

# Grenada: Gaps in Justice Sector Service Delivery & the Lived Experience of Survivors



**ICAAD**  
Human Rights Innovation

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Any comments or suggestions concerning the contents of this document should be addressed to [info@icaad.ngo](mailto:info@icaad.ngo).

All interviews in this report were conducted virtually and in-person in Grenada by ICAAD in 2023. **Some names of specific civil society organisations, survivors, activists, and other individuals are not cited when discussing our interviews to protect their identities.**



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# I. THE LEGACY OF COLONIALISM IN GRENADA AND ITS INFLUENCE ON THE LAWS, CULTURE AND BELIEFS AROUND GENDER BASED VIOLENCE



## A. COLONIALISM IN GRENADA

Colonialism, as in many parts of the world, dictated the design of the legal system in Grenada, a small island nation in the Caribbean Sea consisting of a group of islands that also includes Carriacou and Petite Martinique. With an estimated population of 112,523, Grenada lies 160 kilometres north of Venezuela and is located northwest of Trinidad and Tobago. Grenada occupies 344 square kilometres with a ridge of mountains that run from north to south with steep valleys. Approximately one-third of the population is found in the capital of St. George's, with the island's population concentrated along the coast.<sup>1</sup>

Prior to gaining independence in 1974, Grenada was permanently marked with the deep-rooted impact of European colonialism.<sup>2</sup> The first inhabitants of Grenada seem to have come from Trinidad or Venezuela, before being followed by the Taino around A.D. 700.<sup>3</sup> Shortly before the arrival of the first Europeans, Grenada was inhabited by the Kalingo, a group of indigenous people of the Lesser Antilles in the Caribbean.<sup>4</sup>

After this initial contact, Grenada was seemingly undisturbed by European colonialism for over a century, until a group of British merchants attempted to form a settlement in 1609 which was unsuccessful. Both the French and British laid claims to the island in 1626 and 1627, but it was not officially settled until the French, led by du Parquet, "purchased" the island from the Kalingo chief in 1650. Shortly after, the Kalingo began hostilities against the French which resulted in a series of massacres which reduced the Kalingo to "*such a small number that they were never again to disturb the peace of the colony.*" In 1657, du Parquet sold Grenada to the Comte de Cerrillac and it subsequently became the property of the French West India Company in 1664. When the company was dissolved in 1674, Grenada was annexed to France.<sup>5</sup>

It has been estimated that the British imported just under 130,000 enslaved Africans to Grenada, and over 2.3 million to British colonies in the Caribbean, and the scale across the island can easily be seen.<sup>67</sup> In 1771, a census disclosed a count of 1661 whites, 415 freed slaves and 26,211 enslaved Africans.<sup>8</sup> Importation of enslaved Africans ceased with the abolition of the slave trade in 1808, but enslaved Africans on Grenada were not emancipated until 1833 and not legally free in Grenada until 1838. The emancipation of enslaved Africans presented the plantation economy of Grenada with great difficulty. Planters, both British and French, tried to cling on with the use of indentured labour schemes, slavery in practically all but name, but regardless, the output of sugar fell fourfold between 1846 and 1881.<sup>9</sup> In 1833,

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<sup>1</sup> *The World Factbook – Grenada*, <https://www.cia.gov/the-world-factbook/countries/grenada/>.

<sup>2</sup> *Encyclopedia Britannica – Grenada*, <https://www.britannica.com/place/Grenada/Transportation#ref54643>.

<sup>3</sup> Ripley Bullen, *Archaeology of Grenada*, p.59-61 (1964).

<sup>4</sup> The term "*Kalingo*" is the preferred term for what was formerly known as the "*Carib*" people of the Caribbean. Early Spanish colonisers and administrators preferred the terms "*Arawak*" (now, "*Taino*") and "*Caribs*" to distinguish the people of the Caribbean, with Carib reserved for indigenous groups they considered hostile, and Arawak for groups they considered friendly to their interests. Julie Chun Kim, *The Caribs of St Vincent and Indigenous Resistance During the Age of Revolutions*, Early American Studies (2013).

<sup>5</sup> Beverley Steele, *Grenada, An Island State, Its History and Its People*, Caribbean Quarterly (March 1974).

<sup>6</sup> Statista, *Estimated number of slaves who arrived from Africa in various regions of the British Caribbean in each century from 1606 to 1842* (2020).

<sup>7</sup> Centre for the Study of the Legacies of British Slavery, [https://www.ucl.ac.uk/lbs/maps/caribbean/grenada%22%20/%20%22zoom=13&lng=61.699734&lat=12.130467&estate\\_id=17953&lbs/estate\\_id=17953](https://www.ucl.ac.uk/lbs/maps/caribbean/grenada%22%20/%20%22zoom=13&lng=61.699734&lat=12.130467&estate_id=17953&lbs/estate_id=17953).

<sup>8</sup> William Sewell, *The Ordeal of Free Labour in the British West Indies* (1862).

<sup>9</sup> Beverley Steele, *Grenada, An Island State, Its History and Its People*, Caribbean Quarterly (March 1974).

Grenada became part of the British Windward Islands Administration, which governed Britain's interests in the Caribbean for the rest of the colonial period. In 1958, this organisation was dissolved, and Grenada joined the Federation of the West Indies until its collapse in 1962. The British Government subsequently tried to form a small federation out of its remaining dependencies, and eventually settled for the concept of associated statehood. Under the Associated Statehood Act of 1967, Grenada was granted full autonomy over its internal affairs and eventually gained full independence on 7 February 1974.<sup>10</sup> British colonialism in the West Indies, described as plantation slavery, was said to be characterised by the deprivation for producers of their means of production.<sup>11</sup> In this system, female slaves were expected to work just as hard as men and were punished just as severely<sup>12</sup>, female slaves were in closer proximity to their 'masters' and therefore often more vulnerable to physical punishment - rape was deemed as a "special and institutionalised method of humiliating women and giving them the status of defenceless objects"<sup>13</sup>.

## B. THE LEGACIES OF COLONIALISM IN GRENADA

It has been said that it is difficult to "*disentangle violence against women from the region's deep historical, enslaved and colonized roots and the systemic emasculation of men that ensued*"<sup>14</sup>. As a result of previous British control, Grenada's domestic law remains heavily influenced by the English legal system.<sup>15</sup> Until 2012, Grenada did not criminalise marital rape, a colonial vestige from 18<sup>th</sup> century English common law and the idea of matrimonial consent.<sup>16</sup> Despite criminalisation, Grenada continues to treat marital rape as a lesser form of rape, with the maximum sentences of 14 years and 30 years respectively.<sup>17</sup> Colonialism served to foster violence as the well-established means by which power and authority are contested, and this prevailed to modern times. Corporal punishment in childcare services and for criminal punishment was only outlawed in 2016, and it remains lawful in the home, in education, in penal institutions and in 'alternative' care settings – allowing "justifiable force" by way of "correction".<sup>18</sup>

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<sup>10</sup> "Grenada - The World Factbook". The World Factbook. Central Intelligence Agency (CIA),

<https://www.cia.gov/the-world-factbook/countries/grenada/#:~:text=In%201967%2C%20Britain%20gave%20Grenada,ushering%20in%20the%20Grenada%20Revolution.>

<sup>11</sup> Brigitte Kossek (Vienna), *Women slaves and rebels in Grenada*, p.28 (1993).

<sup>12</sup> *Slavery in Grenada and the Caribbean*, <https://iamgrenada.com/slavery-in-grenada-and-the-caribbean/>.

<sup>13</sup> Brigitte Kossek (Vienna), *Women slaves and rebels in Grenada*, p.28 (1993).

<sup>14</sup> Debra Joseph and Adele Jones, *Understanding violence against women in the Caribbean through an exploration of men's perspectives*, Violence Against Women Journal (April 2023).

<sup>15</sup> Committee of Experts of the Follow-Up Mechanism for the Implementation of the Inter-American Convention Against Corruption, *Questionnaire on Provisions Selected by the Committee of Experts for Analysis Within the Framework of the First Round Response: Grenada*, [http://www.oas.org/juridico/english/grd\\_res\\_en.pdf](http://www.oas.org/juridico/english/grd_res_en.pdf).

<sup>16</sup> Criminal Code (Amendment) Act No. 29 of 2012. It is also important to note that England and Wales did not explicitly criminalise this behaviour until the case of *R v R* [1991] 3 WLE 76, which noted that "[t]he common law is... capable of evolving in the light of changing social, economic and cultural developments" and "that marriage in modern times [is] regarded as a partnership of equals, and no longer one which the wife must be the subservient chattel of the husband."

<sup>17</sup> Section 177(2) and 177(3) of the Grenada Criminal Code, as amended by Section 19 of the Criminal Code (Amendment) Act No. 29 of 2012.

<sup>18</sup> End Corporal Punishment, *Grenada Prohibits Corporal Punishment in Child Care Services and as a Sentence for a Crime* (27 February 2020).



The link between colonialism, poverty, and GBV has been well documented, with a low incidence of social development positively correlating to social attitudes that justify domestic violence.<sup>19</sup> Further, gendered norms have become entrenched in Grenadian society, with a woman's reluctance to conform to "traditional" gender norms often being used as the justification for violence.<sup>20</sup> Power and privilege are seen as belonging in the exclusive remit of men, women are treated as a man's property, and the perceived threat of emasculation remains, serving as a justification among men for violence directed towards women.<sup>21</sup> Following the abolition of slavery, this patriarchal power shifted from the white colonisers to the men of colour who were looking to regain their sense of masculinity, often through the ownership of women's bodies.<sup>22</sup> A recent study on domestic violence in Caribbean countries found that more than 50% of the study participants considered the advancement of women educationally and economically a form of emasculation.<sup>23</sup>

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<sup>19</sup> Sardinha Catalán, *Attitudes towards domestic violence in low- and middle-income countries: A gendered analysis of prevalence and country-level correlates*, PLoS One (2018).

<sup>20</sup> Debra Joseph and Adele Jones, *Understanding violence against women in the Caribbean through an exploration of men's perspectives*, Violence Against Women Journal (April 2023); Ashcroft et al, *Post-colonial studies: The key concepts*, Routledge (2013).

<sup>21</sup> West et al, *Domestic violence Through a Caribbean Lens: Historical Context, Theories, Risks and Consequences*, Journal of Aggression, Maltreatment and Trauma, 761–780 (2019).

<sup>22</sup> Kimalee Phillip, *Coloniality, Sexuality & Violence: An Interrogation into the Colonial Patterns of Violence Against Women in Grenada* (2011); Stacy-Ann Elvy, *A Postcolonial Theory of Spousal Rape: The Caribbean and Beyond*, Michigan Journal of Gender and Law (2015).

<sup>23</sup> Debra Joseph and Adele Jones, *Understanding violence against women in the Caribbean through an exploration of men's perspectives*, Violence Against Women Journal (April 2023); Ashcroft et al, *Post-colonial studies: The key concepts*, Routledge (2013).

## II. SOCIAL NORMS, CUSTOMS, AND PRACTICES THAT CONTRIBUTE TO GENDER BASED VIOLENCE



## INTRODUCTION

To understand traditional gender norms in Grenada - and the Caribbean in general - it is necessary to understand the impact of the Trans-Atlantic slave trade and colonial past.<sup>24</sup> To reverse the emasculating effect of slavery, men have come to see control and domination as a pre-requisite of manhood,<sup>25</sup> and preside over women to take back the power they were systemically denied. This sets the groundwork for the culture that Grenada operates in, notwithstanding individual pathologies which feed off the foundation of female submission, with women still being viewed as men's property.<sup>26</sup>

### A. PATRIARCHAL NORMS IN GRENADA

Women's social status remains similar now, and they are still expected to adhere to stereotypical gender roles, such as cleaning and doing the laundry. Looking after the household is viewed as solely a woman's responsibility while men, predominately viewed as the breadwinners,<sup>27</sup> visit their local rum shop to socialise after work.<sup>28</sup> Men now outnumber women; however, this was not the case 20 years ago.<sup>29</sup> Marriage holds strong cultural relevance, but does not preclude men from having a girlfriend, though this practice is beginning to change.<sup>30</sup> Men benefit the most from inheritance and the father figure in the house is traditionally the most dominant.<sup>31</sup> Women in Grenada confront disproportionately higher levels of poverty and unemployment compared to men, which is most pronounced among single, female-headed households.<sup>32</sup> Segregation is prevalent in the labour force, with more women found in low productive and poorly paid activities and sectors.<sup>33</sup> This is despite women always being strongly represented in the labour force and having average higher levels of education.<sup>34</sup>

Loss of employment, status, and income are seen as contributing factors to the degradation of women, as it leads to men searching for new ways to assert their dominance domestically,

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<sup>24</sup> Joseph, D. D., & Jones, A. D., *Understanding Violence Against Women in the Caribbean Through an Exploration of Men's Perspectives. Violence Against Women*, at 29(5), 1005-1023 (2023), <https://doi.org/10.1177/10778012221104845>.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Nicholson C., & Deshong H.A.F, *Grenada Women's Health and Life Experiences Study* (2018), [https://www.academia.edu/43969328/GRENADA\\_WOMENS\\_HEALTH\\_AND\\_LIFE\\_EXPERIENCES\\_STUDY\\_2018\\_R\\_EPORT](https://www.academia.edu/43969328/GRENADA_WOMENS_HEALTH_AND_LIFE_EXPERIENCES_STUDY_2018_R_EPORT).

<sup>28</sup> Everyculture.com, *Countries and their Culture - Grenada* (2011), <https://www.everyculture.com/Ge-It/Grenada.html>.

<sup>29</sup> Nicholson C., & Deshong H.A.F, *Grenada Women's Health and Life Experiences Study* (2018), [https://www.academia.edu/43969328/GRENADA\\_WOMENS\\_HEALTH\\_AND\\_LIFE\\_EXPERIENCES\\_STUDY\\_2018\\_R\\_EPORT](https://www.academia.edu/43969328/GRENADA_WOMENS_HEALTH_AND_LIFE_EXPERIENCES_STUDY_2018_R_EPORT).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Joseph, D. D., & Jones, A. D., *Understanding Violence Against Women in the Caribbean Through an Exploration of Men's Perspectives. Violence Against Women*, at 29(5), 1005-1023, (2023), <https://doi.org/10.1177/10778012221104845>.

<sup>33</sup> World Bank Group, *Breaking Barriers to Women's Economic Inclusion in Grenada*, <https://policycommons.net/artifacts/3496734/breaking-barriers-to-womens-economic-inclusion-in-grenada-english/4297318/>.

<sup>34</sup> Nicholson C., & Deshong H.A.F, *Grenada Women's Health and Life Experiences Study* (2018), [https://www.academia.edu/43969328/GRENADA\\_WOMENS\\_HEALTH\\_AND\\_LIFE\\_EXPERIENCES\\_STUDY\\_2018\\_R\\_EPORT](https://www.academia.edu/43969328/GRENADA_WOMENS_HEALTH_AND_LIFE_EXPERIENCES_STUDY_2018_R_EPORT).

referred to as the "crisis of masculinity."<sup>35</sup> Two of the most common reasons for Grenadian women not seeking help for Intimate Partner Violence ("IPV") are that: the abuse is considered normal, and, that they fear people will not believe them.<sup>36</sup> Men's violence is accepted as necessary to "restore and maintain a hierarchical gendered order within relationships and in families."<sup>37</sup>

Beliefs around gendered issues continue to restrict women's autonomy, giving credence to men's controlling behaviours, threats, and use of violence against women and girls ("VAWG"). Even non-violent men "remain committed to unequal arrangements of power based on gender."<sup>38</sup> These views are shaped by religious teachings, beliefs about male entitlement to women's bodies, perception that IPV is a private matter, and acceptance of corporal punishment as a means of discipline.<sup>39</sup> Perceptions are changing, as evidenced from the findings of a 2018 study which show that women are almost universal in their belief that men and women should share authority in the family (93.4%), even while 70% believed that a man was the "natural" head of the family.<sup>40</sup>

## **B. SOCIAL NORMS/CUSTOMS REGARDING GBV IN GRENADA**

As VAWG in Grenada is often normalised and justified, it is not uncommon. There are examples of the continued promulgation of VAWG through certain songs and cultural norms. This results in a self-perpetuating cycle, where being a victim of such violence was strongly positively associated with attitudes toward male physical domestic violence ("DV") and physical violence against girls among boys.<sup>41</sup>

The Ministry and its social partners have begun to wage an intense battle to challenge the strict and violent gender norms that contribute to the acceptance of VAWG. There is now a division of Gender and Family Affairs in the Ministry of Social Development and Housing, that seeks to "eradicat[e] gender-based violence, strengthening families and increas[e] women's empowerment opportunities."<sup>42</sup> Whilst things are naturally getting better over time,<sup>43</sup> there is still much work needed for the empowerment and protection of Grenadian women and girls, and "a number of systemic and ideological challenges in addressing GBV in Grenada remain."<sup>44</sup>

An overwhelming majority of women welcome this change and do not accept the notion that that there are any conditions that justify a man inflicting violence on his partner.<sup>45</sup> However, there are still many who remain resistant to certain gender changes; "gender inequality

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Debowska A; Boduszek D; Jones AD; Willmott D; Sherretts N, *Gender-Based Violence-Supportive Cognitions in Adolescent Girls and Boys: The Function of Violence Exposure and Victimization* (2021), <https://pubmed.ncbi.nlm.nih.gov/29294982/>.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Deshong. H. *Women's Health and Life Experiences: A Qualitative Research Report on Violence against Women in Grenada*, 2018 (2020).

[https://oig.cepal.org/sites/default/files/grenada\\_womens\\_health\\_and\\_life\\_experiences.pdf](https://oig.cepal.org/sites/default/files/grenada_womens_health_and_life_experiences.pdf)

<sup>45</sup> Ibid.

continues to exist in terms of income, poverty, family, unemployment and political participation which hinder national development."<sup>46</sup>

New laws have been passed to protect the rights of women and girls, however, there are challenges in enforcement, and women seeking redress through state mechanisms or the court, face many difficulties.<sup>47</sup> For this reason, many victims of sexual violence ("SV") and DV do not report these cases to authorities. Victims may remain silent because of stigma, self-blame, fear of the perpetrator, but above all, lack of confidence in the system. Reportedly, these victims do not call the police for fear of being further abused.<sup>48</sup> Often, women make their decision on whether to stay or leave a relationship based on their fear of future harm, shame, their available support network, and of course, romantic love.<sup>49</sup> The prevalence of VAWG is partially linked to the ability for women to legally consent to sex earlier than they can to medical treatments, exacerbating women and girls' barriers to sexual and reproductive health services.<sup>50</sup>

### **IPV:**

Based on the Report of the Grenada Women's Health and Life Experiences Study, 29% of women in Grenada have experienced physical and/or sexual violence by an intimate partner and 23% experienced sexual violence by a non-intimate partner.<sup>51</sup> The prevalence of GBV in Grenada was highest in cases where women had reported that their partner had witnessed or experienced physical violence as children or where they had been humiliated or ridiculed as a children.<sup>52</sup> More specifically, cases where men had mothers who had been beaten by their husbands appear to have the highest rates of prevalence of lifetime physical and/or sexual violence at 45.5%.<sup>53</sup>

The physical violence reportedly ranges from being slapped, kicked/punched, to being threatened with, or injured by a weapon. Among those who suffer lifetime IPV, more than two-thirds of injuries are severe, which includes hitting, kicking, burning or threatening with a weapon. For many women the abuse does not stop during pregnancy and these beatings

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<sup>46</sup> Government of Grenada, *Grenada National Report: Fulfilment of the Brasilia Consensus*, [https://www.cepal.org/sites/default/files/events/files/grenada\\_report\\_-\\_xii\\_crm.pdf](https://www.cepal.org/sites/default/files/events/files/grenada_report_-_xii_crm.pdf).

<sup>47</sup> Nicholson C., & Deshong H.A.F, Grenada Women's Health and Life Experiences Study (2018), [https://www.academia.edu/43969328/GRENADA\\_WOMENS\\_HEALTH\\_AND\\_LIFE\\_EXPERIENCES\\_STUDY\\_2018\\_REPORT](https://www.academia.edu/43969328/GRENADA_WOMENS_HEALTH_AND_LIFE_EXPERIENCES_STUDY_2018_REPORT).

<sup>48</sup> Deshong. H. *Women's Health and Life Experiences: A Qualitative Research Report on Violence against Women in Grenada*, 2018 (2020).

[https://oig.cepal.org/sites/default/files/grenada\\_womens\\_health\\_and\\_life\\_experiences.pdf](https://oig.cepal.org/sites/default/files/grenada_womens_health_and_life_experiences.pdf).

<sup>49</sup> Ibid.

<sup>50</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (2021),

<https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

<sup>51</sup> UNDP, *Using Data to End Gender-Based Violence in Grenada: United Nations Development Programme* (28 July 2023), <https://www.undp.org/barbados/stories/using-data-end-gender-based-violence-grenada>; Spotlight Initiative, *Grenada Drafts Gender-Based Violence Victims' Rights Policy*, <https://www.spotlightinitiative.org/press/grenada-drafts-gender-based-violence-victims-rights-policy#:~:text=According%20to%20the%20Grenada%20Women's,in%20every%20ten%20Grenadian%20woman.>

<sup>52</sup> Government of Grenada, UN Women, and Caribbean Development Bank, *Grenada Women's Health and Life Experiences Study*, at 7 (2018), <https://caribbean.unwomen.org/sites/default/files/Field%20Office%20Caribbean/Attachments/Publications/2021/20210209%20Grenada%20Life%20Experience%20Report%2018%20for%20digital.pdf>.

<sup>53</sup> Ibid, at 66-68.

are almost universally perpetrated by the child's father. Close to one in every ten Grenadian women have experienced sexual violence in her intimate relationships over her lifetime.<sup>54</sup>

### ***Sexual Violence:***

Sexual violence includes different degrees of sexual assault, such as sexual coercion, forced participation to certain sexual acts and rape. Women's exposure to violence is shown to have clear negative consequences for their physical and emotional health. Impunity for perpetrators of gender-based violence remains extremely common. Whether GBV is tolerated or sanctioned depends entirely on the social environment it occurs within.<sup>55</sup> According to World Population Review in 2019, the Caribbean had five of the highest 20 recorded rape rates, with Grenada reporting 30.6 per 100,000.<sup>56</sup>

### ***Street Harassment:***

Street harassment in Grenada is a multifaceted problem, with incidents ranging from unwanted advances to public humiliation. Many women in Grenada have reported feeling unsafe when walking alone in public spaces, especially in certain neighbourhoods, or at night. This fear of harassment can limit their freedom of movement and negatively impact their overall quality of life.<sup>57</sup>

### ***Media Reports:***

Romantic love, gender and violence are intertwined in both personal and popular accounts. Notions of love in personal and popular culture are depicted as enduring, involving sacrifice, submission, and often with VAWG as central to romantic love.<sup>58</sup> However, love is also seen as a force that can overcome violence.<sup>59</sup> Women are often made to feel responsible for the violence they experience or for having somehow failed in their roles as a partner and even as mother, owing to the social idea that it's "their responsibility as the woman to make everybody happy."<sup>60</sup>

There is now a positive shift as modern news media outlets are increasingly dedicated to raising awareness on these issues. For example, an article from The Caribbean Loop News addresses the pressing issue of GBV in Grenada, in particular the crucial role of men and boys in challenging harmful norms contributing to GBV. In this evolving landscape, there is a shared responsibility among individuals, families, communities, and governments to promote healthy

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<sup>54</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada*, <https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

<sup>55</sup> Ibid.

<sup>56</sup> World Population Review, *Rape Statistics by Country Population*, <http://worldpopulationreview.com/countries/rape-statistics-by-country>.

<sup>57</sup> Sanatan, Amilcar, *Social Media and Feminist Social Change in the Caribbean: An Interview with Ronelle King on #LifeInLeggings*, (2017), [https://sta.uwi.edu/crgs/december2017/documents/CRGS\\_11\\_Pgs\\_323-340\\_ASanatan\\_SocialMediaFeminist.pdf](https://sta.uwi.edu/crgs/december2017/documents/CRGS_11_Pgs_323-340_ASanatan_SocialMediaFeminist.pdf).

<sup>58</sup> Deshong. H. *Women's Health and Life Experiences: A Qualitative Research Report on Violence against Women in Grenada*, 2018 (2020), [https://oig.cepal.org/sites/default/files/grenada\\_womens\\_health\\_and\\_life\\_experiences.pdf](https://oig.cepal.org/sites/default/files/grenada_womens_health_and_life_experiences.pdf).

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

relationships, challenge harmful norms, and work towards a society where love is truly characterized by respect, compassion, and non-violence for all genders.

### **C. CUMULATIVE FACTORS THAT AFFECT GBV IN GRENADA**

#### ***Intergenerational violence:***

One of the most prominent contributors to GBV in Grenada is the socialisation of children in homes where DV and child abuse are normalised.<sup>61</sup>

#### ***The effect of witnessing GBV against their mothers:***

According to a survey conducted by D Jones and D Joseph in Grenada, three-quarters of participants described GBV as something they had witnessed regularly during their childhood.<sup>62</sup> The normalisation of DV in the household means that children grow up without the adequate tools to respond to conflict in relationships and often expect and accept violence.<sup>63</sup> This fact, combined with the gendered expectation that men should be "dominant" and "in-control" results in men acting in violent ways towards their partners.<sup>64</sup>

This is supported by studies which show that girls who grow up in violent homes are more likely to become victims of DV later in life, while boys who witness their fathers and other males acting violently towards their mothers have an increased likelihood of becoming perpetrators themselves.<sup>65</sup>

#### ***The effect of violence against children:***

Violence against children is also reported as prevalent in Grenada. A UNICEF report suggests that in 2019, 50% of parents in Grenada used corporal punishment on their children.<sup>66</sup> Corporal punishment is widely used in schools; an interview with the Grenada National Council for the Disabled revealed that children with autism and other disabilities have also been subjected to violence, being beaten with a ruler or a belt.<sup>67</sup> Contrastingly with Barbados, a 2017 report noted that 38% of Bajan children experienced physical abuse in the family.<sup>68</sup> As such, children are socialised to view violence as commonplace and as the way to resolve conflict.<sup>69</sup> The result is that women who were insulted or humiliated by a parent during childhood were two to three times more likely to experience GBV in adulthood.<sup>70</sup> The same

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<sup>61</sup> Joseph, D. D., & Jones, A. D., *Understanding Violence Against Women in the Caribbean Through an Exploration of Men's Perspectives. Violence Against Women*, at 29(5), 1005-1023 (2023), <https://doi.org/10.1177/10778012221104845>.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> None in three. (n.d.), *Twenty-One Lessons Preventing Domestic Violence in the Caribbean*, <https://www.noneinthree.org/barbados-and-grenada/publications-and-conference-presentations/21-lessons-preventing-domestic-violence-in-the-caribbean/>.

<sup>66</sup> UNICEF, *Generation Unlimited: The Well-being of Young People in Grenada* (2021), <https://www.unicef.org/easterncaribbean/media/2961/file/GenU%20Grenada%20fact%20sheet.pdf>.

<sup>67</sup> Interview conducted by ICAAD with Grenada National Council for the Disabled, 27, September 2023.

<sup>68</sup> Boduszek, D., Debowska, A., Trotman Jemmott, E., Da Breo, H., Willmott, D., Sherretts, N., & Jones, A. D., *Victimisation, Violence, Perpetration, and Attitudes Towards Violence Among Boys and Girls from Barbados and Grenada*, Huddersfield, UK: University of Huddersfield Press (2017), ([https://research.leedstrinity.ac.uk/ws/portalfiles/portal/428225/Boduszek\\_et\\_al.\\_2017\\_Victimisation\\_violence\\_p\\_erpetration\\_and\\_attitudes\\_towards\\_violence\\_among\\_boys\\_and\\_girls\\_from\\_Barbados\\_and\\_Grenada.pdf](https://research.leedstrinity.ac.uk/ws/portalfiles/portal/428225/Boduszek_et_al._2017_Victimisation_violence_p_erpetration_and_attitudes_towards_violence_among_boys_and_girls_from_Barbados_and_Grenada.pdf)).

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

report notes that women whose husbands and partners were beaten as children were nearly three times more likely to experience GBV.<sup>71</sup>

### ***Blame culture:***

A culture of blaming the victims of GBV rather than perpetrators is one that is prevalent in Grenada. In most studies, men who have been violent towards their partners often offer up a "victim blaming narrative" to justify their actions.<sup>72</sup> Such narratives include infidelity, perceived disrespect, or not fulfilling gender roles adequately.

These attitudes are not just limited to perpetrators of violence but are prevalent throughout society in Grenada. Community members often endorse GBV in certain situations, such as infidelity and encourage men to commit violence in such circumstances. These rationales are underpinned by the belief that men are to be "dominant", and a woman must "know her place."<sup>73</sup> As a result, there is a narrative that if a woman behaves - or is thought to behave - in a certain way, a man is not only justified but expected to act violently towards her. **It also limits empathy towards victims as women are seen as the cause of their own abuse.**<sup>74</sup>

### ***Poverty:***

According to the European Commission, 40% of the population in Grenada live below the poverty line.<sup>75</sup> The country has the highest poverty rate of any Eastern Caribbean country.<sup>76</sup> Research suggests that there is an established link between poverty and GBV.<sup>77</sup> This is the same in Grenada, with studies showing that women whose husbands/partners were unemployed, were twice as likely to experience IPV compared to women whose husbands/partners were working.<sup>78</sup>

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<sup>71</sup> Joseph, D. D., & Jones, A. D., *Understanding Violence Against Women in the Caribbean Through an Exploration of Men's Perspectives. Violence Against Women*, at 15, (2023), <https://doi.org/10.1177/10778012221104845>.

<sup>72</sup> Ibid at 1014.

<sup>73</sup> UN Women, *Women's Health and Life Experiences: A Qualitative Research Report On Violence Against Women In Grenada, 2018* (2020) <https://caribbean.unwomen.org/en/materials/publications/2020/8/womens-health-and-life-experiences-a-qualitative-research-report-on-vaw-in-grenada-2018>.

<sup>74</sup> Boduszek, D., Debowska, A., Trotman Jemmott, E., Da Breo, H., Willmott, D., Sherretts, N., & Jones, A. D., *Victimisation, Violence, Perpetration, and Attitudes Towards Violence Among Boys and Girls from Barbados and Grenada*, Huddersfield, UK: University of Huddersfield Press (2017), [https://research.leedstrinity.ac.uk/ws/portalfiles/portal/428225/Boduszek\\_et\\_al.\\_2017\\_Victimisation\\_violence\\_perpetration\\_and\\_attitudes\\_towards\\_violence\\_among\\_boys\\_and\\_girls\\_from\\_Barbados\\_and\\_Grenada.pdf](https://research.leedstrinity.ac.uk/ws/portalfiles/portal/428225/Boduszek_et_al._2017_Victimisation_violence_perpetration_and_attitudes_towards_violence_among_boys_and_girls_from_Barbados_and_Grenada.pdf).

<sup>75</sup> European Commission, *Grenada*, [https://international-partnerships.ec.europa.eu/countries/grenada\\_en#:~:text=About%2060%25%20of%20the%20population,shifts%20in%20the%20global%20economy](https://international-partnerships.ec.europa.eu/countries/grenada_en#:~:text=About%2060%25%20of%20the%20population,shifts%20in%20the%20global%20economy).

<sup>76</sup> Joseph, D. D., & Jones, A. D., *Understanding Violence Against Women in the Caribbean Through an Exploration of Men's Perspectives. Violence Against Women*, at 2 (2023), <https://doi.org/10.1177/10778012221104845>.

<sup>77</sup> Eralp, A. and Gokmen, S, *The Impact of Poverty on Partner Violence Against Women Under Regional Effects: The Case of Turkey*, at 4906 (2023), <https://pubmed.ncbi.nlm.nih.gov/36052441/>.

<sup>78</sup> Joseph, D. D., & Jones, A. D., *Understanding Violence Against Women in the Caribbean Through an Exploration of Men's Perspectives. Violence Against Women*, at 29(5), 1005-1023 (2023), <https://doi.org/10.1177/10778012221104845>.



# III. EXISTING LEGAL BARRIERS TO GENDER EQUITY (LEGISLATIVE REVIEW)



## INTRODUCTION

Statutory laws passed by Parliament as well as English common law form the basis of Grenada's legal system, together with the 1973 Constitution of Grenada (the "Constitution"). Additionally, Grenada is subject to obligations under international law by virtue of its membership in regional and international organisations, including the Organization of American States ("OAS"), the Organisation of Eastern Caribbean States ("OECS") and the UN. Grenada is a dualist state,<sup>79</sup> which means international treaties have to be domesticated within national legislation to have effect on the rights of Grenada's inhabitants. In cases where there are inconsistent provisions among the sources of law, the Constitution will prevail over any other source.

"Although the law should reflect society's highest aspirations of justice, behavioural and cultural shifts take time. The remnants of outdated post-colonial legislation, which are deeply imbued with patriarchal and colonial norms, still pervade many facets of life in Caribbean countries,"<sup>80</sup> including Grenada. Most of Grenada's legislation on violence against women and girls have been a result of the OECS Family Law Reform Project. This Project reflected the commitment by the OECS Governments to develop progressive model family legislation that presented the social realities and would better serve the interests of families and children.

In this section, we will analyse the Constitution and specific legislation to identify provisions within them that create an environment that perpetuates ideas, norms, and behaviours that lead to gender discrimination and ultimately violence against women and girls.

Grenada, having ratified the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), has a fundamental obligation to root out discriminatory provisions that have a negative direct and indirect impact on women and girls. Moreover, it is critical to also consider intersectional forms of discrimination experienced by LGBTQ+ persons, people living with HIV/ AIDs ("PLHIV"), and those living with disabilities.

Grenada ratified CEDAW in 1990. Although the state's actions must be consistent with CEDAW, justice sector institutions have not fully embraced its provisions around non-discrimination.<sup>81</sup> Failure to incorporate such treaties into legislation leaves a protection gap and limits opportunities for the courts to rely on critical human rights provisions within their decision making. One consequence is the failure for specific legislation to bar discriminatory conduct from private businesses and recognize both direct and indirect discrimination.<sup>82</sup>

In addition, the CEDAW Optional Protocol has not been ratified which would give victims/survivors the opportunity to bring their cases before the CEDAW Committee once they had

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<sup>79</sup> Stephen Vasciannie, *Caribbean Perspectives on Human Rights*, [http://www.oas.org/es/sla/ddi/docs/publicaciones\\_digital\\_XXXII\\_curso\\_derecho\\_internacional\\_2005\\_Stephen\\_Vasciannie.pdf](http://www.oas.org/es/sla/ddi/docs/publicaciones_digital_XXXII_curso_derecho_internacional_2005_Stephen_Vasciannie.pdf).

<sup>80</sup> ICAAD & UN Women, *Jamaica: Comparing Justice Sector Standards and Lived Experiences of Victims of Gender-Based Violence*, at 49 (2024) [Publication Pending].

<sup>81</sup> CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Grenada*, at para. 11 (2012).

<sup>82</sup> *Ibid*, at para. 9.

exhausted their domestic remedies.<sup>83</sup> It is critical that survivors have the option to elevate their cases where the state has failed to provide an effective remedy especially since Grenada does not have an independent national human rights institution that is following the Paris Principles relating to the status of National Human Rights Institutions developed by the Global Alliance of National Human Rights Institutions.<sup>84</sup>

With both the high rates of GBV and femicide in Grenada,<sup>85</sup> passing progressive legislation would not be enough to meet the "due diligence" standard articulated under General Recommendation 19 of CEDAW, which asserts that the state may be responsible for private acts of violence if it fails to prevent, properly investigate, or punish such violations.<sup>86</sup> Therefore, addressing both the gaps in legislation that fall short of protecting women and girls and implementation of legislation are essential in meeting the states due diligence obligations.

In understanding the legislative barriers to gender equality, we focus on how the user-experience of survivors is impacted in their daily lives as they seek redress for acts of domestic and sexual violence. Here, we will take an exhaustive look at legislation in Grenada that impacts survivors.

## **A. GRENADA CONSTITUTION OF 1973**

The 1973 Constitution of Grenada (the "Constitution") recognises that "*... every person in Grenada is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest ....*"<sup>87</sup> Fundamental rights and freedoms set out in Article 1 include the right to "*life, liberty, security of the person and protection of the law; freedom of conscience...; protection for the privacy of his home and other property... and freedom of assembly*".

With regards to protection against violence, the Constitution includes protections against "*slavery and forced labour*"<sup>88</sup> and "*torture*", "*inhuman treatment*" and "*degrading punishment*"<sup>89</sup>. Whilst the Constitution does not explicitly refer to domestic violence, it presumably includes a prohibition against violence in the private, as well as the public, sphere. It is noteworthy that the official translation of the Constitution refers to "*human beings*" without regard to sex.<sup>90</sup>

Article 13 of the Constitution also prohibits discrimination by law as well as by the State and defines discrimination as:

*affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions,*

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<sup>83</sup> Ibid, at para. 41.

<sup>84</sup> Global National Human Rights Institutions, *Membership*, <https://ganhri.org/membership/>.

<sup>85</sup> Economic Commission for Latin America and the Caribbean (ECLAC), *The pandemic in the shadows: femicides or feminicides in 2020 in Latin America and the Caribbean*, [https://www.cepal.org/sites/default/files/infographic/files/21-00792\\_folleto\\_the\\_pandemic\\_in\\_the\\_shadows\\_web.pdf](https://www.cepal.org/sites/default/files/infographic/files/21-00792_folleto_the_pandemic_in_the_shadows_web.pdf).

<sup>86</sup> CEDAW, General Recommendation No. 19, 11th Sess., at para. 9 (1992).

<sup>87</sup> Grenada Constitution, Article I.

<sup>88</sup> Ibid, Article 4.

<sup>89</sup> Ibid, Article 5.

<sup>90</sup> Ministry of Social Development and Housing, *Gender Equality Policy & Action Plan: 2014 – 2024*.

*colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.*<sup>91</sup>

There are, however, some exceptions to this law, most notably for individuals who are involved in activities intended to safeguard the security of the State in relation to measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State.

The Constitution therefore explicitly recognises the rights of women and girls to fundamental rights of "*liberty*" and "*security*", prohibits discrimination based on sex, and requires the State to protect these rights. Article 16 states that individuals may apply to the High Court for redress regarding infringement of the Constitution, although the Constitution does not set out the redress available.

## **B. DOMESTIC VIOLENCE ACT, NO. 19 OF 2010 (THE "DVA")**

Grenada has significantly developed its legislative framework surrounding domestic violence with the introduction of the Domestic Violence Act. The DVA prohibits domestic violence and provides victims of domestic violence with the opportunity to obtain Protection Orders with a broad range of possible terms against offenders. However, whilst Grenada has extended the protection accorded by the DVA through amendments to areas identified and recommended by the UN Handbook on Legislation for Violence Against Women (the "UN Handbook"), it is notable that same sex relationships are not covered (which is consistent with the fact that homosexuality is illegal in Grenada).<sup>92</sup> Grenada also has not yet developed regulations to support effective implementation of the DVA, so that there is a lack of sufficient guidance on the more procedural aspects of enforcing the DVA.<sup>93</sup>

### ***Qualifying applicants***

To qualify for a Protection Order under the DVA, victim-survivors must fall into one of the categories covered under Section 5, which includes spouses, members of the same household, cohabiting partners, children or dependants, parents or siblings of the respondent or the respondent's spouse, a person who has a child in common with the respondent, and persons engaged, dating or in a visiting relationship with the respondent. Section 5(3) of the DVA also enables persons with a "*material interest in the well being*" of a person to make the application on that person's behalf, with their consent (which is not needed for applicants who are children, dependents, incapacitated etc.). Police officers and social workers can make such applications.

However, the DVA specifically excludes persons in same-sex relationships by referring to relationships "*with a person of the opposite sex*".<sup>94</sup> Moreover, it remains unclear as to whether persons in same sex relationships who shared the same residence may be able to apply for

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<sup>91</sup> Ibid, Article 13.

<sup>92</sup> UNICEF, A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls (June 2021) p 45; See also United Nations Handbook on Legislation for Violence Against Women (2010) p 25.

<sup>93</sup> Grenada Spotlight Country Programme, p. 21.

<sup>94</sup> Domestic Violence Act No. 19 of 2010, s 2 (*Definitions*).

provision based on being a member of "a shared household".<sup>95</sup> This exclusion of same-sex relationships from the DVA is inconsistent with guidance in the UN Handbook which states that as a minimum legislation should apply to "*individuals who are or have been in an intimate relationship, including marital, non-marital, same sex and non-cohabiting relationships; individuals with family relationships to one another; and members of the same household*".<sup>96</sup> Significantly, intimate partner violence in same sex relationships is not of lesser levels than in heterosexual relationships.<sup>97</sup> Excluding same-sex relationships from the scope of the DVA, as well as being inconsistent with a commitment to non-discrimination, increases the vulnerability of LGBTQ+ persons in abusive relationships by denying basic legislative protections.

### **Scope**

The definition of domestic violence under the legislation encompasses "*any controlling or abusive behaviour that harms the health, safety or well-being of a person or any child*", making it generally broad enough to create a prohibition on emotional, verbal, or psychological abuse. However, the protections in the DVA apply after-the-fact and cannot, currently, prevent certain harm from occurring, namely coercive or abusive behaviour which may be carried out electronically. If the definition of emotional abuse was extended to cover this type of harm, an imminent victim could obtain a Protection Order that prevents an abuser from distributing private/confidential sexual images or videos which may identify the victim ("revenge porn").<sup>98</sup> Trinidad provides an example of how such an amendment might look in practice, having recently updated its domestic violence legislation to recognise the "*making of unwelcome or intimidating contact . . . by any means including in person, verbally or by gesture, letter, telephone or electronic means*".<sup>99</sup>

### **Protection Orders**

Police officers are obliged to respond to complaints about domestic violence and, when at the scene of an incident of domestic violence, are obliged to inform the victim of his or her rights under the DVA, especially of the right to obtain a Protection Order (Section 3 DVA). The police is tasked to enforce breaches of Protective Orders, but in the past have hesitated or even failed to do so, because of cultural perceptions that domestic abuse is not as serious, or because of lack of staffing.<sup>100</sup> This lack of enforcement has historically impacted perpetrators' compliance with Protection Orders.<sup>101</sup>

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<sup>95</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021) p. 46.

<sup>96</sup> *United Nations Handbook on Legislation for Violence Against Women* (2010) p. 25.

<sup>97</sup> *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021) p 45; See also Colleen Stiles-Shields and Richard Carroll, *Same-Sex Domestic Violence: Prevalence, Unique Aspects, and Clinical Implications* (Journal of Sex and Marital Therapy, 2015) 41(6) p 636–648

<sup>98</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021) p. 46.

<sup>99</sup> Republic of Trinidad and Tobago, Act No 18 of 2020 (6 July 2020) Section 3(j)(ix-x).

<sup>100</sup> *Grenada: Domestic violence legislation, including implementation and effectiveness; protection, recourse and services available to victims as provided by the legislation* (March 2013)

<https://www.refworld.org/docid/52833bb24.html>; Interview conducted by ICAAD with RGPF staff, 1 August 2023.

<sup>101</sup> Ibid.

In any case, Protection Orders in Grenada do not exceed three years in duration, meaning survivors are not provided with indefinite protection (Section 8).<sup>102</sup> Moreover, even if granted a Protection Order, there may be issues with the terms of such an order. For example, under Section 7 of the DVA, terms of protection orders may include the perpetrator being required to remain within a specified portion of the home, or to not enter certain parts of the shared household. Such orders are deeply problematic and impractical as they permit the abuser to remain in the same household as the survivor, even if the abuser is required to maintain a specified distance to the victim. Also, the court may direct that both the abuser and the survivor receive professional counselling. Notably, counselling is offered to each party separately with the focus being on addressing the violence and not on partner reconciliation.<sup>103</sup> Nevertheless, obligating a survivor to attend counselling and re-live or address their abusive experiences may be counterproductive and harmful to their mental health.

Finally, while Section 7 (6) of the DVA clearly states that the court may not refuse a Protection Order on the basis that only a single act has been committed or a single threat has been made, under Section 24 of the DVA, the court can withhold a permanent Protection Order if it is satisfied that three conditions are met: (a) the incident was an isolated one, (b) there are circumstances which make it desirable to preserve the family unit, and (c) the conduct complained of is "*not sufficiently grave*" to warrant the imposition of the order. In such cases, with the consent of the applicant, the court can instead require the respondent to enter into a bond of good behaviour for max. 6 months (which is forfeited inter alia if "*the applicant has become fearful of the respondent to the extent that he or she is no longer willing to continue the domestic relationship*"). This is a provision loaded with cultural biases and risks leaving survivors in jeopardy, despite the requirement for their consent to such a solution (which the victim will feel pressured to give when a court is "*satisfied*" that the three criteria are met).

### **C. PROTECTION OF WITNESSES ACT, NO. 17 OF 2014**

The Protection of Witnesses Act, No. 17 2014 (the "Protection of Witnesses Act") governs the protections in place for witnesses in legal proceedings in Grenada. The Protection of Witnesses Act allows for the protection of a witness' anonymity during investigations and/or criminal proceedings.<sup>104</sup> The considerations for this type of order include: the safety of the witness or other person(s), the right to a fair trial and whether anonymity would be a requirement for the witness to give evidence.<sup>105</sup>

The Protection of Witnesses Act also allows for special considerations for witnesses during trials where "***the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings***".<sup>106</sup> It is therefore at the court's discretion as to who qualifies as a vulnerable witness eligible for special consideration.

Special considerations include:

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<sup>102</sup> UN Women Caribbean, *Grenada* <<https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/grenada>.

<sup>103</sup> Ibid.

<sup>104</sup> Protection of Witnesses Act, sec 6 and 13.

<sup>105</sup> Ibid, sec 8(2) and sec 14(1).

<sup>106</sup> Ibid, sec 19(1).

- giving evidence by live link, in private (i.e. with any designated persons(s) excluded from the room), placing a physical screen in the courtroom for the witness to testify behind, or giving evidence or undergoing cross examination by way of a video recorded interview;
- conducting examination of a witness by an intermediary (being an interpreter or other person who must make a declaration that they will perform their duties properly) for the purposes of enabling the communication of questions to and responses from the witness and to provide further explanations where needed so the witness may understand said questions and responses; or
- giving evidence with the use of devices or other aids as the court considers appropriate to enable communication with the witness, where a disability, disorder or some other impairment may otherwise prevent this.<sup>107</sup>

The Director of Public Prosecutions (DPP) may apply for, or the court of its own motion may give, a direction to prohibit a defendant from cross-examining a witness where the court feels this would diminish the quality of evidence given by such witness or would be contrary to the interest of justice.<sup>108</sup> In the absence of such a direction, a defendant may cross-examine a witness.

As detailed later in this report, the use of special measures in GBV cases is non-existent primarily because there is a knowledge gap (CPA was unaware that these procedures existed), but also because it is not being requested by the DPP. Testimony by survivors is being conducted in an environment which inherently creates "fear or distress" when you are mere feet away from the accused. This is further amplified with child survivors. Operationalizing special measures in both the Magistrate and High Courts is essential for the proper adjudication of GBV cases and there must be a presumption given to survivors of GBV that they meet the criteria of being a vulnerable witness.

#### **D. MAINTENANCE ACT, NO.6 OF 1996 ("MA")**

The MA provides the legal basis for maintenance to be provided for children by their mothers and fathers. The MA does provide for maintenance for children born outside of marriage. However, per section 9, such children are regarded as "*illegitimate*" children, and there is therefore disparate treatment between children born outside of marriage as compared to those born to married parents.<sup>109</sup> In this regard, this section includes provisions relating to proving the paternity of a child. These provisions include time constraints and note that an order shall only be made where the court decides "*such person [is] the father of the child*". These provisions mean that there is no presumption of paternity of children born out of wedlock in some instances.<sup>110</sup> Thus, paternity must be proven, and this can be an onerous process which may leave the mother, and child, vulnerable and unable to provide for themselves. It also makes it difficult where couples who are unmarried and separated, as maintenance is not a guarantee. In instances where paternity is presumed, the provisions are

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<sup>107</sup> Ibid, sec 23-28.

<sup>108</sup> Ibid, sec 31(3).

<sup>109</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021),

<https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

<sup>110</sup> Ibid.

narrow and need to be expanded to include provisions relating to DNA testing and other medical and/or scientific tests that can evidence paternity.<sup>111</sup>

## **E. JUVENILE JUSTICE ACT 2012 ("JJA")**

Section 5 of the JJA states that it "*shall be presumed that a child under the age of twelve years is not capable of or guilty of committing a criminal offence*". Children aged 13 and above do not benefit from this presumption. Outside of extremely egregious criminal acts (for example murder or sexual violence), the age of culpability should be raised based on prevailing scientific standards about the development of children.

The JJA does not sufficiently protect children by ensuring that they are provided with a legal representative at the earliest opportunity. Children should be provided with a legal representative as early as the assessment phase (section 8) and it should be a requirement that they are present at the initial inquiry before a Magistrate (section 26). The state is first required to provide a child with counsel at the conclusion of the independent inquiry and only if (i) the child is awaiting trial before the court; (ii) the Director determines that the child's parent or guardian cannot pay for legal representation; and (iii) the proceedings are postponed for trial in the court and it is likely that the child will be found guilty of committing any of murder, manslaughter, rape and/or robbery with violence (section 67).

Should a child refuse to have their parent or an appropriate adult present at court proceedings, the police officer in charge of investigation in relation to the child shall request an independent observer. This is inappropriate given the role of the police officer in the investigation. Any court proceeding should be attended by the child's legal representative.

The JJA allows for the detention of children for up to six months after the date of their plea and prior to the date of their trial (other than in cases of murder, manslaughter or rape) (section 48). Except for exceptionally egregious crimes, children should not be detained pending and during trial.

The JJA prohibits flogging or whipping of children (section 64(2)). Life sentences can also not be imposed on children (section 64(1)).

According to Grenada 2015 Statistical Digest from UNICEF, the Government undertook to further develop its child protection systems by using several different strategies. The success of these strategies employed in strengthening the family and child protection legislative framework in Grenada is reflected in the list of Amendments and Acts introduced during the period 2010 to 2013 (including the JJA). However, programmes of action to prevent and eliminate the worst forms of child labour in practice do not appear to exist.<sup>112</sup> Programmes of action to prevent and eliminate the worst forms of child labour should be developed and implemented.

Grenada was one of the first OECS States to pass some of the earlier OECS Family Law Reform Project Model Bills, including the Domestic Violence Act; the Juvenile Justice Act and the Child Protection and Adoption Act. However, the passage of that batch of Model Bills has now

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<sup>111</sup> Ibid.

<sup>112</sup> Caribbean Employers' Confederation and Caribbean Congress of Labour, *Gap Analysis Matrix: Grenada* (September 2017).



stagnated. Cross referencing between legislative frameworks in Antigua and Barbuda to Grenada should take place to ensure improvements are reflected in the national law reform. Legislative reform of this area should pay special attention to enforcement procedures, striving for creative options that go well beyond committal to prison.<sup>113</sup>

Legal reform is necessary to achieve full prohibition of corporal punishment of children as corporal punishment in Grenada is still lawful in the home, in informal alternative care settings, in day care, in schools and in penal institutions. Sections 54, 55 and 65 of the Criminal Code 1958 provide for "*justifiable force*" for the purpose of "*correction*" of a child. These provisions should be repealed, and prohibition enacted of all corporal punishment in all settings, including the family home and all settings where adults have authority over children.<sup>114</sup>

## **F. CHILD (PROTECTION AND ADOPTION) ACT, NO. 20 OF 2010 ("CPAA")**

The CPAA provides for child protection provisions for those under 18 years of age. The CPAA also has several sections which go to the agency, and understanding, of a child in relation to their care. While these are supposed to ensure the care and protection of children, section 25(1)(i) and 97E when read in conjunction with JJA section 59, creates a pathway for criminalizing children for status offences (e.g. running away from home) and where guardians of the child "refuses or is unable to resume custody of the child."<sup>115</sup> Additionally, section 97E allows for the authorities to apprehend, without warrant, a child who runs away from the person to whose care the child has been committed, and should the adult refuse to receive the child, an order by the court would be made with respect to that child. This section does not account for reasons a child may take such a drastic step (e.g. abuse in the home) and may therefore leave children even more vulnerable. Sections 97E(2) and (3) also criminalises helping a child to run away. Again, this does not account for the reasons a child may need to escape and criminalises anyone who might be willing to help a child who may need safe harbour. Circumstances where a child has run away or exhibited deviant, but not criminal, behaviour and led to juvenile detention has been confirmed in interviewees with the Child Protection Authority.<sup>116</sup>

Notably, section 97J(d) states children have the right to be free from corporal punishment within a childcare setting. These provisions therefore ensure the safety of all children under the age of 18 in childcare settings. However, the CPAA, and wider legislation, fails to protect children from corporal punishment outside of the childcare setting (which is, instead, expressly permitted for the purposes of "correction of misconduct" by the Criminal Code).

Section 97E allows for the authorities to apprehend, without warrant, a child who runs away from the person to whose care the child has been committed, and such child would be brought back to the adult. Should the adult refuse to receive the child, such child would be brought before a court, where an order may be made in respect of that child. This section does not account for reasons a child may take such a drastic step and may therefore leave children

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<sup>113</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021).

<sup>114</sup> End Corporal Punishment, *Country Report for Grenada*, <https://endcorporalpunishment.org/reports-on-every-state-and-territory/grenada/>.

<sup>115</sup> CPAA, sec. 25(1)(i).

<sup>116</sup> Interview conducted by ICAAD with Child Protection Agency, 26 September 2023.

vulnerable. Sections 97E(2) and (3) also criminalises helping a child to run away. Again, this does not account for the reasons a child may need to escape and criminalises anyone who might be willing to help a child who may need safe harbour.

Grenada also has not yet developed regulations to support effective implementation of the CPPA, so there is a lack of sufficient guidance on the more procedural aspects of enforcing the CPPA.<sup>117</sup>

## **G. EDUCATION (AMENDMENT) ACT, NO.26 OF 2012 ("EA")**

The EA<sup>118</sup> provides for amendments to the Education Act Chapter 86 of the Continuous Revised Edition of the Laws of Grenada 2010 (herein referred to as the "Principal Education Code").<sup>119</sup> The EA only provides for a small number of amendments to the Principal Education Code and fails to include amendments to the Principal Education Code in relation to corporal punishment. Section 53 of the Principal Education Code, which allows designated personnel in schools to administer corporal punishment, should be removed so as not to legalise physical punishment of minors in schools.

The EA should also expressly address the issue of the right of pregnant girls to an education. Such rights should be contained in the EA through provisions which provide pregnant young girls with the right to remain in school until a reasonable stage of the pregnancy, as well as provide the right for them return to school and resume education after giving birth.<sup>120</sup> There is a Programme for Adolescent Mothers ("PAM"), whose mission is to help teenage mothers finish their education and reduce second pregnancies during their education. This programme is meant to challenge the cultural resistance and other barriers such as appropriate uniforms and school facilities for adolescent mothers. These programs should be supported, and fundamental rights should not be left to the discretion of the school or principals and should be explicitly contained in the EA so young girls and their equal access to education is protected, no matter the circumstances.<sup>121</sup>

Further, while the EA and Principal Education Code do not contain provisions which note that pregnancy is a reason for expulsion, pregnant teenagers' lived reality is not reflective of this. Pregnant young girls are made to feel unwelcome at school, and schools do expel young pregnant girls from school due to their pregnancy. The EA should therefore also specifically prohibit the expulsion of girls from school on the grounds of pregnancy to address this issue.<sup>122</sup>

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<sup>117</sup> Grenada Spotlight Country Programme, p. 21.

<sup>118</sup> Education Act, Chapter 86,

[https://www.laws.gov.gd/index.php?option=com\\_edocman&task=document.download&id=1070&Itemid=213](https://www.laws.gov.gd/index.php?option=com_edocman&task=document.download&id=1070&Itemid=213).

<sup>119</sup> Education (Amendment) Act, Chapter 86,

[https://laws.gov.gd/index.php?option=com\\_edocman&task=document.download&id=238&Itemid=185](https://laws.gov.gd/index.php?option=com_edocman&task=document.download&id=238&Itemid=185).

<sup>120</sup> In 2014, The Ministry of Social Development and Housing stated in 2014 that, "only a small proportion of adolescent mothers are provided with educational opportunities." *Gender Profile: Grenada*,

<https://oasis.col.org/server/api/core/bitstreams/57389218-9838-4c5d-bb35-b0551810ff2c/content>

<sup>121</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021),

<https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

<sup>122</sup> *Gender Equality Policy and Action Plan 2014-2024, Ministry of Social Development and Housing Government of Grenada* (10 June 2014)

## H. CRIMINAL CODE (AMENDMENT) ACT, NO. 29 OF 2012 ("CCA")

The CCA<sup>123</sup> provides for amendments to the existing legislation contained within the Criminal Code CAP.72A of the 2010 Continuous Revised Edition of the Laws of Grenada (herein referred to as the "Principal Criminal Code").<sup>124</sup> The CCA seeks to revise the Principal Criminal Code in various ways but there are no amendments to, or repeal of, sections 54, 65, 70 and 75.

### ***Corporal punishment (sections 54, 65, 70 and 75 of the Principal Criminal Code)***

Sections 54(i) and 65 justify the use of corporal punishment against minors, servants or "similar persons" (in particular apprentices) for the purpose of "correction for misconduct". Given that it is wide open what behaviour is considered misconduct justifying "correction", this allows for cultural biases, including against LGBT+ individuals, to influence the sentencing. Further, permission of physical punishment of a "servant" allows an abuse of power that disproportionately affects women, who are more likely to provide domestic help. Section 67 also allows the use of force against a person who obstructs the infliction of corporal punishment, which in effect authorizes domestic violence where a household member interferes with the "correction" of a child by an abuser.

Section 70 legalises flogging and whipping as types of punishment. Section 75 makes clear that juvenile offenders (who can be aged between 7 and 18) are not exempt from corporal punishment, although they cannot be flogged. Women – including female juveniles – cannot be sentenced to flogging or whipping, but the court may sentence them to solitary confinement instead. Corporal punishment and solitary confinement (which is an alternative punishment used for girls), are vestiges of colonialism and must be repealed for both adults and juvenile offenders.

This law is being challenged; attorney Jerry Edwin filed a motion calling on the High Court to remove flogging as a penalty. The attorney cited situations of abuse by magistrates where flogging had been used for "robbery, traffic offenses, offensive language,"<sup>125</sup> and other offenses where flogging is not permitted by law. The counsel further exclaimed the travesty of using "slavery era form of punishment in the era of reparative justice."<sup>126</sup>

Abortion is illegal in Grenada under the Criminal Code CAP 72A, section 234, unless the mother's life is in danger. The CEDAW committee was particularly concerned in its 2012 report about the unsafe and illegal abortions in the country and the danger for babies' health.<sup>127</sup>

### ***Industrial School System***

Section 78 provides for the detention of minors (10-18 years) for a minimum of 2 years and a maximum of 5 years in Industrial Schools as an alternative to imprisonment, when it

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<sup>123</sup> Criminal Code (Amendment) Act, No.26 of 2012,

[https://oig.cepal.org/sites/default/files/2012\\_criminal\\_codeamendmentact\\_grd.pdf](https://oig.cepal.org/sites/default/files/2012_criminal_codeamendmentact_grd.pdf).

<sup>124</sup> Criminal Code, Chapter 72,

[https://laws.gov.gd/index.php?option=com\\_edocman&task=document.download&id=191&Itemid=183](https://laws.gov.gd/index.php?option=com_edocman&task=document.download&id=191&Itemid=183).

<sup>125</sup> Caribbean Loop News, *Lawyer Files Motion to Remove Flogging from Law Books in Grenada* (July 12, 2023), <https://caribbean.loopnews.com/content/lawyer-files-motion-removing-flogging-law-books-grenada>.

<sup>126</sup> Ibid.

<sup>127</sup> CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Grenada*, CEDAW/C/GRD/CO1-5, at para. 33 (2012), <https://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-GRD-CO-1-5.pdf>.

"appears" to the court that the minor has criminal habits or tendencies or associates with persons of bad character. This opens the door to gender-related biases in sentencing, especially where girls under 16 are sentenced for consensual sex with same-aged boys, and against minors engaging in consensual same-sex relationships. Furthermore, Industrial Schools, akin to juvenile detention, in the Caribbean context is often used as a form of social control and the enforcement of moral codes.

### ***Sexual crimes***

There is some progress in the CCA through its definition of sexual crimes including the use of gender-neutral terms. However, these provisions are still insufficient in protecting victims of sexual crimes. Sections 177(1) and 178(1) provide definitions of "rape" and "sexual assault" and sections 194 and 195 provide definitions for "genital organs and penetration" and "evidence of rape". The definitions of rape and sexual assault are limited to penetration with genitals, and the "evidence of rape" relies on proof of any degree of penetration. Penetration is defined as only via genitals, meaning the definition of what constitutes rape is narrowly defined and does not include penetration by objects other than genitals. It also fails to address non-consensual penetration of areas other than genitals. These definitions therefore do not define sexual crimes in a sufficient manner, as they focus only on "penetrative" sexual crimes, leaving women, and men, vulnerable to other forms of sexual crimes which have not been criminalised (e.g. forcible penetration by other objects or non-consensual penetration of other areas such as the mouth). Moreover, the legislation should make clear that evidence of resistance is unnecessary to prove sexual violence. With the high rates of sexual violence against children, there is also a notable absence in the legislation around grooming and sexual communication with children.<sup>128</sup>

The definition of what constitutes a punishable sexual crime relies on evidence of such crime occurring "without consent". Consent is not defined clearly, and by looking for consent only, the law does not consider the circumstances under which sexual crimes might occur. Thus, the definition should instead focus on a set of various coercive circumstances, which are defined in the legislation, to make it simpler for victims to present evidence of sexual crimes.<sup>129</sup>

There are also no provisions in the Principal Criminal Code or CCA which provide for the definitions of sexual harassment, nor punishments relating to this. However, the Grenada National Organisation of Women have initiated a programme to aid with the drafting of a Bill against sexual harassment, including in the workplace, so the CCA may not need similar provisions.<sup>130</sup>

Finally, the CCA separates marital and non-marital rape in sections 177(2) and 177(3). The maximum sentence for non-marital rape exceeds that of marital rape (30 years as opposed to 14 years). Marital rape should be treated as harshly as non-marital rape to provide

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<sup>128</sup> Equality & Justice Alliance, Human Dignity Trust, *Next Steps Towards Reform: Assessing Good Practice and Gaps in Commonwealth Sexual Offences Legislation: Caribbean & Americas*, at 30, <https://www.humandignitytrust.org/wp-content/uploads/resources/2020-Next-Steps-CA.pdf>.

<sup>129</sup> A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls (June 2021), <https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

<sup>130</sup> *Gender Equality Policy and Action Plan 2014-2024*, Ministry of Social Development and Housing Government of Grenada (10 June 2014).

adequate protection for married women and to signal that there is no distinction between the severity of rape and marital rape.

### ***Sexual offences against minors***

The CCA also includes amendments in relation to sexual offences against minors in sections 180-181. The section, as it currently stands, separates offences against minors under 13 years of age, and against minors between 13 and 16 years of age. For the latter, there is a defence if the perpetrator is aged up to the age of 19, is a first-time offender, and believed, or had reasonable cause to believe, that the person they had sexual relations with was at least 16. This is problematic, and makes young girls, and young boys, vulnerable to being taken advantage of. Such a defence should be removed.

On the other hand, the sections on sexual offences against minors do not account for consensual sex between two minors, or between two adolescents close in age to one another, where one is recently over the age of consent and the other is still not. Such exemptions operate by creating categorical age-based exceptions from prosecution wherein persons within those categories having consensual sex are exempt from prosecution. The laws of Trinidad and Tobago, for example, include carveouts for aged-based categories to avoid criminalising consensual sex between two minors/adolescents within acceptable age-based parameters.<sup>131</sup> The CCA should therefore clarify the definition of sexual offences against minors to account for such adolescent relationships, while also including specific parameters for adolescent relationships to protect young children from exploitation.

### ***Sexual offences against disabled persons***

Section 182 provides for laws against sex with "*imbeciles*". This is a derogatory term used to refer to those with disabilities. The section is also narrow, in that it does not recognise the sexual autonomy of those that may suffer from certain disabilities and their ability to consent. The CCA's blanket prohibition on sexual relations with those with disabilities therefore does not consider the nuance of certain disabilities and removes sexual autonomy from all those with disabilities.

### ***Incest***

Sections 183A and 183B deal with incestual relationships. The definition of incest does not account for same sex incestual relationships, and does not extend to first cousins, so is incomplete.

Section 183A, relating to incest perpetrated by a male, separates the punishment for incest with a person over the age of 13, and under the age of 13. The maximum prison sentence for incestual relations with a girl under 13 years of age is harsher than that for a girl/woman over 13 years of age. However, the harsher sentence for incestual relations with a minor should

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<sup>131</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021), <https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

encompass girls aged 16 and under, rather than just girls aged 13 and under (to be in line with the general protection of minors under 16 against sexual offences).

Section 183B, relating to incest perpetrated by a female, penalizes the female only if she consented to the sexual intercourse with a male relative (and is at least 16 years old). This is problematic in a child abuse situation where the (female) victim may feel pressured to confirm that she consented to the acts of the abuser. On the other hand, in a consensual relationship there is no reason to punish only the man and not the woman, if incest is to be penalized as such. Section 183A also does not place an age limit on the age of the perpetrator, whereas section 183B defines the age limit of the age of a female perpetrator as being at least 16 years of age. Both sections should be aligned, and those who are not yet adults (either a male or female aged below 18) should not be punished for such incestual relations, as it is likely they are the victims. Both sections relating to incest should therefore define the perpetrator as being an adult, i.e. of at least 18 years of age.

The sections relating to incest therefore need to clarify a few definitions of the crime of incest and include provisions which account for whether such incestual relations, regardless of age, are a product of coercive circumstances. This would help clarify the definitions and ensure victims are not wrongfully punished.

## **I. PRISONS ACT, NO. 11 OF 1980**

Prisons Act, No. 11 of 1980 (the "Prisons Act") allows for the corporal punishment of prisoners where a prisoner is found guilty of any of the following offences: mutiny or incitement to mutiny; taking part in any assault or attack on a member of the prison staff or on a medical officer; or aggravated or repeated assault on any other prisoner.<sup>132</sup>

These offences are punishable by lawful corporal punishment not exceeding twelve strokes, should a prisoner be found guilty thereof following a "*proper inquiry*" by the Superintendent or an authorised officer. Corporal punishment may be imposed in combination with one of the following: reduction of diet for a period not exceeding twenty-one days (with the most restrictive diet being two meals a day, each consisting of 8oz of bread with water);<sup>133</sup> suspension or postponement of privileges for a period not exceeding ninety days; or forfeiture of remission for a period not exceeding ninety days.<sup>134</sup>

The Prisons Act allows for the Minister to make rules generally for the good management and governance of prisons and prisoners. In addition, the Minister may make rules governing the conditions under which, and the manner in which, lawful corporal punishment shall be administered.<sup>135</sup> Save for the restriction that corporal punishment must be "*lawful*", this gives the Minister unfettered powers to make rules regarding administering corporal punishment.

Further detailed rules regarding the administration of corporal punishment are included in the Prison Rules SRO 14 of 1980 (as amended by SRO 12 of 2006):

- Rules 33/307: the Commissioner shall attend all corporal punishment and enter into their Journal any orders which the Prison Medical Officer may have given. The

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<sup>132</sup> Prison Act, sec 35.

<sup>133</sup> Prison Rules, Second Schedule [Rule 308].

<sup>134</sup> Prison Act, sec 35.

<sup>135</sup> Prison Act, sec 51.

Commissioner shall also keep a record of the number of lashes or strokes inflicted. In addition, the Commissioner shall make all necessary arrangements for the carrying out of all executions and shall be present. The Commissioner therefore has a substantial amount of power in relation to the exercise of corporal power.

- Rules 41/60: the Assistant Superintendent and the Superintendent shall take care that no prisoner is subjected to any corporal, cellular or dietary punishment which the Prison Medical Officer has not certified that he or she is capable of undergoing. Whilst this does place a check on the imposition of punishments, it places discretion in the hands of the Prison Medical Officer and is reliant on the Superintendent's Assistant and the Superintendent's compliance with the rules.
- Rule 49/70: the Assistant Superintendent and the Superintendent shall be present at all corporal punishment inflicted at the Prison.
- Rule 89: the Medical Officer shall examine every prisoner about to undergo corporal punishment and shall be present during the administration of such punishment. The Medical Officer may at any time order that such punishment shall not be inflicted or stopped if they are of the opinion that the infliction or further infliction of that punishment is likely to endanger the health of such prisoner. Such a rule again places discretion in the hands of the Medical Officer. It is also unclear to what extent the health of a prisoner must be endangered before the punishment is stopped (given that any corporal punishment will negatively impact the health of a prisoner).

## **J. ELECTRONIC CRIMES ACT, NO. 23 OF 2013 ("ECA")**

The ECA prohibits the capturing of, publishing of and transmission of the private areas of a person online without their permission. This provides some protection to those vulnerable to such crime, but the provision only seeks to punish offenders after the fact. The ECA should therefore expand the definition of such crime, so it also contains provisions allowing a victim to prevent an imminent offender from sharing, non-consensually, private sexual material in which a victim may be identified.<sup>136</sup>

Section 12 also contains provisions outlawing the production of, distribution of and general engagement with child pornography. Children are defined as a person under the age of 18, and the section is a positive step forward in the protection of children, particularly vulnerable girls.

However, this section does include a number of exceptions to the definition of child pornography. Notably, section 12(2) defines the crime as being one "*without lawful justification or excuse*", section 12(3) includes an exception for a "*bona fide law enforcement process*" and section 12(5) states these laws do not apply to "*book, pamphlet, paper, drawing, painting, representation or figure or writing in an electronic form*" which is "*proved to be justified as being for the public good*" or is "*kept or used for bona fide heritage or religious purposes*". This is problematic as section 12 includes a number of defences and carveouts, which may leave young people vulnerable to sexual exploitation. The section 12 exceptions and defences need to be narrowed and clarified, to further protect children. This section should therefore specifically define, or include examples of, what would constitute a legitimate

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<sup>136</sup> Ibid.

or "*bona fide*" defence, to ensure perpetrators are properly punished, and are unable to benefit from a loophole in the law.

### **K. AGE OF CIVIL LEGAL RESPONSIBILITY ACT, NO. 14 OF 2011**

In keeping with international standards, the age of legal responsibility in Grenada is 18: "*As from the appointed day, any person who attains the age of eighteen years, shall be of the age of full civil legal responsibility and thus have full legal capacity to deal with civil matters without needing the consent of his parents or guardians, or the permission of any court of law, on account only of his age.*"<sup>137</sup>

Accordingly, once an individual turns 18 they should not require parental consent. This should allow women over the age of 18 to access medical services, including Sexual and Reproductive Health services, and/or medical care in circumstances of domestic violence, without consent of their parents.

Any law in Grenada made prior or after this Act's commencement which has as a condition that an individual must be over the age of 21 is read as subject to the Act and construed with such modifications necessary to bring it into conformity with this Act. Put simply, this Act ensures that the age of legal responsibility remains at 18, notwithstanding any laws made to the contrary.

### **L. NATIONAL INSURANCE ACT, NO.14 OF 1983 ("NIA")**

The NIA established Grenada's National Insurance Scheme ("NIS"). It is a compulsory contributory scheme and employers and/or self-employed persons are required to make contributions. The NIS pays out wide range of benefits, categorised as short and long-term, which include, for example, an age pension, sickness benefit, maternity benefit etc.

As the benefits available under the NIS correlate to an individual's contribution, women are more likely to receive lower benefits. Women are almost less likely to be eligible for the scheme; they are more likely to take on the role of a homemaker and/o take career breaks to, i.e. raise a family.<sup>138</sup> Age benefits contained in section 29 of the NIA, for example, require consistent contributions before pension is payable, and there is little regard to women's contributors as homemakers in relation to the NIS. Women are also more likely to have lower earnings.

Women would therefore be more likely to receive a lower pension, if they receive one at all. This, in turn, means women are more likely to be financially dependent on their husbands or partners, and therefore less likely to be able to extricate themselves from violent situations.

As to specific benefits, one of the benefits available under the NIS is survivor's benefit, which is a payment available under the scheme to immediate family members of a deceased. While common law marriage is not recognised, section 44 of the NIA provides for survivor's benefit to those who are unmarried and cohabit as partners. The section relies only on the fact that

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<sup>137</sup> Age of Civil Legal Responsibility Act, No. 14 of 2011 Article 3(1).

<sup>138</sup> Gender Equality Policy and Action Plan 2014-2024, Ministry of Social Development and Housing Government of Grenada (10 June 2014).



the couple were living together before the death of one of the partners and is therefore a positive inclusion in protecting the rights of couples in cohabitating relationships.<sup>139</sup>

However, other inclusions in the NIA are less positive. Some of the benefits contained in the NIA apply only to married women. For example, maternity benefit in section 11 is provided only to an insured woman or a woman married to an insured man. Where an unmarried couple cohabits, and the woman is reliant on her partner, she is less likely to be eligible for such benefit.

Further, women who cohabit with an unmarried partner are not granted the same rights and protection as married women. They are generally not recognised as "next-of-kin" when it comes to maintenance, inheritance and property rights. While a cohabiting partner may receive survivors' benefit (as noted above) and funeral grant on the death of their insured partner, they are not able to inherit property of a partner who dies intestate. This is despite the length of their union, or whether the surviving partner has a vested interest in the property.<sup>140</sup> This leaves surviving spouses vulnerable, especially women, who are less likely to own property in their own name.

### **M. MARRIED WOMAN'S PROPERTY ACT 1896 ("MWPA")**

The MWPA is a key piece of legislation related to marriage and family matters, which has been retained from the colonial period and not updated since Grenada gained independence.<sup>141</sup> Complicated the MWPA is that grounds for divorce are based on fault. The MWPA provides that married women have security and protection *feme sole* (i.e. as if they were unmarried). However, the MWPA does not allow for a woman to take any criminal proceeding against her husband as regards to property, unless the "*property shall have been wrongfully taken by the husband*" who leaves or deserts his wife.<sup>142</sup> Such provision narrows the rights and remedies available to married women as regards to property in the event that their husband decides to leave them and it is unclear under which circumstances criminal proceedings may be brought. These protections are further narrowed as neither husband nor wife may sue the other for tort.

Similarly, Section 7 specifically states that a woman, after marriage, is liable by herself for any "*debts, contracts of wrongs*" she has prior to marriage. There is no similar provision for the husband. This means that women who are homemakers may struggle to pay off debts that were incurred prior to marriage, and her husband has no obligation to aid her with these. As there is no provision that mirrors this for men's debts prior to marriage, women who work may therefore become liable for their husbands' debts which were incurred prior to their marriage.

The MWPA also contains no provisions relating to cohabiting unmarried couples. There are some protections afforded for unmarried couples in the NIA, but neither legislation provides

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<sup>139</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021), <https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

<sup>140</sup> *Gender Equality Policy and Action Plan 2014-2024*, Ministry of Social Development and Housing Government of Grenada (10 June 2014).

<sup>141</sup> *Ibid.*

<sup>142</sup> MWPA, sec. 3.

for any 'common law spouse' protections regarding property, inheritance, or maintenance. The legislation is outdated as it has not been updated since Grenada was under colonial rule.

## **N. RENT RESTRICTION ACT, NO. 24 OF 1982**

The Rent Restriction Act is designed to restrict a landlord's ability to increase the rent of a leased property or to recover possession of the property. However, Section 22 of the legislation grants landlords authority to eject tenants "*guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose*". A parallel provision also exists in other Caribbean jurisdictions.<sup>143</sup>

In Grenada, Section 22 can be used to harm the LGBTQI+ community adversely. Consensual same-sex acts are considered to be illegal in Grenada.<sup>144</sup> Although this law is not actively being enforced by the authorities, society in Grenada remains "generally intolerant" of the LGBTQI+ community.<sup>145</sup> Moreover, there is no legislation in place which prohibits discrimination against LGBTQI+ people in terms of housing.<sup>146</sup> As yet, Grenada have not amended the Rent Restriction Act to address this gap. Sexual and gender minorities in Grenada continue to face violence, harassment, and homelessness as a result of discriminatory laws.<sup>147</sup>

## **O. EMPLOYMENT ACT, NO. 14 OF 1999 ("EA 1999")**

There are no legal barriers to women's equal participation in the labour force in Grenada, as section 26 of the Employment Act 1999 ("EA 1999") prohibits discrimination on the basis of sex, marital status or family responsibilities. However, this is dependent on whether women feel able to join the workforce in the first place, which in turn is affected by the support available once they do.

In this regard, the EA 1999, for example, provides paid maternity leave for employed women, which should support women's access to the labour force. However, this has several restrictions. Sections 59 and 62 both restrict maternity paid leave to only those who have been working with their employer continuously for a period of 18 months prior to becoming pregnant. This approach is too restrictive and fails to ensure the provision of basic monetary compensation, even if for a shorter duration, and right of return protections for employees with less than 18 months service. In addition, the EA 1999 is not applicable to members of the police force, armed forces, prison guards or officers except those which are employed in a civilian capacity.<sup>148</sup> This unfairly discriminates against women in such professions by denying them any paid maternity leave under the EA 1999.

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<sup>143</sup> ICAAD, *Jamaica: Comparing Justice Sector Standards and Lived Experiences of Victims of Gender-Based Violence*, p. 67 [Pending Publication].

<sup>144</sup> Criminal Code 1987, sec. 430-431.

<sup>145</sup> House of Commons Library, *LGBT+ Rights and Issues in the Caribbean* at 17 (27 January 2022) <https://researchbriefings.files.parliament.uk/documents/CBP-9436/CBP-9436.pdf>.

<sup>146</sup> US State Department, 2022 Country Reports on Human Rights Practices: Grenada (2022) <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/grenada/>.

<sup>147</sup> Human Rights Watch, *They Can Harass Us Because of the Laws: Violence and Discrimination against LGBT People in Saint Vincent and the Grenadines* (20 July 2023), <https://www.hrw.org/report/2023/07/20/they-can-harass-us-because-laws/violence-and-discrimination-against-lgbt-people>.

<sup>148</sup> Employment Act, No. 14 of 1999, sec. 4.

Furthermore, under Section 60, maternity leave is limited to a period of three months for eligible individuals. Although this provides some time for new mothers to recover without income anxiety, the duration should be lengthened. International best practice by the International Labour Organisation ("ILO") Convention No. 183 states that maternity, or parental, leave should be a minimum of 14 weeks, six of which must be taken following childbirth.<sup>149</sup> Recommendation No. 191 of the ILO recommends a maternity period of 18 weeks.<sup>150</sup>

Finally, Section 65 states that an employee entitled to maternity leave and pay under the EA 1999 is only so entitled "*once in each period of two years and on no more than three occasions including the first occasion*". The EA 1999 should not impose such a limit as this can interfere with a right to bodily autonomy by unfairly discriminating against women who choose to have more than three children, or those who become pregnant again shortly after giving birth.

The Act does not make provision for paternity leave, which has a demonstrable impact on women. To modernise the EA 1999, amendments should be made to recognise parental leave as including fathers. This would ensure parents are able to share the responsibilities of raising children and stop the law from reinforcing traditional gender roles.<sup>151</sup>

## **P. SEXUAL HARASSMENT BILL, 2021**

The Sexual Harassment Bill is currently in the legislative process and is yet to be enacted. It is part of Grenada's broader plans to address gender-based violence and the act will specifically address sexual harassment in the workplace and other public spheres.<sup>152</sup> There are currently no laws providing for criminal penalties for sexual harassment, nor explicitly noting that sexual harassment is prohibited, so this legislation aims to counteract this legislative gap.<sup>153</sup> The government recognises there is a persistent problem with sexual harassment in the workplace, so this legislation will also aid workplaces with navigating what conduct is unacceptable, and the criminal punishment should act as a deterrent. Further, some employers have already taken the initiative to educate employees to reduce harassment and, in some cases, terminate the employment of perpetrators, so a legislative framework should help with improvements to this education and will act as a guideline for all workplaces to build their policies around.<sup>154</sup>

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<sup>149</sup> International Labour Organisation, *Gender Network Handbook (2006), on Convention No. 183 Convention concerning the Revision of the Maternity Protection Convention (Revised) 1952*, Article 4.1, [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/genericdocument/wcms\\_114195.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/genericdocument/wcms_114195.pdf)

<sup>150</sup> International Labour Organisation, *Maternity Protection Recommendation, 2000 (No. 191) Article 1.1*, [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100\\_INSTRUMENT\\_ID:312529](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312529).

<sup>151</sup> ICAAD, *Jamaica: Comparing Justice Sector Standards and Lived Experiences of Victims of Gender-Based Violence*, p. 68 [Pending Publication].

<sup>152</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021), <https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

<sup>153</sup> Ibid.

<sup>154</sup> *Grenada 2022 Human Rights Report (2022)*, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/grenada/>.

The Grenada National Organisation of Women (“GNOW”) initiated a programme advocating for the bill and the organisation submitted a proposed draft bill to the government in 2012.<sup>155</sup> Under the proposed legislation, sexual harassment would be defined as: “*the unwanted or unwelcome physical, verbal and non-verbal conduct of a sexual nature or based on sex, which is offensive to the person being harassed*”.<sup>156</sup>

Various other attempts have been made to incorporate provisions addressing sexual harassment within Grenada's legal framework. Notably, in 2016, a bill aimed at amending the Labour Code of Grenada was approved by both Houses of Parliament and included provisions as proposed, in part, by the draft Bill from GNOW.<sup>157</sup> However, a commencement date remained pending, as certain sections were earmarked for further review.<sup>158</sup> The revisions in this bill primarily focused on addressing sexual harassment within the workplace but did not extend to public spaces and educational settings, unless they could be construed as workplaces.<sup>159</sup> Subsequently, another bill, the Protection against Sexual Harassment Bill was developed as part of the regional IMPACT Justice Project, commissioned by the Caribbean Community (CARICOM).<sup>160</sup> The Ministry of Legal Affairs' Legal Drafting Unit reviewed the draft Bill and submitted feedback to CARICOM, with finalization occurring in the same year. This new Model Bill was recommended as the preferred option, but no further action has been taken to implement it. Consequently, the Ministry of Labour continues to handle allegations of sexual harassment in the workplace on a case-by-case basis.<sup>161</sup>

## **Q. National Sex Offenders Bill, 2020**

In Grenada, there is currently no legislation which establishes a register of sexual offenders. A register is necessary, particularly due to the high prevalence of sexual offences recorded, especially against children, in Grenada.<sup>162</sup>

The National Sex Offenders Bill seeks to address this legislative gap. The aim of the bill is to combat increasing instances of sexual violence and child sexual abuse through a regional registry.<sup>163</sup> The bill proposes the register include a number of offences, including rape, human

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<sup>155</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021), <https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>; and Gender Equality Policy and Action Plan 2014-2024, Ministry of Social Development and Housing Government of Grenada (10 June 2014).

<sup>156</sup> Ibid.

<sup>157</sup> *Grenada Comprehensive National Review on Implementation of the Beijing Declaration and Platform for Action* (May 2019)

[https://www.cepal.org/sites/default/files/grenada\\_comprehensive\\_national\\_review\\_to\\_beijing\\_25\\_may\\_2019.pdf](https://www.cepal.org/sites/default/files/grenada_comprehensive_national_review_to_beijing_25_may_2019.pdf)

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> *Report on CARICOM Model Protection Against Sexual Harassment Bill and Recommendations for a New Bill* (March 2015) <https://caribbeanimpact.org/website/wp-content/uploads/2018/02/IMPACT-Justice-Sexual-Harassment-Report-April-2015-2.pdf>

<sup>161</sup> *Grenada Comprehensive National Review on Implementation of the Beijing Declaration and Platform for Action* (May 2019)

[https://www.cepal.org/sites/default/files/grenada\\_comprehensive\\_national\\_review\\_to\\_beijing\\_25\\_may\\_2019.pdf](https://www.cepal.org/sites/default/files/grenada_comprehensive_national_review_to_beijing_25_may_2019.pdf)

<sup>162</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021),

<https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

<sup>163</sup> *Sexual Offender Registration and Notification Laws around the World* (April 2022), [https://smart.ojp.gov/doc/SORN-Laws-Around-the-World\\_FINAL\\_REPORT.pdf](https://smart.ojp.gov/doc/SORN-Laws-Around-the-World_FINAL_REPORT.pdf).

trafficking and kidnapping, and it is expected to include records of offences where an offender has been convicted or where they have been charged but not convicted. The bill also proposes dual registry; one register would include all details of the offender and another register, which would be public facing, would include only relevant details and redact certain personal details such as information regarding the next of kin.<sup>164</sup>

The bill has been drafted and is awaiting submission to, and approval from, the government. There are no updates available publicly regarding the current status of the Bill. However, it is noteworthy that a similar Bill was passed in Antigua (also a member of the Organisation of Eastern Caribbean States ("OECS")) in 2022,<sup>165</sup> and it appears the process moved more quickly than in Grenada.

## **R. THE MARRIAGE ACT, NO. 14 OF 2011**

Marriage in Grenada is governed by the Marriage Act, No 14 of 2011 (the "Marriage Act"). The Marriage Act allows for the marriage of children under the age of eighteen provided they are at least sixteen years old and either have the consent of their parent or are a widower.<sup>166</sup> Marriage where any of the parties are under the age of eighteen is considered a child marriage by the United Nations. Child marriage has been recognised as a human rights violation by the United Nations Human Rights Council.<sup>167</sup>

The Marriage Act stipulates that the parental consent for marriage of a child under the age of 18 is to be given by the father. The mother can give consent only if the father has died and there is no other legal guardian.<sup>168</sup> The ability to consent to a child marriage in Grenada therefore primarily lies with fathers, which is discriminatory.

The pro-forma registration documents for marriages under the Marriage Act require the name and surname of the father of these being married to be recorded. There is no reference to an individual's mother, or any other form of guardian, in the registration documents.

## **S. MATRIMONIAL CAUSES ACT, 1973**

The West Indies Associated States Supreme Court (Grenada) Act provides that, absent operative law in Grenada, probate, divorce and matrimonial causes shall be dealt with "*as nearly as may be*" in conformity with the law in force in the High Court of Justice in England.<sup>169</sup>

The High Court of Grenada in the 2019 case of *Kieran Emmanuel Telesford v Maureen Ann Telesford nee Frank*<sup>170</sup> confirmed that there are no specific legislation or rules in Grenada governing divorce and matrimonial causes. The court therefore applied the Matrimonial

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<sup>164</sup> UNICEF, *A Comparative Legal Gap Analysis of Laws in Grenada Relevant to Combatting and Ending Violence against Women and Girls* (June 2021),

<https://www.unicef.org/easterncaribbean/media/3171/file/Legal%20gap%20analysis%20Grenada.pdf>.

<sup>165</sup> *Antigua's Lower House passes Sexual Offences Registry Bill*, 26 October 2022,

<https://www.jamaicaobserver.com/latest-news/antiguas-lower-house-passes-sexual-offences-registry-bill/>.

<sup>166</sup> Marriage Act, sec 3 and sec. 20.

<sup>167</sup> Resolution on "Strengthening efforts to prevent and eliminate child, early and forced marriage", A/HRC/RES/29/8.

<sup>168</sup> Marriage Act, sec 20.

<sup>169</sup> West Indies Associated States Supreme Court (Grenada) Act, sec 11(1).

<sup>170</sup> *Kieran Emmanuel Telesford v Maureen Ann Telesford nee Frank* GD 2019 HC 10, at para.3 and 4.

Causes Act 1973 (an act governing divorce law and marriage in England and Wales) and considered case law from the English courts (for example the case of *Piper v Piper*).

Under the Matrimonial Causes Act, either party to a marriage may apply to the court for a divorce if the marriage has "*broken down irretrievably*"<sup>171</sup>.

The laws governing divorce applicable to Grenada are now fifty years old and has recently been described by Baroness Fiona Shackleton in Parliament in England as "*hopelessly out of date*". Given the changes in society (both in the UK and Grenada) since 1973, it is unlikely that the Matrimonial Causes Act is suitable for modern society<sup>172</sup>.

As a result, the UK Government has recently asked its Law Commission to review the Matrimonial Causes Act and consider whether it is still fit for purpose. The Law Commission's review will be focused on the current laws on financial remedies to determine whether there are problems with the current framework which require law reform. The Law Commission intends to publish a scoping report in September 2024<sup>173</sup>.

Any resulting changes to the law in England will, as a result of the West Indies Associated States Supreme Court (Grenada) Act, also be directly applicable in Grenada, without consideration as to whether they are appropriate for Grenada.

It is also unclear whether the outcome of the Law Commission's work will be adopted by the UK Government. In 2014, the Law Commission undertook a review into marital property agreements and other specific aspects of the financial consequences of divorce, producing a report called "*Matrimonial Property, Needs and Agreements*"<sup>174</sup>. The report included several recommendations. Whilst the UK government has produced scoping work as a result of the report, no final response has been received.

Review of this Act could have profound implications for women when it comes to land ownership. Men and women have equal ownership rights to immovable property. However, the reality points to a gender-based gap between men and women, with men controlling and owning around 77% of the land in Grenada.<sup>175</sup> Furthermore, "single women in Grenada, are particularly vulnerable to natural hazards and climate change impacts and are most likely to lack the capacity to cope, since their lower labour participation will be exacerbated due to loss of livelihoods and their susceptibility to domestic and intimate partner violence."<sup>176</sup>

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<sup>171</sup> Ibid, at para. 4.

<sup>172</sup> Fiona W, Irpreet K, Charlotte C, Gavin S, Mark H, Nikki A, *The Review of the Law in England & Wales Dealing with Financial Settlement on Divorce*, <https://www.freeths.co.uk/2023/03/20/the-review-of-the-law-in-england-wales-dealing-with-financial-settlement-on-divorce/>.

<sup>173</sup> The Law Commission, *Financial Remedies on Divorce*, <https://lawcom.gov.uk/project/financial-remedies-on-divorce/>.

<sup>174</sup> The Law Commission, *Matrimonial Property, Needs and Agreements*, [https://s3-eu-west-2.amazonaws.com/cloud-platform-e218f50a4812967ba1215eaecede923f/uploads/sites/30/2015/03/lc343\\_matrimonial\\_property.pdf](https://s3-eu-west-2.amazonaws.com/cloud-platform-e218f50a4812967ba1215eaecede923f/uploads/sites/30/2015/03/lc343_matrimonial_property.pdf).

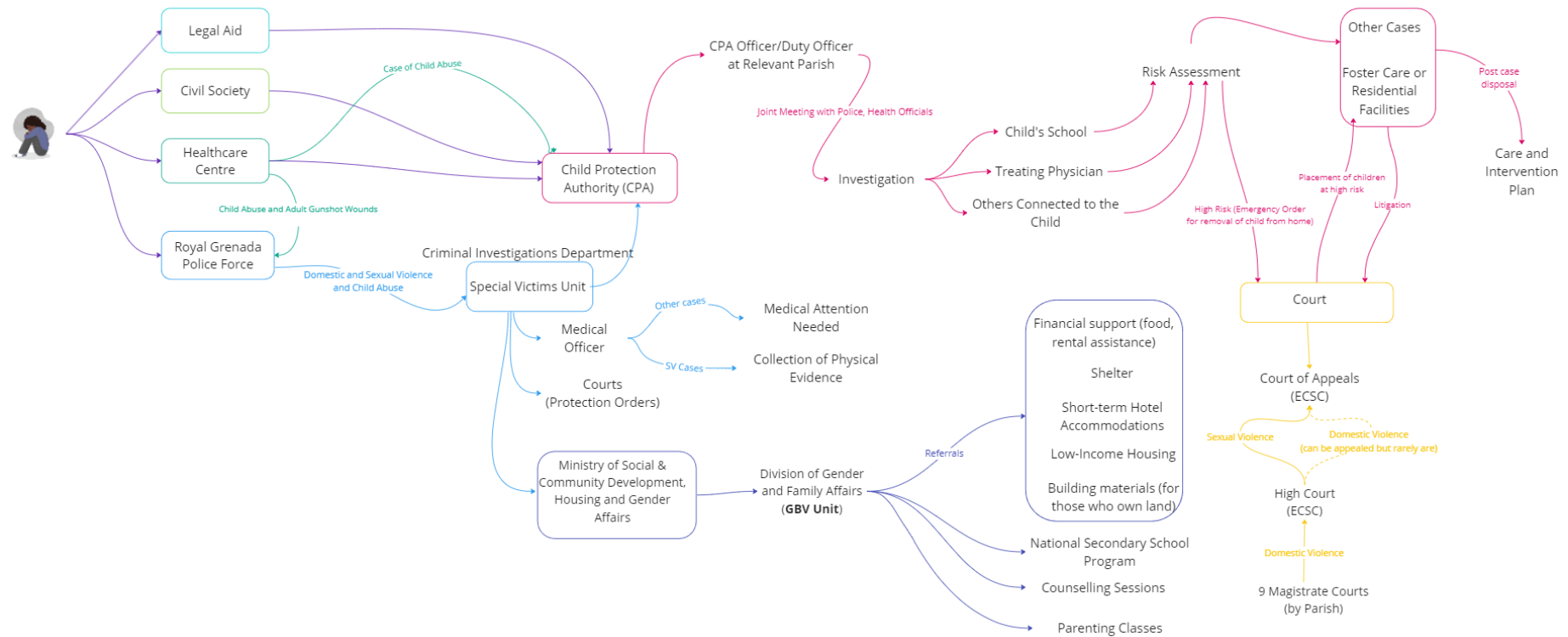
<sup>175</sup> World Bank Group, *Breaking Barriers to Women's Economic Inclusion in Grenada*, at 24 <https://documents1.worldbank.org/curated/en/099603503082357057/pdf/IDU0d3d82498080b0049d80931b04db7448ac3d6.pdf>, See generally Ministry of Social Development and Housing, *Gender Equality Policy Action Plan (GEPAP): 2014-2024*, at para. 269 (2014), [https://oig.cepal.org/sites/default/files/2014\\_gender-equality-policy-action-plan\\_grd.pdf](https://oig.cepal.org/sites/default/files/2014_gender-equality-policy-action-plan_grd.pdf).

<sup>176</sup> UN Women, *Lower Labour Force Participation and Agricultural Sector Impacts Exposes Women to Greater Climate Change and Disaster Shocks*, <https://caribbean.unwomen.org/en/news-and-events/stories/2021/5/lower-labour-force-participation-and-agricultural-sector-impacts-exposes-women-to-greater-shocks>.

# IV. USER EXPERIENCE – LIVED EXPERIENCE OF SURVIVORS

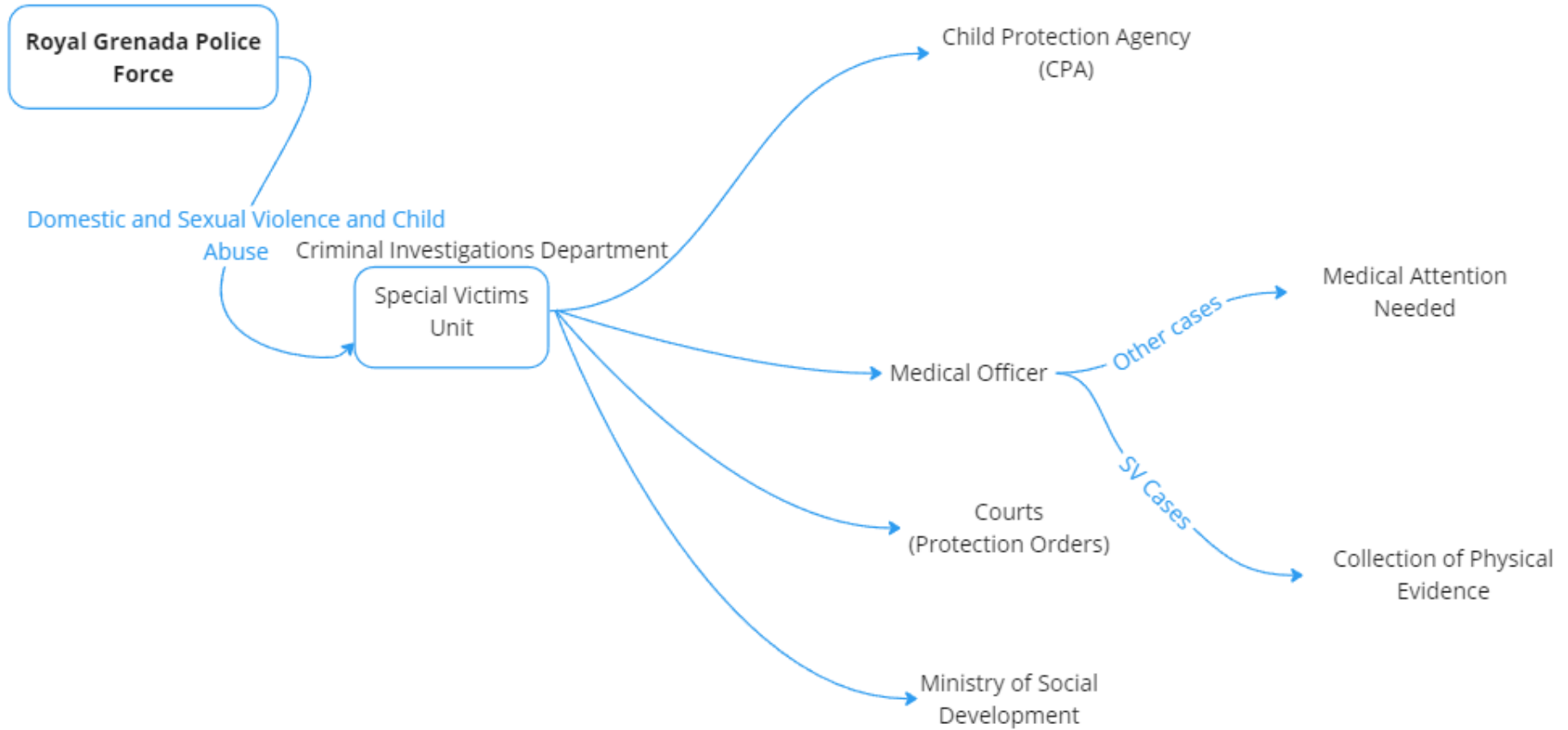


This section focuses on applying the concept of journey mapping to comprehend the process that survivors of GBV navigate in pursuit of justice, whether through criminal or family law courts. To gain insights into a survivor's experience, our approach includes direct interviews with survivors, government entities, and CSOs committed to enhancing access to justice for women and girls. This is further enriched by both qualitative and quantitative analysis, derived from an examination of GBV case law.





### A. Journey Mapping: Reporting to the Police (“RGPF”)



Survivors of domestic or sexual violence face a complex decision to an incident of GBV. Key considerations include ensuring the safety of oneself and their dependants, finding safe shelter, continuity of school for children, staying in their home, job security, and the effectiveness of legal protection orders. Many initially seek advice from family, friends, or religious leaders, who might unknowingly recommend harmful solutions like joint counselling or reconciliation. Thus, the institutions that have been developed to safeguard survivors, must function as intended if there is to be trust in the system.

Once a survivor makes the courageous decision to formally report an incident of GBV, it would be to the Royal Grenada Police Force ("RGPF"). Led by the Police Commissioner, the RGPF uphold internal security. There are approximately 940 RGPF constables, of which, "over seven hundred (700) are males and one hundred and thirty (130) are females."<sup>177</sup> The RGPF faces significant challenges in terms of staffing because a significant portion of its personnel are nearing retirement. Under the DVA, the police have an obligation to "respond to every complaint or report alleging domestic violence, whether or not the person making the complaint or the report is the victim".<sup>178</sup> The police must complete a domestic violence report, which will then form part of the Domestic Violence Register.<sup>179</sup>

The Special Victims Unit (SVU) of the RPF was established in 2018 and comes under the Criminal Investigations Department, which focuses on domestic and sexual violence and child abuse. The SVU is led by Detective Inspector of Police Andrea Noel-Victor and has female officers in the unit. The role of the SVU is to coordinate services for survivors, like Child Protection Authority and Ministry of Social Development, and to raise public awareness on these issues. The SVU, like other law enforcement agents, also has a mandate to work with court to obtain protection orders within the same day as a form of early intervention and to ensure a thorough and complete investigation of all cases.<sup>180</sup>

Bolstering the SVU's mandate is the Statutory Rules and Orders No. 19 of 2017 (Police Standing Order (Amendment)) ("PSO"), which provides a framework for law enforcement to handle domestic and sexual violence cases. Some of the key provisions include:

- a policy akin to a "No Drop Policy," where every domestic violence complaint must be responded to, reported, and the offender charged.<sup>181</sup>
- neutrality and removal of bias;
- refraining from trying to reconcile the parties; and
- advising victims about psychosocial services.

Procedurally, law enforcement in situations where complaints are made in person, must:

- obtain a statement with due consideration of privacy in an appropriate room;
- contact the CPA, if warranted;
- provide a medical form<sup>182</sup> to the victim to get services, and where necessary, accompany victims to get medical attention;

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<sup>177</sup> Royal Grenada Police Force, *About Us*, <https://www.rgpf.gd/index.php/about-us/overview>.

<sup>178</sup> DVA, sec. 19(1).

<sup>179</sup> DVA, sec. 19(2).

<sup>180</sup> DVA, sec. 52; Royal Grenada Police Force, *Special Victims Unit*, <https://www.rgpf.gd/index.php/departments/special-victims-unit>.

<sup>181</sup> Police Standing Order, at A74.

<sup>182</sup> The medical form currently in use needs updating because it does not gather a lot of important information.

- complete domestic violence report Form VIII provided under the DVA.<sup>183</sup>

With respect to protection orders, law enforcement should:

- assist victim with filling out and submitting application to the Court;
- ensure that a copy of the protection order is filed at the relevant police station;
- request the court to attach protection order to the conditions of bail.<sup>184</sup>

Finally, a DV Registry must be maintained by the Chief of Police. With respect to SV cases, all cases must be referred to a medical officer since all physical evidence must be collected in the presence of law enforcement to preserve the chain of evidence. Efforts to avoid retraumatizing the victim is priority. The RGPF expressed a lack of support from the medical establishment; long wait times, exceeding four hours in some cases, discourage victims from proceeding. Additionally, victim anonymity can be compromised in the healthcare setting because of the presence of SVU team members.

Similar to the PSO, The National Domestic Violence and Sexual Abuse Protocol for Grenada ("NDVSAP") emphasizes that police should not provide warnings, rather, mandatory charging should occur even if the victim chooses not to go forward.<sup>185</sup> From a human rights perspective, this provides a complex set of considerations. In seeking to change behaviours and mindsets of law enforcement, and society in general, a No Drop Policy can provide clarity that DV cases will be taken seriously, and that accountability will not be circumvented. However, the policy also removes agency from the victim to best understand and weigh the risks of their circumstance. Our goal here is to highlight the tension and the difficult policy choices that must be made to effectively address DV.

The NDVSAP also highlights that certain factors should not influence law enforcement in GBV matters, for example: marital status of the victim, previous complaints, indications that the matter is privately being "settled," previous sexual history etc.<sup>186</sup> There is no policy for mandatory prosecution and it is up to the prosecutor on whether to proceed with charges, but "cases should not be dismissed without all possible efforts being made to have them adjudicated."<sup>187</sup>

In practice, DV complaints do not always result in a charge contrary to both the PSO and the NDVSAP.<sup>188</sup> While police are responding to most complaints, they rely heavily on the victim's sentiment in considering whether to proceed with their investigation, as the police believe the case will fail without full cooperation of the victim. Often, victims only want perpetrators to stop but do not want to make statements or for charges to be issued.<sup>189</sup> This is especially the case where the perpetrator is using threatening or insulting language, or more "minor issues."<sup>190</sup>

Unfortunately, even with a dedicated SVU, there is a high level of underreporting of IPV to law enforcement due to police not regarding the victim's experience as worthy of concern. The number of these reports is diminished further when considering the potential for threats,

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<sup>183</sup> Ibid, at A76, para.7.

<sup>184</sup> Ibid, at A79, para.7.

<sup>185</sup> NDVSAP, at 28.

<sup>186</sup> NDVSAP, at 31-32.

<sup>187</sup> NDVSAP, at 37.

<sup>188</sup> Interview conducted by ICAAD with RGPF staff, 26 September 2023.

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

fear of being called dishonest, and shame that victims are subjected to at the hands of perpetrators or their own communities. This even results in instances where complainants do not name perpetrators in their police reports.

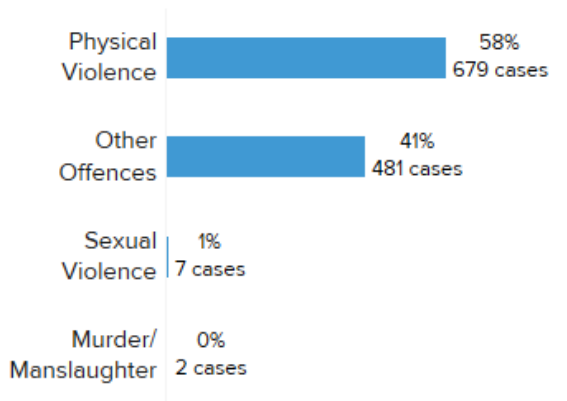
In 2022, 15,879 crimes and small offences were reported to the Royal Grenada Police Force. Of the enumerated offences, approximately 10% (1,203 cases) of the cases were clearly categorized as DV. The reporting of SV was 2.7% of the criminal cases.

## Domestic Violence Offences Reported to the Police

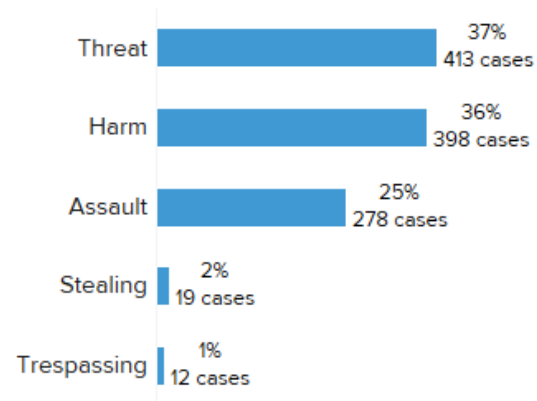
### Types of Abuse and Offences

Physical Violence (such as Assault and Causing Harm) was the most reported offence category, followed by Verbal Abuse (such as Threats).

#### DV Offence Categories



#### Top 5 Offences

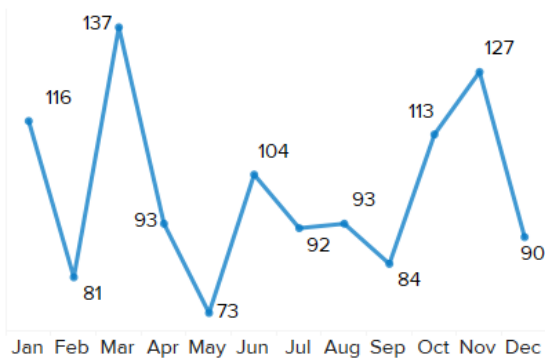


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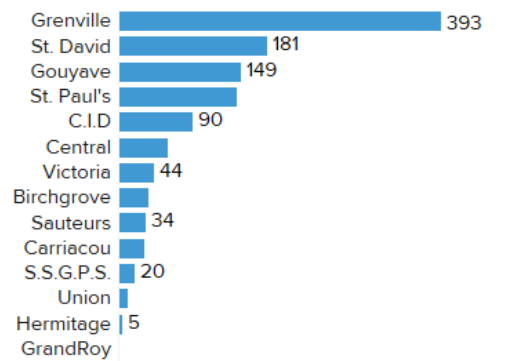
## Grenada - Domestic Violence Offences Reported to the Police in 2022

There were 1203 cases of domestic violence reported to the police in 2022 in Grenada. Approximately 40% of these cases were reported to the Grenville Police Station. In 20% of the cases, the perpetrator used some kind of violence or weapon, and in less than 1% of the cases, drug/alcohol use was also recorded.

Number of cases



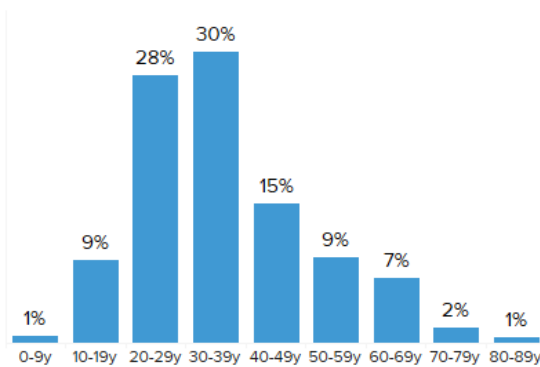
Cases by Station



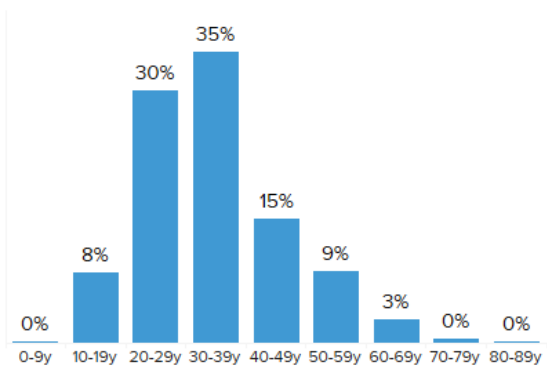
### Age Group

Most of the cases were reported by victims between the ages of 20 - 40 years. Most of the perpetrators were in the same age group as well. In over 50% of the cases, the perpetrator was an intimate partner/ex-partner while in 46% of the cases, the perpetrator was a close family member.

Victim Age Group

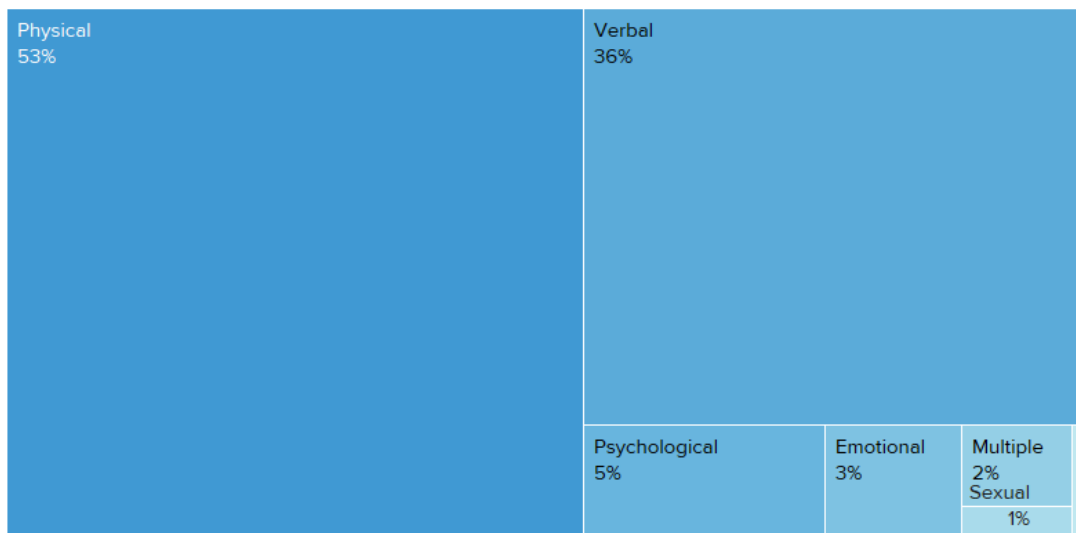


Perpetrator's age



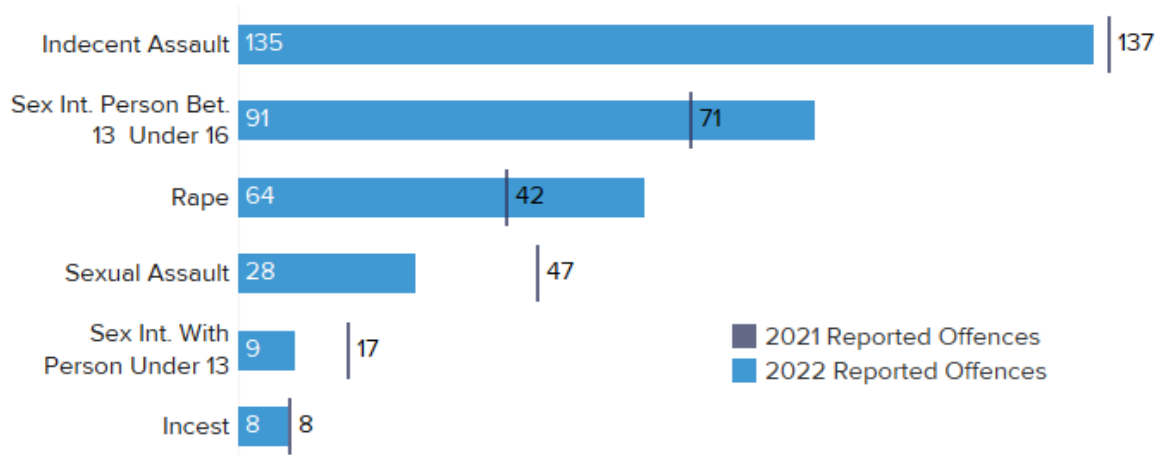
### Type of Abuse

Hover over the label for more information. Select to filter other charts.



## Sexual Offences Reported to the RGPF in 2021 and 2022

There were 335 reports of sexual offences to the police in 2022, a 4% increase YoY. Among these, over 40% were cases of indecent assault, while 27% involved sexual intercourse with a person aged between 13 and 16 years.



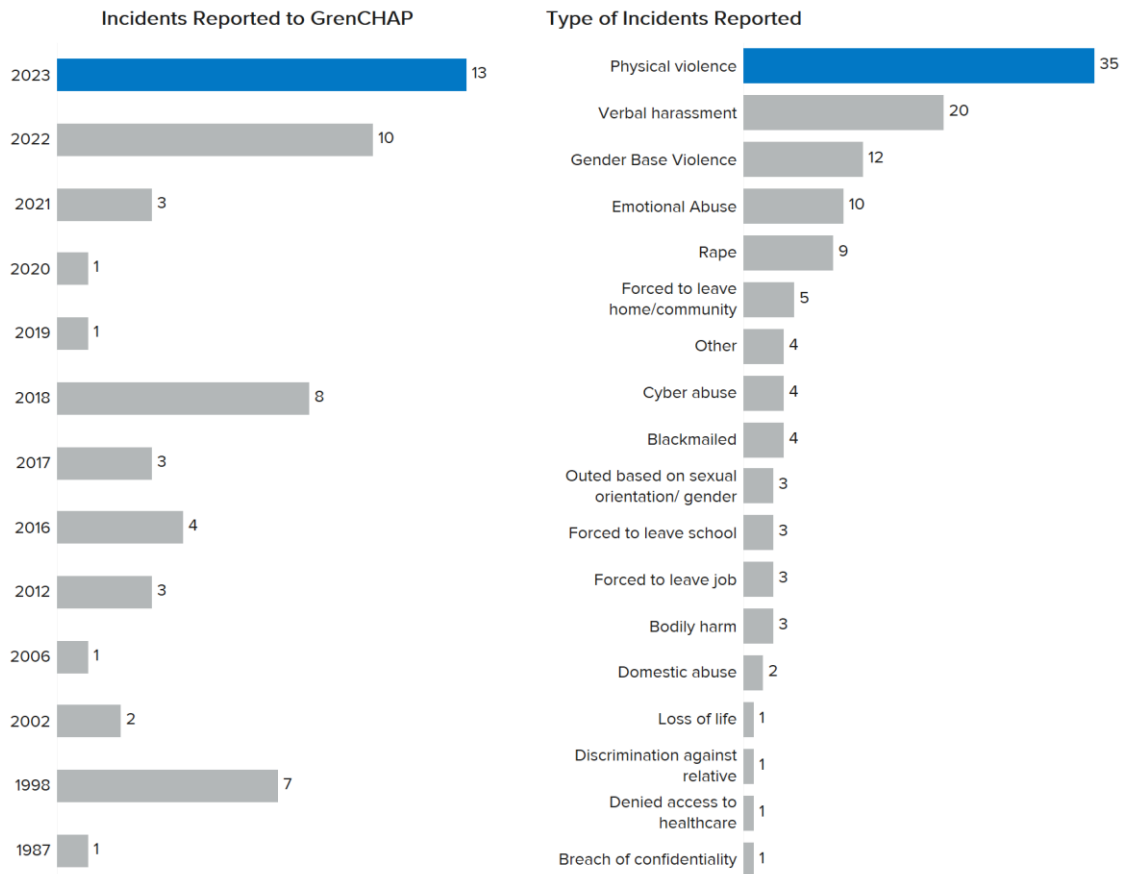
DV matters are exacerbated with the LGBTQI+ community because "current laws criminalize their behaviour, so there is a deep apprehension to bring same-sex domestic violence cases forward."<sup>191</sup> Getting police involved is a challenge because of: 1) the use of dehumanizing language towards LGBTQ+ persons and 2) breaching confidentiality by outing LGBTQ+ survivors. This often leads to "LGBTQ+ survivors . . . never approaching police at all."<sup>192</sup>

<sup>191</sup> Interview conducted by ICAAD with RGPF staff, 26 September 2023.

<sup>192</sup> Interview conducted by ICAAD with GrenCHAP, 25 September 2023.

## GBV Incidents reported by GrenCHAP to the Shared Incident Database (SID)

GrenCHAP has received a total of 57 incident reports with over 40% of incidents being reported over the last few years. This underscores the inroads GrenCHAP has been making within the LGBTQI+ community because it has built trust, confidence, and made significant community outreach efforts.



In instances where the survivor is a minor, police are not trained to interview children and their interactions often are perceived as a form of intimidation, which leads to limited cooperation. More importantly, the timely involvement of CPA is critical, but police delays in referring child survivors' compromises CPA's ability to effectively support victims.<sup>193</sup> One interviewer noted that specific training that is received by SVU personnel becomes less effective when members of that department are moved around the RGPF.<sup>194</sup> Losing institutional knowledge and having new recruits who may not receive that same standard of training impacts accountability especially with training time cut from 6 months to 3 months.<sup>195</sup>

In addition to limited effectiveness with certain communities, trust in the police is eroded when prosecution for serious incidents of GBV ends in limited accountability. For example, a dual citizen of Grenada and the U.S., Treverson Roberts, while visiting Grenada sexually assaulted a child in his care by having the child perform oral sex. The Grenadian court, after receiving a guilty plea from Mr. Roberts, fined him \$1500 XCD and required him to pay the child survivor \$600 XCD, "delivered to the mother of the child to cover counselling

<sup>193</sup> Interview conducted by ICAAD with Child Protection Authority, 26 September 2023.

<sup>194</sup> Interview conducted by ICAAD with Caribbean Association for Youth Development, 28 September 2023.

<sup>195</sup> Ibid.

expenses.<sup>196</sup> The circumstances around the matter go to the heart of additional factors that plague the justice system, which is differential treatment. Both civil society and government personnel identified that there is a perception that people in power, who have wealth, who are lighter skinned, and who are foreigners are treated preferentially in criminal matters, including GBV.<sup>197</sup>

In the case discussed above, the counsel for Mr. Roberts (who lived in the U.S.) was a former Member of Parliament, Nigel Stewart, who also happened to be the husband of the Minister of Legal Affairs at the time, Ms. Kindra Maturine-Stewart. The decision was handed down by the Grenville Magistrate Court and was subsequently appealed by the Commissioner of Police.<sup>198</sup> Arrested and charged in New York for the offence in 2021, Mr. Roberts pled guilty to “engaging in illicit sexual conduct with a minor in a foreign place,”<sup>199</sup> and was sentenced to ten years without the possibility of parole in July 2022.<sup>200</sup>

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<sup>196</sup> Now Grenada, *Trevorson Roberts appeal continues in OECS Court of Appeal*, 17 December 2021, <https://nowgrenada.com/2021/12/trevorson-roberts-appeal-continues-in-oecs-court-of-appeal/>; Office of Public Affairs, Department of Justice, *Man Pleads Guilty Sexual Assault of Child in Grenada*, 13 December 2021, <https://www.justice.gov/opa/pr/man-pleads-guilty-sexual-assault-child-grenada>; Spice Islander, *Grenadian Sentenced to ten years in a US Jail*, 15 July 2022, <https://spiceislander.com/grenadian-sentenced-to-ten-years-in-a-us-jail/>.

<sup>197</sup> Interview conducted by ICAAD with Caribbean Association for Youth Development, 28 September 2023; Interview conducted by ICAAD with Legal Aid, 27 September 2023.

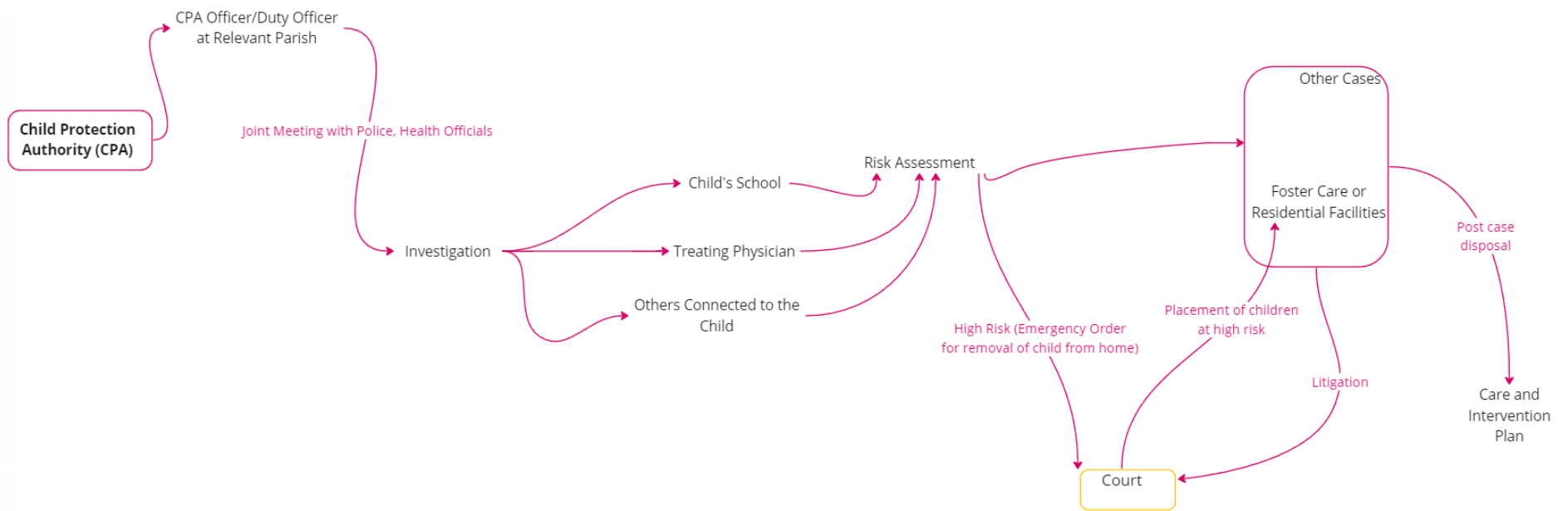
<sup>198</sup> Now Grenada, *Trevorson Roberts Appeal Continues in OECS Court of Appeal*, 17 December 2021, <https://nowgrenada.com/2021/12/trevorson-roberts-appeal-continues-in-oecs-court-of-appeal/>; Office of Public Affairs, Department of Justice, *Man Pleads Guilty Sexual Assault of Child in Grenada*, 13 December 2021, <https://www.justice.gov/opa/pr/man-pleads-guilty-sexual-assault-child-grenada>.

<sup>199</sup> Office of Public Affairs, *Department of Justice, Man Pleads Guilty Sexual Assault of Child in Grenada*, 13 December 2021, <https://www.justice.gov/opa/pr/man-pleads-guilty-sexual-assault-child-grenada>.

<sup>200</sup> Spice Islander, *Grenadian Sentenced to Ten Years in a US Jail*, 15 July 2022, <https://spiceislander.com/grenadian-sentenced-to-ten-years-in-a-us-jail/>.



## B. Journey Mapping: Child Protection Authority (“CPA”)



CPA currently has: 5 offices, 2 residential facilities (group homes for girls and boys) with about a 30-person capacity and about 15 managers, 25 child protection officers, 3 supervisors, 1 senior officer and 1 managerial director.<sup>201</sup> Most child victims of violence, including GBV, come directly to CPA. Additionally, referral pathways include healthcare settings, police, courts, legal aid, and sometimes civil society. Once a victim presents themselves, CPA identifies the proper supervisor at the most relevant Parish. This can include either a CPA Officer or CPA Duty Officer who is on a rotating schedule. Typically, this process leads to a joint meeting between police and health officials. Immediately following, investigations begin where interviews are conducted at the child's school, with the treating physician, and others who might be closely connected to child. At this point, CPA decides if the risk is grave enough to warrant removal from the home. CPA frequently must request emergency orders for removal of a child from a dangerous situation. A request, that by legislation, should be complied with in 48 hours. However, courts frequently fail to adhere to these timelines, and consequently undermine CPA's ability to provide a safe environment for the child in a timely manner.<sup>202</sup> CPAs preference is to place children in foster care because it leads to less traumatic outcomes and the possibility for sooner reunification with their families.

The next step, assuming the case proceeds to court, is the creation of an intervention plan that is aimed at supporting and preparing the child for the litigation process, especially witness testimony. An assessment is then made to ensure the child is ready or whether the case must be adjourned for a later date. However, both the trauma experienced by the child and defence tactics to continually seek adjournment or delay make it difficult for children to be prepared to testify in court. These challenges make it difficult for CPA to provide continuous guidance and support throughout the duration of the trial. According to CPA, even if the process proceeds flawlessly, a high percentage of cases fall apart in the end.

In 2022, there were 604 cases of children being abused that received assistance from the CPA.<sup>203</sup> This includes 152 children who were victims of sexual abuse.

One of the key gaps identified during our interviews was that CPA has been unable to access any special procedures for witnesses. Children often must testify while only a few feet away from the alleged perpetrator, and as a result, are severely retraumatized. Under the PWA, parties may request special measures be applied to witnesses that are justifiably fearful.<sup>204</sup> Any reasonable interpretation of the statute would indicate that child GBV survivors would fall within this category. Nevertheless, CPA was unaware of any such options existing in practice and were told that no facilities existed for witnesses to testify via video link, for example.<sup>205</sup>

The CPA's internal systems are in dire need of updating. Data is still manually tabulated because the case management system that was built for the agency is in disrepair. There was no admin access available for the system, an inability to reassign case workers within the system, or to migrate or export data for any other use. This deficiency undermines the agency's ability to identify trends, engage in strategic planning, and produce accurate reports. Without proper case management systems in place, it is no wonder that cases fall through the cracks and that there are victims who have never received any counselling or follow up.

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<sup>201</sup> Interview conducted by ICAAD with Child Protection Authority, 26 September 2023.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

<sup>204</sup> PWA, section 19(1).

<sup>205</sup> Interview conducted by ICAAD with Child Protection Authority, 26 September 2023.

High turnover in staff also results in gaps in institutional knowledge and a lack of knowledge transfer.

As an agency that regularly collaborates with both the Department of Public Prosecution and the Ministry of Social Work, particularly in cases of domestic or sexual violence involving minors, there is a crucial need to establish more structured procedures. These procedures should ensure that the CPA is adequately informed about the need for the DPP to request special measures in certain cases. Currently, CPA cases do not receive priority in court proceedings, and there is no specific day allocated for addressing child GBV issues. This lack of prioritization extends to the education system as well, leading to significant delays in securing school admissions for children under CPA's care and protection.<sup>206</sup>

On a separate note, children with disabilities often face significant challenges in gaining access to education, encountering discrimination right at the school admissions stage.<sup>207</sup> Some school principals are unwilling to make necessary accommodations, leaving many of these children without the opportunity for formal education and often confined to their homes. Additionally, the scarcity of schools offering placements for students with disabilities leads to extended waiting lists at the few institutions prepared to accommodate them.<sup>208</sup>

Another matter of concern relates to the criminalization of children. CPA indicated that there are circumstances where a child's continuous "deviant" behaviour (not necessarily criminal behaviour) could lead to children being put in juvenile facilities.<sup>209</sup> The use of status offences to incarcerate minors for non-criminal offenses is a systemic problem throughout the Caribbean. Recently, ICAAD supported litigation brought by Operation Safe Space to challenge the constitutionality of the incarceration of girls at a Government Industrial School (GIS) in Barbados. These girls had run away from home and were found to have violated a statute on "Wandering." The incarceration at GIS led to serious human rights violations including sexual violence, solitary confinement, and forced medication. The Barbados High Court in 2023 ruled that the statute was both unconstitutional because activities deemed to be in violation of the statute were vague and had a disproportionate impact on girls.

In Grenada, the JJA section 59 allows for a "compulsory residential requirement" if non-residential requirements have failed. Residential requirement can include juvenile facilities. According to CPA, juvenile facilities may also be used when other residential options are not available. CPA mentioned that the juvenile facilities try and separate minors who have committed criminal offenses versus those placed for their care and protection. It is deeply concerning when minors who have not committed any crime are being placed in criminal institutions because of a lack of other residential accommodations or because of status offences.

There have also been instances where child survivors of GBV have been removed from their homes and even when they have noted their preference to stay with someone trusted who was willing to take them in, their opinions were not considered, and they were instead dropped off at a home for girls without ever hearing from CPA again.<sup>210</sup>

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<sup>206</sup> Ibid.

<sup>207</sup> Interview conducted by ICAAD with Caribbean Association for Youth Development, 28 September 2023; Interview conducted by ICAAD with Grenada National Council for the Disabled, 27, September 2023.

<sup>208</sup> Interview conducted by ICAAD with Caribbean Association for Youth Development, 28 September 2023; Interview conducted by ICAAD with Grenada National Council for the Disabled, 27, September 2023.

<sup>209</sup> Interview conducted by ICAAD with Child Protection Authority, 26 September 2023.

<sup>210</sup> Interview conducted by ICAAD with Caribbean Association for Youth Development, 28 September 2023.

Finally, within the healthcare setting, CPA often must cover the cost of medical services themselves, as they are treated as a statutory body instead of a governmental body.<sup>211</sup> This is exacerbated by the absence of doctors at certain healthcare centres daily and lengthy wait times, which compel them to seek more expensive private care. CPA has also had to cover expenses for seeking services from private physicians, including purchasing medication and pregnancy tests, since they are not prioritized at public facilities.<sup>212</sup>

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<sup>211</sup> Interview conducted by ICAAD with Child Protection Authority, 26 September 2023.

<sup>212</sup> Ibid.

### C. Journey Mapping: Healthcare Centre



When survivors need medical attention due to their injuries, they often seek help at health clinics, private doctors' offices, or hospitals. The role of medical professionals can be critical, not only from a health perspective, but also for the preparation of forensic reports and gathering of evidence, which will be considered by the prosecution in deciding whether to dismiss a charge or take it further. Given the severe underreporting of GBV, medical professionals could be the first point of contact for victims. They offer directions to social services and conduct important safety assessments; this makes the role of health-care professional's critical in the chain of limiting GBV.

Medical professionals are mandated to report cases of domestic violence or sexual violence involving children. However, for adults, this obligation only arises if the violence results in a "gunshot wound or serious bodily injury."<sup>213</sup> Under the mandatory reporter requirements of section 27 of the CPA, both police and the CPA must be notified directly in violence/ abuse cases involving children. Reporting can take place anonymously and there is a \$5,000 fee or imprisonment for three months for failure to report. Any medical follow-up with the CPA should comply with the National Child Abuse Protocol for the Reporting, Investigation and Management of Child Abuse in Grenada.<sup>214</sup>

Recently, under the guidance of the Ministry of Health and Ministry of Social Development, revised standard operating procedures for medical professionals have been put in place with a focus on addressing GBV. Training for physicians and nurses currently includes:

- ensuring a private setting for survivors;
- empathetic questioning around issues of GBV;
- looking for Indicators of violence/ abuse;
- psychosocial support;
- proper medical history and documentation of injuries;
- pursuing a proper line of inquiry to draw out persons who may be potential survivors; and
- understanding who you report to when instances of domestic and sexual violence present themselves.<sup>215</sup>

The CNO identified three physicians recently who travelled to Guyana to participate in a training program focused on the collection of evidence in cases of rape. This includes the application of rape kits, storing evidence, chain of custody etc. All elements that are essential to ensure proper preservation of evidence for trial.<sup>216</sup> However, despite these revised SOPs and trainings that are taking place, several additional gaps remain. Data collection on GBV is still limited or incomplete in police, judicial, and health settings. One of the challenges is that clinicians may identify fractures or bruises and only document the injuries, but not how they believe the injuries came to be and the relationship to the person who caused those injuries.<sup>217</sup> Furthermore, both the CNO and CPA have discussed the hesitancy of clinicians to testify in

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<sup>213</sup> Division of Gender and Family Affairs Ministry of Social & Community Development, Housing and Gender Affairs, *National Standard Operating Procedures for Gender-Based Violence for Grenada*, at 13-15 (Oct. 18, 2021).

<sup>214</sup> *Ibid.*

<sup>215</sup> Interview conducted by ICAAD with Chief Nursing Officer Nester Edwards, 13 September 2023; *See generally*, Division of Gender and Family Affairs Ministry of Social & Community Development, Housing and Gender Affairs, *National Standard Operating Procedures for Gender-Based Violence for Grenada* (Oct. 18, 2021).

<sup>216</sup> Interview conducted by ICAAD with Chief Nursing Officer Nester Edwards, 13 September 2023.

<sup>217</sup> *Ibid.*

court because of a lack of training and confidence of being put on the witness stand. Clinicians who also have a private practice are reticent to take time away from work. Sometimes, physicians even take drastic steps to avoid being put in such a circumstance.<sup>218</sup>

For example, the CNO mentioned that when physicians "see a victim of violence especially children, they may delay seeing the patient until their shift is over."<sup>219</sup> The unintended consequence is an undue delay in patient care, extended time for the survivor spent in open and public emergency room, which undermines the protection of the victim's privacy and further contributes to traumatizing the patient. CPA Director confirmed that they have had to go to private physicians because of 2-5 hour wait times at public hospitals where the child's privacy and confidentiality would have been compromised.<sup>220</sup> Additionally, the absence of a designated day for addressing child GBV issues means that physicians are required close their clinics to provide testimony on random days, leading to a reluctance among medical professionals to take on these cases.<sup>221</sup>

Further gaps highlighted in our discussions around the healthcare system centred on efficiency, training, limited psychosocial resources, design/ space for privacy, limited capacity for lab testing, poor electronic documentation of GBV incidents, and forensic procedures not consistently followed in preserving evidence.<sup>222</sup> To effectuate the new SOPs, timely referrals to appropriate agencies and special measures in healthcare settings to treat survivors is key. When left unaddressed, each gap contributes to the downstream impact on the proper administration of justice.

For example, inaccessibility or incomplete medical records impacts the charges brought against the accused. During the investigation phase, police who have received a GBV related case will provide the survivor with a form that they can provide to the attending physician or clinician at a medical facility documenting their injuries. The person is then given back this form, or "ticket", and this is kept on file with the police.<sup>223</sup> Theoretically, this form of documentation would provide law enforcement the ability to identify a pattern of abuse and for prosecutors to show the continuation or escalation of harm to the survivor. However, frequently, either clinicians will not properly document injuries sustained because of abuse or survivors themselves will downplay the injury and say it was due to an accident.<sup>224</sup> This leads to survivors showing up in court repeatedly for domestic violence incidents because previous charges may have been dropped<sup>225</sup> or non-custodial/ lenient sentences are provided because both the severity and history of abuse aren't fully represented in the medical history.

The Gender Equality Policy Action Plan ("GEPAP"), have also identified a number of concerns related to the health system, including: "lack of a cadre of medical professionals specifically trained to respond, particularly to sexual violence; lack of rape kits and other forensic tools at the General Hospital; infrequent use of photographs of physical injuries; lack of effective social

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<sup>218</sup> Interview conducted by ICAAD with Chief Nursing Officer Nester Edwards, 13 September 2023; Interview conducted by ICAAD with Child Protection Authority, 26 September 2023.

<sup>219</sup> Ibid.

<sup>220</sup> Interview conducted by ICAAD with CPA Director, 26 September 2023.

<sup>221</sup> Interview conducted by ICAAD with CPA Director, 25 July, 2023 and 26 September 2023.

<sup>222</sup> Interview conducted by ICAAD with Chief Nursing Officer Nester Edwards, 13 September 2023; Interview conducted by ICAAD with Child Protection Authority, 26 September 2023.

<sup>223</sup> Interview conducted by ICAAD with Legal Aid, 27 September 2023.

<sup>224</sup> Interview conducted by ICAAD with Chief Nursing Officer Nester Edwards, 13 September 2023; Interview conducted by ICAAD with Legal Aid, 27 September 2023.

<sup>225</sup> Interview conducted by ICAAD with Legal Aid, 27 September 2023.

work and other victims support services at the hospital; insufficient coordination of responses between doctors and other key stakeholders”<sup>226</sup>

Despite these existing challenges, persons living with HIV/ AIDs (“PLHIV/ AIDs”) and the LGBTQI+ community face additional barriers as survivors who engage with health services. GrenCHAP identified instances of clinicians in the health care sector who have refused care to members of both communities.<sup>227</sup> Additionally, if care is provided, they are inundated with “religious instruction by nurses and healthcare workers to pray the gay away.”<sup>228</sup> Complaints typically arise from public hospitals. GrenCHAP personnel have not received similar complaints about private healthcare spaces. The impact is that PLHIV/ AIDs and LGBTQI+ persons avoid clinics or specific clinicians so that they are not discriminated against.<sup>229</sup>

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<sup>226</sup> GEPAP, at para. 204.

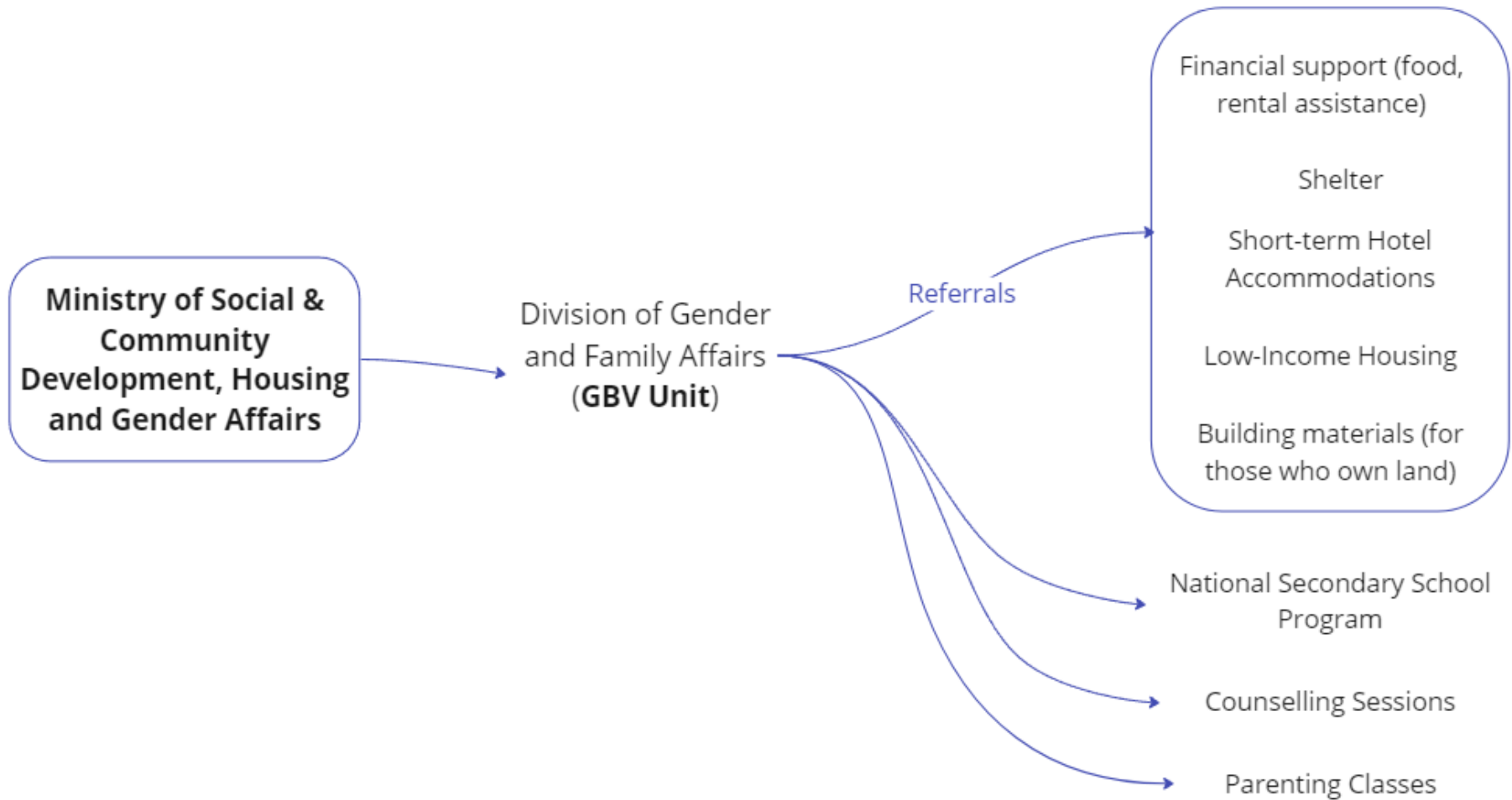
<sup>227</sup> Interview conducted by ICAAD with GrenCHAP, 25 September 2023.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid.



### D. Journey Mapping: Ministry of Social & Community Development



The Ministry of Social & Community Development, Housing and Gender Affairs of Grenada, through its Division of Gender and Family Affairs (“DGFA”), offers critical support to survivors of intimate partner violence and sexual assault. The approach is multi-dimensional, addressing the needs of survivors through several programs and initiatives. The DGFA receives referrals through police, CPA, Legal Aid, health sector, and directly.

The DGFA has three divisions: 1) a gender-based violence unit, which focuses on GBV and prevention; 2) a parenting unit, which focuses on parenting education; and 3) a gender unit, which focuses on gender-mainstreaming. The DGFA ensures that a gender lens is used when assessing all major governmental bodies and to ensure laws and policies are aligned with Grenada’s international human rights obligations.<sup>230</sup>

The GBV-Unit, through its responders, plays a significant role in coordinating care of survivors of violence. They directly interface with clients to understand their needs, and make referrals, for example, for financial assistance and protection orders. Financial assistance, which is dispensed through other divisions of the Ministry, includes providing funds for various needs, including food, clothing, education, employment, and rental assistance (for up to three months), if the victim qualifies.<sup>231</sup> Unfortunately, these funds are limited and cannot cover the duration of GBV cases that are significantly delayed. Survivors also can receive temporary housing assistance by being placed in the one shelter in Grenada, which is separately governed and operated, but reports to the Ministry. The shelter has a maximum capacity of 20 individuals, and offers stays of up to six months, though many survivors have stayed longer. In emergencies where the shelter is full, the Ministry arranges other accommodations for short-term needs. Additionally, the Ministry has access to limited low-income housing and, in some cases, has provided building materials to individuals who own land. While not part of its ambit, the shelter has served as a permanent residence for some women with developmental disabilities. There is a need for more shelters, and for better management of the shelter. For example, one of our interviewees detailed an incident of a child who grew up in the shelter and never attended school.<sup>232</sup> This was surprising, since the shelter is a government-run facility.

Effective case management has been a significant hurdle for the GBV Unit due to a significant lack of funding. For years, the team managed with two staff members handling hundreds of cases, resulting in a considerable backlog and incomplete service delivery. The introduction of the Spotlight Initiative has allowed for the recruitment of additional responders, yet the case load remains high, with over 100+ cases per responder reported in 2021.<sup>233</sup> The unit still relies on paper-based data collection methods, hindering efficient analysis and longitudinal tracking. The unit could benefit from a simple system that allows for inter-agency collaboration and seamless flow of data. There are some attempts at digitizing parts of the intake data collected on paper those seem insufficient and still call for manual data entry and reporting. Furthermore, cases often go dormant due to the lack of a formal closing procedure, and it becomes difficult to prioritize cases without such procedures.

The GBV Unit faces additional challenges in changing societal norms, especially those propagated by churches, which often encourage victims to endure abusive situations. Victim

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<sup>230</sup> Interview conducted by ICAAD with GBV Unit of the Ministry of Social & Community Development, Housing and Gender Affairs, 27 September 2023.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

blaming, including blaming the woman for there “not being enough sexual engagement,” is common, complicating the journey to justice and recovery for many survivors.<sup>234</sup>

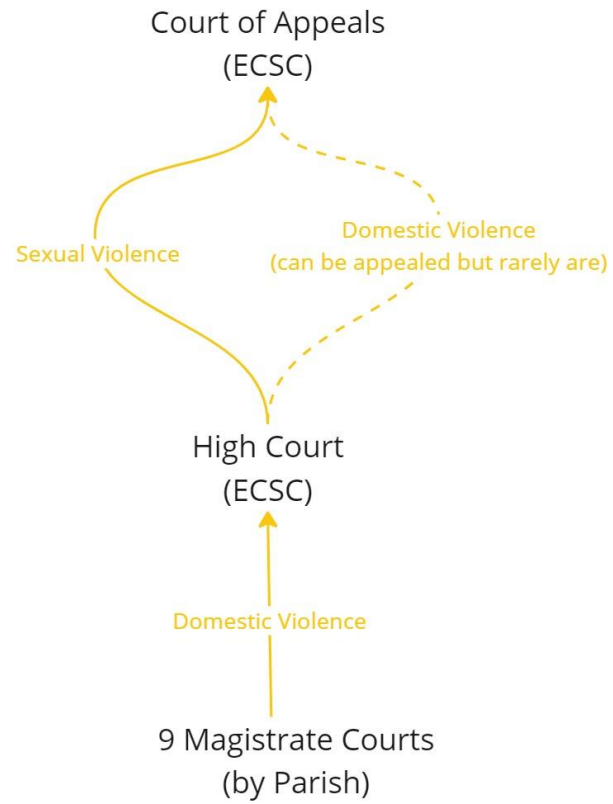
In the realm of education, the GBV Unit had previously implemented a national secondary school program, which was temporarily halted due to COVID-19. However, plans are underway to revive this initiative. Annually, the program reaches 22 schools across the nation every September, delivering presentations on crucial issues, and includes staff from across the DGFA. Notably, discussions on LGBTQI+ issues are not presented on directly because there are no legal protections for sexual acts between same-sex individuals. The GBV Unit also has programs to empower clients, including a 10-day group counselling session called the “Power Program,” and a three-day empowerment program named 'Tears to Tiara,' which covers topics such as self-care, financial literacy, and resilience.<sup>235</sup>

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<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

## E. Journey Mapping: Courts



Grenada has a common law legal system and is one of several Caribbean nations that has its highest court as the Eastern Caribbean Supreme Court ("ECSC"). The Chief Justice of the ECSC is appointed by King Charles III and other justices and judges are appointed by the Judicial and Legal Services Commission. The ECSC has both a Court of Appeal and High Court of Justice where High Court judges are placed in different Member States and the Court of Appeals is a traveling court and reviews cases from the High Court and Magistrate courts of Member States. Four High Court judges currently sit in Grenada with nine Magistrate Courts throughout the island.<sup>236</sup>

Magistrate Court decisions are not published and are not courts of record. The only record may be hand-written notes by judges. Like Parish Courts in Jamaica, without being a court of record, the ability to appeal matters, establish and rely on precedent, achieve consistency in sentencing, transparency, and critically reviewing the functioning of courts and judges, is severely compromised. The limited ability to access cases is also highlighted by the lack of digitization of case law even at the High Court level.<sup>237</sup>

Speaking with Supreme Court Registrar, Xiomara Cherebin-Forsyth, the registry is in the process of digitizing 500+ cases covering 20 years. The lack of digitization also makes publication of case law extremely limited especially in sexual offence cases. For example, to legally publish sexual offence cases, they must be appropriately anonymized to protect the identity of victims. Digitization allows for a more seamless standardized methodology to achieve anonymity in sexual offence cases. Currently, High Court case files are currently in the "Vault", which is a dilapidated room where the infrastructure is crumbling, files reach the ceiling near the lights, and where one incident of fire or flooding could wipe out legal decisions in an instant. The vault also houses records surviving from the days of slavery, with the oldest documents being from 1705. Steps are being taken to house the documents in a more protected location, however, digitization is still paramount to ensure long-term viability and accessibility of legal cases.<sup>238</sup> The absence of digitization of records and storing recordings of transcripts in the cloud has caused a serious miscarriage of justice. In 2022, a British man in Grenada convicted of murdering his wife was able to successfully appeal his sentence and obtain release after serving 12 years of a 67-year sentence because the court was unable to produce a full transcript of the court proceedings.<sup>239</sup> One day of the trial was missing and the judge's laptop where notes were taken could not be located.<sup>240</sup>

One of the most troubling pieces of information uncovered through triangulating our conversations was that excessive delays in GBV cases create numerous circumstances that undermined access to justice. According to Legal Aid,<sup>241</sup> most criminal matters at the Magistrate level are related to domestic violence, and according to two legal officials who wished to remain anonymous who showed us a list of recent court matters (Cause List), most

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<sup>236</sup> Eastern Caribbean Supreme Court, *About Us, Judicial Officers*, <https://www.eccourts.org/judicial-officers/high-court-judges>; Commonwealth Governance, *Judicial System of Grenada*, <https://www.commonwealthgovernance.org/countries/americas/grenada/judicial-system/>.

<sup>237</sup> Interview conducted by ICAAD with Chief Registrar, 25 September 2023.

<sup>238</sup> Ibid.

<sup>239</sup> The New Today, *Missing Court Transcripts, British Murder Convict Alexander Clack Walks Free*, 24 September 2022, <https://www.thenewtodaygrenada.com/local-news/missing-court-transcripts-british-murder-convict-alexander-clack-walks-free/>.

<sup>240</sup> Interview conducted by ICAAD with Chief Registrar, 25 September 2023.

<sup>241</sup> Interview conducted by ICAAD with Legal Aid, 27 September 2023.

(50-60%) criminal matters at the High Court level are related to sexual offences.<sup>242</sup> Based on the figure below, the rates of SV matters at the High Court are at extremely high levels for 2023. Verifying this with RGPF data is complicated because of the lack of disaggregated information and ability to identify which cases have proceeded to trial at which court.

In St. George's Parish, which is the most densely populated area, there are three distinct dates set aside for Family law matters on the last week of the month: 1) Wednesday, maintenance; 2) Thursday, domestic violence, and other family disputes; and 3) Friday, juvenile matters. These are typically the busiest and most crowded days of the month at the Magistrate's courthouse. In other jurisdictions, totalling seven other Magistrate Courts, there is only one day a month dedicated to all Family law matters. Currently, Grenada is facing a huge dearth of Magistrates to oversee and hear the vast volume of cases<sup>243</sup> **and more importantly, only one day a month is dedicated to addressing all domestic violence matters in the country.** To date, from our previous work in the Pacific Islands (where rates of GBV are the highest in the world), Barbados, and Jamaica, Grenada is unique in having such a high percentage of GBV cases coming before the courts and that is recognizing that only a fraction of GBV cases are even reported. One outcome of these findings is that the prevalence rate of GBV in Grenada (~30%) is likely to be underestimated.

These same interviewees confirmed that on average that domestic and sexual violence cases can take on average 2-3 years and 4-5 years respectively to adjudicate, and sometimes, even as long as a decade. This has some devastating downstream impacts:

- prolonging the trauma faced by survivors;
- survivors must continue to live in limbo and fear for prolonged periods of time as most accused, even in serious GBV matters, are granted bail.
- the circumvention of justice through pay-outs and other informal reconciliation, which amounts to about 20% of all GBV related matters;<sup>244</sup>
- the Gender Affairs division of the Ministry of Social Development is unable to effectively monitor case files, provide support services, and allocate necessary funds for extended durations of time to survivors;
- defence attorneys use adjournment as a tool to wear down survivors because they recognize cases will fall apart for a multitude of reasons if the matter is prolonged.

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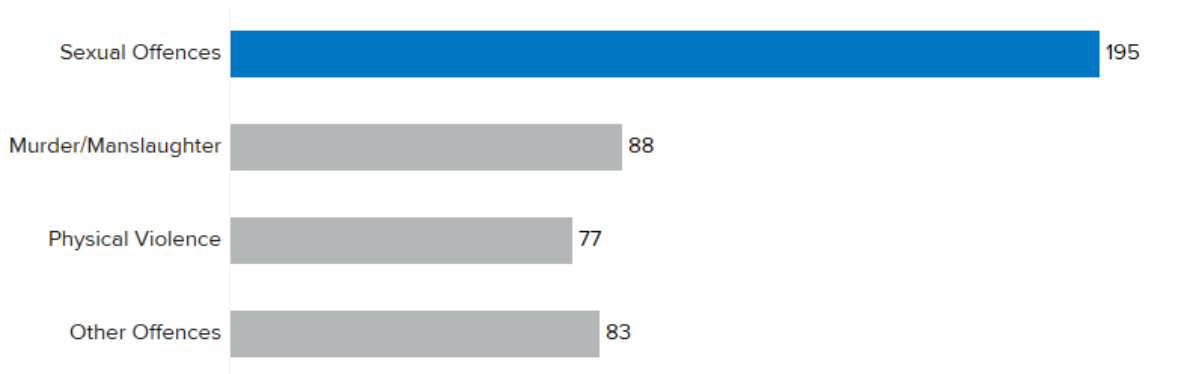
<sup>242</sup> Interview conducted by ICAAD with Chief Registrar, 25 September 2023; Interview conducted by ICAAD with a legal official who wished to remain anonymous, 29 September 2023; Interview conducted by ICAAD with Legal Aid, 27 September 2023; Interview conducted by ICAAD with a legal official who wished to remain anonymous, 26 September 2023.

<sup>243</sup> Interview conducted by ICAAD with Legal Aid, 27 September 2023.

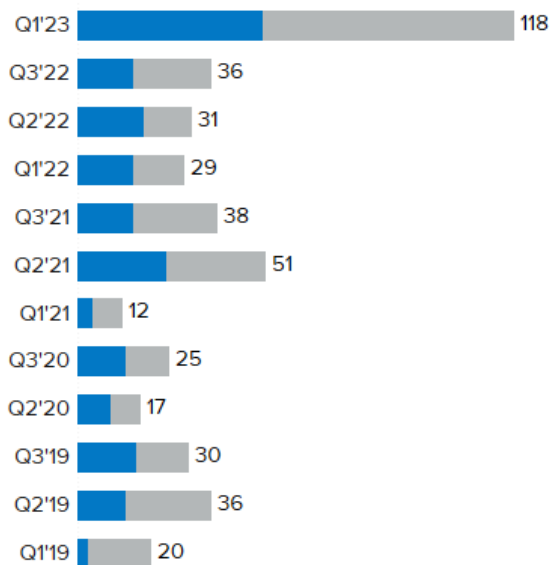
<sup>244</sup> Interview conducted by ICAAD with a legal official who wished to remain anonymous, 26 September 2023.

## Sexual Offence Cases in the High Court between Q1 2019 - Q1 2023

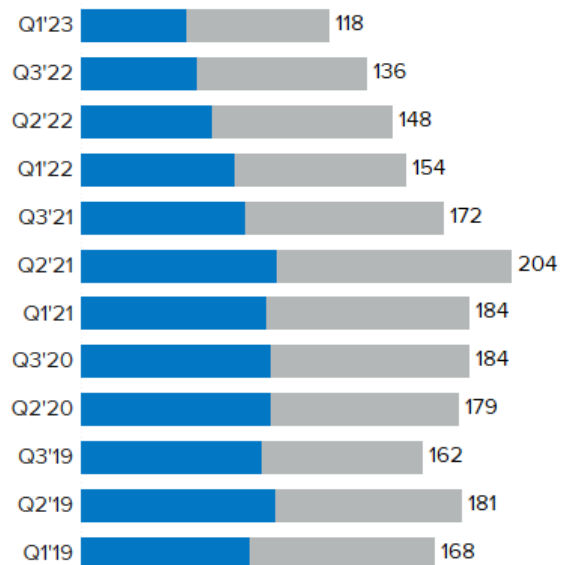
On examining 443 unique cases before the High Court from Q1 2019 to Q1 2023, 193 cases involved sexual offences. Thus, on average, 45% of the court's docket per quarter is related to sexual offences, highlighting the prevalence of sexual offence cases within this timeframe.



Unique Sexual Offence Cases in the High Court



Sexual Offence Cases per Quarter in the High Court



Furthermore, the Magistrate and High Court facilities are not designed to avoid retraumatization of survivors. Often, the waiting areas are crowded and don't separate the accused and survivor.<sup>245</sup> Once a survivor enters the courtroom space, they are often only a few feet away from the accused.<sup>246</sup> The tight layout of the courts fails to adequately protect vulnerable witnesses and may inadvertently intimidate them, affecting their ability to testify effectively. If the attorney seeks to have private consultations with their client, there are often no facilities to do so.<sup>247</sup> Furthermore, the Court posts matters to be heard on the outside of Courtroom where anyone who is in the vicinity can view. Protection order matters are not posted, but a spectrum of family matters like domestic violence assaults, incest etc. are regularly posted.<sup>248</sup> Though it may not include the names of the victims, it does have the

<sup>245</sup> Interview conducted by ICAAD with Legal Aid, 27 September 2023.

<sup>246</sup> Interview conducted by ICAAD with Chief Registrar, 25 September 2023.

<sup>247</sup> Interview conducted by ICAAD with Legal Aid, 27 September 2023.

<sup>248</sup> Ibid.

name of the accused, which can easily be sufficient information to undermine the privacy of the survivor.<sup>249</sup> And finally, in-camera proceedings linked to special measures for witnesses are not utilized.<sup>250</sup>

One of the key access to justice issues that came up continuously was the non-existent use of special measures for witnesses at either the Magistrate or High Court. This was confirmed from multiple legal officials and agencies –the prosecution is not requesting special measures for either child or adult survivors when bringing criminal matters of domestic and sexual violence before the Court. Some judges use their discretion to create a courtroom environment that is conducive to the administration of justice. For example, some control the courtroom so that the accused never directly cross examines the survivor/ witness and requires counsel to do so, allows the social worker to stay with the survivor during the proceedings, and encourages the timely disposition of cases.

Nevertheless, not all judges are as conscientious about fostering a secure environment within their courtrooms. According to the head of the Legal Aid Counselling Clinic (LACC), Tyrone Buckmire, there have been several instances, at the behest of defence attorneys, that Magistrate judges have removed CPA officers, LACC staff, probation officers, and social workers because the defence has argued that their presence is prejudicial to their client. This request is often left unchallenged as police prosecutors, who have no formal legal training, do not object and state the reasons why it is important for the presence of the different agencies to remain in support of the survivor. In many cases, the survivor (especially child survivors) loses all their support system in one instance and the cases fall apart from that point onward. Police prosecutors are often left outmatched by skilled defence attorneys.<sup>251</sup>

Furthermore, Section 67 of the Criminal Procedure Code Cap 72B, states that “Notwithstanding section 10(iv), or any other law, a Judge or Magistrate shall, in any matter before him or her involving a sexual offence or indecent assault, order that no person other than the officers of the Court, the virtual complainant, other persons engaged in the prosecution, and the accused, his or her witnesses and his or her Counsel, if any, shall have access to or remain in the room or building in which the matter is being heard.” A strict interpretation of this code makes it difficult for agencies to provide support to a vulnerable survivor in the court room.

In addition to the limited protections provided to survivor witnesses in Court, several of our interviewees identified failures by judges to issue protective orders in a timely fashion. In one incident, a survivor was told to come back the following month because the Magistrate was not well that day. The staff at the Court made no efforts to assign the case to another Magistrate.<sup>252</sup> In a more recent incident, the survivor applied for a protection order in May of 2023 and was told the Magistrate had taken ill and that client would be given a date when the Magistrate was back. The court did not provide a date until September, which means the survivor had no choice but to continue living with her abuser in the same house without a protection order in place.<sup>253</sup> There was no attempt made by the court clerks to reassign the

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<sup>249</sup> Interview conducted by ICAAD with Legal Aid, 27 September 2023; Interview conducted by ICAAD with Chief Registrar, 25 September 2023.

<sup>250</sup> Interview conducted by ICAAD with Chief Registrar, 25 September 2023; Interview conducted by ICAAD with a legal official who wished to remain anonymous, 29 September 2023; Interview conducted by ICAAD with Legal Aid, 27 September 2023; Interview conducted by ICAAD with a legal official who wished to remain anonymous, 26 September 2023; Interview conducted by ICAAD with CPA, 26 September 2023.

<sup>251</sup> Interview conducted by ICAAD with Legal Aid, 27 September 2023.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.



matter or transfer it to another court. This underscores the lack of urgency by the Court to address protection orders and to understand the necessity of preventing further escalation of violence in domestic violence cases.

In regards to the Magistrates' court, one prosecutor suggested the abolishment of the police prosecutor system in favour of prosecutors from the DPP's office handling those cases. Police prosecutors' training is not extensive enough to match that of a lawyer and this leads to challenges both at the magistrate's level but also later at the High Court, when it comes to the record that was meant to be established at the lower court by the police prosecutor being incomplete. Another concern shared by the same prosecutor in Grenada is that there is a disconnect between the prisons and the criminal records office. This has led to situations where an individual's incarceration status had to be confirmed by a phone call to the prison during sentencing in a different case in the High Court.

Illuminating these gaps reveals the need for specialized courts for both Family Law and Sexual Offences. Recommendations have been made by the CEDAW Committee and the Spotlight Initiative to address this absence.<sup>254</sup> One female police officer poignantly discusses why there is a need:

*"Another challenge I think is the way our court system is set up, in that, having a victim in the court and that alleged suspect or accused is right there... For juveniles, the court might be cleared but having that suspect sitting just a couple of feet away, they have to relive that memory, looking at that person. Sometimes that break down and then the matter gets thrown out. No prosecution happens. So I believe we would have to change our court systems, maybe that the complaint or the victim stay away from the court but using technology, they give the evidence. So they don't have to face that person again."*

## **F. Concluding Thoughts**

As part of the European Union's partnership with the United Nations to eradicate violence against women globally, there is also the Spotlight Initiative Grenada division launched in March 2020. In response to the Grenada Women's Health and Life Experiences Survey, the Spotlight Initiative has been working on a draft Victim's Rights Policy that aims to "ensure that victims and essential service providers are aware of the rights of victims and survivors to facilitate enforcement, accountability and victim empowerment."<sup>255</sup> The policy consultation is done in cooperation with the Grenada Bar Association, UNICEF and the Grenada Ministry for Social Development, Housing and Community Empowerment, and it is intended to be brought to the Grenadian Government for consideration. The goal of the draft policy is to guarantee "support to victims for their healing and recovery, delivered in accordance with international standards and best practice."<sup>256</sup> The draft policy is a result of consultations between the Ministry for Social Development, Housing and Community Empowerment; representatives from the Grenada Bar Association; representatives from the United Nations Emergency Fund

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<sup>254</sup> Spotlight Initiative, *To Eliminate Violence Against Women and Girls, Country Programme Document, Grenada*, at 21-22 (2019).

<sup>255</sup> Spotlight Initiative, *Grenada Drafts Gender-Based Violence Victims' Rights Policy* (2021), <https://www.spotlightinitiative.org/press/grenada-drafts-gender-based-violence-victims-rights-policy>.

<sup>256</sup> *Ibid.*

("UNICEF"); representatives from UN Women and many more. Indications from these consultations seem to conclude that: "[a]ny bold systemic changes that [are] need[ed] to have in [Grenada] really stems from social justice. To have the greatest impact in changing cultural and social realities of violence against women and girls, we have to endorse practices such as these."<sup>257</sup>

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<sup>257</sup> Chrissie Worme-Charles, Permanent Secretary, Ministry of Social Development, Housing and Community Empowerment.

# V. CASE LAW ANALYSIS



## A. Case Law Analysis: Mixed Methods Research

By reviewing sentencing guidelines, case-law, and using a mixed methods research approach that values and utilises both quantitative and qualitative data, we can harness important insights that validate the assertions of survivors, civil society advocates, and government officials who have experienced and detailed to us first-hand the gap between law and justice. Recognising that one of the most critical issues in assessing GBV is closing the data gap, the goal here is to create an evidence base that tracks case law over time to illuminate patterns within judicial decision-making. This will help inform how future data can be tracked and analysed to create a solid foundation for advocacy and reform.

## B. Methodology

TrackGBV<sup>258</sup> began in 2013 and has led to the review of over 5,000 GBV cases from nine Pacific Island countries covering a 20-year period. Building on this methodology,<sup>259</sup> the review of Grenada GBV cases reveals the presence of contentious factors that have a direct impact on sentencing outcomes and overall accountability in GBV matters. Before getting into the data, the following definitions have previously informed our analysis.

- **Gender-based violence:** “an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (i.e., gender) differences between males and females.”<sup>260</sup> For the purposes of TrackGBV, we analyse only cases involving GBV against people who identify as girls/ women or female specifically, of any age.
- **Domestic violence:** “All acts of physical, sexual, psychological, [spiritual,] or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”<sup>261</sup>
- **Sexual violence:** “Engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object; engaging in other non-consensual acts of a sexual nature with a person or causing another person to engage in non-consensual acts of a sexual nature with a third person.”<sup>262</sup>
- **Contentious factors:** Those factors which, when used in mitigation by the court, discriminate against the victim/ survivor based on her gender. This may be through gender stereotyping and rape myths, the consideration of customary practices which

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<sup>258</sup> ICAAD, TrackGBV Program, <https://icaad.ngo/trackgbv/>.

<sup>259</sup> ICAAD, *SGBV Sentencing Handbook* (2019), <https://icaad.ngo/wp-content/uploads/2019/01/ICAAD-SGBV-Sentencing-Handbook-1.19.pdf>.

<sup>260</sup> *Institutional Framework for Addressing Gender-Based Violence in Crises*, International Organization for Migration, (2018) at 29, [https://publications.iom.int/system/files/pdf/iom\\_gbvic\\_framework.pdf](https://publications.iom.int/system/files/pdf/iom_gbvic_framework.pdf).

<sup>261</sup> Council of Europe, *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (2011), at Article 3, <https://rm.coe.int/168008482e>.

<sup>262</sup> *Ibid.*, at Article 36.

may be imbued with gender discrimination (such as reconciliation ceremonies) or other factors which unjustly privilege the interests of the perpetrator over the interests of the victim/ survivor. These contentious factors have been separated into three categories: Gender Stereotypes, Customary Practices and Other Factors:

- **Gender stereotyping:** Stereotypical attitudes and beliefs regarding gender and the way in which men and women should interact within society. Gender stereotypes also includes rape myths: prejudicial, stereotypical, or false beliefs regarding rape, and characteristics of rape victims and rapists.
- **Reconciliation and other customary practices:** This includes forms of out-of-court justice and reparation including payment of compensation, formal apology, and reconciliation. It also includes situations where customary practices are used as justification for criminal acts which undermine equal protection under the law for female victims/survivors (e.g. marital rape does not exist, women cannot rape men, or it was "just a little sex").
- **Other contentious factors:** This includes any other factors which unjustly privilege the interests of the perpetrator over the interests of the victims/survivors. For example, considering the fact that the perpetrator participated in church activities as a mitigating factor.

### **C. Sentencing Guidelines - Eastern Caribbean Supreme Court**

The first set of sentencing guidelines for the Magistrates and High Courts in Grenada and other courts under the jurisdiction of the Eastern Caribbean Supreme Court (the "ECSC") was launched on 17 September 2019 and came into effect on 1 October 2019. On 30 July 2020, a second set of sentencing guidelines was issued, which came into effect on 1 September 2020. This included new guidelines for sentencing of sexual offences.

The Sentencing Guidelines Initiative is aimed at promoting and streamlining the Court's approach to sentencing across its nine-member jurisdiction and are intended to reflect fairness and effectiveness.<sup>263</sup>

### **D. Sentencing Guidelines as Applied to Sexual Offences**

The guidelines cover sexual offences including rape, unlawful sexual intercourse, unlawful sexual intercourse with a person under the age of 16, unlawful sexual intercourse with a person under the age of 13, indecency and incest.<sup>264</sup>

The sentencing guidelines include a general framework for the judiciary, which consist of 6 steps and require the judiciary to take into consideration:

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<sup>263</sup> *Eastern Caribbean Supreme Court Issues Second Set of Sentencing Guidelines Slated To Come Into Effect on 1st September, 2020*, <https://www.eccourts.org/eastern-caribbean-supreme-court-issues-second-set-of-sentencing-guidelines-slated-to-come-into-effect-on-1st-september-2020/>.

<sup>264</sup> *See generally* Eastern Caribbean Supreme Court, *A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court: Sexual Offences Re-Issue* (Nov. 8, 2021).

1. The seriousness of the offence;
2. Any aggravating and/or mitigating factors;
3. Guilty pleas;
4. The number of offences being considered;
5. The amount of time served on remand; and
6. Other applicable orders such as restraining orders.<sup>265</sup>

*Step 1: Seriousness of the Offence*

The first step in constructing a sentence is to establish the starting point for the offence. In cases of rape (dealt with at Section 1), this requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused.

Factors to be taken into account in relation to the harm caused include, for example, (i) the extremity of the psychological or physical harm, which must be supported by evidence, (ii) the use of firearms, other weapons or extreme force, and (iii) the age of the victim – the harm will be more serious if the victim is a child under 10 years of age or 65 years and over. The categories for harm in the guidelines include only "*exceptional*", "*high*" or "*significant*" and do not allow for the possibility of there being no harm.<sup>266</sup>

The seriousness of the offence is established by reference to the culpability of the offender, which can be assessed as "high" or "lower". Factors affecting the culpability of the offender include, for example, abuse of positions of trust, group attacks, disparity of age, history of violence against the victim, use of violence or threats of violence to prevent reporting, recording of incidents, use of drugs or alcohol, and offences motivated by, or **demonstrated hostility to the victim based on their sexual orientation or sexual identity**.<sup>267</sup> This is an important recognition by the court that members of the LGBTQI+ community, especially the transgender community, face significant sexual offence violations even if the State, through legislation, deems them to be invisible under the law.

Each offence has a different calculation matrix once the category of harm and level of seriousness has been determined.

*Step 2: Aggravating factors and/or mitigating factors*

Aggravating factors and mitigating factors will be used to adjust the sentencing figures either upwards or downwards. Aggravating factors may include (i) the victim being particularly vulnerable, (ii) previous convictions for sexual offences, (iii) knowledge of infection with STIs; or (iv) offences committed whilst on bail, etc.

Mitigating factors may include (i) good character, (ii) genuine remorse, (iii) physical or mental disability, (iv) "youth and/or lack of maturity" where it explains the offender; (v) **"no violence used beyond that inherent in the offence"; (vi) some initial consensual sexual activity" etc.**<sup>268</sup> The last two mitigating factors are inherently problematic and arise in many sexual offence cases. First, the use of aggravated forms of violence (e.g. weapon) is considered aggravating. There is no rationale for why the absence of an aggravating factor,

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<sup>265</sup> Ibid at 2-3.

<sup>266</sup> Ibid at 4-5.

<sup>267</sup> Ibid at 6.

<sup>268</sup> Ibid at 8.

no use of a weapon in the commission of a crime for example, should be used as a mitigating factor. At most, it should have no bearing on the sentence. Second, by stating that "some initial consensual sexual activity" can be considered a mitigating factor is to indirectly assign blame to the victim for changing their mind. In addition, this idea perpetuates stereotypes about men, that once they get sexually aroused, they can't stop. These are one of the most prevalent and damaging rape myths that exist.<sup>269</sup>

The Court also notes generally when it comes to the commission of a crime that "voluntary intoxication, whether by drink or drugs, is not a mitigating factor. This is an important point to highlight since in other jurisdictions the voluntary use of drugs has not only been seen as a mitigating factor, but also, the root cause of gender-based violence rather than something that amplifies that violence."<sup>270</sup>

### *Step 3: Guilty pleas*

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.<sup>271</sup>

### *Step 4: The number of offences being committed*

The sentencing figure should then be adjusted if sentencing for more than one offence. If appropriate, dangerousness should also be considered.<sup>272</sup>

### *Step 5: Time spent on remand*

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision.<sup>273</sup>

### *Step 6: Other orders*

Finally, consider ancillary orders, compensation, restraining orders, etc, if applicable.<sup>274</sup>

Under the section on unlawful sexual intercourse and aggravated unwanted sexual intercourse, the ECSC identifies situations where diversion or non-custodial sentence may be appropriate. One example the Court gives under unlawful sexual intercourse is a consensual sexual relationship between minors. In this report itself, we have identified these as status offences that criminalize young people not because the act itself is criminal, but because of a desire to shape their behaviour and conform to a moral code. The Courts in Practice Direction 8D have also indicated the importance of using a custodial sentence as "a last resort for

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<sup>269</sup> Megan Hermolle, Samantha J. Andrews, and Ching-Yu S. Huang, *Rape Stereotype Acceptance in the General Population of England and Wales*, *J Interpers Violence*. 2022 Dec; 37(23-24).

<sup>270</sup> Eastern Caribbean Supreme Court, *Sentencing Guidelines Rules 2019: Practice Direction 8A No. 1 of 2019*, at 5.

<sup>271</sup> Eastern Caribbean Supreme Court, *A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court: Sexual Offences Re-Issue*, at 9 (Nov. 8, 2021).

<sup>272</sup> *Ibid.*

<sup>273</sup> Eastern Caribbean Supreme Court, *A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court: Sexual Offences Re-Issue*, at 10 (Nov. 8, 2021).

<sup>274</sup> *Ibid.*

children” and to avoid “criminalising children.”<sup>275</sup> We agree such circumstances are not deserving of a custodial sentence, but we are also wary of non-custodial sentences being applied to other unlawful sexual intercourse and aggravated unlawful sexual intercourse scenarios where the Court has deemed the consequences of the action to fall into Category 3 and seriousness Level B.<sup>276</sup>

The Court has also indicated under Practice Direction 8C,<sup>277</sup> that suspending a sentence that has received a sentence over two years should be rare and also suspending a sentence for more than two years. Therefore, in sexual offence cases we should rarely, if ever, see a suspended sentence. However, this poses a serious problem in domestic violence cases where sentences typically fall in a range lower than two years. In previous work, we have flagged that suspended sentences in domestic violence cases signal a lack of seriousness by the courts to address domestic violence and its devastating impact to both the survivor and others, including children, who are in the home environment.

The guidelines are a positive step and are mostly in line with international standards outside of areas that have been flagged. They also encourage transparency; the courts must give reasons explaining the construction of the sentence in a way that can be readily understood by defendants and justify any departure from the guidelines.<sup>278</sup> The success of these guidelines is ultimately dependent on how they are applied by the judiciary.

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<sup>275</sup> Eastern Caribbean Supreme Court, *Sentencing Guidelines Rules 2019: Practice Direction 8D No. 4 of 2019*, at 2.

<sup>276</sup> Eastern Caribbean Supreme Court, *A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court: Sexual Offences Re-Issue*, at 15, 22 (Nov. 8, 2021).

<sup>277</sup> Eastern Caribbean Supreme Court, *Sentencing Guidelines Rules 2019: Practice Direction 8C No. 3 of 2019*, at 1

<sup>278</sup> See generally Eastern Caribbean Supreme Court, *Sentencing Guidelines Rules 2019: Practice Direction 8A No. 1 of 2019*; Eastern Caribbean Supreme Court, *A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court: Sexual Offences Re-Issue* (Nov. 8, 2021).



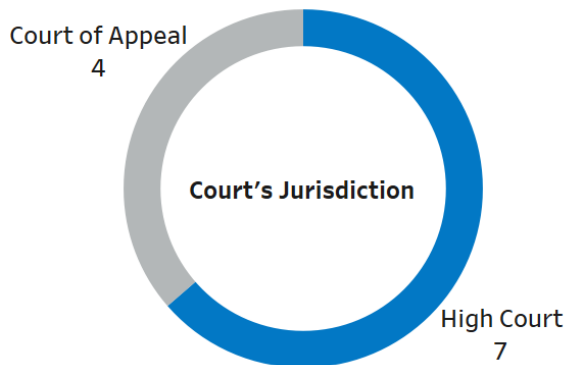
## Stereotyping, Rape Myths & Victim Blaming: Incorrect Assumptions

**Rape is always violent, or involves physical force** – Rape most commonly occurs between strangers in dark alleys – **Prostitutes / sex workers cannot be raped** – You cannot be raped by your husband or partner – **The victim had previously consented to sex with the accused a number of times so s/he must have consented** – **If your culture condones, or is perceived to condone, marital rape, underage “sex”, or forced marriage, then you should not be upset about it/it does not matter as much/it’s more of a grey area** – Sexual abuse at the hands of a perpetrator which took place when the victim was a child has no bearing on the issue of consent if the same parties go onto engage in sexual activity as adults – **The victim provoked rape and automatically implied consent by their dress / flirtatious behaviour** – If you send sexual images or messages prior to meeting someone, then having sex is inevitable – If you voluntarily attend someone’s house after a date or night out, you obviously want sex and consented to it by going there – **If you meet men online or through hook-up apps you are consenting to sex and should be ready to offer sex** – If you drink alcohol or use drugs then you have made yourself vulnerable to being raped and you bear the responsibility – If you have lots of sex, including with different people, then you are promiscuous / “deserve what you get” / are not harmed by rape – If someone has truly been raped then they would never seek, or want, sex soon afterwards – **You can tell if someone has ‘really’ been raped by how they act afterwards** – A real rape victim is always visibly distressed when describing what happened to them – **A real rape victim would never freeze when attacked, they would fight back** – A real victim of rape would never be able to carry on with their normal life – go to work, take children to school etc – If the victim didn’t scream, fight, or get injured then it wasn’t rape – If the victim didn’t complain to the police immediately it can’t have been rape – If you don’t say “no”, it wasn’t rape – **Only young / attractive people get raped** – Strong / independent / powerful / older people don’t get raped – The victim’s race / religion / background is responsible for the rape – **A real victim would always be able to provide a clear and coherent account of being raped** – Inconsistencies in accounts provided by a victim always means they lack credibility as a witness – Where a victim has consumed alcohol or drugs prior to an incident s/he will always be an unreliable witness as their evidence won’t be accurate – **False allegations are common and women always cry rape when they regret having sex or want to seek revenge** – Other complaints of rape which have not resulted in successful prosecution outcomes always mean the victim lacks all credibility as a witness – Previous withdrawals of complaints, or previous reluctance to co-operate with a prosecution, always means the victim lacks credibility as a witness – **Where the victim has previous convictions s/he always lacks credibility as a witness** – The victim has previous convictions or has told untruths about other matters and therefore can never be relied upon to tell the truth about rape – **Where the victim has a learning disability or mental health condition s/he always lacks credibility as a witness** – If someone displayed signs of sexual arousal during abuse, the only conclusion is that they wanted and/or enjoyed it.

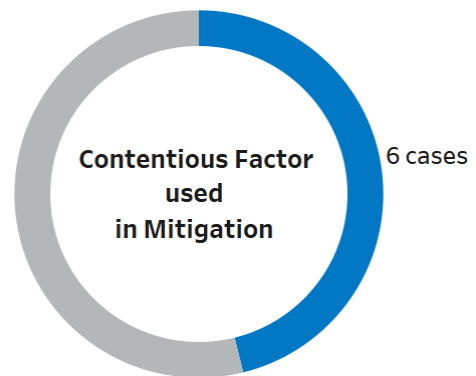
*Source: Crown Prosecution Service of England and Wales*

## E. Mixed Methods Research

Using a specific search methodology,<sup>279</sup> our research identified 13 GBV applicable cases<sup>280</sup> on the Eastern Caribbean Supreme Court Website between 2003 and 2020 (comprising 7 High Court Judgments and 4 Court of Appeal Judgments). This section provides a summary of the insights derived from our analysis regarding judicial decision-making in domestic and sexual violence cases. It's crucial to note that the sample size of 13 cases is relatively small. Therefore, we should exercise caution in drawing extensive conclusions from them. Instead, this subset of cases offers a pathway for further exploration and establishes a rationale for undertaking additional research, including case law analysis.



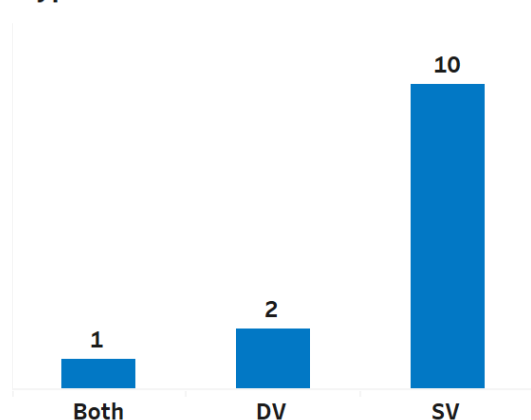
**Within this subset, contentious factors were raised in 8 cases.** These contentious factors played a part in the mitigation of sentences in 6 cases, leading to a sentence reduction in 4 cases and acquittal in 2 cases due to the absence of corroborative evidence presented by the victims, highlighting the need for legal reforms to better protect survivors and promote a fair and equitable judicial process.<sup>281</sup>



## F. Quantitative Data

Regrettably, lower courts, such as Petty Sessions Courts and Parish Courts, are not courts of record. Consequently, domestic violence cases, which typically originate in those courts, are underrepresented in our dataset. In our analysis, two (2) cases were related to domestic violence, ten (10) pertained to sexual violence cases and one (1) case presented with attributes of both domestic and sexual violence. More than half of the cases involved the charge of rape (seven cases), with carnal knowledge and murder being the next most common charges (two cases each).

Types of Cases

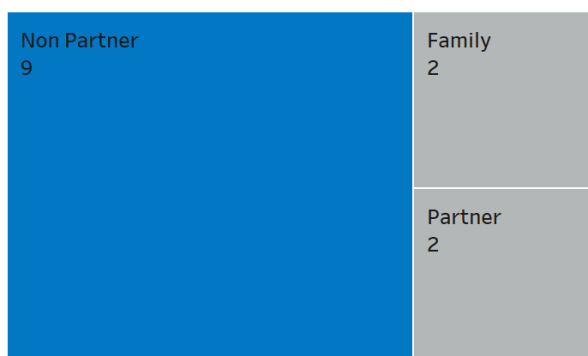


<sup>279</sup> ICAAD, SGBV Sentencing Handbook (2019), <https://icaad.ngo/wp-content/uploads/2019/01/ICAAD-SGBV-Sentencing-Handbook-1.19.pdf>.

<sup>280</sup> Sentencing decisions involving gender-based violence-related charges.

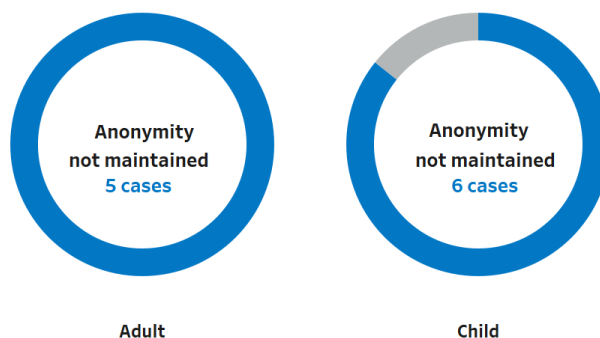
<sup>281</sup> Ibid.

### Relationship between perpetrator and victim



In seven (7) cases, the victim/survivor was a child. The perpetrator was known to the victim/survivor in over eleven (11) cases. In two (2) case, the perpetrator was the victim's partner/ex-partner, while in two cases, the perpetrator was a family member. In nine (9) cases, non-partner violence was involved.

The anonymity of victims/survivors was not maintained in eleven (11) cases. This includes instances where, even though the victim was not identified by name, there were identifying details about them that would compromise their anonymity.



In five (5) cases, medical reports were consulted, a proportion notably low, especially considering the prevalence of

rape and murder cases that typically heavily depend on such reports. This does not imply that medical reports did not contribute to the decision-making process; rather, it indicates that they were not explicitly cited in the judgement or sentencing decision. Social Enquiry reports were mentioned in seven (7) of the cases, including six rape and one murder case.

Many cases lacked a discussion about the factors considered during sentencing unless the appeal specifically addressed the sentence. Nonetheless, we observed that commentary on contentious factors resulted in sentence reductions in five cases. In most of these instances, consideration of childhood abuse or growing up in a dysfunctional family played a significant role. For example, in the ECSC High Court judgement, *The Queen v Hayden Phillip*,<sup>282</sup> the court incorporated information from the social enquiry report in mitigation, highlighting the perpetrator's "chaotic and dysfunctional childhood characterised by the loss of his mother at the early age of six years," resulting in a discount of 2 years in the sentence.<sup>283</sup>

<sup>282</sup> *The Queen v Hayden Phillip*, <https://www.eccourts.org/the-queen-v-hayden-phillip/>.

<sup>283</sup> *Ibid*, para 23.

In four (4) cases, perpetrators were accorded first-time offender status, though there is arguably a misapplication of this status in two instances (one involving rape and one involving murder). In the case with charges of rape and engaging in sexual intercourse with a minor, the perpetrator exhibited a pattern of repeat offending that was overlooked.<sup>284</sup> In the murder case, the perpetrator was deemed to have a "clean record," disregarding his two convictions for minor offences in 2009 and 2010, along with a conviction for indecent assault in 2011.<sup>285</sup>

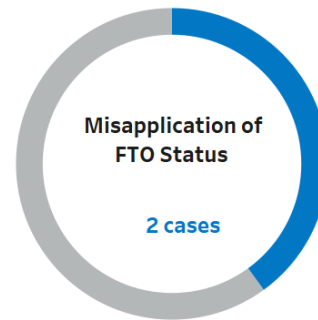
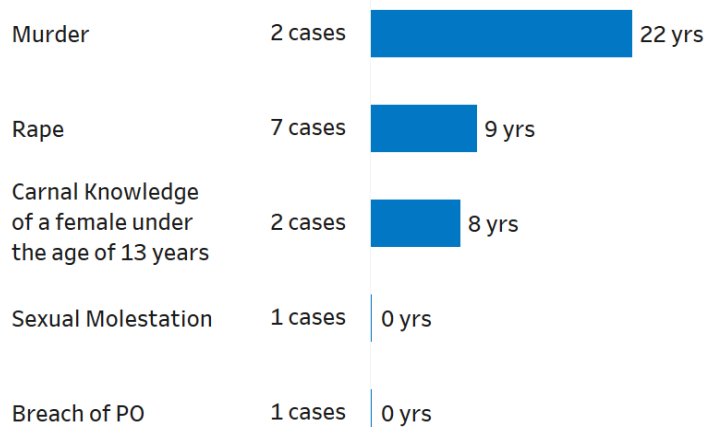


Figure X

While we acknowledge that judges have discretion in this realm, we contend that, in other jurisdictions, we have successfully argued and persuaded judiciaries that the spirit of the law concerning leniency for first-time offenders is compromised when facts indicate previous violent offences (even if unrelated to the current charge) or when there is a clear pattern of violence against the victim/survivor, even in the absence of prior convictions.<sup>286</sup>

Count of Cases and Average Final Sentence by Charge Category



### G. Qualitative Data

#### Privileging the Perpetrator over Survivor in Sentencing (“Personal Mitigating Factors”)

In the 2010 case of *R v Cassius Batson*,<sup>287</sup> the perpetrator pleaded guilty to 2 counts of rape and 7 counts of unlawful sex.<sup>288</sup> He had an intimate relationship with an underaged 15-year-old schoolgirl. Their relationship came to an end when the victim found out that Batson was not only married but also significantly older than what he told her. Batson raped the victim and threatened to kill her. Batson had been convicted four times previously: twice for rape in 1992, attempted rape in 1996, and indecent assault.<sup>289</sup> The court ordered a social inquiry

<sup>284</sup> Regina v Kenny Cadoo, <https://www.eccourts.org/regina-v-kenny-cadoo/>.

<sup>285</sup> Regina v Winston Murray, <https://www.eccourts.org/regina-v-winston-murray/>.

<sup>286</sup> ICAAD, *Fijian Judiciary Collaborates with ICAAD to Improve Access to Justice* (2018), <https://icaad.ngo/2018/07/20/fijian-judiciary-icaad-improve-access/>.

<sup>287</sup> R v Cassius Batson, <https://drive.google.com/file/d/1eQZR9NWDh-AzBs0iwUe4hdfrgQvjrgK/view?usp=sharing>.

<sup>288</sup> Ibid, para 1.

<sup>289</sup> Ibid, para 5.

report and a psychological assessment. For his psychological assessment, the psychotherapist concluded that "*Batson did not display any diagnosable mental impairment*" or psychological condition, but his capacity to remain sensible diminished considerably in certain situations.<sup>290</sup>

When reaching the sentencing decision, the court considered aggravating factors, including the use of a cutlass to invoke fear, the age of the victim, and the perpetrator's past convictions of a similar nature. However, despite the victim's age, the presence of violence (and that the rape is itself inherently violent), the court remarked that "*no other evidence of violence was used by the convicted man, nor was the rape accompanied by perversions.*"<sup>291</sup> The court also reiterated, among other mitigating factors highlighted by the Chief Justice in the case of *Winston Joseph et al v Regina*, factors such as "*consensuality, genuine affection on the part of the defendant rather than the intention to use the girl simply as an outlet for sexual inclinations,*" and "*deliberate attempts at seduction by the girl.*"<sup>292</sup> The court considered "the prompt apology and its acceptance by the victim who thereafter fell in love with the perpetrator" as strong mitigating factors in the circumstances.

Although the court did not discuss the breakdown of the sentence, it identified the maximum sentence for the offence of rape at 15 years<sup>293</sup> but went on to sentence the perpetrator to 6 years of imprisonment.<sup>294</sup> The court found charges of unlawful sex to be consensual with a willing participant.<sup>295</sup> Despite a maximum sentence of 5 years, the court as it had found strong mitigating factors and no additional aggravating factors, consequently, imposed only a 2-year concurrent imprisonment sentence on each count.<sup>296</sup>

While out on bail for the afore-referenced offence Cassius Batson committed and pleaded guilty to the offence of unlawfully and carnally knowing a 12-year-old schoolgirl. The perpetrator was a resident in the home of the victim's mother<sup>297</sup>, and when the mother was away at work, showed the victim a pornographic movie and had sex with her against her will.<sup>298</sup> The court acknowledged that by having sex with the victim in the house of her mother, the perpetrator had betrayed his benefactor's trust and that the only mitigating factor in the case was the victim's guilty plea. Nevertheless, the court considered the possibility of the perpetrator's future rehabilitation and imposed a sentence of 8 years imprisonment for this offence (note that the maximum sentence for the offence was 15 years); and it ordered the sentences to run concurrently.<sup>299</sup>

## **H. Need for Corroboration in Cases of Sexual Violence**

In Grenada, like in many other Commonwealth nations, cases involving sexual assault have, historically, grappled with the contentious requirement of third-party corroboration, a legal stipulation demanding additional supporting evidence beyond the victim's testimony.

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<sup>290</sup> Ibid, para 8.

<sup>291</sup> Ibid, para 15.

<sup>292</sup> Ibid, para 13.

<sup>293</sup> Ibid, para 16.

<sup>294</sup> Ibid, para 17.

<sup>295</sup> Ibid, para 18.

<sup>296</sup> Ibid, para 19.

<sup>297</sup> Ibid, para 20.

<sup>298</sup> Ibid, para 4.

<sup>299</sup> Ibid, para 22.

Advocating for the elimination of the corroboration requirement in sexual assault cases, the Fiji Court of Appeal, challenged a discriminatory common law exception prevalent in many Commonwealth countries' legal systems in the case *Balelala v State* [2004] FJCA 49. It critiqued the rule demanding third-party corroboration of a complainant's testimony, perpetuating the unfounded myth that women and girls fabricate rape and sexual assault allegations. It cited a landmark case originating from Grenada, where the Privy Council, clarified that common law did not mandate corroboration in sexual assault cases. It emphasized that good practice in sexual offenses laws required the explicit abolition of corroboration through legislation and underscored the detrimental impact of the corroboration rule on sexual assault survivors, often discouraging them from reporting crimes or cooperating in prosecutions. It also discredited attempts to justify the rule based on stereotypes about women's behaviour, highlighting the imperative to discard such flawed reasoning and uphold the rights and dignity of survivors.<sup>300</sup>

In an ECSC divorce proceeding from 2014, *Stephanie Joseph v Selwyn P Joseph*<sup>301</sup>, the court issued an order instructing the involved parties to "refrain from molesting, harassing, besetting, intimidating, and/or threatening, and carrying out physical or other abuse of the other."<sup>302</sup> Subsequently, the wife alleged that the husband had engaged in sexual molestation<sup>303</sup>, thereby violating the court's directive and presenting the police report and medical report in support.<sup>304</sup> The court was reluctant to consider the seriousness of rape/molestation in relation to married couple, likely as a result of the fact that the law surrounding marital rape is less progressive. It requires onerous proof on the part of the complainant, often the women in the relationship. The court emphasised the gravity of the accusation, stating that

"an allegation of sexual molestation in any form is very serious," and emphasised that the burden rested on the wife to establish, beyond a reasonable doubt, that the husband had breached the order through the alleged acts of sexual molestation. The judge remarked, "the police report and the medical report do not amount to corroboration. The police report is not corroborating evidence since it is a record of the Wife's version of the incident. At best it confirms the allegation and the fact that she made such a report. It does not go to the truth of its contents. There was no evidence from the doctor who examined the Wife, so there was no medical evidence before the Court to support the Wife's allegation."

Putting emphasis on the husband's version of the events, the court concluded that the wife failed to meet this burden for several reasons: (i) the absence of evidence from any corroborating witness; (ii) the lack of supporting evidence from the examining doctor; (iii) both parties choosing not to cross-examine the deponents who swore to the affidavits in the committal application; and (iv) the court finding the husband's account of the events on March

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<sup>300</sup> [Next Steps Towards Reform: Assessing good practice and gaps in Commonwealth sexual offences legislation Caribbean & Americas](#), at 24.

<sup>301</sup> *Stephanie Joseph v Selwyn P Joseph*, <https://www.eccourts.org/judgment/stephanie-joseph-v-selwyn-p-joseph>.

<sup>302</sup> *Ibid*, para 1.

<sup>303</sup> *Ibid*, para 3.

<sup>304</sup> *Ibid*, para 11.

5th to be equally plausible as the wife's version of events.<sup>305</sup> The judge dismissed the committal application and ordered the wife to pay the husband costs in the sum of \$750<sup>306</sup>.

In *Sheldon Thomas v The Queen*<sup>307</sup>, a 21-year-old appealed against his conviction and four-year imprisonment sentence for rape.<sup>308</sup> The case rested on the complainant's uncorroborated testimony, alleging non-consensual intercourse. She reported the incident to her mother immediately, leading to accusations at the appellant's home. The appellant, however, argued the encounter was consensual.<sup>309</sup> The appeal raised concerns about weak evidence, the exclusion of certain evidence, inadequate presentation of the defence's case, and a misdirection on the law of recent complaint.<sup>310</sup> The court rejected claims of weak evidence, citing the jury's role in assessing credibility.<sup>311</sup> It found no evidence of exclusion and concluded the trial judge adequately presented the defence's case.<sup>312</sup> However, the court identified a critical misdirection regarding recent complaint law, noting the lack of independent confirmation for the complainant's accusation in the presence of the appellant. The judge erroneously suggested the complainant's testimony constituted a recent complaint, violating legal principles.<sup>313</sup> This misdirection, affecting the trial's fairness, led to the appeal's success, overturning the conviction, and setting aside the sentence.<sup>314</sup> This meant that the testimony of the complainant was overlooked because of this lack of corroborating evidence because of which the sentence was overturned.

### **I. Contentious Factors Raised by Defence and Acknowledged by the Court**

In *Regina v Kenny Cadoo*<sup>315</sup> from 2017, the perpetrator, a 32-year-old man<sup>316</sup>, pleaded guilty to raping his two young cousins who were between the ages of 14 and 15 at the time of the offense. The perpetrator raped the victims multiple times and threatening to kill them if they told anyone. Only when one of the victims became pregnant did she was encouraged by her friends to report to the police<sup>317</sup>. The victim impact reports for both the victims highlighted the trauma, mental and psychological stress, and embarrassment they suffered as a result.<sup>318</sup> The court recognized a prevalent concentration on sexual offences, notably against young women, as reflected in the weekly court list. Emphasising the imperative to address such offences urgently, particularly those impacting women and girls, the court underscored the necessity to cease tolerating sexual defilement. It called for a robust message through the legal system, asserting a zero-tolerance policy for rape, sexual assault, and any form of sexual abuse, with a commitment to imposing appropriate custodial sentences on offenders.<sup>319</sup>

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<sup>305</sup> Ibid, para 15.

<sup>306</sup> Ibid, para 16.

<sup>307</sup> *Sheldon Thomas v The Queen*, <https://www.eccourts.org/judgment/sheldon-thomas-v-queen>.

<sup>308</sup> Ibid, para 1.

<sup>309</sup> Ibid, para 3.

<sup>310</sup> Ibid, para 5.

<sup>311</sup> Ibid, para 9.

<sup>312</sup> Ibid, para 11.

<sup>313</sup> Ibid, para 19.

<sup>314</sup> Ibid, para 20.

<sup>315</sup> *Regina v Kenny Cadoo*, <https://www.eccourts.org/judgment/regina-v-kenny-cadoo>.

<sup>316</sup> Ibid, para 15.

<sup>317</sup> Ibid, para 8.

<sup>318</sup> Ibid, para 11 & 12.

<sup>319</sup> Ibid, para 33.

In sentencing the defendant, the court observed that there were several aggravating factors: the victims were minors and the defendant was 16 years their senior; the defendant was a relative and a person of trust; after one of the victims became pregnant, she sought help from the defendant but defendant again sexually assaulted her; and the offence occurred while the defendant was on bail.<sup>320</sup> The defence raised contentious factors during mitigation including the perpetrator's community involvement, church attendance, and strong family values. It also downplayed the age disparity between the perpetrator and the victims.<sup>321</sup> Defence also shared character witnesses and a Social Inquiry Report that portrayed the perpetrator as a respectful, cooperative individual with positive contributions to his community.<sup>322</sup> Despite his repeat offending, the judge recognized the perpetrator's "previous good character" but considered only his guilty plea in mitigation.<sup>323</sup> He gave the 1/3rd credit for the same and another 12 months credit for a 4 month delay in sentencing.<sup>324</sup> Accordingly, the court sentenced the perpetrator to 7 years of imprisonment for raping the 16 year old and 3 years for having sexual intercourse with the 14 year old, there a cumulative sentence of 10 years imprisonment.<sup>325</sup> The judge also mandated that the defendant engage with the social and probation services and attend an "enhanced skills" court for a period of 12 months, and courses recommended to deal with addressing sexual offending behaviour for a period of 12 months. If the defendant breached this requirement, he would be liable to serve a further 12 months of imprisonment.<sup>326</sup>

In *Regina v Winston Murray*<sup>327</sup>, Winston Murray was convicted of the murder of a young mother in June 2010.<sup>328</sup> The victim was last seen walking, followed by Murray, and later found manually strangled and mutilated.<sup>329</sup> Murray was found guilty, and reports indicated he was inarticulate, below average intelligence, and displayed no remorse.<sup>330</sup> Despite having two convictions for minor offences in 2009 and 2010, and a conviction for indecent assault in 2011, the court considered him to "have a clean record".<sup>331</sup> However, it identified the unprovoked, violent nature of the murder as an aggravating factor while the mitigating factors included no evidence of weapon use, Murray's positive character, and factors influencing his conduct.<sup>332</sup> The court imposed a 30-year prison sentence, emphasising societal abhorrence and the need for rehabilitation, recommending psychiatric counselling during incarceration.<sup>333</sup>

In the case of *Regina v Kade Richards*<sup>334</sup> from Grenada, the perpetrator entered a guilty plea to charges of wounding and causing grievous harm to an adult female<sup>335</sup>. The victim was dragged into the bushes and assaulted with a piece of wood and cutlass, resulting in deep lacerations and abrasions.<sup>336</sup> Additionally, the perpetrator admitted guilt in the rape and

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<sup>320</sup> Ibid, para 31.

<sup>321</sup> Ibid, para 14.

<sup>322</sup> Ibid, para 15.

<sup>323</sup> Ibid, para 32.

<sup>324</sup> Ibid, para 35.

<sup>325</sup> Ibid, para 38.

<sup>326</sup> Ibid, para 39.

<sup>327</sup> *Regina v Winston Murray*, <https://www.eccourts.org/judgment/regina-v-winston-murray>.

<sup>328</sup> Ibid, para 1.

<sup>329</sup> Ibid, para 2.

<sup>330</sup> Ibid, para 5.

<sup>331</sup> Ibid, para 29.

<sup>332</sup> Ibid, para 22.

<sup>333</sup> Ibid, para 40.

<sup>334</sup> *Regina v. Kade Richards*, <https://www.eccourts.org/regina-v-kade-richards/>.

<sup>335</sup> Ibid, para 1.

<sup>336</sup> Ibid, para 4.



robbery of a 16-year-old female, an incident just two days later.<sup>337</sup> The court, demonstrating a progressive stance against rape and domestic violence, especially in non-marital situations, emphasized the severity of such offenses and the need for deterrence, prevention, and punishment. The court underscored the prevalence of these crimes, linking them to upbringing issues and stressed the importance of equipping social services, health services, and counselling resources to address the root causes within a secure environment.<sup>338</sup> Emphasising the evolving society's need for innovative solutions, the court hoped for increased public morale and productivity to break the vicious cycle of crime.<sup>339</sup>

Upon assessing the aggravating factors, the court noted the victim's age, the use of a weapon, the perpetrator's criminal history, the physical harm and trauma suffered by the victims.<sup>340</sup> The social enquiry report also revealed the perpetrator's lack of remorse, propensity for violence, and the perceived threat posed to the community. It considered his guilty plea as the only mitigating factor and gave him a 25% credit for the same. The court arrived at a final sentence of 3 years of imprisonment for wounding for the first indictment, 11 years and 3 months for rape, and 6 years for robbery for the second indictment.<sup>341</sup> Sentences for both indictments were ordered to run consecutively resulting in a total of 14 years and three months.<sup>342</sup>

In the ECSC High Court judgement, *The Queen v. Coleman Baptiste*<sup>343</sup> from 2013, 42-year-old Coleman Baptiste pleaded guilty to raping the victim several times and holding her at knifepoint until she was able to fight him off and escape.<sup>344</sup> The court began by observing that "over the past few years, the courts have been disposed to sentence persons convicted of rape to terms of imprisonment between 7-10 years."<sup>345</sup> Here, the only mitigating factor was the defendant's guilty plea, which entitled him to a full 1/3 discount on his sentence. The aggravating factors included physical and psychological harm, use of a weapon and violence, and numerous prior convictions, including one for unlawful carnal knowledge in 2003, for which he was sentenced to 5 years imprisonment.<sup>346</sup> Considering these factors, the court sentenced the defendant to a term of eight years' imprisonment.<sup>347</sup>

In a 2016 case from the Eastern Caribbean Supreme Court in the Court of Appeal, *Peter Thomas v Desireen Douglas*,<sup>348</sup> Peter Thomas faced allegations of domestic violence. He was formerly in a long-term relationship with Desireen Douglas and had a child. The relationship deteriorated over time.<sup>349</sup> The allegations from two separate incidents from 2010 and 2014 included Peter Douglas physically assaulting the respondent's sister, accosting her father, threatening the lives of household members with a cutlass, and turning off the water on the shared property.<sup>350</sup> Peter denied the allegations, asserting self-defence.<sup>351</sup> The magistrate

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<sup>337</sup> Ibid, para 3.

<sup>338</sup> Ibid, para 17.

<sup>339</sup> Ibid, para 18.

<sup>340</sup> Ibid, para 26.

<sup>341</sup> Ibid, para 33.

<sup>342</sup> Ibid, para 35.

<sup>343</sup> *The Queen v Coleman Baptiste*, <https://www.eccourts.org/queen-v-coleman-baptiste>.

<sup>344</sup> Ibid, para 1, 4.

<sup>345</sup> Ibid, para 20.

<sup>346</sup> Ibid, para 11.

<sup>347</sup> Ibid, para 34.

<sup>348</sup> *Peter Thomas v Desireen Douglas*, <https://www.eccourts.org/judgment/peter-thomas-v-desireen-douglas>.

<sup>349</sup> Ibid, para 1.

<sup>350</sup> Ibid, para 3.

<sup>351</sup> Ibid, para 4.

court issued a mandatory injunction directing him to restore water supplies to the Property and a restraining injunction against interference and violence. A corresponding injunction was issued against the respondents.<sup>352</sup> The court observed the absence of written reasons for the judge's order.<sup>353</sup>

In the subsequent appeal, Peter Douglas presented nine grounds challenging the judge's decision, addressing issues of non-disclosure and the application of legal principles.<sup>354</sup> However, the appellate court dismissed the appeal, emphasising his insufficient effort in obtaining the judge's reasons and supporting the judge's exercise of discretion. The court justified the injunction as "sensible," stating, "a person cannot complain of prejudice or inconvenience because he is restrained from committing acts of violence."<sup>355</sup> Additionally, the court awarded costs of \$1,500.00 to the respondents.<sup>356</sup>

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<sup>352</sup> Ibid, para 1.

<sup>353</sup> Ibid, para 7.

<sup>354</sup> Ibid, para 8.

<sup>355</sup> Ibid, para 21.

<sup>356</sup> Ibid, para 23.

## VI. CONCLUSION & RECOMMENDATIONS



The findings in this report illuminate the gaps that exist in laws, policies and guidelines, in judicial attitudes and in service delivery, where recommendations can be implemented to improve the experience of women navigating social services and the judicial sector. Based on these findings, the following recommendations can be made, in addition to the recommendations set out in the body of this report.

### ***Legislation and the State***

Arguably the majority of change must come from the top, the Government, through introducing new laws or amending archaic ones. Firstly, current anachronistic legislation should be amended to reflect modern progressive reforms (for example, the Criminal Code (Amendment) Act, No. 29 of 2012, sec. 182 and the use of the term "*imbecile*"). In addition, whilst the Married Women's Property Act 1896 has been historically praised for conferring married women the same rights as her husband, the Act did not go far enough and is certainly outdated for today's society. The Act should be amended to unify the treatment of common law and customary spouses who do not have the same inheritance and property ownership benefits as their married counterparts. Amendments should be made to the Domestic Violence Act 2010 to address domestic violence in same-sex relationships and the consideration of de-criminalising same-sex activity.

The penalty and sentencing regime need overhauling. The penalty sentences for marital and non-marital rape alongside penetrative and non-penetrative offences should be equal -which will play a role in disabusing long-held cultural and social notions around marital rape. In addition, there should be criminalisation for non-consensual sexual acts that involve non-genital penetration such as sexual assault and harassment which is and should be deemed as a serious offence. Legislation should include the notions of "consent" and "indecent assault" and adopt a wide definition of consent which captures various coercive circumstances.

In addition, the Ministry of Health must strengthen medico-legal processes in GBV matters to ensure preservation of evidence (documentation of violence, rape kits etc.), chain of custody, efficient lab testing, and the ability for physicians and nurses to effectively testify in court. This can be done by supporting:

- Access to and training around the use of rape kits is an essential component to criminal accountability;
- Testimonies by medical professionals because they treated the survivor or as expert witnesses is vital to the assessment of medical evidence in GBV cases.

The state should consider amending Criminal Code CAP 72A, section 234 which criminalises abortion or the bare minimum should provide exemptions in cases of GBV.

When it comes to administration, agencies should prioritize internal promotion and succession planning to mitigate the negative effects of leadership turnover. Establishing clear pathways for career advancement and investing in the development of existing staff members can help maintain continuity and morale within the organization. Additionally, efforts should be made to document institutional knowledge and provide support for transitioning leaders to ensure smooth handovers. By valuing and retaining experienced staff, organizations can strengthen their capacity to effectively fulfil their mandates and serve their communities. Agencies should also invest in training programs to prepare new recruits for their roles effectively, and should develop strategies to address staffing gaps.

Additionally, data collection processes and data literacy need to be prioritized across all institutions. However, simplifying the proposed solutions is crucial to minimize staff burden and ensure smoother implementation. Currently, many datasets are manually tabulated, and where data is inputted to report to other agencies, it is high-level information that is not used for day to day operations. Case intake forms that automatically populate spreadsheets with case information are not difficult to build, and those spreadsheets can be used to easily generate reports or be exported to report to larger systems without manual tabulation.

### ***Healthcare: Victim Support***

Measures should be implemented to improve coordination between law enforcement and medical personnel to ensure timely support for victims. Police should record and report wait times at health centers and hospitals so valuable insights could be provided for improving service delivery. Due to the length of time before cases come to trial, doctors sometimes cannot locate their notes to support medical testimony. As such, a better documentation system needs to be instituted to handle medical records so that it is possible to pull medical evidence for crimes, and for past harm a victim may have faced. Additionally, we recommend establishing partnerships with international organizations, universities, and governments to facilitate specialized training and resources, including rape kits and DNA testing, to enhance accountability in crimes of domestic and sexual violence.

### ***Child Protection***

Ensure children with disabilities have sufficient access to educational facilities without fear, stigma, or threat of corporal punishment. Children who have been removed from their home by CPA following an incident of violence should be granted priority placement in schools they are being enrolled in. CPA must be given the resources to create safe residential facilities for children who have been removed from their homes. Minors, who are being placed in a facility for their care and protection should never be placed in juvenile facilities because of a lack of other residential options. CPA Officers who are seeking care of children at public health facilities should be given priority to safeguard the child's privacy and confidentiality. The JJA and CPAA must close any loophole that allows for minors who have committed status offences to be incarcerated in juvenile facilities.

Corporal punishment, in all environments including schools, juvenile facilities, and prisons should be banned in alignment with Grenada's obligations under the Convention on the Rights of the Child. In addition, corporal punishment should be banned or discouraged in the home. Inter-agency meetings are essential to ensure proper coordination for the protection of children in court. Currently, a Criminal Justice Committee meets quarterly but it does not include all relevant agencies and the topics are spread broadly.

### ***The Courts and the Judicial System***

To improve transparency and consistency withing judicial decision making, digitization of all past/ present case law, including domestic violence and sexual violence cases must be a priority. The publication of all digitized case law, so that it is readily accessible can help build public trust.

Domestic violence (civil and criminal matters), forming most cases that go before the Magistrate Court, should be heard in court daily rather than the current practice of hearing

these cases on a single day of each month. The downstream impact of such a decision is tremendous and would result in a plethora of changes including:

- Relieve the backlog of GBV cases ensures that people do not circumvent justice through pay-outs because of massive delays in adjudication of cases;
- Reduce re-traumatization survivors face;
- Remove incentive for unnecessary adjournments as a defence tactic to continue delaying until the case falls apart; and
- Reducing the drop-off in social services.

This recommendation does not obviate the need for dedicated and specialised Family and Sexual Offence Courts that have trained staff and judiciary as well as support services that are directly linked and accessible to the Courts. These support services are still very much needed to ensure victims of GBV are sheltered and empowered.

Both Magistrate and High Courts must have processes and separate facilities to accommodate special measures for victims likely to face fear or distress under the Protection of Witnesses Act, which includes survivors of GBV.

Judges should remind the prosecution of their responsibilities under the Act to file Form 7 when they have a vulnerable witness. The presumption in any GBV matter should be that the witness is vulnerable unless rebutted. The special measures provision in the Protection of Witnesses Act should be operationalized, with clarity as to who qualifies as a vulnerable witness and would be eligible for special measures under the existing Act. There should be a rebuttable presumption that victims of GBV, including both minors and adults, are vulnerable witnesses. Subsequent legislation or amendments about special measures for witnesses should include a comprehensive definition/ examples of who would potentially be a vulnerable witness.

Address differential and discriminatory treatment of people living with HIV/AIDs, persons with disabilities, LGBTQ+, different racial/ ethnic background (including colourism), and those who are impoverished when it comes to filing complaints with law enforcement, getting treatment at health facilities, or seeking access to the courts. This also includes holding accountable those who violate the law and who are in positions of power including, police officers, politicians, judicial officers etc.

Diversion programmes should not be seen as a get out of jail free card or to replace accountability for serious crimes. Rehabilitation and restorative justice practices serve a vital function to prepare for the reintegration of perpetrators into society and should be seen as a vital component to any redress mechanism.

Protection Orders must be addressed within 24-48 hours and transferred to another Court or judge if the assigned judge is incapacitated.

### ***Education***

Governmental funds should be allocated towards educating both women and men about body autonomy, sexual assault, pregnancies, legal rights and the principles of consent and equality. Given GBV stems from Grenada's colonial past and the unequal footing between men and women, communities should learn about such principles. Education can happen through school for young adults but also through local community teach-ins and discussions at church.

There should be an increase to the state funding of the LACC and the establishment of more support units to expand access to justice.