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LEGAL AID FOR WOMEN VICTIMS OF GENDER VIOLENCE IN THE CARIBBEAN

Identifying Gaps and Programmatic Responses

A comparative study on the availability of legal aid and assistance services for victims of gender violence in Belize, Haiti, Jamaica, Suriname and Trinidad and Tobago

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List of Acronyms and Abbreviations

| | |
|---|---------|
| Caribbean Community | CARICOM |
| Bureau of Women’s Affairs (Jamaica) | BWA |
| Convention Against Torture | CAT |
| Convention on the Rights of the Child | CRC |
| Convention on the Elimination of Discrimination Against Women | CEDAW |
| Center for the Investigation of Sexual Offences and Child Abuse (Jamaica) | CISOCA |
| Economic Commission for Latin America and the Caribbean | ECLAC |
| Inter-American Commission on Human Rights | IACHR |
| International Covenant on Civil and Political Rights | ICCPR |
| International Convention on the Elimination of Racial Discrimination | ICERD |
| Ministère de la Condition Féminine et des Droits des Femmes | MCDFDF |
| Police Nationale Haïtienne | PNH |
| Victims Support Unit (Jamaica) | VSU |
| Victim and Witness Support Unit (Trinidad and Tobago) | VSWU |

CHAPTER 1 - INTRODUCTION

Violence against women is now recognized by the United Nations as a major human rights, development and security challenge that is 'global, systemic, and rooted in power imbalances and structural inequality between men and women.'¹

The Caribbean is one of the regions that has seen some of the most dramatic levels of violence leveled against women, with far-reaching impact on its societies and economies. This was recently highlighted in the Caribbean Human Development Report produced by UNDP in 2012, which quoted that 3 out of the top 10 recorded rape rates occur in the Caribbean.² Gender violence is not only part of but also contributes to a wider problem of insecurity which affects whole communities, undermining the significant development advances chartered by countries in the region by limiting choices and opportunities for the most vulnerable.

As this study will explore in detail, many factors contribute to this state of affairs; a patriarchal culture where women are maintained in a state of subordination; an endemic problem of criminal violence; and large-scale impunity resulting from the failings of criminal justice systems. Through evidence-based research presented in its human development reports, and its regional and country programmatic interventions, UNDP has been at the forefront of efforts to tackle gender violence and undergird linkages between violence, gender and poverty.

As is now well known, tackling gender violence requires multidisciplinary and coordinated approaches addressing the health, educational, economic, social, and legal dimensions of the problem.³ Although seemingly restrictive, legal aid must be one component in multidimensional approaches to gender violence and must be connected to the provision of other services to victims. Legal aid will assist women in understanding their legal rights and making informed choices on ways to see them enforced. It will give greater visibility to the prevalence of gender violence and generate necessary pressure on criminal justice actors, by striving to ensure that cases are adequately and diligently investigated, prosecuted and adjudicated. It will thereby contribute, together with more wide-ranging judicial reform measures, to putting an end to the impunity enjoyed perpetrators. Legal aid will obviously not singlehandedly resolve the systemic deficiencies of judicial responses to gender violence in the region, but it plays a critical role

¹ United Nations Secretary-General's Report, 'In-depth study on all forms of violence against women', UN Doc. A/61/122/Add.1, 6 July 2006, para. 30, see also para. 69; see also UN Commission on the Status of Women, Agreed conclusions on the elimination and prevention of all forms of violence against women and girls, 57th Session (2013) UN Doc. E/2013/27, E/CN.6/2013/11, para. 10, http://www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_%28CSW_report_excerpt%29.pdf

² UNDP, *Caribbean Human Development Report 2012: Human Development and the Shift to Better Citizen Security*, p. 26 (hereafter, Caribbean HDR). http://hdr.undp.org/sites/default/files/caribbean_hdr2012.pdf

³ See in this respect, United Nations Secretary-General's Report, 'In-depth study on all forms of violence against women', note 1 above, para. 56.

in empowering women to seek accountability. It constitutes therefore an essential building block of comprehensive access to justice strategies, in full accord with UNDP's practice.⁴

The present study examines existing responses to gender violence in select Caribbean countries (Belize, Haiti, Jamaica, Suriname and Trinidad and Tobago), with a specific focus on the value of legal aid and assistance as a means to enhance women's access to justice and address the levels of impunity that currently exist.

As with the Caribbean Human Development Report, the approach adopted is that of offering an 'opportunity for the people of the region to learn more about each other and to learn from each other.'⁵ Given the scale and prevalence of SGBV in all countries of the region, the value of shared learning cannot be overstated here. Another key objective of the study is to offer recommendations to UNDP with a view to identifying potential programmatic strategies in enhancing women's access to justice with respect to SGBV.

1. The Caribbean: General Context and Key Development Indicators

The Caribbean is a highly diverse region which may be subdivided into the mainland Caribbean and the islands, and into four distinct linguistic groups, namely, the Dutch-speaking, English speaking, French-speaking and Hispanic Caribbean.

Caribbean societies are relatively young in historical terms, apart from Haiti, the Dominican Republic and Cuba. Most countries became independent in the last 50 years, and some are still dependencies of European states, which may partly explain their relative lack of social cohesion.⁶

Another important feature of the sub-region is its diverse populations, levels of development and state capacities. Caribbean populations are young and primarily live in urban areas. Ethnic and religious groups are varied, and include Christians, Hindus, East Indians, persons of African descent, Europeans, Amerindians, and Chinese. Levels of development vary between middle-income countries (e.g. Belize, Jamaica, Suriname, Trinidad and Tobago) and less developed countries (e.g. Haiti).

Caribbean countries, notwithstanding their great diversity and differences, share a number of similar challenges. All of these countries have in common a long history of inequality and discrimination. This inequality is reflected in the 'unbalanced distribution of state protection and the inequitable treatment of rights and freedoms',⁷ and in the Inequality adjusted HDI, which is of 0.644 for Trinidad and Tobago (and an overall loss of 15.3 percent), Jamaica (0.591 and an overall loss of 19.1 percent) Suriname (0.523 and

⁴ UNDP, *Access to Justice Practice Note*, 2004

http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/access-to-justice-practice-note/Justice_PN_En.pdf

⁵ Caribbean HDR, note 2 above, p. 4.

⁶ *Ibid.*, p. 3.

⁷ *Ibid.*, p. 9.

an overall loss of 23 percent) although it bears noting that apart from Haiti (0.273 and a 40.2 percent loss), the loss is lesser than the average for LAC region (25.6 percent).⁸

Crime and insecurity is rife in most of these countries, and the homicide rate is well above the world average, ranging from 6.9 murders for 100,000 in habitants in Haiti to 52.2 in Jamaica,⁹ making it the second most violent region in the world.¹⁰ The Citizen Security Survey conducted in 2010 showed that more than half of respondents felt insecure because of crime, with a particularly low sense of security in Trinidad and Tobago (25 percent).¹¹

Finally, and as will be elaborated in greater detail below, gender discrimination and violence continue to be a reality for the region's women.

Regional integration efforts have been undertaken to address these common challenges. The Caribbean Community (CARICOM), which comprises 15 states in the region, is the most significant of these regional organizations. Its four priority areas include functional cooperation, economic integration, coordination of foreign policy and regional security cooperation and rationalization.

2. Main Findings of the 2012 Caribbean Human Development Report

The rationale for the production of the Caribbean Human Development Report was based on the value of undertaking a comparison of the insecurity challenge in the region and of state responses to such challenge. Although the Caribbean has greatly progressed as regards access to education, poverty reduction, political development and democratic governance, development is still hampered by high levels of violent crime and insecurity, including gender violence, as was noted above. In the context of the region, the report notes that these 'may be regarded as the outcome of a wrong approach to development that marginalizes large sections of the population',¹² and that there is a 'troubling level of non-criminalized forms of social violence that are typically directed at the members of vulnerable groups that historically have been disfavoured and discriminated against'.¹³

Human development report processes spawned by UNDP have for the last two decades helped shift the development paradigm and influence public policies and debate at the global, regional and national levels. In the case of the Caribbean, the HDR aimed at altering current thinking within the region on security and crime control towards the full adoption of a citizen security approach that is consistent with human development.¹⁴ The main messages of the report were that 1) high levels of violence could be successfully turned around with the right mix of policies; 2) gender-based violence can be controlled and prevented by interventions that interrupt the cycle of violence; 3) social cohesion is greater in communities that have no street gangs; 4) security efforts are more effective if the right of the people are expected and the

⁸ <http://hdr.undp.org/en/countries/>

⁹ <http://data.un.org/Data.aspx?d=UNODC&f=tableCode%3A1>

¹⁰ Caribbean HDR, note 2 above, p. 36.

¹¹ *Ibid.*, p. 19.

¹² Caribbean HDR, note 2 above, p. 5.

¹³ *Ibid.*, p. 1.

¹⁴ *Ibid.*, p. 9.

people are involved as active agents and co-producers of their own security; 5) there is considerable support for social crime prevention; 6) empowering young people by investing in their development should be a priority; 8) crime and insecurity are costly to long-term development.¹⁵

3. Methodology and Scope

Although the present study constitutes a follow up to the 2012 Caribbean Human Development Report (CHDR) (see above), the selection of countries examined herein differs slightly. Three countries covered in the CHDR are included, namely, Jamaica, Suriname and Trinidad and Tobago. Additionally, Belize, which notwithstanding its belonging to CARICOM, tends to be regarded for geographical reasons as part of the Central America sub-region was included, as well as Haiti, which stands out linguistically, economically and in terms of its legal system. These countries were selected because of they varied in terms of the degree and character of insecurity, their linguistic differences and different levels of development.

In terms of the study's substantive scope, the analysis primarily focuses on violence in the family, and violence in the community, more specifically domestic violence (which may include as applicable sexual offences, such as rape and incest) and sexual violence by non-intimate partners. It does not examine trafficking or other forms of sexual exploitation, which raise a distinct set of issues and responses.¹⁶

The report was undertaken in close cooperation with the UNDP Country Offices of the five selected countries. Research involved both desk review analysis, and semi-structured interviews with stakeholders conducted in the country or in a small number of cases, through teleconferences.¹⁷ Individual 'baseline' reports were produced for each of the countries and consolidated into the present regional study, to highlight common challenges and contrast existing responses. The report also relied on the data collected for the Caribbean Human Development Report, primarily the 2010 Caribbean Victimization Survey, and the UNDP Citizen Security Survey 2010, which entailed the random selection and interview of some 11,155 resident citizens of the Caribbean-7.¹⁸

Each of the countries presented one common methodological challenge, namely, the lack of standardized, comprehensive, and sex-disaggregated data, which are critical to have a detailed understanding of the incidence of sexual and gender-based violence, and of the effectiveness of law enforcement and judicial responses. The problem was particularly acute as regards the availability of judicial data on the number of cases reported, investigated, and adjudicated and their judicial outcomes (i.e. acquittal, conviction, or dismissal).¹⁹

¹⁵ *Ibid.*, p. 9-10.

¹⁶ On the scope and definitions of violence against women under international law, see Chapter 2.

¹⁷ See Annex I for the list of stakeholders interviewed for each of the countries.

¹⁸ Caribbean HDR, note 2 above, p. 11.

¹⁹ See similar explanation in Caribbean HDR, note 2 above, p. 11.

CHAPTER 2 - NORMATIVE AND CONCEPTUAL FRAMEWORK

1. Violence Against Women in International Law

Although there is no global binding convention dealing specifically with violence against women, there are nonetheless important instruments and recommendations, most importantly, the Convention on the Elimination of All Discrimination Against Women, CEDAW General Recommendation No.19, and the 1993 Declaration on the Elimination of Violence Against Women, adopted thereafter.²⁰ At the regional level, the Organization of American States has sponsored the adoption of the Inter-American Convention on Prevention, Punishment, and Eradication of Violence Against Women ‘Convention of Belem do Para’.²¹

1.1. Definitions

Violence against women is ‘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.’ It includes (a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.²²

The term of ‘gender-based’ acknowledges that this sort of violence against women is directly related to and shaped by gender roles in society.²³ According to the CEDAW, ‘gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.’²⁴

Article 2 of the Convention *Belem do Para* offers a comprehensive definition of violence against women, as follows:

Violence against women shall be understood to include physical, sexual and psychological violence:

²⁰ UN Declaration on the Elimination of Violence Against Women, UN Doc. A/48/104, 20 December 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>; CEDAW General Recommendation No. 19 on Violence Against Women, 27 January 1992, UN Doc. A/47/38, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/300395546e0dec52c12563ee0063dc9d](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/300395546e0dec52c12563ee0063dc9d)

²¹ Adopted in Belém do Pará, Brasil, on June 9, 1994 at the twenty-fourth regular session of the General Assembly), <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>

²² Arts 1 and 2 of the UN Declaration on the Elimination of Violence Against Women; see also subsequent General Assembly Resolutions on intensification of efforts to eliminate all forms of violence against women, including Res. 61/143, 30 January 2007; Res. 62/133, 18 December 2007; Res. 63/155, 18 December 2008; Res. 64/137, 18 December 2009; RES/65/187, 21 December 2010; and Res/67/144, 20 December 2012, all available at <http://www.un.org/womenwatch/daw/vaw/v-work-ga.htm>

²³ CEDAW General Recommendation No. 19, note 1 above, para. 6.

²⁴ CEDAW General Recommendation No.19, note 1 above, para. 1, 24.

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

One important point to bear in mind is that not all of these acts of violence will be as such criminalized in a given national legal order. Thus domestic violence is not expressly criminalized in all Caribbean countries while some of the acts constituting domestic violence are, such as physical assault, murder, battery etc.

1.2. Measures to Prevent, Punish and Eradicate Violence against Women

Violence against women will not be eradicated without political will and commitment at the highest levels to make it a priority locally, nationally, regionally and internationally. Political will is expressed in a variety of ways, including legislation, national plans of action, adequate resource allocation, location of mechanisms to address violence against women at the highest levels, efforts to overcome impunity, visible condemnation of this violence, and sustained support by leaders and opinion makers of efforts to eradicate it. Creating an environment conducive to the effective functioning of NGOs working on this issue and collaboration with them are also indications of political will.

UN in-depth study on all forms of violence against women, 2006, para. 55.

In line with the above statement,²⁵ all of the aforementioned instruments recommend a full array of measures to be adopted by governments to end gender-based violence.

The 1993 UN Declaration²⁶ thus provides that states should, *inter alia*:

- Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already

²⁵ United Nations Secretary-General's Report, 'In-depth study on all forms of violence against women', UN Doc. A/61/122/Add.1, 6 July 2006, para. 284.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>

²⁶ See also CEDAW General Recommendation No. 19, note 1 above.

existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

- Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;
- Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;
- Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
- Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- Recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women;
- Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels.

CEDAW General Recommendation No.19 more specifically provides for the availability of support services to rural women and special services for isolated communities; and the existence of criminal penalties and of civil remedies in cases of domestic violence. In one of its 'views' on an individual complaint, the Committee recommended a number of measures targeted at the legal system with a view to guarantee access to justice to victims of rape, namely 'to ensure that legal procedures and court proceedings involving crimes of rape and other sexual offences are pursued in expeditious manner, are impartial and fair and not affected by prejudices or stereotypical gender notions'.²⁷

²⁷ Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 18/2008 adopted on 16 July 2010, para. 8.3. The Committee further stressed that 'stereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general', para. 8.4

Positive Obligations to Eliminate Domestic Violence
The Maria da Penha Case

In 1983, Maria da Penha, was the victim of a double homicide attempt by her then husband and father, causing her irreversible paraplegia. Fifteen years later, in spite of two court sentences, the procedure was still ongoing and the perpetrator remained at large.

In 2001, the Inter-American Commission of Human Rights concluded that Brazil was responsible due to its omissions, negligence and tolerance of domestic violence against Brazilian women, finding that Brazil had violated various rights protected by the Belem do Para Convention and the American Convention on Human Rights, including the right to equal protection before the law and to a simple and prompt recourse before competent courts, as well as the right to judicial guarantees and to judicial protection, due to the unjustified delay and negligent handling of the case.

The Commission also issued a series of recommendations to rectify Brazil's public policies on domestic violence, including promoting the training of specialized judicial and police officers; simplifying criminal proceedings; and increasing the number of Women's Police Stations with special resources.

Article 7 of the Convention 'Belem do Para' lists similar obligations of state parties to prevent, punish and eradicate violence against women, with the important difference, that these are binding obligations of state parties to the convention. The obligations are particularly extensive and seek to cover the whole gamut of legal instruments and procedures to prevent and punish violence.

The obligations include the adoption of any legal measures in their domestic criminal, civil and administrative frameworks on the prevention, investigation and penalization of cases of violence against women; 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; the adoption of 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; and the establishment of the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies. In *Velazquez Rodriguez v. Honduras*, the Inter-American Court of Human Rights found that a state is under an obligation to take action to prevent human rights violations committed by non-state actors, investigate allegations of violations and punish wrongdoers. The standard to establish state responsibility is one of reasonableness.²⁸

At the sub-regional level, CARICOM has adopted the Charter of Civil Society (1997) which deals in its Article XII dealing with Women's Rights explicitly recognizes and provides that in strengthening gender equality women's equal rights with men shall include the right 'to legal protection including just and effective remedies against domestic violence, sexual abuse and sexual harassment'. Article V, on equality before the law mandates that states shall use their best endeavours to have legal assistance extended in any case where the interest of justice so requires. The Charter is not legally binding but is a declaration which represents the aspirations of the CARICOM countries.

²⁸ *Velazquez Rodriguez v. Honduras*, 29 July 1988, http://www1.umn.edu/humanrts/iachr/b_11_12d.htm ; see also *Maria da Penha Maia Fernandes v. Brazil*, 16 April 2011, <http://www1.umn.edu/humanrts/cases/54-01.html>

CARICOM has also developed model legislation on domestic violence known as the Family (protection against Domestic Violence) Act, which has influenced the passing of legislation by all English-Speaking Caribbean countries.

2. Gender-Based Violence as an Impediment to Development

There is now broad consensus on the deleterious impact of gender-based violence on women's rights, and more fundamentally, on human development. Thus, 'in addition to the harm they exact on the individual level, these consequences also exact a social toll and place a heavy and unnecessary burden on health services'. The CEDAW Committee also noted that 'the underlying consequences (...) of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities'.²⁹ In addition to the direct costs of gender based violence, in terms of health care, judicial and social services for survivors and the prosecution of perpetrators, gender based violence has indirect costs as well, namely, lower productivity and earnings of survivors with a negative impact on the economies of developing and developed countries alike.³⁰

The CEDAW has highlighted the prevalence of family violence as one of the most insidious forms of violence against women. These are perpetuated by traditional stereotypes and attitudes but also by a lack of economic independence, which forces many women to stay in violent relationships.³¹ Research converges on the increased risk of partner and sexual violence for poor women.³² Thus achieving the MDGs, in particular those related to poverty, education, health and gender equality, is also essential to achieve equal access to justice and remedies for women.³³ Another facet of the linkages between gender-based violence and development is that in times of economic crises, poverty may lead to an increase in domestic violence.³⁴

²⁹ General Recommendation No. 19, note 1 above, para. 11; see also UN Commission on the Status of Women, Agreed conclusions on the elimination and prevention of all forms of violence against women and girls, 57th Session (2013) UN Doc. E/2013/27, E/CN.6/2013/11, para. 21, http://www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_%28CSW_report_excerpt%29.pdf

³⁰ United Nations Secretary-General's Report, 'In-depth study on all forms of violence against women', UN Doc. A/61/122/Add.1, 6 July 2006, note 6 above, para. 107, 1771-177.

³¹ General Recommendation No. 19, note 1 above, para. 23.

³² Secretary-General's Report, 'In-depth study on all forms of violence against women', note 6 above, para. 100.

³³ See UN Women, *2011-2012 Progress of the World's Women's Report*, 2011, p. 14, <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>; Secretary-General's Report, 'In-depth study on all forms of violence against women', note 6 above, para. 54, 86.

³⁴ See e.g. UN Women, *the World's Women Report 2010, Trends and Statistics*, p. 127, http://unstats.un.org/unsd/demographic/products/Worldswomen/WW_full%20report_BW.pdf

3. Access to Justice and Legal Aid

3.1. Access to Justice

3.1.1. Normative Framework

Access to justice through the availability of effective remedies is now regarded as an essential requirement for the full respect and protection of human rights and the rule of law, although it is worth noting that the term ‘access to justice’ is not explicitly used in the most significant human rights instruments, such as the ICCPR or the Universal Declaration on Human Rights.³⁵ Access to justice may have varied meanings. It is used in a general manner ‘to signify the possibility for the individual to bring a claim before a court and have a court adjudicate it’. It also refers more specifically to the right not only ‘to enter a court of law, but to have his or her case heard and adjudicated in accordance with substantive standards of fairness and justice’, or even more narrowly, to describe ‘the legal aid for the needy, in the absence of which judicial remedies would be available only to those who dispose of the financial resources necessary to meet the (...) cost of lawyers in the administration of justice’.³⁶

UN and regional human rights instruments have generally embraced the second meaning of the concept as reflected in article 8 of the Universal Declaration of Human Rights and article 25 of the American Convention on Human Rights.

Everyone has the right to a simple and prompt recourse, or any other effective recourse to a competent court or tribunal for protection against acts that violate their fundamental rights recognized by the Constitution of laws of the state concerned or by this Convention...’

Article 25 American Convention on Human Rights

Under the CEDAW, the general prohibition of discrimination enshrined in Article 2 specifically provides that ‘laws prohibiting discrimination must embody some form of legal or other material consequence for those who violate them’. This broad formulation is meant to include all types of remedies

and penalties, whether penal, civil or administrative.

Article 2 (c) of CEDAW requires effective judicial protection of women’s entitlement to enjoy rights on an equal basis with men. This is an obligation of result, which requires that the remedy be practically available and accessible as soon as women wish to assert their rights before the relevant courts, tribunals or other institutions. The interpretation of the obligations under this article is set out in CEDAW General Recommendation No.28.³⁷ The structures and institutions comprising the justice system must ensure legal protection of the rights of women on an equal basis with men. Therefore, they should be impartial,

³⁵ F. Francioni (ed.), *Access to Justice as a Human Right*, Oxford University Press, 2007, p. 24.

³⁶ *Ibid.* p. 1.

³⁷ CEDAW, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>

efficient, adequately resourced and free from gender bias and negative stereotypes in the administration of justice.

The Committee has also found that prosecuting perpetrators of domestic violence and ensuring effective and timely criminal and civil remedies obligations is a clear obligation of State parties to the Convention.³⁸ In the case of *Ms. A.T. v. Hungary*, the Committee underlined the need to investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence, to provide victims with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation.³⁹ As noted in the Secretary-General's in-depth study on all forms of violence against women, 'when the state fails to hold perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, patterns of violent behaviours are normalized.'⁴⁰

3.1.2. Access to Justice under UNDP's Mandate

Access to justice is regarded as a core component of UNDP's mandate to reduce poverty and strengthen democratic governance. UNDP's declared niche is to support justice to make it work for those who are poor and disadvantaged. Common barriers to access to justice are long delays and hefty cost; abuse of authority; weak enforcement of laws and implementation; ineffective remedies; lack of *de facto* protection; lack of adequate information about the law; lack of adequate legal aid; and avoidance or disenfranchisement from the legal system for the above reasons and due to its remoteness, intimidating character, or lack of legitimacy.⁴¹

UNDP's Access to Justice work is human rights-based, and thus grounded in relevant international human rights standards and principles. A human rights-based approach is useful to:

- Focus on the immediate, as well as underlying causes of the problem—the factors impeding access (lack of safeguards to access, or insufficient mechanisms that uphold justice for all under any circumstances);
- Identify the 'claim holders' or beneficiaries — the most vulnerable (rural poor, women and children, people with diseases and disabilities, ethnic minorities, among others);
- Identify the 'duty bearers' - the ones accountable for addressing the issues/problems (institutions, groups, community leaders, etc.); and

³⁸ Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 6/2005 adopted on 6 August 2007, para. 12.3.

³⁹ Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 2/2003 adopted on 26 January 2005, para. 9.6.

⁴⁰ United Nations Secretary-General's Report, 'In-depth study on all forms of violence against women', note 6 above, para. 76.

⁴¹ UNDP, *Access to Justice Practice Note*, 2004

http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/access-to-justice-practice-note/Justice_PN_En.pdf, p. 3-4.

- Assess and analyze the capacity gaps of claim-holders to be able to claim their rights, and of duty-bearers to be able to meet their obligations and use analysis to focus capacity development strategies.⁴²

4. Legal Aid: Conceptual and Normative Bases

Lack of legal awareness and legal aid is widely regarded as one of the greatest obstacles to guaranteeing access to justice. The 2004 *Access to Justice Practice Note* thus recognizes legal aid and awareness as one of the key areas of engagement of an access to justice strategy. Legal aid and counsels entails the development of the capacities (from technical expertise to representation) that people need to enable them to initiate and pursue judicial proceedings and may involve professional lawyers (as in the case of public defense systems and pro bono representation), laypersons with legal knowledge (paralegals) or both (as in alternative lawyering and development legal aid). It is also worth noting that the UN Secretary General's report on Legal Empowerment of the Poor and Eradication of Poverty recognizes legal aid as a key element of legal empowerment particularly for poor women.⁴³

The right to legal aid finds support in international instruments such as the right to a fair trial as provided in the Universal Declaration on Human Rights (article 11.1), and the ICCPR (article 14 (3)). The CEDAW has also recognized the importance of legal aid as a means to ensure effective access to justice for victims of domestic violence.⁴⁴

According to the *United Nations Principles on Access to Legal Aid in Criminal Justice Systems*, adopted on 20 December 2012, legal aid includes legal advice, assistance and representation for victims and for arrested, prosecuted and detained persons in the criminal justice process, provided free of charge for those without means. The term 'legal aid' is further intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanism and restorative justice processes.⁴⁵

One key element of the definition for the present purposes is that legal aid is understood to apply to both defendants *and victims*. Guideline 7 of the UN Principles offers specific recommendations regarding legal aid to victims, such as:

- Education and advice on legal rights in international and domestic law, including the possibility of taking civil action or making a claim for compensation in separate legal proceedings, whichever is consistent with the relevant national legislation;

⁴² *Ibid.*

⁴³ UN Secretary General's report on Legal Empowerment of the Poor and Eradication of Poverty UN Doc. A/64/133, 13 July 2009, para. 77.

http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/report-of-the-secretary-general-on-legal-empowerment-and-poverty-eradication-a-64-133/A_64_133_EN.pdf.

⁴⁴ Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 19/2008 adopted on 28 February 2012, para. 9.16.

⁴⁵ Economic and Social Council, *United Nations Principles on Access to Legal Aid in Criminal Justice Systems*, UN Doc. E/CN.15/2012/L.14/Rev.1, 25 April 2012, para 8 and Principle 4, <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/V12/528/23/PDF/V1252823.pdf?OpenElement>

- Free legal assistance, care and support throughout the entire criminal justice process.
- Prompt information by the police and other frontline responders (i.e. health, social and child welfare providers) of the right to information, entitlement to legal aid, assistance and protection and how to access such rights.
- Consideration for the views and concerns of victims at appropriate states of the criminal justice process;
- Ability of victim service agencies and NGOs to provide legal aid;
- Establishment of mechanisms and procedures to ensure close cooperation and appropriate referral system between legal aid providers and other professionals (i.e. health, social and child welfare providers).

Guideline 9 expressly provides for the provision of legal aid, advice and court support services **in all legal proceedings** to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services.⁴⁶ The language used would indicate that in gender-based violence cases, legal aid and advice should not only be provided in criminal proceedings, but also in civil proceedings.

Legal aid is usually provided through government schemes, such as public defender systems and local governance mediation services, or through civil society groups, through rosters of pro-bono attorneys, legal clinics and public interest law groups. The latter approach has the benefit of ensuring greater accessibility and flexibility to users, but its downside is that it will not always be sustainable. The former approach is theoretically the more desirable – based on the understanding of legal aid as a service to be provided by the state – but may suffer from stifling bureaucratic processes and remoteness. As noted in the Practice Note, ‘non government services are not a substitute for state responsibility to provide legal aid, although they are a key source of assistance for the poor and the disadvantaged, especially where governments lack the capacity to fulfill their responsibilities’.⁴⁷ In many instances, states will apply a means test to determine eligibility for legal aid. The UN Principles require that the criteria for eligibility be widely publicized, that legal aid be provided on a preliminary basis in urgent cases, such as at police stations or in detention centres, and most importantly in domestic violence cases, that the income be calculated on the basis of their own individual assets, rather than on the basis of household income.⁴⁸

⁴⁶ See also GA Res. 63/155, para. 16(m), 30 January 2009; GA Res. 65/187, 23 February 2011, para. 16(n); GA Res. 67/144, 27 February 2013, para.18(t); see also in this regard, UN Commission on the Status of Women, Agreed conclusions on the elimination and prevention of all forms of violence against women and girls, 57th Session (2013) UN Doc. E/2013/27, E/CN.6/2013/11, para. f), http://www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_%28CSW_report_excerpt%29.pdf

⁴⁷ See also United Nations, ‘In-depth study on all forms of violence against women’, note 6 above, para. 329, which notes that it is ‘good practice for Governments to support [legal aid] projects, particularly through funding.’

⁴⁸ See Guideline 1 of the UN Principles, note 26 above.

The 2004 UNDP *Access to Justice Practice Note* provides a useful analysis of the importance of legal aid for access to justice, and highlights **three key challenges of availability, affordability and adequacy** that poor people and other disadvantaged groups face when it comes to legal aid. It identifies important guidelines on the design of legal aid programmes, recommending that the programme:

- be demand-driven, i.e. based on disadvantaged people's legal needs;
- be based on new litigation methodologies, that may motivate lawyers to represent the poor through non-market means;
- make use whenever possible of paralegals, which offer greater accessibility, quality of communication and are low-cost;
- strive to ensure coordination between state and non-state actors as a means to fill gaps in the provision of legal services to disadvantaged people.
- be sustainable. Legal aid schemes are usually expensive and many governments do not consider them a priority. For programming purposes, particular attention should be paid to finding ways to ensure financial sustainability and cost-effectiveness. Examples include the use of pro bono lawyers, university law clinics; the participation of Bar associations, paralegals and other public advocates; as well as a coordinated lobby for an adequate share of public revenue.

An expansive understanding of legal aid is particularly critical from a gender perspective, due to the multiple barriers faced by women in accessing justice and the ensuing need for 'specialized, tailored and integrated services'.⁴⁹ Interestingly, no less than 45 countries have recognized the fundamental importance of legal aid and have included a right to free legal aid in legislation on domestic violence.⁵⁰ The 2006 in-depth study on all forms of violence against women specifically recommends the creation of services, in cooperation with civil society organizations as appropriate, in the following areas: access to justice, including free legal and when necessary; provision of a safe and confidential environment for women to report violence against women; adequately funded shelters and relief services etc.⁵¹

CHAPTER 3 - SEXUAL AND GENDER BASED VIOLENCE IN THE CARIBBEAN: A SITUATION ANALYSIS

This chapter will present key data on the prevalence of gender discrimination and gender violence in the Caribbean, primarily drawn from the 2012 Caribbean Human Development Report.

⁴⁹ UN Women, *2011-2012 Progress of the World's Women, In Pursuit of Justice*, note 14 above, p. 13.

⁵⁰ *Ibid.*, p. 56.

⁵¹ Secretary-General's Report, 'In-depth study on all forms of violence against women', note 6 above, para. 284; see also the call for integrated centres in GA Res. 63/155, 30 January 2009, para. 16(q); GA Res. 65/187, 23 February 2011, para. 16(r); GA Res. 67/144, 27 February 2013, para.18(x).

1. Gender Discrimination in the Caribbean

Gender discrimination in its widest understanding continues to affect many women in the countries under study. The Gender Inequality Index (GII), which reflects women's disadvantage in terms of reproductive health, empowerment and economic activity, shows a significant loss in human development in these three dimensions. Thus, the 2013 score is estimated to be 0.311 for Trinidad and Tobago, 0.435 for Belize, 0.458 for Jamaica, 0.467 for Suriname, and 0.592 for Haiti. The LAC average is at 0.419.⁵²

Although important advances have been chartered in women's access to education and the labour market, as well as political participation and equality before the law, inequities persist.⁵³ Agriculture and light industries, which have constituted for long one of the key sources of livelihood of poor women, have been in decline and the recent global economic crisis has deepened the region's economic ills, disproportionately affecting women.⁵⁴ Added to this are the gender employment gap, the gender pay gap, occupational segregation and unpaid work.⁵⁵

Another important feature of the region is the large number of women headed households. Approximately half of all households in the Caribbean are headed by women who tend to live in poverty. They experience as a result higher infant mortality rates, higher early pregnancy rates, lower school enrollment, lower employment rates and increased likelihood of being subjected to violence.⁵⁶

As will be seen through this report, the continuing economic disenfranchisement of women is in all of the countries under study a key factor in their gender and sexual victimization. In other words, 'the social, economic and political empowerment of women is essential to counter decades of deprivation... caused by poverty, and social, cultural, political and institutional practices.'⁵⁷

The discrimination experienced by women must be qualified by the existence of a robust and proactive civil society sector which, in most of the region, and certainly in Haiti, Jamaica, and Trinidad and Tobago, has been particularly effective in engaging with the government to enhance its responses to gender discrimination and violence,⁵⁸ and has proven to be a critical counterpoint to government's perspectives, particularly in Haiti and Jamaica. The Caribbean HDR explains that 'concern for individual rights, a political culture of democracy, and widespread piety' have contributed to the development of protection systems for victims. The Report also notes that 'community activism is important in a context where the general

⁵² <http://hdr.undp.org/en/countries/>; see also UNDP, *Caribbean Human Development Report 2012: Human Development and the Shift to Better Citizen Security*, p. 17-18 (hereafter, Caribbean HDR).

http://hdr.undp.org/sites/default/files/caribbean_hdr2012.pdf

⁵³ *Ibid.*, p. 18.

⁵⁴ *Ibid.*, p. 19.

⁵⁵ *Ibid.* p. 19.

⁵⁶ *Ibid.*, p. 34.

⁵⁷ *Ibid.*, p. 176.

⁵⁸ On the importance of civil society to enhance women's access to justice, see UN Women, *2011-2012 Progress of the Worlds' Women Report: In Pursuit of Justice*, 2011, p. 118.

perception of performance and the confidence in the police's ability to control domestic violence and rape are rather low.⁵⁹

2. Violence Against Women in the Caribbean

According to the Caribbean HDR, across the Caribbean, three practices have become a matter of growing concern, namely, sexual violence, domestic violence and trafficking in persons.⁶⁰ The present study will focus on the first two.

Domestic violence is widespread in the Caribbean and no less than 11 percent of respondents to the survey conducted for the Caribbean HDR, primarily women, indicated that they had experienced domestic violence.⁶¹ This is correlated with the fact that respondents who had experienced sexual assault were least likely to respond that this was a stranger.⁶² Likewise, a 2013 WHO study estimates that 27% of women in the Caribbean have been subject to intimate partner violence.⁶³ The national reports prepared for the present study as well as prior academic policy studies show a high level of interpersonal violence, which reflects an 'entrenched culture of violence and adversarial intimate relationships.'⁶⁴ In all of the countries included in the report, a majority of men as well as women believe it is justified to use violence if expectations about gender roles are not met.⁶⁵ Women who experience abuse are thus often blamed for the abuse, and for having 'provoked' the violence.

⁵⁹ Caribbean HDR, note 1 above, p. 41.

⁶⁰ *Ibid.*, p. 25.

⁶¹ *Ibid.*, p. 30.

⁶² *Ibid.*, p. 31.

⁶³ World Health Organization, *Global and regional estimates of violence against women : prevalence and health effects of intimate Partner violence and non-partner sexual violence*, 2013, p. 47, http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf?ua=1

⁶⁴ *Ibid.*, p. 30.

⁶⁵ *Ibid.*, p. 30.

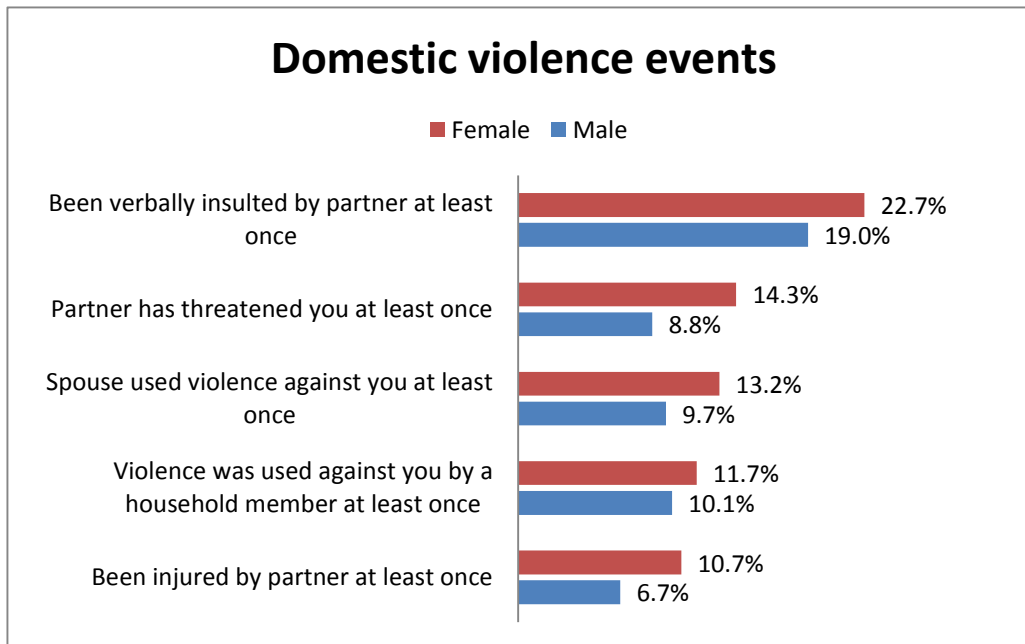


Figure 1 UNDP Citizen Security Survey 2010

Sexual victimization outside the home will vary across geographical areas and specific population groups but it is clear that it is the youth, and particularly the girl child that is disproportionately affected by this violence.⁶⁶ A UNODC and World Bank 2007 study found that 3 out of the top 10 recorded rape rates occur in the Caribbean.⁶⁷

Although progress has been achieved particularly as regards updating domestic legislation⁶⁸ to ensure conformity with international norms, and the creation of specialized police and support services, much remains to be accomplished to ensure that women who have been victims of SGBV obtain actual justice. The Caribbean HDR reports a high level of dissatisfaction with the police response amongst women who were physically abused in 2009.⁶⁹ One of the indicators used to assess the effectiveness of state responses is the so-called clearance rate. Across the Caribbean and in all of the countries under study, the clearance rate is particularly low, meaning by implication that the conviction rate is very low as well. By way of example, the average clearance rate for rape and carnal abuse in Jamaica between 1970 and 2009 was 48 percent.⁷⁰

⁶⁶ Caribbean HDR, note 1 above, p. 26-27, which notes as well that the Caribbean is the region with the earliest onset of sexual initiation in the world. According to a 2003 World Bank Study, almost two-thirds of respondents reported sexual initiation before the age of 13.

⁶⁷ Caribbean HDR, note 1 above, p. 26.

⁶⁸ All of the English-speaking countries in the Caribbean have enacted domestic violence legislation, see UN Women, *Strengthening Accountability and Community Action for Ending Gender-Based Violence in the Caribbean*, <http://www.unifemcar.org/gbvlawportal/DevelopmentsinLaw.aspx?var=5>

⁶⁹ Caribbean HDR, note 1 above, p. 40.

⁷⁰ *Ibid.*, p. 26.

One of the most fundamental challenges in gauging the incidence of sexual and gender based violence in these countries remains the limited availability of detailed data.⁷¹ In most countries, the data is not gender disaggregated. Where statistics are available for sexual offences, no details are provided on specific types of offences, such as rape, incest etc. Furthermore, sexual and gender based violence tend to be, as in many other parts of the world, severely underreported.⁷² The results of the Caribbean HDR victimization survey show that the reported occurrence of sexual assault in 2009 was 2.1 percent, and as the table below shows, the sample of female victims was below 100 for the three countries, and cannot therefore be regarded as statistically significant.⁷³ Original research conducted by Elsie Le Franc and others, on interpersonal violence in Barbados, Jamaica and Trinidad and Tobago, found that approximately 68 percent of the 3,401 respondents were victims of violence perpetrated by a relationship partner. The findings suggest that there were very high levels of tolerance among victims, which in itself resulted from an entrenched culture of violence and of adversarial intimate relationships. Underreporting results from other factors as well, including women’s lack of economic independence, and family pressures based on the common belief that these are purely private matters.⁷⁴ For the present purposes, however, the most telling and problematic factor is the lack of effective response from law enforcement authorities and the judiciary, which will be further analyzed below.

| | | Trinidad and Tobago | Suriname | Jamaica |
|---|----------------|---------------------|--------------|--------------|
| Female - non-victim of domestic violence | N cases | 694 | 659 | 923 |
| | % | 89.0% | 87.6% | 93.5% |
| Female – Victim of domestic violence | N cases | 86 | 93 | 64 |
| | % | 11.0% | 12.4% | 6.5% |
| Total | N cases | 780 | 752 | 987 |
| | % | 100% | 100% | 100% |

Figure 2 UNDP Citizen Security Survey 2010

3. Access to Justice in the Caribbean: An Institutional Perspective

Before examining in further detail the challenges faced by gender-based violence victims in accessing justice and the availability and adequacy of legal aid support in the five countries selected for the present study, it is useful to offer a snapshot of some of the broader structural problems of judicial institutions that impact effective access to justice in countries of the region. While the following section will outline some of the key deficiencies of the police and judicial institutions and how these affect gender-based violence victims, it is important to note that significant efforts have been undertaken by countries in the region in recent years, including countries included in the present study, to improve responses to gender

⁷¹ *Ibid.*, p. 31; see also World Health Organization, *Global and regional estimates of violence against women: prevalence and health effects of intimate Partner violence and non-partner sexual violence*, World Health Organization, 2013, p.33, which notes that the Caribbean, together with Central Sub-Saharan Africa, East Asia and Central Asia, is the region with the least data available.

http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf?ua=1

⁷² Caribbean HDR, note 1 above, p. 31.

⁷³ *Ibid.*, p. 31.

⁷⁴ See UN Women, *Strengthening Accountability...*, note 17 above,

<http://www.unifemcar.org/gbvlawportal/DevelopmentsinLaw.aspx?var=5>

violence, through the establishment of specialized police units, the production of guidance tools for the police, or the creation of hotlines.⁷⁵

3.1. Police Services

As will be amply illustrated in this study, the police services suffer from severe shortcomings, particularly as regards their responses to gender violence. The CHDR identified three key challenges faced by police services in the region, namely, performance legitimacy imperative; integrity imperative; and the rights-respecting imperative.⁷⁶ All of these three challenges are bound to impact responses to sexual and gender-based violence.

Performance and capacity is certainly a key problem in Haiti, where the police still lacks basic equipment to fulfill its task. The Caribbean HDR also noted that only 33 percent of the police academies in the countries covered in the report provided training on women's rights (although 83 percent provided gender violence training).⁷⁷ In Belize, corruption is viewed by many stakeholders as widespread and the police often expects payouts in the form of financial or even sexual favours to arrest or serve a summon on a perpetrator. Rights-respecting obligations are also very problematic in Jamaica where only 15 percent of respondents considered that the police respected citizens' rights and only 8.9 percent believed it treated people equally. The figures were only marginally better for Trinidad and Tobago, i.e. 23.4 percent and 15.1 percent, respectively.⁷⁸ The results were higher, however, when the question posed to respondents was whether their rights were being respected by the police, with an average of 39 percent responding positively.

⁷⁵ See Final Conclusions, p. 137.

⁷⁶ Caribbean HDR, note 1 above, p. 95-96.

⁷⁷ *Ibid.*, p. 99-100.

⁷⁸ *Ibid.*, p. 103.

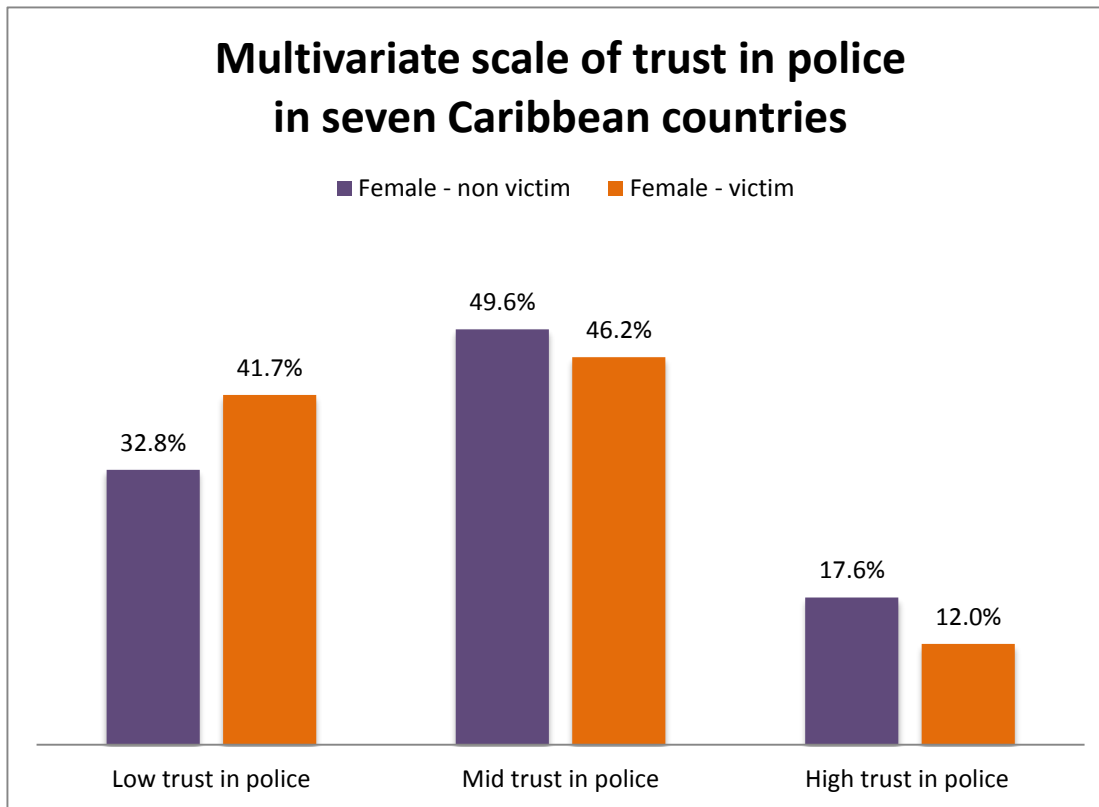


Figure 3: UNDP Citizen Security Survey 2010

Tellingly, responses to the same question by female victims of domestic violence were less positive than those of female who had not been victimized.⁷⁹ At the same time, the responses regarding the perceived performance of the police in controlling domestic violence were significantly lower, i.e. 23.9 percent in Jamaica, 25.6 percent in Suriname, and only 8.9 percent in Trinidad and Tobago, with an average of only 21.7 for the countries included in the survey.⁸⁰ Although, as will be seen below, many of the countries studied, including Haiti, Jamaica, and Trinidad and Tobago have police services specialized in responding to sexual offences and/or domestic violence cases, and several of them, namely Belize and Trinidad and Tobago, expressly provide for the obligation of the police to respond to every report of domestic violence,⁸¹ lack of capacity, flawed mandates and poor coordination with other services remain an ongoing concern.

3.2. Justice Institutions

Both criminal justice systems and civil law procedures are relevant in addressing sexual and gender based violence. Criminal justice is tasked with prosecuting the perpetrators, while family courts or other civil proceedings will be key in preventing further violence through the issuance of protection or restraining

⁷⁹ Caribbean HDR, note 1 above, p. 105: 38.9 percent of domestic violence victims in Jamaica, 32.2 percent in Suriname, and 31 percent in Trinidad and Tobago.

⁸⁰ *Ibid.*, p. 107.

⁸¹ See UN Women, *Strengthening Accountability...*, note 17 above.

<http://www.unifemcar.org/gbvlawportal/DevelopmentsinLaw.aspx?var=5>

orders, and in some cases tenancy and occupation orders, as well as providing in certain instances access to a range of social services.

Some experts opine that the statutory regimes that have been created to ensure tailored responses to gender based violence have had the unintended consequence of pigeonholing the issue as a family matter rather than a criminal justice matter.⁸² This may have unintentionally contributed to reinforcing the public perception that these behaviours are somehow less reprehensible than other offences, justifying as well the deficient police, and criminal justice responses to it. At the same time, given the dysfunction of the criminal justice system throughout the region (see below), it is hardly surprising that advocates and victims have generally relied on civil and family law remedies. One should note, however, that there is even less reliable data available on the performance of the judiciary in civil proceedings for domestic violence, and it is anything but sure that they are more effective. Although a little dated already, a study on Trinidad and Tobago quoted by UN Women found that the majority of protection (77 percent) orders applications were either withdrawn or dismissed and that the process was relatively lengthy.⁸³

Although many of the challenges experienced by justice systems in the countries under study are similar, there are important differences between the legal systems of these countries. The common law applies in three countries (Belize, Jamaica and Trinidad and Tobago) and their judicial systems bear therefore many similarities in terms of the structure of the court system and statutory regime. Haiti and Suriname's legal systems are based on the civil law tradition, which primarily differ in the criminal realm with important implications in terms of evidentiary rules, and the participation of the victim in the proceedings, for in civil law countries, victims are able to take part in the proceedings and claim compensation in case the accused is found guilty.

Regardless of the legal tradition they are based upon, in all of the countries examined, criminal justice systems suffer from structural flaws that affect their performance, effectiveness and legitimacy. The main symptoms of these flaws are the slow processing of cases and ensuing backlog, and the low conviction rates and resulting impunity enjoyed by criminals.⁸⁴

The reasons that have contributed to the backlog problem are manifold: increased crime rate; inadequate staffing; poor capacity of judicial professionals; case processing delays by forensic services; dilatory practices used by lawyers and other practitioners and more generally inefficient scheduling and case management practices.⁸⁵ This is particularly problematic with respect to sexual and gender-based

⁸² Domestic violence is not, as such criminalized in the English-speaking Caribbean. There is however a formal linkage between the civil remedies available in domestic violence cases, *i.e.* the protection order, and the criminal process, in that criminal sanctions will usually apply where a protection order is breached; see UN Women, '*Strengthening Accountability...*', note 17 above, <http://www.unifemcar.org/gbvlawportal/DevelopmentsinLaw.aspx?var=5>

⁸³ *Ibid.*

⁸⁴ See in this regard, Crime, Violence and Development: Trends, Costs, and Policy Option in the Caribbean, March 2007, p. 107.

⁸⁵ Caribbean HDR, note 1 above, p. 123. As noted in the report, in Trinidad and Tobago, 'almost every adjournment request from defense or the prosecution is granted', p. 123.

violence, where the delays will severely impact the process, including the victim's willingness to proceed with the case.

The backlog problem also contributes to the low conviction rates, which according to the Caribbean HDR, are 'alarmingly low'. Although no systematized data is available, a number of examples help demonstrate the scale of the problem. A study conducted in Trinidad and Tobago found that of the 123 cases waiting for trial before the High Court between 2003-2006, only 30.1 percent had been concluded by mid-2008, and only 5.7 percent had led to a conviction.⁸⁶ The figures are similar, and even lower, in sexual offences cases.⁸⁷

In all of the countries under study, a disproportionate number of cases are thus simply dismissed, without any conviction or acquittal outcome. Case dismissals happen for a host of reasons, such as witness intimidation, lack of victim participation in the process, and attorney absenteeism. As shown in many of the countries under study, witnesses recanting or refusing to appear is a particularly frequent occurrence, not least due to pressures, intimidation, and fear, which is particularly prevalent in small countries and communities such as those of the Caribbean and in the absence of adequate witness protection programmes.⁸⁸ In Trinidad and Tobago, a majority of homicide case dismissals occurred in the Magistrates Courts between 2006 and 2008 as a result of complications with witness testimony.⁸⁹ In Suriname, only 20 to 25 percent of the estimated 6,000 to 7,000 criminal records that are handled by the prosecution office end up before the courts, the remainder being dismissed or left in limbo.⁹⁰ Given these systemic deficiencies, it is not surprising that the justice system is rated even lower than the police in terms of capacity in a majority of countries (32.3 percent in Jamaica, 27.2 in Trinidad and Tobago) with the exception of Suriname (52.7 percent).

Low conviction rates may also be related to the judicial and legal culture, and the long-held gender biases that the law and its practitioners continue to harbor. One good example is the so-called 'corroboration warning' which until recently was still mandatory under the common law in sexual offence cases. The corroboration warning is a 'special rule requiring the judge to give the jury a specific direction and warning in respect of the evidence of the complainant in a sexual offence case, that is to say, the evidence of the person who says that he or she has been the victim of a sexual offence'. Although it might also theoretically apply to male as well as female victims, there is no doubt that it will primarily apply to the latter. The warning is directed at the jury and cautions against conviction upon uncorroborated evidence of the victim alone, although it allows such situation should the jury be nonetheless persuaded of the defendant's guilt. The classic version of the explanation was given by Salmon LJ in these terms:

'... because human experience has shown that in these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories

⁸⁶ Caribbean HDR, note 1 above, p. 124.

⁸⁷ See Belize in this respect.

⁸⁸ *Ibid.*, p. 125.

⁸⁹ Caribbean HDR, note 1 above, p. 125.

⁹⁰ *Ibid.*, p. 125.

are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all.⁹¹

In other words, the common law itself is based on the notion that women and girls have a 'special propensity' to lie'. Satrohan Singh JA referred (as had others before him) to examples of such reasons as being sexual neurosis, fantasy, spite and refusal to admit consent because of shame.⁹² Although the corroboration warning in sexual offence cases is no longer mandatory in the UK, and expressly prohibited in Canada, it only became discretionary a few years ago in Jamaica and in Trinidad and Tobago.⁹³

Finally, another common characteristic is the rudimentary nature of the data available for measuring the operation of the judicial systems. The present study confirmed that 'even descriptive data on the flow of cases through criminal justice systems are not consistently available'.⁹⁴ Computing conviction rates, a key indicator of the system's effectiveness turns out to be a particularly challenging exercise due to the dramatic case processing delays.⁹⁵

3.3. International and Regional Human Rights Remedies

Although all of the countries included in the study are parties to the American Convention on Human Rights (except Belize) and to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 'Belem do Para', as well as CEDAW, it is worth noting that few have actually allowed individuals to lodge individual petitions before the regional or international bodies mandated to ensure compliance with their implementation.

Only Haiti and Suriname recognized the jurisdiction of the Inter-American Court of Human Rights.⁹⁶ As regards CEDAW, Belize is the only of the five countries that ratified the Optional Protocol to CEDAW, recognizing thereby the competence of the Committee on the Elimination of Discrimination against Women -- the body that monitors States parties' compliance with the Convention to receive and consider complaints from individuals or groups within its jurisdiction.⁹⁷

The availability of these international remedies could go some way towards helping advocates and lawyers defending victims of gender violence in their fight for justice, and should be regarded as valuable tool in seeking enhanced compliance by states with their international obligations under these instruments, particular as regards the obligation to investigate, prosecute and punish acts of violence against women.

⁹¹ in *Reg v Henry* (1968) 53 Cr App Rep 150 at 153.

⁹² in *Pivotte* at p.118,

⁹³ UN Women, '*Strengthening Accountability...*', note 17 above.

<http://www.unifemcar.org/gbvlawportal/DevelopmentsinLaw.aspx?var=5>

⁹⁴ Caribbean HDR, note 1 above, p. 122.

⁹⁵ *Ibid.*, p. 125.

⁹⁶ <http://www.corteidh.or.cr/tablas/abccorte/ABC-de-la-Corte-Interamericana-de-Derechos-Humanos/index.html>

⁹⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en

COUNTRY CASES

CHAPTER 4 - Belize

1. Introduction

As with other countries of the Caribbean region, sexual and gender-based violence constitutes one of the most serious symptoms of Belize's current security problem. It also results in part from deep-seated cultural stereotypes and gender disparities in terms of income and access to employment.

In 2007, the report of the CEDAW noted with concern the lack of access to justice for women and encouraged Belize to eliminate impediments and enhance women's legal literacy, awareness of rights and capacity to effectively claim them.⁹⁸

The Government, through the Women's Department of the Ministry of Human Development, has been proactive in its efforts to respond to this challenge in a multisectoral fashion. A few civil society organizations have worked closely with the Department to pursue advocacy and outreach activities and to provide a range of services, - from counseling to medical care, and legal advice to gender violence survivors.

Legal aid has been sporadically provided and there is renewed focus by the Attorney General's office on strengthening legal aid services. However, there currently is no free legal aid service provided by either the government or civil society groups that is available to gender violence survivors on an ongoing basis.

2. Situation Analysis

2.1. Population - Governance

Belize is situated on the Caribbean coast of Central America and borders the territories of Mexico and Guatemala. The country is divided into six districts covering an area of 8,866 square miles and has 311,500 inhabitants. The majority lives in the Belize District, and the Cayo District, where the capital, Belmopan, is situated.

The population is multi-ethnic and multilingual and comprises the Creole, Garifuna, Mestizos, Spanish, Mayans, English, Mennonites, Lebanese, Chinese and East Indian groups. The population of Belize is young; 2010 data indicates that 43.86 percent of the population are children and adolescents⁹⁹ and 65 percent is under 30 years old.

⁹⁸ Human Rights Council, Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the annex to human rights council resolution 5/1 – Belize, 9 March 2009, UN Doc. A/HRC/WG.6/5/BLZ/2 para. 19,
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/119/45/PDF/G0911945.pdf?OpenElement> .

⁹⁹ Statistical Institute of Belize, Population and Housing Census, Government of Belize, Belmopan.

Belize gained independence from British rule (when it was known as British Honduras) in 1981 and maintains today a common law system, a constitutional monarchy and a parliamentary system based on the Westminster model. Belize is part of the British Commonwealth, the Caribbean Community and Common Market (CARICOM), the Organization of American States (OAS), and of *El Sistema de la Integración Centro Americana* (Central American Integration System) (SICA). Belize is also the newest member of the Caribbean Court of Justice.

2.2. Development Indicators

According to World Bank data, Belize's economy falls in the lower middle income category and in some respects out-performs other countries in the region on development indicators (health; education; access to water; and access to sanitation). Belize's economy is small and dominated by three sectors: agriculture, services and industry. The economy is aided by tourism, which in 2008 contributed to 20.6 percent of the country's GDP¹⁰⁰. Over the last twenty years, Belize has oscillated between periods of high growth and periods of retrenchment and economic stasis, with significant limitations to economic opportunity and structural inequities in education, health and income.

Belize displays high unemployment rates, which rose from 8.2 percent in 2009 to 23.1 percent in 2012. Youth unemployment is particularly high and above the national average. At present the workforce is estimated to be only 122,300 people strong. Inequalities have also deepened in recent years. According to the 2010 Common Country Assessment, the percentage of the population living in poverty has risen from 33.5 percent in 2002 to 41.3 percent in 2009, (52 percent for children).¹⁰¹

As regards education, completion rates for both primary and senior schools are very low, with only an 8-11 percent enrollment rate for higher education. The dropout rates from boys are much higher than for girls. Those who do achieve a high standard of education are likely to leave the country and 'brain drain' is a serious concern. For a country with a small population density this poses serious challenges in terms of capacity and skill-base.

2.3. Crime and Violence

Crime constitutes one of the major challenges impacting Belize's development. The murder rate is one of the highest in the world (41.7 per 100,000 inhabitants in 2010).¹⁰² In Central America and the Caribbean, Belize's crime figures are behind only El Salvador, Jamaica, Guatemala and Honduras – all of which continue to show extremely high levels of organized violence – and they look set to continue to rise.

¹⁰⁰ H. Gayle, N. Mortis, *Male Social Participation and Violence in Urban Belize: An Examination of their Experiences with Goals, Guns, Gangs, Gender, God and Governance*, 2010, p. 50.

http://dbzchild.org/uploads/docs/complete_pgmale_social_participation_and_violence_in_urban_belize_grand.pdf

¹⁰¹ United Nations Belize, *Common Country Assessment*, March 2012, p. 7, 29.

<http://www.undp.org/content/dam/belize/docs/UNDP%20BZ%20Publications/Common%20Country%20Assessment%202012,%20Belize.pdf>

¹⁰² *Ibid.*, p. 22.

This surge in violent crime has led to an important increase in police arrests but the justice system has not been able to keep up the pace, leading to a serious problem of prison overcrowding and unreasonably long periods of pre-trial detention. According to one stakeholder, out of a prison population of 1,200 inmates, little less than half are on remand and denied bail.

One of the major causes of crime and violence in Belize is the growth in drug trafficking activities due to the use of Belize as a trans-shipment point and a significant route for the illicit trafficking in drugs, arms and even humans.¹⁰³ Belize is now listed as one of the 22 major illicit drug traffic/producing countries in the world.¹⁰⁴

Aside from transnational organized crime, poverty is consistently identified by stakeholders as a key cause of crime.¹⁰⁵ Unemployment, marginalization, lack of education, poor housing, living conditions and entrenched cultural norms regarding gender roles play important symbiotic roles in generating and sustaining impoverishment and contributing to crime.

At the level of the family there is a pattern of either absentee fathers or male partners involved in visiting relationships with the mother(s) of their children and a common pattern of men fathering children with multiple mothers. These may constitute contributing factors to the rise of gangs in the urban communities and especially in Belize City. Gangs, offer young men a sense a belonging and community that they may not find in their family unit.¹⁰⁶ It is noted however, that at this point, gangs do not represent an ‘organized or orchestrated criminal organization but rather youth clusters whose criminal activity is incidental rather than purposeful’ to the extent that their activities have been described by experts as ‘disorganized crime’.¹⁰⁷

The importance of addressing crime through access to justice and citizen security policies has been recognized as one of the key pillars for long-term development under the Horizon 2030: Belize for All, a comprehensive long term planning initiative,¹⁰⁸ and the Medium Term Development Strategy.¹⁰⁹ In terms of short term assistance, this pillar is also a coalescing factor driving a more harmonized process of donor coordination by bi-lateral and multilateral agencies in the country.

3. Sexual and Gender Based Violence in Belize

3.1. Gender Disparities

Women in Belize are disproportionately affected by poverty and marginalization. The labour market is characterized by substantial gender-based discrimination, with women’s employment concentrated in low paid service sector jobs. These gender disparities are reflected in the fact that the average income is

¹⁰³ *Ibid.*, p. 24.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, p. 26.

¹⁰⁶ Caribbean Development Bank, ‘Country Gender Assessment – Belize’ August 2011, (draft), para. 19.

¹⁰⁷ Common Country Assessment, note 4 above, p. 23.

¹⁰⁸ *Ibid.*, p. 11.

¹⁰⁹ *Ibid.*, p. 12.

4,022 USD for women against 10,117 USD for men.¹¹⁰ Differences are also clear in terms of levels of labour force participation (45.8 percent for women v. 77.8 percent for men with sharper differences in rural areas¹¹¹ and unemployment rates more than twice higher for women than men, 33.1 percent v. 16.7 percent) and level of education (two to one ratio of male to female at tertiary education level).¹¹² As far as political representation is concerned, the gap is even wider, and at present there is only one woman sitting in the National Parliament and two appointed, non-elected female ministers in the Cabinet.¹¹³ The assumption of women's subordinate status and economic dependency continues to be reflected in some of the domestic legislation related in particular to child support, pensions, and compensation.¹¹⁴

3.2. Sexual and Gender-Based Violence

In addition to the aforementioned increase in common crime, Belize has also experienced an important rise in the number of reported cases of domestic violence.¹¹⁵

An important dimension of gender relations in Belize relates to discriminatory traditions, customs and stereotypes which 'keep women in subordinate positions'¹¹⁶ and put women at heightened risk of violence. Although already a little outdated, a large 1999 family health survey revealed that 40 percent of Belizean men believed that domestic violence was acceptable in some circumstances (e.g. infidelity). A 2006 study of the Statistical Institute of Belize shows that 12.2 percent of the population believed that a husband was justified in beating his wife, an opinion that was shared by up to 34.2 percent of the population in the rural region of Toledo, in the South.¹¹⁷ More generally, many believe that domestic violence is a private matter within the family and that there should be no police intervention in those cases.

The data gathered by the Department of Epidemiology of the Ministry of Health, offer a useful quantitative picture of the incidence of domestic violence in Belize.¹¹⁸ According to these data, the number of domestic violence cases against women has increased from 858 cases in 2006 to 1,227 cases

¹¹⁰ Caribbean Development Bank, note 9 above, p. 5.

¹¹¹ *Ibid.*, para. 94.

¹¹² Common Country Assessment, note 4 above p. 29.

¹¹³ *Ibid.*, p. 17.

¹¹⁴ Caribbean Development Bank, note 9 above, para. 37.

¹¹⁵ See also A. Moore, ACCP Country Report – Belize: Strengthening State Accountability in Policing and Prosecuting Sexual Assaults, August 2009, p. 6, <http://sgdatabse.unwomen.org/uploads/Police%20and%20Prosecution%20Training%20Needs-%20Country%20Report.pdf>

¹¹⁶ Women's Department, The National Gender-Based Violence Plan of Action, 2010-2013. August 2010.

¹¹⁷ Statistical Institute of Belize, selected MICS Indicators for Women, 2006.

¹¹⁸ Although the Surveillance System on Gender-Based Violence is supposed to include statistics on sexual violence, the Ministry recognized that at this point it mainly captures domestic violence, see D. J. Lewis, *Walking in the Darkness, Walking in the Light: A National Assessment of Actions on Ending Violence Against Women*, Women's Department of the Ministry of Human Development and Social Transformation, June 2009, p. 30, <http://sgdatabse.unwomen.org/uploads/VAWReport-FINAL%5B1%5D.pdf>. According to the same report, the Belize Police Department has also initiated a system of Gender-Based Violence Statistics Nationwide, that includes recording of sexual offences, but no further information or report was found about the said data.

in 2010.¹¹⁹ The three institutions where most of the cases are referred to are, first, the Family Court and Magistrate Courts, second, the police, and in third place, the Women's Department.¹²⁰ The highest number of reported cases during the period 2006-2010 has been in urban areas, particularly the Belize District.¹²¹ The data also reveals that out of a total of 1,477 incidents (for both male and female) in 2010, 911 constituted repeated incidents, showing the continuing nature of abusive behaviour.¹²² The vast majority of cases involve husband and wife or common law spouses.¹²³ The question of whether there has been an actual increase in the number of cases received nuanced answers, due to the fact that the increase in reported cases could just mean that more women were willing, thanks to the impact of the advocacy and awareness raising of the government and civil society, to go forward and report abuse.

Although the surveillance system has important strengths, including its multisectoral nature and the ongoing commitment of the government to oversee the system, a number of important flaws were also noted. First, these data only concern domestic violence, in spite of the recommendation made in 2003 to broaden the system's reach based on a broader concept of 'gender-violence'.¹²⁴ The statistics are not supported by qualitative analyses of the figures, which would permit a better understanding of any statistically relevant evolution throughout the years. As well, the data does not shed light on the severity of gender-based violence.¹²⁵ Finally, there are still important gaps in the assessment and measurement of the measures adopted by the government to address gender violence,¹²⁶ in particular as regards the effectiveness of the judicial system in this area. That being said, it is important to underscore that out of all of the countries included in this study, Belize may have the most sophisticated and updated data collection system.

The Guiding Principles identified in the National Assessment document provide a useful framework against which to assess the latest efforts to address gender-based violence. These principles are as follows:

- 1) The response to violence against women must be based on understanding the roots of this violence in a system of gender inequality and women's subordination.
- 2) All programmes must put the safety and security of women and children first.
- 3) Confidentiality must be guaranteed to all victims of violence against women.

¹¹⁹ Health Statistics of Belize (2006-2010), Volume No.7, October 2011, p. 208.

¹²⁰ *Ibid.* p. 229.

¹²¹ *Ibid.* p. 212.

¹²² *Ibid.* p. 214.

¹²³ *Ibid.* p. 221.

¹²⁴ K. Fowler, V. Espitia, A. Crosby, L. Dahlberg, S. Parks, Evaluation of the Gender-Based Violence Surveillance System in Belize, Centers for Disease Control and Prevention, September 2011, p. 7.

¹²⁵ See Women's Department, Ministry of Human Development and Social Transformation, Belize, National Gender-Based Violence Plan of Action 2010-2013, August 2010, p. 6, which includes as one of the plan's objectives the improvement of systems to measure the incidence, frequency and severity of gender-based violence.

¹²⁶ Women's Department, Ministry of Human Development and Social Transformation, Belize, National Gender-Based Violence Plan of Action 2010-2013, August 2010, p. 2.

- 4) Each system responsible for violence against women must develop its own plan for ensuring a positive response. This plan must be focused, delegate clear responsibility for implementation, provide adequate resources, and include a mechanism for monitoring and evaluation. Those at the highest level of the systems and Ministries responsible for them must take ownership of the implementation of these plans.
- 5) Guaranteeing a fast and effective police response must be a high priority. Women's confidence in this response can only be assured through the implementation of mechanisms for external oversight of police actions.
- 6) Civil society, and in particular women and women's organizations, has a critical role to play in advocating for individual women needing protection and support, as well as in advocacy for changes in public sector policies and practice. It also has an important responsibility in developing a deeper understanding of the roots of violence against women and in raising public awareness of this.
- 7) Government must demonstrate the political will to take action to address violence against women. A key part of demonstrating this political will is in providing the human and financial resources necessary for an effective response.

4. Normative and Institutional Framework

4.1. International Legal Framework

Belize has signed and ratified 7 major international human rights treaties to date. These include the ICCPR, the ICERD, CEDAW, the CAT, the CRC, both optional protocols to the CRC (OP-CRC-AC and OP-CRC-SC), as well as the Optional Protocol to CEDAW, the Convention on the Protection of the Rights of All Migrant Workers and their Families (CRMW) and most recently, the Convention on the Rights of Persons with Disabilities (CRPD).

At the regional level, Belize is a party to the 1996 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.¹²⁷ Belize has not recognized the jurisdiction of the Inter-American Court of Human Rights, however.¹²⁸

Belize also recognizes the original jurisdiction of the Caribbean Court of Justice, which hears appeals as the court of last resort in both civil and criminal matters from those member states which have ceased to allow appeals to the Judicial Committee of the Privy Council (JCPC), i.e., as of 2011, Barbados, Belize, and Guyana.

While ratifying these conventions is commendable, at present the conventions are insufficiently mainstreamed into the work of the responsible government ministries. Actual policy follow-through has been selective, there has been insufficient operationalization and allocation of resources and further progress is needed in the reporting system.¹²⁹ Additionally, and in spite of recommendations to this effect,

¹²⁷ See Article 2.

¹²⁸ <http://www.corteidh.or.cr/tablas/abccorte/ABC-de-la-Corte-Interamericana-de-Derechos-Humanos/index.html>

¹²⁹ Common Country Assessment, note 4 above, p. 9.

Belize has not yet implemented the UPR recommendations of 2009 suggesting the establishment of a national human rights institution.¹³⁰

4.2. Domestic Legal Framework

The Constitution is the supreme law of Belize. It guarantees the protection of fundamental rights and freedoms including protection of the right to life, the protection of personal liberty, the protection of the law, the protection from inhuman treatment, and the protection from discrimination on the grounds of race, sex, place of origin, political opinion, colour or creed, amongst others.

Pursuant to the Criminal Code, the following offences may be brought against the perpetrator of gender violence:

- Aggravated assault (use of an object or weapon to hit during an assault of a sexual nature)
- Assault and battery (other physical contact intended to frighten or cause pain especially if person of low mental capacity is an infant)
- Carnal knowledge (where a man has sexual intercourse with a girl under 16 years old)
- Common assault (touching the survivor in an inappropriate and unwelcomed manner, including fondling)
- Dangerous harm (using an object to cause harm in a way to endanger life)
- Forcible abduction (to take away or detain a female of any age against her will with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person)
- Grievous bodily harm (using an object to harm which disfigures the survivor)
- Harm (unlawfully and intentionally causes harm, injuries inflicted on the survivor during a sexual assault that result in a bruise or swelling constitutes harm).
- Incest (where a male family member has a sexual relationship with a female family member, the male can be charged with incest, if the female is under 16, if she is over 16 she can also be charged).
- Indecent assault (any unwanted sexual behaviour or touching of any person such as touching a woman's breast or exposing one's genitalia to another person etc.
- Maim (destruction of a limb or organ such as a fracture, broken bones etc.
- Rape (where a man has sexual intercourse with a female without her consent. If the incident happens during the course of a marriage when the parties were separated or pursuing a divorce, the perpetrator may be charged with marital rape).
- Sexual harassment (unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment, when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive environment. The Protection Against Sexual Harassment Act is also applicable to other institutions, and the law protects persons from sexual advances when, applying for a place of accommodation as a tenant).

¹³⁰ *Ibid.*, p. 11.

- Trafficking (where parent uses child for financial gain by causing child to be exploited for a sexual purpose).
- Unnatural crime (buggery or sodomy of a male).
- Wounding (intentionally and unlawfully causes a wound).

Under the Criminal Code, mandatory sentences apply for carnal knowledge of a child (12 years), for a girl between the age of 14 and 16 (five years) and for rape (eight years). Also worth noting are the specific procedural rules applying in rape cases, where pursuant to Chapter 95 of the Evidence Act, evidence or questions concerning the past sexual history of the complainant with a person other than the alleged offender cannot be introduced except with complainant except with leave of the Judge.

Many of these offences were added in the law by the 2007 Domestic Violence Act, which overhauled the previous legislation, providing for harsher penalties¹³¹ including sanctions against physical but also emotional, psychological, sexual and financial abuse, and the broadening of the categories of persons protected by the Act. It lists a large number of offenses that are covered under the act, including, assault and battery, aggravated assault, murder or attempted murder, shooting or wounding with attempt to do grievous bodily harm, inflicting an injury with or without a weapon, rape or attempted rape, indecent assault, manslaughter, marital rape, incest, and unlawful carnal knowledge.

Two concerns have been voiced relating to the criminal law on sexual and gender violence. First, the law is not gender-neutral and still assumes that the offender will be a man and the victim a woman (e.g. in the cases of incest, rape, and carnal knowledge) and many observers have called for the law to be amended in this respect.¹³² NGOs have also been advocating for legislation to criminalize commercial sexual exploitation of children and adolescents but the bill has not yet been passed, in spite of the recognition of the prevalence and rise of this phenomenon.¹³³ Overall, however, the domestic legal framework adequately addresses gender-based violence and criminalizes a wide range of behaviours that may constitute gender-based violence.

Additionally, the Domestic Violence Act creates new categories of remedies through specific orders that can be issued by the Family Court, such as:

- a Protection Order, which prohibits the respondent from abusing the applicant and from being on the premises, from communicating with the applicant, taking or damaging property belonging to the applicant, approaching the applicant within a specified distance or from encouraging another person to engage in any of this conduct;
- an Occupation Order, which grants the applicant the right to live in the household residence;

¹³¹ Laws need to be amended to include stiffer penalties for perpetrators.

¹³² Moore, note 115 above, p. 16.

¹³³ Common Country Assessment, note 4 above, p. 24-25.

- a Tenancy Order which grants the applicant the right to live in rented household premises, and directs the respondent to continue to paying the rent on those premises during the period of the order.

Another welcome amendment brought by the Domestic Violence Act was to broaden the definition of 'spouse' to include individuals who have children in common but may not live together and or who are in visiting relationships (de facto spouse).¹³⁴

While the Domestic Violence Act essentially provides civil remedies in domestic violence cases, any breach of these orders will trigger criminal proceedings before the Magistrate's Court or the Supreme Court (depending on the severity of the offence) stiff criminal sanctions apply for breach of court orders in domestic violence cases, i.e. a fine of up to \$9,000 for a first conviction or imprisonment of up to one year, or both; a fine between \$12,000 and \$15,000 or imprisonment of up to 24 months or both for a second conviction, and a prison term of five years for any subsequent conviction.

What is lagging is the full implementation of these gender-based violence relevant laws. As will be elaborated below, the reasons are related to both the continuing reluctance of victims to come forward and report gender-based crimes, and on the need, on the supply-side, to strengthen the capacity of the law enforcement and justice authorities in responding to these crimes in a gender-sensitive manner.¹³⁵

4.3. Institutional Framework

4.3.1. Judicial System

The Judiciary is headed by the Chief Justice who has overall responsibility for the administration of Justice. Section 94 of the Constitution establishes a Supreme Court of Judicature and a Court of Appeal. The Supreme Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law. The Court of Appeal exercises an appellate jurisdiction with power to hear and determine appeals in both civil and criminal matters. The Constitution provides that any person alleging the violation of any of the fundamental rights may apply to the Supreme Court for redress.

The main courts dealing with gender-based criminal offences are the Magistrate Court and the Supreme Court. The Magistrate's Court is established under statutory law and provides the community with equal and impartial access to judicial services by ensuring the preservation of judicial independence, protection of individual rights and increasing the public's trust and confidence

The Family Court has jurisdiction over the Domestic Violence Act in Belize City.¹³⁶ Its main mandate is to resolve disputes arising from family separation, including legal separation and spousal maintenance; institutional care for children deemed 'uncontrollable'; custody, maintenance, and paternity; protection and care of abused and neglected children; and protection from domestic violence, including protection

¹³⁴ D. Lewis, 'Walking in the Darkness...' , note 21 above, p. 26.

¹³⁵ Caribbean Development Bank, note 9 above, para. 40.

¹³⁶ There are no family courts in the districts and the Domestic Violence Act thus comes under the jurisdiction of the district Magistrate's Court; see D. Lewis, note 21 above, p. 26.

of residency rights. The Family Court provides as a first step mediation services. If the dispute cannot be mediated, a Court hearing may be initiated.

The hearings are held in closed session and the decisions are not published, which makes it difficult to fully assess the effectiveness of the system from the perspective of gender violence survivors. Estimates provided indicated that 50 percent of the Court's docket consists of domestic violence cases, around 408 cases in 2011,¹³⁷ a slight decrease from 2008, where the Family Court disposed of 387 protection orders and 71 occupation orders.¹³⁸ According to the 2008-2009 Chief Justice's Report, the Court is struggling to meet the needs of the public in particular due to the insufficient number of intake/welfare officers in Belize City. Likewise, capacity is insufficient with respect to referrals to counseling given that the Belize Counseling Center is the only government institution that provides professional counseling.¹³⁹

Difficulties in enforcing the decisions of the Family Court have been noted in previous reports and by the stakeholders interviewed for the present study. Some of these difficulties related to the incapacity of the Family Court to collect child maintenance monies, and the inability to track payments made outside of the court system, which is frequently complicated by the multiplicity of households needing support from the paternal parent.¹⁴⁰

4.3.2. Police Force

The importance of addressing gender violence has also been recognized at the level of the police and both a sexual violence unit and a domestic violence unit have been established within the police force, as will be detailed below. The sexual violence and domestic violence units pertain to two different branches of the police forces, the former to the patrolling section, and the latter to the crimes branch. The domestic violence unit was created in 1999 and is made of nine different formations, with a total of 19 police officers for the Belize district and one civilian staff. The unit only exists in Belize City, however, and in other districts, individual police officers usually only one per station, are assigned to handle domestic violence cases without receiving adequate training.¹⁴¹

Despite these efforts to develop tailored and effective responses to domestic and sexual violence, problems persists due to the rotation requirements of police officer, which generates problems in terms of institutional memory and capacity. Logistical capacity was also mentioned.

¹³⁷ The Family Court Statistics provided in the Chief Justice's Annual Report for 2008-2009, classify the cases by the type of orders sought from the court. A total of 619 protection and occupation orders (531 and 88, respectively) were settled or pending before the Court in 2008, both of which are most commonly used in domestic violence cases, see p. 101.

http://www.belizejudiciary.org/web/supreme_court/CJ2009.pdf

¹³⁸ Chief Justice's Annual Report, note 40 above, p. 104.

¹³⁹ *Ibid.*, p 96.

¹⁴⁰ Women's Issues Network of Belize, Shadow Report presented to CEDAW in relation to the 3rd and 4th period state party report of the Government of Belize, p.3.

¹⁴¹ D. Lewis, note 21 above, p. 34.

4.3.3. Government Institutions

Amongst government institutions, the most relevant is the Ministry of Human Development and Social Transformation, which has adopted a human rights approach to the delivery of social services and the protection of vulnerable groups, and has oversight of amongst others, the Women's Department.

One branch of the Ministry is The Women's Department, which was established in 1986, and is the primary government institution tasked with addressing gender discrimination, including gender violence. Its work focuses on economic empowerment; client support (including support on domestic violence, sexual assault, legal separation, child maintenance and custody); outreach through advocacy, information, education and communication; and resource development.¹⁴² In conducting this host of activities, it has received funding from various multilateral agencies including UNFPA, UN women, UNDP, UNICED, and the OAS and of bilateral partners such as the German Embassy.¹⁴³ It has offices in each district of the country where clients can register complaints, find relevant documentation and administrative forms.

The Department has been proactive in addressing these issues, by issuing National Gender-Based Violence Plans of Action since 2007. It remains however constrained by the meager budget and technical and legal capacity allocated to the Ministry for Human Development.¹⁴⁴

Another institution with a specific mandate on women's issues is the National Women's Commission created in 1982 which is an advisory group institutionally linked with the government and tasked with advocating the implementation of Belize's National Gender Policy, promoting, monitoring and evaluating compliance with CEDAW, and other national, regional and international obligations relevant to women including the Belem do Para Convention.

Two other government bodies deserve mention. First, the Office of the Ombudsman, established in 1999, is mandated to investigate and report on allegations of corruption, wrongdoing and actions taken by an authority resulting in injury, injustice or abuse. Also, since 1999, the Ministry of Health and its Epidemiology Unit is tasked, in collaboration with the Women's Department, to oversee the surveillance system for domestic violence, and to publish on a regular basis statistics on the incidence of domestic violence.¹⁴⁵

4.3.4. Civil Society Organizations

Although civil society remains relatively weak in Belize, a number of organizations are active in advocacy, outreach and service delivery in addressing gender violence.

The shelters for domestic violence victims are run by NGOs. There are only two shelters in the whole country, one in Belize City (*Haven House*) and one in San Ignacio (*Mary Open Doors*) that host survivors of domestic violence. Both are small operations and able to host only four families at a time. They provide a

¹⁴² Women's Department, Ministry of Human Development and Social Transformation, Annual Report 2011: Empowering Women to Make Informed Decisions, p.2.

¹⁴³ *Ibid.*, p. 51.

¹⁴⁴ CEDAW Shadow report, note 140 above, p. 1,

¹⁴⁵ See data analyzed above.

number of related services, including counseling, referral and advocacy including court advocacy, childcare, and skills training to help women become financially independent. Although both shelters are institutionally linked to the Women's Department, which will refer cases to them, they receive limited financial support from the government. Havens House, which was the first shelter ever established in Belize (1993) for instance receives funding to support the salaries of two staff members, but needs to fund raise independently to cover all other expenses (maintenance of the shelter, food etc.). At the time of the visit, the coordinator of the shelter indicated that she was concerned that they would not be able to continue operating by the spring due to funding shortages.

The *Women's Issues Network of Belize* (WIN Belize) is a network of civil society organizations engaged in national and international advocacy work on women's rights, including sexual violence, domestic violence and reproductive rights. They have authored a 'shadow report' on the implementation of CEDAW to the CEDAW Committee in 2007. They also implemented in 2011 a project, which consisted of one-stop-shop services for domestic violence and commercial sexual exploitation survivors, including medical attention, psychosocial care and legal advice, as discussed in further detail below.¹⁴⁶

Youth Enhancement Services (Y.E.S.) focuses on the needs of young women, including by raising awareness through leadership training, young women's forums, public meetings, workshops and community plays on sexual abuse and exploitation. Y.E.S. also lobbies government for legal reforms to protect women and girls from sexual abuse and other violence affecting them. Y.E.S. has for instance launched a campaign on intergenerational transactional sex (ITS), i.e. relationships between older men and younger women, highlighting that ITS carries a risk for women to be subject to rape, and domestic violence amongst others.

Also worth mentioning (although no meetings could be organized with these groups), the Productive Organization for Women in Action (POWA), a community based women's group which is involved in issues related to violence against women and HIV/AIDS. Activities include support to women survivors of violence and HIV positive, community outreach and mobilization. Finally, the Toledo Maya Women's Council (TMWC) addresses family violence as part of their healthy mother healthy baby project.

5. Review and Analysis of Gender Violence Responses

At the time of the latest report to CEDAW on the implementation of the Covenant by Belize, the 'shadow report' submitted by WIN Belize noted that based on the domestic violence data, as well as the focus group discussions, there was under reporting of domestic violence, primarily in the Southern region of the country. Some women indicated that a lack of confidence in the system prevented them from seeking the assistance of the police or the family court. Additionally, some women were unaware of where to turn other than the police, and what the procedure would be to seek assistance. Even those who went through the system became frustrated with the lack of or slow results of their efforts, and in some cases, lost confidence in the system. This had a ripple effect in that they conveyed their experience with other women, who as a result decided not to seek the assistance of the authorities. Another revealing comment

¹⁴⁶ Evaluation Report: Increasing Access to Justice, Psycho-Social and Rehabilitative Services for Victims of Commercial Sexual Exploitation and Domestic Violence, May 2012. See below.

made by the women who had been interviewed for the report was that the punishment for convicted perpetrators was relatively lenient, leading to the perception that the whole process was a 'joke'.¹⁴⁷

Sadly, these opinions gathered in 2007 continue to reflect the current realities, in particular as regards the underreporting and lack of confidence in the system.¹⁴⁸ One element that was emphasized by a majority of stakeholders and not mentioned as such in the 'shadow report' was the link between domestic violence and economic disempowerment. One of the main reasons women fail to report or when they eventually report, decide not to press charges and to return to a situation of abuse is that many victims are unemployed and unable to sustain themselves independently, as is evidenced by the aforementioned data on economic disparities based on gender.¹⁴⁹ According to estimates provided, 6 out of 10 women will return to their abuser. This pattern also contributes to a vicious cycle where some police officers feel they are wasting their time on domestic violence cases, which won't be pursued given that the victim will in any event return to her home. One of the women victimized who was interviewed during the mission explained that she had been subjected to physical and emotional abuse for four years, reporting four times to the police after serious incidents, but returned every time to her spouse because she had no way to sustain herself financially, until she finally decided to take refuge in one of the shelters and find a way to survive on her own.

What is needed, therefore, is a continuing joint advocacy effort on the part of the government and civil society to address violence against women that goes hand in hand with policies addressing the economic disempowerment of women. It was noted for instance that the 16 days of activism on gender violence certainly had an impact and that a surge in the number cases reported had been observed as a result of the campaign.

The following sections will examine existing plans, programmes and activities by governmental and judicial institutions and civil society to address gender violence.

5.1. Women's Department

The Women's Department has been amongst the most proactive institutions in terms of advocacy, capacity development and support to gender violence initiatives. All of these activities are part and parcel of a comprehensive national gender violence plans of action, which were issued for 2007-2009 and 2010-2013, which are multisectoral instruments designed to ensure the integration of specific objectives related to the fight against gender-based violence in each of the sectors concerned (e.g. health, social services; law enforcement; justice; education; ombudsman's office; civil society).

5.1.1. National Plans of Actions and other Policy Initiatives

To ensure proper coordination and monitoring of activities, the plan creates a number of mechanisms. The Women's Department remains responsible for the overall coordination of the plan, but each sector involved must nominate a focal point for overseeing implementation within the given sector. Focal Points

¹⁴⁷ CEDAW Shadow Report, note 140 above, p. 21.

¹⁴⁸ See also D. Lewis, note 21 above, p. 33.

¹⁴⁹ See also specific cases retold by A. Moore, note 115 above, p. 10,

from relevant government ministries will form a gender-based violence sub-committee of the Gender Integration Committee with specific responsibility for reporting on progress on the Plan of Action in the public sector. Aside from the Ministries, an additional focal point will be added to represent the Police Department as an institution with a critical role to play in the implementation of this plan.¹⁵⁰ On the civil society front, the Women's Issues Network of Belize (WIN-Belize) will be responsible for overseeing the implementation of the plan for civil society organizations.

The Women's Department also issued a National Assessment on Actions on Ending Violence Against Women, which includes a presentation of the legal framework on gender-based violence,¹⁵¹ including international commitments, national policies and plans and domestic laws and legislative reforms; a review of the situation of violence against women in Belize, including a response of both public sector systems and civil society organizations; a list of 43 recommendations in the areas of understanding violence and raising awareness, legislation, confidentiality, coordination of systems response, the police, the courts, the health care system, social services and counseling, the education system, the women's department, work with men, civil society and ending violence against women. A second study sponsored by the Women's Department looked at policing and prosecution of sexual offences.¹⁵² This report included fourteen recommendations, aimed at improving the response of the justice system to sexual assault and sexual abuse, and the coordination among the various sectors in this area.

5.1.2. Specific Areas of Engagement

The Women's Department also engages in three sets of activities to enhance gender equality and address discrimination and gender violence: 1) outreach and advocacy; 2) client support, which includes information and dissemination, and court advocacy (including court preparation), police advocacy and referrals; and 3) capacity building.

In terms of outreach and advocacy, the Department conducted sensitization sessions on gender based and domestic violence for 5,169 participants and on sexual violence for 470 participants in 2011.¹⁵³ Trainings were conducted on rape, sexual violence, and women's legal rights in each of the country's districts as well.¹⁵⁴ The Department has established support group for women who have been affected by gender based-violence, which meet on a weekly or by-weekly basis. A total of 70 women attended these groups throughout the country in 2011.¹⁵⁵ The Women's Department has also produced a Handbook on Sexual Violence,¹⁵⁶ a Women's Rights Handbook,¹⁵⁷ and a Women's Handbook on Domestic Violence,¹⁵⁸

¹⁵⁰ National Gender-Based Violence Action Plan 2007-2001, p. 8.

¹⁵¹ D. Lewis, note 21 above.

¹⁵² A. Moore, note 115 above.

¹⁵³ *Ibid.*, p. 24.

¹⁵⁴ Trainings on women's legal rights were conducted throughout the country for 2,338 people, and on rape and sexual violence for 1,431 people, see p. 24-29.

¹⁵⁵ *Ibid.*, p. 40.

¹⁵⁶ Women's Department, *Handbook on Sexual Violence: A Resource Guide to Legislations, Policies, Services and more, 2012*, with the support of UNFPA and UN Women.

¹⁵⁷ Women's Department, *Women's Rights Handbook*, January 2008.

¹⁵⁸ Women's Department, *Women's Handbook on Domestic Violence*, November 2005, revised in 2009.

which provide crucial information on women's rights, and legal provisions on domestic and sexual violence in an accessible format and language.



Figure 4 A campaign poster in the Women's Department Office, Belize City, January 2013

In terms of client support, according to its 2011 Annual Report, the Department provided support (including referrals to shelter, counseling, social services) to 399 female victims of domestic violence (26 were male) out of a total of 1,523 cases.¹⁵⁹ The Women's Department has also sponsored legal clinics and the provision of legal advice and counseling as will be detailed below in the following section. To deal with perpetrators of domestic violence, the Women's Department has also set up a Batterers Intervention Program but it was unable to initiate a second cycle of activities in 2011 due to the limited number of referrals from the Family and Magistrates Courts.¹⁶⁰

Finally, the Women's Department is engaged in wide-ranging capacity-building activities, with a strong focus on the police forces (see below). It issued a Domestic Violence Protocol for Police Officers, published in 2010, which provides guidelines on police response and investigation of allegations of domestic violence and a Sexual Violence Protocol, which was developed in 2011.

5.2. Police Department

According to Section 24 of the Domestic Violence Act, a police officer is under an obligation to respond to every complaint or report of domestic violence, whether or not the person making the report is the victim or a third party. Section 33 indicates that the police officer shall, in cases of domestic violence, take all reasonable measures to prevent the victim from being abused again and shall assist the victim in getting

¹⁵⁹ *Ibid.*, p. 20.

¹⁶⁰ *Ibid.*, p. 40. For a critique of the batterers' intervention programmes and other programmes directed at men, see D. Lewis, note 21 above, p. 45.

medical care; getting to a safe place; advise the victims of her rights and of any government and private services that may be available to her, and advise the victims on the importance of preserving evidence.

The role of the police officer is paramount as s/he will often be the first point of contact with the authority of the state for victims. As such, the police officer fulfills also an advisory function including a legal one. Thus, the Domestic Violence Protocol provides that the police officer should inform the victim(s) of the options that are available including recording a statement, proceed with criminal charges, and/or make a referral to other agencies that are able to provide support services. They should also be able provide information on how to obtain a Protection or Occupation Order or other court orders from the Family Court.¹⁶¹ And they have a crucial role in gathering the evidence that will be used by the Prosecution to build a case.

The quality of the response of the police has been identified as a serious impediment to women's effective access to justice and remedies. According to the 2007 CEDAW 'Shadow Report, police officers were not adequately trained to be sensitive to women in domestic violence and sexual abuse situations, they tended not to respond in a timely manner or not to respond at all.¹⁶² Those Police Officers who were asked what was the reason for the limited response indicated that it was partially due to the lack of transportation or other resources; but more critically because they felt inadequate in dealing with such situations; or, that it was not a worthwhile effort since their experience was that the next day the victim would have made up with the abuser.¹⁶³

This situation does not seem to have changed significantly at the time of the present report. Although there have been important advances in ensuring tailored approaches to domestic and sexual violence cases by the police, many stakeholders noted that concerns remained as regards police response to gender violence for a variety of reasons.

In terms of attitude, some of the stakeholders interviewed noted that the police might still be reluctant to intervene and try to convince women to return to their spouses or partners. Even though training is provided as part of the general induction into the police forces, these efforts may be undermined by the attitude of the hierarchy. Even some female officers tend to believe that victims of domestic violence invite this kind of behavior onto themselves, which is bound to influence the investigation of these cases.

Corruption is endemic, and several stakeholders, including government representatives, cited cases of police officers expecting money to pursue a case, or accepting money to have the case dropped.¹⁶⁴ Moore reported that 'all of the families of minor victims interviewed (...) had some experience with attempts at bribery or suspected pay offs by the offender to the police by the accused.'¹⁶⁵

Another problem is that the members of the Domestic Violence Unit are not subject to a specific screening and/or selection process to ensure that they have the skills and profile required for the sensitive nature

¹⁶¹ Domestic Violence Protocol, p. 12.

¹⁶² See also D. Lewis, note 21 above, p. 35.

¹⁶³ CEDAW Shadow Report, note 140 above, p. 21.

¹⁶⁴ See also D. Lewis, note 21 above, p. 35.

¹⁶⁵ A. Moore, note 115 above, p. 9.

of the function. Neither are they required to undertake specific and/or additional training, which means that most of them have not received sufficient training to address gender violence cases. Although a counselor had been assigned to the unit, s/he had left and had not been replaced.

In terms of investigative capacity, officers in the domestic violence unit are not detectives and have not received specific investigative training. They often lack the basic skills required to rigorously investigate cases of domestic violence and build a case for the Prosecution.¹⁶⁶ Moore reported that the police often fail to take statements from bystanders and only records the statements of the victim and/or other complainants.¹⁶⁷ They have no knowledge of interviewing techniques for victims and perpetrators.¹⁶⁸ Also, the authorities do not have the capacity to collect and use forensic evidence in investigating sexual offences. The use of DNA would be particularly important, however, in cases where the victim is a minor and is too young to testify.¹⁶⁹ Delays are also frequent and the Prosecution has complained that they sometimes receive cases related to incidents that occurred over a year before.¹⁷⁰

Finally, the Domestic Violence Act, despite the clear language of Section 24, is toothless inasmuch as it does not provide for any specific sanction in cases where police officers fail to comply with its instructions.¹⁷¹

The fact that these issues have yet been fully addressed is worrisome, given that many of these were well known and had been highlighted by the CEDAW Committee in its recommendations to the Government of Belize, and which is related to the need to provide on-going training in basic counseling, especially with regard to domestic violence situations, and additional training in gender sensitization; and the importance to ensure a decrease in response time. It also took note of broader resource and capacity problems, namely overwork, exhaustion, underpay, and non-existent benefits package, which all contribute to ineffective police response to crime in general and domestic violence in particular.¹⁷²

Some signs of progress are nevertheless noteworthy. The police authorities noted that more women are now willing to come forward and report to the police, also in part thanks to the existence of the police hotline, which has permitted more effective and speedier responses to incidents of domestic violence. In the past year, 493 cases were reported and 259 were sent to court. They noted that underreporting nonetheless continues to be an issue and oftentimes, police officers are informed by neighbours and/or relatives of an incident, but when contacted, the women decline to report the case. Police recruits at the Police training school now receive training on domestic violence, which is conducted by the Women's Department. Thus, in 2011, such training was offered to 74 recruits. As the department responsible for the production of the sexual violence and domestic violence protocols, the Women's Department was also involved in ensuring the socialization of these tools through the conduct of orientation sessions to a

¹⁶⁶ *Ibid.*, p. 11.

¹⁶⁷ *Ibid.*, p. 12.

¹⁶⁸ *Ibid.*, p. 13.

¹⁶⁹ *Ibid.*

¹⁷⁰ D. Lewis, note 21 above, p. 36.

¹⁷¹ *Ibid.* p. 16.

¹⁷² See note 140 above.

total of 117 police officers across the country.¹⁷³ Finally, the Police Department has partnered with the Women's Department which supported the organization of a ten-day training on management of domestic violence and sexual offence cases in Canada, and enabled one police officer to attend,¹⁷⁴ and of a training on sexual violence in Barbados for which two Belizean police officers were able to participate.¹⁷⁵

5.3. Judicial Response

5.3.1. Criminal Justice System

The effectiveness of the judiciary in responding to gender violence is first and foremost impacted by the general state of crisis of the criminal justice system. The Common Country Assessment notes that there are 'systemic capacity challenges and resource constraints that hamper the optimal institutional effectiveness of the judiciary in Belize'.¹⁷⁶ Systemic constraints include 'low resource allocations for judicial operations, lack of performance assessment system for judicial effectiveness, relatively weak public confidence in the judicial system, and the lack of substantive alternative dispute resolution mechanisms to complement the formal judiciary in reducing caseloads'.¹⁷⁷ Operationally, caseload levels are increasing faster than the disposal of cases, leading to serious delays and backlog, and the judiciary is concentrated in Belize City making access to justice challenging for populations living in other districts.¹⁷⁸

By way of example, periods of pre-trial detention can last for up to two years and the conviction rate is quite low, at 6-7 percent, and less than 10 percent in murder cases even.¹⁷⁹ A pattern has also been identified whereby witnesses to crimes are increasingly reluctant to testify, due to fear of reprisal, death or other pressures. Thus, in the course of 2008, the Department of Public Prosecution's Office lodged 83 *nolle prosequi* motions, which aborted the trial of offences ranging from murder, attempted murder, to rape, incest and burglary.¹⁸⁰ This impunity is attributed to poor investigation; poor case preparation, poor communication between the police and the courts; witness reluctance to testify, corruption of magistrates and solicitors, and political interference.¹⁸¹

The situation is even grimmer if one looks at the response to gender violence. For once, there is a fundamental difficulty in assessing such response because judicial databases will record cases based on the specific criminal offences (harm, assault etc.) for which a person is charged and will not specify the gender dimension of the crime. Likewise, the prosecution service does not maintain records of gender violence cases per se. That said, the statistics provided by the Chief Justice in its annual report on cases

¹⁷³ Women's Department Annual Report, p. 49.

¹⁷⁴ *Ibid.*, p. 49.

¹⁷⁵ *Ibid.*, p. 50.

¹⁷⁶ Common Country Assessment, note 4 above, p. 13.

¹⁷⁷ *Ibid.*, p. 13. The budget of the judiciary represented 1.03% of the national budget, in 2008, see Chief Justice's Annual Report on the Judiciary of Belize, 2008-2009, note 40 above, Annual Address by Chief Justice, p. 16.

¹⁷⁸ Common Country Assessment, note 4 above, p. 1; Moore, note 115 above, p. 15. .

¹⁷⁹ Common Country Assessment, note 4 above, p. 22.

¹⁸⁰ Chief Justice Annual Report on the Judiciary of Belize, 2008-2009, note 40 above, p. 19.

¹⁸¹ Common Country Assessment, note 4 above, p. 14.

heard by the Supreme Court in 2008-2009 provides a useful indication of the capacity of the judicial system to address gender violence crimes.

Gender cases apparently constitute the majority of cases reaching the Supreme Court for the Southern and Northern districts while homicide is the chief crime going before the Court from the Central District, which would tend to confirm the prevalence of gender violence in the country. According to the Chief Justice's Annual report, 2008-2009 saw a slight reduction in sexual offences cases from 2007, with 18 rape cases, 27 carnal knowledge cases and 16 unlawful carnal knowledge cases,¹⁸² thus a total of 62 sexual offences cases before the Supreme Court, which is still high.

That being said, stakeholders representing the judicial authorities confirmed once again that the reluctance of victims to come forward continues to be one of the major challenges in the prosecution of gender violence cases.¹⁸³ Approximately half of all sexual offence cases are dropped before they go to trial.¹⁸⁴ And even in those cases that reach the Supreme Court, the statistics reveal the scale of the problem.

Out of 44 sexual offences cases before the Supreme Court in 2008-2009 (i.e. rape, carnal knowledge and unlawful carnal knowledge and incest), only one case (incest) led to the conviction of the accused. In four cases, the defendant was found not guilty, one case was dismissed, and 38 cases were nolle prosequi, i.e. discontinued by the Prosecution before trial or before the verdict was rendered.

Measures have been adopted to try to reassure victims who fear the consequences of their testifying. Social workers are usually present during the hearing and play an important role in reassuring witnesses and providing key advice. Closed session may be ordered and screens may be used,¹⁸⁵ and the identity of the victim can be protected under the law. In fact in all sexual offences and all offences involving minors, the name of the victims will not be disclosed. It was noted however that some Judges might still balk at adopting such measures and perceive them as tactics to try to seek the sympathy of the jury.

Perceived attitudinal problems of some judges and jury members were in fact noted by several stakeholders as contributing to the reluctance of victims to testify. The fact that the criminal law division of the Supreme Court currently has no female judges is not irrelevant in this respect¹⁸⁶ and concerns have been expressed regarding some continuing prejudice against victims of sexual violence by some of the Court's Judges. That said, trainings have been organized on the sensitization of the judiciary on the treatment of victims of sexual assault, with the support of the US embassy so there seems to be awareness about the problem.

¹⁸² Chief Justice Annual Address, note 40 above, p. 29, for a breakdown by district, see p. 56.

¹⁸³ See also Moore, note 115 above, p. 9.

¹⁸⁴ Common Country Assessment, note 4 above, p. 25; Moore, note 18 above, p. 9.

¹⁸⁵ See also Moore, note 18 above, p. 14.

¹⁸⁶ See also CEDAW Committee Concluding Comments, which recommended an increase in the number of female judges and law enforcement officials; D. Lewis, note 21 above, p. 14.

5.3.2. Family Court

Although the role of the Family Court in implementing the Domestic Violence Act has been positive, a number of concerns were expressed as regards the Family Court. Some noted that the attitude of some of the officers of the Family Court was demeaning. In some cases, women themselves have to take a Summon to their spouse/partner and there have been also instances of corruption of the Court's bailiffs mentioned by several stakeholders. Some also felt that emotional and mental abuse was still not sufficiently considered by the Court.

Finally, it was confirmed that civil cases against convicted offenders are not the norm in Belize, given that these offenders are usually without resources. There is in fact no victim compensation embedded in the criminal and therefore no compensation is contemplated for sexual assault victims.¹⁸⁷ Similarly, as regards the Family Court, there is a possibility of seeking financial compensation but it apparently is rarely sought.

6. Availability and Effectiveness of Legal Aid Services

Awareness amongst stakeholders about the importance of legal representation and advice to survivors of gender-based violence is undoubtedly present. During the UPR process conducted in 2009, the Government of Belize acknowledged the importance of legal representation as being key to true access to justice and indicated that the Legal Aid Office had recently been enhanced to provide legal representation to the indigent.¹⁸⁸ It recognized as well that more resources needed to be invested in this area. Stakeholders confirmed this general assessment and emphasized the importance of victim advocacy and accompaniment in dealings with the police, court and other authorities.¹⁸⁹ Some noted that there still lacked a 'pro-bono' culture in the Belizean legal profession.¹⁹⁰ In the leaflet prepared by the Family Court for justice users, the point is clearly made that the Family Court cannot provide legal advice, including as to whether a party should take a matter to Court.

Most stakeholders considered that the period starting from the reporting of a case to its adjudication in court constitutes one of the most critical stages of the process in terms of legal aid needs. It is at this time that legal aid is often glaringly absent and could prove crucial to support victims in pursuing their case and thereby improve the implementation of the law and fight impunity. It would also ease the task of the Prosecution, which obviously represents the interest of the victim and of society as a whole at trial but does not have the resources or mandate to reach out to victims at that stage. Legal aid is also viewed as crucial in Family Court hearings, where most women will not be sufficiently familiar with the law and will often feel intimidated by the setting.

The Women's Department 2010-2013 National Plan of Action on Gender-Based Violence includes several specific objectives on access to adequate legal aid and representation for survivors of gender-based

¹⁸⁷ Moore, note 18 above, p. 5.

¹⁸⁸ Human Rights Council 'Universal Periodic Review: Report of the Working Group on the Universal Periodic Review, UN Doc. A/HRC/12/4, 4 June 2009, para. 66
http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/BZ/A_HRC_12_4_BLZ_E.pdf

¹⁸⁹ Lewis, note 21 above p. 47.

¹⁹⁰ *Ibid.*, p. 38.

violence, specifically for rural women.¹⁹¹ It is worth noting, however, that the timeframe provided in the National Action Plan for this activity was April 2012. Based on the information gathered during the mission, this timeframe was not met and the Solicitor General's Office indicated that it is still seeking funding to spearhead this initiative.

6.1. Structure and Scope of Legal Aid Services

Legal aid for gender violence survivors remains the exception in Belize and constitutes one of the most glaring gaps in the responses of the authorities to gender violence.


Free legal aid is offered by the state only for capital offences, i.e. those that are punished by the death penalty. In such cases, the government assigns the case to an attorney through the Registry of the Supreme Court.

For all other offences, as well as in civil, family, and administrative cases, legal aid is provided at a reduced rate. Legal aid is only provided in the narrowest sense, to represent justice users in litigation cases, no wider legal information and advice services are provided. Legal aid was previously managed by the bar association but was taken over by the government and is currently only available in Belize City in a centre served by three attorneys. A large number of these cases are actually domestic violence cases. The main problem of the current legal aid system is not capacity as such but financial resources, as there is no system of pro-bono services provided by the bar for instance.

There was also recognition that in its current state, legal aid services in cases lodged against government authorities may prove sensitive due to possible conflicts of interest and that the legal aid system could be severely constrained in this respect.

In spite of the reduced rate, legal aid remains unaffordable for most women. The list of available services provided by the legal aid centre and of the applicable rates as posted in one of the shelters that were visited provides a much more concrete understanding of the hurdles facing women seeking legal representation.

¹⁹¹ See Women's Department, the National Gender-Based Violence Plan of Action, p. 6. One of the activities foreseen is for the Attorney General to make legal aid available at no cost to survivors of domestic violence and increase the number of attorneys at the Belize City Legal Aid Office to at least 2 in recognition of the increased work load, and to establish legal aid offices in the districts p. 16.



Legal Advice & Services Centre
 Providing Affordable and Reliable Legal Solutions to Those Most in Need
 # 25 Gabourel Lane P.O. Box 971, Belize City, Belize C.A. Tel. 501-223-3443 Fax: 501-227-0581

**COSTS
OF OUR SERVICES**

| | |
|---|--|
| DIVORCE | |
| Un-contested Divorce (Petitioner) | \$700.00 |
| Contested Divorce (Petitioner) | \$900.00 |
| Contested Divorce (Respondent) | \$1,100.00 |
| Out-of- jurisdiction Divorce | \$1,100.00 |
| FAMILY COURT | |
| Legal Separation | \$250.00 |
| Maintenance | \$350.00 |
| Custody | \$400.00 |
| Affiliation Proceedings | \$150.00 |
| Adoption (filing fees not included) | \$600.00 (Inter country); \$800.00 (Intra country) |
| ADMINISTRATION OF ESTATES | |
| Estate (\$400.00 - \$20,000.00) | \$150.00 or 2% of estate (whichever is higher) |
| Estate valuing less than \$400.00 | \$25.00 |
| MAGISTRATE COURT (CRIMINAL) | \$500.00 + \$30.00 per day in court |
| MAGISTRATE COURT (CIVIL) | \$100.00 OR 5% of claim (whichever is higher) |
| SUPREME COURT (CRIMINAL) | \$750.00 + \$30.00 per day in court |
| BAIL APPLICATION (Supreme Court) | \$500.00 |
| SUPREME COURT (CIVIL) | \$500.00 +filing fees |
| PERSONAL INJOURIES CLAIM (Claims less than \$20,000) | 5% of Claim |
| APPEALS (INFERIOR APPEALS) | \$1,200.00 |
| DRAFTING DOCUMENTS | |
| Letters, including pre-action letters | \$50.00 |
| Power of Attorney | \$150.00 |
| Vesting Assent | \$150.00 |
| Deed Polls | \$150.00 |

Figure 5 Reduced Legal Fees Applied by the Legal Advice & Services Centre, posted at the *Mary Open Doors Shelter*, San Ignacio, Belize

By way of example, representation in the criminal section of the Magistrate Court would cost 500BZD (roughly \$250) plus 30BZD per day in court and 750 BZD for the Supreme Court and 30BZD per day in court. If one compares these rates with the threshold of the general poverty level in the country, which stood in 2009 at \$3,429,¹⁹² it is easy to see that under the current system, seeking legal aid comes at a considerable expense with less than certain outcomes and that for that reason, many women will not be able to take advantage of these services.

The Office of the Solicitor General of Belize intends to expand the availability of legal services to every district of the country and hopes in this way to be able to reduce the rates of legal aid through economies of scale. Before being able to implement this plan, however, an interim solution will be the creation of mobile clinics. The plan would also include the provision of more specific legal aid services for juveniles and women. A statutory body would be established with a mixed board, made of both government and civil society representatives. This is a welcome development, and UNDP is supporting the legal aid centre in this respect. It is clear, however, that these efforts will not have an immediate impact on the availability of legal aid for women and that alternative solution should also be contemplated in the meantime.

¹⁹² National Human Development Advisory Committee Ministry of Economic Development, Commerce and Industry, and Consumer Protection, 2009 Country Poverty Assessment, August 2010, p. 51. <http://www.belize.gov.bz/public/Attachment/131612504571.pdf>

Finally, it is worth mentioning that during the 16 days of activism against gender-based violence, the Women's Department holds sexual violence forums and information sessions that are open to the public and include support services. According to its 2011 report, 252 women participated in these sessions throughout the country.¹⁹³ As part of the 16 days, legal clinics were held in San Ignacio and Belize City. Legal advice was provided by attorneys provided free legal advice to 13 persons (10 women and 3 men), in San Ignacio and 70 persons (44 women and 26 men) in Belize City, primarily with respect to child custody and child maintenance issues.¹⁹⁴ The Women's Department was considering whether it would be within their mandate to further institutionalize the system. One suggestion was made to create a database or registry of attorneys and offer one or two pro-bono cases per year on gender violence. While this could prove to be a good pilot effort, it would not meet by any means existing needs for victims of gender violence.

6.2. Civil Society Initiatives

Some interesting initiatives have been undertaken by civil society groups, which deserve special mention. WIN Belize implemented a project supported by the US embassy, which offered one-stop shop services to women and was deemed highly successful but had to be stopped to lack of funding. The Women's Department offers free counseling through legal clinics convened twice a year during the women's month and the 16 days against gender based violence.

The programme on "Increasing Access to Justice, Psycho-Social and Rehabilitative Services for Victims of Commercial Sexual Exploitation and Domestic Violence" is the only legal aid initiative that specifically sought to address the situation of victims of domestic and commercial sexual exploitation in Belize. The programme was initiated in October 2010 and was executed by the Women's Issues Network of Belize and implemented by two partner agencies, Youth Enhancement Services (Y.E.S.) and Haven House (H.H.).¹⁹⁵

The objective of the programme was to contribute to the prevention and elimination of commercial sexual exploitation of children and adolescents and domestic violence in Belize through the provision of a range of supportive services, with two main components, namely, inter-agency collaboration and coordination for the education, care, protection and rehabilitation of victims and their families; and increasing access to victims of CSEC and domestic violence. (p.8-14) Key beneficiaries included child and adolescent victims of commercial and sexual exploitation, those at risk of involvement in commercial sexual exploitation, victims of domestic of violence and their families. (p. 7.). 60 women were able to receive support through the project.

The evaluation report of the programme indicates that the programme's objectives were partly met. The programme successfully detected and registered victims, provided psycho-social care and support to

¹⁹³ *Ibid.*, p. 36.

¹⁹⁴ *Ibid.*, p. 41.

¹⁹⁵ For a presentation of these various civil society organizations, see above.

victims and their families including emergency food assistance, medical service, counseling, life skills and support groups, educational support, and reintegration into society.¹⁹⁶

The most important objective for the present study was to provide access to justice using the CSEC (prohibition) act (2003) and any other related legislation that will protect their human rights.¹⁹⁷ In this area, the programme was deemed a great success. Cases included sexual abuse of children, sexual violence and domestic violence.

Even if not all of the clients used those services, it was empowering for them to know that the service was readily available to them. . Those who used the services stated that it was of tremendous help. Victims of DV indicated that thanks to these services they felt adequately prepared for court hearings and the collaboration between legal and counseling services strengthened service delivery. Based upon the recommendation of the legal consultant, WIN Belize coordinated a workshop for clients to prepare them about the requirements of bringing a case to court.¹⁹⁸

Overall, the one-stop-shop or ‘wrap-around’ service approach, to use the term of the evaluation report, was viewed as a relevant model in that it addresses the multiple needs and issues of gender violence survivors.¹⁹⁹ The key problems that were identified related to the sustainability, and the human and financial resources needed for the project. Also, the involvement of the Ministry of Human Development and of the Women’s Department was identified as being key to the sustainability and impact of the project.

7. Summary of Findings

The results of the desk review and interviews conducted with stakeholders lead to a number of important conclusions on the nature of gender-based violence in Belize and the responses by both the state authorities and civil society groups, as follows.

Incidence and Causes of Domestic Violence

Domestic violence is a serious problem in Belize and the number of reported cases is on the increase. It is difficult to say, however, whether this increase reflects an increase in the incidence of domestic violence.

The causes of domestic violence are relatively well known. Attitudinal issues, including ingrained discrimination and prejudice, which keep women in positions of subordination, are certainly responsible. Related to this are sharp economic disparities between genders that also contribute to the underreporting and repeated nature of domestic violence.

International and Domestic Legal Framework

¹⁹⁶ Evaluation Report, p. 16.

¹⁹⁷ *Ibid.*, p. 14.

¹⁹⁸ *Ibid.*, p. 14.

¹⁹⁹ *Ibid.*, p. 16.

Belize has ratified all the main universal and regional human rights instruments that are of relevance to addressing gender-violence.

Consistent implementation of these conventions coupled with the requisite reporting expertise is still lagging however, notwithstanding the important work conducted by the Women's Department of the Ministry of Human Development and Social Transformation.

The Domestic Violence Act has created specific civil remedies for victims of domestic violence.

Institutional Framework and Institutional Responses to Gender-Based Violence

At the level of the government, the Women's Department undertakes crucial work to raise awareness, develop capacity and provide support to victims of gender violence. It is also tasked with the design and coordination of multisectoral plans on gender violence.

The police have established specific domestic violence and sexual violence units. Although progress has been chartered in terms of training, quality and speed of response (through the establishment of a hotline), concerns remain in terms of the attitudes of the police force, cases of corruption, and the capacity to investigate and provide legal advice.

Prosecution of gender-violence related offences remains hampered by the reluctance of victims to testify in court and press charges. The poor quality of the investigative work conducted by the police is also at issue.

Prejudice amongst judges (all of whom are men in the criminal section of the Supreme Court) combined with the aforementioned challenges in prosecuting cases means that only a handful of the cases brought before the Supreme Court lead to convictions of the defendants. A majority of cases are discontinued at the request of the Prosecution due to the fears, pressures, and lack of economic dependency of victims.

Several civil society groups are trying to fight gender-violence through international and national advocacy, outreach, community mobilization, accompaniment and support services to victims. There are two shelters for victims of gender violence, which provide primarily skills training and counseling to victims. All of these groups operate with only minimal resources with limited sustainability of initiatives and results as a consequence.

Availability and Effectiveness of Legal Aid Services

The Office of the Solicitor General runs a legal aid centre in Belize City, which provides legal representation at a reduced rate in criminal, civil, family and administrative cases. The rates remain prohibitive for most victims of gender violence, however.

The Women's Issues Network of Belize executed a one-off programme supported by the US Embassy which consisted of one-stop-shop-services including, medical care, counseling, psycho-social care, and legal aid. The programme was regarded as a great success and highly valued by the women who used it but ended after one year due to the discontinuation of funding.

Recommendations for Programmatic Support on Legal Aid in Belize

Additional legal aid services could provide crucial support to victims of gender violence, particularly in the very early stages, from the time of reporting the incident to the police, the hearing in family court, up to proceedings before criminal courts.

One option, which is already in the pipeline, would be the expansion of legal aid services by the Office of the Solicitor General, which could through an economy of scale to the adoption of lower rates for victims of gender violence. It would be key to conduct a market study to establish a reasonable fee, however to agree from the outset on the rates that would be applicable to women, to ensure that these services are effectively available to them.

Engagement with civil society groups with prior experience in providing one-stop-shop services should also be contemplated and would not have to be regarded as excluding engagement with the government run legal aid centre. It would carry the advantage of being free of charge, and accompanied by a range of other services (medical, psycho-social, counseling, skills training) for survivors of gender violence.

CHAPTER 5 – Haiti*

1. Introduction

Sexual and gender based violence have received increased attention from the international community present in Haiti in recent years. Although the problem is anything but new, it was certainly brought to light in the wake of the 2010 earthquake.

The response of institutions and of the criminal justice system to this violence remains, however, deeply inadequate due to a lack of capacity and resources but also due to the persistence of cultural stereotypes. In practice, perpetrators enjoy almost total impunity, which contributes to perpetuating the problem and maintains women in a situation of vulnerability.

In terms of support and assistance available for victims, civil society groups, in particular grass-roots organizations have been most active and offer in many regions of the country an integrated support, including medical and psycho-social care, and in some instances legal assistance. The Legal Assistance Bureau (*Bureau d'Assistance Légale* – BAL) which has resumed its work under the authority of the Ministry of Justice, also offer services but is currently operating in Port-au-Prince only, has limited capacity and is not specialized in the provision of assistance to victims.

Stakeholders nonetheless agree on the fact that legal aid should as a matter of principle be provided by the state. The key question therefore lies in the manner in which integrated services can be incorporated within state institutions to ensure their sustainability, while taking full advantage of the experience acquired by civil society groups in this area, so that continuing access and effectiveness of these services may be guaranteed. In spite of ongoing efforts to strengthen the capacity of governmental institutions and the important role played by the Ministry of Justice and Public Security (*Ministère de la Justice et de la Sécurité Publique*) and the Ministry for the Status of Women and Women's Rights (*Ministère de la Condition Féminine et aux Droits des Femmes – MCFDF*) state institutions remain fragile and weakened by ongoing institutional and political infighting.

2. Situation Analysis

2.1. Geography – Population - Governance

Haiti is situated in the Caribbean region and together with the Dominican Republic, is one of the states on the island of Hispaniola.

The country has 10,413,211 inhabitants, 2.5 million of them living in the capital, Port-au-Prince. 40 percent of the population is between 0 and 14 years old and life expectancy at birth is 62.4 years. There are two official languages, French and Creole. 95 percent of the population is of African descent, while 5 percent are of European origin.

Haiti became independent from France in 1804 and was governed for many years by authoritarian regimes, more notoriously, those of François Duvalier and his son, Jean-Claude, from 1957 to 1986. Despite the adoption of a democratic constitution in 1987, the country has suffered from chronic political

instability. In 1990, Jean-Bertrand Aristide was elected president but was toppled by a military junta. He was brought back to power in 1994 but was the victim of a second coup in 2004. The 2006 democratic elections constituted an important turning point towards the democratization of the country.

Haiti continues to experience severe governance challenges, due to political infighting, which contribute to the serious deficiencies of the state. These constant reshuffles at governmental level²⁰⁰ undermine state institutions, including the judiciary and security sector,²⁰¹ and create an enabling environment for corruption.

2.2. Development Indicators

Although the situation has considerably improved in recent years, Haiti's development challenges persist. In 2011, 55 percent of the population lived with an average income below the extreme poverty line of one USD per person per day and 71 percent, i.e. almost 6.2 million people, below the general poverty line of 2 USD per day.²⁰² 64.5 percent of the population has access to drinking water and 21.9 percent of children below the age of 5 suffer from chronic malnutrition, which constitutes an important progress compared to previous years.²⁰³

Access to education has been democratized²⁰⁴ and school attendance for the elementary level is of 77 percent, while the literacy level is 67.54 percent.²⁰⁵ The average length of school attendance is nonetheless quite short, 4.9 years,²⁰⁶ which reflects the fact that the level of secondary school attendance is only 25 percent.²⁰⁷ Unemployment is also extremely high, 40.6 percent of the population is currently jobless, and poverty is endemic, particularly in rural areas.

The 2010 earthquake worsened the economic and social situation of the poorest, killing 200,000 people and leaving over 2.3 million people without accommodation. The cost of this disaster was estimated to be around 7,804 billion USD, slightly more than the country's GIP in 2009. Most public buildings, including the judicial and police services infrastructure were either destroyed or underwent serious damage and

* The original report on Haiti was prepared in French for UNDP's Haiti Country Office (see http://www.undp.org/content/dam/haiti/docs/emancipation_des_femmes/UNDP_HT_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf). The chapter was translated from French by the author without revision by a professional translator.

²⁰⁰ Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, 8 March 2013, UN Doc. S/2013/139 (Secretary-General's Report 2013), para. 60.

²⁰¹ Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, 31 August 2012, UN Doc. S/2012/678 (Secretary-General's Report 2012), para. 19; Secretary-General's Report 2013, para. 64.

²⁰² Human Rights Council, 'National Report Submitted pursuant to Paragraph 15 a) of annex to Resolution 5/1', 19 July 2011, UN Doc. HRC/WG.6/12/HTI/1 (Human Rights Council National Report), para. 57.

²⁰³ Ministère de la santé publique et de la population, Enquête Mortalité, Morbidité, et Utilisation des Services EMMUS-V, Haïti 2012 – Rapport préliminaire (Rapport EMMUS-V), September 2012, p. 13.

²⁰⁴ Ministère de la santé publique et de la population, Enquête Mortalité, Morbidité, et Utilisation des Services 2006-2006, Haïti, janvier 2007, (Rapport EMMUS-IV), p. 27.

²⁰⁵ *Ibid.* p. 30.

²⁰⁶ See Indicateurs internationaux de développement humain – Programme des Nations Unies pour le développement, <http://hdrstats.undp.org/fr/pays/profils/HTI.html>

²⁰⁷ Rapport EMMUS-V, note 4 above, p. 10.

many government institutions continue to be housed in prefabricated installations. Over 18,000 civil servants died as a result of the earthquake, generating important losses in terms of human capital. To this day, over 400,000 persons are still displaced and live in camps.²⁰⁸

2.3. Violence and Crime

Crime and violence remain one of the key challenges that need to be addressed to achieve long-term stability in Haiti. The earthquake had a devastating impact on law and order institutions and on the country's social fabric, which led to a particularly tense security situation.²⁰⁹ Many detainees were able to escape from prison and the capacity of detention centres was greatly reduced due to the destruction and decay of correctional structures.²¹⁰

Recent statistics show that the number of homicides has significantly increased during the second trimester of 2012, and the last MINUSTAH report refers to an average of 79 homicides per month from September to December 2012, while during the same period in 2011, the average was 60.²¹¹ The number of kidnappings was around 18 per month during the same period,²¹² while 40 rapes were reported.²¹³ Criminal violence is particularly prevalent in the metropolitan zone of Port-au-Prince, where 65 percent of homicides are committed, 85 to 90 percent of those taking place in poor neighbourhoods. Armed bands are primarily to blame for the current insecurity in these areas and are involved in murders, kidnappings, theft, trafficking of drugs and light weapons, racket and in the fight for control of their territories,²¹⁴ which are partly incited by political actors.²¹⁵

3. Sexual and Gender-Based Violence in Haiti

3.1. Development and Gender Disparities

Women play an important role in Haitian society. They represent 51 percent of the country's population, and constitute 48 percent of the economically active population above all in the informal sector and minor exchanges, where they represent 82 percent of workers, and in agriculture, where their proportion is 37 percent.²¹⁶ The birth rate remains high, 3.5 children per woman, particularly for very young women (15-

²⁰⁸ Secretary-General's Report 2012, note 2 above, para. 13.

²⁰⁹ Human Rights Council, 'Compilation prepared by the High Commissioner for Human Rights in accordance with Paragraph 15 b) of annex to Resolution 5/1', UN Doc. A/HRC/WG.6/12/HTI/2, 25 July 2011, para. 30.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/152/81/PDF/G1115281.pdf?OpenElement>

²¹⁰ *Ibid.*, para. 32.

²¹¹ Secretary-General Report 2013, note 1 above, para. 10.

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ Secretary-General Report 2012, note 2 above, para. 12

²¹⁵ Secretary-General Report 2013, note 1 above, para. 10.

²¹⁶ Ministère de la Condition féminine et aux Droits des Femmes, *Une Réponse à la violence faite aux femmes en Haïti: Étude sur la violence domestique et sexuelle en Haïti*, 2007, p.16

<http://sgdatabse.unwomen.org/uploads/Haiti%20-%20une%20reponse%20a%20la%20violence%20faite%20aux%20femmes%20en%20haiti.pdf>; see also Rapport EMMUS-IV, note 5 above, p. 37 for more recent data.

19 years old).²¹⁷ The first sexual relations start at a relatively young age,²¹⁸ and there is a strong proportion of informal or common law unions,²¹⁹ and of visiting relationships, where the man has several partners in the highest age range.²²⁰ Between 42 and 44 percent of heads of household are women.²²¹

Women continued to be significantly disadvantaged in terms of their health and their economic, social and educational opportunities.²²² They receive lower wages than men, represent 87 percent of the third of lowest incomes in the informal sector and 83 percent in the formal sector, compared to 69 and 44 percent for men, respectively. Low educational levels predominantly affect women, which explain their early entry into the labour market and limited qualifications. This feminization of poverty and state of subordination contribute to their being targeted as potential victims of violence.²²³ They also are subject to serious discrimination in terms of access to justice and public services.²²⁴

At the political and institutional levels, the Constitution was amended in 2011 and now creates a mandatory quota of 30 percent of women in ‘all sectors of national life’. Although the public discourse on gender equality is fine-tuned, the implementation of public policies on gender equality has not followed through. Women remain underrepresented in political posts and at the highest level in state institutions, and in the judiciary,²²⁵ where they constituted in 2011 only 13 percent of judges and 7.9 percent of judicial officers.²²⁶

3.2. Gender Violence

Gender violence is not a new phenomenon in Haiti. Although the impact of the earthquake has focused the attention of international actors and the media on the prevalence of sexual violence in the IDP

²¹⁷ Rapport EMMUS-V, note 4 above, p. 15.

²¹⁸ Rapport EMMUS-IV, note 5 above, p. 84 and 86. As regards relationships, the average age of women at the time of their first union is 19.8 years old in rural areas. Women with secondary education level or with higher incomes do so at a later age, around 23-24 years old. In terms of first sexual relations, 16 percent of women have sexual relations before the age of 15, and the median age of the first sexual relationship is 18.1 years old.

²¹⁹ See Rapport EMMUS-V, note 4 above, on the multiplicity of sexual partners especially amongst men, p. 43.

²²⁰ Rapport EMMUS-IV, note 5 above, p. 81-83. The report takes note, however of clear decrease in the reported number of such visiting relationships.

²²¹ See UN Committee on the Elimination of Discrimination against Women, ‘Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial, second, third, fourth, fifth, sixth and seventh periodic reports of State parties: Haiti, July 2008, UN Doc. CEDAW/C/HTI/7 (CEDAW Report), p. 21.

²²² Human Rights Council Compilation, note 10 above, para. 23, CEDAW Report, note 22, p. 77.

²²³ Inter-American Commission on Human Rights, ‘Observations of the Inter-American Commission on Human Rights Upon Conclusion of its April 2007 Visit to Haiti’, OEA.Ser.L/V/II.131, 2 March 2008 (Inter-American Commission Report), para. 42; Human Rights Council, ‘Summary established by the High Commissioner pursuant to paragraph 15 c) of the annex to Resolution 5/1 of the Human Rights Council, UN Doc. A/HRC/WG.6/12/HTI/3 (Summary Human Rights Council), para. 16 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/153/23/PDF/G1115323.pdf?OpenElement>; Ministère de la Condition Féminine et aux Droits de la Femme, Étude: Une Réponse à la Violence Faite aux Femmes en Haïti, étude sur la violence domestique et sexuelle en Haïti, 30 March 2008 (MCFDF Study 2007), p. 21.

²²⁴ Inter-American Commission report, note 24 above, para. 40, 42.

²²⁵ *Ibid.*, para. 40-41; Human Rights Council Compilation, note 10 above, para. 23.

²²⁶ United Nations Rule of Law Indicators Project, Implementation of Rule of Law Indicators in Haiti (September – October 2011), April 2012 (Haiti Rule of Law Indicators), p. 22, for further information see p. 92-93.

camps,²²⁷ the acts of violence against women, in particular sexual violence were already recognized as a serious problem long before the earthquake occurred.²²⁸ In 1996, the *Centre Haïtien de Recherches et d'Actions pour la Promotion Féminine* concluded that 70 percent of Haitian women had experienced various situations of violence, including sexual psychological, social, and political violence.²²⁹ These estimates must be compared with the EMMUS-IV Report, which indicates that for the relevant period (2004-2005), more than a quarter of respondents (27 percent), declared having being subjected to physical violence since the age of 15. The same report indicated that 46 percent of these acts had been committed by persons who were not their partners/spouses while 32 percent declared that the author was the partner/spouse only. If one adds to this figure the case where the husband or partner has been involved in this violence with others, almost two third of the reported cases involved the partner or husband.²³⁰

Stereotypes and discrimination are still widely present in Haitian society, and are based on the concept that the man ought to be able to control his wife, including by violent means.²³¹ These stereotypes are also strongly influenced by cultural values that are commonly accepted, including the fact that violence is still regarded as a valid strategy for conflict resolution, in a society, which has been characterized by the Special Rapporteur on violence against women as 'structurally and intrinsically violent'.²³² The *Centre Haïtien de Recherches et d'Actions pour la Promotion Féminine* de 1996 indicated that 48 percent of women who had already been victims of domestic violence considered that it was justified to beat up a woman if she neglected her children, if she went out without informing her partner, if she was in disagreement with him, or if she refused to have sexual relations, did not cook well, or spoke to other men.²³³ The EMMUS-IV Report of 2004-2005 shows a significant decrease of this percentage, but the data reveals nonetheless that over 20 percent of women still considered that a man had the right to beat up his wife or partner if she went out without informing him or if she neglected the children.²³⁴ Between 7 and 8 percent opined, according to the same report, that it is acceptable that a man beat up his wife when she burns the food, when she defies him, or when she refuses to have sexual relations with him. A third of women surveyed were agreeing with at least one of these reasons.²³⁵

²²⁷ As noted by the Human Rights Section of MINUSTAH, 'violence committed in the camps is only a more visible example of a systemic and structural problem of Haitian society', see MINUSTAH (Human Rights Section) Profile of Police and Judicial Response to Rape in Port-au-Prince', June 2012 (OHCHR Study), para. 35. <http://www.minustah.org/a-profile-of-police-and-judicial-response-to-rape-in-port-au-prince/> ; see also report of the Inter-American Commission, note 24 above, para. 50.

²²⁸ MCFDF Study, note 24 above, p.21; see also Inter-American Commission Report, note 24 above, para. 46; CEDAW Report, note 22 above, p. 23, 50-53.

²²⁹ MCFDF Study, note 24 above, p. 18.

²³⁰ EMMUS-IV Report, note 5 above, p. 299.

²³¹ Inter-American Commission Report, note 24 above, para. 50; CEDAW Report, note 22 above, p. 45.

²³² CEDAW Report, note 22 above, p. 50.

²³³ MCFDF Study 2007, note 24 above, p. 19.

²³⁴ See MDG Fund, ' Perspective sur la victimization des femmes en Haïti, 25 novembre 2012, which reports a rate of 10 to 20 percent of women considering that a man is justified in beating his partner when she disobeys. <http://www.ht.undp.org/content/dam/haiti/docs/reduction%20de%20la%20pauvrete/Journee%20Contre%20les%20Violences%20Faites%20aux%20Femmes.pdf>

²³⁵ EMMUS-IV Report, note 5 above, p. 283.

The social and political violence that has affected the country for decades has also had an impact on private relationships and on the incidence of sexual, domestic and family violence, in both in quantitative terms and in terms of the nature and degree of cruelty of those acts.²³⁶ This connection is particularly clear when one examines the conditions that prevailed during periods of social and political disturbances, such as the wide circulation of weapons, the absence of street lighting, and to a lesser extent – although this factor is important in the displaced camps in particular -, the lack of intimacy in the home.²³⁷ As was noted by the UN country team in 2011, ‘mass displacement, inadequate housing, the loss of livelihood and economic opportunities have increased the exposure of women to abuse.’²³⁸

In the past, rape was also used in a political context to intimidate women, particularly under the regime of President Cedras, and became subsequently a common practice of criminal gangs, and of the Haitian National Police (*Police Nationale d’Haïti* – PNH) and of paramilitary structures.²³⁹ The commission of collective rapes, which constituted between 2004 and 2005 a third of the cases recorded by women’s groups, appeared to be attributable to these various groups.²⁴⁰ Women have also been exploited by these armed groups as sexual slaves.²⁴¹ The lawlessness that prevailed after the earthquake allowed these gangs to prosper and to continue exploiting and commit violence against women, above all in the IDP camps.²⁴²

3.3. Analysis of most recent data on gender violence

In terms of data collection, the *Concertation nationale contre les violences faites aux femmes* has been actively involved in the gathering of more precise and comprehensive data on the incidence of gender violence. The methodology was based on the elaboration of a single form, which all institutions dealing with gender violence were encouraged to use since 2006.²⁴³ This methodology sought to rectify the problem of disparate and inconsistent data gathered by the myriad national and international organizations, which work with women. The earthquake gravely impacted these efforts. The last data which were presented run from July 2001 to June 2012.²⁴⁴

That said, it is important to note that data collection continues to be challenging, due to the culture of silence which prevails as regards domestic violence,²⁴⁵ due to a certain ‘normalization’ of these acts, and of the common opinion that these behaviors belong to the private sphere and are not really criminal.²⁴⁶

²³⁶ See *Concertation Nationale contre les violences faites aux femmes*, Plan national de lutte contre les violences faites aux femmes: prévention, prise en charge et accompagnement des victimes de violences spécifiques faites aux femmes, 2006-2011 (National Plan), November 2005.

²³⁷ MCFDF Study, note 24 above, p. 18.

²³⁸ Human Rights Council Compilation, note 10 above, para. 34; see also Human Rights Council Summary, note 24 above, para. 69-72.

²³⁹ Inter-American Commission Report, note 24 above para. 44.

²⁴⁰ National Plan 2006-2011, note 37 above, p. 7-8.

²⁴¹ Inter-American Commission Report, note 24 above, para. 46, 50.

²⁴² EMMUS-IV Report, note 5 above, p. 295.

²⁴³ See National Plan, note 37 above, 2006-2011, p.11.

²⁴⁴ *Concertation nationale contre les violences faites aux femmes*, ‘Violences spécifiques faites aux femmes’, July 2001 to June 2012.

²⁴⁵ Inter-American Commission Report, note 24 above, para. 45-46; MCFDF Study 2007, note 24 above, p. 20; National Plan 2006-2011, note 37 above, p. 6.

²⁴⁶ Inter-American Commission Report, note 24 above, para. 46, 50.

As was noted in the EMMUS-IV Report, ‘even those women who want to speak about their experience struggle because they are scared or ashamed.’²⁴⁷ Some of the stakeholders interviewed also note that the police are not keen to share data with NGOs. The legacy of the dictatorship and of political conflict also contributes to distrust towards the authorities and the reluctance to share information, which could be used against the population.

The data presented below is therefore primarily drawn from the *Concertation*. Although they do not permit to precisely assess the incidence of gender violence versus other offences, and to draw a proper comparison with other countries of the region, these data nonetheless offer an overview of the most common categories of gender violence, and of the profile of the victims in terms of age, social and personal status.

The last report of the *Concertation nationale* indicates that from July 2011 until June 2012, 1,127 cases of sexual violence against both women and men were reported in four departments of the country, 76.6 percent of these cases affected women. These cases were registered through the ‘national registration form’, 52.4 percent by women’s groups, 35.9 percent by health professionals, 25 percent by women’s organizations, and 10.6 percent by the judicial sector (courts and prosecution offices). These figures reveal important changes compared to previous data, according to which women would primarily direct themselves to health institutions, and in second place (25 percent of cases only), to women’s groups. The percentage of cases reported to the judicial institutions has also seen a marked increase, since it previously was of 7 percent.²⁴⁸

64.9 percent of the 893 cases of violence against women were cases of physical violence, 16.1 percent were of a sexual nature, - a significant decrease since the last report where the percentage was 29 percent – 7.3 percent were psychological, and 11.7 economic.²⁴⁹ The age range that was most affected is 20 -30 years old for physical aggression, and between 10 and 25 years old for sexual violence, and no less than 60 percent for girls who were still minors at the time of the aggression, 5.6 percent being 5 to 10 years old.²⁵⁰ The report also shows that single women are primarily targeted for violence, around 80 percent, primarily young women and girls. Of the 142 reported cases of sexual violence, rape amounted to 78.2 percent, 9.2 percent were attempted rapes, and 3.50 percent were ‘sexual touching’. 89.3 percent of rapes were committed collectively, which is a particularly high figure. This is correlated with the places where the violence are generally committed, 57 percent having been committed at a private home, and 34 percent in a public space. Domestic and family violence (i.e. between family members except spouses/partners or ex-spouses/partners) represent, respectively, 70 percent and 10 of gender violence cases. Finally, it is worth noting that 43 percent of women do not immediately report the case to health, legal or other services, which, as will be discussed below, generate problems with prosecuting those cases.

²⁴⁷ EMMUS-IV Report, note 5 above, p. 295.

²⁴⁸ Concertation nationale contre les violences faites aux femmes, ‘Violences spécifiques faites aux femmes’, juillet 2011 à juin 2012 (Report Concertation nationale) p. 2-3.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*, p. 4. See also Fonds pour la réalisation des OMD, ‘Perspective sur la victimisation des femmes en Haïti’, 25 November 2012. Note that the percentage of women who accepted to answer the survey is very low.

As regards the treatment of these cases by the police and the judiciary, there is only a limited amount of available data. UNDP has gathered relevant data on this question, showing that for the period from October 2012 to June 2012, 724 sexual violence cases were brought before the courts for the whole country, which constitutes 6.5 percent of the total (11,097) of offences brought before the courts. The study by the human rights section of MINUSTAH reports on the other hand, that for 2010, a group of local organizations had registered 500 cases of sexual violence for the area of Port-au-Prince. In December 2011, only 60 to 80 cases had been referred to the prosecution, 26 cases had been brought before an investigating judge, and out of these 26 cases, only six were brought before the courts. No trial hearings had yet taken place in any of the cases.²⁵¹

Although these only looked at 500 cases, these figures show the high level of impunity that prevails in rape cases, which is similar to other countries examined in the present study. The reasons why only a limited number of cases reaches the courts are related, as examined in further detail below, to the limited capacity of the police and lack of training of police officers; to the threats and intimidation against the victim and her family; and to the delays incurred in the investigation due to the limited resources and to difficulties in the issuances of medical certificates.²⁵²

4. Normative and Institutional Framework

Although Haiti has adhered to the most important international conventional instruments on gender discrimination, the normative framework remains flawed. In its 2007 report, the Inter-American Commission on Human Rights noted important legislative gaps in this area.²⁵³

4.1. International Legal Framework

Haiti has ratified most international instruments on human rights and fundamental freedoms, including the ICCPR (ratified in 1991), the CEDAW (ratified in 1981).²⁵⁴ Haiti is not yet party to the CAT, to the ICESCR and its protocols or to the ICCPR and CEDAW Protocols.²⁵⁵ It has also recognized the jurisdiction of the Inter-American Commission of Human Rights.

4.2. Domestic Legal Order

The 1987 Constitution includes several chapters relating to fundamental rights of Haitians and recognizes *inter alia*, the right to life, to education, to information, to security as well as the principle of equality between men and women. Pursuant to article 276 of the Constitution, international treaties override national law.

²⁵¹ OHCHR Study, note 28 above, p. 13. The organizations which registered the cases are FEM CAM, KOFAVIV, and FAVILEK.

²⁵² OHCHR Haiti Study, note 28 above, p. 11. On the medical certificates and the measures adopted to address the problems experienced in terms of issuance, doctor's qualifications, and cost, see below, Marjorie Joseph, Le certificat médical, une preuve incontournable dans les cas de violence faites aux femmes, URAMEL, http://www.haitimedical.com/uramel/formulaires/violence_femmes.pdf

²⁵³ Inter-American Commission Report, note 24 above, para. 47.

²⁵⁴ One shall note, in particular, that articles 2, 5, 11, 12 and 16 of the CEDAW.

²⁵⁵ Human Rights Council Compilation, note 10 above, para. 1.

Although there are legal texts dealing specifically with matters related to gender discrimination, such as the 1982 Decree that ensured that the status of married women would be in line with the Constitution and eliminated any discrimination, there is no generic legislation, which prohibits and penalizes gender discrimination.²⁵⁶

The criminal code, like the criminal procedure code, was promulgated in 1835. It is therefore not surprising that it makes no reference to sexual or gender offences. A 2005 Decree was adopted by the executive and amended the criminal code as regards criminal offences, prohibiting the discriminatory treatment of women.²⁵⁷ It does not provide, however, for a definition of the offences, and of their constitutive elements.²⁵⁸ The draft criminal code, which is currently being discussed, should put an end to this important gap and would modify the sentencing regime including through the adoption of more severe penalties.²⁵⁹ The criminal procedure code also provides for free legal aid (or 'judicial aid') for criminal defendants accused of a felony or misdemeanour. A 1864 law has extended this measure to all indigent persons.

A draft legislation elaborated by the MCFDF on prevention, punishment and elimination of gender violence has been under discussion for several years, and was submitted for consultation to the NGOs, to the United Nations and to the health organizations providing assistance to rape victims. The drafting process is currently on hold and no information was made available on the timing of its possible adoption. If passed, the legislation would constitute an important advance not only because it defines the various categories of violence against women but also because the document provides in its latest version for a right to information, social assistance and free legal aid.

4.3. Institutional Framework

State institutions in Haiti continue to have limited capacity. This is one of the reasons for the large-scale problem of impunity that affects the country.²⁶⁰ Most of the complaints lodged by women are not effectively and diligently processed. There is also great concern with the scale of corruption, which contributes to a culture of lawlessness and primarily impacts the most vulnerable, including women.

4.3.1 Judiciary

The judiciary's structure is based on the French system.²⁶¹ The highest court is the *Cour de cassation*,²⁶² followed by five appeals courts, and 18 first instance tribunals that are spread through 10 districts.²⁶³ The 189 peace tribunals sit at the local level and have, contrary to French law, jurisdiction in criminal as well

²⁵⁶ OHCHR Study, note 28 above, p. 7.

²⁵⁷ Décret de 2005 modifiant le régime des agressions sexuelles et éliminant en la matière les discriminations contre la femme. (Le Moniteur, no 60, 11 août 2005).

²⁵⁸ OHCHR Study, note 28 above, p. 6.

²⁵⁹ In rape cases, for instance, the sentence would go from 10 years forced labour to a sentence of 5 to 15 years imprisonment (see article 2 of the 2005 Decree and article 212-22 of the draft criminal code).

²⁶⁰ See also Human Rights Council Compilation, note 10 above, para. 28; Inter-American Commission, note 24 above, para. 50.

²⁶¹ See article 58 of the 1995 Decree related to the organization of the judiciary in Haiti.

²⁶² See articles 129 to 163 of the 1995 Decree.

²⁶³ Articles 92 to 128 of the 1995 Decree.

as civil cases. The judge of the peace is also an auxiliary of the governments, receives complaints about offences committed in his jurisdiction and may refer these cases to the prosecution. S/he issues a statement in cases of *flagrante delicto* and records the statements of the witnesses. Pursuant to article 91 of the 1995 Decree, judges of the peace are also conciliation judges, and as such, must strive to reconcile the parties who appear before them.

The functions of the judiciary are laid down in articles 173 to 184 of the Constitution. The law on the high judicial council and the law on the magistrates and on the magistrates' school regulate in greater detail some of the key elements of the system.

The deficiencies of the judiciary result from the legacy of the dictatorship and are reflected in the limited effectiveness of accountability mechanisms, as well as in the institutional culture where impunity and corruption prevail. There is a serious backlog of cases resulting in part from the fact that the judiciary lacks resources, particularly equipment, database technology and library resources. Protective measures do not apply to judges, and they are ill paid. For instance, Jacmel, one of the main provincial towns of the country, has three judges for 300,000 inhabitants.²⁶⁴ It is therefore not surprising that the Haitian justice user has only limited trust in the integrity, efficiency, and independence of the judiciary.²⁶⁵

At this time, the independence of judges remains limited, to the extent that the judiciary remains under the authority of the Ministry of Justice. In other words, the separation of powers remains illusory.²⁶⁶ Until recently, it was the Ministry of Justice and the Directorate of judicial affairs, which was receiving complaints from citizens but the procedure seems to never have been used.²⁶⁷ A high council of the judiciary tasked with the supervision of the work of the judiciary was created through a 2007 law and receives the joint support of MINUSTAH and UNDP. The 2007 law provides that any person who deems having been harmed by a judge, which could entail his disciplinary responsibility, may apply to the high judicial council. The sanctions against the judge may include the termination without compensation of the judge, as well as criminal sanctions if the facts constitute a criminal offence.²⁶⁸

The Council has not been able to focus on its key mandate of supervision, due to difficulties, which arose as regards the nomination of members of the Electoral Council.²⁶⁹ In its latest report, the Secretary-General highlighted the importance of the mission of the judicial council, referring to controversies related to the nomination process by the Ministry of Justice of judges of the peace, who did not meet the criteria in terms of qualification and experience.²⁷⁰

²⁶⁴ Haiti Rule of Law Indicators, note 27 above, p. 73.

²⁶⁵ Human Rights Council National Report, note 3 above, para. 66; Haiti Rule of Law Indicators, note 27 above, p. 32.

²⁶⁶ Haiti Rule of Law Indicators, note 27 above, p. 77.

²⁶⁷ Haiti Rule of Law Indicators, note 27 above, p. 81.

²⁶⁸ Arts 22, 28, and 33 of the law of 17 December 2007 creating the High Judicial Council. See also articles 380 to 393 of the criminal procedure code which provides for complaints procedures against judges in cases of criminal acts within or outside of their official functions.

²⁶⁹ Secretary-General Report 2013, note 1 para. 35.

²⁷⁰ Secretary-General Report 2013, note 1 above, para. 36.

In spite of the existence of direct remedies in disciplinary matters (see above), only 55 percent of surveyed persons for the Rule of Law Indicators study considered that it was possible to obtain justice in such cases,²⁷¹ while the prosecutors seemed to be far more exposed to such type of complaints.²⁷² Judges continued to be perceived as omnipotent, and are not accountable in practice. Furthermore, no prosecutor would be willing to take such a case out of fear of retaliation.²⁷³ The only real remedies are thus non-legal, through the media and the advocacy of human rights groups.²⁷⁴

MINUSTAH and UNDP provide essential technical assistance in the justice reform process.²⁷⁵ The programmatic framework in the realm of rule of law and justice is the joint MINUSTAH-UNDP programme on rule of law, justice and security (2010-2012) whose objectives are: 1) to assist in the re-establishment of the capacity of justice and security services; 2) to put in place preventive measures in potential zones of conflict; and 3) to support reform processes towards the establishment of sustainable justice and security systems.

MINUSTAH and UNDP are involved in supporting judicial training, technical assistance to the High Judicial Council, improvement of legal and building services in the tribunals, and the rehabilitation of forensic equipment.²⁷⁶ Furthermore, MINUSTAH and UNDP have lent their support to the training of judges, judicial officers, and police officers on sexual and gender-based violence.²⁷⁷ The judicial school was reopened in 2009 and has established stricter criteria to improve the quality of future judges.²⁷⁸ These efforts seem to have been fruitful²⁷⁹ except perhaps as regards judges of the peace whose level of competence is still being criticized.²⁸⁰

Considerable obstacles will still have to be overcome to achieve tangible and sustainable results: the lack of political will, the lack of coordination amongst donors; the limited capacity of the state and the fragile process of reform in the realm of service delivery and accountability of civil servants still constitute major challenges.

4.3.2. Police

Although the national police have become increasingly efficient in its response to crime, its capacity to provide security on the whole territory is not yet fully functional. The blue helmets and the UN police continue to play an important role in the maintenance of security and stabilization.²⁸¹

²⁷¹ *Ibid.*, p. 20, 81-82.

²⁷² *Ibid.*, p. 80, 82.

²⁷³ *Ibid.* p. 81.

²⁷⁴ *Ibid.*, p. 81.

²⁷⁵ Human Rights Council Compilation, note 10 above, p. 19.

²⁷⁶ Secretary-General's Report 2012, note 2 above, para. 31; Secretary-General's Report 2013, note 1 above, para. 33, 37, regarding the reconstruction of a forensic institute.

²⁷⁷ See also 2013 Secretary-General's Report, note 1 above, para. 43.

²⁷⁸ Human Rights Council National Report, note 3 above, para. 73-74.

²⁷⁹ Haiti Rule of Law Indicators, note 27 above, p. 94.

²⁸⁰ See above.

²⁸¹ 2012 Secretary-General's Report, note 2 above, para. 43.

The PNH has still limited personnel, and the goal of MINUSTAH is to increase the number of police officers by at least 15,000 men and women by 2016, which would require the strengthening of capacity of middle range and high level officers tasked with the supervision of new recruits logistical and administrative strengthening and of course, the increase of financial resources of the institution in order to pay additional staff.²⁸² The PNH had to launch a recruitment campaign to meet its objectives and has announced that 14,070 applicants had been selected, out of which only 1,070 women.²⁸³ MINUSTAH also assists the PNH in the vetting process of the applicants.²⁸⁴

4.3.3. Government Institutions

The Ministry of Justice and Public Security manages the judiciary (see above) as well as the prosecution office, but is faced with serious challenges.

MINUSTAH and UNDP have assisted the Ministry in the adoption of a roadmap on the rule of law and strengthening the Direction of Judicial Inspection and the planning services.²⁸⁵ UNDP has also supported the evaluation of a strengthening of the capacities of the Ministry, which led to the adoption of an institutional plan of action.

Aside from the Ministry of Justice, the MCFDF has obviously an important role as well. The Ministry was created in 1994 and is governed by the Decree of 22 December 2005. Its main functions include gender mainstreaming, and the monitoring of the implementation of international conventions on women's rights, which have been ratified by Haiti.²⁸⁶ The MCFDF is also tasked to provide services to women through the coordination of support systems. The Ministry is composed of three technical divisions, on gender mainstreaming, on the promotion and defense of women's rights, and on the coordination of the departmental offices (local sections/ rural women).

4.3.4. Civil Society

There is a very dynamic civil society in Haiti and women's groups have been active for many years.²⁸⁷ These groups are present in the capital as well as in the provinces and rural areas. The most prominent women's organizations are *Kay Famm* (Women's House), which receives and supports victims of violence and runs a shelter; *Famm Deside* (Decisive Women); SOFA (Solidarity Haitian Women), which offers integrated services to women and girls who have been victims of violence throughout the country. These organizations have organized themselves at the national level, through the *Coordination nationale pour le plaidoyer pour les droits des femmes* (CONAP). Other groups which provide services to women include

²⁸² 2013 Secretary-General's Report, note 1 above, para. 22.

²⁸³ Haiti Rule of Law Indicators, note 27 above, p. 15, 58, indicating that only 7.5 percent of police officers are women.

²⁸⁴ 2013 Secretary-General's Report, note 1 above, para. 30.

²⁸⁵ 2012 Secretary-General's Report, note 2 above, para. 30.

²⁸⁶ See CEDAW Report, note 22 above, p. 33.

²⁸⁷ In 1991, women's groups convened the first national encounter against violence and in 1998, an international tribunal against gender violence was held, see Plan National 2006-2011, note 37 above, p. 8; see also CEDAW Report, note 22 above, p. 25.

GUESKIO which offers integrated health services for raped women; and *URAMEL* (Research Unit for medico-legal action), which is tasked with the forensic support of victims of sexual violence.²⁸⁸

The arrival of massive number of international organizations, including international NGOs in Haiti following the earthquake has somewhat weakened the role of these national organizations and their capacity, because donors have tended to turn towards international agencies, which used national groups as sub-contractors and have sometimes overlooked their deep knowledge and experience of the country.

4.3.5. Concertation nationale contre les violences faites aux femmes

The aforementioned organizations have established in partnership with the MCFDF, the Health and Population Ministry and the Ministry of Justice as well as several international agencies (UNFPA, UN Women, UNDP, WHO, UNICEF, UNAIDS, MINUSTAH, and CIDA) the *Concertation nationale contre les violences faites aux femmes*. The *Concertation nationale* was established in 2003 upon the initiative of the MCFDF in order to elaborate and propose public policies related to services to victims of gender violence and to ensure support for these policies by public authorities.²⁸⁹

The *Concertation nationale* is managed by a tripartite committee and divided into technical commissions, tasked with the harmonization of interventions and procedures; the production of standardized tools, and the coordination of actions in three separate areas: 1) data collection; 2) prevention and awareness-raising; 3) integrated support of victims of gender violence.²⁹⁰

The capacity of the *Concertation nationale* was greatly impacted by the earthquake and the National plan of action was for this reason not fully implemented. The new national plan for 2012-2016, identifies four strategic areas: 1) training of health, judicial, police, media, and updating of training tools; 2) data collection; 3) awareness, information and operationalization of the national plan; 4) coordination, monitoring and evaluation.²⁹¹

5. Institutional and Civil Society Responses to Gender Violence

5.1. Police and Prosecution

Many efforts have been undertaken to strengthen the capacity of the PNH to respond to gender violence. Thanks to the advocacy of the *Concertation nationale*, combined with the setting up of a coordination of gender affairs within the PNH, specialized units were created in police stations, and officers were trained to ensure the medical and legal follow up and to sensitize the community. UNPOL also created 14 positions of gender advisers (at least one in each region) as well as focal points on sexual and gender violence in the IDP camps and police stations, who have counterparts with similar responsibilities within the PNH.²⁹²

²⁸⁸ For a comprehensive list, see National Plan, note 37 above, p. 5.

²⁸⁹ See National Plan, note 37 above, p. 14.

²⁹⁰ For the details of activities see National Plan, note 37 above, p. 12.

²⁹¹ Plan national 2012-2016 de lutte contre la violence faite aux femmes, Prévention, accueil, prise en charge et accompagnement des femmes et filles victimes de violences sexospécifiques, July 2011, see above for legal assistance measures.

²⁹² OHCHR Study, note 28 above, p. 12.

Trainings were held before the earthquake by the *Concertation nationale* with the support of UNFPA,²⁹³ and more recently with the support of UNDP.

In spite of these efforts, the credibility of the police remains limited. The study on the rule of law indicators indicates that only 56.2 percent of experts interviewed considered that the police responded in a competent and professional manner to cases of domestic violence, due to limited capacity, above all in the provinces.²⁹⁴ A slightly higher proportion, 62.5 percent of experts, viewed positively the quality of police response in cases of sexual violence.²⁹⁵ According to the same survey, only 28 percent of victims had actually gone to the PNH or UNPOL.²⁹⁶ In fact, the information provided by stakeholders confirm that domestic violence is rarely reported to the police and that they tend to focus on sexual violence committed in public areas and by criminal gangs. In the so-called 'lawless' areas of the capital, women go rarely to the police. This may be due to the fact that the police commonly refuse to record the case when the perpetrator has not been identified – which is frequent in the camps when a rape is committed at night. This is in spite of the fact that Haitian law allows a complaint to be made against unidentified authors.²⁹⁷

Although the police has specialized units, only a small number of police officers received a full training on gender violence and the number of police officers, especially women officers, is too low to respond to the demand.²⁹⁸ Most of the police stations (more than 70 percent) do not have separate areas to receive the victims when they come to report a crime.²⁹⁹ The police react only when the situation is particularly serious,³⁰⁰ and tend to recommend that the case be brought before the judge of the peace, which is not required, since the PNH is authorized to take action without a judicial order in case of *flagrante delicto*.³⁰¹ In other situations, the case must be referred to the investigating judge and the practice of referring the case to the judge of the peace is therefore unlawful.³⁰² Judges of the peace have, according to converging reports, a tendency to prevent the investigation to be pursued because they often consider that the case can be resolved through mediation. Their role is therefore regarded as problematic in these types of cases.³⁰³

In many instances, the gender unit of UNPOL will respond rather than the PNH.³⁰⁴ This situation is partly attributable to the lack of basic equipment of the police. PNH officers often ask UNPOL to take them by car to go arrest suspects or to take victims to the hospital.³⁰⁵ Further improvements must also be made in

²⁹³ *Ibid.*, p. 13.

²⁹⁴ Haiti Rule of Law Indicators, note 27 above, p. 11, 37.

²⁹⁵ *Ibid.*, p.11.

²⁹⁶ Haiti Rule of Law Indicators, note 27 above, p. 14, p. 40, 53; OHCHR Study, note 28 above, p. 15.

²⁹⁷ OHCHR Study, note 28 above, p. 15.

²⁹⁸ See for instance OHCHR Study, note 28 above, p. 14, 23.

²⁹⁹ Haiti Rule of Law Indicators, note 27 above, p. 53.

³⁰⁰ *Ibid.*, p. 37; OHCHR Study, note 28 above, p. 17.

³⁰¹ On *flagrante delicto*, see OHCHR Study, note 28 above, p. 15.

³⁰² OHCHR Study Haiti, note 28 above, p. 17.

³⁰³ Haiti Rule of Law Indicators, note 27 above, p. 38.

³⁰⁴ Haiti Rule of Law Indicators, note 27 above, p. 37.

³⁰⁵ OHCHR Study, note 28 above, p. 13-14.

the recording of incidents at the police station as officers often fail to include essential data for the prosecution of cases, such as the name of the victim.³⁰⁶

The Rule of Law Indicators study shows that compared to the police and judges, the prosecutors seem to have a slightly better reputation, both in terms of efficiency and integrity. As regards gender violence, a position of special prosecutor was created, but the role remains limited because there is still no specific legal regime applicable to sexual and gender violence (see discussion of draft legislation above).

5.2. Judiciary

The perception of the judiciary by Haitians is not highly positive. 53 percent of surveyed persons in the Rule of Law Indicators study agreed with the statement that the courts treat citizens justly and fairly regardless of race, income, national, social or religious origin or gender. The race and social status, the level of wealth and political opinion of the justice user seem to be determining factors in the ways in which judges will treat people.³⁰⁷

Furthermore, the deficiencies of the judiciary in terms of capacity has the consequence that it is not only difficult to obtain reliable data on the number of cases brought before the courts and on their outcomes, but also that the length of the proceedings will often motivate the complainant to drop the case.

The interviews conducted with stakeholders confirm the results of the Rule of Law Indicators survey, namely that a large majority believe that victims must often pay an 'official' or 'informal' manner to ensure that their complaint be processed by the courts.³⁰⁸ The judicial backlog is so large that some files get lost and the only manner to retrieve them is to pay the officers. 35.7 percent of surveyed persons for the Rule of Law Indicators study opine that suspects can often avoid conviction or at least obtain a light sentence by paying the judge.³⁰⁹

Another important point relates to the availability of interpreters, given that the large majority of women victims of violence only speak Creole. 68.5 percent of surveyed persons indicated that there was only a limited or very limited availability of interpreters during the hearings.³¹⁰ In most cases, the judges and lawyers act as interpreters of the accused and/or victims. The Ministry of Justice provides interpreters but only in Port-au-Prince. While the suspect is often represented by an attorney, the victim usually arrives alone before the judge or with other persons who do not speak French well and it is therefore difficult for her to present her version of the facts.

In view of these findings, it is surprising that a majority of persons surveyed consider that the victims of sexual and gender violence are heard in a fair manner by the courts and that 72 percent of experts are in agreement with the fact that the rights of victims are sufficiently guaranteed in criminal proceedings, due to the presence of a prosecutor who will represent the interests of the public and of the victim.³¹¹

³⁰⁶ *Ibid.*, p. 19.

³⁰⁷ Haiti Rule of Law Indicators, note 27 above, p. 85.

³⁰⁸ *Ibid.*, p. 70.

³⁰⁹ *Ibid.*, p. 78.

³¹⁰ *Ibid.*, p. 67.

³¹¹ Haiti Rule of Law Indicators, note 27 above, p. 18, 72.

Although the law provides for the possibility for a judge to order in camera hearings to preserve the safety and the anonymity of the victim, it is clear that women remain highly disadvantaged in terms of their basic understanding of the process (for linguistic reasons) and their economic vulnerability. Apparently, many victims do not even attend the hearings not only out of fear of retaliation, but sometimes because the bailiffs who must serve them with the order scheduling the hearing are not able to locate them.³¹²

Although UNDP has recently started collecting data concerning the number of cases of sexual and gender violence brought before the courts,³¹³ which shows that there seems to be an equal number of convictions and acquittals, no detailed data for the whole country on the outcome of criminal proceedings in terms of acquittals, dismissals and convictions.

The only study that examined the way in which all the elements of the penal chain work together in cases in rape cases was commissioned by the Human Rights Section of the MINUSTAH in 2012. The approach was to follow 62 cases of rape that had been reported to the police between June and August 2010 in five distinct police stations of the metropolitan area of Port-au-Prince (there are 18 police stations in the area).³¹⁴ 45 of these 62 cases were referred to the prosecution by the police or judges of the peace. Only 25 cases were recorded by the prosecution, due to the negligence of the judges of the peace, or as explained above, due to the practice of settling cases.³¹⁵ Eleven cases were then referred to an investigating judge,³¹⁶ four were dismissed by the investigating judge and the seven remaining cases were still under investigation.³¹⁷ None of these cases had at the time of the study's publication, been on trial, over a year after the lodging of the complaint with the police.³¹⁸

The conclusions of this study show that the main bottleneck is to be found at the level of the police, which fails to refer a case if the victim does not provide a medical certificate. Another problematic aspect is the role of the judges of the peace, who tend to favour a settlement of the case in accordance with article 91 of the Decree of 1995, even in those cases where the offence has been duly reported (and in gender violence cases, it will in most cases constitute a felony or misdemeanor) and where they are legally bound to refer the case to the prosecution. Many stakeholders also indicated that the family of the victim may prefer a settlement joined with adequate compensation rather than criminal proceedings.³¹⁹ This problem could be partly rectified by amending the legislation to expressly provide that the power of the judge of the peace to peacefully settle disputes does not apply in sexual and gender violence cases.

³¹² OHCHR Study, note 28 above, p. 22.

³¹³ See above.

³¹⁴ OHCHR Study, note 28 above, p. 5.

³¹⁵ *Ibid.*, p. 18, 21.

³¹⁶ Apparently the 14 cases that were not referred had not been properly recorded by the prosecution, because they were regarded as lacking sufficient evidence, and were dismissed for this reason, but there is no written record of such decisions, see OHCHR Study, note 28 above, p. 22.

³¹⁷ OHCHR Study, note 28 above, p. 21.

³¹⁸ *Ibid.*

³¹⁹ See also Inter-American Commission Report, note 24 above, para. 50; OHCHR Study, note 28 above, p. 20-21, which evokes the role of trainee lawyers who intervene as mediators and hope thereby to obtain a commission based on the compensation granted to the victim.

In practice, the medical certificate obtained within 72 hours of the commission of the act appears to be an essential piece of evidence for successful prosecution, even though in theory, this is only one of the many evidentiary materials that may be relevant.³²⁰ It seems that absent this certificate, it is extremely difficult to convict the perpetrator, because of the difficulty of getting witnesses to testify. This certificate is supposed to be free,³²¹ but according to stakeholders, some doctors will charge as much as 12 Haitian dollars for the document, especially in cases of physical violence.³²² In some instances, additional test and examination are required but these are often too expensive for the victims. In other instances, the victim cannot be examined by a doctor for several days.³²³

The certificate is also essential to determine the gravity of the injuries inflicted, which will have an impact on sentencing.³²⁴ In cases where the certificate could not be obtained, it is not totally impossible to bring a case, but it is likely that the accused will receive a lighter sentence. Given the fact that the deadline during which the certificate must be obtained is particularly critical,³²⁵ the role of the police is absolutely crucial.

5.3. MCFDF

MCFDF is responsible for the implementation of the National Plan for the elimination of all discrimination against women. The Ministry received the support of several international agencies, such as UNFPA, UNICEF, AECID, and CIDA and UN Women has supported the elaboration of a guide on legal assistance and judicial aid in favour of victims of violence which was published in 2008. The Inter-American Development Bank has also supported several initiatives, such as the National Plan and the capacity strengthening of the Ministry.³²⁶

The MCFDF has managed safe spaces for victims in three displaced camps and has coordinated the setting up of similar areas in seven police stations with the support of the MINUSTAH.³²⁷ It has also organized training sessions for members of the PNH on measures to be adopted in cases of sexual violence and for lawyers on remedies available for victims of sexual violence.

That said, the MCFDF has had difficulties in implementing its mandate of coordination.³²⁸ Although Haitian authorities are aware of the problem of gender violence, the state response remains fragmented and is

³²⁰ OHCHR Study, note 28 above, p. 16; see also Marjorie Joseph, *Le certificate medical, une preuve incontournable dans les cas de violence faites aux femmes*, URAMEL, http://www.haitimedical.com/uramel/formulaires/violence_femmes.pdf

³²¹ See MoU concluded by the MCFDF the Ministry of Health and Population and the Ministry of Justice and Public Security.

³²² See also Inter-American Commission Report, note 24 above, para. 52.

³²³ See Marjorie Joseph, note 121 above.

³²⁴ *Ibid.*

³²⁵ According to the OHCHR Study, many women only go to the hospital several days or even weeks after the facts, note 28 above, p. 16.

³²⁶ See Study commissioned by the Inter-American Development Bank, *Rapport final: étude sur la violence domestique et sexuelle en Haïti*, 30 mars 2007.

³²⁷ 2012 Secretary-General's Report, note 2 above, para. 34; 2013 Secretary-General's Report 2013, note 1 above, para. 44.

³²⁸ See also Human Rights Council Summary, note 24 above, para. 24.

not properly integrated within a public policy against gender discrimination. These difficulties are largely due to the limited resources available to the Ministry, whose budget represented only 1.40 percent of the national budget in the budget proposal for 2011-2012.³²⁹

5.4. Civil Society

Civil society groups continue to have a key role in terms of awareness raising and advocacy, as well as in terms of integrated support and services to the victims.

Through the *Concertation nationale*, civil society organizations have successfully requested that the medical certificate – so critical for successful prosecution – be free. This is now formally provided in a Ministerial regulation. Strong advocacy was also pursued to ensure that any medical doctor may issue the certificate and not only hospital doctors.³³⁰

Women's groups also provide integrated support to victims including medical and psycho-social care, as well as legal assistance, as will be detailed below. Many gaps still exist, however, for instance in terms of the shortage of shelters. One shelter was created in 2011 for displaced women by KOFAVIV with the support of UNHCR. Another shelter was established in Petit-Goave by another local NGO with the support of UNHCR and the French Red Cross.³³¹ UN Women has supported some shelters as well and the development of guidelines on gender violence.

Although the work of grass-roots groups in terms of awareness of women has been particularly important, awareness is not sufficient on its own to break the cycle of abuse, which is linked to many other factors, including impunity.

6. Accessibility and Effectiveness of Legal Aid Services

In spite of the recognition of legal aid in Haitian law since the 19th century, legal aid is in practice hardly available.

All of the interviewed stakeholders including government representatives recognized the duty of the state to provide legal aid for justice users, and put into effect the fundamental right of access to justice for Haitians, and more specifically, the right of gender violence victims to obtain free legal assistance, such as expressly stipulated in article 5.6 of the draft law on the prevention, punishment and elimination of violence against women.³³²

Challenges in terms of external funding will likely affect the quality and sustainability of services and justify the preference for state intervention. In the Haitian context, state services may not guarantee quality and continuity. Given the extensive work of civil society groups in this area, it seems essential that their

³²⁹ OHCHR Study, note 28 above, p. 12.

³³⁰ On the challenge of obtaining a certificate in a hospital, see OHCHR Study, note 28 above, p. 16; see also Marjorie Joseph, note 121 above.

³³¹ OHCHR Study, note 28 above, p. 20.

³³² 12 July 2011 draft.

experience be fully utilized and to foster knowledge transfer so as to prevent any detrimental impact in the quality and scope of services available.

The following sections will, on the one hand, examine the ‘mainstream’ legal aid approach adopted through the National System of Legal Assistance and the Legal Aid Bureau (*Bureau d’Assistance Légale* – BAL) and on the other, the integrated approach adopted by many grass-roots groups which consist in offering a range of medical, psychological, social and legal services to women, akin to the so-called ‘one-stop-shop’ approach.

6.1. BAL and other Legal Aid Initiatives

Legal assistance is defined as ‘support, assistance, representation before the courts provided freely by the state to a person in an economically vulnerable situation (...) when the individual wishes that a judge adjudicate a case but is not able to cover the judicial and lawyer’s fees.’³³³

Until 2011, the BAL was part of the National System of Legal Assistance (SYNAL) which existed at national level and was managed by the International Legal Assistance Consortium (ILAC) with the logistical support of the MINUSTAH and funding of SIDA until early 2011, and of UNASUR (*Unión de Naciones Suramericanas*) afterwards. Until November 2011, SYNAL employed around 250 Haitian lawyers in 14 offices around the country. The system was based on the assignment by the bar of an experienced lawyer who supervised the work of junior attorneys and trainees. The majority of cases dealt with the defense of criminal defendants. During its three years of operation, the SYNAL provided assistance in 9,000 cases and has reportedly obtained the release of 4,000 individuals. According to the International Crisis Group, each office of SYNAL cost approximately 60,000 USD per year.³³⁴

Since December 2012, the BAL has in some way resumed the activities of the SYNAL, this time under the authority of the Ministry of Justice, but it is only operational in the Port-au-Prince area.

According to several studies, the lawyers who work in these centres are not always fully competent and are not well remunerated (around 300 USD per month). Some of them do not have experience in pleading a case before a court.³³⁵ A bar school was established in Port-au-Prince to fill these gaps but not in other parts of the country.³³⁶

According to many stakeholders, there is insufficient political will to support the BAL and it was established primarily to please international actors. In criminal proceedings, the BAL is primarily tasked to represent criminal defendants, whose rights are also often violated. The legal representation of victims has therefore never been an important part of these programmes, given the tremendous needs in terms of criminal defense.

³³³ MCFDF, *Guide sur l’assistance légale ou aide judiciaire en faveur des femmes et des filles violentées*, 2008, p. 19.

³³⁴ International Crisis Group, ‘Update Briefing: Keeping Haiti Safe: Justice Reform’, 27 October 2011, p. 9. <http://www.crisisgroup.org/en/regions/latin-america-caribbean/haiti/b027-keeping-haiti-safe-justice-reform.aspx>

³³⁵ Haiti Rule of Law Indicators, note 27 above, p. 72.

³³⁶ *Ibid.*, p. 22, 95.

Although this is not as such an institutional initiative, it is also worth mentioning the *Bureau des Avocats Internationaux* (BAI), which has recently focused on cases of rape, ongoing impunity, and their prevention. It seems to have achieved encouraging results, and has apparently been able to see seven cases adjudicated with a conviction outcome and prison sentences.³³⁷

6.2. Integrated Services by Grass-Roots Groups

Aside from the BAL, legal services to victims of gender violence are frequently provided by civil society groups which enjoy great credibility and trust amongst women. These services are not only more accessible geographically, but their methodology is better tailored to women's needs, in that they offer integrated support services or 'one-stop-shop' approaches which are currently viewed as being most promising to address the needs of gender violence victims.³³⁸ The services offered range from medical care, counseling, psychosocial assistance, to legal assistance including specific advice and ongoing support, and socio-economic assistance. In many instances, the members of the groups will accompany the victim through the various steps of the procedure, including at court hearings. Their presence has an impact on the judge's approach and may avoid miscarriages of justice. That said, representatives of these organizations do not usually have a legal training and are not as such qualified to legally represent the victim. They have therefore a more limited ability to influence the course of the procedure than qualified attorneys.

The *Concertation nationale* published in 2011 an updated directory of the groups that offer services for victims of gender violence throughout the 10 departments of the country.³³⁹ The Directory provides a good overview of the range of services and shows that the offer may differ widely from one area to the other, and that the provision of the whole range of services by one single group is exceptional.

For instance, l'AFASDA which is located in Cap Haïtien, created a legal cell and enables other organizations to refer women to this cell if they have no resources.³⁴⁰ *Kay Famm* is another organization which offers legal assistance and to which other organizations can refer women. *Kay Famm* also created the centre REVIV which hosts temporarily or permanently young and adolescent girls who have been victims of sexual violence and which provides legal services.³⁴¹ *Famm Deside* also provides various services to women and girls who have been victims of domestic and sexual violence, including accompaniment of the victims to the hospital, the police and/or the court; legal services (through the service of an attorney); medical assistance; the follow up of each individual case; and a shelter for victimized women.³⁴²

³³⁷ <http://www.ijdh.org/a-system-put-to-the-test/>

³³⁸ See in this respect Un Women, *Progress of the World's Women: In Pursuit of Justice*, 2011, p. 57; Inter-American Commission Report, note 24 above, para. 48; CEDAW Report, note 22 above, p. 59.

³³⁹ See CEDAW Report, note 22 above, p. 58; http://unfpahaiti.org/actualite_det.php?id=33

³⁴⁰ See http://www.afasda.com/Activitees_Photos.php

³⁴¹ http://www.Kayfanm.info/index.php?option=com_content&task=view&id=15&Itemid=35

³⁴² <http://fanmdeside.com/services/>

Médecins Sans Frontières Canada has also opened in partnership with MCFDF and grass roots groups (SOFA and *Kay Famm* amongst others) legal centres in Port-au-Prince, including Haitian attorneys who provide legal assistance in criminal and civil cases.³⁴³

The work of the *Centre d'écoute de l'Organisation des Femmes de Charet* (OFC) in St Marc illustrates the crucial role of these groups and the challenges they face on a daily basis. The OFC was founded in 1988 and has 300 members. It organizes visits at people's homes to see the victims and assists to obtain a medical certificate and to start judicial proceedings. In case the doctor asks to be paid to provide a certificate, the OFC may be able to assist financially. The OFC has obtained the support of the joint Programme for conflict prevention and of UN Women to have an attorney representing the victims but the funding seems to have run short. L'OFC has also referred certain cases to the BAL but their experience was not conclusive due to the focus of the BAL on criminal defense. L'OFC may also try to provide mediation between the parties and may in certain instances create a mediation committee.

In the National Plan of the *Concertation nationale* for 2012-2016, a series of measures are advocated to strengthen the capacity for legal assistance to women and girls, through the organization of training for legal professionals and civil society on the specificity of legal assistance for gender violence victims; on the adoption of a sensitization plan for justice professionals that would highlight the need for multidisciplinary services for women; the integration in the training of judicial and police officers of a module on integrated support, and finally, the setting up of one year residency for bar trainees in governmental or non-governmental institutions providing legal assistance to women.³⁴⁴

7. Summary of Findings

Incidence and Causes of Domestic Violence

- Women continue to be victimized on the basis of their gender, and the problem is rooted in cultural stereotypes, but also in the social and political instability of the recent years. The 2010 earthquake has only exacerbated a situation, which was already present for long.
- Although some stakeholders consider that the public debate has evolved and that there is greater awareness by the population and by political leaders of the scale of the problem, much remains to be done to end the ongoing impunity enjoyed by perpetrators.

International and Domestic Legal Framework

- Haiti has ratified the main universal and regional human rights instruments that are of relevance to addressing gender-violence.
- Its domestic legal framework is outdated however, and the current draft legislation on the prevention, punishment and elimination of sexual and gender based violence should be promptly adopted.

³⁴³ See Haiti Rule of Law Indicators, note 27 above, p. 60; see also <http://www.asfcanada.ca/fr/asf-en-action/programmes/15/haiti>

³⁴⁴ National Plan 2012-2016, July 2011, p. 7.

Institutional Framework and Institutional Responses to Gender-Based Violence

- State capacity, including the police and the judiciary remains limited and highly dependent upon external funding.
- The MCFDF has proactively sought to devise strategies and support initiatives to address sexual and gender based violence but is relatively weak politically and needs sustained support from the international community.
- Civil society and grass-roots groups fulfill a critical function in the provision of services to victims, but remain powerless to resolve the structural flaws of the Haitian state.
- The *Concertation nationale contre les violences faites aux femmes* is a valuable model of coordination between state institutions, civil society and international actors. The *Concertation* has had a key role in the adoption of national action plans, the development of standardized tools for data collection, and in advocating for simplified procedures regarding the issuance of a medical certificate to victimized women.

Accessibility and Effectiveness of Legal Aid Services

- State-funded legal assistance is provided by the services of the Ministry of Justice through the *Bureau d'Assistance Légale*, which only operates in the zone of Port-au-Prince, and is not as such specialized in supporting victims of gender violence.
- Many grass roots groups have gained extensive experience in supporting victims of gender violence, seem to enjoy a great deal of trust within the population and have a solid reputation amongst international agencies.
- Although all stakeholders, particularly civil society, emphasized that it is for the state, in accordance with its international obligations, to provide this legal service, which would in principle allow for greater sustainability and geographical coverage, one must ensure that the accessibility and effectiveness will not suffer as a result and that integrated strategies will be adopted.

Recommendations for Programmatic Support on Legal Aid in Haiti

- The services of the BAL should be available throughout the country. Given the collaboration that exists between UNDP and the Ministry of Justice within the framework of the capacity strengthening exercise, additional activities should be proposed to strengthen the capacity of BAL in terms of services offered for women that are victims of gender violence, through targeted recruitment and training.
- The *Concertation* constitutes a key platform for dialogue between Haitian and international institutional actors and civil society as regards gender violence. It should be better utilized and supported to develop a coordinated approach between grass-roots groups, the Ministry of Justice and the MCFDF, in particular BAL, in terms of the development of an integrated support and one-stop-shop approach.
- The *Concertation nationale* could, with UNDP's support:

- Update the directory prepared in 2011, which is already foreseen in the National Plan 2012-2016, and prepare on this basis a detailed mapping of services that are available throughout the country in terms of legal assistance and legal aid, so as to identify good practices and lessons learned.
 - Coordinate the elaboration and/or updating of a series of 'protocols' and brochures on integrated services for gender violence victims, which would be targeted at the various entities that may be handling this type of cases, such as the police, the BAL, and civil society.
 - Organize coordination meetings between the PNH, the Ministry of Justice, more specifically the services supervising the BAL, and the main civil society groups, to contemplate the establishment of coordination mechanisms between local services provided by grass-roots groups, and the BAL and ensure thereby greater accessibility of the BAL.
- Given its experience in this area, the MCFDF could organize with the support of UNDP, training workshops on SGBV for the lawyers working for the BAL.

CHAPTER 6 - Jamaica

1. Introduction

The case of Jamaica epitomizes in many ways the challenges faced by countries in the region in addressing sexual and gender based violence as part of citizen security strategies.

Although crime has decreased in the last few years, Jamaica's murder rate continues to be one of the highest in the world, and is in fact the highest in all of the Caribbean. According to some analysts, '[i]n view of the systematic manifestation of violence in Jamaica, gender-based violence must be identified and treated as one of the primary and intrinsic sources of violence'.³⁴⁵

The government has strived to combat sexual and gender based violence through the work of the Centre for the Investigations of Sexual Offences and Child Abuses, the Victims Support Unit (VSU) and the Bureau of Women's Affairs. The structural failings of the judicial system, and the fragmentation of approaches and initiatives have diminished the impact of these efforts, however. Several women's groups are active in addressing SGBV through advocacy, sensitization and the provision of assistance, including legal advice, but their resources remain limited.

Legal aid for victims is essentially provided in civil proceedings through Legal Aid Clinics that receive some subsidies from the Legal Aid Authority, a governmental entity. What is not clear, however, is the extent to which women are properly informed of these services and use them, and whether these legal aid providers are sufficiently capacitated to address gender violence claims.

2. Situation Analysis

2.1. Population - Governance

Jamaica is the largest English-speaking island in the Caribbean and has a population of 2,711,500 inhabitants. According to the 2001 census, the population is 91.2 percent black, 6.2 percent mixed and 2.6 percent other or unknown.³⁴⁶

Jamaica is a parliamentary democracy and constitutional monarchy, based on the Westminster system, with Queen Elizabeth II as its Head of State. A Governor-General, who, like the monarch serves an essentially ceremonial role, is nominated by the Prime Minister of Jamaica and the entire Cabinet and appointed by the monarch.

³⁴⁵ Heather Royes, S. Samiel, V. Tate; K. Fox, Evaluation of the Impact of Gender-Based Interventions in Jamaica, (note date) p. vii.,

http://198.170.76.2/jamspred/Impact_of_Gender_Based_Interventions_Jamaica.pdf

³⁴⁶ National Census Report Jamaica, 2001, p. 35

<http://www.caricomstats.org/Files/Publications/NCR%20Reports/Jamaica.pdf>

2.2. Key Development Indicators

Jamaica is classified as an upper middle income country; its human Development Index for 2012 was 0.730, positioning it at 85 out of 187 countries and territories. In macroeconomic terms, the country has been suffering from a high level of debt and has been receiving support from the International Monetary Fund (IMF) since February 2010,³⁴⁷ experiencing slow economic growth, increased inflation, and rising unemployment levels (11.3 percent in 2009 and 12.4 percent in 2010).³⁴⁸ Poverty levels have accordingly increased from 9.9 percent of the population in 2007 to 16.5 percent in 2009, with 71 percent of the poor living in rural areas and one in every four children living in poverty.

According to the 2009 National MDG Report, the country is on track to eradicating extreme hunger and 98.9 percent of the population has access to basic sanitation. Although it has achieved universal primary education, concerns have been raised on the low achievement of children in the poorest and most volatile communities, particularly boys. Access to quality health care for poor children is also an ongoing challenge.³⁴⁹

2.3. Violence and Crime

One of the greatest challenges currently facing the country is the dramatically high crime rates and level of violence, which topped the world's ranking in 2009, and was of 52.2 homicides per 100,000 inhabitants in 2010.³⁵⁰ This insecurity results for a large part from the interconnectedness between drug trafficking, the illicit proliferation of small arms, and the presence of criminal gangs.³⁵¹ According to the UNDAF, 'many of these crimes, - some of which are linked to armed gangs -, are often characterized by male on male, poor on poor, and youth on youth in inner city communities'.³⁵² It has also been historically linked to the

³⁴⁷ Country Programme Action Plan, Jamaica 2012-2016, p. 4.

³⁴⁸ See also Planning Institute of Jamaica, Vision 2030 National Development Plan, Medium Term Socio-Economic Policy Framework (MTF) 2009-2012, Two Year Progress Report, April 2009 – March 2011, p. 11, [http://www.vision2030.gov.jm/Portals/0/Workshops_Reports/MTF%202-Year%20Progress%20Report%20\(Draft%20-%20February%202012\).pdf](http://www.vision2030.gov.jm/Portals/0/Workshops_Reports/MTF%202-Year%20Progress%20Report%20(Draft%20-%20February%202012).pdf)

³⁴⁹ Planning Institute of Jamaica in collaboration with the Ministry of Foreign Affairs and Foreign Trade, National Report of Jamaica on Millennium Development Goals for the UN Economic and Social Council Annual Ministerial Review, Geneva, July 2009, p. 9 (2009 MDG Report)

<http://www.jm.undp.org/files/GOJ%20National%20Report%20to%20UNAMR-Final.pdf>; Crime Prevention and Community Safety Unit Ministry of National Security Government of Jamaica, National Crime Prevention and Community Safety Strategy (NCPCSS), October 2010, p. 1. http://www.mns.gov.jm/sites/default/files/documents/files/Nat%20Crime%20Prevt%20Com%20Safety%20Strat%20October%202010_1.pdf

³⁵⁰ <http://data.un.org/Data.aspx?d=UNODC&f=tableCode%3a1>

³⁵¹ Human Rights Council, 'National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1', UN Doc. A/HRC/WG.6/9/JAM/1, 20 August 2010, para. 70; see also UNODC and the Latin America and Caribbean Region of the World Bank, 'Crime and Development: Trends, Costs, and Policy Options in the Caribbean, March 2007, p.111, http://www.unodc.org/pdf/research/Cr_and_Vio_Car_E.pdf; Sistren, 'Tek it to Dem an Rise Up wi Community: Baseline Report, p. 8, 13.

³⁵² United Nations Development Assistance Framework Jamaica 2012 - 2016, April 2011, p.3, <http://www.jm.undp.org/content/dam/jamaica/docs/misc/Jamaica-UNDAF2012-2016.pdf>; see also Inter-American Commission on Human Rights, 'Report on the Situation of Human Rights in Jamaica, 10 August 2012, Doc. OED/Ser.L/V/II.144, para. 29; National Crime Prevention and Community Safety Strategy, note 349 above, p. 6.

large quantities of guns brought in the country in the 1970s and 1980s in order to arm opposing political parties and voters, which contributed to the establishment of political dons who exercised control of drugs and arms stockpiles.³⁵³ This connection has not completely disappeared and the Inter-American Commission recently expressed its 'grave concern over reports of possible connections between Jamaican political institutions and inner-city criminal gangs'.³⁵⁴ Jamaica has also been criticized by the UN and regional human rights bodies for its high level of extrajudicial killings by security forces and the impunity enjoyed by those responsible, which reinforces 'the tendency of law enforcement officials to substitute extrajudicial executions for investigation and criminal procedure.'³⁵⁵

The continuously high crime rate, crisis of public confidence and the recent civil unrest in May 2010, which led to a two month, limited state of emergency,³⁵⁶ have demonstrated the need for governance reforms as an improved framework for addressing key developmental challenges. To address the problem, the government has focused its efforts on law enforcement and justice reforms, but it is still too early to gauge the impact of these initiatives.³⁵⁷ The Jamaica National Development Plan sets out specific outcomes that the state wishes to achieve by the year 2030 including security and safety.³⁵⁸

3. Sexual and Gender Based Violence in Jamaica

3.1. Gender Discrimination

Data available on gender equality offers a contrasting picture. In terms of educational achievement, women outperformed men with 83.3 percent achieving grade four literacy and numeracy tests against only 64.7 percent of boys. Likewise, enrollment rates at secondary and tertiary levels are significantly higher for women than men.

Yet, these educational successes have not yet led to full equality in economic terms. Men represent 54.4 percent of the labour force versus 45.6 percent for women,³⁵⁹ and the unemployment rate continues to be significantly higher amongst women, at 17.8 percent for women and 10.3 percent for men.³⁶⁰ In its 2006 report, the CEDAW Committee had noted that women continued to be underpaid and

³⁵³ See Amnesty International, 'Sexual Violence Against Women and Girls in Jamaica: 'Just a Little Sex'', June 2006, <http://www.amnesty.org/en/library/info/AMR38/002/2006>, p. 13,

³⁵⁴ Inter-American Commission on Human Rights, note 352 above, paras. 30-31.

³⁵⁵ Human Rights Council, 'Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, UN Doc. A/HRC/WG.6/9/JAM/2, 12 August 2010, para. 23; see also Inter-American Commission on Human Rights, note 352 above, para. 27, 42-62.

³⁵⁶ Inter-American Commission on Human Rights, note 352 above, para. 35-40.

³⁵⁷ See Jamaican Justice System Reform Task Force, Final Report, 2007.

http://www.cba.org/jamaicanjustice/pdf/jjsrtf_report_final.pdf

³⁵⁸ Planning Institute of Jamaica, Vision 2030 Jamaica National Development Plan. Medium Term Socio-Economic Policy Framework (MTF), note 348 above, p. 35

³⁵⁹ <http://www.jamstats.gov.jm/Portals/0/download/EMPLOYED%20LABOUR%20FORCE%20-%20Jamaica%20Number%20-%20Graph.pdf>

³⁶⁰ See Bureau of Women's Affairs, 'Statistics at a Glance on Gender Indicators in Jamaica, 2012-2013'; see also 2009 MDG Report, note 5 above, p. 10.

underemployed and faced discrimination in the labour market.³⁶¹ The Inter-American Commission of Human Rights reached a similar conclusion, noting that ‘poverty is a key factor in the discrimination that women suffer in Jamaica’.³⁶² Another salient characteristic of Jamaica, which is likely related to female poverty, is the high proportion of female-headed households, which represent 45.5 percent of all households.

At the institutional level Jamaica was the first CARICOM country to establish in 1974 a special government body dedicated to women’s affairs, which was upgraded to the Bureau of Women’s Affairs in 1976.³⁶³ The CEDAW has nonetheless expressed concern about the low participation of women in public and political life at the highest level of decision-making,³⁶⁴ and based on the latest statistics collated by the Bureau of Women’s Affairs, full equality is still a long way ahead. In 2012, four out of 20 members of the Cabinet, eight out of 63 members of Parliament, and six out of 21 members of the Senate were women.³⁶⁵

3.2. Gender Violence

3.2.1 The Data Challenge

One of the major challenges in analyzing sexual and gender-based violence in Jamaica is the existence of serious gaps in data management and standardization,³⁶⁶ which make it difficult to have a sufficiently precise picture on the incidence of sexual and gender-based violence in the country. This lack of proper data is particularly problematic with respect to the number of complaints, prosecutions, convictions and sentences imposed by the judicial system in SGBV cases,³⁶⁷ which are not readily available.

Back in 2006, the CEDAW Committee lamented the limited availability of data disaggregated by sex in a number of areas covered by the Convention.³⁶⁸ In its 2011 report to CEDAW, the government expressed its commitment to ‘ensuring that the national statistical agencies responsible for planning national censuses and other social and economic surveys formulate questionnaires in such way that data can be disaggregated according to sex’ yet recognized that ‘although there has been some improvement since

³⁶¹ Human Rights Council Compilation, note 355 above, para. 29.

³⁶² See also Inter-American Commission on Human Rights, note 352 above, para. 214.

³⁶³ On the mandate of the Bureau of Women’s Affairs, see below.

³⁶⁴ Human Rights Council Compilation, note 11 above, para. 28.

³⁶⁵ See also CEDAW, ‘Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined sixth and seventh periodic reports of State parties, Jamaica’, UN Doc. CEDAW/C/JAM/6-7, 7 January 2011, (2011 Jamaica CEDAW Report) para. 89-92, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/203/02/PDF/N1120302.pdf?OpenElement>; CEDAW 2012 NGO Alternative Report Jamaica, prepared by the Association of Women’s Organizations in Jamaica and the CEDAW 2012 Working Group, p. 10, which qualifies the positive picture presented by the government with a more mixed assessment; CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/JAM/CO/6-7, 6 August 2012, para. 17 (see also 2012 CEDAW Concluding Observations) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/455/54/PDF/N1245554.pdf?OpenElement>

³⁶⁶ See in this respect, Country Programme Action Plan, Jamaica 2012-2016, p. 4; see also Inter-American Commission on Human Rights, note 8 above, para. 215.

³⁶⁷ CEDAW 2012 NGO Alternative Report Jamaica, note 21 above, p. 34.

³⁶⁸ See CEDAW, Concluding comments of the Committee on the Elimination of Discrimination against Women: Jamaica, UN Doc. CEDAW/C/JAM/CO/5, 25 August 2006, para. 11-12.

the last reporting period, the systematic collection of comprehensive data disaggregated by sex and other measurable indicators to assess trends in the situation of women continues to be a challenge'.³⁶⁹ In its latest report, CEDAW once again called on the government to 'collect and compile comprehensive data on violence against women, disaggregated by sex, age and the relationship between the victim and perpetrator, and carry out an in-depth analysis of the findings and utilize them to develop and implement a comprehensive strategy to combat violence against women'.³⁷⁰

The fact that data collection and analysis is still deficient may indicate that the matter has not been treated with the required level of priority demanded by CEDAW and other UN Bodies, such as the General Assembly.³⁷¹ This conclusion is also borne out by the fact that the international community has been actively engaged in supporting the Jamaican government in its efforts to improve data collection and analysis. Jamaica, like other Caribbean countries, participated in an inter-regional project on 'Enhancing capacities to eradicate violence against women through networking of local knowledge communities', which was coordinated by ECLAC in collaboration with other UN regional commissions, UNIFEM and the UN Statistical Division, and aimed to assist in the development of a core set of gender indicators.³⁷²

3.2.2. Analysis of available data

Notwithstanding the difficulty of obtaining fully reliable and comprehensive figures, a variety of studies, surveys, and incomplete official data seem to converge in finding that sexual and gender-based violence continues to affect a large number of women and is on the increase. The CEDAW Committee had expressed in 2006 great concern about the extent, intensity, and prevalence of violence against women in the country and highlighted the gender stereotypes and patriarchal culture,³⁷³ which underpin discrimination against women in many spheres.³⁷⁴

According to the 2008 Reproductive Health Survey, 12 percent of Jamaican women had reported being physically forced to have sexual intercourse at some time in their lives.³⁷⁵ 18 percent reported that they had witnessed violence between their parents. 61.2 percent of women further reported that they had experienced some form of physical violence for example, being slapped, kicked, shoved, or hit by a parent or step-parent before the age of 15.³⁷⁶ For Jamaican males between the ages of 15 and 24 years, the Survey found that 14 percent had witnessed violence between their parents and 58 percent reported

³⁶⁹ 2011 Jamaica CEDAW Report, note 21 above, para. 26.

³⁷⁰ 2012 CEDAW Concluding Observations, note 21 above, para. 22.

³⁷¹ See also in this respect, the Recommendations for Action Against Violence Against Women, p. 5.

³⁷² See also The United Nations Regional Commissions, 'Enhancing Capacities to Eradicate Violence Against Women', January 2013, p. 26-27,

<http://www.eclac.org/publicaciones/xml/9/49129/EnhancingCapacitiesToEradicateViolenceAgainstWomen.pdf>

³⁷³ CEDAW 2006 observations, note 24 above, para. 15; see also 2012 CEDAW Concluding Observations, note 21 above, para. 19.

³⁷⁴ *Ibid.*, para. 13.

³⁷⁵ National Family Planning Board and Statistical Institute of Jamaica, Reproductive Health Survey, Jamaica, 2008, p. 386. The survey can be downloaded from the following website,

<http://ghdx.healthmetricsandevaluation.org/record/jamaica-reproductive-health-survey-2008-2009>

³⁷⁶ *Ibid.*, p. 374.

having experienced physical abuse from a parent or stepparent.³⁷⁷ The majority of perpetrators were known to the woman, including current or previous partners (36 percent), acquaintances (20 percent), boyfriends or ex-boyfriends (18 percent), and relatives (10 percent). Only 12 percent who were raped reported having been raped by a stranger.³⁷⁸

Almost half (48 percent) of women were subjected to at least one controlling behaviour by a current or former spouse. Experiences of multiple controlling behaviour were strongly associated with all types of intimate partner violence, including physical violence.³⁷⁹ During the year 2007, 14.7 percent of women in unions reported verbal abuse, 6.5 percent reported physical abuse and 2.8 percent reported sexual abuse.³⁸⁰

Other limited data provided in the report submitted by the government to CEDAW indicates that in 2008, 5.9 percent of all cases were related to gender violence and processed, compared to 6.6 percent of all cases in the previous year,³⁸¹ although it is not clear whether cases refer exclusively to criminal cases or also include civil cases before the family court. For the years 2003 to 2005, between 55 to 65 percent of the complaints based on the Domestic Violence Act were disposed of.³⁸² The same report indicates that for one of the major Police Division of the country, in the parish of St Catherine, the unit averaged 250 reports of domestic violence per month.³⁸³

In a 2009 survey of 750 girls aged 15 to 17, researchers reported that 49 percent had experienced some level of sexual violence or coercion, and 23 percent had been physically forced to have sex.³⁸⁴ A detailed analysis of SGBV data was provided in a study by the Bureau of Women's Affairs on Policing and Prosecution of Sexual Offences in Jamaica, conducted in 2009. According to the said study, the total number of sexual offences in 2008 was 2,232, including 849 cases of rape, 610 cases of carnal abuse and 499 cases of indecent assault. Around 56 percent of those cases were 'cleared up', i.e. had gone through the preliminary hearing stage before a Magistrates' Court, the remainder being left unresolved.³⁸⁵ Other studies report that for 2008, 60 of the 160 murdered women had been the victims of domestic violence.³⁸⁶

The most recent data gathered by the Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA) from 1 January to 24 November 2012 indicates that 1,613 cases of sexual offences were reported, including rape, sexual intercourse with a person under 16, incest, grievous sexual assault, sexual

³⁷⁷ *Ibid.*

³⁷⁸ *Ibid.*, p. 386.

³⁷⁹ *Ibid.*, p. 376.

³⁸⁰ *Ibid.*, p. 378.

³⁸¹ 2011 Jamaica CEDAW Report, note 21 above, para. 176.

³⁸² *Ibid.*, para. 180.

³⁸³ *Ibid.*, para. 180.

³⁸⁴ See Baumgartner et al, 'The Influence of Early Sexual Debut and Sexual Violence on Adolescent Pregnancy: A Matched Case-Control Study in Jamaica', *International Perspectives on Sexual Violence and Reproductive Health* 2009 35(1): 21-28, <http://www.guttmacher.org/pubs/journals/3502109.html>

³⁸⁵ Bureau of Women's Affairs, 'Policing and Prosecution of Sexual Offences in Jamaica: A Baseline Assessment,' August 2009, p. 7.

³⁸⁶ L. Dunn and V. Sutherland, 'Gender Based Violence in Jamaica: A Profile of Victims and Perpetrators. A Preliminary Case Study'. Institute for Gender and Development Studies, University of the West Indies Mona, 2010.

touching, indecent assault, assault with intent to rape, and attempted rape. These figures do not include cases of domestic violence that do not constitute sexual offences, however. This also shows that between 2009 and 2012, there was a constant increase in the number of reported cases of rape (834 in 2012, 815 in 2011, 717 in 2010 and 706 in 2009).³⁸⁷

According to Dunn and Sutherland, the group at highest risk of rape seems to be females between the ages of 15 and 19 years, followed by females from the ages of 10 to 14 years, and female from the age of 20 to 24 years.³⁸⁸ Disturbingly, the 0 to 9 years age groups appear to constitute 5.4 percent of the victims.³⁸⁹ As regards SGBV more generally, the majority of victims are between the age of 25 and 55 years old.³⁹⁰ Perpetrators tend to be relatively young, between the age of 14 and 25 years and were usually known to the victims.³⁹¹

3.2.3. Contributing Factors

Consensus exists in the literature and amongst stakeholders that prevailing factors contributing to SGBV include the fact that gender violence is often regarded as the norm and ‘intrinsic to the ways in which men and women relate to each other’.³⁹² A demeaning image of women in the media and popular culture further contribute to this ‘normalization’ process.³⁹³

Jamaica’s most recent Reproductive Health Survey of 2008 examined gender attitudes about violence against women and found that Jamaican men aged 15 – 24 years had a tendency toward more traditional attitudes about gender norms when compared to young women in the same age group.³⁹⁴ Sizeable opinion gaps were also seen between young men and young women on various issues such as the importance of a man showing his wife/partner ‘who is the boss’; the acceptability of a wife’s refusal to have sex with her husband where he is involved in other sexual relationships with women/ if he sees other women; whether a wife should obey her husband even if she disagrees with him; and whether problems in the family should be discussed only with family members.³⁹⁵

Another important characteristic of SGBV in Jamaica, is its concentration in inner-city communities, and its linkages with wider criminal violence. These communities are characterized by a large number of alienated young men with limited economic opportunities, low education levels, weak family structures and easy access to guns. The experience of violence within the home tends to perpetuate the cycle of

³⁸⁷ http://www.jcf.gov.jm/sites/default/files/crime_stats_and_analysis_for_2012.pdf

³⁸⁸ See also Amnesty International, note 9 above, 70% of all reported sexual assaults in 2004 were recorded against girls rather than women, p.4. Note also that the Draft National Strategic Action Plan highlights the problem of school related gender-violence, noting that most of the perpetrators or either male peers or teachers, see Bureau of Women’s Affairs, National Strategic Action Plan to Eliminate Gender-Based Violence in Jamaica, 2011, p. 16.

³⁸⁹ Dunn and Sutherland, note 42 above, p. 23.

³⁹⁰ *Ibid.*

³⁹¹ http://www.jcf.gov.jm/sites/default/files/Rape_Assessment.pdf

³⁹² CEDAW 2012 NGO Alternative Report Jamaica, note 21 above, p. 33.

³⁹³ See also Inter-American Commission on Human Rights, note 8 above, para. 222.

³⁹⁴ National Family Planning Board, 2008 Reproductive Health Survey Jamaica, p. 2, <http://ghdx.healthmetricsandevaluation.org/record/jamaica-reproductive-health-survey-2008-2009>

³⁹⁵ *Ibid.*, p. 370-371.

violence as it often constitutes a risk factor for the perpetration of violence as an adult.³⁹⁶ For many commentators, all of these factors contribute to aggressive masculine behaviour including against women.³⁹⁷

The government has fully acknowledged the scope of the problem, and found that ‘domestic violence is one of the more pervasive and common forms of violence plaguing the society. It contributes to the overall pattern of crime and violence due to its debilitating effects on the social fabric and its role in socializing the youths to violence as a means of dispute resolution. Women and children are disproportionately at risk from domestic violence.’³⁹⁸ A 2008 population-based study on Interpersonal violence in three Caribbean Countries, including Jamaica³⁹⁹ examined the experiences of 15 – 30 year old males and females, finding that out of 3,401 respondents, 70.9 percent reported victimization through some form of violence, which was most commonly perpetrated by a relationship partner (62.8 percent). Of significance is the finding that sexual violence victimization was highest in Jamaica. The findings also suggest that there were very high levels of tolerance among victims and that a culture of violence and of adversarial intimate relationships may be well entrenched. This was confirmed in a baseline study conducted in two inner-city neighbourhoods of Kingston, where a prevailing view was that women did not feel loved if their men did not beat them up.⁴⁰⁰

3.2.4. Underreporting

The aforementioned figures are dramatic in and of themselves. Yet, as in the rest of the world, many experts believe that this is the tip of the iceberg although the scope of unreported cases is by definition extremely difficult to gauge. Some studies indicate that in Jamaica an estimated 80 percent of domestic violence cases go unreported in any given year.⁴⁰¹

In the 2009 baseline assessment on policing and prosecuting sexual offences, some of the reasons for under reporting were identified as being related to the trivialization of forced sex, family pressure, particularly in cases of incest, that may include bribery, or threats of physical harm.⁴⁰² Other factors include economic dependency, lack of legal awareness, inadequate response from the authorities,⁴⁰³ or fear of embarrassment. Sometimes, the law, while well intended, may have perverse effects. Under the

³⁹⁶ Amnesty International, note 9 above, p. 7.

³⁹⁷ Dunn and Sutherland, note 42 above, p. 7.

³⁹⁸ See Jamaican Justice system reform task force final report, June 2007, p.117, http://www.cba.org/jamaicanjustice/pdf/ijsrtf_report_final.pdf

³⁹⁹ Le Franc E, Samms-Vaughan M, Hambleton I, Fox K, Brown D., ‘Interpersonal violence in three Caribbean countries: Barbados, Jamaica, and Trinidad and Tobago’, Rev. Panam. Salud Publica/ Pan Am J Public Health 2008; 24 (6): 409 – 421.

⁴⁰⁰ Sistren Theatre Collective and Partners, ‘Tek it to dem an rise up with Community: Baseline Report’, p. 29.

⁴⁰¹ See Dunn and Sutherland, note 42 above, p. 7; see also Amnesty International, note 9 above, which reports that about 25% of sexual violence is actually reported, p. 4.

⁴⁰² 2009 Baseline Assessment, note 41 above, p. 101.

⁴⁰³ Dunn and Sutherland, note 42 above p. 17; see also also Inter-American Commission on Human Rights, note 8 above, para. 218.

Child Care Protection Act, the non-reporting of child abuse is penalized and some pregnant girls will as a result be afraid to see a doctor for fear of being reported.

As was noted by Dunn and Sutherland, ‘there are two sides to the problem. The reputation of the police has been tarnished by allegations of corruption, abusiveness, violations of the human rights of poor citizens and non-responsiveness to reports of crimes including domestic violence. On the other hand, [a] strong culture of silence, (...) undermines the ability of police officers to collect adequate data to build a case and to secure a conviction. Being labeled a ‘police informer’ in many poor communities is equivalent to a sentence of death. As a result, many crimes go unreported and the cycle continues.’⁴⁰⁴

4. Normative and Institutional Framework

4.1. International Legal Framework

Jamaica has signed and ratified 8 major international human rights treaties to date. These include the (ICCPR), the ICESCR, the ICERD, the CEDAW, the CRC, one of the optional protocols to the CRC (OP-CRC-AC), the Convention on the Protection of the Rights of All Migrant Workers and their Families (CRMW) and most recently, the Convention on the Rights of Persons with Disabilities (CRPD). Jamaica, is, however, not yet a party to the Convention Against Torture (CAT), the optional protocols to the ICESCR, ICCPR, CEDAW, the CRPD and the second optional protocol to the CRC.⁴⁰⁵

At the regional level, Jamaica is since 2005 a party to the 1996 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women but it has not recognized the jurisdiction of the Inter-American Court of Human Rights with respect to individual petitions.

While ratifying these conventions is commendable, there has been insufficient operationalization and allocation of resources and further progress is needed in the reporting system. These findings were further confirmed in the CEDAW shadow report submitted by NGOs in 2011 and in the CEDAW Concluding Observations.⁴⁰⁶

4.2. Domestic Legal Framework

The Constitution is the supreme law of Jamaica. Chapter 3 of the Constitution guarantees the protection of fundamental rights and freedoms including the protection of the right to life, the right to personal liberty and security of the person; freedom of movement; freedom from inhuman treatment or punishment; and respect for private and family life. Section 13.3(i) of the Charter of Fundamental Rights and Freedoms guarantees these rights and freedoms regardless of being ‘male or female’ while Section 24 prohibits discriminatory laws, without spelling out, however, the possible grounds of discrimination.

⁴⁰⁴ Dunn and Sutherland, note 42 above, p. 8; see also National Crime Prevention and Community Safety Strategy (NCPCSS), p. 3, note 5 above, which notes the unwillingness and fear to come forward as witness and recognizes that the lack of confidence, trust and legitimacy of the police contributes to a sense of impunity from prosecution and exposes the most vulnerable to further victimization.

⁴⁰⁵ See Human Rights Council Compilation, note 11 above.

⁴⁰⁶ CEDAW 2012 NGO Alternative Report Jamaica, note 21 above, p. 6; 2012 CEDAW Concluding Observations, note 21 above, paras 9, 12.

Furthermore, the Privy Council found that Section 13 does not entail per se a remedy to legally enforce the rights enshrined therein.⁴⁰⁷

A serious point of concern in the domestic legal framework relates to the existence of so-called ‘savings provisions’, which protect laws that existed prior to the adoption of the Constitution from constitutional challenge notwithstanding the fact that they contravene or are inconsistent with the provisions of the Charter. Thus, Section 24(7) protects from constitutional challenge laws related to sexual offences, which in essence, removes a fundamental remedy and in this way hinders access to justice for Jamaican women.

The *Sexual Offences Act*, passed in 2009 repealed the *Incest (Punishment) Act* and certain elements of the *Offences Against the Person Act*, and created new provisions for the prosecution of rape and other sexual offences, including marital rape, anonymity of complainant in rape and other sexual offences, as well as incest. An important change was also made as regards sexual history evidence, and the assumption that used to be made, that a woman who has had sexual intercourse outside of marriage is an unreliable and untruthful witness is now generally disregarded.⁴⁰⁸

One should note, however, that this statutory instrument continues to grant partial immunity to husbands who rape their wives, by limiting the circumstances in which a man can be found to have raped his wife, as follows: where the parties are separated; where proceedings to dissolve the marriage or have it voided have begun; where the husband has been ordered by the court not to molest or cohabit with the wife or where the man has sexual intercourse with his wife knowing that he suffers from a sexually transmitted infection.⁴⁰⁹ Furthermore, rape is defined so as to only apply when committed against a woman, and the provisions on buggery continue to apply in spite of ongoing discussions on its possible repeal.

The 1995 *Domestic Violence Act* essentially provides for civil remedies in domestic violence cases, through the issuance of protection, occupation and ancillary orders. Any breach of these orders will trigger criminal proceedings before the Magistrate’s Court or the Supreme Court (depending on the severity of the offence). The statute was amended in 2004 to extend its scope and allow not only married women but also women in common-law and visiting relationships to seek occupation and protection orders in cases of domestic abuse.

The *Matrimonial Causes Act* also creates remedies for personal protection of spouses, and/or children of a marriage, similar to those under the Domestic Violence Act.

Finally, in spite of continuing promises in this respect, there is still no legislation punishing sexual harassment in Jamaica.⁴¹⁰

⁴⁰⁷ *Campbell-Rodriguez v. the Attorney-General* [2001] UKPC 65; see 2012 CEDAW Concluding Observations, note 21 above, para. 13-14.

⁴⁰⁸ CEDAW, ‘Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women’, note 21 above, para. 70.

⁴⁰⁹ See in this respect 2012 CEDAW Concluding Observations, note 21 above, para. 21.

⁴¹⁰ See in this respect, CEDAW 2012 NGO Alternative Report Jamaica, note 21 above, p. 13.

4.3. Institutional Framework: Judicial Institutions and other Institutions with Mandates on Sexual and Gender-Based Violence

4.3.1. Judicial System

The judicial system in Jamaica is based on British common law and practice. The structure of the Jamaican Judicial System is based on five basic tiers. The lowest tier is the Petty Sessions Court, presided over by Justices of the Peace, with power to hear minor matters, primarily licensing and administrative issues.

The next tier of court is the Resident Magistrates' Court. Resident Magistrates have jurisdiction to try cases summarily as well as on indictment. The level of sanctions, in terms of fines and imprisonment, is lower than that which may be imposed in the Supreme Court. Aside from exercising jurisdiction in criminal cases, Resident Magistrates preside over the Coroner's Court, Traffic Court, Drug Court, Tax Court, Family Court, Juvenile Court and Civil Court. The jurisdiction of the Civil Court is limited to claims not exceeding \$1,000,000. Severe crimes such as rape and murder are not tried by the Resident Magistrate's Courts, but are referred to the Supreme Court after a preliminary hearing at the RM level. Appeals from the Resident Magistrates' Court may be lodged before the Court of Appeal.

The Supreme Court is the highest first instance court and is the equivalent of the High Court in other common law countries. The Supreme Court has jurisdiction in civil, criminal, family, and other cases.

Appeals from the Supreme Court are also made to the Court of Appeal, the fourth tier of the court structure. It may confirm, overturn or vary judgments in any cases in which there are appeals from any of the first instance courts. The decisions of the Court of Appeal may be subject to appeal to the Judicial Committee of the Privy Council (The Privy Council). Appeals to the Privy Council are restricted to cases of a certain monetary value or where they are of exceptional public importance.

In 2008, the IACHR noted that justice in Jamaica 'is administered with one standard for the rich and another for the poor' and reported that 'the police and judiciary frequently treat persons from socio-economically disadvantaged sectors of society with discrimination and disrespect'.⁴¹¹ It also highlighted pervasive delays at every stage of the investigatory and judicial processes, the outdated nature of the process and the limited resources of the system,⁴¹² with the result that there are allegedly 400,000 cases in backlog.⁴¹³ The Final Report of the Jamaican System Reform Task Force similarly noted the existence of a 'general culture of delay', and the lack of access to legal information.⁴¹⁴

⁴¹¹ Inter-American Commission on Human Rights, note 8 above, para. 64, 80, 82.

⁴¹² *Ibid.* para. 72, 77, 89.

⁴¹³ See also Inter-American Commission on Human Rights, note 8 above, para. 88.

⁴¹⁴ p. 10 and 12, see also para 356.

According to the 2007 Jamaican Justice System Task Force, in 2007 the system was:

- **too unequal**, due to imbalance between wealthy litigants and under-resourced litigants;
- **too expensive**, due to costs outweighing the value of the claim and the cost-ineffectiveness of the proceedings;
- **too uncertain**, due to unpredictable length and cost of proceedings and inconsistency of outcomes;
- **too slow**, in disposing of cases;
- **too complicated**, for most lay persons;
- **too fragmented**, due to lack of overall responsibility for the administration of justice;
- **too adversarial**, which contributes to length and overall ineffectiveness.

The Jamaican Justice System Reform Project established by the Government, which entailed a comprehensive review conducted in 2006 and 2007, sought to develop strategies and mechanisms to undertake the modernization of the system. The Justice System Task Force Report which integrated the findings of the review, made a number of important recommendations including the establishment of a Justice Modernization Division within the Ministry of Justice the establishment of the Court Management Services entity to facilitate more efficient operations of the Court System; the modernization of the Office of the Director of Public Prosecutions, and the implementation of the criminal case management system.⁴¹⁵ Specific measures have in fact been implemented to speed up proceedings and clear the backlog of judicial cases, including increased staff and equipment of judicial institutions; the use of mediation for certain civil cases, training in criminal case management and improved court reporting.⁴¹⁶

The impact of these initiatives is not yet apparent, however, as was noted by the Inter-American Commission of Human Rights in its 2012 report, which concluded that 'it has yet to produce concrete results leading to an increase in access to justice.'⁴¹⁷

4.3.2. Government Institutions

Amongst government institutions, the most relevant is the Bureau of Women's Affairs (BWA), which is the main state agency responsible for gender issues currently hosted within the Prime Minister's Office. In 2004, the government also established the National Gender Advisory Committee, which included

⁴¹⁵ See Jamaican Justice System Reform Task Force, note 54 above, p. 14; Human Rights Council National Report, note 7 above, para. 53; see also Inter-American Commission on Human Rights, note 8 above, para. 92.

⁴¹⁶ Human Rights Council National Report, note 7 above, para. 91, 93; see also CEDAW, 'Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women', note 21 above, para. 77; Ministry of Justice, Annual Report, 2008-2009, p. 16; see also Vision 2030 2009-2011 Progress Report, note 4 above, p. 18, which identifies as one of the priority national outcome on security and safety, the support to the reform of the justice system, including the implementation of the Justice Enforcement Management System in the Supreme Court and the Resident Magistrate Court, as well as the implementation of six case management pilot projects.

⁴¹⁷ Inter-American Commission on Human Rights, note 8 above, para. 63.

representatives of government ministries and agencies, NGOs, academics, rural women and youth and was tasked with supervising the elaboration of a National Gender Equality Policy.⁴¹⁸

The Government, through the Bureau of Women's Affairs, has adopted a series of policy documents, which aim at achieving gender equality and combating discrimination, such as the 1987 National Policy Statement on Women, which referred already to the need to combat violence against women, and the National Policy for Gender Equality, adopted in 2011.⁴¹⁹

The National Policy for Gender Equality aimed to mainstream gender, within a human rights based framework, in all state institutions and their apparatuses, in partnership with private sector, non-governmental and civil society organizations. The BWA accordingly established by 2011 18 gender focal points in key government ministries and agencies with a view to advancing gender mainstreaming and ensuring that gender is integrated in all plans, policies, programmes, projects and operations.⁴²⁰

In its latest report, CEDAW took note of the limited resources available to the BWA and asked the Government to 'strengthen the capacity of the Bureau of Women's Affairs, including by providing adequate human, technical and financial resources and establishing clear and well-defined responsibilities, to coordinate and oversee the preparation and implementation of legislation, policies and programmes in the field of gender equality'.⁴²¹

5. Review and Analysis of Institutional and Civil Society Responses

The review of relevant institutions and their response to gender-based violence shows that the government has tried to address some of the challenges faced by victims of gender violence in seeking justice, particularly at the level of the police with the establishment of the Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA) and as regards the protection of victims and witnesses.

On the other hand, the severe backlog at judicial level means that impunity continues to prevail and access to justice remains a major challenge for many victims of gender violence.

The approaches of the institutions still seem to be highly fragmented and devoid of a clear and integrated vision on how to address the multiple dimensions of gender-based violence. The fact that the National Strategic Action Plan to Eliminate Gender-Based Violence drafted in 2011, has still not been adopted, is a matter of concern in this regard.

⁴¹⁸ See Draft National Strategic Action Plan to Eliminate Gender-Based Violence in Jamaica, 2011, p. 23.

⁴¹⁹ National Policy for Gender Equality, March 2011, <http://www.jis.gov.jm/pdf/NPGE-JA-FINALwCover21311.pdf>, p. 26 – 27.

⁴²⁰ CEDAW, 'Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women', note 21 above, para. 61.

⁴²¹ 2012 CEDAW Concluding Observations, note 21 above, para. 16.

5.1. Bureau of Women's Affairs

The BWA has been active both in terms of seeking to develop a clear strategic framework for eliminating gender violence and supporting specific projects and activities.

As regards the former, the National Policy for Gender Equality identified specific targets on SGBV including, for the Ministry of National Security to design and implement a comprehensive crime plan which includes strategies to address gender-based violence and other forms of violence against women; to establish 24-hour hotline and to provide additional shelter places.⁴²²

With respect to the latter, the BWA has implemented over the years a series of projects addressing SGBV, including a project on 'Reducing Gender-based Violence in Jamaica: Increasing Awareness, Enhancing Access to Protection, Strengthening Responses (2008-2009)' which received UN funding, and a project on 'Strengthening State Accountability and Community Action for Ending Gender-based Violence in the Caribbean' (2009-2010) which was undertaken with other CARICOM countries and aimed to reduce gender-based-violence through strengthened and responsive state and civil society actions.⁴²³

The BWA has also conducted seminars on international standards applicable to women's rights, for resident magistrates, judicial officers, and other officials,⁴²⁴ and campaigns of public education on sensitization.⁴²⁵ The BWA organized training through the Ministry of Justice and the Norman Manley Law School towards providing public education on legal literacy towards the expansion of legal assistance to women wishing to bring claims of discrimination or other legal matters before the courts. In 2008, the Justice Training Institute conducted 40 workshops and training courses for approximately 1,397 participants to include modules related to a wide range of areas including victim support and court management.⁴²⁶ The BWA also established a *Male Desk* in 2009 to extend its reach and provide opportunities to engage men in the gender discourse and to establish a central point for information on men's health and development.⁴²⁷

In spite of great needs in this respect, and its mention as one of the targets of the National Policy for Gender Equality there does not seem to be at this point in time any government-run shelter.⁴²⁸ The government provides a small subsidy to *Women Inc.*, which runs the only shelter for the whole of Jamaica. There are currently no shelter facilities outside of the capital, Kingston, leaving women in the rural and

⁴²² <http://www.jis.gov.jm/pdf/NPGE-JA-FINALwCover21311.pdf>

⁴²³ CEDAW, 'Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women', note 21 above, para. 46-47.

⁴²⁴ *Ibid.*, para. 22, 52.

⁴²⁵ *Ibid.*, paras 23-24, see also para. 43.

⁴²⁶ CEDAW, 'Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women', note 21 above, para. 83.

⁴²⁷ Human Rights Council National report, note 7 above, para. 10.

⁴²⁸ See National Policy for Gender Equality, p. 49; CEDAW 2012 NGO Alternative Report Jamaica, note 21 above, p. 32.

provincial towns in a particularly vulnerable situation.⁴²⁹ In meeting with the BWA, information was provided on the possible creation of a one-stop shop center, and on expanded support for shelters.

Although the BWA has undertaken a series of activities, many of the undertakings made in its latest report to the CEDAW Committee in 2011 do not seem to have yet led to tangible results. This is particularly the case as regards the national strategic action plan, which has not yet been finalized and the adoption of protocols for the treatment of victims and vulnerable witnesses including women and children.⁴³⁰

5.2. The Jamaican Constabulary Force (JCF)

The JCF has devised a specialized response to sexual offences and child abuse through the establishment of the Centre for the Investigation of Sexual Offences and Child Abuse. For other gender-related offences, however, the 'regular' police forces continue to be the main responder.

5.2.1. Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA)

The Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA), established in 1989, is part of the JCF and centralizes the response and investigation of sexual offences by the police. The Centre operates seven units island-wide and has CISOCA investigators posted at different stations across the 19 divisions covering the island.

CISOCA offers integrated services by a multidisciplinary team, which includes police officers, social workers, and counselors from the Victim Support Unit, who are tasked with providing, *inter alia*, adequate legal information. Most CISOCA officers receive a tailored training on sexual offence investigation;⁴³¹ however, they do not receive formal training on sexual offence laws or legal processes. A review of the training needs and methodologies has been urged for some years ago already.⁴³² CISOCA officers will continue to provide assistance to the victim throughout the various stages of the procedure, including the taking of supplemental statements the identification of the accused, and the court hearings.

Once the statement is taken by the officer to initiate the investigation process, it is followed by a forensic medical examination. In the Kingston Centre, this will be conducted by one of the District Medical Officers on the Centre's roster, in other locations, at the emergency room of the nearest hospital or to a medical doctor. The examination will be conducted on site or if more expedient, at a clinic or hospital.⁴³³ CISOCA officers will continue to provide assistance to the victim throughout the various stages of the procedure, including the taking of supplemental statements the identification of the accused, and the court hearings.

⁴²⁹ CEDAW 2012 NGO Alternative Report Jamaica, note 21 above, p. 32.

⁴³⁰ See CEDAW, 'Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women', note 21 above, para. 52.

⁴³¹ 2009 Baseline Assessment, note 41 above, p. 64.

⁴³² *Ibid.*, p. 65.

⁴³³ *Ibid.*, p. 49.

The next step will consist of the identification of the suspect, which in the vast majority of cases is known to the victim and in fact a spouse or intimate partner.⁴³⁴ Once identified, the suspect will be interrogated and his voluntary statement taken.⁴³⁵

The following step will be the gathering and handling of evidence, primarily retrieved from the medical examination of the victim, and analyzed including through DNA testing, which has apparently increased the level of prosecutions and convictions.⁴³⁶

The interviews conducted with officers reveal that important gaps may persist in the investigation process, due to lack of precision and details in the statements provided by the victim and witnesses, in particular as regards the key requirement of lack of consent, the identification of the accused, the existence of prior threats by the perpetrator or the existence of an alibi of the accused or other circumstantial evidence.⁴³⁷

The facilities of CISOSA in Kingston provide private interview rooms and video-recording rooms, improved physical examination equipment etc,⁴³⁸ but this is often not the case in other locations.⁴³⁹ The Centre is opened 24 hours a day in Kingston but unfortunately the outposts situated in the rural areas are not able to provide such service. Another matter of concern is that the medical doctors that examine the women are generally men, which is problematic for many women.⁴⁴⁰ Finally, there do not seem to be any written protocols or document guiding officers in the various steps to be followed in the reporting and investigation of sexual and domestic violence cases.⁴⁴¹ By the same token, there are no written protocols governing the relations between the medical professionals and the police and the conduct of forensic examinations, which can lead to undue delays in some instances.⁴⁴² Another point of concern is the absence of proper performance management conducted on an ongoing basis.⁴⁴³

5.2.2. Police Force

In cases where CISOCA is not present or able to intervene, 'regular' police officers will handle the case, which may lead to differing outcomes and double standards as a result. Also, other violent acts that do not constitute a sexual offence will not come under the purview of CISOCA and will be handled by 'regular' police stations.

Although a domestic violence intervention module has been included in the syllabus of the Jamaica Police Academy Basic Training and Probationer Training and according to the government, by 2011,

⁴³⁴ *Ibid.* p. 49.

⁴³⁵ *Ibid.* p. 50.

⁴³⁶ *Ibid.*, p. 51.

⁴³⁷ *Ibid.*, p. 52; see also Dunn and Sutherland, note 42 above, p. 35.

⁴³⁸ CEDAW, 'Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women', note 21 above, para. 183.

⁴³⁹ 2009 Baseline Assessment, note 41 above, p. 47.

⁴⁴⁰ CEDAW 2012 NGO Alternative Report Jamaica, note 21 above, p. 33; 2009 Baseline assessment, note 41 above, p. 88.

⁴⁴¹ 2009 Baseline assessment, note 41 above, p. 44.

⁴⁴² *Ibid.*, p. 56, 89-90. Another point of concern is the lack of proper training in forensic examination and in the presentation of expert evidence by medical professionals, *Ibid.*

⁴⁴³ *Ibid.*, p. 58.

approximately 10 percent of the police force had been trained,⁴⁴⁴ most stakeholders concur that the police do not enjoy a great level of trust in the way in which it handles cases of sexual and domestic violence,⁴⁴⁵ due to the lack of sensitization of police officers to the issue of sexual and gender-based violence, and a resulting process of double victimization.⁴⁴⁶ Anecdotes reveal that the police station has the discretion to refer a case to CISOCA, and in some instances, victims have to wait hours until they are seen by a CISOCA officer. Some police officers continue to have a misconceived understanding of SGBV.⁴⁴⁷ In some instances, women have tried to file a complaint of domestic violence but police officers failed to file the report or to actually use the report during the prosecution of the case.⁴⁴⁸ The result is that there is wide reluctance of victims and members of the community more widely to report sexual offences.⁴⁴⁹ Greater efforts to sensitize the police on sexual and gender-based violence would have to be undertaken, together with a review of the methodology used.

Recommendations have been made for the development of protocol on police treatment of victims since 2007, but this does not seem to have been taken up.⁴⁵⁰

5.3. The Ministry of Justice's Victim Support Unit

The Victim Support Unit of Jamaica (VSU) was established in 1998 and is now operated by the Ministry of Justice. It aims to assist persons against whom crimes have been committed. The VSU, through its 14 parish offices island-wide, assists victims of crime to manage the emotional trauma associated with and caused by crime. This includes:

- Ensuring that victims have means of re-course and redress;
- Providing mediation and other counseling needs;
- Ensuring that the victim is informed of his/her rights and the means through which justice may be attained;
- Promoting structural changes in the justice system that facilitates the needs and rights of victims.

The VSU elaborated a Victims Charter to ensure that victims are protected and given a fair and just treatment throughout the various stages of the judicial process,⁴⁵¹ including women and girls, although it seems surprising that no mention is made of the specificity of SGBV cases, given that they constitute a large proportion of cases handled by the VSU.

The VSU assesses clients from the police, probation services, the court system, schools, hospitals, churches, past clients, and 'walk-ins'. A significant number of the victims who contact the VSU have not

⁴⁴⁴ CEDAW, 'Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women', note 21 above, para. 179; see also 2009 Baseline Assessment, note 41 above, p. 63.

⁴⁴⁵ See also 2009 Baseline Assessment, note 41 above, p. 59; Amnesty International, note 9 above, p. 22.

⁴⁴⁶ *Ibid.*, p. 59.

⁴⁴⁷ *Ibid.*, p. 66.

⁴⁴⁸ CEDAW 2012 NGO Alternative Report Jamaica, note 21 above, p. 36.

⁴⁴⁹ 2009 Baseline Assessment, note 41 above, p. 46.

⁴⁵⁰ See Jamaica Justice System Task Force, Final Report, 2007, note 54 above, p. 167.

⁴⁵¹ See <http://www.slideshare.net/rodjemalcolm/jamaica-ministry-of-justice-victims-charter>

contacted the police. This raises the concern that there are still a substantial number of crime victims whose concerns are not being brought directly to police and to the formal justice system.

Information available on the operation of the VSU indicates that they have developed a strong institutional relationship with the JCF and that a victim support officer is often present a few hours after a report is made to the police. A VSU officer is also present every Tuesday at CISOCA's headquarters and available to attend interviews of traumatized victims.⁴⁵²

The VSU has according to the Victim's Charter assisted no less than 30,000 victims, most of them female between 2001 and 2005. In 2008, of the total number of persons that received services from the VSU, 16.2 percent were carnal abuse cases, 13.8 percent rape cases, and 10.6 percent domestic violence cases. 67 percent of the victims assisted by the VSU in 2006 were female, SGBV cases, constituting therefore nearly 40 percent of the overall cases handled by the VSU.⁴⁵³ The data available from the 2011 Social and Economic Survey is similar, with a lower number of female over male (59.2 percent) out of which 15.7 percent had been victims of carnal abuse, 11.4 percent of rape and 11.3 percent of domestic violence.

The VSU will keep the victim fully informed of the proceedings, pay for victim expenses, and liaise with the prosecutor and the defense in the preparation of cases which involve victims and witnesses with special needs.⁴⁵⁴ There seems to be therefore an important legal advice component to their work, although the service is usually provided by volunteers and officers who receive a very low pay, and the extent to which they are properly capacitated to provide such advice is not fully clear. From the information gathered, the VSU does not formally provide legal advice and certainly not legal representation to women who seek its support.

5.4. Judicial Responses

Both criminal and civil proceedings may theoretically offer redress for victims of gender violence in Jamaica. In practice, however, the criminal justice system is so dysfunctional that the chances of seeing a perpetrator convicted are rare. Civil proceedings may therefore offer more effective remedies, although it is extremely difficult to actually measure the effectiveness of the system, in the absence of detailed data on the number, processing time, and outcome of protection order applications.

As was noted by the 2007 Jamaica Justice System Task Force, the key problem is that the justice system is not focused on the victim,⁴⁵⁵ and that a paradigmatic shift needs to happen to facilitate greater involvement of victims in the process.

⁴⁵² 2009 Baseline Assessment, note 41 above, p. 59.

⁴⁵³ CEDAW, 'Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women', note 21 above, para.181; see also Ministry of Justice, Annual Report 2008-2009, p. 23.

⁴⁵⁴ Victims Charter, 2006, <http://www.slideshare.net/rodjemalcolm/jamaica-ministry-of-justice-victims-charter>

⁴⁵⁵ Jamaica Justice System Task Force, note 54 above, p. 168.

5.4.1. Criminal Justice System

Under Jamaican law, after the police have investigated a case, prosecutions are conducted by either the clerks of court of the Resident Magistrate's court, which will in this instance report to the Director of Public Prosecutions (ODPP), or by Crown Counsels and other senior prosecutors in the office .

Prior to the trial *per se*, preliminary examinations will be held, consisting of the determination by the Magistrate of whether a *prima facie* case exists and whether the matter should be sent for trial. It starts with the submission of the police file, which will permit to determine whether additional evidence should be sought.⁴⁵⁶ Although there is in practice *ad hoc* communication between investigating police officers and prosecuting authorities, the absence of a more formal interface for communication and information sharing is problematic in cases where there is insufficient evidence based on the statements taken by the police. The preliminary examination process has been criticized as it often amounts to a mini-trial and may lead to further victimization as women are forced to testify multiple times. Furthermore, the process does not seem to fully meet its purpose of filtering the cases that are not prosecutable.⁴⁵⁷

At the level of the ODPP, one point of concern is that there may be heavy rotation between prosecutors for a single case, which can prove disruptive and disturbing to the victims who would benefit from a single point of interface.⁴⁵⁸ Furthermore there is no standardized approach to the way in which the prosecutor will handle the preparation of the witness, which means there can be wide differences in the approaches of each prosecutor. On the other hand, as with the police, the VSU seems to have developed a good relation with the prosecution services, providing counseling, courtroom preparation and other support services.⁴⁵⁹

In terms of the attitude of the judiciary in sexual offences trials, there have been infamous examples of insensitivity on the part of judges towards the victims of such offences, although there are no rigorous studies of the judiciary's general perception of sexual offence and their victims.⁴⁶⁰ What transpires from discussions with civil society stakeholders is a general perception of remoteness, inapproachability, intimidation, even hostility of the judicial establishment against victims and witnesses, all of which likely contribute to the problem of underreporting and withdrawal of cases.⁴⁶¹ More specific concerns were raised regarding a male dominated culture of legal fraternity, and a conservative attitude of the prosecution services.

In jury cases, the perception of members of the jury will often be prejudiced against the victim, based on assumptions about the dress of the victim, the demeanour of the victim at trial, or the behaviour that would 'entice' rape, or on perceptions on what a rapist looks like.⁴⁶²

⁴⁵⁶ *Ibid.*, p. 71.

⁴⁵⁷ *Ibid.*, p. 72.

⁴⁵⁸ Baseline assessment, note 41 above, p. 73.

⁴⁵⁹ *Ibid.*, p. 74.

⁴⁶⁰ *Ibid.*, p. 79-80.

⁴⁶¹ *Ibid.*, p. 79.

⁴⁶² *Ibid.*, p. 81.

That said, most stakeholders concurred that the major hurdle in ensuring the swift and successful prosecution of sexual and gender violence cases, relates to the profound structural problems of the Jamaican judicial system, namely, the enormous backlog of judicial cases. By way of example, statistics from the JCF show that the percentage of ‘cleared up’ cases was of 45.7 percent for rape in 2012 and 41.1 percent in 2011.⁴⁶³ The delays incurred in the adjudication of cases means that by the time the case is ready for trial, many victims will no longer be willing to come forward and testify and prefer to abandon the case.⁴⁶⁴ In one case, the victim was 15 when the crime was committed and the case came to court when she was 19 and was eventually dismissed.

All of these deficiencies have been known for some time. In 2007, the Jamaican Justice System Task Force recognized that more needed to be done for the judiciary to tackle domestic violence cases. The Task Force recommended at the time that a review be conducted on the way in which domestic violence cases are being processed and the identification of new approaches to better respond to the problem, including the consideration of the benefits and costs of establishing domestic violence courts.⁴⁶⁵

5.4.2. Civil Justice

In terms of civil remedies, an abused person may apply at the office of the Resident Magistrate’s Court or Family Court for a protection order. In most cases, the person against whom the order is served will have to be served with the order and appear in court. If the delay in hearing the case would generate a risk for the claimant in terms of her safety or undue hardship, the order may be issued *ex parte*. Similar orders may be issued pursuant to the *Matrimonial Causes Act* (see above). Very little information is available, however, on the number of protection order applications, the number of orders issued, the number of cases in which those were breached and led to the prosecution of the offender etc.

5.5. Services Provided by Civil Society Groups

Jamaica benefits from a strong and proactive network of NGO’s and grass roots groups advocating for women’s rights and providing services to women. The following is a non-exhaustive list and description of the most relevant ones.

Women Inc. is a group specialized in providing support to battered women and operates the only shelter of its kind in Jamaica. It receives a small subvention from the government, which represents only 1/5 of the annual operating budget, and is subject therefore to severe budgetary constraints.⁴⁶⁶ The shelter operates as an emergency temporary residence for women in crisis. The location is kept confidential to protect the safety of women. It offers domestic violence intervention trainings for police officers and

⁴⁶³ http://www.jcf.gov.jm/sites/default/files/crime_stats_and_analysis_for_2012.pdf. Cases that are cleared up are those that reach the stage of a preliminary hearing, where the case is either to the Magistrate’s Court or the decision is made not to proceed with the case.

⁴⁶⁴ See 2009 Baseline assessment, note 41 above, p. 83; 2012 CEDAW Concluding Observations, note 21 above, para.21; Jamaica Justice System Task Force, note 54 above p. 172.

⁴⁶⁵ Jamaican Justice System Reform Task Force, note 54 above, p. 118.

⁴⁶⁶ <http://www.groots.org/members/jamaica.htm>

workshops for men on attitudes and values that give rise to violent behavior, as well as life skills training for victims. *Women Inc.* also runs a 24-hour hotline service for victims of domestic and other forms of violence and provides walk-in counseling services during business hours.

The *Association of Women's Organizations of Jamaica* (AWOJA) was established in 1987 upon the initiative of the Women and Development Studies group of the University of the West Indies as an umbrella association for over 60 women's organizations and submitted for instance the latest 'shadow report' to CEDAW on behalf of its members.⁴⁶⁷

The *Women's Resource and Outreach Centre* (WROC) aims to provide holistic services and programmes that promote gender equality and the empowerment of women and youth.⁴⁶⁸ WROC trained 15 facilitators from five inner-city communities in Kingston to address issues that arise from gender-based violence. The facilitators engaged the communities to promote gender equality, expose, condemn and eliminate GBV and support WROC's outreach services. They have worked with community groups, guidance counselors, teachers and students in the schools to create a culture of condemnation of gender-based violence. WROC has a professional counselor who addresses issues that may arise and provides mediation support services. Individual and group counseling are also available to members of the public by appointment.

Women's Media Watch focuses on the prevention of gender-based violence by combating biased perceptions endorsing gender violence and discrimination, challenging the media on sexist and discriminatory reporting, and conducting workshops and seminars to train the public and the media.⁴⁶⁹

Sistren Theatre Collective uses popular theatre to convey Jamaican women's experiences of discrimination and violence. The grass-roots group has shed light on teenage pregnancy, domestic violence, incest, child abuse and rape through drama, song, and dance.

The *Independent Jamaican Council for Human Rights* (IJCHR) has produced in March 2013 a Human Rights Training Manual for the Jamaican Police, which includes specific instructions on the handling of domestic violence and sexual offences cases, including as regards the treatment of victims.

These groups have collaborated together on several initiatives, including a campaign on domestic violence targeted at local groups, the police and teen mothers. In 2002, they jointly issued a manifesto for the prevention of sexual injustice which contained 15 recommendations, many of which have since then been implemented.⁴⁷⁰

The relations between these various groups and government entities working on gender equality, is complex, however, affecting the effectiveness and coordination of responses to SGBV.

⁴⁶⁷ <http://www.iwraw-ap.org/resources/pdf/Jamaica%20NGO%20SR.pdf>

⁴⁶⁸ <http://www.wrocjamaica.org/about-wroc/what-we-do>

⁴⁶⁹ <http://womensmediawatch.org/>

⁴⁷⁰ Healing the Nation: Women's Manifesto for the Prevention of Sexual Injustice, 2002.

6. Availability and Effectiveness of Legal Aid Services

Pursuant to the *Legal Aid Act*, legal aid is available to both men and women and access to legal services is provided through the Legal Aid Council. Although the *Legal Aid Act* does contemplate the provision of legal aid in civil cases, legal aid is currently only offered by the Legal Aid Council to those facing criminal charges, not to the victims.

Legal aid services in non-criminal matters, such as to assist in family court proceedings, are primarily provided by the legal clinics of Kingston and Montego Bay as well as the Norman Manley Law School. In its CEDAW report, the Government indicated that plans are underway to expand coverage to civil matters so as to increase the benefits available to women, but there is no confirmation that this has been done so far.⁴⁷¹

Overall, victims interviewed for other surveys generally considered that they had been adequately prepared for criminal proceedings by CISOCA and the VSU, although some of them did not expect the perpetrator to be granted bail, which sometimes came as a shock.⁴⁷² Likewise, the accompaniment and support provided by both agencies, which offer a series of integrated services (albeit not much in terms of legal advice *per se*) was regarded as satisfactory.

That said, the Jamaican Justice System Reform Task Force had concluded on the need for ‘point of entry’ advice to be provided to members of the public, to ease their initial encounter with the justice system. It suggested therefore the creation of ‘neighbourhood peace and justice centres’, based on currently existing experiences in Hanover, Flankers, and St James, and operated by the Dispute Resolution Foundation, which had yielded positive results.⁴⁷³ The 2012 CEDAW Concluding Observations also emphasized the importance of strengthening victim assistance and support programmes by providing women victims of violence with legal aid, medical support, mental health services, rehabilitation services, and shelters, as appropriate, in all areas of the country.⁴⁷⁴

6.1. Structure and Scope of State-Funded Legal Aid Services

Under the auspices of the Legal Aid Council, legal aid is primarily available through a combination of the work of duty counsels who will provide representation until the first court date at no cost and assigned counsels, who are nominated by the court and through three Legal Aid Clinics.

The Legal Aid Council (LAC) is a statutory entity under the Ministry of Justice which is mandated to 1) administer the Legal Aid Scheme which provides legal aid for citizens; 2) provide advice and keep under review the Provisions and Regulations of the *Legal Aid Act* and make such recommendations to the Minister (of Justice) as the Council sees fit; 3) organize and establish Legal Aid Clinics, formulating the requisite standards, procedures and regulatory framework; 4) establish panels of attorneys to execute

⁴⁷¹ CEDAW, ‘Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women’, note 21 above, para. 84-84.

⁴⁷² 2009 Baseline Assessment, note 41, p. 93.

⁴⁷³ Jamaican Justice System Reform Task Force, note 54 above, p. 150. See also its recommendation for legal advice and assistance to be provided to victims who require it and cannot afford it themselves, p. 167.

⁴⁷⁴ 2012 CEDAW Concluding Observations, note 21 above, para. 22.

legal aid duties in fulfillment of its mandate; and5) administer an Outreach Programme to ensure that the public and stakeholders are fully apprised of its available services and the procedural processes required.

Duty and Assigned Counsels exclusively provide representation to criminal defendants, and the availability of legal aid for victims of SGBV is therefore essentially limited to the work of the Legal Aid Clinics. Although the webpage of the Legal Aid Council indicates that as of September 30 2012, approximately three hundred and seventy-nine (379) attorneys were enlisted, including almost ninety (90) Senior Counsel, the Inter-American Commission on Human Rights concluded that there was a serious shortage of attorneys willing to serve as duty counsel or provide legal services, due to the delays in the payment and the general inadequacy of fees.⁴⁷⁵

Legal aid is not always completely free and the level of support provided by the state will be assessed against the person's earnings. The Legal Aid Council is empowered by the state to establish and maintain a tariff of fees to be paid by the Council to attorneys for services rendered. The scale ranges from the assignment of duty Counsel to maximum fees applicable in capital murder trials. The Legal Aid Council will also implement means test criteria and the prescribed process for contribution requests.

The council supervises the operations of legal aid clinics, which have a 'reporting relationship by law to the council', but maintain their own boards of directors and direct their general day-to-day affairs. The clinics receive a small annual subvention from the Ministry of Justice; otherwise it is entirely dependent on the fees from the clients for the remainder of the cost to run its operations.

The Kingston Legal Aid Clinic Limited (KLAC), was established in 1971 by a group of attorneys and aims to 'provide high quality legal service to persons who because of poverty are in danger of having their legal rights infringed'. Another Legal Aid Clinic was established in Montego Bay, while two mobile Clinics operate in, respectively, Mandeville Manchester on Wednesdays and in May Pen, Clarendon on Thursdays twice per month. An average of 900 persons is seen at the May Pen Clinic, 1500 at the Mandeville Clinic and in excess of 12,000 at the Kingston office annually. Approximately half of these clients come in for advice on a variety of legal, social economical and on occasions even medical problems. According to the Head of the Legal Aid Authority, in excess of 6,000 persons per annum receive assistance with civil matters from legal aid clinics. Clients are asked to pay a small consultation fee of JD 1,500. Clients' earnings are assessed and fees are charged based on each client's ability to pay.

These clinics do not seem to handle a large amount of family issues related to SGBV, such as protection orders, however. One reason is that the *Domestic Violence Act* allows victims to apply for a protection order without the assistance of an attorney. Legal Aid Clinics do not for this reason usually provide their services in such cases, notwithstanding the fact that women will often greatly benefit from the assistance of an attorney and that the partner against which the protection is sought will often be represented, putting the victim at a clear disadvantage. The Final Report of the Jamaican Justice System Task Force noted existing gaps in the provision of civil legal aid, and recommended that a study be conducted to investigate options for the cost-effective delivery of civil legal aid services, including through an inquiry

⁴⁷⁵ Inter-American Commission on Human Rights, note 8 above, para. 75; see also Jamaican Justice System Reform Task Force, note 54 above, p. 156.

into unmet civil legal aid needs and a review of best practices in other jurisdictions.⁴⁷⁶ Such study does not seem to have been undertaken at this time.

6.2. Civil Society and Academic Initiatives

A number of other organizations that operate independently provide legal advice and legal aid in civil and criminal matters, including those related to SGBV.

Women Inc. is one of the leading women's groups in Jamaica and one the only one that specifically provides legal aid services to women who use its services. It used four attorneys but has suffered from a lack of resources.

Pro bono services are offered by some NGOs, such as the *Independent Jamaican Council for Human Rights* and private attorneys.

7. Summary of Findings

The results of the desk review and interviews conducted with stakeholders lead to a number of important conclusions on the nature of gender-based violence in Jamaica and the responses by both the state authorities and civil society groups, as follows.

Incidence and Causes of Domestic Violence

- Sexual and gender based violence is a serious problem in Jamaica and the number of reported cases is on the increase.
- The causes of domestic violence are relatively well known. Attitudinal issues, including ingrained discrimination and prejudice, as well as economic disenfranchisement keep women in positions of subordination.

International and Domestic Legal Framework

- Jamaica has ratified the main universal and regional human rights instruments that are of relevance to addressing gender-violence.
- Consistent implementation of these conventions coupled with the requisite reporting expertise is still lagging, however.
- Jamaica criminal law criminalizes a large range of acts that may constitute gender-violence.
- The *Domestic Violence Act* has created specific civil remedies for victims of domestic violence.

Institutional Framework and Institutional Responses to Gender-Based Violence

- The Bureau of Women's Affairs is tasked with developing capacity and providing support to victims of gender violence. It is also tasked with the design and coordination of multisectoral plans on gender violence, but coordination is still weak and approaches fragmented.

⁴⁷⁶ Jamaican Justice System Reform Task Force, note 54 above, p. 160.

- At the level of the police, although the service provided by CISOCA is generally well regarded and offers integrated responses, it only intervenes in cases of sexual offences. In domestic violence cases that do not constitute sexual violence, concerns remain in terms of the attitudes of the police force, specifically in terms of corruption, and the capacity to investigate and provide legal advice.
- Several civil society groups are trying to combat gender-violence through international and national advocacy, outreach, community mobilization, accompaniment and support services to victims. There is only one shelter for victims of gender violence, which provides primarily skills training and counseling to victims. All of these groups operate with minimal resources with limited sustainability of initiatives and results as a consequence.

Availability and Effectiveness of Legal Aid Services

- Legal aid is available but only on a limited basis for victims and primarily in civil proceedings. It is not clear, however, how many women actually avail themselves of these services.
- Although the CISOCA and VSU are models which are closest to 'one-stop-shop', they nonetheless differ in that legal advice does not seem to constitute one the core component of their services.
- There is consensus amongst both national and international observers on the value of strengthening integrated approaches to legal aid and advice, and assess the accessibility and effectiveness of civil legal aid in domestic violence cases before civil courts.

Recommendations for Programmatic Support on Legal Aid in Jamaica

- CISOCA's mandate should be expanded so as to cover all domestic violence cases and not only sexual offences.
- Additional training should be provided to CISOCA in investigation techniques, while the police and prosecutors should receive further training on handling SGBV cases.
- Based on its global experience, UNDP could help the government and civil society groups devising integrated approaches on legal aid for SGBV victims, support the creation of additional shelter facilities, especially outside the capital, and the operation of a 24-hour telephone hotline to facilitate access to first responders.
- In order to be most effective, government and civil society must work hand in hand. UNDP should consider facilitating some of these processes to smooth out relations between the various stakeholders involved.
- A study should be conducted, as recommended in the 2007 Jamaica Justice Reform Task Force, on the accessibility and effectiveness of civil legal aid services in domestic violence cases.

CHAPTER 7 - Suriname

1. Introduction

Although Suriname does not have a high crime rate compared to other countries of the region, domestic violence is, as in the rest of the region, an ongoing concern.

The government has adopted wide-ranging legislation to address the problem, and has strived to strengthen the institutional framework related to gender violence, and the responses of the police in particular. Problems lie with the judiciary, due to the serious backlog of cases, which impedes their effective adjudication.

Legal aid services exist but legal aid providers are not specifically trained to handle SGBV cases, and legal aid is hardly available in the rural interior where domestic violence is common.

2. Situation Analysis

2.1. Population - Governance

The Republic of Suriname (*Republiek Suriname*) is situated in the North Eastern part of South America but is regarded as a Caribbean country and is a member of CARICOM. Suriname's population is composed of eight ethnic groups: 27 percent of the population is of Indian descent; 18 percent are Creole descendants of African slaves; and 15 percent are ethnically Javanese. The majority of the population in the interior is Maroon (14.5 percent). There are also smaller communities of Amerindians, Chinese, European, Guyanese and Brazilian minorities. Around 41 percent of the population is Christian, 20 percent Hindu and 13 percent Muslim.⁴⁷⁷

Suriname has been a functioning democracy with a multi-party system since independence from the Netherlands in 1975, except for two periods of military rule in 1980-87 and 1990-91. Elections since 1987 have been largely free of violence. Suriname has a presidential system of government, defined by the 1987 constitution. The president and vice-president are elected by the Parliament, and the government is appointed by the President.

2.2. Development Indicators – Crime Rate

Suriname's HDI value for 2012 is 0.684 - in the medium human development category - positioning the country at 105 out of 187 countries and territories. Between 2005 and 2012, Suriname's HDI value increased from 0.666 to 0.684, an increase of 3 percent or average annual increase of about 0.4 percent.⁴⁷⁸

* This chapter is based on a draft prepared by a junior consultant who conducted field research in Suriname between 23 and 26 January 2013. The draft submitted was complemented by desk research conducted by the main author, but some information remains incomplete due to the lack of data available outside the country.

⁴⁷⁷ See Human Rights Council, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1, UN Doc. A/HRC/WG.6/11/SUR/1, 16 February 2011, para. 22 (hereafter, Human Rights Council Suriname National Report),

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/107/32/PDF/G1110732.pdf?OpenElement>

⁴⁷⁸ See <http://hdrstats.undp.org/images/explanations/SUR.pdf>

However, when the value is discounted for inequality, the HDI falls to 0.526, a loss of 23 percent due to inequality in the distribution of the dimension indices. The average loss due to inequality for medium HDI countries is 24.2 percent and for Latin America and the Caribbean it is 25.7 percent.

Although the homicide rate in Suriname is extremely low compared with other countries of the region, at 4.6 murders per 100,000 inhabitants in 2010,⁴⁷⁹ a relatively large number of respondents in the 2010 Citizen Security Survey viewed property crime and violent crime as, respectively the second (43.3 percent) and third (43.1 percent) main problems of the country, right after corruption, and before unemployment, cost of food, and poverty.⁴⁸⁰

3. Gender Discrimination and Violence

3.1. Gender Equality

Suriname has a Gender Inequality Index value of 0.467, ranking it at 94 out of 148 countries in the 2012 index. 40.5 percent of adult women have reached a secondary or higher level of education compared to 47.1 percent of their male counterparts. Female participation in the labour market is 40.5 percent compared to 68.7 for men.

As regards political representation, 19.6 percent of parliamentarians; 28 percent of senior officials and managers; and 51 percent of professional and technical workers are women. In the judiciary, there were in 2011, nine male and ten female judges.⁴⁸¹

3.2. Sexual and Gender-Based Violence

Suriname does not have in place a comprehensive data collection system with respect to gender-based violence and gender equality.⁴⁸² Data obtained tend not to be disaggregated and often fails capture the relationship between the victim and the perpetrator. Furthermore, it is difficult to present a true indication of the number of reported incidents of domestic violence, as reports of domestic violence to a support service organization may not necessarily be transmitted to the police and vice versa. There is therefore a disconnect between NGOs and the various ministries with respect to the type of data that are captured and registered.⁴⁸³

3.2.1. Available Data

Gender-based violence, primarily domestic violence is an ongoing problem in the country, which cuts across all socio-economic and educational backgrounds.⁴⁸⁴ Based on the results of the UNDP Citizen

⁴⁷⁹ See <http://data.un.org/Data.aspx?d=UNODC&f=tableCode%3a1>

⁴⁸⁰ See *Caribbean Human Development Report 2012, UNDP Citizen Security Survey 2010: Summary of Findings – Suriname*, p. 3, <http://sr.one.un.org/wp-content/uploads/2012/11/CHDR-Summary-of-Findings-Suriname.pdf>

⁴⁸¹ Human Rights Council Suriname National Report, note 1 above, para. 62.

⁴⁸² See in this respect, UNFPA Draft Strategy and Framework 2012 – 2016: Sexual Violence among Intimate Partner Relations prepared by the Women’s Rights Center – communication obtained from UNFPA Suriname.

⁴⁸³ See also, observations made in the 2011 Suriname Situation Analysis p. 17

⁴⁸⁴ *Caribbean Human Development Report 2012: UNDP Citizen Security Survey 2010: Summary of Findings – Suriname*, note 4 above, p.11. The 2010 UNDP Citizen Security Survey found that persons who declared that they

Security Survey, the percentage of persons in Suriname who indicated that they were victims of domestic violence was 11.7 percent, versus an average of 10.9 percent for the Caribbean.⁴⁸⁵

It is generally agreed that most incidents of gender-based violence in Suriname are not reported to the police.⁴⁸⁶ Police officers interviewed also expressed the view that there were not many reported cases of sexual violence occurring outside of the domestic sphere. Neither were there many reported cases of sexual harassment. The most common form of gender-based violence in Suriname is thus domestic violence.

In 2008, 74.4 percent of victims of domestic violence were women. Perpetrators of indecency offences are mostly men (99.1 percent) while the victims are more often women and girls (94.7 percent of cases).⁴⁸⁷ 341 cases of sexual abuses were received and investigated by the police in 2012, a decrease from 451 cases in 2011.⁴⁸⁸ Cases of domestic violence reported to the Police Corps of Suriname during the period 2005 – 2009 are as follows:

| YEAR | MEN | WOMEN | TOTAL |
|--------------------------|-----|-------|-------|
| 2005 | 47 | 741 | 788 |
| 2006 | 350 | 1294 | 1644 |
| 2007 | 394 | 1375 | 1769 |
| 2008 | 449 | 1308 | 1757 |
| 2009 (1e t/m 3e quarter) | 301 | 1158 | 1459 |

This chart shows a significant increase of reported cases between 2005 and 2007 and a limited decrease between 2007 and 2009. More recent data indicates that 1,459 cases of domestic violence were reported in 2011 and 1,167 in 2012, which shows that the number of cases has been relatively constant in recent

were victims of gender-based violence, in particular domestic violence had varying educational levels with 13.2 percent having no basic education to complete primary education; 10.7 percent having incomplete to complete secondary education and 1.3 percent having incomplete to complete tertiary education.

⁴⁸⁵ 2010 UNDP Citizen Security Survey, note 4 above, p. 9.

⁴⁸⁶ Feedback from consultations; M. Heemskerk, I. Apapoe, 'Gender Equality, Gender Relations, and the Position of Women in Suriname: A Situation Analysis', National Bureau for Gender Policy, February 2011 (2011 Situation Analysis)

http://mariekeheemskerk.org/Reports/gender%20report%20final%20engels_submitted%20feb%202011.pdf .

⁴⁸⁷ 2011 Situation Analysis, note 10 above, p. 17.

⁴⁸⁸ See Department of State Suriname Human Rights Report, 2012, p.12.

<http://photos.state.gov/libraries/suriname/231771/PDFs/2012%20Human%20rights%20report.pdf>

years. It is also worth mentioning that the police attributed no less than 14 of the 27 murders committed in 2012 to domestic violence.⁴⁸⁹

Other data not captured by police statistics and which were represented in the Citizen Security Survey are as follows:

- The highest percentage of victims of domestic violence occurred in the rural interior (14.1 percent), followed by the rural coastal areas (13.3 percent) and lastly by the urban area (10.8 percent).
- With respect to the types of domestic violence experienced by persons in Suriname, 17 percent of respondents indicated that they were sworn at or insulted by a partner or an ex partner. 13.1 percent indicated that their spouse said things that frightened them, such as threatening to harm them or someone close to them. 11.6 percent of respondents indicated that their spouse or ex-partner had been violent towards them while 7.1 percent stated that they had been injured on occasions where the partner or ex-partner used violence against them.

Additionally, some stakeholders have pointed to a correlation between domestic violence and some cases of murder and suicide amongst women. Murders and suicides linked to domestic violence were said to be especially prevalent in the district of Nickerie which holds the highest suicide rates in Suriname and which has very high rates of domestic violence.

3.2.2. Perception of Domestic Violence

While support service providers have expressed the view that men and women are generally aware that domestic violence and sexual violence is wrong and ought not to be practiced or accepted, beating or chastising by male partners is still widely regarded as acceptable. Suriname's most recent Multiple Indicator Cluster Survey of 2010 found that a significant percentage of women believed a man is justified in being physically abusive towards their partner in certain circumstances. 13 percent of women aged 15- 49 believed a husband is justified in beating his wife/partner. Neglect of children is the most common reason, irrespective of the women's background characteristics. Other reasons frequently mentioned by the women are: "if she goes out without telling him" (3%) and "if she argues with him" (4%). This belief was most prevalent among women from the rural interior (27%). Paramaribo is the only district that recorded less than 10 percent acceptance. The prevalence of such a belief was inversely associated with women's education and wealth quintile. For women with no education, the prevalence is estimated to be 26 percent and much higher than 10 percent observed in the case of women with at least secondary education. For the poorest women, the acceptance is estimated to be 22 percent and for the women of the richest households, it is estimated to be 6 percent. It was also noted that the level of acceptance drops with age, ranging from 19 percent for 15- 19 year olds to less than 10 percent for 40- 49 year olds.⁴⁹⁰

⁴⁸⁹ Department of State Suriname Human Rights Report, 2012, note 12 above, p.12.

⁴⁹⁰ Gender Bureau of Statistics, Ministry of Planning and Development Cooperation and Ministry of Social Affairs and Housing, Suriname Multiple Indicator Cluster Survey 2010, Final Report, 2013, p. 150, http://www.childinfo.org/files/MICS4_Suriname_FinalReport_Eng.pdf. The Cluster Survey is a nationally representative sample survey of women aged 15- 49 and children under age five of 7,407 responding households out of a total of 9,356 sampled households.

3.2.3. Underreporting

Coupled with the level of acceptance of violence towards women in the society is the reluctance of victims of gender-based violence to report incidences of violence to the police and to continue with legal proceedings aimed at securing the conviction of the perpetrators. The 2010 Citizen Security Survey showed that the level of reporting incidence of domestic violence to the police was lower than that of the Caribbean average. While in the Caribbean 11.1 percent of respondents who experienced some type of domestic violence declared that the police was made aware of the incident of domestic violence, in Suriname this percentage was only 8.2 percent.

Economic disparities between men and women explain to an important extent this phenomenon, and affect women's willingness to pursue legal remedies against the abusive behaviour of their male partners. Men tend to be the sole owner of the home and many women may fear being forced out of the home (without alternative means of accommodation) if they report to the police.

Many women in Suriname are not only reluctant to complain to the police but are also hesitant to seek assistance from counselors or institutions. Domestic violence is seen as a private family issue; reporting is still frowned upon because it will bring shame and disrepute on the family name. A common practice is to first ask members of the family to mediate the conflict. Stakeholders expressed the view that this approach rarely works to stop the violence as in most instances family members tend to encourage the women to bear with the abuse and hope that in time the man will change his behaviour; in the alternative they inform her of means by which she should try and soothe the situation by complying with his demands. Since many households consist of extended families (usually such family members are related to the men), there is also a fear of retribution from the family members.

According to stakeholders, strong religious beliefs also play a part, whereby men and women tend to hold the view that since the man is the designated 'head of the household' by God, his authority should not be challenged by the woman.⁴⁹¹

In cases where the victim eventually decides to report to the police, the preference is to ask the police to issue a warning to the perpetrator and to encourage the perpetrator to receive counseling. Women want violence to come to an end but at the same time they do not wish to put an end to their intimate relationship. Neither do they want the partners to leave the home. When the matter actually comes before the court, there is the fear that the partner will be imprisoned.

⁴⁹¹ See also Human Rights Council, 'Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with Paragraph 15(b) of the annex to Human Rights Council resolution 5/1, UN Doc. A/HRC/WG.6/11/SUR/2, 21 February 2011, para. 13 regarding cultural stereotypes.
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/109/15/PDF/G1110915.pdf?OpenElement>

There is, as in other countries, a clear lack of confidence of victims in the ability of the police and justice system to protect them. The Citizen Security Survey found that respondents' trust in the police force was higher (77.6 percent) than that of the Caribbean average (65.6 percent) while the degree of trust in the justice system was significantly lower than the Caribbean average (35.7 percent) at 27.3 percent.

Finally, many victims are not properly informed about existing support services, and legal remedies.

4. Normative and Institutional Framework

4.1. International Legal Framework

Suriname ratified the major human rights conventional instruments, including the ICCPR, the ICERD, the ICESCR, the CRC, the CEDAW and the Inter-American Convention on the Prevention, Eradication and Punishment of Violence against Women in 2002. It is not a party to CAT or to the Optional Protocols to CEDAW and CRC on the other hand.⁴⁹²

Suriname has recognized the jurisdiction of the Caribbean Court of Justice and the jurisdiction of the Inter-American Court on Human Rights.

4.2. Domestic Legal Framework

The Constitution of Suriname adopted in 1987 has strong equality guarantees. It protects against discrimination on the basis of birth, gender, race, language, religion, descent, education, political beliefs, economic position or social circumstances or any other status. The protection from discrimination on the basis of gender found in article 8.2 of the Constitution is a notable guarantee, which is absent in most Commonwealth Caribbean Constitutions. Suriname's Constitution further provides under article 35.2 that men and women shall be equal before the law.

Domestic Violence is governed by the 2009 *Law on Combating Domestic Violence* while the *Moral Law*, which was amended in 2009, governs the law on sexual offences. The *Moral Law* is included in the Penal Code. The Penal Code criminalizes rape including marital rape. Rape in Suriname is gender neutral thereby applying to males. As of 2012, legislation prohibiting stalking was also adopted. However there is no law in place to protect against sexual harassment, although a draft is apparently under discussion.

The *Act Fighting Domestic Violence* was passed in 2009. It protects against acts of domestic violence and the threat of domestic violence and provides for the issuance of protection orders, which can last for up to three (3) years.⁴⁹³ The Act allows specified persons for example, investigative officers, probation officers, physicians, psychologists, recognized social workers or and authorized institutions to apply for a protection order on someone else's behalf.

⁴⁹² See Human Rights Council Suriname Compilation, note 15 above, p.2.

⁴⁹³ This period is significantly longer than that in other domestic violence legislation in the Commonwealth Caribbean.

The Act defines and provides examples of physical violence, psychological violence, sexual violence and economic/financial violence. The definition of ‘partner’ in the Act is broad enough to include persons in same sex relationships. This is a notable improvement over most of the domestic violence legislation in the Commonwealth Caribbean where the definition of spouse excludes persons in same sex relationships.

Where a person is a victim of domestic violence, the matter may be dealt with under the domestic violence legislation, under the criminal code or both. Where the act amounts to a criminal offence it may be subject to prosecution under the Penal Code. This does not prevent the victim from obtaining a protection order in respect of the same act of violence. Where a perpetrator breaches an order of protection, the breach amounts to an offence, which may be subject to prosecution under the Penal Code. Breach of the protection order results in fines and or imprisonment, ranging from four years to eight years depending on the number of times the order has been violated.

4.3. Institutional Framework

4.3.1. Judiciary

The judicial system is largely influenced by Dutch law. The High Court of Justice is the highest judicial authority entrusted with the administration of justice in Suriname. Three district courts are competent to hear civil and criminal cases in three distinct geographical districts of the country, although they are all situated in Panamaribo.

4.3.2. Police

The functions of the police, which is under the authority of the Ministry of Justice and Police is to maintain law, order, and security, prevent crime and protect persons and goods. It also has investigative functions. The *Procureur Generaal* is competent to oversee police officers in their functions. The Chief of the Police Corps is responsible for the organization of the force.⁴⁹⁴

4.3.3. Other Government Institutions

Suriname’s government has made a concerted effort to address women’s human rights by embarking on key initiatives to promote gender equality and address gender-based violence. Suriname’s human rights-based development strategy also states that a cross-cutting gender perspective should be mainstreamed into all plans and programs.⁴⁹⁵ A National Bureau for Gender Policy was established within the Ministry of Home Affairs in 1997, tasked with the coordination of national gender policy. A Gender Management System has been set up with gender focal points in all government ministries.⁴⁹⁶ The Bureau has developed

⁴⁹⁴ See <http://www.politie.sr/>

⁴⁹⁵ Government of Suriname, MDG Progress Report, November 2009, p. 36, http://www.surinamebusinessforum.org/smartcms/downloads/pdf/MDG%20rapport%20final%2015april2010_new_opt.pdf

⁴⁹⁶ 2011 Situation Analysis, note 10 above, p. 79 – 80

partnerships with both national civil society groups, and regional and international organizations, including UN Women, UNDP, UNFPA, and CARICOM.⁴⁹⁷

The Integral Gender Action Plan 2006 – 2010 which was formulated in collaboration with several stakeholders (NGOs, several ministries) is the main policy initiative seeking to improve the situation of women, men, boys and girls. This Action Plan has as its principal aim the achievement of the Millennium Development Goals.⁴⁹⁸ The Action Plan has a total of 116 actions in relation to the priority areas of the National Multi-Annual Development Plan for 2006 - 2011.⁴⁹⁹

The National Bureau for Gender Policy is working to develop a Gender Database System (GDS) to strengthen institutional capacity to collect, manage and use gender-disaggregated data which will enable monitoring and evaluation of the national gender policy, as well as efficient reporting, in particular in the framework of CEDAW and MDGs.⁵⁰⁰ The Gender Database System will aid in the implementation of the gender policy; conducting gender analyses on the basis of sex-disaggregated data and gender-sensitive indicators; serve as a planning and monitoring instrument and as a source of reliable data for national and international reporting.⁵⁰¹

A National Committee on Gender Legislation was also set up, consisting of representatives of government, non-state actors, including academics and civil society.⁵⁰²

A Government's Steering Committee on Domestic Violence has been created and tasked with presenting proposals to combat and prevent domestic violence; to provide integrated shelter and guidance to victims; coordinate the implementation of these tasks; evaluate cooperation and provide advice on the continuation or termination of the cooperation covenant.⁵⁰³

5. Institutional and Civil Society Responses to Gender Violence

5.1. Bureau for Gender Policy

The Bureau for Gender Policy has spearheaded several initiatives to address gender-based violence. Over the last two years, the Bureau has embarked on training over one hundred religious leaders across Suriname to identify domestic violence situations.⁵⁰⁴ The Bureau has also used drama to target and inform youths in some districts about issues relating to gender-based violence in an effort to address and reduce the culture of violence in Suriname.

⁴⁹⁷ Human Rights Council Suriname National Report, note 1 above, para. 35, 37.

⁴⁹⁸ 2009 MDG Report, note 19 above, p. 36

⁴⁹⁹ Communication received from the Bureau for Gender Policy.

⁵⁰⁰ 2009 MDG Report, note 19 above, p. 36

⁵⁰¹ 2011 Situation Analysis, note 10 above, p. 81.

⁵⁰² *Ibid.*, para. 39.

⁵⁰³ See Communication received from the Bureau of Gender Policy

⁵⁰⁴ Human Rights Council Suriname National Report, note 1 above, para. 45.

The Bureau has further supported gender equality training and education of businessmen in Suriname and a National Policy on Violence is being discussed. The Bureau indicated that there are no battery intervention programs currently active in Suriname and considered that there was an urgent need for such programs. Unfortunately, there are not enough social workers available to provide the required counseling to perpetrators especially on issues of gender equality and gender-based violence.

In response to alarming levels of domestic violence in Nickerie, the Ministry hosted a workshop on Domestic Violence to identify possible solutions for eliminating domestic violence in that district.⁵⁰⁵

5.2. The Police

One of the notable provisions in the domestic violence legislation is the provision mandating an investigative officer to respond to every notification or report concerning domestic violence, irrespective of whether the person notifying or reporting is the victim or not. The investigative officer must then fill up a record form drawn up by the Minister, which is to be included in the National Domestic Violence Register, and which is kept by the Suriname Police Corps. According to Suriname's report to the Human Rights Council, specialized training was organized for the police on counseling victims and perpetrators.⁵⁰⁶

According to interviews, the actual practice is for the police officer to hear the claim being made by the victim, and thereafter speak with the alleged perpetrator. The interview with the victim is held in a special facility and in private.⁵⁰⁷ If there are sufficient grounds to do so, the perpetrator may in the first instance be locked up for a period of four days and thereafter released. During this period the victim determines whether she wants the matter to proceed any further. If after this first incident, two further incidents at the hand of the same individual occur, the perpetrator is locked up for a period of thirty days and brought before the courts for the offence committed.

On many occasions the matter does not proceed to court as the victim withdraws the complaint and is unwilling to provide evidence, which is needed to secure a successful conviction. As a result, police officers tend to be reluctant to respond to a report of domestic violence. Information provided by stakeholders also points to the failure of the police and social workers to follow up with victims after they report incidences of violence to the police.

5.3. Ministry of Justice and Police

The Ministry of Justice and Police collaborates with various departments and civil institutions, such as the Bureau for Women and Child Policy, the Public Prosecutor, the Bureau for Legal Regulation and the Bureau for Victim Support. This is in line with the letter of intent for collaboration signed in 2008 by six Ministries.⁵⁰⁸

⁵⁰⁵ Communication received from the Bureau for Gender Policy of the Ministry of Home Affairs, February 2013.

⁵⁰⁶ Human Rights Council Suriname National Report, note 1, para. 55.

⁵⁰⁷ *Ibid.*, para. 51.

⁵⁰⁸ See Situation Analysis 2011, note 10 above, p. 17

The *Bureau for Victim Support* works in tandem with the Police and provides counseling (including practical, legal and psycho-social) services to victims of crime and on some occasions to perpetrators on a voluntary basis and with the support of the NGO *Stichting Stop Geweld* who have 2 social workers who work specifically with the perpetrators. In many instances the police advise victims of gender-based violence to seek support services at the Bureau. Some victims visit the Bureau of their own volition. Counseling is provided in a face-to-face setting but where a person is reluctant to attend counseling, the Bureau has the discretion to provide counseling via the telephone. The Bureau has since 2008 launched a public awareness campaign on domestic violence and the Ministry of Justice and Police in collaboration with the *Foundation Stop Violence against Women* published a brochure, which indicates among other things the content of the protection order, who can apply, where the form can be collected and where it should be submitted.

The Ministry of Justice and Police also manages the only shelter hosting victims of gender-based violence, which was created in 2010. Victims are allowed to stay at the shelter for a maximum period of three months and are responsible for providing their own meals. It becomes a challenge where victims at the shelter are without means of employment. In such instances they often rely on family support and may have to return to live with the abusive partner. Many women actually prefer not to leave the home there being no security of alternative accommodation at the end of the three months period. The need for more shelters for victims of gender-based violence, in particular domestic violence is one highlighted by the stakeholders consulted for this study.

Given the economic destitution of the women who have left their home, there is a need to complement awareness efforts with practical support such as financial support, permanent housing solutions and skills training. Some interviewees also suggested that the state should provide alternative housing for perpetrators of domestic violence against whom a protection order is made or whom are ordered by the court to vacate the home. Perpetrators would be mandated to reside at the home for a designated period, during which intervention strategies to accept responsibility and encourage behaviour change would be employed. Victims may then be less hesitant to seek the court's assistance to remove the perpetrator from the home and feel less guilt knowing that the perpetrator will be placed in a state run facility.

5.4. Civil Society Initiatives

The Non-Governmental Organizations in Suriname which specifically respond to gender-based violence and human rights issues are: *Foundation Stop Violence against Women*, *Foundation Ilse Henar-Hewitt* and the *Women's Rights Center*. Each of these three organizations has very different but related functions which together help to promote a rights-based response to gender-based violence. Most of these NGOs lack a sustainable funding basis as they primarily rely on external donors.⁵⁰⁹

⁵⁰⁹ See Country Report of the Republic of Suriname at the Eleventh Session of the Regional Conference on Women in Latin America and the Caribbean (ECLAC), Brazil, 13 – 16 July 2010, <http://www.eclac.cl/mujer/noticias/paginas/6/38906/Suriname.pdf>

That said, as part of its commitment to gender equality the government has developed strong partnerships with the aforementioned NGOs with a focus on providing legal aid services to women and/or ensuring a gender and human rights response.

5.4.1. Foundation Stop Violence Against Women

Foundation Stop Violence against Women was established in 1992 and was the first NGO in Suriname to specifically deal with violence against women. The goals of the Foundation are to: contribute to the prevention of and combat violence against women; promote healthy partner relations; provide assistance and counseling to victims of domestic violence; and promote gender equality in Suriname. The Foundation is operated by a small team of approximately seven persons. In some instances the police sends perpetrators of gender-based violence to the Foundation for counseling. Current and ongoing activities of the Foundation are as follows:

- Counseling of victims and perpetrators of domestic violence (counseling may be voluntary or system oriented);
- Counseling of perpetrators in collaboration with the Ministry of Justice and Police as provided under the domestic violence legislation;
- Counseling of self help groups;
- Forming and guiding of ‘Networks preventing/fighting Domestic Violence’ in several districts;
- Organizing educational and training activities for service and assistance providers (teachers, police officers, social workers, civil servants etc.);
- Organizing in and out of school educational programs for youngsters and training programs for teachers;
- Research and data collection;
- Participation in working-groups existing at both governmental and non-governmental institutes/organizations;
- Maintaining contacts/networking at the national, regional and international levels;

Recognizing the strong impact that religion has on gender-based violence, and in order to reach out to members of religious groups, the Foundation has partnered with the Suriname Bible Association. Through this partnership education and information as regards gender-based violence is provided to the Association, which is then passed on to their members.⁵¹⁰

5.5.2. Women’s Rights Centre

The *Women’s Rights Centre* (WRC) was established in 1997 with the goal of providing services to eradicate all forms of violence against women, to lobby and advocate for women’s rights from a broad perspective and to address other women’s issues concerned with gender equality and gender equity. WRC’s work centers on education and training on gender equality issues, especially domestic violence. WRC took part in the drafting of the domestic violence legislation and is actively involved in educating agencies, groups and individuals about gender and human rights issues.

⁵¹⁰ See also Human Rights Council Suriname National Report, note 1 above, para. 44.

5.5.3. Ilse Henar-Hewitt Foundation

Aside from its legal assistance work (see below) the *Ilse Henar Hewitt Foundation* also carries out scientific and legal research and lobby activities in collaboration with partner organizations in an effort to contribute to the amendment of existing legislation that is discriminatory against women or the introduction of new legislation. Areas in which the organization has carried out activities include: pension rights, sexual harassment in the workplace, right to paid maternity leave, inheritance law as regards so called “illegitimate children”, parental visitation rights, and the right of children to be heard.

6. Accessibility and Effectiveness of Legal Aid Services

6.1. Bureau for Legal Aid

The Bureau for Legal Aid has offices in Paramaribo and Nickerie and provides legal advice and representation in relation to civil matters (property, divorce etc,) and criminal matters (for the defendant).

The Bureau determines whether a person qualifies for legal aid by virtue of a means test. At present persons seeking to get legal aid from the Bureau should not, according to the legal aid legislation, earn more than \$1500 Surinamese Dollars per month. The Bureau does not provide legal aid in gender violence cases *per se*. Where the matter involves related family matters such as property disputes or divorce etc., the Bureau may be able to assist. This was explained by the fact that victims of gender-based violence tend to seek the assistance of the State’s Bureau for Victim Care or non-governmental institutions. They do not visit the Bureau for Legal Aid. The forms required to get a protection or restraining order from the court are available at the Bureau for Legal Aid, but these forms are hardly if ever requested by persons seeking the assistance of the Bureau. Personnel at the Bureau for Legal Aid have not received specialized training on human rights or gender equality issues. Additionally, the pool of available lawyers is in effect limited.⁵¹¹

With respect to persons accused of criminal offences, the law requires that the police should promptly inform the Bureau for Legal Aid once they are in custody so that Bureau can respond appropriately in seeking to provide legal advice and representation to the accused. Information provided by stakeholders indicates that the police do not always comply with the law, and in some instances there are significant delays before the Bureau is made aware by the police of the detention of an accused.

The Bureau does not have data on the number of and type of matters that it handles each year, although ideally this should be in place. The Bureau pointed to a need for more personnel to adequately comply with its mandate.

6.2. Ilse Henar-Hewitt Foundation – Bureau for Legal Aid for Women⁵¹²

The *Ilse Henar-Hewitt Foundation* is the only organization in Suriname which is primarily concerned with providing legal assistance to women. The Foundation aims to create awareness among women, men and children about their rights and aims to eliminate inequalities. To this end, the Foundation offers legal

⁵¹¹ Human Rights Council Suriname Compilation, note 15 above, para. 28.

⁵¹² Written correspondence received from the Foundation *Ilse Henar-Hewitt*.

assistance to underprivileged women (women with little or no income) dealing with legal issues. Services offered by this organization include the provision of legal advice, legal assistance and legal information to individuals groups and organizations.

The office, located in Paramaribo, is open daily and advice may be provided in person or by telephone. To increase access to legal services to persons in other districts, the organization has set up a mobile unit. The Foundation is served by three lawyers working from 8am to 11:30am daily and a notary. It also maintains a roster of attorneys who are willing to provide their legal services at a greatly reduced fee to the clients and to whom referrals are made in particular circumstances.

The Foundation specifically provides education and legal information to victims of domestic violence, sexual violence and sexual harassment to make them aware of their legal rights and options. In domestic violence cases, the Foundation also addresses related family law matters such as property, divorce, custody or maintenance. Where needs be the Foundation directs clients to the relevant Bureaus that are best able to assist such as the bureau dealing with custody and maintenance. In some instances the lawyers accompany victims of gender-based violence to court to provide them with support throughout the proceedings. The Foundation provides legal information to the public by virtue of mass media and educational meetings with various targets groups in the districts.

UNFPA has supported the Foundation *Ilse Henar-Hewitt* in a community based legal awareness and assistance project by providing capacity building. Information is provided for example on how to file a case under the domestic violence and stalking legislation. Specialized training is provided for counselors and specific attention is granted on providing support services for persons with special needs.

7. Summary of Findings

Incidence and Causes of Domestic Violence

- Domestic violence is the most prevalent form of gender violence in Suriname.
- Gender stereotypes and economic disenfranchisement are, as in the rest of the Caribbean, key concerns.
- Underreporting remains a serious problem. Factors include the aforementioned attitudinal issues, family pressures, and a general lack of trust in judicial authorities and in their ability to effectively tackle SGBV.

International and Domestic Legal Framework

- While Suriname has put in place a robust normative framework to address gender violence, implementation remains a serious concern due to the failure of the police and social workers to follow up with victims after they report incidences of violence to the police; the reluctance of health care workers to report cases that involve gender-based violence; and the failure of persons authorized to seek protection orders on victims' behalf to do so.

Institutional Framework and Institutional Responses to Gender-Based Violence

- Suriname's government has undertaken various initiatives to address SGBV and has established several institutions to address gender discrimination and gender violence.
- Further efforts need to be undertaken, including the adoption of a national plan on SGBV to enhance coordination between the government and civil society.
- Capacity building of state institutions, justice and health professionals and non-governmental organizations is lacking.
- There are no standard specialized units across all police stations and no systemized mechanism for police and support service provider follow-up with victims after they report incidents of violence to the police.
- Suriname does not have any rape crisis centre and as such rape victims seek support from organizations, family members, religious leader etc. Neither is there a one-stop facility for victims of gender-based violence where medical, policing, counseling and legal aid services are provided jointly.
- There are no organizations that have expertise in responding to sexual and intimate partner violence within the Maroon and Indigenous tribal communities and women in these communities continue to be marginalized in terms of their access to justice and adequate remedies.⁵¹³ This would require some tailored approach that take full consideration of their own system of governance and dispute resolution mechanisms. It must also be noted that persons and communities in the rural interior are challenged in accessing support services and education. The State has acknowledged that the interior is generally hampered by a lack of transport facilities, adequate school buildings, educational tools and material, qualified teachers and teachers' accommodation.⁵¹⁴
- Apart from the Bureau of Victim's support, there is a lack of integrated approaches by state-funded legal aid providers.

Availability and Effectiveness of Legal Aid Services

- The state must play an active role in the provision of information, advice and legal representation to victims of gender-based violence and further ensure that such services are accessible to persons not only in the urban areas but the rural interior.
- The Bureau for Legal Aid ought to specifically provide legal aid services and legal information for victims of gender-based violence in accordance with the United Nations Principles on Guidelines on Access to Legal Aid in Criminal Justice Systems.
- The current income ceiling under legal aid legislation may exclude a large number of women from accessing legal aid and ought to be reduced.
- Legal professionals and administrative staff engaged in such services do not receive specific training on SGBV.

Recommendations for Programmatic Support and Technical Assistance

⁵¹³ See UNFPA Draft Strategy and Framework

⁵¹⁴ See Country Report of the Republic of Suriname at the Eleventh Session of the Regional Conference on Women in Latin America and the Caribbean (ECLAC), Brazil, 13 – 16 July 2010 p.

- Support state and non-state agencies in collecting, analyzing and using sex disaggregated data on investigation, prosecution, and adjudication of SGBV cases and ensuring timely access to such data.
- Offer gender equality and human rights training for response and service providers, specifically the police, prosecutors, lawyers with the legal aid bureau, and non-governmental organizations offering counseling and other support services;
- Provide technical and financial support for non-governmental agencies providing legal aid and other support services to victims of gender-based violence;
- Support and build upon the rights awareness campaign efforts especially that being provided by the Women's Rights Centre;
- Conduct research on the provision of support services to indigenous and maroon groups that are usually not sufficiently targeted and given access to the required support services; and
- Strengthening of the legal education programs to ensure that lawyers receive specialized training on gender and human rights.

CHAPTER 8 – Trinidad and Tobago

1. Introduction

Sexual and gender-based violence, in particular domestic violence and incest, is an ongoing challenge in Trinidad and Tobago, and the number of reported cases of sexual offences and domestic violence has been constantly increasing in the last few years. Cultural factors combined with lack of equal opportunities in access to employment contribute to the continuing prevalence of domestic violence.

Although several initiatives have been taken by the government in seeking to address the problem, and the country is often hailed as a model in terms of its legislative and institutional framework to address SGBV, one of the main challenges in seeking justice is related to more profound institutional deficiencies of the judicial system in particular the serious backlog of cases.

As to the availability and quality of legal aid, it is primarily relevant in domestic violence cases, where women may apply for a protection or an occupation order. In criminal proceedings, the assumption, as in other common law countries, is that the victim is actually represented by the Prosecution.

There also seems to be a gap in terms of the actual use by women of such services and the training of attorneys in handling these particularly harrowing cases.

2. Situation Analysis

2.1. Population - Governance

Trinidad and Tobago is an archipelagic state in the Southern Caribbean, which is comprised of two islands, Trinidad, the larger one where the capital, Port-of-Spain, is situated, and the smaller, Tobago. At the end of 2010, it had a population of 1,317,714.

It is a multi-ethnic society, composed of persons of African descent (37.5 percent), East Indian descent (40 percent), mixed ancestry (20.5 percent), European descent (0.6 percent), and other ethnic groups.

Trinidad and Tobago became independent in 1962 and adopted a republican constitution in 1976. It is a parliamentary democracy based on the Westminster system and it is part of the Commonwealth and of the Caribbean Community (CARICOM).

2.2. Development Indicators

In economic terms, the country has enjoyed robust growth of 8 percent average between 2000 and 2008 although it was impacted by the 2009 economic crisis and unemployment rose from 4.6 percent in 2008

to 6 percent in 2010. Thanks to the health of its economy, the country has achieved significant progress in the reduction of extreme poverty and has surpassed the target of universal primary education.⁵¹⁵

One of the main development challenges faced by the country has been the rise in violent crime over the last decade due to the country's geographical location on a transit route for the shipment of narcotics. This led the government to impose a state of emergency in August 2011 which lasted for three months and was justified by a so-called 'war on crime'.⁵¹⁶ The murder rate remains comparatively high, with a figure of 35.2 murders per 100,000 inhabitants in 2010, but this constitutes a decrease over previous years, as it was 37.9 in 2009 and 41.1 in 2008.⁵¹⁷

3. Gender Equality and Gender Violence

Data on gender equality shows that compared to other countries of the sub-region, Trinidad and Tobago has a relatively positive record. In a 2011 Commonwealth survey, Trinidad and Tobago ranked third out of 54 Commonwealth countries as the best place for raising a female child.⁵¹⁸ Significant achievements on MDG 3 (gender equality) have been made as 28 percent of Trinidad and Tobago's Parliamentarians and 25 percent of local government practitioners are women. The Country elected its first female prime minister in May 2011. There has been a 51 percent increase in the enrollment of women in tertiary education between the years 2003 to 2009.⁵¹⁹ In terms of access to the labour market, women are still disproportionately unemployed as compared to men, and underpaid in every sector except if employed as civil servants.⁵²⁰

Family violence, in particular domestic violence and incest remain, however serious concerns. The latest statistics show a continuing increase in the number of reported cases. In 2010, a total of 180 cases of domestic violence were reported by women. This figure increased to 195 in 2011 and 233 in 2012. With respect to sexual offences, the trend seems to have been halted: there were 19 reported cases in 2010, an important increase in 2011 with 35 cases, and a lower figure of 27 in 2012. The data gathered by the Rape Crisis Society shows that cases of rape are equally divided between rape by acquaintance and rape by a stranger.⁵²¹ On the other hand, 82 percent of perpetrators of child sexual abuse were known to the

⁵¹⁵ See <http://www.undp.org.tt/mdg/index.html>

⁵¹⁶ Human Rights Council, 'Report of the Working Group on the Universal Periodic Review, Trinidad and Tobago', UN Doc. A/HRC/19/7, 14 December 2011, para. 11.

⁵¹⁷ <http://data.un.org/Data.aspx?d=UNODC&f=tableCode%3a1>

⁵¹⁸ Human Rights Council, 'National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1, Trinidad and Tobago, UN Doc. A/HRC/WG.6/12/TTO/1, 19 July 2011, para. 107.

⁵¹⁹ See <http://www.undp.org.tt/mdg/index.html>; see also Minister of Community Development, Culture and Gender Affairs of Trinidad and Tobago, 'National Policy Gender and Development: Situational Analysis', (Draft), June 2007, p. 12,

http://genderaffairs-tt.com/pdf_docs/National%20Gende%20Policy-Situational%20Analysis.pdf

⁵²⁰ *Ibid.*, p. 18.

⁵²¹ Rape Crisis Society of Trinidad and Tobago, Annual Report 2012, p. 15. For an overview of the incidence of sexual offences and domestic violence by district see Trinidad and Tobago Central Statistical office, Trinidad and Tobago Human Development Atlas, 2012,

http://www.planning.gov.tt/sites/default/files/content/mediacentre/documents/Human_Development_Atlas.pdf

child or adolescent and these crimes were therefore most likely to be committed in the victim's or the perpetrator's home.⁵²²

This reality results in large part from the persisting cultural stereotypes against women. According to a study on child sexual abuse in the country conducted by the University of the West Indies in St Augustine, 'the onus is on women and girls to make themselves unavailable to men and not for men to refuse them. Girls are often blamed for having been raped or exploited, are stigmatized as promiscuous and are ostracized if they become infected with HIV. The sexual activity of young girls is often viewed as a 'rite of passage by male caregivers, especially when the caregiver is not a biological relative'.⁵²³

Information gathered from the activities of the Rape Crisis Society shows that a majority of the clients using their services in 2012 were between the ages of 12 and 17 years old (21.9 percent) followed by the 18-26 years old group (18.2 percent).⁵²⁴ In some cases, family members or the police often encourage abused girls to marry their perpetrator.⁵²⁵ Indeed, child marriage remains legal in specific religious traditions of the island, in accordance with the *Muslim Marriage & Divorce Act* and the *Hindu Marriage Act*.⁵²⁶

As ever, underreporting remains a serious concern and is attributable to family dynamics, reluctance to expose the child or oneself to the criminal justice system, disbelief of the survivor, and persisting taboo around sexual and domestic violence. Often as well, these are regarded as 'private affairs',⁵²⁷ or the attitude of police officers is a deterrent to reporting.⁵²⁸

4. Normative and Institutional Framework

4.1. International Legal Framework

Trinidad and Tobago has signed and ratified five major international human rights treaties to date. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the International Convention on the Elimination of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). It is to be noted, however, that Trinidad and Tobago

⁵²² *Ibid.*, p. 19.

⁵²³ R. Reddock, S. Reid, T. Nickenig, 'Breaking the Silence: A Multi-Sectoral Approach to Preventing and Addressing Child Sexual Abuse in Trinidad and Tobago: Child Sexual Abuse and HIV', University of the West Indies St Augustine (no date); National Gender Policy Study, note 5 above, p. 15.

⁵²⁴ Rape Crisis Society of Trinidad and Tobago, note 7 above, p. 11.

⁵²⁵ R. Reddock, S. Reid, T. Nickenig, 'note 9 above.

⁵²⁶ Human Rights Council, 'Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, Trinidad and Tobago, UN Doc. A/HRC/WG.6/12/TTO/3, 22 July 2011, para. 24.

⁵²⁷ Rape Crisis Society of Trinidad and Tobago, note 7 above, p. 7.

⁵²⁸ Republic of Trinidad and Tobago, 'National Gender Policy and Action Plan: Building Consensus, Shaping the Vision, Sector Study: Law and the Judicial System', p. 18. http://uwispace.sta.uwi.edu/dspace/bitstream/handle/2139/7631/CGDS_1504.pdf?sequence=1.

has not yet domesticated CEDAW by adopting legislation incorporating it into the domestic legal order and has not ratified the Optional Protocol to CEDAW.⁵²⁹

At the regional level, Trinidad and Tobago is also a party to the 1996 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, which provides a detailed definition of violence against women.⁵³⁰ It has, however, not recognized the jurisdiction of the Inter-American Court of Human Rights to hear individual petitions.

4.2. Domestic Legal Framework

The Constitution of Trinidad and Tobago recognizes and guarantees the protection of fundamental rights and freedoms for all citizens, including the right to life, liberty, security of the person and property, equality before the law, respect for private and family life and the right of equality of treatment by public authorities. It also prohibits discrimination on the basis of race, origin, colour, religion or sex. Any individual who alleges that his/her right has been violated or suppressed is entitled to apply to the High Court to seek judicial redress.⁵³¹ However, section 6 of the Constitution introduces an exception to that rule through a saving clause preserving the validity of laws that predate independence even if they do not conform to the aforementioned clause, including laws that discriminate against women.

Relevant legislation on SGBV include the 1986 *Sexual Offences Act*, which was subsequently amended to expand on the range and scope of sexual offences covered under the Act, and to repeal and replace the law governing the Sex Offender Registry. Other relevant offences are penalized under the *Summary Offences Act*, which punishes assault, aggravated assault, the *Malicious Damage Act*, the *Offences Against the Person Act*, which punishes murder, shooting or wounding, inflicting injury, attempt to choke, administering poison, and the *Children Act*, which protects girls as victims of sexual abuse.

The *Evidence Act* and the *Administration of Justice Miscellaneous Provisions Act* of 1996 expressly states that it is not obligatory for the Court in sexual offences cases to give the jury a warning about convicting the accused on the uncorroborated evidence of the complainant. The judge however can exercise his discretion to advise the jury in this regard.⁵³²

The 1999 *Domestic Violence Act* is not meant as an alternative to the criminal process, but as a means to expand the range of remedies available to victims of domestic violence. These are intended to form part of a National Domestic Violence Register to be maintained by the Commissioner of Police and mandated by the Act. According to available information, this registry is not yet operational.

⁵²⁹ See Human Rights Council Report of the Working Group, note 2 above, para. 4 where the Government recognizes that although many of the rights protected under CEDAW are already recognized in domestic law, the specific definition of discrimination against women is still a matter to be considered by the legislature for possible amendment of the law.

⁵³⁰ See Article 2.

⁵³¹ Human Rights Council National Report, note 4 above, para. 16-17.

⁵³² See *Mymoon v The State*, TT 2002 CA 81 (Criminal Appeal No. 73 of 2000) decided 10 October 2002.

4.3. Institutional Framework:

4.3.1. Judicial System

The judicial system in Trinidad and Tobago is based on British common law and is structured into three basic tiers, i.e. the Magistracy which consists of 13 Magisterial districts, with jurisdiction over less severe criminal and petty civil matters; the Supreme Court, which consists of the High Court and the Court of Appeal, with jurisdiction over civil and criminal matters and the Privy Council, which is the court of last resort, as in other countries of the English Caribbean.

Sexual offences are indictable offences and are therefore first heard as preliminary enquiries in the Magistrate's Court. The Magistrate's Court also hears applications for protection order pursuant to the *Domestic Violence Act*.

In 2004, a Family court was established within the Magistracy and the High Court with jurisdiction in all family matters, including spousal abuse, divorce and child maintenance. It still is at this time a pilot project based on alternative approaches that aim to improve services for citizens seeking assistance in dealing with family disputes. Some of the valuable innovations introduced by the Family Court have been a focus on user satisfaction through evaluation reports; the development of a unified office for both the High Court and Magistrate Court, and the availability for justice users of a 'multi-door / one-shop court', which includes on site-availability of alternative dispute resolution, social work intervention, probation and child and youth day care services.⁵³³ The philosophy behind the establishment of the Family Court was to promote a less adversarial approach to the resolution of family disputes. Judges sit together with the parties around a table rather than in a courtroom. The value of this new judicial service offered to citizens and its contribution to enhanced access to justice seems to be borne out by the continuing increase of its caseload from 2008 until now.⁵³⁴

4.3.2. Government Institutions

The Ministry of Youth, Gender and Development is mandated to provide expertise and support to government agencies and other stakeholders on gender, including gender violence, and to institutionalize gender in the planning process. This includes advancing the status and rights of women and men, developing policies relevant to gender specific issues and promoting the equitable advancement of women and men in all spheres of development; researching and disseminating information on gender specific issues; promoting change in gender discriminatory social consciousness and traditions; promoting change in gender discriminatory social consciousness and traditions; and build consultative mechanisms with government agencies, NGOs, and private sector partners in advancing gender equality; foster equitable participation of women and men in policy formulating processes.⁵³⁵

⁵³³ Judiciary of the Republic of Trinidad and Tobago, 'Celebrating the Independence of the Judiciary: Annual Report 2011-2012', p. 92,

http://www.ttlawcourts.org/images/annualreports/jrtt_an_%20re_%2011_12.pdf

⁵³⁴ *Ibid.*, p. 92.

⁵³⁵ <http://www.mgycd.gov.tt/>

4.3.3. Civil Society Groups

Several civil society groups are active on women's issues in Trinidad and Tobago. These include a number of faith-based organizations which provide health, educational, and other services to women.⁵³⁶ Some of these groups take part in the Network of NGO's of Trinidad And Tobago For the Advancement of Women which is involved in advocacy with governments and decision-makers; provides information, advice and support to other organizations; fund-raises for women's groups; works at the regional and global levels in matters related to women's rights and the CEDAW.⁵³⁷ A more detailed description of the civil society groups offering specific services to victims of sexual and gender based violence is presented below.

5. Review and Analysis of Government and Civil Society Responses to Violence Against Women

5.1. Ministry of Gender, Youth, and Child Development

The 2009 National Policy on Gender and Development 2009 (not yet adopted in 2012)⁵³⁸ provides for improved legal remedies for victims of GBV, the creation of centralized system for data collection, the establishment of specialized rape and sexual offences units within police stations and strengthening the capacities and effectiveness of shelters for victims and children.⁵³⁹

A Domestic Violence Task Force was also established in 1999 to elaborate a holistic and multidisciplinary policy on domestic violence at the national level. The Task Force includes representatives of the police, the judiciary, the Rape Crisis Centre, the Central Statistical Office, and the University of the West Indies. Its functions include deepening knowledge regarding the factors which contribute to domestic violence; develop the capacities of civil servants and civil society organizations; and develop innovative mechanism to measure the effectiveness and cost of interventions to prevent and respond to domestic violence in the country. At this time, however, it is not clear that major advances were chartered through the task force in the formulation and implementation of specific policies to address violence against women.

The Domestic Violence Unit established the Domestic Violence Hotline - 800-SAVE in 1996. The Hotline aims to reduce the incidence of violent acts related to domestic violence; provide support for victims and perpetrators of violence; provide a facility for anyone to access help in a situation of crisis; and facilitate the collection of data which can be analyzed for informing the development of policies, programmes and projects to deal with the issue.

The Hotline provides listening, information and referral services to victims and perpetrators of domestic violence. By 2006, the Hotline had received more than 13,000 calls related to domestic violence issues. Although it is difficult to measure the Hotline's success in reducing the incidence of violent acts related to domestic violence, the fact that over 9,500 referrals have been made to such services as the

⁵³⁶ For a full list, see

http://genderaffairs-tt.com/index.php?option=com_content&view=article&id=107&Itemid=222

⁵³⁷ http://genderaffairs-tt.com/index.php?option=com_content&view=article&id=107&Itemid=222

⁵³⁸ Human Rights Council Report of the Working Group, note 2 above, para. 15.

⁵³⁹ http://genderaffairs-tt.com/index.php?option=com_content&view=article&id=102&Itemid=219

police, safe houses, legal aid and Drop In Centres shows that the Hotline offers an essential service for persons in need of help. The hotline is staffed by trained counselors who are able to provide immediate crisis intervention assistance. Callers can be directly connected to get help in their areas, including emergency services and shelter as well as information and referrals, counseling and assistance in reporting abuse. The Hotline is structured to operate on a 24-hour basis, with eight active listeners rostered on three 8-hour shifts per day. The structure also provides for a Supervisor/Counselor who manages the Hotline's daily operations and provides counseling services to some of the Hotline's clients. At present, the operations of the Hotline is managed and monitored by the non-governmental organization, Families in Action.

The data related to the activities of the hotline and presented in its 2010-2011 offer a useful snapshot of the main users of the service. A majority of users are female between the ages of 20 and 34 years old. 91 percent of the unemployed users are female and are primarily in common law relationships (32 percent), or married (29 percent). Most of the cases relate to emotional, physical or verbal abuse.⁵⁴⁰ Interestingly, out of the 20,828 calls handled, 20 percent were referred by the hotline counselor to the police, while 15 percent to the legal services, which seem relatively low.⁵⁴¹

The data gathered by the service has also served to spearhead other initiatives and to inform national, regional and global policy processes. These include the establishment of Drop-In Centres (see below), the creation of the Male Support Programme, the policy roundtable on Domestic Violence data collection and multi-disciplinary training for police officers and other service providers to victims and perpetrators of domestic violence.

⁵⁴⁰ National Domestic Violence Hotline Service, Yearly Report for Period 01/10/10 to 30/09/11, p. 4-6, http://genderaffairs-tt.com/pdf_docs/Hotline_Report_2011.pdf

⁵⁴¹ *Ibid.*, p. 1, 11.



Figure 6 1-800 SAVE Poster in the Rape Crisis Society of Trinidad and Tobago - July 2013

The Ministry sponsors other important programmes on gender violence. The Gender Affairs Division established 'drop-in centres' which stemmed from the realization that people who contacted the domestic violence hotline had difficulties accessing counseling and support services in their communities. It was thus started as a pilot project in 1998 with the support of UNDP and later led to the creation of the domestic violence hotline.⁵⁴²

The objectives of the drop-in centres are to provide support services for victims of domestic violence including rape and incest; to encourage the establishment of support groups at the community level; to promote an integrated approach to the protection and rehabilitation of persons vulnerable to domestic violence and to encourage conflict resolution as a means to preventing violence. Each Centre is staffed by a trained social

worker and support personnel and operates one day per week. The community police, wardens of the community centres and representatives of community groups also form part of the service delivery team which aims to provide both information and assistance to individuals and families in the community.

5.2. Police Service: the Victim and Witness Support Unit (VWSU)

The VWSU was established as part of reforms aiming at bridging the gap between the police and the victims and witnesses of crime and operates as a civilian unit within the Trinidad and Tobago Police Service (TTPS).⁵⁴³ Its main goals are to educate victims and witnesses and in this way prevent the risk of secondary victimization, collaborate with other agencies with the aim of enhancing existing victim support policies and programmes, develop a network system to harmonize governmental and non governmental initiatives which promote victim and witness support, and to assist in promoting respect for the human

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http://www.gov.tt/gortt/portal/ttconnect/CitizenDetail/?WCM_GLOBAL_CONTEXT=/gortt/wcm/connect/gortt+web+content/TTConnect/Citizen/Topic/HealthandWellness/Emergency+Services/Domestic+Violence+Drop-In+Centres

⁵⁴³ See also <http://www.ttps.gov.tt/CitizenSupport/VictimSupport.aspx>

dignity of victims through their interaction with all elements of the police service and by extension the criminal justice system.

The VWSU offers holistic support to victims and witnesses of crime – persons who have reported a crime as well as those referred to the unit. Services include legal information by providing guidance on the criminal justice system, and information on the progress of investigations. Liaison services with other support agencies are also provided.

VWSU support officers are available in 10 different police stations throughout the country. The VWSU becomes involved in a case from the time a report is filed with the police. At this point an investigator will be assigned to the case and make a referral to the unit. As a result of such referral, a victim and witness support officer will contact the informant or victims.

One of the major gaps in addressing SGBV occurs at the time of reporting. This is a crucial moment at which the victim may be either encouraged or discouraged to proceed. Many studies have reported dismissive and sometimes wholly inappropriate attitudes of police officers in receiving the report, notwithstanding their clear obligations under the *Domestic Violence Act*. During the consultations conducted as part of the elaboration of the National Gender Policy, it was revealed that the police had encouraged an abuser to inflict further violence on the victim because she had dared to report him.⁵⁴⁴ The dismissive attitude of police officers is exacerbated by the high level of victim recantation to initiate criminal proceedings, which appears to contribute to the frustration felt by the police in dealing with domestic violence.⁵⁴⁵ Many stakeholders have confirmed that the attitude of the police continues to constitute a serious concern. Police officers are still not sufficiently sensitized and will consider that only penetration constitutes sexual abuse, for instance. In some cases, the police officer knows the perpetrator, a relatively common occurrence in a small country such as Trinidad and Tobago, and will therefore not file the report.

To address this problem, a *Domestic Violence Investigative and Procedural Manual for Police Officers in Trinidad and Tobago* was prepared and accompanied by a series of training programmes targeting all police officers in the country. The manual provides examples of the type and evidence of abuse that may be reported under the legislation; explains who may apply for a protection order or who may be victims of domestic violence, how to handle the first interview in person or by telephone and how to prepare the domestic violence report; how to handle the situations on the scene of a domestic violence incident and how to collect the evidence at the scene. The manual specifically provides that interviews should be conducted privately and that a counselor from the community policing section must be contacted. It recommends that the victim be immediately examined by a medical doctor, and that the accompanying police officer be a woman. The police officer is also expected to provide information to victims about relevant community and social services, such as shelters and legal aid, counseling, childcare etc. and this first contact should constitute the starting point of an integrated response by the competent services.

⁵⁴⁴ 'National Gender Policy and Action Plan: Building Consensus, Shaping the Vision, Sector Study: Law and the Judicial System', note 14 above, p. 18.

⁵⁴⁵ *Ibid.*, p. 18.

At the hearing, the investigative police officer is present to assist the victim and must be sensitive to the needs and fears of the victim. According to the manual, the police investigator must fully prepare the victim for the court hearing and must explain as far as possible the court proceedings.

The question, however, is the extent to which these sensible guidelines have been adequately implemented. As was soberly noted in the manual itself, 'neither written words, nor sets of guidelines can substitute for the required change in the attitude of police officers investigating and responding to reports of domestic violence'.⁵⁴⁶

5.3. Judicial Responses

Due to the lack of gender-disaggregated data and of data on the outcomes of sexual offences and domestic violence cases, it is difficult to assess with great accuracy the response of the judicial system to SGBV in Trinidad and Tobago.⁵⁴⁷

What comes out from the desk review and interviews conducted for the study is that the family court process seems to be far more effective than the criminal justice system, which suffers from structural problems.

The question of bias and of deep distrust of the judicial system and of legal professionals in general also came up with some stakeholders going as far as concluding that the favoured approach was to avoid going through the judicial system and seek more pragmatic solutions to resolve individual situations instead. Amongst those women who decide to bring the matter before the courts, many eventually give up for a variety of reasons, not least, economic reasons, including their economic dependence to the perpetrator, lack of money for transportation, childcare arrangements, inflexible working hours, and as in all the other countries included in this study, the length of judicial proceedings.⁵⁴⁸

On the other hand, there is also indication that judicial officers are not well equipped and prepared to handle cases of domestic violence, and deal with the victims with the required degree of sensitivity. On the occasion of the launch of the 16 days of activism against violence against women, the Chief Magistrate, Marcia Ayers-Caesar, noted that judicial officers have to deal with victims of domestic violence who come to the court for help but do not have access to attorneys, adequate sources of income, access to counseling, functional extended families or even a safe place to live, which can be a source of frustration.⁵⁴⁹ These remarks are borne out by earlier findings in an ethnographic study on the implementation of domestic violence legislation in Trinidad and Tobago, which found that officers of the court held 'a physical, social, psychological or economic power over them', and that as a result many victims did not feel at ease to speak freely, and 'delegalized' the complaint, by their dismissiveness.⁵⁵⁰

⁵⁴⁶ Domestic Violence manual, p. 7.

⁵⁴⁷ See also 'National Gender Policy and Action Plan: Building Consensus, Shaping the Vision, Sector Study: Law and the Judicial System', note 14 above, p. 11.

⁵⁴⁸ Republic of Trinidad and Tobago, 'National Gender Policy and Action Plan: Building Consensus: Shaping the Vision'. Sector Study: Law and the Judicial System', note 14 above, p. 12.

⁵⁴⁹ Rape Crisis Society of Trinidad and Tobago, note 7 above, p. 35.

⁵⁵⁰ 'National Gender Policy and Action Plan: Building Consensus, Shaping the Vision, Sector Study: Law and the Judicial System', note 14 above, p. 12.

There is little doubt therefore that the very attitude of the judicial professionals will have a major impact on the effectiveness of the remedies and in ending impunity for perpetrators.

If as judicial officers, we treat domestic violence seriously, so too will the parties and the rest of the criminal justice system.

Chief Magistrate Marcia Ayers-Caesar, 24 November 2012

5.3.1. Criminal Justice System

Although data collection and analysis on the functioning of the justice systems is far more advanced than in other countries of the region, the criminal justice system in Trinidad and Tobago suffers from serious deficiencies. The court backlog is one of the chief challenges faced by justice users.

For 2011-2012, 11,627 domestic violence cases were filed before the Magistrates' Court which constitutes around 10 percent of the total number of matters before the Magistrates' Court for that year,⁵⁵¹ while 10,530 domestic violence cases were disposed of in the same year, meaning that there is a 0.91 disposed to file ratio applicable.⁵⁵² The judiciary's annual report indicates that at the level of the Court of Appeal, out of 18 matters based on the *Sexual Offences Act* in 2011-201, 12 took one to two years before being disposed of, four matters took between two to three years, and 2 took over six years.⁵⁵³ One needs to bear in mind that these periods of time apply for the proceedings before the Court of Appeal, and that the total of years a specific matter takes from the initial charges to final resolution will in all probability take twice as much or even more time.

Compared to other countries, the statistical data provided by the judiciary of Trinidad and Tobago is relatively detailed and well presented, yet it is regrettable that gender disaggregated and 'offence disaggregated' data is not readily available. A key measure of the criminal justice system's effectiveness in handling SGBV cases, which is lacking, is the number of cases that led to a conviction, acquittal, or dismissal of the case for lack of evidence.

One of the consequences of the existing backlog is that many SGBV cases end up being dismissed, for lack of evidence, as the victim and other witnesses may no longer be willing to testify before the court. Amnesty International thus reported that the conviction rate for sexual offences was only of 3 percent. This very low figure also results according to Amnesty International from the fear of intimidation by the victim, the lack of support services and the overwhelming distrust of the judicial system by the most vulnerable strands of the population.⁵⁵⁴ Another matter of concern is that the common law warning on corroboration, while no longer mandatory under Privy Council jurisprudence, is not strictly prohibited,

⁵⁵¹ Annual Report of the Judiciary of the Republic of Trinidad and Tobago 2011-2012, note 19 above, p. 111.

⁵⁵² *Ibid.*, p. 112.

⁵⁵³ *Ibid.*, p. 85.

⁵⁵⁴ See Human Rights Council Summary, note 12 above, para. 12.

notwithstanding the fact that corroboration will notoriously be difficult to achieve in sexual offences cases, which usually are committed in the absence of witnesses.

5.3.2. Domestic Violence in the Family Court and Magistracy

To qualify to seek relief under the *Domestic Violence Act*, the applicant must be either married or previously married to the abusive person; have lived with or is living with a person of the opposite sex as husband or wife although not legally married to that person; have been in a visiting relationship with a person of the opposite sex for a period exceeding twelve months; or be a member of the household.

The Magistrates' Court will grant the protection order on a balance of probabilities where it is satisfied that the respondent is engaging or has engaged in domestic violence against the applicant or is likely to engage in conduct that would constitute domestic violence. The court will consider the nature, history or pattern of violence and whether a previous protection order or interim order has been issued; the need to protect the applicant and any other person for whose benefit the protection order has been granted from further domestic violence; the welfare of any child; the accommodation needs of the applicant and any other person; the hardship that may be caused as a result of making of the order; the income, assets and financial obligations of the respondent, the applicant and any other person affected by the order; the need to preserve and protect the institution of marriage and other relationships whilst affording protection and assistance to the family as a unit.

The proceedings in respect of an application for a protection order shall be held *in camera* unless the Court directs otherwise. The Protection order may be issued for the period deemed necessary by the Judge but shall not exceed two years. The judges in the Magistrates' Court may also issue an interim order on a temporary basis until a ruling on the Protection order is issued, and where it appears necessary and appropriate in order to ensure the safety and protection of the applicant. The interim order may apply for a maximum of 21 days. In case the protection order has been breached, the police may detain and arrest that person without warrant. Importantly, although legal aid may be available in principle, the law also provides that the applicant does not need an attorney to file her application.

While the recently established Family Court is competent to hear domestic violence cases, an application for a protection order will only go before the Family Court if connected to other family proceedings. According to available data, domestic (violence) cases thus constitute only a relatively small proportion of the matters before the court, 237 over 2,955 cases between February and July 2012, and 145 over 2,476 from August 2011 to January 2012.⁵⁵⁵ If filed on its own, the matter will still be heard by the magistracy. This is unfortunate as it appears that the Family Court procedure is far more suitable to address these matters.⁵⁵⁶

One argument favouring the adjudication of domestic violence cases by the Family Court is that one of its aims was to ensure the disposal of cases in a timely manner. The Rules of the Court specifically provide that before the High Court, all matters filed before it must lead to first appearance before a judge within

⁵⁵⁵ *Ibid.*, p. 94.

⁵⁵⁶ 'National Gender Policy and Action Plan: Building Consensus, Shaping the Vision, Sector Study: Law and the Judicial System', note 14 above, p. 14.

eight weeks of filing, a standard which was reached in 77 percent of cases in 2011/2012. Before the Magistrates' Court, the applicable deadline is of six weeks, a standard complied with in 89 percent of cases in 2011/12.⁵⁵⁷

Given that the Family Court enjoys a modern system of data collection, it is surprising that it does not offer information on the outcomes of applications filed before it, and on the reasons for dismissal. A common view amongst stakeholders was that overall, women who would apply for protection/restraining orders would generally succeed, and that the system worked fairly well at the level of the Family Court. This was not a unanimous view, however, and other stakeholders felt that the family court was also ineffective in addressing these types of cases. The UN Women research project *Child Support, Poverty and Gender Equality in the Caribbean* found that despite improvements in the justice sector, particularly through the pilot Family Court, delays; low levels of awards; noncompliance with court orders; limited avenues for enforcement of court awards and limited legal representation continued to persist.⁵⁵⁸ Another issue of concern related to the level of privacy afforded to applicants in these matters, which may affect women's willingness to pursue their case.⁵⁵⁹ The study conducted for the purpose of the national gender policy noted in this respect that the situation is made worse due to the adversarial nature of the proceedings and the fact that many women have no legal representation.⁵⁶⁰

5.3.3. Services Provided by Civil Society Groups

The *Rape Crisis Society of Trinidad and Tobago* conducts educational campaigns and provides counseling to victims of sexual and domestic violence, as well as group therapy. It has undertaken several initiatives such as the setting up of a survivor's support group, individual and family counseling sessions, training in counseling, and outreach services on violence prevention and sexual and domestic abuse awareness. Over 3,000 persons benefited from these workshops in 2012.

Twelve centres have been created by civil society that receive subsidies from the state and which provide integrated and free services to the victims, survivors and their families.

One such centre is *The Shelter*, an emergency shelter for women and children who suffer from domestic abuse. Residents' length of stay varies according to their needs and on the recommendations of their assigned counselor. During this time they receive therapeutic counseling and are encouraged to acquire marketable skills. The Shelter has an Outreach Programme for non-residents, providing various medical, legal and training services necessary to help with the transition from victim to survivor to success, although it appears that legal services have been rarely used.

⁵⁵⁷ Annual Report of the Judiciary of the Republic of Trinidad and Tobago 2011-2012, note 19 above, p. 102.

⁵⁵⁸ UNIFEM, 'Child Support Poverty and Gender Equality: Policy Considerations for Reform', 2008 <http://www.unifemcar.org/Photos/CSP%20Policy%20Considerations%2017%20April%2008.pdf>

⁵⁵⁹ In the family court, cases are heard in the ordinary magistrates' courts where the names of the defendants are publicly announced.

⁵⁶⁰ 'National Gender Policy and Action Plan: Building Consensus, Shaping the Vision, Sector Study: Law and the Judicial System', note 14 above, p. 13.

Women Working for Social Progress is a woman's organization whose services include drop-in centres, counseling, schools for alternative education and remedial classes.

The *Trinidad and Tobago Coalition Against Domestic Violence* has a legal clinic once a month where volunteer attorneys will provide advice on protection orders, child custody and other matters related to domestic violence situations.⁵⁶¹

6. Availability and Effectiveness of Legal Aid Services

6.1. Legal Aid and Advisory Authority

Legal aid is primarily provided through the Legal Aid and Advisory Authority, which is an agency of the Ministry of Justice and is governed by the *Legal Aid and Advice Act*.

In practice, the authority is staffed by five officers for the whole country and legal aid is provided through a roster of attorneys who can be assigned to a case. One of the officers is actually available in the family services centre, where mediation and probation services are available under one roof. The attorneys are usually in private practice but will be paid for their service by the Authority out of the state subvention. The attorneys do not receive specialized training on sexual and gender based violence cases, however. It is clear for instance that in certain cases, certain social or counseling skills are important aside from purely legal and technical skills and that attorneys on the legal aid roster would benefit from specific training in this regard. Apparently, a direct referral system to counseling services used to exist but it is no longer in operation.

Legal aid may be provided in most areas of the law, including criminal and civil cases although in sexual offence cases, legal aid is usually provided to the defendant rather than the victim. In domestic violence cases, it will commonly be the Magistrate who will approve or deny aid at the first hearing of the case. Once provided, aid is completely free. In High Court civil matters, eligibility for legal aid is based on the applicant's means (disposable income and capital) as well as the merits of the matter, as laid out by the provisions of the *Legal Aid and Advice Act*.⁵⁶²

Another possible scenario is where a woman is referred to the Legal Aid Authority by other authorities or by NGOs and the legal officer will conduct an interview to determine eligibility. According to stakeholders, the problem may be that there is no sufficient awareness as yet on the availability of legal aid, and of its importance. Another concern is that the referral may take too long while it is known that in SGBV cases,

⁵⁶¹ <http://ttcadv.net/legal-clinic>

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http://www.gov.tt/gortt/portal/ttconnect!/ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os3jvQCMDU09LYwP_QANL A6MgT0NXA1NvY3dzY6B8JLJ8kLsbUN7V1NDDO8zYwMCAgO7g1Dz9cJCduFV5maLLY9oBkjfAARwN9P088nNT9Qtyly o8s0wUATAfrjo!/dl2/d1/LOIDU0IKSWdrbUEHIS9JRFJBQUlpQ2dBek15cXchL1ICSkoxTkExTkk1MC01RncvN19LUTIwN Uk5MzBHOVUxMDJSUUFON0pJM09FMC82Z1MzSjczMDAwMDEw/?WCM_PORTLET=PC_7_KQ205I930G9U102RQA N7JI3OEO_WCM&WCM_GLOBAL_CONTEXT=http://wcmprodhttp.ttconnect.gov.tt/gortt/wcm/connect/GorTT Web Content/ttconnect/citizen/role/apersonwithadisability/socialservices/legal+aid

a timely handling is essential. This may contribute, with other aforementioned factors to the frequency of recantation of statements by women and their decision not to proceed with the case.

It also bears noting that according to several stakeholders, one of the main problems in the provision of legal aid is not related as such to resources but to the lack of trust that women have in legal professionals, whose integrity is not held in high regard, and they view legal aid as second class representation.

6.2. Civil Society and Academic Initiatives

The *Coalition Against Domestic Violence* holds a legal clinic once a month, which allows victims to seek legal advice on a variety of legal issues.

7. Summary of Findings

Incidence and Causes of Domestic Violence

- Domestic violence is a serious problem in Trinidad and Tobago and the number of reported cases is on the increase. It is difficult to say, however, whether this increase reflects an increase in the incidence of domestic violence.
- The causes of domestic violence are relatively well known. Attitudinal issues, including ingrained discrimination and prejudice, which keep women in positions of subordination, are primarily responsible.
- Underreporting remains a serious problem. Factors include the aforementioned attitudinal issues, family pressures, and a general lack of trust in judicial authorities and in their ability to effectively tackle SGBV.

International and Domestic Legal Framework

- Trinidad and Tobago's legal framework is broadly adequate, with some provisions worth replicating, such as the strict obligation in the law of police officers to report cases of domestic violence.
- Implementation is difficult to gauge, however, primarily because of the absence of proper statistical information on the conviction rate in sexual offences cases and on the outcomes of application for protection orders.

Institutional Framework and Institutional Responses to Gender-Based Violence

- Government institutions, namely the Ministry of Youth, Gender and Development have sought to proactively address SGB by establishing the domestic violence hotline, an important initiative.
- It is regrettable, however, that the national plan elaborated in 2009 has not yet been adopted.
- The police's victims and witnesses unit seems to be at the forefront of efforts to address SGBV in an integrated manner and has produced a comprehensive tool on how to handle those cases.
- The efforts of the police cannot in and of it succeed, however, if the judiciary is not able to diligently process sexual and domestic violence cases. The structural problems suffered by the judiciary, in particular, the serious judicial backlog, and the low conviction rate in sexual offences

cases are particularly detrimental to SGBV victims and contribute to the ongoing impunity enjoyed by perpetrators.

- Service providers have no sufficient training on gender and how gender feeds into gender ideology.

Availability and Effectiveness of Legal Aid Services

- Legal aid is in principle available, particularly in domestic violence cases in civil proceedings.
- It is not clear whether women are sufficiently informed about the availability of legal aid before they apply for a protection order and it would be crucial to ensure that police officers, and other service providers who are in contact with a victim at the earliest stage provide that information.
- The attorneys who provide services under the legal aid scheme do not seem to receive specific training in this area, and may not be fully equipped to deal with an emotionally traumatized client.
- It appears that in many cases, legal aid will be provided at the first hearing before the court. It would be important to consider whether legal aid should not be made available from the very first contact with the police, so that advice could be provided at the earliest stage, to support the victim in seeking justice.

Recommendations for Programmatic Support and Technical Assistance

- Support may be contemplated to assist the government in developing capacity of the judiciary to collect and analyses gender-disaggregated data on the handling and processing of sexual offences and domestic violence cases, including the processing times, and conviction rates as a means to gather clear baseline data on the effectiveness of the justice system and on existing gaps in ensuring women's access to justice in SGBV cases.
- Support may be provided in the training of attorneys on gender and sexual violence.
- Consideration should be had on the innovations introduced by the Family Court and whether these, in particular the evaluations reports and the 'multi-door / one-shop court' could be applied to other parts of the judicial system.

CHAPTER 9 - CONCLUSIONS

The present study sought to assess existing needs for legal aid and assistance services for women victims of gender violence in five Caribbean countries, and make recommendations on programmatic strategies accordingly.

1. Common Causes – Deficient Responses

Some of the findings of the present study merely confirm previous academic and policy work on violence against women in the Caribbean. In all of the countries included in the study, and despite serious gaps that continue to exist in the collection and analysis of relevant data, the problem is endemic and systemic, the product for the most part of deep-seated cultural stereotypes and economic disenfranchisement.

In terms of responses, while there is some progress, particularly in view of the adoption of coordinated approaches through the elaboration of national plans on violence against women, and the creation of specialized services on domestic and/or sexual violence at the level of the police in all of the countries examined, major challenges remain.

One of the most daunting relates to the deficiencies of the criminal justice system, which in all of the five countries, mean that conviction rates for SGBV perpetrators remain extremely low while large numbers of cases have to be dismissed for lack of evidence. The large-scale impunity enjoyed by perpetrators is not only unacceptable as a matter of principle. It is also highly problematic, because, 'state inaction with regard to the proper functioning of the criminal justice system has particularly corrosive effects as impunity for acts of violence against women encourages further violence and reinforces women's subordination. Such inaction by the State to address the causes of violence against women constitutes lack of compliance with human rights obligations.'⁵⁶³ There is no doubt that in all of the countries under review, the need for justice reform has become urgent, and will prove critical to address gender violence.

2. Availability and Quality of Legal Aid: Does it Make a Difference?

Given the scale of the challenges in improving judicial responses to gender violence can legal aid make a difference? It obviously cannot do it singlehandedly; but it can play a critical role by reinforcing pressure against criminal justice professionals, including the police, prosecutors and judges, thereby ensuring greater diligence and effectiveness at each step of the procedure, from the reporting, to the investigation, prosecution and adjudication of the case. Additionally, most justice systems, including those of the countries studied herein, provide far better services to those justice users who have the means to afford a good attorney. In other words, rule of law interventions that exclusively focus on institutional strengthening may not suffice in enhancing the accountability of judicial institutions and the provision of legal aid by qualified professionals may constitute an important incentive and help guarantee compliance with the principles of due process and of equality before the law.

⁵⁶³ Secretary-General's Report on in-depth study of all forms of violence against women, para. 96.

2.1. Lack of Comprehensive and Integrated Legal Aid Services

In none of the countries under review is the state providing fully adequate legal aid and assistance services to SGBV victims. In countries with legal systems rooted in the common law tradition such as Belize, Jamaica, and Trinidad and Tobago, legal aid is usually not contemplated for victims in criminal proceedings, based on the assumption that the prosecution and police will represent the victim's interests. That said, legal advice is provided by specialized victims units created within the police in Jamaica and Trinidad and Tobago. Otherwise, *ad hoc* services of legal advice and assistance are offered primarily by civil society groups, but both the geographical reach and sustainability of these services are limited. Legal aid may, on the other hand, be in principle available in civil proceedings in domestic violence cases, but the fact remains that most state-funded legal aid schemes are primarily geared towards the representation of criminal defendants, and that attorneys may not be properly trained to handle sexual and gender violence cases on behalf of the victim. Furthermore, legal aid will not always be completely free. In Belize, Suriname and Trinidad and Tobago for instance, victims may have to pay reduced legal fees, which may in fact be too steep for most poor women.

Another common flaw of current approaches is the limited coordination and integration of services offered to SGBV victims. The only country where such an integrated and coordinated approach is more widespread is in fact in Haiti, through the work of women's groups. Although the 'one-stop-shop' approach should not be regarded as a panacea, it seems to have achieved impressive results in terms of the increase in reported cases at the very least. These approaches require close coordination amongst various services, including coordination between governmental agencies and institutions and civil society groups.

2.2. Identifying Benchmarks to Assess Legal Aid Services

As was noted in the chapter related to legal aid, the 2004 *Practice Note on Access to Justice* identifies some of the key elements to be considered in designing legal aid programmes. These elements (existence of demand; new litigation methodologies; use of paralegals; coordination; and sustainability) are also useful benchmarks to assess existing services of legal aid. Another set of criteria for consideration in assessing and comparing current legal aid services in the countries under study is provided in Guidelines 7 and 9 of the *UN Principles on Access to Legal Aid in Criminal Justice Systems*. The table below thus presents a matrix of whether the following combined criteria exist in each of the countries under review:

- Geographical and substantive scope of services offered (criminal and/or civil proceedings)
- Methodology adopted (specific tools and/or protocols; training for service providers)
- Coordination (proper coordination and integration between the various services; existence of NGO services)
- Sustainability (financially supported by the state or completely institutionalized)

| | Belize | Haiti | Jamaica | Suriname | Trinidad & Tobago |
|----------------------------------|--|---|--|--|--|
| Accessibility of Services | Legal Aid Centre situated in Belize City with limited capacity and geographical coverage. Although mandate covers both criminal and civil proceedings, in practice, services essentially geared towards the representation of criminal defendants and means test applies, reduced legal fees remain too costly for many women. Legal advice outside of actual proceedings is not provided. | Legal assistance is crucial from the early stages, due to the significance of a medical certificate as evidence of violence. State-funded legal aid provided only in Port-au-Prince and primarily geared towards criminal defense. Integrated Advice and representation of victims of gender violence primarily offered by grass roots and women's groups throughout the country. | Legal advice is provided to victims in criminal proceedings by CISOCA in sexual offences cases and in all criminal cases by the VSU. In civil proceedings, Legal Aid Clinics may provide legal aid but means test applies for eligibility. | Legal aid and advice provided by Bureau of Victim Support and NGO. Bureau for Legal Aid does not provide assistance in domestic violence cases as such. Geographical coverage limited in spite of important needs in the rural interior, although NGO has a mobile legal aid clinic. | Legal advice provided through the Domestic Violence Hotline of the Gender Division and the Victims and Witnesses Support Unit. Legal Aid and Advisory Authority offers legal aid in criminal and civil proceedings but means test applies before the High Court in civil cases, while criminal legal is usually provided to the defendant. |
| Methodology | Women's Department developed a protocol on domestic violence and sexual violence cases for the police. | Training of the police has been provided by MINUSTAH and UNDP. No specific protocols or other tools exist for state responders on SGBV but training provided for in 2012-2016 National Plan on GV. | Integrated approaches through 'one-stop-shop' have not been really tested although CISCOCA and the VSU offer some level of integration. Legal aid providers do not receive specific training on SGBV cases. Legal aid in civil cases essentially provided by Legal Aid Clinics, which receive, only limited subsidy from the Legal | Training of police officers has been provided and a brochure prepared but no specialized unit and no follow up of cases. UNDP has supported campaign to inform public about legal aid services. | No training provided for attorneys providing representation through the Legal and Advisory Authority. Lack of information and awareness by women of the availability of legal aid and often not available before first hearing in court. |
| Coordination | Civil society relatively limited, but overall good coordination by the Women's Department. Integrated 'one-stop-shop' pilot programme implemented by NGO with external funding proved successful but stopped due | <i>Concertation nationale sur les violences faites aux femmes</i> offers an excellent model of coordination between state entities, civil society and international actors | Poor coordination between the BWA and civil society groups overall and conflictive relations hamper efforts to address SGBV in coordinated fashion. A National Strategic Plan has been prepared but not yet adopted. | No national plan on SGBV as such but integration efforts by the National Bureau for Gender Policy | National plan not yet adopted, but otherwise coordination between civil society and government seems to be adequate. |
| Sustainability | Lack of sustainability of civil society efforts. Legal Aid Centre received support from UNDP but resources are extremely limited. | Civil society efforts suffer from lack of sustainability and depend on the vagaries of international funding. | BWA has limited resources and many plans and initiatives have not been implemented. | Limited capacity in terms of the number of legal professionals | Government services seem to have adequate resources. NGOs have far more limited means. |

From the matrix above, the following good practices and recommendations may be identified:

- ***Integrated approaches and Coordination:*** as noted throughout the study, integrated strategies that include psychosocial, legal, medical, skills training services are regarded as a particularly effective model to respond to situations of gender violence. While it may not always be possible to create such services for lack of capacity and/or funds, effective coordination between the various government services (police, judiciary, social services) and civil society groups that operate shelters, provide medical care, and legal advice and information should be a critical starting point. Efforts towards enhanced coordination should therefore be a priority.

- ***Reaching the Victims:***

Early enough. In all of the countries examined, intervention to provide legal support and advice to the victim is absolutely essential from the very outset, that is, from the moment the victim takes the initiative to report an incident to the police. This might help prevent the frequent recantations by women who are often too fearful to proceed with the case. It would also help monitor police reporting and investigative functions, which in all of the countries studied herein, remains broadly inadequate due to entrenched cultural factors but also lack of capacity. In most cases, legal aid and advice, when available is often provided too late. The establishment of police units specialized in the investigation of gender violence offences, such as in Jamaica and Trinidad and Tobago, may constitute a valuable model to rectify the situation, provided it is staffed with properly trained personnel that are able to provide sound legal advice or to direct victims to such services. Also, the creation of a domestic violence hotline may help address the problem of underreporting which is extremely common in gender violence cases.

Throughout the country. Gender violence, in particular domestic violence, is not a phenomenon that is limited to urban areas; it is also a serious problem in rural areas, where women have a particularly difficult time accessing police, judicial and other services. Jamaica, for instance, does not have any shelter outside of Kingston. In both Haiti and Trinidad and Tobago, women's grass roots groups as well as religious groups play an important role in supporting victims. Further efforts should be undertaken to support these initiatives and identify ways to create coordination mechanisms with state services.

Affordable and available, as applicable in both family/civil and criminal proceedings. One of the legal hurdles facing the provision of legal aid is that in common law countries (i.e. in Belize, Jamaica and Trinidad and Tobago), legal aid is essentially conceived to ensure the legal representation of accused persons, while the prosecution will 'represent' the victim. Most legal aid services thus primarily focus on criminal proceedings and the representation of the accused. Where legal aid is available in family and/or civil proceedings, it is usually not completely free and aid is provided on the basis of a means-test. In some instances, the legal fees, albeit reduced, remain too prohibitive for women. It is essential therefore to review current approaches to ensure affordable, and where applicable, free legal aid to victims of gender violence.

- ***Capacity and Sustainability.*** One of the major challenges in all of the countries included in this report, relates to capacity and sustainability. In terms of capacity, adequate training of all the justice professionals, including police officers, bailiffs, law clerks, judges, prosecutors, and attorneys and other legal professionals providing legal aid on gender violence remains needed. The production of protocols or other clear and concise guidance tools, such as those produced by the Women's Department of Belize for the police, may help establish standardize procedures in handling gender violence cases. The importance

of coordination between civil society and state services may also prove crucial. Civil society services may help both in terms of capacity-building and training, while the involvement of state services may contribute to enhanced sustainability of civil society initiatives.

3. Regional Engagement on Legal Aid for Victims of Gender Violence

Each of the country chapters offers some more specific recommendations on the ways in which UNDP could engage on these issues at national level. However, given the regional scope of the problem and the limited capacity of each state, regional approaches and strategies, to be undertaken, as applicable, with other UN system and/or regional partners, could also be highly valuable in seeking to address the scourge of gender violence by improving legal aid and advice responses.

A number of areas lend themselves well to regional endeavours. Beyond the narrow focus of legal aid, the cultural and social norms that seem commonly shared by countries in the region and have a clear impact on the response to gender violence could be an important area of intervention. In particular, the issue of 'masculinity' in the Caribbean must be addressed to fully understand gender relations and violence in the region. At the normative level, any advocacy regarding the ratification of the Optional Protocol to CEDAW and the recognition of the Inter-American Court's jurisdiction (as regards Belize, Jamaica and Trinidad and Tobago) could also be contemplated as a means to improve accountability and compliance with human rights standards. At a more specific level, the production of specific tools for service providers on the handling of gender violence cases, on the implementation of integrated approaches, and on training of legal aid providers on domestic and sexual violence cases could be supported in partnership with other agencies and regional organizations, where applicable.

ANNEX I - List of Stakeholders Interviewed

Belize (mission conducted from 21 to 25 January 2013)

| | |
|------------------------|--|
| Ms. Andrewin | Ministry of Health – Epidemiology Unit |
| Mr. Nigel Hawke | Office of the Solicitor General |
| Ms. Margaret Nicholas | Family Court |
| Sergent Reese | Domestic Violence Unit (Police) |
| Ms. Sherilyn Vidal | Director of Public Prosecutions |
| Cynthia Williams | Women’s Department |
| Mr. Andrew Marshalleck | Bar Association of Belize |
| Ms. Cain | Youth Enhancement Services |
| Ms. Mindy Pratt | Programme Coordinator – Haven House |
| Ms. Carolyn Reynolds | Women’s Issues Network |
| Ms. Ana Silva | Mary Open Doors |
| Ms. Erica Goldson | UNFPA |

Haiti (mission conducted from 25 to 29 March 2013)

| | |
|---|---|
| M. Pierre-Antoine Archange, Chef d’Unité Gouvernance | UNDP |
| M. Mamadou Alioune Drame, Officier Principal, Affaires Judiciaires, État de Droit | UNDP |
| M. Brice Bussiere, Chef de Projet, État de Droit | UNDP |
| Mme. Anne Fuller, Chef Ajointe, Section Droits de l’Homme | HCDH - MINUSTAH |
| Ms. Bethie Casty, Gender Focal Point, Justice Section | MINUSTAH |
| Mr. Jean Michel Raymond, Doyen | First Instance Tribunal |
| M. Dabrezil (représentant M. Lucmane Delille) | Prosecutions of the First Instance Tribunal |
| Officiers Responsables Chargés du Genre, Commissariat de Port-au-Prince | PNH (Haitian National Police) |
| Ms. Islande Cadet | ONU Femmes |
| Mme. Mona Jean, Directrice des Affaires Judiciaires | MCFDF (Ministry of Women’s Status and Women’s Rights) |
| Ms. Baudouine Kamatari, Senior Gender Advisor, Gender Unit | MINUSTAH |

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| M. Jacques Paul Bossico, Directeur des Affaires Judiciaires Mme Urlande Polycarpe, Inspectrice Judiciaire, | Ministry of Justice and Public Security |
| Dr. Marjorie Joseph | URAMEL |
| Mr. Max Rovelson and Ms. Colas Jocelyne | Commission épiscopale Justice et PAix (JILAP) |
| Ms. Nicole Magloire | National Coordination on Violence Against Women (Concertation nationale contre les violences faites aux femmes) |
| Debriefing avec Maureen Mayne et Atsuko Hirakawa | UNDP |
| Debriefing with Ms. Sophie De Caen, Director | UNDP |
| Ms. Charline Guillaume, Responsable de l'OFC | Organisation Femmes de Charet (OFC), Centre d'Ecoute pour les femmes victimes de violence, Saint Marc, Artibonite |

Jamaica (mission conducted from 15 to 17 July 2013)

| | |
|-------------------------|---|
| Ms. Dundeen Ferguson | Women Inc. |
| Dr. Carolyn Gomes | Executive Director – Jamaicans for Justice |
| Ms. Joan Grant Cummings | Women's Resource and Outreach Centre |
| Ms. Taitu Heron | Institute for Gender and Development Studies, University of the West Indies, Mona, Jamaica |
| Ms. Patrice La Fleur | UNFPA Jamaica Office |
| Major Moore | Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA) |
| Ms. Zaila McCalla | Chief Justice – Supreme Court of Jamaica |
| Mr. Kent Pantry | Executive Director University of Technology Legal Advice Centre |
| Ms. Robinson | Bureau of Women's Affairs |
| Ms. Zoe Simpson | Executive Director Women's Centre of Jamaica Foundation - |
| Ms. Violet Sutherland | Institute for Gender and Development Studies, University of the West Indies, Mona, Jamaica |

Suriname (mission conducted from 23 to 26 January 2013)

| | |
|--|---|
| Ms. Judith Brielle | Representative, UNFPA |
| Ms. Margo Bean | Foundation Stop Violence Against Women |
| Mrs. Henna Guicherit and Mrs. Hanna Bakboord | Women's Rights Center |
| Mrs. Naipal | Bureau for Victim Care (Ministry of Justice and Police) |

| | |
|----------------------|--|
| | |
| Ms. Yvonne Towikromo | National Bureau for Gender Policy (Ministry of Home Affairs) |
| Ms. Nadiah van Dijk | Foundation Ilse Henar Bureau for Legal Aid for Women |

Trinidad and Tobago (mission conducted from 29 to 31 July 2013)

| | |
|--|--|
| Ms. Arneaut | Legal Aid and Advisory Authority |
| Mr. Inglefield and Ms. Ria Bernard | The Shelter for Battered Women and Children |
| Mrs. Jones | Love Until Foundation |
| Ms. Mary Mohan | Childline |
| Ms. Tisha Nickenig | Research Project Coordinator, Institute for Gender and Development Studies |
| Ms. Gaietry Pargass (interview by telephone) | Legal Consultant, Ministry of Gender, Youth and Child Development |
| Ms. Ayana Scoon Ms. Hart Ms. Nathalie Robinson Ms. Patrice Lawrence | Ministry of Gender Affairs |
| Ms. Margaret Sampson-Browne | Manager, Victim and Witness Support Unit of the Trinidad and Tobago Police Service |

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