



IMPROVED ACCESS
TO JUSTICE IN THE
CARIBBEAN

Funded by the
Government
of Canada

Canada

IMPACT JUSTICE PROTOCOL SERIES:

Working with Persons with Disabilities in the Eastern
Caribbean Justice System



**No. 3: Protocols for Judicial Officers:
International Standards and Best Practices**

2018

© Government of Canada

No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the IMPACT Justice Project, CARICOM Research Building, UWI, Cave Hill Campus, Barbados. Such written permission must be obtained before any part of this publication is stored in a retrieval system of any nature.

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

Table of Contents

| | |
|---|----|
| PREFACE | 4 |
| ASSESSMENT | 12 |
| ATTITUDES AND PERCEPTIONS | 13 |
| LEGAL REPRESENTATION | 18 |
| RIGHT TO BE HEARD..... | 19 |
| ACCESS AND SPECIAL MEASURES | 20 |
| PRIVACY AND CONFIDENTIALITY | 23 |
| COUNSELLING AND RELATED FORMS OF SUPPORT AND ASSISTANCE... | 24 |
| REHABILITATION AND REINTEGRATION | 25 |
| TRAINING, AWARENESS-RAISING AND STAKEHOLDER COLLABORATION | 27 |



PREFACE

The UN Convention on the Rights of Persons with Disabilities and related international instruments, standards and best practices explicitly recognises persons with disabilities as a distinct class of persons who, by reason of their historical status of being marginalised and discriminated against, are in need of specialised support and assistance, commensurate with their respective needs and interests. Although international law does not excuse criminal behaviour, if engaged in by persons with disabilities, it nonetheless recognises that these persons, irrespective of whether they are in need of care and protection or are in conflict with the law, must be provided with appropriate access to various support services.

The Convention envisages a fair system of justice in which the following would obtain:

- comprehensive assessments of persons with disabilities must necessarily be carried out by trained practitioners at the earliest possible opportunity in order to determine the nature of any disability exhibited and the individual needs of the person concerned;
- persons with disabilities must be treated in a non-discriminatory manner in all decisions that touch and concern them;
- prompt, proactive and efficient investigations must be carried out in relation to identifying abuse sustained by persons with disabilities, and practitioners working in the justice system with persons with disabilities must mandatorily report any harm sustained by these persons;
- persons with disabilities should be free to voice their views and concerns in an atmosphere that respects their wills and preferences;

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

- persons with disabilities are entitled to specialised access to justice through, among other things, the provision of appropriate modes of communication and the reconfiguration of institutions of justice to better accommodate these persons;
- persons with disabilities are entitled to legal representation of the highest quality, and, where they have not retained counsel, appropriate advice and legal aid should be afforded them;
- persons with disabilities, wherever the need arises, should benefit from counselling and medical and psychological assistance on an equal footing with non-disabled persons;
- to the greatest extent possible, the privacy of persons with disabilities should be respected by all stakeholders in the justice system, and any relevant information about these persons should only be disclosed on a need to know basis in circumstances where such disclosure is necessary and proportionate;
- persons with disabilities are entitled to benefit from rehabilitative and reintegration services so as to enable them to become better citizens after coming into contact with the justice system; and
- training, awareness raising, stakeholder collaboration and data collection are essential to the effective delivery of justice to persons with disabilities.

IMPACT Justice recognises that although these values are foundational to any fair and efficient justice system, they have not always been observed by practitioners who work with persons with disabilities within the context of the justice system in the Eastern Caribbean. To this end, and, having regard to the now axiomatic need for harmonisation of policies and practices with regard to the protection of the rights of persons with disabilities who come into contact with the justice system in the Eastern Caribbean, these protocols have been drafted in keeping with



***IMPACT Justice Protocol Series:
International Standards and Best Practices 2018***

international standards and best practices, in particular those emanating from:

- *The United Nations Convention on the Rights of Persons with Disabilities (adopted by the General Assembly in 2006)*
- *The UN Declaration on the Rights of Disabled Person (adopted by the General Assembly in 1975);*
- *The UN World Programme of Action concerning Disabled Persons (adopted by the General Assembly in 1982);*
- *The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (adopted the General Assembly in 1993);*
- *The ILO Recommendation concerning Vocational Rehabilitation of the Disabled (adopted by the ILO, 1955;) and*
- *various international treaties, including the UN Convention on the Rights of the Child.*

The *Protocols for Practitioners Working with Persons with Disabilities in the Eastern Caribbean Justice System*. are a series of guidelines comprising specific instructions, consistent with international best practices and standards, designed to guide and regulate the interactions between persons with disabilities who come into contact with the justice system in the Eastern Caribbean and the following stakeholders:

- Defence Counsel (Booklet No. 1)
- Education Officers (Booklet No. 2)
- Judicial Officers (Booklet No. 3)
- The Police (Booklet No. 4)
- Prosecutors (Booklet No. 5)
- Social Workers, Probation Officers and Childcare Board Officers (Booklet No. 6)



No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

- Staff at detention centres/residential facilities (Booklet No. 7); and
- Staff employed at NGOs that work with children (Booklet No. 8).

The Protocols represent an ongoing commitment by IMPACT Justice to engender the principles of integrity, excellence, accountability and professionalism in dealings with persons with disabilities who come into contact with the justice system.

Although the Protocols do not have the force of law, in order for them to be effective, all stakeholders should endeavour to do their utmost to adhere to the guidelines and directions prescribed therein, as, such adherence will help to ensure that the delivery of justice to persons with disabilities in the Eastern Caribbean is efficient, objective and fair.

Finally, to remain relevant, the Protocols must remain current. In this regard, they should not be regarded as fixed in time, but rather, should be treated as living documents: perpetual works in progress. To this end, the Protocols should be subject to continuous review and, in collaboration with relevant stakeholders, should be updated as necessary, as new issues and challenges invariably require new policies or revisions to existing ones. All practitioners working with persons with disabilities in the justice system should be conscious of this, and are encouraged to suggest changes where policies are unclear or out-dated.

IMPACT Justice is pleased to introduce this series: *Protocols for Practitioners Working with Persons with Disabilities in the Eastern Caribbean Justice System*. Another series, for practitioners working with children, will also be published. IMPACT Justice trusts that the protocols in the two series will be an invaluable resource for all stakeholders.

***IMPACT Justice Protocol Series:
International Standards and Best Practices 2018***

As the Regional Director of IMPACT Justice, I thank the Government of Canada for funding the series, and Dr. Jason Haynes, attorney-at-law, for conducting the necessary desk research, interviews in the OECS and preparing the booklets.

Velma Newton (Prof.)
Regional Project Director
IMPACT Justice
Caribbean Law Institute Centre
Faculty of Law
UWI, Cave Hill Campus
Barbados

August 2018



IMPROVED ACCESS
TO JUSTICE IN THE
CARIBBEAN

Funded by the
Government
of Canada

Canada

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

GENERAL FINDINGS

An empirical research project was conducted which involved interviews with one hundred and seven (107) stakeholders across the seven Eastern States of Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines. The following conclusions were made with respect to the treatment of persons with disabilities in the Eastern Caribbean justice system:

- there is, at present, a relative dearth of data/information on persons with disabilities who come into contact with the justice system in all of the States examined by the research project;
- there is some degree of uncertainty on the part of persons with disabilities, and third parties, regarding what constitutes a crime against these persons, and when reporting of an incident should take place. Lack of trust and fear by people with disabilities of the criminal justice system as well as being ‘shut in’ within the context of families and communities impede the adequate reporting of abuse against persons with disabilities;
- negative perceptions and stereotypical views held by some professionals in the justice system with respect to persons with disabilities, and particularly persons with intellectual disabilities, often lead to reports of crimes against these persons not being taken seriously;
- the relative lack of disability awareness and training amongst professionals working in the justice system often leads to a failure to correctly identify people with disabilities as vulnerable complainants, witnesses or defendants, and this often impedes the provision of appropriate support to these persons;

***IMPACT Justice Protocol Series:
International Standards and Best Practices 2018***

- the provision of legal representation to persons with disabilities, though it has gotten better in recent years, continues to pose ongoing challenges in the sub-region in the absence of structured systems of legal aid provision;
- the general lack of accessible police stations, courts, social services departments and other public institutions of justice often impedes the extent to which persons with disabilities are able to access justice on an equal footing with non-disabled persons; and
- access to information and modern modes of communication remains a serious challenge for a number of persons with disabilities who come into contact with the justice system in the Eastern Caribbean.

The following are general recommendations for improving access to justice by persons with disabilities in the Eastern Caribbean:

- there is a need for early identification/assessment in respect of persons with disabilities who come into contact with the justice system so that appropriate support and assistance provided, if necessary;
- professionals working in the justice system should be frequently trained on various disability related issues so that they are better able to identify different types of disabilities and recognise when appropriate support systems need to be put in place;
- there is a need to enhance the provision of accessible information for people with disabilities regarding the process of reporting a crime and the nature of the justice system more generally;
- there is a need to make institutions of justice more accessible to persons with disabilities, through the installing of ramps and lifts, as well as the provision of various forms of communication in accessible formats, including Braille, sign language, tactile, Easy



No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

Read formats and alternative and augmentative modes of communication;

- special measures should be more effectively utilised in practice;
- there is a greater need for pre-trial court orientation sessions to better familiarise persons with disabilities with the court's environment, language, personnel and processes; and
- there is a need for greater communication and coordination between all professionals in the justice system so that persons with disabilities are afforded the best support possible.

PROTOCOLS FOR JUDICIAL OFFICERS

FORMAL POLICY AND PROCEDURES

ASSESSMENT

International law places an obligation on States to ensure that persons with disabilities who come into contact with the justice system are properly identified and assessed, so that appropriate forms of early intervention and reasonable accommodation can be provided at the earliest possible opportunity so as to enable these persons to fully participate in any ensuing legal proceedings (**Articles 12 and 13 of the Convention on the Rights of Persons with Disabilities**). The importance of early and accurate assessment of persons with disabilities lies in the fact that it creates an opportunity, from the very outset, for the specific difficulties that these persons face to be identified and for an individualised care plan to be developed to assist these persons, not only in terms of access to physical facilities, but also to communication and support services. It also provides a basis for determining the capacity of these persons so that diversion and rehabilitative services could be provided, consistent with their needs and will and preferences. This

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

sentiment was expressed by the Committee on the Rights of Persons with Disabilities in its recent Guidelines on Article 14 of the Convention¹.

SPECIFIC GUIDELINES

The judicial officer should:

- enquire, at the earliest opportunity, about the person’s age, family and social background and any special needs that he or she might have, having regard to any disability which may impact on the person’s ability to fully participate in legal proceedings. Disability-sensitive language should be used when making enquiries into the individual circumstances of the person;
- direct that a comprehensive assessment be carried out by a suitably trained practitioner in respect of the person with a disability. This assessment should clearly identify not only the immediate and long term needs of the person, but also indicate the extent to which the person’s disability impacts upon his or her decision-making capacity; and
- refer the person to competent agencies and personnel so that he or she can receive the assistance contemplated by the assessment report.

ATTITUDES AND PERCEPTIONS

States are obliged to adopt immediate, effective and appropriate measures to “combat stereotypes, prejudices and harmful practices relating to persons with disabilities” who come into contact with the

¹ Committee on the Rights of Persons with Disabilities, ‘Guidelines on article 14: The right to liberty and security of persons with disabilities, Adopted during the Committee’s 14 session, September 2015

**IMPACT Justice Protocol Series:
International Standards and Best Practices 2018**

justice system, whilst simultaneously promoting “positive perceptions and greater social awareness” towards these persons (**Article 8 of the Convention on the Rights of Persons with Disabilities**). The Committee on the Rights of Persons with Disabilities, in its recent General Comment on the Right to Independent Living, has reaffirmed the importance of States taking this obligation seriously in practice,² as a failure to ensure full compliance may have grave negative externalities, including improper assessment of persons with disabilities; inadequate provision of social services and specialised modes of communication; secondary victimisation; *de jure* and *de facto* discrimination; and a failure to make reasonable accommodation for persons with disabilities who come into contact with the justice system.

A person’s level of support needs, especially where these are high, should not be a barrier to obtaining support in decision-making. All forms of support in the exercise of legal capacity, including more intensive forms of support, must be based on the will and preference of the person, not on what is perceived as being in his or her objective best interests. A person’s mode of communication must not be a barrier to obtaining support in decision-making, even where this communication is non-conventional, or understood by very few people.³

States have an obligation to recognise and assist persons chosen by persons with disabilities as their supporter, especially if the disabled persons are isolated and may not have access to naturally occurring support in the community. This must include a mechanism for third

²Committee on the Rights of Persons with Disabilities, Eighteenth session 14-31 August 2017, ‘General comments General comment on article 19: Living independently and being included in the community’, CRPD/C/18/1, 29 August 2017, paras. 5 and 15(f)

³ CRPD/C/GC/1 paragraphs 26-29

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

parties to verify the identity of a support person as well as a mechanism for third parties to challenge the action of a support person if they believe that the support person is not acting in accordance with the will and preferences of the person concerned. In order to comply with the requirement, set out in article 12, paragraph 3, of the Convention, for States parties to take measures to “provide access” to the support required, States parties must ensure that support is available at nominal or no cost to persons with disabilities and that lack of financial resources is not a barrier to accessing support in the exercise of legal capacity.⁴

The person must have the right to refuse support and terminate or change the support relationship at any time. The provision of support to exercise legal capacity should not hinge on mental capacity assessments; new, non-discriminatory indicators of support needs are required in the provision of support to exercise legal capacity.⁵

It is important that support mechanisms respect the “wills, preferences and rights” of the person with a disability. Known as “supported decision making”, this is an emerging principle in international law. It is in contrast to “substituted decision making” where a decision maker makes a determination “in the best interest” of the person with a disability. It has now been recognised that while the “best interest” principle is suitable for children, it is not appropriate in relation to adults except in extraordinary circumstances.⁶

⁴ CRPD/C/GC/I paragraphs 26-29

⁵ General Comment 1, paragraphs 26-29

⁶ See “Equality, Capacity and Disability in Commonwealth Laws” (Australia Law Reform Commission Report 124), November 24, 2014, accessed via <https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>

**IMPACT Justice Protocol Series:
International Standards and Best Practices 2018**

In assisting a person who requires decision-making support to make decisions, a person chosen by them as supporter must support the person to express their will and preferences; and assist the person to develop their own decision-making ability. In communicating will and preferences, a person is entitled to communicate by any means that enable them to be understood, and have their cultural and linguistic circumstances recognised and respected.⁷

SPECIFIC GUIDELINES

The judicial officer should seek to:

- explain to the person in a disability-sensitive manner the nature of the legal proceedings in relation to which he or she is involved as a party;
- explain to the person how he or she may participate in the legal proceedings;
- give the person an opportunity, depending on the findings of the assessment report and the rules of evidence, to express his or her views and concerns in an atmosphere that respects his or her will and preferences;
- explain to the person with a disability that he or she has a right to call a caregiver or support person.
- order that appropriate aids to communication be provided to a person with a disability who is unable to, on his or her own, advance his or her views when being questioned.
- explain to the caregiver or support person of the person with a disability, if any, how they can effectively support the person's

⁷ Ibid, Chapter 3: <https://www.alrc.gov.au/publications/will-preferences-and-rights>

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

participation in legal proceedings, and the limits beyond which their participation will be curtailed;

- give the caregiver or support person of the person with a disability the opportunity to participate in legal proceedings through not only allowing them to attend any court hearings, but also through allowing them to express the views and concerns advanced by a person with a disability who is unable to do so on his or her own volition;
- explain to the person with a disability and/or his or her caregiver or support person all relevant details regarding the court's procedures, environment, personnel and language;
- order that a tour of the court room be provided before the matter starts;
- afford the person with a disability and/or his or her caregiver or support person the opportunity to ask questions regarding the manner in which proceedings would be conducted;
- avoid using anachronistic language in reference to a person with a disability and instead use disability-sensitive/inclusive language;
- be sensitive to the concerns of persons with disabilities, and avoid using any language or gestures that could be construed as discriminatory; and
- expedite the hearing of all matters involving persons with disabilities.

Examples of Inclusive Language

| Instead of ... | Use ... |
|--|--|
| The handicapped, the disabled, crippled, invalid | Disabled people, persons with disabilities |
| Suffers from ... | Has ... |

**IMPACT Justice Protocol Series:
International Standards and Best Practices 2018**

| | |
|--------------------------------|--------------------------------------|
| Mad, mental | Person with mental health condition |
| Mentally handicapped, retarded | Person with learning disability |
| Deaf and dumb, deaf mute | Deaf, person with hearing impairment |

LEGAL REPRESENTATION

Article 13 of the Convention on the Rights of Persons with Disabilities places an obligation on States to ensure effective access to justice by persons with disabilities on an equal basis with others, including the provision of procedural and age-appropriate accommodations, such as legal representation. This obligation is aimed at facilitating the effective role of persons with disabilities as participants in the justice system, including as defendants in legal proceedings, from the investigative stage to the conclusion of these proceedings. This provision necessitates that States not only provide the necessary incentives for members of the private bar to assist persons with disabilities who are in conflict with the law, but also to develop a system of legal aid provision commensurate with the individual circumstances of persons with disabilities who might otherwise not be in a position to afford to obtain legal representation on their own volition.

SPECIFIC GUIDELINES

The judicial officer should seek to:

- enquire, at the earliest possible opportunity, into whether the person with a disability has received adequate legal advice, and whether he or she is being represented in ongoing proceedings by counsel;

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

- remind counsel of the importance of providing persons with disabilities who are in conflict with the law with the highest quality of legal representation; and
- implore counsel, both at the private bar and at the relevant legal aid authority, to provide accused persons with disabilities with legal representation, should they not have the resources to retain counsel.

RIGHT TO BE HEARD

States are under an obligation to take all appropriate measures to ensure that persons with disabilities as well as institutions and individuals advocating for and on their behalf can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas through all forms of communication (**Article 21 of the Convention on the Rights of Persons with Disabilities**). The importance of this right cannot be overstated, since it is the gateway to persons with disabilities fully expressing their wills and preferences, and provides an avenue through which these individuals could communicate and challenge decisions that touch and concern their lives in the context of the justice system.

SPECIFIC GUIDELINES

The judicial officer should seek to:

- assist and encourage a person with a disability and/or his or her caregiver or support person the fullest opportunity to express his or her views and concerns, to the extent that the rules of evidence allow;

**IMPACT Justice Protocol Series:
International Standards and Best Practices 2018**

- direct that appropriate communication assistance be provided to a person with a disability who is unable to, on his or her own, advance his or her views in the context of any legal proceedings;
- allow representatives of NGOs who represent persons with disabilities to fully advocate for and on behalf of persons with disabilities, to the extent that the rules of evidence allow, without subjecting them to unnecessary restrictions. Any restrictions imposed in this regard must be rationally connected to a public interest aim and must be proportionate; and
- recommend to relevant agencies and stakeholders that ramps, lifts, disability-friendly bathrooms and similar type facilities be installed to assist persons with disabilities gaining access to the court and other relevant buildings on equal basis with others.

ACCESS AND SPECIAL MEASURES

To enable persons with disabilities to fully participate in all aspects of the justice system, States are under an obligation to take appropriate measures to provide to these persons access, on an equal basis with others, to various public institutions, including police stations, prosecuting departments, courts and other related facilities (**Article 9 of the Convention on the Rights of Persons with Disabilities**).

Article 13 of the Convention on the Rights of Persons with Disabilities obliges States to ensure that persons with disabilities are afforded “procedural and age-appropriate accommodations”, which has been interpreted to include the provision of special measures, in suitable circumstances, so as to enable their effective participation in legal proceedings. The spirit and context of this provision necessitate that States provide appropriate information and communications technologies, including public signage in Braille; live assistance and

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

intermediaries, such as guides, readers and professional sign language interpreters, voice recognition and the Internet to persons with disabilities who come into contact with the justice system.

In this context, the Committee on the Rights of Persons with Disabilities has recently pointed out in General comment No. 2 that, “accessibility is indeed a vital precondition for persons with disabilities to participate fully and equally in society and enjoy effectively all their human rights and fundamental freedoms”,⁸ a view which was earlier affirmed by the said Committee in the case of *Nyusti and Takács v. Hungary*, when it noted that, “all services open or provided to the public must be fully accessible to persons with disabilities in accordance with the provisions of article 9 of the Convention.”⁹

SPECIFIC GUIDELINES

The judicial officer should seek to:

- reconfigure the court room in a manner which would allow persons with disabilities to achieve their best evidence;
- designate a particular area of the court room, which is suitably appointed and configured, to accommodate persons with disabilities who are awaiting the hearing of their matters;
- direct that the relevant agencies and stakeholders reconfigure detention centres/residential facilities so as to better accommodate persons with disabilities, and enable their successful rehabilitation;

⁸Committee on the Rights of Persons with Disabilities, ‘Eleventh session 31 March–11 April 2014 General comment No. 2 (2014) Article 9: Accessibility’, CRPD/C/GC/2, 22 May 2014, para. 12.

⁹(communication No. 1/2010, Views adopted on 16 April 2013)

***IMPACT Justice Protocol Series:
International Standards and Best Practices 2018***

- direct that appropriate communication aids, such as Braille, live assistance and intermediaries, such as guides, readers and professional sign language interpreters and voice recognition be provided to persons with disabilities so as to enable their full participation in legal proceedings;
- schedule matters involving persons with disabilities at times and places which allow these persons the opportunity to fully participate in legal proceedings;
- closely monitor the examination, and, in particular cross-examination, of the person with a disability in order to protect him or her from harassment or intimidation;
- ensure that the language used within the context of court proceedings is disability-sensitive;
- favour a disability-friendly atmosphere for the hearing of matters involving persons with disabilities by, for example, communicating in a manner which enables these persons to fully understand what is being said;
- limit, in appropriate circumstances, the duration of the person's stay in court or the number of questions put to him or her;
- order that rest breaks be taken by the person with a disability at regular intervals;
- monitor the appearance of the person with a disability to ensure that he or she is not unduly tired, distressed or otherwise suffering undue discomfort;
- order, where appropriate, the use of live links;
- order, where appropriate, the recording of a person's initial statements so that the recording could be used in subsequent proceedings;
- allow the person's voice to be subject to modulation;
- order that the matter be heard in camera;



No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

- order, where appropriate, that the person's testimony be given in a closed session; and
- prohibit direct cross-examination of children with disabilities who are victims or witnesses by an accused who is not legally represented and, where necessary, assign a representative to the accused for the sole purpose of the child's cross-examination.

PRIVACY AND CONFIDENTIALITY

Article 22 of the Convention on the Rights of Persons with Disabilities obliges States to ensure that persons with disabilities are not subject to arbitrary or unlawful interference with their privacy, and further makes it clear that States are under an obligation to protect the confidential nature of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

SPECIFIC GUIDELINES

The judicial officer should seek to:

- order that persons not directly involved in the proceedings be excluded from the court while a matter involving a person with a disability who is a victim of some harm is being heard;
- give directions restricting the media from publishing any information that may specifically identify a person with a disability who has been subject to abuse, especially abuse of a sexual nature;
- direct that professionals working in the justice system take all appropriate measures to keep any documents/records relating to a person with a disability who comes into contact with the justice system confidential;

***IMPACT Justice Protocol Series:
International Standards and Best Practices 2018***

- make orders for the withholding of the person’s name and other identifying details, especially in sensitive sexual cases;
- order, where necessary, that the person’s evidence be given on the other side of a device, such as a screen, thereby preventing direct eye contact with the accused;
- order that the person not be in the presence of the accused for longer than is necessary;
- allow the use of recorded evidence in subsequent proceedings, provided that the rights of the defence are respected;
- direct that a person with a disability who is alleged to be a victim of abuse and who is awaiting the hearing of his or her matter be accommodated in a room(s) at court that is away from the public’s view; and
- direct that a person with a disability who is alleged to be a victim of abuse enter through/exit from discreet areas of the court so that he or she is not unduly exposed to the public.

COUNSELLING AND RELATED FORMS OF SUPPORT AND ASSISTANCE

Persons with disabilities who come into contact with the justice system often invariably face a number of impediments to giving their best evidence, including reliving traumatic experiences in the context of a wholly unfamiliar legal environment as well as being possibly further victimised by the adversarial nature of legal proceedings. In order to alleviate some of these difficulties faced by persons with disabilities, **Article 25 of the Convention on the Rights of Persons with Disabilities** envisages that States would provide these persons with appropriate support services so that they could obtain “the highest attainable standard of health” whilst participating in legal proceedings.

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

This provision covers, among other things, access to counselling and psychiatric assistance, and demands that these services be “free or affordable” and of a high quality.

SPECIFIC GUIDELINES

The judicial officer should seek to:

- require the formulation of any assessment that could assist the court in determining the physical and psychological needs of the person with a disability;
- consider the range of medical, counselling and other support services available in light of the person’s immediate and long term needs;
- direct that appropriate medical, counselling or other support services be afforded the person with a disability for a specified duration;
- regularly review the extent to which the court’s order with respect to the provision of support services to the person with a disability has been complied with;
- vary/reissue any orders made with regard to the provision of medical, counselling or other support services to the person with a disability, where the circumstances so demand.

REHABILITATION AND REINTEGRATION

The Committee has stated that deprivation of liberty in criminal matters should be used as a matter of last resort and when other diversion

**IMPACT Justice Protocol Series:
International Standards and Best Practices 2018**

programmes including restorative justice, are insufficient to deter future crime.¹⁰

Where deprivation of liberty is unavoidable, an effort must be made to ensure that persons with disabilities who come into contact with the justice system are afforded the opportunity to reintegrate into society. To this end, disability-sensitive programs in the areas of health, employment, education and social services should be afforded to persons with disabilities at the earliest possible stage of legal proceedings, having regard to their individual needs.

SPECIFIC GUIDELINES

The judicial officer should seek to:

- explore the range of rehabilitative programs at his or her disposal;
- determine which rehabilitative programs are best suited to be applied to a person with a disability who comes into contact with the justice system, having regard to the nature of the offence for which the person has been found guilty; the person's age and level of maturity; and the educational, social and developmental needs of the person;
- order the person to participate in an appropriate rehabilitative programme, which may include vocational training, educational, and violence prevention programmes, substance abuse and recidivism prevention, sex offender evaluation and treatment, and offending behaviour or anger management programmes;

¹⁰ Committee on the Rights of Persons with Disabilities, 'Guidelines on article 14: The right to liberty and security of persons with disabilities, Adopted during the Committee's 14 session, September 2015, para. XII

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

- give directions on the utilisation of appropriate reintegration methods, such as the issuance of reintegration permits, which allow the person to leave detention centres or other such facilities to participate in educational, rehabilitative or job activities in the community before being formally released.
- give appropriate directions so that persons with disabilities can benefit from educational and vocational services, counselling, reasonable follow-up evaluations and monitoring.

TRAINING, AWARENESS-RAISING AND STAKEHOLDER COLLABORATION

The supreme importance of training and awareness-raising in respect of stakeholders who interact with persons with disabilities is evidenced by the fact that these obligations are referred to in several Articles of the Convention on the Rights of Persons with Disabilities, namely **Articles 8(2)(d), 9(2)(c), 13(2) and 26(2)**. Collectively, these Articles provide that States are under an obligation to train stakeholders in the justice system as well as raise awareness among these stakeholders so that persons with disabilities can benefit from improved access to justice. Among the professionals recognised by the Convention as in need of specialised training are judicial officers, the police and prison staff and social workers, as these persons most frequently interact with persons with disabilities. As averred to by the Committee on the Rights of Persons with Disabilities in its General Comment on Accessibility, the advantages associated with training and awareness-raising in the context of the justice system are numerous, including enhanced identification and assessment; improved access to various facilities and modes of communication; a more pragmatic approach to the rehabilitation and reintegration of

**IMPACT Justice Protocol Series:
International Standards and Best Practices 2018**

persons with disabilities; and improved data collection.¹¹ Moreover, in executing training and awareness-raising initiatives with respect to persons with disabilities, international law envisages that stakeholders would collaborate in a timely and efficient manner.

SPECIFIC GUIDELINES

The judicial officer should seek to:

- engage in regular and comprehensive training on the following issues:
 - relevant human rights norms, standards and principles, including the rights of persons with disabilities;
 - principles and ethical duties of their office;
 - the nature of different disabilities;
 - myths and facts about persons with disabilities;
 - signs and symptoms that indicate crimes against persons with disabilities;
 - crisis assessment skills and techniques;
 - best practices in relation to making referrals, with an emphasis placed on the need for confidentiality;
 - impact, consequences, including negative physical and psychological effects, and trauma of crimes against persons with disabilities;
 - special measures and techniques to assist persons with disabilities who are victims and witnesses in the justice process;

¹¹ Committee on the Rights of Persons with Disabilities Eleventh session 31 March–11 April 2014 General comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, para. 19

No. 3: Protocols for Judicial Officers Working with Persons with Disabilities in the Eastern Caribbean Justice System

- cross-cultural and age-related linguistic, religious, social and gender issues;
- appropriate communication skills for interacting with persons with disabilities;
- interviewing and assessment techniques that minimise any trauma to persons with disabilities while maximising the quality of information received from persons with disabilities;
- skills to deal with persons with disabilities who are victims and witnesses in a sensitive, understanding, constructive and reassuring manner; and
- roles of, and methods used by, professionals working with persons with disabilities who are victims and witnesses.

The judicial officer should also seek to:

- collaborate with a wide cross-section of professionals working in the justice system so as to enable the efficient delivery of justice to persons with disabilities who come into contact with the justice system. This entails active communication, cooperation and collaboration with prosecutors, defence counsel, police officers, social workers, education officers, staff at detention centres/residential facilities, and representatives of NGOs, who provide material, social, educational, vocational and related assistance to persons with disabilities, and who also facilitate the implementation of various court-directed diversion, rehabilitative and reintegration programmes
- ensure that all conflicts which arise between stakeholders are swiftly and resolutely resolved; and

***IMPACT Justice Protocol Series:
International Standards and Best Practices 2018***

- work together with other stakeholders in the justice system in all matters concerning persons with disabilities, to the extent that the proper administration of justice allows for this.

The judicial officer should also seek to:

- direct court staff to collect, store and, when necessary, retrieve data/information on the following matters:
 - the number of persons with disabilities brought to court;
 - the number of persons with disabilities sentenced and the nature of any sentence imposed, including the duration of said sentence;
 - the number of children with disabilities subject to diversion;
 - the use of alternative, non-custodial sentences in respect of persons with disabilities;
 - the number of persons with disabilities who benefit from rehabilitative services, and the nature of these services;
 - the extent to which caregivers or support persons of persons with disabilities participate in court proceedings;
 - the number, frequency and nature of any inspection of places of detention which accommodate persons with disabilities;
 - the existence of and utilisation of systems that enable persons with disabilities to file complaints; and
 - any directions made by the court concerning persons with disabilities who come into contact with the justice system.
- make relevant data available to other stakeholders in the justice system.

WHAT IS IMPACT JUSTICE?

The IMPACT Justice Project is a collaboration between the Canadian Government and the University of the West Indies Cave Hill Campus for enhancing access to justice benefitting men, women, youth and businesses in CARICOM. Its components are: the drafting of gender and environmentally sensitive model legislation and training legislative drafters; provision of an enhanced gender-responsive legislative framework of lawyers which includes upgrading of their skills, the establishment and expansion of legal databases and increasing access to training and delivery of Alternative Dispute Resolution and community-based peace-building services in CARICOM Member States.

What are the “Protocols for Practitioners Working with persons with Disabilities in the Eastern Caribbean Justice System”?

The Protocols are a series of guidelines produced by the IMPACT Justice Project that constitute specific instructions, consistent with international best standards and practices, designed to guide and regulate the interactions between persons with disabilities who come into contact with the justice system in the Eastern Caribbean, and authorities such as judicial officers, prosecutors and defence counsel, police, social workers, and staff at detention centres/residential facilities.

Although the Protocols do not have the force of law, it is hoped that all stakeholders will do their utmost to adhere to the guidelines and principles described. This will help to ensure that the delivery of justice to persons with disabilities in the Eastern Caribbean is efficient, objective and fair.

**Improved Access to Justice in the Caribbean
(IMPACT Justice Project)**
Caribbean Law Institute Centre (CLIC), Faculty of Law,
The University of the West Indies
CARICOM Research Building,
Cave Hill Campus P.O. Box 64,
Bridgetown BB11000, BARBADOS
Tel: 1.246.417.4651/2 Fax: 1.246.421.2177
WWW.CARIBBEANIMPACT.ORG