

Jamaica: Comparing Justice Sector Standards and Lived Experiences of Victims of Gender-Based Violence



ICAAD
Human Rights Innovation

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All interviews in this report were conducted virtually and in-person in Jamaica by ICAAD in 2022. There are also instances of interviews being referenced that were conducted by UN Women in 2021. **Some names of specific civil society organisations, survivors, activists, and others are not cited when discussing our interviews to honour their desire for anonymity.**

TABLE OF CONTENTS

<u>I. INTRODUCTION</u>	8
<u>II. THE LEGACY OF COLONIALISM IN JAMAICA AND ITS INFLUENCE ON THE LAWS, CULTURE, AND BELIEFS AROUND GBV</u>	10
<u>III. SOCIAL NORMS, CUSTOMS, CULTURAL PRACTICES AND BELIEFS THAT PERPETUATE GBV TODAY</u>	15
<u>IV. JAMAICA GENDER EQUITY DATA</u>	20
<u>A. Prevalence of GBV</u>	
<u>B. Government/Parliament</u>	
<u>C. Judiciary</u>	
<u>D. Law Enforcement</u>	
<u>E. Management Positions Within Corporations</u>	
<u>F. Women’s Role in The Formal Sector vs. Informal Sector</u>	
<u>G. Education</u>	
<u>H. Family Matters</u>	
<u>I. Intersectionality</u>	
<u>V. USER-EXPERIENCE I: STANDARDS SET BY THE JUSTICE SECTOR</u>	29
<u>A. Court Management Services (CMS): Customer Service Charter</u>	
<u>B. Ministry of Justice (JRUI): Victim’s Charter</u>	
<u>C. Ministry of Justice (JRUI): Citizen’s Scorecard: Baseline Metrics</u>	
<u>1. Court Customer Service: Design + Staff + Infrastructure</u>	
<u>2. Support Systems</u>	
<u>3. Courts: Judicial Process</u>	
<u>D. Court Procedures</u>	
<u>1. Judicial Conduct Guidelines</u>	
<u>2. Sentencing Guidelines</u>	
<u>E. Law Enforcement</u>	
<u>F. Health Care Providers</u>	

VI. USER-EXPERIENCE II: EXISTING LEGAL BARRIERS TO GENDER EQUITY

48

- [A. The Constitution & Charter of Fundamental Rights](#)
- [B. The Domestic Violence Act 1995 \(Amendment\) 2004 \(“DVA”\)](#)
- [C. Offences Against the Person Act 1962 \(“OAPA”\)](#)
- [D. Sexual Offences Act, 2009 \(“SOA”\)](#)
- [E. Committal Proceedings Act, 2014 \(“CPA”\)](#)
- [F. Child Pornography Prevention Act, 2009 \(“CPPA”\)](#)
- [G. Child Care and Protection Act, 2004 \(“CCPA”\)](#)
- [H. Sexual Harassment Act, 2021](#)
- [I. Sentencing Guidelines, the Criminal Justice Administration \(Amendment\) Act, 2015 \(“CJAA”\), and the Judicature \(Appellate Jurisdiction\) \(Amendment\) Act, 2021](#)
- [J. Rent Restriction Act 1944](#)
- [K. Cybercrimes Act, 2015](#)
- [L. Maternity Leave Act, 1979](#)

VII. USER-EXPERIENCE III: LIVED EXPERIENCE OF SURVIVORS

69

- [A. Journey Mapping I: Reporting to the Police](#)
- [B. Journey Mapping I-A: Specialised Law Enforcement Divisions - Domestic Violence Intervention \(DVI\) Centre](#)
- [C. Journey Mapping I-B: Specialised Law Enforcement Divisions - Centre for Investigation of Sexual Offences and Child Abuse \(CISOCA\)](#)
- [D. Journey Mapping I-C: Child Protection and Family Services Agency \(CPFSA\)](#)
- [E. Journey Mapping I-D: Counseling to Support Victims](#)
- [F. Journey Mapping I-E: Shelter Services](#)
- [G. Journey Mapping II: Healthcare Centre](#)
- [H. Journey Mapping III: Courts](#)
- [I. Case Law Analysis: Mixed Methods Research](#)
 - [1. Methodology](#)
 - [2. Quantitative Data](#)
 - [3. Qualitative Data](#)
- [J. Retrospective Analysis of Survivor Interviews](#)

VIII. BEST PRACTICES TO IMPROVE COURT USER-EXPERIENCE FOR SURVIVORS 138

A. International & Foreign Jurisdictions

1. Criminal Courts

2. Civil Courts

B. Regional (Caribbean)

1. Criminal Courts

2. Civil Courts

IX. CONCLUSION & RECOMMENDATIONS 146

FIGURES

Figure 1: Lifetime Prevalence of GBV in Jamaica

Source: [Women's Health Survey 2016](#) at p 44, 68

Figure 2: Change in Crime Rates between 2009 and 2013

Source: [Women's Health Survey 2016](#) at p 22

Figure 3: Reasons for No Confidence in the Jamaican Justice System

Source: [Jamaica Citizen Scorecard Development](#) at p 25

Figure 4: Public Trust And Confidence In The Justice System Scorecard, 2013

Source: [Jamaica Citizen Scorecard Development](#) at p 88

Figure 5: Corporal Punishment of children in Jamaica

Source: [Corporal Punishment of children in Jamaica](#) at p 8

Figure 6: Victim Journey Mapping

Figure 7: Journey Mapping: Domestic Violence Intervention (DVI) Centre

Figure 8: Journey Mapping: Centre for Investigation of Sexual Offences and Child Abuse (CISOCA)

Figure 9: Sexual Assault on Females 2017- Sep 2022 (CISOCA Dashboard)

Figure 10: Journey Mapping: Child Protection and Family Services Agency (CPFSA)

Figure 11: Journey Mapping: Counselling to Support Victims

Figure 12 : Victim Services Unit - Data Dashboard

Figure 13: Journey Mapping: Courts

Figure 14: Stereotyping, Rape Myths & Victim Blaming: Incorrect Assumptions

Figure 15: Jamaica Case Law Analysis: Type of Contentious Factors used in Mitigation

Figure 16: Jamaica Case Law Analysis: Relationship between perpetrator and victim

Figure 17: Jamaica Case Law Analysis: Anonymity not maintained

Figure 18: Jamaica Case Law Analysis: Misapplication of First Time Offender Status

Figure 19: Jamaica Case Law Analysis: Count of Cases and Average Final Sentence by Charge Category

Figure 20: Jamaica Retrospective Analysis: Type of Cases (Domestic/Sexual Violence)

Figure 21: Jamaica Retrospective Analysis: Type of Gender Based Violence (IPV/NPV)

Figure 22: Jamaica Retrospective Analysis: Recidivism

Figure 23: Jamaica Retrospective Analysis: Key Population

Figure 24: Jamaica Retrospective Analysis: Charge Categories

Figure 25: Jamaica Retrospective Analysis: Case Timeline

Figure 26: Jamaica Retrospective Analysis: Inaction/Failure to Investigate by the Police

Figure 27: Jamaica Retrospective Analysis: Violence faced by LGBTQ+ Victims/Survivors

Figure 28: Jamaica Retrospective Analysis: Violence faced by HIV+ Victims/Survivors

Figure 29: The Justice Continuum from Essential Services for Women and Girls

Source: [Module 3: Justice and Policing](#) at p 8

Figure 30: Checklist of Recommended Practices to support for Domestic Violence Victims/Survivors

Source: [Center for Court Innovation](#)

I. Introduction



I. INTRODUCTION

The focus of this report is to illuminate the user-experience of Jamaican citizens when seeking services from the justice sector, specifically in relation to gender-based violence (“GBV”) and related family law matters. Though the courts are the focal point of our analysis, there are critical roles played by law enforcement and the health care system to ensure proper redress for victims/ survivors. Looking at the justice sector as a whole, we follow the lived experience of survivors and map their journey¹ along all points of intersection in the different institutions within the justice system to illuminate current gaps in service delivery. The idea of service delivery and user-experience is broadly construed to include the roles and responsibilities of each institution within the justice sector and its staff who serve the public when they come before it in GBV and family law matters.

In the context of Jamaica’s colonial history, social norms, customs, and data on gender inequities, the report will focus its analysis on user-experience from three different perspectives: 1) the guidelines, charters, or protocols that justice sector institutions hold themselves to when serving the public; 2) the policies and legislation which create an environment that has direct consequences on user-experience; and 3) the actual lived experience of victims/ survivors captured through qualitative and quantitative sources, including baseline metrics from previous research, case law analysis, and interviews with survivors, government, and civil society organisations (“CSOs”).

The aim is to better understand the gap that exists between law and justice for citizens accessing the courts. Here, we introduce design thinking to provide a user-centred approach.

A user-centred approach is diametrically opposed to top-down approaches where the outcomes may only tangentially benefit the user. Rather, it reorients one’s world view and forces those in power to put aside their own ideas and desires about improving their institutions to focus on the lived experience of those who are most impacted by those institutions.

¹ Journey Mapping: Step by step process of how a user interfaces with a service.

II. The Legacy of Colonialism in Jamaica and its Influence on Laws, Culture & Beliefs around GBV



II. THE LEGACY OF COLONIALISM IN JAMAICA AND ITS INFLUENCE ON THE LAWS, CULTURE, AND BELIEFS AROUND GBV

Christopher Columbus chanced upon Jamaica in 1494 and it was later colonised in the early 16th century by the Spanish empire. The indigenous Arawak (Taino) population were decimated, but not extinguished, by enslavement and disease shortly after the Spanish settled Jamaica, and the island was seized by the Commonwealth of England in 1655.⁴ The English used the land initially for tobacco, indigo and sugar plantations, but by the early 18th century, sugar cultivation dominated agriculture with nearly 430 sugar estates by 1739, manned entirely by African enslaved labourers.⁵ To work the plantations, the English transported close to a million enslaved Africans to Jamaica.⁶

The modern day notion of patriarchy in Jamaica is a reflection of and reaction to the European system of patriarchal and hegemonic practices driving slavery.⁷ This system of patriarchy not only served to control the labour, reproduction, and sexuality of women, but it also created hierarchies of men.⁸ White male enslavers exercised their power through violence to control enslaved people by physical violence and sexual assault.⁹ The institution of chattel slavery, in its design and practice, was gendered. White enslavers maintained their right to punish enslaved black men for physically abusing their wives or partners and would also give leave to enslaved men to rape and kidnap enslaved black women.¹⁰ Further, the status of children was determined solely by the status of the child's mother. For example, children born to enslaved black women would be enslaved, and children born to white women would be free

⁴ Science, *Genes of 'extinct' Caribbean Islanders Found in Living People* (February 19, 2018), <https://www.science.org/content/article/genes-extinct-caribbean-islanders-found-living-people>

⁵ Jamaica Information Service, *The History of Jamaica*, <https://jis.gov.jm/information/jamaican-history/>.

⁶ Slavery and Remembrance, *Transatlantic Slave Trade: Jamaica*, <https://slaveryandremembrance.org/articles/article/?id=A0112>.

⁷ Patricia Mohammed, *Unmasking Masculinity and Deconstructing Patriarchy: Problems and Possibilities within Feminist Epistemology, Ch. 2 in Interrogating Caribbean Masculinities: Theoretical and Empirical Analyses*, University of the West Indies Press (2000); Judiciary Trinidad & Tobago, *Justice Through a Gender Lens: Gender Equality Protocols for Judicial Officers*, at 1 (2018).

⁸ Patricia Mohammed, *Unmasking Masculinity and Deconstructing Patriarchy: Problems and Possibilities within Feminist Epistemology, Ch. 2 in Interrogating Caribbean Masculinities: Theoretical and Empirical Analyses*, University of the West Indies Press, at 58 (2000).

⁹ Gillian E. Mason, Nicola Satchell, *Interpersonal Violence in the Caribbean: Etiology, Prevalence, and Impact, Ch. 8 in Caribbean Psychology: Indigenous Contributions to a Global Discipline*, American Psychological Association, at 207 (2016).

¹⁰ Hilary Beckles, *Black Masculinity in Caribbean Slavery, Ch. 8 in Interrogating Caribbean Masculinities: Theoretical and Empirical Analyses*, University of the West Indies, at 236-238 (2000).

regardless of the father's status.¹¹ The European patriarchal system developed masculinity centred on control, ownership, and possession of power and property. Despite slavery in Jamaica being abolished in 1834 (known as emancipation) and gaining independence from England in 1962,¹² the impacts of colonial rule and "imported ideological and legislative positions" remain.¹³

Following independence, political and economic instability led to the development of organised crime with gangs and "Dons" affiliated with political parties engaging in money laundering and drug smuggling.¹⁴ In the 1960s, politicians in densely populated inner-city areas of Kingston armed groups with guns and charged them with defending their own areas and ensuring citizens voted in support of their preferred candidates.¹⁵ This led to the formation of garrison communities, characterised by political favouritism, violence, and gang rivalries harnessed to political party ends. While political control of organised violence has reduced over time, territorial divisions armed with guns and ruled by a new generation of dons remain, known for crimes and highly authoritarian relationships with followers.¹⁶ Poverty and violent crime continue to pose significant challenges today.¹⁷

High levels of violence have been characteristic of Caribbean societies with histories of settler colonialism and enslavement. The legacies of slavery have contributed to the creation of societies with deeply entrenched patriarchal structures, where gender-based violence is normalised and often goes unchallenged.¹⁸ Additionally, colonialism and its accompanying ideologies of domination and control have played a significant role in perpetuating gender-based violence. Furthermore, the historical legacy of plantation slavery has left deep scars on Caribbean societies, with the exploitation of enslaved women being a key aspect of this system.¹⁹ The legacy of plantation slavery has contributed to a culture where the responsibility for raising children was often placed primarily on women, with men frequently absent from the

¹¹ Ibid. at 230.

¹² CIA, *The World Factbook, Jamaica*, <https://www.cia.gov/the-world-factbook/countries/jamaica/>.

¹³ Judiciary Trinidad & Tobago, *Justice Through a Gender Lens: Gender Equality Protocols for Judicial Officers*, at 1 (2018).

¹⁴ Ibid.

¹⁵ Glaister Leslie, *Confronting the Don: The Political Economy of Gang Violence in Jamaica*, Small Arms Survey, Graduate Institute of International and Development Studies, Geneva 2010.

¹⁶ Ibid.

¹⁷ CIA, *The World Factbook, Jamaica*, <https://www.cia.gov/the-world-factbook/countries/jamaica/>.

¹⁸ Samantha Longman-Mills, et al., *The Psychological Trauma of Slavery: The Jamaican Case Study*, Social and Economic Studies, vol. 68, no. 3-4, (Sept.-Dec. 2019),

¹⁹ Kamala Kempadoo, ed., *Sun, Sex, and Gold, Tourism and Sex Work in the Caribbean* p.5-7, Rowman (1999).

home due to work or other obligations.²⁰ This cultural pattern of absentee fathers has been perpetuated over generations.

Although GBV in Jamaica must be viewed within this broader context of historical violence, it is also vital to investigate the power structures at play, how these operate between genders, and the violence that arises from them.

Within the last few decades, through various forms of research and activism, GBV has come to be known as “one of the most widespread, persistent and devastating human rights violations in our world today,”²¹ which “disproportionately affects women and girls, particularly through certain forms of violence such as child marriage, intimate partner violence (IPV), female genital mutilation, ‘honour’ killings or trafficking.”²² Any responses to and strategies to combat GBV need to be framed with the foregoing reality in mind, as well as the socio-economic impact of these acts, to ensure maximum effectiveness.

In addition to the link between violence and Jamaica’s colonial past, that is expressed above, equally toxic legacies exist in the form of legislation that is regressive and fundamentally violates basic rights of vulnerable communities or ignores certain communities altogether. Vagrancy laws,²³ which go back to the days of emancipation (mid 1800s), were designed to lay down moral codes and to control “former slaves and indentured immigrants.”²⁴ In the mid 1900s these laws targeted the poor, homeless, sex workers, and dissidents whose way of life was “offensive to the community.”²⁵ Further, post-colonial laws created penalties for abortion,²⁶ buggery,²⁷ and the

²⁰ Samantha Longman-Mills, et al., *The Psychological Trauma of Slavery: The Jamaican Case Study*, Social and Economic Studies, vol. 68, no. 3-4, (Sept.-Dec. 2019).

²¹ UN The Spotlight Initiative to eliminate violence against women and girls, *Leaving no one behind*, <https://www.un.org/en/spotlight-initiative/>.

²² Plan International, *Gender-Based Violence*, <https://plan-international.org/protection-from-violence/gbv-gender-based-violence/>.

²³ Town and Communities Act 1843, https://websitesearchive2020.nepa.gov.jm/new/legal_matters/laws/Planning_Laws/Towns_and_Communities_Act_1843.pdf.

²⁴ Tracy Robinson and Janeille Zorina Matthews, *Modern Vagrancy in the Anglophone Caribbean*, Caribbean Journal of Criminology, Vol. 1, No. 4, at 128 (Apr. 2019).

²⁵ Ibid.

²⁶ Offences Against the Persons Act 1864 (Cap. 269), Amended Act No. 18 of 2010, sec. 3(2) (hereinafter “OAPA”), https://japarliament.gov.jm/attachments/339_Offences%20Against%20the%20Person%20Act.pdf.

²⁷ OAPA, sec. 76.

continuation of corporeal punishment while criminalising children for status offences.²⁸ Each of these laws was created in an environment of state-sanctioned punishment for those the State wanted to subjugate or whose behaviours deviated from colonial and patriarchal norms.

The intersection between gender and race is also important to consider when examining GBV. In 1994, Janet-Brice Baker conducted research exploring domestic violence and spousal abuse in African-American and African-Caribbean families in the US.²⁹ The research showed that black women, in both cases, were characterised as strong, emasculating matriarchs who fought with their partners, and were the cause of the violence perpetrated against them.³⁰ Racial category and skin colour have been found to structure social inequality in Jamaica. “Overall, blacks and darker-skinned individuals have significantly lower levels of household amenities and years of schooling than their non-black and lighter-skinned Jamaican counterparts, even when accounting for social class back-ground.”³¹ It is likely therefore, that racial disparities, along with other intersectional issues like class and ability, play a significant role in the user-experience of victims in the courts.

In the last five decades, greater amounts of attention have been brought to GBV as a result of the rise of Jamaican women’s rights organisations, feminist activists, and humanitarian agencies. Moreover, significant work has been done by these organisations to foster positive changes in both state and community approaches to GBV. Ultimately, this has led to legislative and policy changes with regards to how GBV is understood and addressed in Jamaica. These efforts are typified by the fact that Jamaica has become a signatory to a number of international conventions to end GBV and gender inequality. However, in speaking with stakeholders in Jamaica, the implementation gap remains one of the most pressing issues in the realisation of accountability and justice for survivors of GBV.

²⁸ Child Care and Protection Act No. 11 of 2004, sec. 8(2) (hereinafter “CCPA”), https://oig.cepal.org/sites/default/files/2005_childcareprotection_jam.pdf.

²⁹ Janet Brice-Baker, “Domestic Violence in African-American and African-Caribbean families,” *Special Issue: Multicultural views on domestic violence, Journal of Social Distress and the Homeless* (1994).

³⁰ Ibid.

³¹ Monique D. A. Kelly, *Examining Race in Jamaica: How Racial Category and Skin Color Structure Social Inequality*, *Race and Social Problems*, p.8, Springfield (2020), <https://www.vanderbilt.edu/lapop/news/031820-Jamaica-springer.pdf>.

III. Social Norms, Customs, Cultural Practices and Beliefs that Perpetuate GBV Today



III. SOCIAL NORMS, CUSTOMS, CULTURAL PRACTICES AND BELIEFS THAT PERPETUATE GBV TODAY

In Jamaica, there remains a culture of silence surrounding GBV and the enormity of its impact on Jamaican society. Though this report will cite surveys conducted on GBV, they come with serious limitations as access – to women living in poverty, women associated (directly or indirectly) with and living near gang communities, and women living in rural areas – has proved challenging in understanding the full scope of violence. Based on conversations with international development agencies, CSOs, and government, the overall reported numbers around GBV are likely to be considerably higher. Furthermore, surveys (outside of hospital records) rarely capture violence committed against those under the age of 15 years old, and in some jurisdictions, this demographic faces the greatest amount of violence, both domestic and sexual.³²

According to the Women’s Health Survey of Jamaica (“**WHSJ**”), 18.4% of women who faced physical or sexual partner violence “told no one.”³³

Of those who told someone about the violence, most confided in friends (40.0%), and less than 20 % (19.3%) reported the abuse to the police.³⁴

Women chose to seek help based on their own notion of whether or not the violence they were experiencing was “*normal*.” The report continues:

More than one-third (36.7%) of women said they did not reach out for help because the “*violence was normal*” and they did not consider it “*serious* [enough] to report.” This supports findings from the WHSJ’s qualitative study which showed that for some women, partner violence is accepted and tolerated as a natural consequence of being in a relationship with a man. Similarly, some men believe that “*love is violence*,” and thus violence is normalised in most intimate relationships.³⁵

³² Research conducted by ICAAD in the Pacific Island region reveals that the majority of cases of sexual violence brought to court involved victims between the ages of 6-17. In Fiji, for example, the vast majority of cases involved girls between the ages of 6-14. Because standard prevalence surveys do not poll girls under 15, there is a gap in the data.

³³ Carol Watson Williams, *Women’s Health Survey 2016*, Jamaica, UN Women, at 62 (2016), <https://publications.iadb.org/en/womens-health-survey-2016-jamaica-final-report>.

³⁴ *Ibid.*, at 62.

³⁵ *Ibid.*, at 63.

Poverty in Jamaica is also a structural issue which perpetuates GBV. Local criminal leaders or “*Dons*” often use their positions of power to exploit families in abject poverty by offering food or resources in exchange for sexual favours from their children, and face threats for reporting which in turn perpetuates a culture of silence towards GBV.³⁶ Local communities also have a strong reverence towards local pastors and some of these pastors use their positions of authority to perpetuate a culture of silence around GBV in their local communities, which in turn propagates GBV.³⁷

Data collated by Jamaican authorities in relation to GBV remains inadequate. According to the WHSJ, “Jamaica has no reliable estimate of the prevalence of violence against women, including intimate partner violence.”³⁸ This scarcity of data makes it difficult to assess “the extent of the problem and in efforts to design effective strategies to address gender-based violence (intimate partner violence in particular).”³⁹ Of the data that exists, the Jamaica Injury Surveillance System shows that that between 2016 and 2020, 10,239 women suffered violence related injuries from fight/arguments, 2,403 suffered sexual assault, and 246 girls suffered child abuse.⁴⁰ The majority of the violence against women and girls happened to those aged 10-49.⁴¹ Violence affected women at home more often than men, and accounted for 56% (7,707 of 13,715) of records.⁴²

In terms of violence in the home (including intimate partner violence, sexual assault and child abuse), “female victims were three to four times more assaulted by their boyfriends than males were assaulted by their girlfriends over the five year period. The same statistics [were] true for wives when compared against husbands over the same period.”⁴³ There were 1,778 female victims of sexual assault under the age of 20 in the five year period.⁴⁴ This is an underestimation as victims reporting to CISOCA are not counted within these figures, in addition to those who do not report. While the majority

³⁶ Romardo Lyon, “Sex Abuse’s Culture of Silence”, *Jamaica Observer* (24 April 2022), <https://www.jamaicaobserver.com/news/sex-abuses-culture-of-silence/>.

³⁷ *Ibid.*

³⁸ Williams, at 23.

³⁹ *Ibid.*

⁴⁰ Five Years Analysis of Injuries in Jamaica 2016 to 2020, Violence Prevention Alliance, prepared for the Ministry of Health and Wellness, Jamaica (MOHW), p. 32 (2021). Note that the report specifies, “Sexual assault cases are also a grave concern, the numbers reported in the table above is not a true representation of the magnitude of the problem as many cases go unreported and most cases occurring in the Kingston and St. Andrew region goes directly to Centre for Investigation of Sexual Offences and Child Abuse (CISOCA) and are not captured in the hospital based JISS.

⁴¹ *Ibid.* at 31.

⁴² *Ibid.* at 33.

⁴³ *Ibid.* at 48.

⁴⁴ *Ibid.* at 52.

of sexual assaults occurred at the home, “[t]he number of 10 to 19 year old females who said “other” or “unknown” to where they were injured was a total of 426 victims,” which means 74% did not disclose where their assaults occurred.⁴⁵



Figure 1: Lifetime Prevalence of GBV in Jamaica

The Jamaican government accepts that the lack of reliable statistical data is an issue and as part of its National Strategic Action Plan against GBV, there is recognition that data is an important component to eliminating GBV in the country.⁴⁶

GBV is prevalent throughout Jamaica, and the level of violence in the home escalated during the COVID-19 pandemic because of elevated stress and stay at home policies.⁴⁷ It is important to note that the prevalence numbers are likely significantly higher, but limitations in the collection of data have precluded the ability of researchers to

⁴⁵ Ibid. at 51.

⁴⁶ Williams., at 23-24; *Spotlight Initiative to Eliminate Family Violence, with focus on Violence Against Women and Girls, in Jamaica*, at 22-25, 63-65 (October 2019).

⁴⁷ Dr Olaf J. de Groot, *Reducing violence against women and children is vital to socio-economic development, and more community-based approaches to encourage its reduction are the most desirable*, United Nations Jamaica (30 November 2021),

<https://jamaica.un.org/en/160890-reducing-violence-against-women-and-children-vital-socio-economic-development-and-more>; see also Laurence Telson, *Home Not So Sweet in Times of COVID19*, Caribbean DEVTrends+, Inter-American Development Bank (April 2020).

understand the full scope of violence.⁴⁸ Violent discipline of children is commonplace in Jamaica, and research shows that violent discipline or exposure to it promotes the culture of violence.⁴⁹ UNICEF reports that in Jamaica “up to 85% of children encounter such violence.”⁵⁰

Intra-couple wealth inequality is potentially also a source of intimate partner violence (“IPV”). Tonni-Ann Brodber, Representative of the UN Women Multi-Country Office, comments:

the research shows that IPV risks in Jamaica include increased quarrelling between couples. The large and increasing inequality in labour participation could lead to increased stress and quarrels among couples in the home. In some cases, these arguments provide a gateway to IPV for men who are inclined to resolve conflict with violence.⁵¹

Traditional views of women and girls in society and customary practices reinforce traditional roles of what it means to be a well-behaved girl and a married woman. These have a direct impact on acts of violence, as well as factors affecting the way the community and the judicial system respond to such violence. Society in Jamaica is historically conservative and infused with patriarchal norms, despite being a matriarchal society, and this is reflected in the culture surrounding GBV. The following views and practices are of particular importance:

-
- Men are seen as being economically and socially superior to women, which is key to how masculinity is expressed;
 - Women who witness or experience GBV as children often become victims of GBV in later life;
 - Men often use physical and sexual violence against women as a form of “discipline” for non-compliance with social norms and customary values; and
 - Fear of shame and condemnation from their perpetrator or wider community often results in domestic violence cases being withdrawn before prosecution.
-

⁴⁸ Carol Watson Williams, *Women’s Health Survey 2016 Jamaica*, UN Women, at 23 (June 2018), <https://publications.iadb.org/en/womens-health-survey-2016-jamaica-final-report>.

⁴⁹ de Groot.

⁵⁰ de Groot.

⁵¹ Ibid.

IV. Jamaica Gender Equity Data



IV. JAMAICA GENDER EQUITY DATA

In 2016, the WHSJ was published by the Statistical Institute of Jamaica, the Inter-American Development Bank, and the United Nations Entity for Gender Equality and the Empowerment of Women. The WHSJ was the first report to comprehensively examine the nature and prevalence of GBV in Jamaica. The report investigates both women’s lifetime and most recent experiences of IPV and non-partner violence and abuse, surveying both sexual and non-sexual abuse. The data that this report is based on allows for an understanding of the factors that are associated with GBV and its impact on women’s mental and physical health. It also explores coping strategies that women use to deal with abuse, attitudes towards gender roles, and a profile of perpetrators.⁵²

The data collection for the WHSJ used a combination of quantitative and qualitative methods, including in-depth interviews, a household survey, and focus groups. The household survey included 1,340 surveyed, with a 85.5% household response rate and a 65.9% individual response rate. The questionnaire covered “general and reproductive health; attitudes towards gender roles; experiences with IPV; impacts and coping with IPV; and experiences with non-partner violence.”⁵³ The focus groups explored lifetime abuse and intergenerational violence; socioeconomic contexts and diverse cultural perspectives on the experience of abuse, and how other forms of violence contribute to IPV.⁵⁴

A. Prevalence of GBV

GBV comes in many forms, from physical and sexual violence to sexual harassment, verbal and emotional abuse. It affects people across all strata of society, regardless of age, education, or socioeconomic status, though it primarily affects women.⁵⁵

Change in Crime Rates between 2009 and 2013

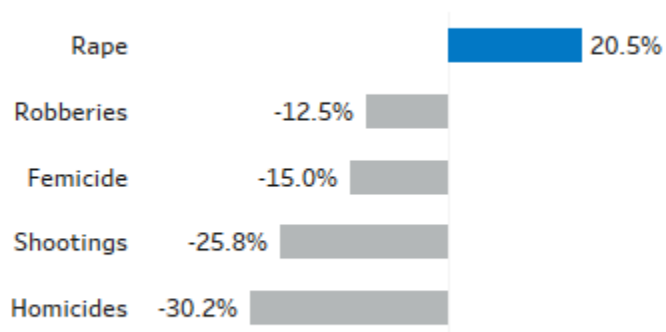


Figure 2

⁵² Williams, at 23.

⁵³ Ibid., at 14.

⁵⁴ Ibid., at 14.

⁵⁵ Ibid., at 22.

Crime is “the main public safety issue for Jamaicans and a significant threat to the country’s human and economic development.” As mentioned previously, there are no reliable estimates of the prevalence of GBV.⁵⁶ However, it is clear that GBV is a major issue. Data from the Reproductive Health Survey Jamaica 2008,⁵⁷ show that 50% of women reported forced intercourse prior to age 20, and 66% before age 25. The majority of culprits have a pre-existing relationship to the women, “including current or previous partners (36%), acquaintances (20%), boyfriends or ex-boyfriends (18%), and relatives (10%). In fact, only 12% of women surveyed reported rape by a stranger.”⁵⁸ Furthermore, “[o]nly 15.4% of women who were victims of GBV reported the matter to the police.”⁵⁹ The most prevalent GBV is spousal IPV, with 35% of women reporting that they have experienced IPV at least once.⁶⁰

The three strongest risk predictors of experiencing IPV were: childhood experience of violence, controlling behaviour⁶¹ of a husband/partner, and alcohol use by the perpetrator.⁶² These factors also increased vulnerability to HIV/AIDS and other sexually transmitted infections.⁶³

B. Government/Parliament

There is a positive trajectory for the involvement of women in government and politics, with the 2020 election seeing the Jamaican Parliament having a record 28.6% of women elected to serve, an increase of 11.5% from 2016.⁶⁴ While there is obviously a need for continued growth, this is a major improvement from previous years.

⁵⁶ Using administrative data to measure domestic violence in Jamaica is difficult, as there is no definition of ‘domestic violence’ in the Domestic Violence Act or in the Violence Against the Person Act, and hence the police use varying definitions which can include violence between persons who are related, or living in the same house (Anthony Harriot and Marlyn Jones, *Crime and Violence in Jamaica: IDB Series on Crime and Violence in the Caribbean*, IDB Series on Crime and Violence in the Caribbean (2016), <https://publications.iadb.org/en/crime-and-violence-jamaica-idb-series-crime-and-violence-caribbean>).

⁵⁷ Florina Serbanescu, Alicia Ruiz and Danielle Suchdev, *Reproductive Health Survey Jamaica*, National Family Planning Board (2010), <https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/vaw%20survey/jamaica%20vaw%20survey.pdf?vs=846>.

⁵⁸ Williams, at 23.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid. Though alcohol is a risk to experiencing IPV, alcohol should not be seen as a root cause of IPV. It amplifies existing patriarchal, cultural, or supremacist thoughts and behaviours that seek to control women and girls.

⁶³ Ibid.

⁶⁴ Caribbean Women in Leadership, “Jamaica General Elections – Recognising Women’s Role in Politics”, (5 September 2020), <https://ciwil.org/jamaica-general-elections-recognising-womens-role-in-politics/>.

C. Judiciary

Despite the judiciary being traditionally completely male-dominated, the current make-up of the judiciary is one of a majority of women judges, though men still are in the highest positions.⁶⁵ The first woman was appointed to the judiciary in 1959 as a Resident Magistrate. The first woman was appointed to the Supreme Court in 1974, and the first to be appointed a judge of the Court of Appeal was in 1988. Only one woman has ever served as Chief Justice, Zaila McCalla, who served from 2007-2018. A woman has yet to serve as President of the Court of Appeal.⁶⁶

In 2022, the latest statistical data of gender representation in the judiciary of Jamaica⁶⁷ reveals that there are 95 female and 30 male judges in the judiciary - a staggering number favouring female judges - although male judges now occupy the top positions at each level of the judiciary.⁶⁸

This hierarchical divide was reinforced by our experience interviewing government officials in the justice sector. Whereas women are well represented in high positions within government, the highest positions within those institutions are most often occupied by men.

D. Law Enforcement

Despite numerous searches there is insufficient data to describe or comment on the role of women in Jamaican law enforcement. In interviews with a CSO partner that works closely with law enforcement, out of the approximate 14,000 officers, one-third were said to be women.

E. Management Positions Within Corporations

According to a comparison of data compiled by the International Labour Organization (“ILO”) in 2014 of 81 countries, Jamaica had the highest proportion of women in senior

⁶⁵ Marva McDonald-Bishop, *Whither the Men? Gender Representation in the Jamaican Judiciary*, UNDOC (2021), <https://www.unodc.org/dohadeclaration/en/news/2021/18/whither-the-men--gender-representation-in-the-jamaican-judiciary.html#:~:text=In%202022%2C%20the%20latest%20statistical,top%20positions%20at%20each%20level>.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ *Strength of a woman, Female jurists lauded on International Day of Women Judges*, The Gleaner (11 March 2022), <https://jamaica-gleaner.com/article/news/20220311/strength-woman>.

and middle management positions, at 63.9%.⁶⁹ These numbers appear to have stayed relatively constant, as in 2021, according to the Statistical Institute of Jamaica, Labour Force Statistics, 62.5% of women were classified as Professionals, Senior Officials, and Technicians.⁷⁰ While there is insufficient data to determine the number of women in senior and executive management positions in Jamaica, the ILO's 2018 report on *Women in business and management: Gaining momentum in the Caribbean*, which surveyed 432 companies across the Caribbean about their boards, showed Jamaica's representation of women on company boards at 40%, and women as board chairs at 23%.⁷¹ However, "[a]mong the 53 companies listed on the Jamaica Stock Exchange, women make up 17 percent of board directors. In only two was the chairperson a woman."⁷² As in the majority of countries, representation of women decreases as the management positions become more senior.⁷³

F. Women's Role in The Formal Sector vs. Informal Sector

Notwithstanding the positive data on women in managerial positions, the Labour Force Survey shows that women have lower rates of labour force participation than men. The 2016 survey revealed that "the female labour force participation rate was 58.7% compared with 71.2% for men, and they experienced higher rates of unemployment (16.9% compared to 9.5% for men)."⁷⁴ This is despite the fact that women have higher qualifications than men in equivalent positions.⁷⁵

Women are also paid less than men for similar work, earning 63 cents for every one dollar.⁷⁶ Similar to many countries including the United States, this is despite legislation (Employment (Equal Pay for Men and Women) Act passed in 1975) mandating equal pay between men and women.⁷⁷ While there are no formal barriers to women being employed in certain fields, social norms often dictate employment positions that are considered more appropriate for men or women. As a result, sex segregation exists

⁶⁹ ILO Stat Explorer, SDG Indicator 5.5.2 - Proportion of women in senior and middle management positions (%) Annual, 2014. Unfortunately,

⁷⁰ Statistical Institute of Jamaica, Employed Labour Force by Occupation Group, <https://statinja.gov.jm/LabourForce/NewLFS.aspx>

⁷¹ International Labour Office, *Women in business and management: Gaining momentum in the Caribbean*, (2018) at 25.

⁷² Suzanne Ffolkes-Goldson (ed.), *Commonwealth Caribbean Corporate Governance*, Routledge, (2016).

⁷³ *Women in business and management: Gaining momentum in the Caribbean*, International Labour Office, (2018) at 19.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Williams, at 20.

⁷⁷ *Ibid.*, see also Employment (Equal Pay for Men and Women) Act 35 1975, <https://laws.moj.gov.jm/library/statute/the-employment-equal-pay-for-men-and-women-act>

“across the labour force, with women dominating some occupational groups and men others.”⁷⁸

Youth unemployment is a major issue in Jamaica, with young women experiencing the highest rates of unemployment among the working age population. According to the 2016 Labour Force Survey, more than a third of young women between the ages 20 and 24 were unemployed. Unemployment in turn creates increased vulnerability and exposure to exploitation and poverty.⁷⁹

According to the Reproductive Health Survey 2008, 48.8% of young women, aged 15 to 24, reported their first sexual intercourse as being coerced.⁸⁰ Given that the sexual encounter is coerced and unanticipated, it has major implications on reproductive health, pregnancy, and vulnerability to sexually transmitted diseases. Teenage pregnancy is a major concern with 18% of all births in Jamaica involve teen mothers (72/1000).⁸¹ Because motherhood often leads to high-rates of drop-out and teenagers not completing their education, Jamaica implemented a National Policy for the Reintegration of School-Age Mothers into the Formal School System in 2013. The policy seeks to ensure that young mothers can return to school and complete their education.

G. Education

Up until 1944, when a universal core curriculum was established for both boys and girls, girls’ education in Jamaica consisted of some basic classes and home economics.⁸² Much progress has been made in closing the education gap. According to the World Economic Forum Global Gender Gap Report 2022, around 35% of women go into tertiary education, in comparison to 20% of men.⁸³ However, closing the gender-gap in education has not resulted in equal pay. Furthermore, women are much more likely to be engaged in unpaid household domestic work, and have less access to resources.

⁷⁸ Ibid., at 20.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ UNFPA, *Country Brief: Jamaica*, <https://caribbean.unfpa.org/en/news/country-brief-jamaica>.

⁸² Borgen Project, “Top 10 Facts About Girls Education In Jamaica”, (2018), <https://borgenproject.org/top-10-fact-about-girls-education-in-jamaica/>.

⁸³ *Global Gender Gap Report 2022, Insight Report*, World Economic Forum (July 2022).

H. Family Matters

According to the Women, Business and the Law 2021 World Bank Index, Jamaica scored poorly on the Parenthood Indicator, which relates to laws supporting women's work after having children. The report suggests that Jamaica consider making "paid leave of at least 14 weeks available to mothers, making the government administer 100% of maternity leave benefits, making paid leave available to fathers, and making paid parental leave available."⁸⁴

I. Intersectionality

Rural Women

Approximately "45% of Jamaica's population lives in rural areas where the incidence of poverty is at about 28.5%."⁸⁵ The effect of this is the migration of residents to opportunities in urban areas which then exacerbates the existing poverty in rural areas.⁸⁶ Women in poverty in rural areas are at greater risk of exploitation and the normalisation of GBV – for example, according to the WHSJ, women in rural areas were more likely to believe that a woman "should tolerate violence to keep her family together (8.5 per cent compared to 4.3 per cent of women in urban areas), and one-fifth (19.7 per cent) believed that rape is generally the result of some careless action on the part of the victim, compared to 12.6 percent of women living in urban areas."⁸⁷ Furthermore, urban women were much more likely (10x) to leave home due to severe injury than rural women.⁸⁸

Age

The WHSJ concluded that younger women were more likely to be subject to some form of GBV. For example, almost half of women (45%) under the age of 19 in live-in partner relationships had higher lifetime IPV rates in comparison to a quarter (24.5%) of women who entered such a relationship after 19. Nearly 14.0% of women surveyed stated that they had their first sexual encounter before they were 15 years old, and of those, 32.8% were forced encounters.⁸⁹ This is despite any sexual intercourse under

⁸⁴ World Bank Group, *Women, Business and the Law 2021*, <https://wbl.worldbank.org/content/dam/documents/wbl/2021/snapshots/Jamaica.pdf>.

⁸⁵ "Poverty-Reduction Projects to be carried out in Rural Areas", *Jamaica Information Service* (27 February 2018), <https://jis.gov.jm/poverty-reduction-projects-carried-rural-areas/>.

⁸⁶ *Ibid.*

⁸⁷ Williams, at 40.

⁸⁸ *Ibid.*, at 64.

⁸⁹ *Ibid.*, at 17-18.

the age of 16 being statutory rape under Jamaican law. The knock-on effect of this is that girls who are coerced into sex are very unlikely to make their own decisions about contraception which then makes them vulnerable to unwanted pregnancies, sexually transmitted diseases and exploitation.⁹⁰

LGBTQ+

Women who identify as lesbian or bisexual as well as trans women suffer from severe discrimination in Jamaica. According to a Human Rights Watch (HRW) report in 2014, lesbian women are often derogatorily referred to as “sodomites” or “sodomite gals.”⁹¹ While the law does not criminalise same-sex relations between women, lesbian and bisexual women are still subjected to appalling physical and sexual violence such as “corrective rape.”⁹²

A public opinion survey conducted in 2012 found that nearly 84% of respondents believed that female homosexuality was immoral.⁹³

This high prevalence of homophobia means that the police are often indifferent to investigating GBV related to sexual orientation or gender identity. According to the HRW report, out of the 56 cases of GBV identified in that report, only 4 of the victims were aware that the police had made arrests in their case.⁹⁴

Disability

According to a March 2022 report on Jamaica by the UN Convention on the Rights of Persons with Disabilities, there remains a distinct lack of data as to how violence intersects with the disabled population at large which, in turn, means there is very little

⁹⁰ Ibid., at 21.

⁹¹ Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT people in Jamaica* (21 October 2014),

<https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica>.

⁹² Ibid., at 11; Nadine Wilson-Harris, “‘Corrective rape’ Lesbian targeted by men who want to ‘straighten them out’”, *The*

Jamaica Gleaner (1 December 2014),

<https://jamaica-gleaner.com/article/lead-stories/20141203/corrective-rape-lesbian-targeted-men-who-want-straighten-them-out>.

⁹³ Human Rights First, *LGBT Issues in Jamaica Factsheet* (15 May 2014),

<https://www.humanrightsfirst.org/resource/lgbt-issues-jamaica>.

⁹⁴ Human Rights Watch, at 27.

data on the prevalence of GBV amongst women with disabilities.⁹⁵ The Centre for Investigation of Sexual Offences and Child Abuse (CISOCA) collects data on age and gender, but by the government's own admission, it does not collect data which disaggregates by disability.⁹⁶ Demographic surveys can start to address this gap by including the Washington Group Short Set of questions to identify people with disability in larger data sets.⁹⁷ Without this disaggregation, it is difficult to assess how widespread the issue is. Jamaica is not alone in failing to record this specific issue.

A March 2019 report by the Inter-American Development Bank for Latin America and the Caribbean found that only Chile and Colombia had recorded data relating to violence against disabled women.⁹⁸

The more detailed Columbian survey found overwhelmingly that disabled women were far more likely to be victims of all forms of IPV (sexual, physical, psychological and economic) than women who were not disabled.⁹⁹ If extrapolated for the Caribbean region, it would be reasonable to infer that disabled women in Jamaica are likely subject to similar (if not worse) levels of violence. The Jamaican government must be urged to record this type of data so that the prevalence of violence against disabled women is better understood.¹⁰⁰

⁹⁵ UN Committee on the Rights of Persons with Disabilities, 26th Session, *Replies to the List of Issues by Organizations of Persons with Disabilities in Jamaica*, at 12-13 (March 2022), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fJAM%2f

47972&Lang=en.

⁹⁶ *Ibid.*, at 13.

⁹⁷ Washington Group on Disability Statistics, <https://www.washingtongroup-disability.com/question-sets/>.

⁹⁸ Luana Marques Garcia Ozemela, Diana Ortiz and Anne-Marie Urban, *Violence against Women and Girls with Disabilities: Latin America and the Caribbean*, Inter-American Development Bank, at 15-16 (2019), <https://publications.iadb.org/en/violence-against-women-and-girls-disabilities-latin-america-and-caribbean>.

⁹⁹ *Ibid.*, at 17.

¹⁰⁰ *Ibid.*, at 28-29.

V. User-Experience I: Standards Set by the Justice Sector



V. USER-EXPERIENCE I: STANDARDS SET BY THE JUSTICE SECTOR

To better understand the standards set by the justice sector in serving its citizenry, we hone in on charters, protocols, and guidelines that provide instruction to government officials on meeting its customer service responsibilities. On the basis that these policies are binding, we consider that these policies represent a social contract between the justice sector and its citizens. Here, we look expansively at key agencies impacting on victims/ survivors facing GBV.

A. Court Management Services (CMS): Customer Service Charter

The Customer Service Charter is an initiative set by the Court Management Services (CMS) headed by the Chief Justice and overseen by the Principal Executive Officer of the CMS, which details the responsibilities of all who are involved in the business of the courts. This includes: “judges, attorneys, court staff, police officers, and the public users.”¹⁰¹ The key functions of the CMS include accounting/ audit, management/ administration, ICTs, client services, and property management/ maintenance.

At the heart of the Charter, the CMS lays out the standards by which the courts should be “user-friendly, effective and responsive to the needs of all our customers, regardless of who they are.”¹⁰²

The Charter operates as a guide to ensure that, ideally, the highest ethical standards are maintained where fair and equal treatment irrespective of gender, disability, religious beliefs etc. are upheld.¹⁰³

When dealing with court staff in-person, the Charter lays out what the user should expect:

- Professionalism;
- Fair treatment;
- Prompt service;

¹⁰¹ Court Management Services, “Customer Service Charter for the Courts of Jamaica”, at 2 (hereinafter “CMS”), <https://supremecourt.gov.jm/content/customer-service-charter>.

¹⁰² Ibid., at 3.

¹⁰³ Ibid., at 4.

- Respect for privacy;
- Provision of clear information;
- Responsiveness to user’s requests and comments.

When calling or writing to the court, a user should expect that staff will:

- “Answer telephone calls within four rings”;
- Acknowledged receipt of correspondence within five working days;
- Reply to correspondence within 10 working days;
- Recommend an attorney if requested;
- Facilitate communication with the judge.

If these standards are not being met, users have a few options in providing feedback:

- 1) at the customer complaint system on the Supreme Court page at <https://cad.gov.jm/complaints/>;
- 2) the human rights assessment on the Ministry of Justice’s website (this is no longer on the website), instead, the MoJ has provided customer.service@moj.gov.jm; and
- 3) by contacting the Public Defender at publicdefender@opd.gov.jm.

B. Ministry of Justice (JRUI): Victim’s Charter

Our current analysis relies on the draft versions of the Victim’s Charter published in 2006 and 2013. The focal point of the discussion will be the 2006 version, but any relevant distinctions between versions will be identified.

The Victim’s Charter came about after recognizing an imbalance in the law that focuses on the state as a victim of the crime rather than the victim themselves.¹⁰⁴ This removes the victim from being the central part of the administration of justice.

“Victims . . . have no separate identity in the criminal law, save and except when they assume the role of witness for the prosecution . . .”¹⁰⁵ One of the dangers in taking

¹⁰⁴ Ministry of Justice, *Towards a Victim’s Charter*, at 3 (hereinafter “MoJ/ JRUI”), <https://jis.gov.jm/government/documents/ministry-of-justice-victims-charter/>.

¹⁰⁵ *Ibid.*, at 3.

such an approach is the risk of citizens resorting to retributive or “community justice.”¹⁰⁶

The first international recognition of victim’s rights in criminal proceedings was the Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power in 1985 by the United Nations General Assembly resolution 40/34.

The Victim’s Charter recognises both the above-mentioned declaration and the principles set out in the Handbook of Justice for Victims that was devised by the UN Office for Drug Control and Crime Prevention.

The goal of the Victim’s Charter is to illuminate these universally accepted principles which are to:

- Centre victims;
- Ensure victim support systems are in place;
- Remove risk of secondary victimisation;
- Remove incentive for committing acts of retributive or “community justice;”
- Promote human dignity;
- Restitution;
- Ensure adherence to international human rights law;
- Strengthen civil society to promote victim support/ protection.¹⁰⁷

Critical in implementing these principles is ensuring that victims are made aware of every step of the criminal proceedings and are “notified of any plea agreements, diversion programmes, or restorative justice” actions.¹⁰⁸ Part of this includes the design of court facilities, including segregated spaces between victims and defendants¹⁰⁹ “minimi[z]ing the number of appearances at court; participation in any witness protection programme; ensuring payment of witnesses’ expenses; preparation of impact statements for the courts; provision of safe places for victims when they are attending court; [and] safe passage for victims to and from the venue.”

To support victims in Jamaica, the government created:

- Victim Support Unit (“VSU”)

¹⁰⁶ Ibid., at 2.

¹⁰⁷ Ibid., at 3.

¹⁰⁸ Ibid., at 4.

¹⁰⁹ Ibid., at 5.

- Centre for Investigation of Sexual Offences and Child Abuse (“CISOCA”) within the Jamaica police force, which is known as the Constabulary Force.

One of the recommendations to strengthen Victim Support Units was to have one connected to each Parish Court which is an “inferior court of record” that is often the first point of contact for many Jamaicans.¹¹⁰ These units could help facilitate expenses related to witness testimony, ensure attendance by the victim for conducting a needs assessment, and provide assistance to those victims with special needs or vulnerabilities.¹¹¹

One tangible example where victims are centred in the criminal proceedings is during the determination of any plea negotiations.

Within the Plea Negotiations and Agreement Act, the relevant director of public prosecutions (“DPP”) may hear views of the victim prior to accepting a plea deal.¹¹² Similarly, in the Parole Act, a provision that would allow the views of the victim to be heard prior to parole hearings should be implemented (we note that a specific provision to this effect was included in the 2013 draft Victim’s Charter).¹¹³

Other ways victims’ concerns can be validated are through victim impact statements, which allow a victim to have a direct voice in the proceedings and can enumerate the full range of impact that that violation has had on them and their families.

We note that the 2013 draft Victim’s Charter sets out a more comprehensive right to offer information through all phases of the trial, including Parole Board hearings.

When it comes to children, additional consideration must be given to them as victims and witnesses. The Victim’s Charter discusses the fact that the Child Care and Protection Act introduces the concept of a Children’s Advocate. Here, great care is taken to protect the child from the intimidating environment of the courtroom and the

¹¹⁰ Supreme Court, *The Court Structure and Hierarchy*,

<https://supremecourt.gov.jm/content/court-structure-and-hierarchy>; The Parish Court, <https://www.parishcourt.gov.jm>

¹¹¹ MoJ/ JRUI, at 6.

¹¹² The Plea Negotiations and Agreement Act 2017, No. 14 of 2017, sec. 7(1),

<https://japarliament.gov.jm/attachments/article/341/The%20Plea%20Negotiations%20and%20Agreements%20At.%202017%20No.%2014.pdf>.

¹¹³ MoJ/ JRUI, at 9.

defendant's presence, privacy is of great importance, and expediency of trials is critical.¹¹⁴ Unfortunately, the 2013 draft Victim's Charter emphasises privacy overall, and it does not expand on these ideas in relation to children.

Currently, there is no provision in law that orders the compensation of victims for physical harm, which is contrary to best practices. The pursuit of civil remedies against one who will be serving a prison sentence does not often lead to damages. "Victim Services has urged states to ensure that victims of violent crimes receive compensation from public funds as soon as possible after the injury is suffered."¹¹⁵ In the 2013 draft Victim's Charter, there was a specific provision for compensation under the Victim Compensation Programme and involved monetary and forms of services as part of the redress process. Furthermore, the 2013 draft Victim's Charter goes into detail about right to restitution, which includes regaining unlawfully dispossessed goods or property.

Finally, the MoJ offers some guidance on certain policy considerations if the Victim's Charter becomes adopted by statute. One progressive view was to broaden the definition of "victim" to family members or dependants. This could have an impact on the delivery of social services to impacted parties or compensation if a victim's fund were to be created. Furthermore, it is argued that this could reduce secondary victimisation by institutions that do not adequately have policies in place such as schools or hospitals and those that report on these incidents like the media.¹¹⁶

UNFPA is working with the Bureau of Gender Affairs to draft Multi-Agency Standard Operating Procedures for Providing a Continuum of Care to Survivors of Gender Based Violence and Multi-Agency Referral Protocols for Gender Based Violence.¹¹⁷ These guidelines should provide a pathway to improve further iterations of the Victim's Charter and one that provides specialised responses to GBV survivors, focusing on service delivery by both criminal and family law courts, emphasis on multi-sectoral responses including law enforcement and health care, and incorporation of the panoply of international human rights standards to service delivery for victims in line with the UN's Essential Services Packages for Women and Girls Subject to Violence.

¹¹⁴ Ibid., at 8.

¹¹⁵ Ibid., at 10.

¹¹⁶ Ibid., at 10.

¹¹⁷ UNFPA and Bureau of Gender Affairs collaborate to foster the intersectoral response to Gender Based Violence in the framework of the Spotlight Initiative (June 2022), <https://caribbean.unfpa.org/en/news/unfpa-and-bureau-gender-affairs-collaborate-foster-intersectoral-response-gender-based-violence>

C. Ministry of Justice (“JRUI”): Citizen’s Scorecard: Baseline Metrics

In 2012, The MoJ/ JRUI commissioned a Citizen Scorecard to better understand the needs of the citizenry when accessing the courts. This involved both surveys and public consultations in rural and urban areas within Jamaica.¹¹⁸ Though the findings of this report are a decade old, it provides an important baseline study to understand the strengths and weaknesses of the court system as a whole when it comes to survivors of GBV accessing both criminal and family law courts today. In summary, here are some of the following issues the report found where customer service expectations were met and where remedial action is necessary. We will focus on elements that may be relevant to women and girls accessing criminal and family law courts:

1. Court Customer Service: Design + Staff + Infrastructure

The majority of respondents found the courthouse to be situated in locations that made it easy for them to access via public transportation and most were able to find the court on their first visit.¹¹⁹ There were however some interviewees who discussed how designing courthouses above police stations undermined the impartiality of the court.¹²⁰ Accessibility within the courthouse complex was good, but deficient when it came to those with special needs.¹²¹ Additionally, respondents found the conditions of the bathroom deplorable and the courthouse environment itself to be uncomfortable.¹²² Some interviewees commented that “court infrastructure was falling apart especially at the Magistrate’s Court.”¹²³ Court infrastructure was ranked the second highest in need of reform.¹²⁴

Connected to the concern around infrastructure, respondents believed that the budget for the court was inadequate (78%). Respondents perceived a lack of resources to support the needs of the court, therefore, it is not surprising that many of them did not believe it was likely that court staff received continuing legal education (42%).¹²⁵ The report goes on to note:

¹¹⁸ Darby Darby and Associates on behalf of MoJ, *Jamaica Citizen Scorecard Development*, at 2-3 (2013) (hereinafter

“MoJ/ Darby”), <http://juristproject.org/wp-content/uploads/2019/08/Jamaica-Citizen-Scorecard-Development.pdf>.

¹¹⁹ *Ibid.*, at 32.

¹²⁰ *Ibid.*, at 54.

¹²¹ *Ibid.*, at 33 (58% of respondents indicated access for those with special needs is required).

¹²² *Ibid.*, at 13.

¹²³ *Ibid.*, at 54.

¹²⁴ *Ibid.*, at 21.

¹²⁵ *Ibid.*, at 29.

The importance of every court employee’s role cannot be overstated as contact with court staff is likely the first contact that a citizen has with the court system. This being the case, it is imperative that front-line personnel be provided with the highest level of training on a continuous basis.

Respondents identified areas where court personnel should be more sensitised, which included: court procedure, office procedure, changes in law and staff supervision and gender sensitivity issues.

Overwhelmingly, the lack of separate waiting areas for different parties to the litigation and limited public seating were found to be problematic by over 70% of the respondents. “Adequate seating is also a measure of the provision of proper court infrastructure and is vital to making the courts **fully functional, accessible and user-friendly** to citizens.” The report briefly looked at whether the court met the concerns of women. When it came to the needs of pregnant and breast-feeding women, the majority of respondents believed those needs were being met (62%), but most did not know if that was the case with respect to medical and hygienic needs (65%).¹²⁶

2. Support Systems

Although The Ministry of Justice’s Victims Support Unit (MoJ/ VSU) was known to respondents, only 24% of those who used its services found to have benefited from it.¹²⁷ The Children in Court Project and Special Intervention Project for Schools were the most utilised of the VSU programmes.¹²⁸ Overall, 42% of respondents found that the VSU did not meet the needs of users.¹²⁹

When it came to CSOs, the majority of respondents (58%) found them to be extremely valuable, but also wanted them to be more “aggressive” in their advocacy through raising public awareness of issues and through “facilitating public debate.”¹³⁰

¹²⁶ Ibid., at 42.

¹²⁷ Ibid., at 15.

¹²⁸ Ibid., at 15-16.

¹²⁹ Ibid., at 16.

¹³⁰ Ibid., at 16-17.

In responding to what is the greatest need for an effective justice system, police reform was ranked as the highest ranking need followed by court infrastructure and improved public awareness of the justice system.¹³¹ “Of all the respondents sampled, 82% said that they were not aware of any avenues through which they can provide feedback to the MOJ about anything related to the justice system.”¹³²

3. Courts: Judicial Process

The overwhelming number of respondents (91%) believe in the right to an appeals process, but a vast majority (88%) believe **poverty** is a serious impediment in the review of convictions and sentences on appeal.¹³³ One of the most concerning findings was that 46% of respondents did not have confidence in the justice system mainly because of “poor pre-trial investigations.”¹³⁴

One long-standing issue where there was relative consensus was the view of the court having a serious backlog problem.¹³⁵ In the past decade, the Jamaican judiciary has made efforts to reduce this backlog, but challenges remain. Part of the reasons respondents noted for this was witness unavailability, empanelling jurors, and judges not making timely decisions.¹³⁶ A percentage of interviewees (18%) also highlighted the fact of too many adjournments.¹³⁷

When it comes to incarceration of children, respondents believe it should be minimised (78%), and that if imprisoned, they should be separated from adults (47%).¹³⁸

At a more fundamental level, a significant majority (62%) of respondents did not feel that court staff treated everyone equally.¹³⁹ This also extended to judges, where 42.9% of respondents were uncertain whether judges used

Reasons for No Confidence in the Jamaican Justice System

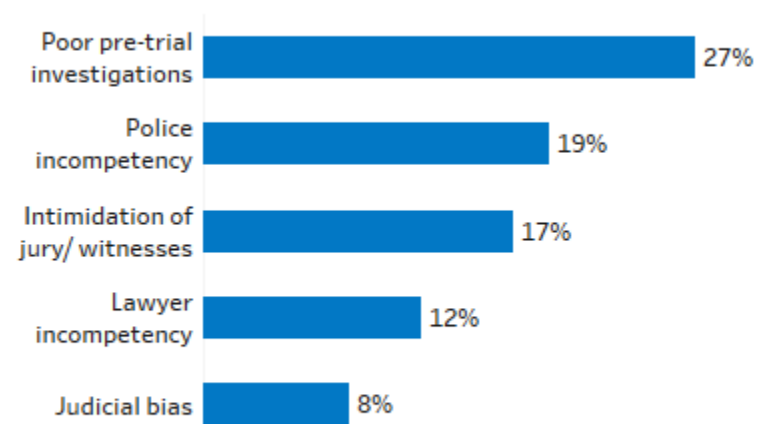


Figure 3

¹³¹ Ibid., at 21.

¹³² Ibid., at 74.

¹³³ Ibid., at 23.

¹³⁴ Ibid., at 24.

¹³⁵ Ibid., at 37.

¹³⁶ Ibid., at 38, 46.

¹³⁷ Ibid., at 55.

¹³⁸ Ibid., at 41.

¹³⁹ Ibid., at 31.

impermissible factors in their decision making such as the race, gender, or ethnicity of the accused.¹⁴⁰ A sizable percentage of interviewees (41%) “were of the view that justice is skewed in favour of the rich” and those that could afford legal protection while a smaller portion felt “dispossessed of their power and constitutional rights.”¹⁴¹ Though most were aware of Legal Aid as an option, 88% believed that public education campaigns were needed and a similar percentage thought the Legal Aid process needed improvement.¹⁴² One area that could address this is through training. Here, one of the interviewees discussed problems with having the Justice Training Institute of the Ministry of Justice, Jamaica (“JTI”) provide specialised training for Magistrates.¹⁴³

The chart below is an adapted synthesis of the Ministry of Justice’s Baseline Citizen’s Scorecard 2013, located in Annex D of the original report. It breaks down the overall ranking of the justice system delivery standard:

¹⁴⁰ Ibid., at 47.

¹⁴¹ Ibid., at 57.

¹⁴² Ibid., at 44.

¹⁴³ Ibid., at 54.

Public Trust And Confidence In The Justice System Scorecard, 2013

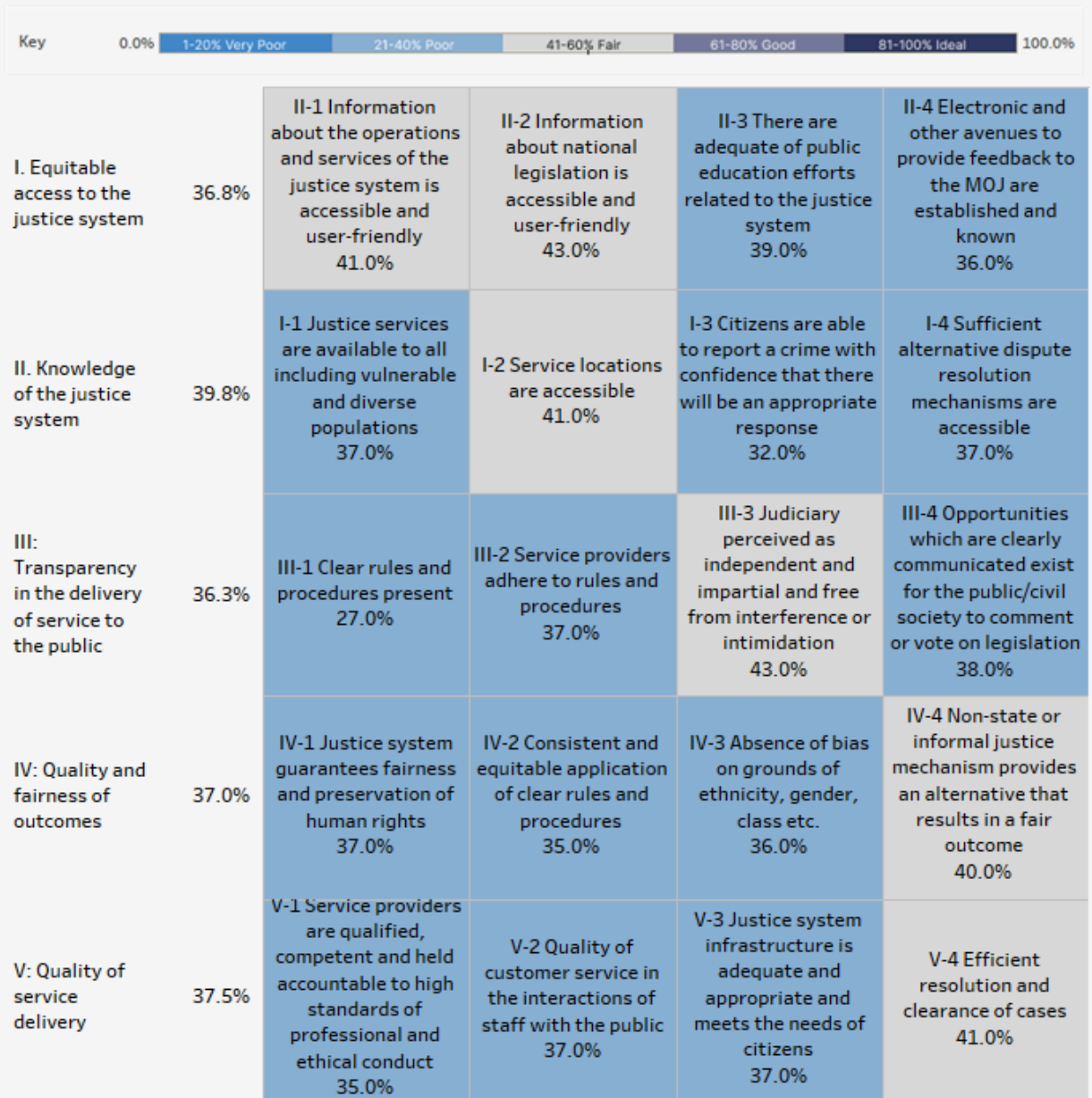


Figure 4

The overall score given by those surveyed and interviewed for the scorecard was 37.5%, which falls within the range of poor service delivery.¹⁴⁴

In each of the five key areas:

- 1) equitable access to the justice system;
- 2) knowledge of the justice system;
- 3) transparency in the delivery of service to the public;
- 4) quality and fairness of outcomes; and
- 5) quality of service delivery, the justice system scored in the poor range in each category.

There were areas where the citizenry thought the justice system was doing a fair job; these included service locations, access to legislation, perception of the judiciary as independent, and clearance of cases. Nevertheless, the consolidation of all the data reveals that there is significant room for improvement in the user-experience of the citizenry when interfacing with the courts.

D. Court Procedures

The following guidelines being laid out should not be seen as exhaustive, rather, they are specific justice sector guidelines, policies, or legislation that may have particular bearing on GBV cases. In the section focusing on the lived experience of survivors, we will discuss further how the application of these specific guidelines, policies, or legislation plays out in actual GBV cases.

1. Judicial Conduct Guidelines

The Judicial Conduct Guidelines provide statements and principles to advise judges on ethical issues they may confront while they serve on the bench. They do not address judicial misconduct. The first five principles focus on the qualities that make for a qualified judge: **judicial independence, integrity, propriety, competence, and diligence**. Propriety is a core principle because even the mere “appearance of impropriety” calls into question all other principles.¹⁴⁵

¹⁴⁴ Ibid., at 106 (Annex D).

¹⁴⁵ See generally, *Jamaica – Judicial Conduct Guidelines*, http://www.oas.org/juridico/PDFs/mesicic4_jam_ic_gui.pdf.

The commentaries on these principles also note that “particular care should be taken to avoid causing unnecessary hurt” while keeping the “privacy interests” of those involved in mind.¹⁴⁶ Furthermore, a judge should take part and foster an environment where continuing legal education can be obtained by both lawyers and judges. By maintaining an attitude that sees the acquisition of knowledge as part of their professional duties, judges will invariably set the bar for what competence and diligence looks like for both lawyers and their peers.

The final four principles of **equality, impartiality, transparency, and accountability** focus on pillars of the judicial profession that must be upheld by every judge to ensure the trust and validity of the institution. Below, we’ll highlight some key commentaries for each of the principles.

For the principle of equality, there is insightful commentary that goes beyond a judge trying to rule fairly, but urges judges to stay informed about how the cultural milieu and attitudes have shifted, so as to avoid inappropriate or hurtful conduct.¹⁴⁷ Critically, the commentaries also make a link between equality and impartiality and that reliance on stereotypes, myths, or prejudice can undermine a judge’s impartiality whether actual or perceived.¹⁴⁸ In addition, speech or conduct that reveals biases towards one’s gender, social status, and marital status etc. should not be engaged in.

Impartiality, like the principle of equality, can only be achieved without “bias or prejudice.” If a judge is seen to have a perceived or actual bias or has prejudged the matter without hearing the evidence, they should disqualify themselves. The element that strengthens the idea of impartiality is when a judge renders a well reasoned decision that lays out clearly how the evidence leads them to their final outcome. To uphold this principle of transparency, it is essential for decisions to be made public and freely accessible to the litigants as well as to other interested parties. Having decisions publicly available creates a level of accountability for the judge who is typically only substantively accountable through the appeals process.

2. Sentencing Guidelines

The basic framework for any sentencing guideline for the judiciary is premised on the principles of proportionality and consistency. These principles are upheld by assessing

¹⁴⁶ Ibid., at 11.

¹⁴⁷ Ibid., at 11.

¹⁴⁸ Ibid., at 13.

the gravity of the crime and relying on guidance provided by cases where similar offences have been committed (precedent).¹⁴⁹

One key document that courts should be relying on prior to passing a sentence, is the social enquiry report. These reports are prepared to assist judges with making a determination about the perpetrator's sentence. They can provide key background details about the circumstances of the perpetrator, and though it is not mandatory and within the judge's discretion to review this report, it is generally accepted as "good sentencing practice."¹⁵⁰ Critical to this point is when a serious crime has been committed, such as rape, reliance on the social enquiry report "should now be regarded as . . . [an] invariable norm."¹⁵¹

Non-custodial Sentencing

In determining whether a non-custodial sentence is appropriate, a judge will look at the totality of the circumstances and view a custodial sentence as a last resort. Even in serious cases, if there are significant mitigating circumstances or a sentence that does not exceed three years, suspending a sentence can be considered by the court.¹⁵² Special provisions are applicable in cases where a child is found guilty of an offence, and provisions of the Child Care and Protection Act must be taken under consideration.

Prescribed Minimum Sentencing

In most cases, judges have discretion to give a sentence that falls within a wide range, (including to suspend any sentence, as discussed above). However, when a statutory minimum has been set, the judge no longer has discretion to fall below the minimum sentence. A few examples, which are applicable to GBV cases, are found in the Offences Against the Person Act ("OAPA") and the Sexual Offences Act ("SOA").

Specifically, in the SOA, the minimum sentence in rape cases is 15 years¹⁵³ and the judge must specify that a period of no less than 10 years must be served before

¹⁴⁹ Supreme Court, *Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts*, at 1-1 (hereinafter "Sentencing Guidelines"), <https://www.supremecourt.gov.jm/sites/default/files/Jamaica%20Sentencing%20Guidelines.pdf>.

¹⁵⁰ *Ibid.*, at 2-1.

¹⁵¹ *Ibid.*, at 2-1.

¹⁵² *Ibid.*, at 3-1.

¹⁵³ Parliament of Jamaica, *The Sexual Offences Act 2009*, at sec. 6(1)(a) and (b), https://japarliament.gov.jm/attachments/341_The%20Sexual%20Offences%20Act,%202009.pdf.

eligibility or parole.¹⁵⁴ This also applies to adults in a position of authority who have had (15-year minimum) or have attempted to have (10-year minimum) sexual intercourse with a child under 16 years of age.¹⁵⁵ It is interesting that in reality the normal range of sentences in attempt cases actually falls below the 10-year minimum threshold. The range has been identified between 3-10 years with a starting point¹⁵⁶ of 5 years, which is well below the statutory minimum.¹⁵⁷ In section VII (H)(3)(b) we identify why this is occurring.

Aggravating/ Mitigating Circumstances

After consideration of all the relevant evidence, a judge will move to identify a starting point for the sentence and then consider whether there have been any aggravating factors that could increase the sentence or mitigating factors that could decrease the sentence. Additionally, any time spent on remand pending trial would act as a deduction in the sentence.

When identifying a starting point for the sentence, it is important to ensure that the analysis for aggravating or mitigating factors plays a separate role in the increasing or decreasing of the sentence, and that double counting does not occur where a judge is influenced to have a higher or lower starting sentence based on aggravating or mitigating factors.

A few aggravating factors that typically play a role in GBV cases are:

- Age of the offender;
- Previous conviction for similar offences, “particularly where a pattern of repeat offending is disclosed;”
- Use of a weapon;
- Vulnerability of the victim;
- Abuse of position of trust, “particularly in relation to sexual offences” involving a minor;
- Offenders operating in groups or gangs.¹⁵⁸

A few mitigating factors that typically play a role in GBV cases are:

¹⁵⁴ Sentencing Guidelines, at 3-1.

¹⁵⁵ Ibid., at sec. 6(1)(a) and (b).

¹⁵⁶ “The starting point is a notional point within the normal range, from which the sentence may be increased or decreased to allow for aggravating or mitigating features of the case.” Sentencing Guidelines, at 7-1.

¹⁵⁷ Sentencing Guidelines, at A-8. It is likely that plea deals are the reason why sentences are dropping below the mandatory minimum as discussed later regarding rape cases.

¹⁵⁸ Ibid., at 8-1.

- Youth of the offender;
- Previous good character of the offender;
- Remorse, reparation, apology;
- Provocation;
- Impact on the offender or their family because of the offence (sole breadwinner arguments);
- “[F]amily background of the offender;”

Later we will discuss and apply these factors to GBV cases to see the outcomes in practice.

Guilty Plea

Typically, in many jurisdictions including Jamaica, the rationale for providing a sentence discount for an offender making an early guilty plea is because it serves the public interest, preserves the court’s time/ resources, saves victims and witnesses from having to give evidence, which can be retraumatising, and it may “encourage others to plead guilty where appropriate.”¹⁵⁹

The level of discount that is allowable is governed by the Criminal Justice Administration Act (“CJAA”). It follows that a guilty plea when:

- Entered at the first available opportunity receives up to a 50% discount;
- Offered before trial, but after the first available opportunity, up to 35%;
- Given after the trial has finished but before a verdict is rendered, up to 15%.

Here, the judge takes into consideration the seriousness of the offence, impact on the victim, previous convictions, and other relevant factors in coming up with a percentage discount. The statute does not permit the judge to suspend the sentence wholly or provide a discount of greater than 50% based on a guilty plea.

The broader take away from the sentencing guidelines is that they are evolving standards and that these, from the Jamaican government’s perspective, provide “contemporary best practices in the areas of sentencing.”¹⁶⁰

¹⁵⁹ Ibid., at 10-2.

¹⁶⁰ Ibid., at 16-1.

E. Law Enforcement

One of the key documents in laying out the standard for engagement between law enforcement (Jamaica Constabulary Force (“JCF”) and citizens is the Police-Citizen Relations Code of Conduct.¹⁶¹ A few key provisions that impact GBV issues will be flagged. First, the Code emphasises the following rights of citizens:

- right to life;
- right to live free;
- protection under the law;
- enjoyment one’s property;
- freedom of expression;
- freedom of association.¹⁶²

Connected with these rights are the responsibilities of the law enforcement to its citizens starting with treating all citizens equitably irrespective of “race, colour, domicile, religion, gender or political opinion.” Furthermore, law enforcement must respect your privacy interests within the home and family. Later, we will see how these duties may be misapplied when it comes to GBV related cases.

Any abuse of a citizen’s rights by law enforcement, can be reported to the Community Conflict Resolution Council (“CCRC”). This includes:

- The Police Public Complaints Authority
- The Jamaica Constabulary Force (Office of Professional Responsibility)
- The Office of the Attorney General
- The Office of the Public Defender
- The Human Rights Consultants (within Ministry of National Security & Justice)

In an updated report on “Transforming the JCF” written by the JCF Strategic Review Panel and published by the Ministry of National Security, an emphasis was placed on developing a modern police force that focused on “the protection of human rights” and took on the duty of being the primary guardians of security and human rights.¹⁶³ Part of being the guardian of citizens’ rights, includes the “appointment of well qualified and well trained managers at all levels [who are] accountable for their

¹⁶¹ The Jamaica Chamber of Commerce, the Inncity Development Committee, et. al, *Police-Citizen Relations Code of Conduct*, OAS, at 1 https://www.oas.org/es/sla/dlc/mesicic/docs/jam_res26.pdf.

¹⁶² *Ibid.*, at 1.

¹⁶³ Ministry of National Security, *A New Era of Policing in Jamaica: Transforming the JCF*, at 15 https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session9/JM/JFJ_Jamaicansforjustice_Annex4.pdf.

actions.”¹⁶⁴ A few key points highlighted by the report regarding the user-experience of citizens with law enforcement centre around:

- trustworthy and responsive policing;
- human rights and dignity being respected;
- elimination of corruption;
- willingness to work in partnership with CSOs and average Jamaicans.¹⁶⁵

The report goes on to suggest ways in which law enforcement can be more community-centred and ensure that human rights are being upheld.

With respect to specific divisions within law enforcement charged with assisting victims/ survivors, the Centre for the Investigation of Sexual Offences and Child Abuse (“CISOCA”) was established within the JCF in 1989. It was created to improve police sensitivity and service delivery for victims of sexual assault, including improving confidentiality, speedy and effective investigation, and rehabilitation through counselling and therapy.

The JCF currently has 10 (with one more in the pipeline) Domestic Violence Intervention Centres which operate on the principles of intervention, counselling, awareness, response and empathy. From the beginning of 2021 till September of 2021, 704 cases were seen by the centres.¹⁶⁶

F. Health Care Providers

In 2014, the Health Policy Project, working through the United States Agency for International Development (“USAID”), the President’s Emergency plan for AIDS Relief (“PEPFAR”), Ministry of Health, and Woman Inc. (an NGO based in Jamaica), piloted a referral protocol that included a GBV screening tool and mapping of GBV referral systems. It also included protocols for all sexual orientations and gender identities.¹⁶⁷

In 2018, 60 healthcare workers across the island benefited from training to identify and handle cases of GBV. The training was conducted by the National Family Planning Board, in collaboration with Health Policy Plus (a seven-year cooperative agreement

¹⁶⁴ Ibid., at 16.

¹⁶⁵ Ibid., at 20.

¹⁶⁶ Over 700 Cases Referred to Domestic Violence Centres Jamaica Observer, Jamaica Observer, <https://www.jamaicaobserver.com/news/over-700-cases-referred-to-domestic-violence-centres/>

¹⁶⁷ Health Policy Plus, *Integrating Gender-based Violence Screening and Referral into Health Services to Address the Needs of Women and Other Vulnerable Populations* (2014), <http://www.healthpolicyplus.com/archive/browseHPP.cfm?get=757>.

funded by the USAID). The initiative was carried out as a training of trainers in the field, who subsequently administer similar training to the staff members at their respective health care facilities.

In 2021, the Prime Minister Andrew Holness confirmed that “nurses, police officers, justice system personnel, and other frontline workers would also benefit from training in understanding violence.”¹⁶⁸ In June 2022, under the EU Spotlight Initiative, “UNFPA, in collaboration with the Bureau of Gender Affairs Jamaica (BGA)...launched the Intersectoral and Interagency Referral Protocol and Standard Operating Procedures.” The interagency MOU seeks to improve interagency collaboration to increase collaboration between the “health, justice, social services, and education sectors.”¹⁶⁹

¹⁶⁸ Latonya Linton, *Gender-Based Violence Training For Front-Line Workers*, Jamaica Information Service (22 April, 2021) <https://jis.gov.jm/gender-based-violence-training-for-front-line-workers>.

¹⁶⁹ *UNFPA launches Referral Protocol and Standard Operating Procedures in Jamaica* (15 June, 2022) <https://caribbean.unfpa.org/en/news/unfpa-launches-referral-protocol-and-standard-operating-procedures-jamaica>. At the time of the publication of this report, the Standard Operating Procedures had not been made public.

VI. User-Experience II: Existing Legal Barriers to Gender Equity



VI. USER-EXPERIENCE II: EXISTING LEGAL BARRIERS TO GENDER EQUITY

Jamaican law is derived from common law, legislation and regulations passed by the Parliament and regulatory government bodies, and the Constitution of Jamaica, 1962 (the “**Constitution**”). Additionally, Jamaica is subject to obligations under international law by virtue of its membership in regional and international organisations, including the Organization of American States (“**OAS**”) and the UN. Jamaica is a dualist state, which means international treaties have to be domesticated within national legislation to have full effect.¹⁷⁰ In cases where there are inconsistent provisions among the sources of law, the Constitution of Jamaica will prevail over any other source.¹⁷¹

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, including Jamaica.

In this section, we will analyse the Constitution, specific legislation, and policies 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.

Jamaica, 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.

¹⁷⁰ Stephen C. Vasciannie, *Human Rights Law in the Commonwealth Caribbean*, UN, https://legal.un.org/avl/pdf/ls/Vasciannie_outline.pdf.

¹⁷¹ Constitution of Jamaica, 1962 (rev. 2015), sec. 2 (hereinafter “Constitution”).

Jamaica ratified CEDAW in 1984 (with a reservation that was later withdrawn),¹⁷² but it does not have full effect domestically because it has not been incorporated into legislation which is required in a dualist system. Although the state's actions must still be consistent with CEDAW,¹⁷³ justice sector institutions have not fully embraced its provisions around non-discrimination. Failure to incorporate such treaties into legislation leaves a protection gap and also limits opportunities for the courts to rely on critical human rights provisions within their decision making.

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 exhausted their domestic remedies. It is critical that survivors have the option to elevate their cases where the state has failed to provide an effective remedy especially since Jamaica does not have an independent national human rights institution that is in compliance with the Paris Principles relating to the status of National Human Rights Institutions developed by the Global Alliance of National Human Rights Institutions.

With both the high rates of GBV and femicide in Jamaica,¹⁷⁴ 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.¹⁷⁵ 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 Jamaica that impacts survivors.

¹⁷² UN Treaty Body Database, “Ratification Status for Jamaica”,

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=86&Lang=EN.

¹⁷³ Concluding observations of the Committee on the Elimination of Discrimination against Women: Jamaica, CEDAW/C/JAM/CO/6-7, at para. 10, (July 2012).

¹⁷⁴ UNFPA, “UNFPA in Jamaica collaborates with Government and CSOs to address GBV and Family Violence, Scale up HFLE” (19 January 2022),

<https://caribbean.unfpa.org/en/news/unfpa-jamaica-collaborates-government-and-csos-address-gbv-and-family-violence-scale-hfle-0>.

¹⁷⁵ CEDAW, General Recommendation No. 19, 11th Sess., at para. 9 (1992).

A. The Constitution & Charter of Fundamental Rights

The Constitution recognises that “the state has an obligation to promote universal respect for, and the observance of, human rights and freedoms”¹⁷⁶ and that “all persons in Jamaica are entitled to . . . fundamental rights and freedoms.”¹⁷⁷ Fundamental rights and freedoms are guaranteed under section 13 of the Constitution, including the “right to life, liberty and security of the person;”¹⁷⁸ “the right to equality before the law;”¹⁷⁹ and “the right to freedom from discrimination” based on gender, race, place of origin, social class, religion, and political opinions,¹⁸⁰ as well as the “right of every child” to protection, as required.¹⁸¹ Section 13 also provides protection from “torture or inhuman or degrading punishment or other treatment.”¹⁸² In this regard, the Constitution explicitly recognises the right of women and girls to be protected and free from GBV, which could contravene a woman’s or girl’s fundamental rights to “life, liberty and security” and “to freedom from discrimination” based on gender.

The Charter of Fundamental Rights, which repealed and replaced the Bill of Rights chapter in the Constitution, broadly guarantees the rights to equal protection and humane treatment by the state.¹⁸³ Unfortunately, in section 13(3)(i), which deals with discrimination by private actors, the list of protected groups, does not include discrimination on the basis of sex or sexual orientation, which would apply to LGBTQ+ persons. The international human rights trends are clear that LGBTQ+ persons should be afforded these protections. For example, in the context of employment discrimination, over 100 countries provide protections to LGBTQ+ persons globally, including Antigua and Barbuda, Belize, Bahamas, Barbados, British Virgin Islands, Cuba, Grenada, Montserrat, and Turks and Caicos in the Caribbean.¹⁸⁴ The Charter also contains a savings clause, which prevents pre-Independence laws from being subject to judicial review, as indicated in sections 13(12) and 18). This includes clauses that are specifically directed at upholding the criminalisation of homosexual activities, unions

¹⁷⁶ Constitution, sec. 13.1.a.

¹⁷⁷ Ibid., sec. 13.1.b.

¹⁷⁸ Ibid., sec. 13.3.a.

¹⁷⁹ Ibid., sec. 13.3.g.

¹⁸⁰ Ibid., sec. 13.3.i.

¹⁸¹ Ibid., sec. 13.3.k.

¹⁸² Ibid., sec. 13.6.

¹⁸³ Parliament of Jamaica, Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act (2011), sec. 13(3)(g); 13(3)(h) (hereinafter “Charter”),

https://www.google.com/search?q=jamaica+charter+of+fundamental+rights+and+freedoms&rlz=1C5CHFA_enGB901GB901&oq=Jamaica+Charter+of+Fundamental+Rights+and+Freedoms&ags=chrome.0.0i512j0i390l4j69j60.3098j0j4&sourceid=chrome&ie=UTF-8.

¹⁸⁴ Equaldex, LGBT employment discrimination by country, <https://www.equaldex.com/issue/employment-discrimination>.

and abortion.¹⁸⁵ “The savings law clauses have resulted in the court abdicating, as Lord Nicholls put it, “its responsibility to ensure that the people of a country, including those least able to protect themselves, have the full measure of protection against the executive which a constitution exists to provide.”¹⁸⁶ The Jamaican Parliament had an opportunity to remove the savings clause during the drafting of the 2011 Charter of Rights, as recommended by the Constitutional Commission, but rejected the recommendation.¹⁸⁷

The savings clause acts as a colonial chain that binds the Jamaican government and the Constitution to norms that the colonial powers have now abandoned themselves.

In a similar situation, to maintain continuity with the laws as a state transitioned from colonial rule to independence, Belize time-barred its savings clause to be effective for only five years after independence. Today, courts in Belize have no restrictions on striking down laws inconsistent with human rights.

B. The Domestic Violence Act, 1995 (Amendment) 2004 (“DVA”)

The DVA provides specific protection for a “prescribed person” and their “dependants” in the form of protection and/ or occupation orders authorised by the courts against the accused for a specific duration of time.¹⁸⁸ Under the DVA, a “prescribed person” includes a spouse, parent, child, members of the respondent’s household, and those who are in a “visiting relationship” with the respondent.¹⁸⁹ As visiting relationships are between a “man and a woman” under the DVA, the court will only consider the safety of a person in a heterosexual visiting relationship with the respondent. The added vulnerabilities of LGBTQ+ persons is likely exacerbated by their exclusion from the definition of “Spouse” under the Property (Rights of Spouses) Act of 2004 and Maintenance Act of 2005 which disentitles LGBTQ+ persons from the protections thereunder, including, a presumption that each spouse is entitled to one-half share of the family property.

¹⁸⁵ Charter, sec. 13(12)(a-c), 13(1)(a-b).

¹⁸⁶ Deniece A. Beaumont Walters, *Commonwealth Caribbean Constitutions and Savings Law Clauses*, DBW Legal, <https://dbwlegal.com/constitutions-and-savings-law-clauses/>.

¹⁸⁷ Tenesha Myrie, A bunch of cowards, *The Gleaner* (December 16, 2018), <https://jamaica-gleaner.com/article/commentary/20181217/tenesha-myrie-bunch-cowards#:~:text=The%20current%20savings%20law%20clause%20in%20Section%2013%2812%29,where%20these%20laws%20and%20punishments%20violated%20constitutional%20rights.>

¹⁸⁸ Parliament of Jamaica, *The Domestic Violence Act of 2004*, sec. 4(2)(a) (hereinafter “DVA”), <https://jamaicansforjustice.org/understanding-the-domestic-violence-act/>.

¹⁸⁹ DVA, sec. 2(1).

A further oversight is that the DVA does not cover sexual violence. This creates a gap in the law for survivors who seek protection or occupation orders if they have been sexually assaulted by their partner. Proposed amendments to the DVA will seek to close these gaps by expanding the relevant definition to include psychological, emotional, and sexual violence.¹⁹⁰

One of the DVA's limitations is that it fails to provide an expansive definition of domestic violence, ignoring emotional, economic, and spiritual¹⁹¹ coercion that creates an oppressive and dangerous environment. Rather, the legislation only focuses on "physical or mental injury," as grounds for seeking a protection or occupation order.

The ripple effects of this limited definition within the DVA, combined with the facts that criminal penalties are not based on the degree of the domestic violence act committed and that the OAPA only provides for law enforcement to charge someone with a crime when it results in physical harm all create an environment where law enforcement does not seriously investigate all manifestations of domestic violence outside of those resulting from visible physical abuse.¹⁹²

In contrast, the Domestic Violence Act (1999) of Trinidad and Tobago includes "emotional or psychological or financial abuse" in its definition of domestic violence.¹⁹³ Additionally, to point to some of the provisions that cover gaps apparent in a review of protections available through courts in Jamaica, discussed below, the Trinidadian Act enables courts to make orders return property, pay compensation for monetary loss resulting from domestic violence, pay rent or mortgage, and provide financial support for the applicant and their dependents.¹⁹⁴ Additionally, the Trinidadian Act provides for Interim Protection Orders, which can be granted without notice to the respondent in urgent situations, further enhancing the protection offered to victims.¹⁹⁵

¹⁹⁰ Chris Patterson, "Amendments To Domestic Violence Act For The House Before End Of June", *Jamaica Information Service* (9 June 2021),

<https://jis.gov.jm/amendments-to-domestic-violence-act-for-the-house-before-end-of-june/>.

¹⁹¹ DVA, at sec. 4(2)(a). Spiritual coercion: use of religion to justify why a woman must be subservient to her male partner (a form of supremacy) to create an environment that is oppressive and abusive.

¹⁹² OAPA, sec. 40.

¹⁹³ Domestic Violence Act, Chap. 45:56, p.6, Laws of Trinidad & Tobago (1999),

<https://data.miraquetemiro.org/sites/default/files/documentos/Domestic%20Violence%20Act%20of%20Trinidad%20and%20Tobago.pdf>

¹⁹⁴ *Ibid.* at 10-11.

¹⁹⁵ *Ibid.* at 14.

One of the key provisions of the Jamaica DVA is the inclusion of third parties who could apply for protection or occupation orders on behalf of the survivor directly with the court. This could be either a Constable (law enforcement) or “any other person . . . with leave of the Court.”¹⁹⁶ The inclusion of this provision eases the burden on survivors who have just experienced trauma, are currently displaced from their home, or are at risk of further violence. Unfortunately, law enforcement, who are best situated to file a third party protection order on behalf of the survivor, rarely shoulders this responsibility.¹⁹⁷ Even when a survivor does apply for a protection or occupation order, the process often takes six to eight weeks before it is approved.¹⁹⁸

Courts issuing protection orders can bar the accused from the house, place of work, children’s school etc., yet, most of these orders only restrain the accused from coming within a few arm’s length of the survivor.¹⁹⁹ The lack of sufficient physical boundaries enumerated in typical protection orders by Family Law judges creates countless opportunities for those orders to be violated, putting both the survivor and their dependants at continued risk.²⁰⁰ The breach of a protection order may result in a monetary fine and/or the arrest of the accused only if the accused was personally served and the accused then breached the protection order in any manner.²⁰¹ The fine currently is \$10,000JMD and / or six months imprisonment, but has had little effect in deterring persons according to critics.²⁰² Proposed amendments to the DVA will increase the penalty to \$1 million JMD if passed.²⁰³ Some advocates are also critical of the proposed increased fine as the funds are not allocated to the victim / survivor or any assistance programs.²⁰⁴ Law enforcement may arrest a person if they “believe that the arrest of that person is necessary for the protection of the prescribed person.”²⁰⁵

However, holding the accused accountable for violations of protection or occupation orders is extremely rare, even with proposed changes to the DVA that include greater monetary penalties²⁰⁶ for those who violate protection orders.²⁰⁷ The increased

¹⁹⁶ DVA, sec. 3(a)(b).

¹⁹⁷ Interviews with police. Discussed further on p.74.

¹⁹⁸ Interview of CSO partner conducted by ICAAD, 3 May 2022; Interview of CSO partner conducted by UN Women, 15 November 2021.

¹⁹⁹ Interview conducted by ICAAD of Parish Court judges, 4-5 October 2022.

²⁰⁰ Interview conducted by ICAAD of Parish Court judges, 4-5 October 2022.

²⁰¹ DVA, sec. 5(1)(2).

²⁰² Kimberly Hibbert, *A big dirty joke*, Jamaica Observer (January 19, 2020), <https://www.jamaicaobserver.com/news/a-big-dirty-joke/>

²⁰³ *\$1m fine for persons who disobey protection orders from the court*, Loop News (June 8, 2021), <https://jamaica.loopnews.com/content/million-fine-persons-who-disobey-protection-orders-court>.

²⁰⁴ Interview conducted by ICAAD of Parish Court judges, 4-5 October 2022.

²⁰⁵ DVA, sec. 5(3).

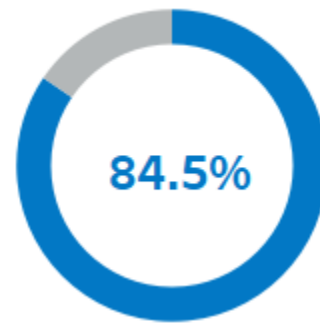
²⁰⁶ From 10,000 JMD to 1 million JMD, via Patterson (June 2021).

²⁰⁷ Interview conducted by ICAAD of Parish Court judge, 4 October 2022.

penalties will likely only make it more difficult for the survivor who may be reliant on the income of her partner. The better alternative is for any monetary penalties to be allocated to the survivor or put in a victim's compensation fund. When granting occupation orders,²⁰⁸ the court may designate the duration, the terms, and the conditions of the occupation which the court sees fit.²⁰⁹

An occupation order may require both the survivor and the accused to occupy the same household, and in such instances, the court may grant orders for the use of shared household items,²¹⁰ as well as the payment of rent, mortgage, or utilities by the accused.²¹¹ Family Court judges²¹² have noted how untenable it is to require both parties to occupy separate sections of the home. Not only are such orders problematic from a safety standpoint, but they also implicitly sanction the survivor (and dependants) by curtailing their freedom within the home. Unlike protection orders, no specific criminal or civil liabilities are provided for breaches of an occupation order in the DVA.²¹³

Certain provisions in the DVA would improve the outcomes for survivors, but are not often used. For example, “[W]here the Court grants an occupation order on an *ex parte* application, the Court shall at the same time make an interim protection order.”²¹⁴ In addition, the court could also grant a maintenance order simultaneously.²¹⁵ The only limitation is that the maintenance order only exists for the duration of the protection or occupation order.²¹⁶ Nonetheless, those orders can be given for several months²¹⁷ and



children aged 2-14 years experienced violent discipline in their home one month prior to the survey

Figure 5: Corporal Punishment of children in Jamaica

²⁰⁸ DVA, sec. 7(3).

²⁰⁹ DVA, sec. 7(2).

²¹⁰ DVA, sec. 12; This occurs even in situations where the court has found that only one party was at fault and committed violence. Interview conducted by ICAAD of Parish Court judge. 4 October 2022.

²¹¹ UN Women, “Caribbean - Jamaica”,

<https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/jamaica>.

²¹² Interview conducted by ICAAD of Parish Court judges, 4-5 October 2022.

²¹³ DVA, sec. (9).

²¹⁴ DVA, sec. 7(3).

²¹⁵ DVA, sec. 4(5).

²¹⁶ DVA, sec. 4(5).

²¹⁷ Occupation orders “shall continue in force for a period of three months . . . unless the Court otherwise directs”, via DVA, sec. 12(2).

would save survivors from having to unnecessarily come back to the court and apply separately for maintenance.

Finally, corporal punishment does not fall under the DVA. While corporal punishment is unlawful “as a disciplinary measure in penal institutions,” it is not illegal in the home, though the government and Prime Minister have made public statements about reforming the laws to prohibit corporal punishment in all settings.²¹⁸ Corporal punishment should be banned because it perpetuates a cycle of violence, teaching individuals that physical aggression is an acceptable means of resolving conflicts, much like the dynamics observed in domestic violence situations. Furthermore, by legally allowing such punitive measures, society implicitly condones the use of physical force in interpersonal relationships, which can embolden abusers and blur the lines between discipline and abuse.²¹⁹

Several changes to the DVA have been proposed by Jamaica’s Ministry of Culture, Gender, Entertainment, and Sport, and a draft bill was created in consultation with the Office of the Chief Parliamentary Counsel and Attorney General’s Chambers. As of the publication of this report, no amendments have been passed.²²⁰

Violence is a learned behaviour and getting at the historical and contemporary roots of violence in Jamaica requires a definitive prohibition against all forms of corporal punishment anywhere.

C. Offences Against the Person Act 1962

Criminal offences are covered by the OAPA. Under the OAPA, forms of GBV that cause physical injury, such as wounding²²¹ and aggravated assaults²²² are subject to criminal liability. In many jurisdictions, including Jamaica, legislation around domestic violence is bifurcated between civil and criminal legislation. This separation undermines the severity and unique challenges posed by domestic violence which includes the:

²¹⁸ End Violence Against Children | End Corporal Punishment, *Country Report for Jamaica* (August 2022), <https://endcorporalpunishment.org/reports-on-every-state-and-territory/jamaica/>.

²¹⁹ Jeff R. Temple, PhD, et.al. *Childhood Corporal Punishment and Future Perpetration of Physical Dating Violence*, *J Pediatr*. 2018 Mar; 194: 233–237, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5826833/>.

²²⁰ Sheri-Kae McLeod, *Jamaica’s domestic violence law on the cards for coming year*, *Caribbean National Weekly* (June 10, 2022), <https://www.caribbeannationalweekly.com/news/jamaicas-domestic-violence-law-on-the-cards-for-coming-year/>.

²²¹ OAPA, sec. 13;20; 22.

²²² OAPA, sec. 40.

- 1) act of abuse;
- 2) a breach of trust; and
- 3) severe psychological or emotional impacts on dependents within the home as well as how these intersect with divorce, marriage, property, and child protection and custody.

Common and aggravated assaults do not accurately reflect the full spectrum of harm that arises from the breach of trust in domestic violence situations. One clear example of this is that sec. 40 of the OAPA, which covers aggravated assaults on women and children, has a prison term not to exceed six months. This is a disproportionately low sentence for criminal acts that result in severe injuries, whereas, sec. 20 which covers grievous bodily injury can result in a life prison term.

Specific legislation that incorporates both the civil and criminal aspects of domestic violence is vital to ensuring proper forms of redress, including sentencing that matches the gravity of the offence.

Other aspects of the OAPA that impact women and girls are related to reproductive health. Abortions are illegal under the OAPA and those who have an abortion can be jailed for life and their doctor imprisoned for life as well.²²³ Under the general criminal law defence of necessity, an abortion may be performed to save a pregnant woman's life.²²⁴ In theory, the English case of *R v Bourne* [1938] 1 KB 687 would apply in Jamaica as the abortion provisions under the OAPA are close to identical to those of the Offences Against the Persons Act 1861 (England, Wales and Northern Ireland).²²⁵ In this case, the court decided that if the doctor holds the opinion that the probable consequence of continuing the pregnancy would cause physical or mental harm to the woman, then the termination of the pregnancy is an act towards the preservation of life and therefore lawful.²²⁶ While this precedent has been broadly embraced by the Jamaican government since 1975, it has never been tested in a Jamaican court.²²⁷

²²³ OAPA, sec. 3(2).

²²⁴ Saramaria Virri, *Coming to Terms: The Social Costs of Unequal Access to Safe Abortions*, "Caribbean Policy Research Institute", at 7 (February 2021), <https://www.capricaribbean.org/documents/coming-terms-social-costs-unequal-access-safe-abortions>.

²²⁵ *Ibid.*, at 7.

²²⁶ *Ibid* 7; *R v Bourne* [1938] 1 KB 687.

²²⁷ *Ibid.*, at 7.

Also, the drawbacks of *Bourne* are that (1) the principle only provides an abortion provider with a defence against a criminal charge, it does not shield him/her from criminal prosecution, and (2) the burden is on the provider to establish that the abortion was necessary.²²⁸ Given the ambiguity of the law, most medical practitioners avoid performing the procedure and, if they do, it is expensive and not made openly available.²²⁹ The general position, therefore, is that abortions can only be performed ‘legally’ in cases of rape, incest and extreme abnormality of the foetus or danger to the mother. There is anecdotal evidence to suggest that these laws are rarely enforced but they nevertheless contribute to an environment of uncertainty and criminality.²³⁰ Wealthier women, who can afford the procedure and find a “discreet doctor,” can obtain abortions, whereas poorer women rarely have this option, which means they often turn to unsafe methods.²³¹

D. Sexual Offences Act, 2009

Sexual offences are separately covered under the Sexual Offences Act, 2009 and the Child Pornography (Prevention) Act, 2009. Sexual offences that are covered by the SOA include rape,²³² “grievous sexual assault,”²³³ sexual abuse of a child²³⁴ and persons with mental incapacity,²³⁵ and sex trafficking and procurement.²³⁶ Lacking within the legislation is a comprehensive definition of rape. Under the SOA, rape is committed when a man has sexual intercourse with a woman without a woman’s consent or recklessly does not consider whether the woman consents or not.²³⁷ Rape is further limited to where there is a male perpetrator and a female victim and only when there is penile penetration of the vagina.²³⁸ Men cannot be victims of the crime of rape. Moreover, there is no express definition of consent requiring free and voluntary consent to be given.²³⁹ The legislation also fails to make clear that evidence of resistance, for example physical injuries, should not be necessary to prove that the

²²⁸ *Ibid.*, at 7.

²²⁹ *Ibid.*, at 7.

²³⁰ Lillian Perlmutter, “Jamaica Could Finally Decriminalize Abortion”, *Vice News* (13 April 2021), <https://www.vice.com/en/article/bvzg5d/jamaica-could-finally-decriminalize-abortion>.

²³¹ Maria Luna Kistic, “Reproductive Rights in Jamaica: Abortion”, *Left Alliance for National Democracy and Socialism*

(16 February 2021), <https://www.jalands.org/media/opinion-pieces/2021/2/16/reproductive-rights-in-jamaica-abortion>.

²³² SOA, sec. 3(1).

²³³ SOA, sec. 4(1).

²³⁴ SOA, sec. 10.

²³⁵ SOA, sec. 16.

²³⁶ SOA, sec. 18.

²³⁷ SOA, sec. 3(1).

²³⁸ SOA, sec. 3(1).

²³⁹ *Ibid.*

sexual activity took place without consent. It also does not clarify that consent cannot be inferred from the victim's submission or silence during the assault.²⁴⁰

A man who commits the offence of rape is liable to imprisonment up to life, but not less than 15 years.²⁴¹ While both the offences of rape and grievous sexual assault provide a minimum sentence of 15 years' imprisonment if convicted in the Supreme Court, a person convicted of "*grievous sexual assaults*" on summary conviction in a Parish Court will only be given a maximum of three years' imprisonment.²⁴² Concerningly, however, under the SOA, there is no offence committed when there has been non-consensual penile penetration of the anus (irrespective of gender). Instead, this is covered by Jamaica's arcane "buggery laws" (see below). Anal sex between a man and a woman and between men is criminalised as the offence of "buggery" which has a maximum sentence of up to 10 years' imprisonment.²⁴³ There is no discussion in the Act regarding consent, and the crime applies equally to consenting adults. It should be noted that buggery is set out in the same section of the Act as the criminal offence of bestiality,²⁴⁴ revealing how outdated and homophobic the law is, as well as being incongruous with basic human rights norms. Furthermore, differing penalties for the act of rape creates unequal protection under the law – whereas the maximum penalty for vaginal rape is imprisonment for life, the maximum penalty for anal rape is 10 years.

In addition, there is an offence for attempted buggery which is punishable by seven years' imprisonment²⁴⁵ and a prohibition on acts of "gross indecency"²⁴⁶ which is generally understood to mean physical intimacy between gay men or lesbian women in public or in private.²⁴⁷ This is punishable for a maximum term of two years.²⁴⁸ Under the SOA, men convicted of buggery may have their case inputted into the Sex Offender Registry and be subject to reporting requirements.²⁴⁹ The buggery laws therefore legitimise discrimination against members of the LGBTQ+ community in Jamaica and create an environment of impunity for acts of violence against them. The

²⁴⁰ Ibid.

²⁴¹ SOA, sec. 6(1)(a).

²⁴² SOA, sec. 6.

²⁴³ OAPA, sec.76.

²⁴⁴ OAPA, sec.76.

²⁴⁵ OAPA, sec. 77.

²⁴⁶ OAPA, sec. 79.

²⁴⁷ Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT people in Jamaica*, at 10 (21 October 2014),

<https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica>.

²⁴⁸ OAPA, sec. 79.

²⁴⁹ SOA, Part VII, sec. 29-33.

intentional legislative drafting and use of heterosexual binary terms²⁵⁰ in defining the act of rape to the exclusion of LGBTQ+ persons, is a direct assault on the very principles of non-discrimination, contradicting the protections purported to be upheld by the Constitution and Charter of Fundamental Rights, and violating several international treaties that Jamaica has ratified.

Other factors that impact gender equity within the SOA include marital rape, which is considered a criminal act in only very specific circumstances. Criminal liability attaches when:

- 1) spouses have separated;
- 2) there is a written separation agreement;
- 3) dissolution of marriage proceedings have been instituted;
- 4) a protection or occupation order has been granted; or
- 5) the husband is aware he is suffering from a sexually transmitted infection.²⁵¹

Thus, marital rape is not criminalized when it falls outside these circumstances. Furthermore, under the SOA, the implications of the narrow scope of criminal liability attaching in circumstances of marital rape mean that unmarried women have greater protection than married women, and married men have no recourse for sexual intercourse from their wives.

Moreover, the Sex Offender Registry is not public, and can be accessed only by those who are deemed to have a “legitimate interest.”²⁵² In other words, even if the victim submits a request for access to such information to the Commissioner of Corrections, access to the Registry might not be granted.

²⁵⁰ DVA, sec. 2.

²⁵¹ SOA, sec. 5.

²⁵² Department of Correctional Services, “Sex Offender Registry”, <https://www.dcs.gov.jm/pages/probation-services/sex-offender-registry/>. Those deemed to have a legitimate interest are “members of the Jamaica Constabulary Force; persons engaged in the professional counselling of sex offenders; prospective employers and employees of the sex offender; persons managing facilities for the care or treatment of vulnerable persons at which the sex offender is, or has applied to be, a patient, employee or volunteer; persons managing educational institutions at which the sex offender is enrolled or is seeking to enroll; persons acquiring information approved by the Minister for statistical purposes; and a parent, guardian, caregiver, nearest relative or person having an association with the sex offender.”

Sexual offences against children are also addressed in the SOA. Concerningly, the SOA first defines a child as under the age of 18 within the SOA,²⁵³ but for purposes of sexual offences against children and indecent assault, defines a “child” as under the age of 16.²⁵⁴ This removes statutory rape as a criminal act for adults who have sex with minors who are 16 and 17 years old, and because the SOA criminalises sexual intercourse by a “person” (i.e. not an adult) who has sex with another person simultaneously criminalises consensual sexual relationships between minors who are under 16.²⁵⁵ Moreover, the legislation provides as a defence an adult under the age of 23 who has sex with a minor under 16 years of age, but had “reasonable cause to believe the . . . person was of or over the age of sixteen.”²⁵⁶ The combination of these provisions shields adult men who have sex with minors to the detriment of children.

A couple of positive elements with the SOA are that the common law presumption of incapacity for boys under the age of 14 to commit rape or any other sexual offence has been abolished²⁵⁷ and that corroboration (which was a requirement for the veracity of a rape complainant’s testimony to be corroborated with other evidence) is not required, however a judge may give a corroboration warning to the jury.²⁵⁸

E. Committal Proceedings Act, 2014 (“CPA”)

For indictable sexual offences, speed is a crucial element to ensuring that victims are not unnecessarily retraumatised by events and to ensuring there is no loss of faith in the court process.²⁵⁹ This was recognised by the Jamaican government and in 2014, it passed the Committal Proceedings Act which introduced committal proceedings in the Parish Courts in respect of indictable offences which generally speaking are more serious offences like rape and some forms of assault. On the other hand, committal proceedings are a form of preliminary hearings, undertaken to consider whether there is sufficient evidence to go to trial. These proceedings can be conducted wholly on the basis of the written statements taken from the survivor, accused, and other witnesses. The Parish Judges decide on the basis of the written statements whether the accused will be committed to stand trial or shall be discharged. This new process has significantly reduced the length of time matters take to go through the court

²⁵³ SOA, sec. 2.

²⁵⁴ SOA, sec. 8.

²⁵⁵ SOA, sec. 10.

²⁵⁶ SOA, sec. 10(3).

²⁵⁷ SOA, sec. 24.

²⁵⁸ SOA, sec. 26.

²⁵⁹ Jurist Project, *Model Guidelines for Sexual Offence Cases in the Caribbean Region*, at 23 (2017),

<https://juristproject.org/wp-content/uploads/2019/08/Model-Guidelines-for-Sexual-Offence-Cases-in-the-Caribbean-Region-For-website.compressed-1.pdf>.

process and is considered to be a more efficient and effective process than prior forms of preliminary hearings.²⁶⁰ There is some concern that the written statements from the survivor taken by the police may be the only evidence provided in such proceedings, whether in respect to sexual or domestic violence cases. Relying solely on police written statements from a victim who has recently been traumatised potentially creates an evidentiary problem. Therefore, without a more meaningful examination of the matter, many cases may be summarily dismissed.

F. Child Pornography Prevention Act, 2009 (“CPPA”)

Other crimes related to sexual exploitation and offences against children are covered in the CPPA. In addition to offences dealing with the direct participation in child pornography or personal possession, under the law, where a person does not directly participate in the production or personally possess child pornography, persons who derive financial or other benefits from the production and distribution or use of children in child pornography are criminally liable under section 7 of the CPPA. Distribution includes the sale, import or export, or publication of child pornography in any form, and can result in imprisonment for up to 20 years.²⁶¹

G. Child Care and Protection Act, 2004 (“CCPA”)

As stated previously, no legislation expressly prohibits corporal punishment in all spaces, including CCPA and the Education Act of 1965.²⁶² Under the Flogging Regulation Act of 1903, corporal punishment in penal institutions was allowed until it was repealed in 2013 by the Law Reform (Flogging and Whipping) (Abolition) Act. The CCPA also prohibits under section 62 corporal punishment in penal settings.

The CCPA prohibits assault “likely to cause that child unnecessary suffering or injury to health,”²⁶³ but the language leaves open the possibility that there are times where it is necessary to punish a child through violence. Unfortunately, even a draft policy to amend the CCPA did not find any problem with section 9 and made no recommendations to expressly forbid corporal punishment even when the Office of the Children’s Advocate recommended the prohibition of corporal punishment in all

²⁶⁰ Ibid., at 25.

²⁶¹ CPPA, sec. 4(2), 4(3).

²⁶² It is permissible for a teacher to apply “moderate and reasonable” corporal punishment, *Ryan v Fildes* [1983] 3 All E.R.517.

²⁶³ Parliament of Jamaica, Child Care and Protection Act 1991, sec. 9(1) (hereinafter “CCPA”).

settings.²⁶⁴ The one place where the CCPA does prohibit corporal punishment is when the child is in a “place of safety” or alternative care settings.²⁶⁵

Similarly problematic is section 24 of the CCPA which allows a parent or guardian to bring a child they are “unable to control” before the Juvenile Court, where a judge can commit the child under a correctional order.²⁶⁶ That fact that a child is found to be “destitute, wandering, or begging,”²⁶⁷ susceptible to being exposed to a moral danger, and is brought by their guardian to court, is sufficient for the court to intervene if the parents prove they are unable to control the child. As a result of this legislation, judges have incarcerated “uncontrollable” children, including girls with histories of facing domestic and sexual violence in the home as well as those with mental illnesses,²⁶⁸ in adult correctional facilities, including facilities that house inmates for serious crimes (e.g., murder).²⁶⁹

In June 2023, Jamaica repealed section 24 of the CCPA “ending the practice of children deemed uncontrollable.”²⁷⁰ These types of laws are broadly categorised as status offences, which are non-criminal actions that are violations of the law merely because they were committed by a child.²⁷¹

Both the lack of explicit prohibition on corporal punishment and criminalising of children for status offences runs contrary to the intent and spirit of the legislation that purports to give deference and holds as the paramount consideration the “best interests of the child.”²⁷² However, the recent repeal of section 24 and amendment to the CPPA has shifted this landscape. No longer are children who are deemed

²⁶⁴ Global Initiative to End All Corporal Punishment of Children, *Corporal punishment of children in Jamaica*, at 2, <http://www.endcorporalpunishment.org/wp-content/uploads/country-reports/Jamaica.pdf>.

²⁶⁵ CCPA, sec. 62.

²⁶⁶ CCPA, sec. 24(1).

²⁶⁷ CCPA, sec. 8(2).

²⁶⁸ Stand Up for Jamaica et al., *Incarceration of Children Considered Beyond Parental Control* (2016), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JAM/INT_CCPR_CSS_JAM_25268_E.pdf.

²⁶⁹ OCA, *Focusing on the Uncontrollable Child* (March 2013), <https://www.welcome.oca.gov.jm/media/RECOMMENDATIONS-TO-THE-HOUSES-OF-PARLIAMENT.pdf>.

²⁷⁰ Jamaica Observer, *Amendment to CCPA Creates a Kinder, Gentler Environs for Children*, <https://www.jamaicaobserver.com/2023/07/28/amendment-to-ccpa-creates-kinder-gentler-environs-for-children-will-jams/>. “Uncontrollable” is not defined under CCPA, and judges have the authority to criminalise behavioural issues or status offences

²⁷¹ In March 2023, prior to the repeal of section 24 in Jamaica, ICAAD supported Operation Safe Space (OSS) to bring a constitutional challenge against similar legislation in Barbados under the Reformatory and Industrial Schools Act. The High Court ruled that the “wandering” legislation was found to be unconstitutional and discriminatory on the basis of age and gender. Shamar Blunt, *Ruling on Wandering Charge Progressive, says Human Rights Activist*, Barbados Today, <https://barbadostoday.bb/2023/03/03/ruling-on-wandering-charge-progressive-says-human-rights-activist/>.

²⁷² See generally CCPA.

uncontrollable imprisoned, instead, the legislation mandates that the child receive proper education and non-residential therapy by behavioural specialists.²⁷³ Nevertheless, if a residential therapeutic order is given,²⁷⁴ previous documentation of residential housing have proven to be woefully inadequate in fulfilling the legislative requirement of care and protection.²⁷⁵ Therefore, it is vital that reform in the residential housing system matches the legislative reform undertaken. Finally, reforms within the CCPA did not go far enough as it still permits the imprisonment of children 14 or older in adult correctional facilities²⁷⁶ in direct contravention of several human rights treaties, including the Convention on the Rights of the Child.²⁷⁷ Additionally, a child under 14 can be imprisoned for a term of up to 25 years.²⁷⁸

With respect to privacy, the legislation does prohibit the reporting of “name, address, or school, or include any particulars calculated to lead to identification.” This is critical especially in sexual offence cases of children.

H. Sexual Harassment Act, 2021

In October 2021, Jamaica passed the Sexual Harassment Act (“**SHA**”).²⁷⁹ This new law imposes duties on employers and institutions, including, but not limited to, educational institutions, correctional institutions, and medical facilities,²⁸⁰ to maintain a sexual harassment-free environment and to issue a policy for preventing sexual harassment.²⁸¹ The SHA also prohibits sexual harassment between workers, students, or other individuals within an institution,²⁸² and requires employers to take action in addressing sexual harassment claims.²⁸³

While the SHA formally recognised sexual harassment under Jamaican law, the law is limited in that the focus is on employers and institutions and does not cover sexual harassment in public spaces. If a survivor successfully wins their sexual harassment

²⁷³ CCPA (Amendment 2023), sec. 13(3), <https://www.japarliament.gov.jm/attachments/article/339/237-185--1-.pdf>.

²⁷⁴ CCPA (Amendment 2023), sec. 13(3), <https://www.japarliament.gov.jm/attachments/article/339/237-185--1-.pdf>.

²⁷⁵ Jamaicans for Justice, Quality of Care Critical Incident Report (2020).

²⁷⁶ CCPA, sec. 68 (1)(b) (“Provided that in the case of a child who has attained the age of fourteen years . . . the child may be committed to such place, including an adult correctional centre . . .”).

²⁷⁷ Convention on the Rights of the Child, General Assembly resolution 44/25, 20 November 1989.

²⁷⁸ CCPA, sec. 78(5).

²⁷⁹ Parliament of Jamaica, The Sexual Harassment Prevention and Protection Act 2021 (hereinafter “SHA”), <https://japarliament.gov.jm/attachments/article/339/The-Sexual-Harrassment--Prevention-and-Protection--Act--2021-.pdf>.

²⁸⁰ SHA, sec. 2. See also:

<https://mcges.gov.jm/index.php/gender/item/857-grange-get-ready-for-implementation-of-sexual-harassment-law>.

²⁸¹ SHA, sec. 4(1).

²⁸² SHA, sec. 9.

²⁸³ SHA, sec. 4,5.

case before the Sexual Harassment Tribunal, the Tribunal may only award civil remedies of damages.²⁸⁴ Imprisonment only occurs if there is a default of payment, but not exceeding three months.²⁸⁵ Thus, perpetrators who are found guilty of sexual harassment which does not arise to a sexual offence under the SOA, will not be criminally liable for their actions.

Though the Tribunal only has civil powers, those who constitute its members are drawn from various areas of expertise, including: gender affairs, attorneys, mediators, worker representation, mental health, and labour representation.²⁸⁶ Moreover, half the positions of the 14 appointed members “shall be females.”²⁸⁷

The Minister of Culture, Gender, Entertainment and Sport, Olivia “Babsy” Grange has informed the House of Representatives that a sexual harassment unit to investigate complaints has been established.²⁸⁸ Minister Grange further stated that, “we have already started to receive complaints, and we’ve been helping companies to put the necessary mechanisms in place to respond to them. So far, the Bureau of Gender Affairs has assisted 200 organisations to draft their sexual harassment workplace policies.”²⁸⁹

Further to the implementation of the Sexual Harassment Act, the Ministry of Culture, Gender, Entertainment and Sport has conducted “sensitisation and awareness-raising sessions with public and private sector organisations, NGOs, educational institutions, and other groups”²⁹⁰ in an effort to change prevailing opinions on sexual harassment. Rather than treating the issue as trifling, these sessions have sought to convey that “this is not a simple matter. It is a serious crime. Unwanted sexual advances, requests for sexual favours and crude sexual behaviours affect quality of life by creating an intimidating, hostile, or offensive environment.”²⁹¹

²⁸⁴ SHA, sec. 36(1).

²⁸⁵ SHA, sec. 39(1).

²⁸⁶ SHA, sec. 13.

²⁸⁷ SHA, sec. 13(3). The language of “females” would not inherently bar trans women for example, who may seek to be appointed as one of the members of the Tribunal.

²⁸⁸ Balford Henry, “Grange Setting Up Sexual Harassment Unit”, *Jamaica Observer* (8 June 2022), <https://www.jamaicaobserver.com/latest-news/grange-setting-up-sexual-harassment-unit/>.

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*

I. Sentencing Guidelines, the Criminal Justice Administration (Amendment) Act, 2015 (“CJAA”), and the Judicature (Appellate Jurisdiction) (Amendment) Act, 2021

One of the key concerns, when it comes to GBV cases, is the court’s treatment of those who plead guilty and then receive significant discounts for egregious offences. Judges have discretion on whether to accept or reject a plea based on the severity of the crime. According to the Sentencing Council in the UK, a maximum of a one-third discount should be given if the defendant pleads guilty at the first stage of the proceedings.²⁹² In addition, the Eastern Caribbean Supreme Court Sentencing Guidelines similarly outlines a one-third sentence discount.²⁹³ This is in stark contrast to the 50% discount provided by Jamaican courts. The importance of such discounts is magnified in domestic violence offences which garner disproportionately low sentences based on both statutory maximums and judicial discretion. However, this also has a significant impact on rape cases because guilty pleas allow for the courts to give a sentence below the mandatory minimum of 15 years.

In Jamaica, “the process of making an allowance for a guilty plea, as well as the level of the allowable discount, is governed by sections 42D and 42E of the CJAA.”²⁹⁴ The final discount awarded relies on judicial discretion. “[W]here the offender pleads guilty, the sentencing judge may reduce the sentence that would otherwise have been imposed on conviction after trial by up to:

- (i) 50%, where the plea is entered on the first relevant date;
- (ii) 35%, where the offender indicates to the court that he or she wishes to plead guilty after the first relevant date, but before the trial commences;
- (iii) 15%, where the offender pleads guilty, after the trial has commenced, but before the verdict is given.”²⁹⁵

²⁹² Sentencing Council, *Reduction in Sentence for Guilty Plea: Definitive Guideline*, <https://www.sentencingcouncil.org.uk/wp-content/uploads/Reduction-in-Sentence-for-Guilty-Plea-definitive-guideline-SC-Web.pdf>.

²⁹³ Eastern Caribbean Supreme Court, *Sentencing Guidelines Rules: Practice Direction 8A No. 1 of 2019*, at 2.

²⁹⁴ Sentencing Guidelines, at 10-2.

²⁹⁵ Criminal Justice (Administration) Amended Act 2015, sec. 42D(2)(a-c) (hereinafter “CCJA”), <https://supremecourt.gov.jm/content/criminal-justice-administration-amendment-act-2015>.

In circumstances where the offence that is the subject of the guilty plea is punishable by a prescribed minimum sentence such as in rape and grievous sexual assault cases, the sentencing judge “may reduce the sentence . . . without regard to the prescribed minimum sentence.”²⁹⁶ The sentencing judge “should also specify a period of not less than two-thirds of the sentence thus imposed which the offender must serve before becoming eligible for parole.”²⁹⁷ Therefore, even though the normal range for rape cases has been identified as 15-25 years in the Sentencing Guidelines Appendix,²⁹⁸ rape cases can fall below the statutory minimum guidelines, several examples of which we will cover in detail in the case law analysis section below.

It is only in murder cases, where even if plea discounts are considered, the court cannot impose a sentence that falls below the statutory minimum.²⁹⁹ In cases where there is a mandatory minimum sentence and the court feels that the circumstances of the case create a “manifestly excessive and unjust” sentence, the court can sentence the defendant to the minimum and provide them a certificate that would allow them to seek an Appeal against the sentence.³⁰⁰ This allows the Court of Appeal, under 13(1A) of the Judicature (Appellate Jurisdiction) Act, to impose a sentence below the mandatory minimum.

J. Rent Restriction Act 1944 (Amendment), 1983

The legislation gives landlords the authority to eject a tenant for nuisance and annoyance of neighbours or if the premises have been used for “immoral or illegal purpose.”³⁰¹ Thus, LGBTQ+ persons can arbitrarily be evicted because the landlord has wide discretion and LGBTQ+ persons’ actions and very existence are deemed to be immoral or illegal by a majority of Jamaicans. This leads to high levels of homelessness amongst the LGBTQ+ population, which creates additional vulnerabilities to domestic and sexual violence. Amendments to the Act in 2021 unfortunately did not address this discriminatory feature in the law.³⁰²

²⁹⁶ Sentencing Guidelines, at 10-4.

²⁹⁷ *Ibid.*, at 10-3.

²⁹⁸ *Ibid.*, at A-7.

²⁹⁹ OAPA, sec. 3(1)(b).

³⁰⁰ CJAA, sec. 42K(1)(a-b).

³⁰¹ Rent Restriction Act 1944 (Amendment), 1983, sec. 25(1)(c).

³⁰² Jamaica Observer, “Room for Discrimination in rent Restriction Act” (11 October 2021), <https://www.jamaicaobserver.com/letters/room-for-discrimination-in-rent-restriction-act/>.

K. Cybercrimes Act, 2015

In 2017, an activist, Latoya Nugent, used social media to publicly name perpetrators who sexually violated her. She was charged under sec. 9(1) of the Cybercrimes Act, which arises from using a computer “to send another person any data . . . that is obscene, constitutes a threat, or is menacing in nature; and intends to cause, or is reckless as to whether the sending of the data causes annoyance, inconvenience, distress, or anxiety, to that person or any other person.”³⁰³ While the law can be used to prosecute cyberbullying, cyberstalking, and online harassment, the legislation is so vaguely worded that a broad category of noncriminal acts could become criminalised and subject to fines or four years’ of imprisonment. In the Nugent case, charges were eventually dropped by the Department of Public Prosecution.³⁰⁴ Nevertheless, the use of such legislation to silence critics, political opponents, and survivors could set a dangerous precedent.

L. Maternity Leave Act, 1979

To modernise the Maternity Leave Act, amendments recognising the value of parental leave, to include fathers, have yet to be made. Paid parental leave is a means of ensuring that parents share the responsibilities of child rearing, and the law does not continue to reinforce traditional gender roles. Furthermore, the law is paternalistic because it requires a certificate from a medical practitioner asserting that the worker be absent because of pregnancy³⁰⁵ and stipulates a maximum length of leave before and after the birth of the child, which places full control with the employer rather than the parent. Any extension of leave beyond the prescribed 12 weeks³⁰⁶ requires medical examination and notification of the need for continued confinement.³⁰⁷

The law does provide paid maternity leave covering two months, which is an important step in ensuring workers are able to fully recover without the anxiety of not being paid and their job position and title remaining intact during the period of leave.³⁰⁸

³⁰³ Janine Mendes-Franco, “Jamaican Activist Arrested Under Cybercrime Law Amid Her Campaign Against Sexual Violence”, *GlobalVoices* (21 March 2017), <https://globalvoices.org/2017/03/21/jamaican-activist-arrested-under-cybercrime-law-amid-her-campaign-against-sexual-violence/>.

³⁰⁴ Office of the Director of Public Prosecutions, “Media Release: Regina v Latoya Nugent for Breaches of the Cybercrimes Act”, (17 May 2017), <https://www.dpp.gov.jm/sites/default/files/news/Press%20Release%20Latoya%20Nugent.pdf>.

³⁰⁵ Maternity Leave Act, Act No. 44 of 1979, sec. 3(1)(c), <https://www.ilo.org/dyn/travail/docs/541/The%20Maternity%20Leave%20Act.pdf>.

³⁰⁶ Maternity Leave Act, sec. 3(2).

³⁰⁷ Maternity Leave Act, sec. 3(3) - 3(5).

³⁰⁸ Maternity Leave Act, sec. 5(1).

VII. User-Experience III: Lived Experience of Survivors



VII. USER-EXPERIENCE III: LIVED EXPERIENCE OF SURVIVORS

This section uses the design principle of journey mapping to understand the pathway survivors take to obtain accountability in GBV cases whether in criminal or family law courts. To assist with understanding a survivor's journey, we rely on direct interviews with survivors, government agencies, and CSO partners working to advance access to justice for women and girls, supplemented with qualitative data and quantitative data obtained from GBV case law and a retrospective analysis of survivor interviews conducted when they have sought assistance from CSOs.

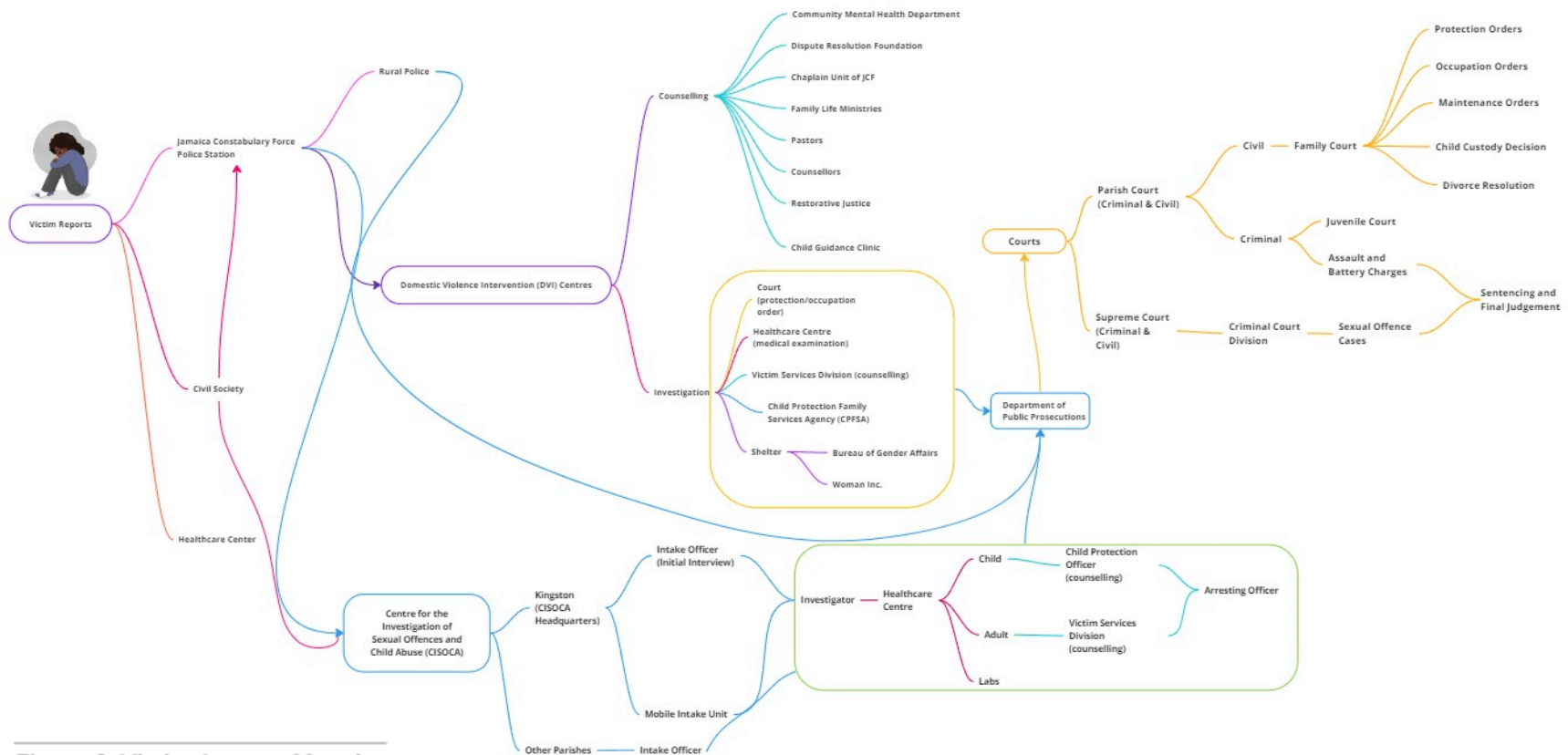


Figure 6: Victim Journey Mapping

A. Journey Mapping I: Reporting to the Police

When a survivor faces domestic or sexual violence, the immediate challenge becomes whether they should report at all. Through the process of reporting, many second order consequences arise that will change the survivor's life forever. However, there is very little detail of the process itself that is known to a majority of survivors to help them make that choice, which increases their scepticism in coming forward.

Outside of social and interpersonal relationships, victims of domestic violence must weigh several concerns that come with reporting, such as:

- how do I keep myself and my children safe;
- will a shelter accept me and all my children;³¹⁰
- will my children be safe continuing to attend the same school;
- can I stay in my home or will the perpetrator be removed;
- can I go back to work, and if I do, will the perpetrator find me and will he jeopardise my job and safety; and
- how long do I have to wait for a protection and/or occupation order to take effect?

Additionally, we recognise that the first person a survivor may report to may be a family member, friend, or trusted church pastor. Often, those who do not have specialised training to understand the risk, trauma, and legal consequences arising from GBV will suggest joint counselling and reconciliation to maintain familial harmony. However, rather than preserving harmony within the family, these options risk retraumatizing the survivor and possibly jeopardising the safety of dependents within the household where the perpetrator resides.

Fear of intimidation or retaliation, resulting even in death, is a huge consideration for survivors who choose to report, and is a risk not only for themselves, but also for immediate and extended family members and dependants. This is especially the case involving more dangerous persons, such as those involved in gangs, where violence is a daily part of life and there is a culture of silence when it comes to reporting to the police.³¹¹

³¹⁰ Typically shelters only have space for one to two children; older children are often denied care because of space constraints.

³¹¹ Ministry of Justice (MOJ), Justice Undertakings for Social Transformation (JUST) Programme, Government of Canada and United Nations Development Programme (UNDP), *Swift, Sure & Inclusive Justice Through Effectively Caring for Witnesses, An Integrated Strategic Plan*, at 46 (2020), <https://uwi.edu/salises-mona/sites/salises-mona/files/PDF/IntegratedStrategicPlan.pdf>.

For those survivors who choose to report directly to the Jamaica Constabulary Force (“JCF”), their cases may be referred and investigated by the Domestic Violence Intervention (DVI) Centre or Centre for Investigation of Sexual Offences and Child Abuse (“CISOCA”), depending on the crime. The DVI Centre or CISOCA may refer the victim to a medical clinic for treatment or to have forensic evidence collected. Additionally, referrals are made for counselling where the victim may receive assistance in applying for a protection order and to be sheltered during the duration of their legal case. This is the best-case scenario.

Stakeholders report that victims reporting to police often experience being interviewed by multiple officers, a lack of privacy, often gain no assistance in obtaining a protection order, and often are not taken seriously.³¹² Citizens generally distrust police. In a wholly preventable and tragic case that came up in our interviews, a woman was turned away from a police station for being inappropriately dressed.³¹³ When she returned to her community, she was killed.³¹⁴ The negative impact of dress code requirements often have a disparate impact on women, the poor, and on marginalised communities whose dressing may not conform to societal standards. Another example comes from our interview of transgender women. Here, we learned that a trans woman³¹⁵ was threatened by security that her piercings would be forcibly removed before she could enter the Criminal Court in Kingston. That there is an unhelpful focus on dress code was further corroborated by a Family Court judge who detailed how security within their own courthouse would not allow a person to enter because they had ripped pants.³¹⁶ Navigating the justice system is made more difficult because highly discretionary policies are being wielded inappropriately by those wanting to exert their authority over others in vulnerable situations, thereby creating an additional barrier to accessing justice. Access also varies across areas. For example, even though CISOCA investigators exist in all 14 parishes, rural police often do not have separate DVI Centres.³¹⁷ In a case detailed by retired police, a woman sought assistance from rural police for sexual violence, but because they knew her family and her father’s history of mental illness, the local police claimed the whole family, including her, were crazy.³¹⁸

³¹² Interview conducted by ICAAD with CSO partners, 3-7 October 2022.

³¹³ Requirements to be dressed appropriately were also observed at the Kingston Legal Aid Center and are enforced in both criminal and family law courts.

³¹⁴ Hunter, Nadisha, *Dress code enforced!*, Jamaica Gleaner, 10 December 2010.

³¹⁵ Interview conducted by ICAAD with trans survivors, 5 October 2022.

³¹⁶ Interview with Parish Court Judge, 4 October 2022.

³¹⁷ Angus, Garfield, *JCF Expands DVI Centres To St. Ann And St. Mary*, Jamaica Information Service, 13 May 2021.

³¹⁸ Grant, Novelette (Ret’d Deputy Commissioner of Police, JCF). Interview conducted by ICAAD, 3 October 2022.

When survivors do not believe law enforcement can assist in their case, they often seek the assistance of CSOs, such as Eve for Life, Woman Inc., Jamaicans for Justice, J-Flag, or Transwave to provide shelter or guidance when facing violence. These CSOs provide support to the survivor in seeking medical attention or a protection order, and ensure that law enforcement adequately report and investigate the incident. These steps are taken only at the request of the survivor. CSOs are critical because they bridge the social support gap and provide a roadmap to navigate the justice system while ensuring that a survivor actually receives assistance.

For example, trans interviewees commented that when they have sought assistance from police, they have been turned away and that officers refuse to engage or accept reports from them.³¹⁹ They also expressed fear of reporting to police because of instances where police have either directly committed violence against them or have sent other individuals in the community to beat up the victim and their partner (in a domestic violence situation).³²⁰ In one instance, an interviewee was hit by a car that fled the scene and needed immediate hospitalisation. When police were transporting her to the hospital, they purposely took a longer route to the hospital. When she was released from care at the hospital, she went back to report the hit-and-run incident to the police, and they refused to take her complaint.³²¹ Additionally, people living with HIV (“PLHIV”) and trans persons have specifically related incidents to us where officers have refused to be in close proximity to them when they have come in to file GBV-related incidents, or have become violent or upset if a PLHIV or trans person accidentally touched them, and generally treated them like they were untouchables.³²²

³¹⁹ Interview conducted by ICAAD with trans survivors, 5 October 2022.

³²⁰ Ibid.

³²¹ Ibid.

³²² Interview conducted by ICAAD with trans survivors and CSOs, 4-5 October 2022.

B. Journey Mapping I-A: Specialized Law Enforcement Divisions - Domestic Violence Intervention (DVI) Centre

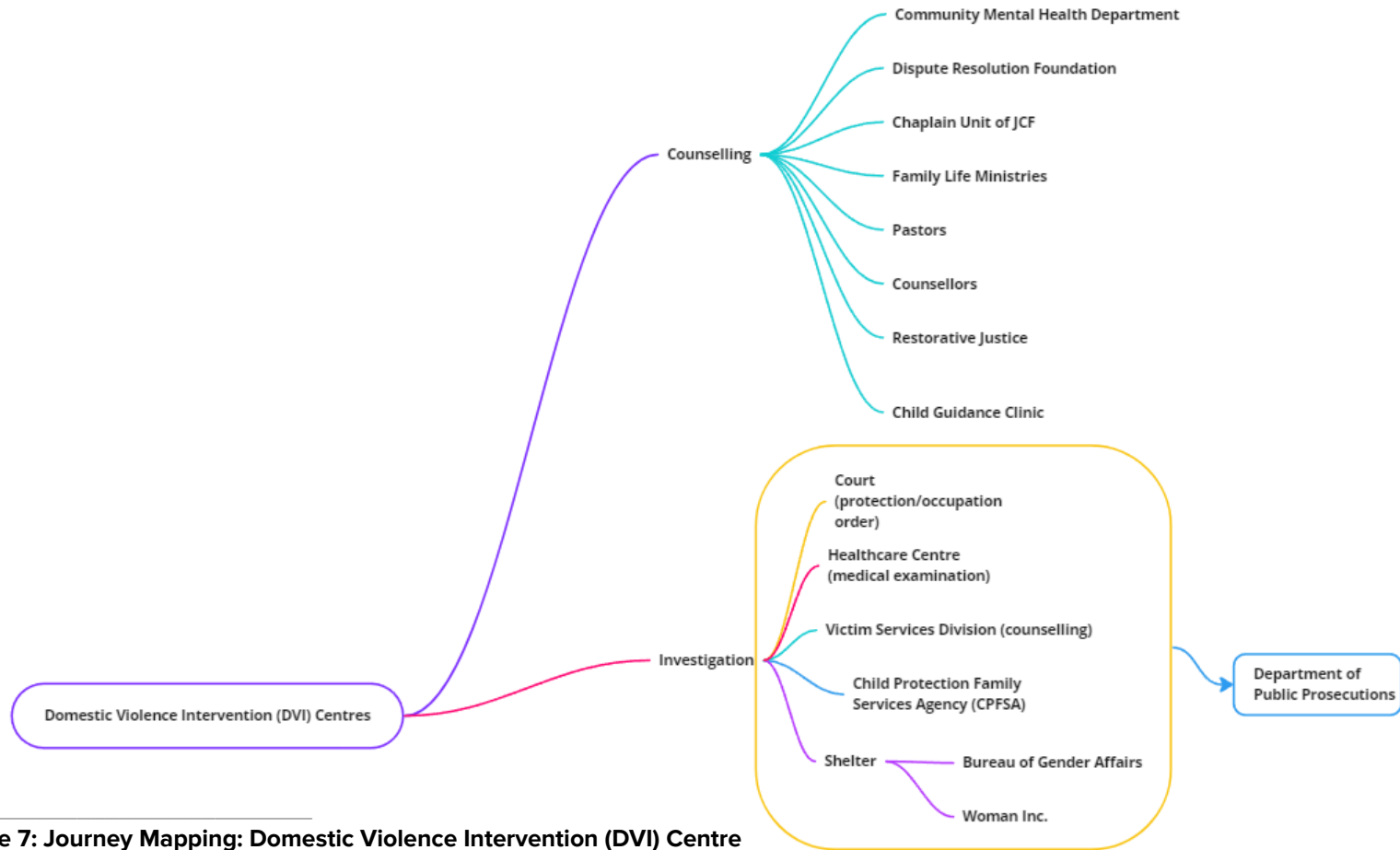


Figure 7: Journey Mapping: Domestic Violence Intervention (DVI) Centre

There are now 10 Domestic Violence Intervention (DVI) Centres in Jamaica, with six having been opened between 2021-2022. Four are located in St. Thomas and Kingston, and the other six are located in the parishes of Clarendon, St. Catherine, St. Ann, St. Elizabeth, St. Mary, and Westmoreland. Upon reporting domestic violence to the JCF, by phone or by coming into the station to make a report, the reporting individual is referred to the DVI Centre where available. The DVI Centre focuses on the principles of intervention, counselling, awareness, response and empathy. If there are injuries to the survivor, police at the station will begin an active investigation to take the matter before the court.

In a conversation with Sergeant Winsome Higgins, who heads the DVI Centre at Constant Spring Police Station, she mentioned that if an accused party is aggressive in the presence of police, and they believe the survivor's safety is at risk, they can take the accused into custody for four hours without charge and pending investigation. If they still persist with violent or aggressive tendencies, they can be held for 24 hours. Sgt. Higgins also mentioned that police officers (as authorised under the DVA) will sometimes apply for a protection or occupation order on behalf of the survivor.³²³ Examples detailed separately by Deputy Superintendent of Police (DSP) Jacqueline Dillon and Retired Deputy Commissioner of Police, Novelette Grant, involved situations where law enforcement applied for a protection order on a survivor's behalf, but the court clerk insisted that the survivor had to appear in-person for it to be issued, and therefore, was turned away. DSP Dillon discussed the need for clarity in the DVA around protection and occupation orders to ensure coordination between the courts and police.³²⁴

Nevertheless, there is not much evidence of police officers acting as third parties on behalf of survivors. Furthermore, additional conversations with members of police, CSOs, survivors, and data from our retrospective analysis have confirmed that police rarely, if ever, obtain protection or occupation orders on behalf of survivors. N. Grant, believes that survivors need to be informed by police of their right to pursue protection or occupation orders by themselves or with the assistance of police or other third parties, and that court clerks need to be made aware that police and third parties can assist.³²⁵ Legislation is not enough in N. Grant's opinion, and regulations to ensure the well-being of survivors are critical.³²⁶

³²³ Sergeant Higgins (Head of DVIC at Constant Spring Police Station). Interview conducted by ICAAD, 5 October 2002.

³²⁴ Dillon, Jacqueline (Deputy Superintendent of Police (DSP), Interview conducted by ICAAD, 7 October 2022.

³²⁵ Grant, Novelette (Ret'd. Commissioner of Police). Interview conducted by ICAAD, 3 October 2022.

³²⁶ Grant, Novelette (Ret'd. Commissioner of Police). Interview conducted by ICAAD, 3 October 2022.

Following a risk assessment, the most common pathway taken at the DVI Centres is to refer complainants to counselling, health care centres, transitional housing, shelters, Victim Services Division (“VSD”) or Child Protection and Family Services Agency (“CPFSA”). DSP Dillon indicated that the intention behind counselling is to “reduce the number of cases that go to court.”³²⁷ Though reduction in the backlog of court cases is important, the priority for police should be on accountability and redress for the survivor in domestic violence cases.

Additionally, the Centre takes a “survivor-centred approach,” which is interpreted as “whatever [the] victim wants is what they get,” and outlines the processes available to them.³²⁸ Where there is no wounding or physical signs of an altercation, there is no mandatory charge process, though the police are required to take a statement.³²⁹ Again, DSP Dillon points out the inconsistency of the legislation with actions that police should be taking. Arrests are not mandatory where there is no physical harm because it does not fit within the parameters of the OAPA and the DVA is only a civil statute.³³⁰ Even where there is physical harm and a charge by police, victims can still choose not to cooperate, testify, or provide a statement. Here, there are many cases where police will stop their investigation and prosecution won’t pursue the case further unless another witness is found who is willing to provide evidence. Though the police and prosecution have the authority to proceed in cases where the survivor no longer wants to cooperate in domestic violence matters, this often does not happen.

The “survivor centred approach” (as has been interpreted) is laudable in its attempt to centre survivors, but several examples that came out in interviews showed this approach to be problematic. In practice, the survivor centred approach is not focused on receiving mental health services, accountability, and redress; rather, we consider that it is bound up in reducing court backlogs and in cultural and religious norms that prioritise keeping families and communities together (no matter the circumstance) rather than the well-being of the survivor. **The list of counselling services that have a focus on reconciliation** and are places of referral from DVI Centres includes:

- Restorative Justice (Ministry of Justice)³³¹

³²⁷ Dillon, Jacqueline (Deputy Superintendent of Police (DSP), Interview conducted by ICAAD, 7 October 2022.

³²⁸ Dillon, Jacqueline (Deputy Superintendent of Police (DSP), Interview conducted by ICAAD, 7 October 2022.

³²⁹ *Victim’s Charter of Jamaica*, p. 10, para. 3.2, Ministry of Justice, June 2013.

³³⁰ Dillon, Jacqueline (Deputy Superintendent of Police (DSP), Interview conducted by ICAAD, 7 October 2022; Grant, Novelette (Ret’d. Deputy Commissioner of Police). Interview conducted by ICAAD, 3 October 2022.

³³¹ Ministry of Justice, *The National Restorative Justice Policy* (13 August 2012), https://moj.gov.jm/sites/default/files/2020-10/Restorative%20Justice%20Policy_Revised_%20Final_Policy_March_18.pdf. The MoJ’s desire to move toward a restorative justice model is commendable and looking at best practices, including

- Chaplain Unit of the Jamaica Constabulary Force
- Family Life Ministries
- Multiple Church Pastors

N. Grant has noted that although the focus of the DVI Centres is to be empathetic to survivors and provide appropriate counselling services, many of the service providers that the DVI Centres rely on have staff that are inexperienced in appropriately dealing with survivors.³³² Sometimes, rather than the protection survivors need from the accused, restorative justice processes are recommended to the family where it does not make sense.³³³ This is where the Restorative Justice Unit within the Ministry of Justice has to advise survivors to seek a protective order instead.³³⁴

indigenous practices, should be celebrated. Nonetheless, the inclusion of reconciliation (Victim-Offender Reconciliation Process – VORP) as part of the framework for restorative justice must contend with the power imbalance and societal pressure that is present in GBV cases. Throughout the world, reconciliation is a default response to GBV and can often preclude accountability rather than heal communities when harmony leads to ignoring the interests of the victim. Therefore, we counsel great care, if not caution, in using such approaches when it comes to GBV.

³³² Grant, Novelette (Ret'd. Deputy Commissioner of Police). Interview conducted by ICAAD, 3 October 2022.

³³³ Grant, Novelette (Ret'd. Deputy Commissioner of Police). Interview conducted by ICAAD, 3 October 2022.

³³⁴ Grant, Novelette (Ret'd. Deputy Commissioner of Police). Interview conducted by ICAAD, 3 October 2022.

C. Journey Mapping I-B: Specialised Law Enforcement Divisions Centre for Investigation of Sexual Offences and Child Abuse (CISOCA)

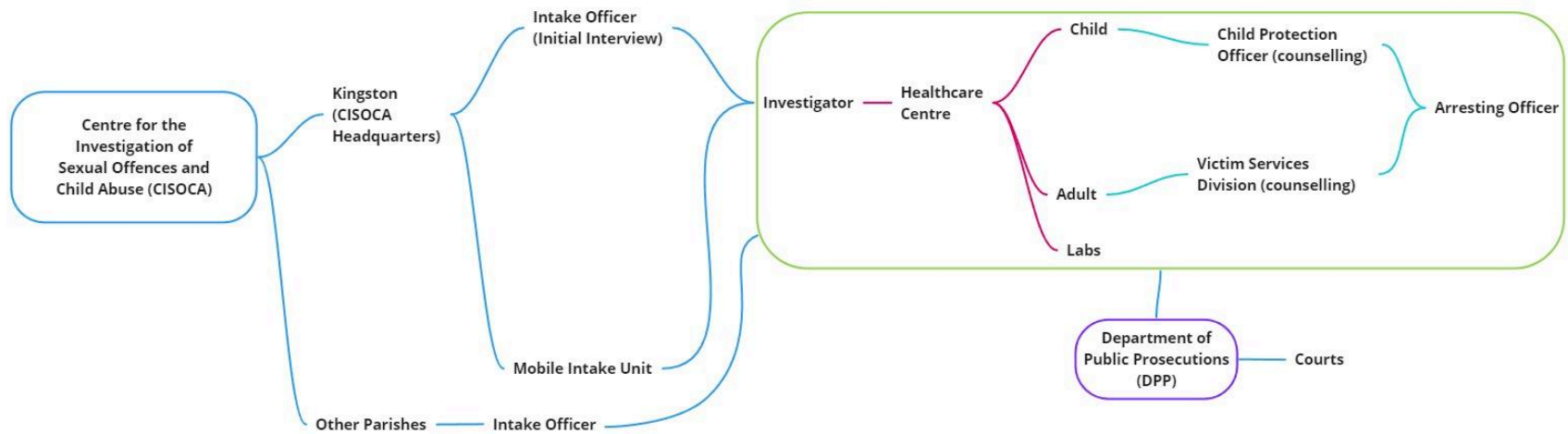


Figure 8: Journey Mapping: Centre for Investigation of Sexual Offences and Child Abuse (CISOCA)



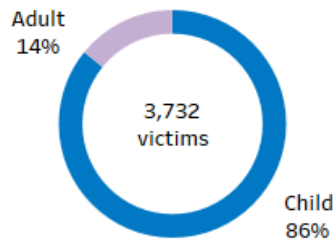
Sexual Assault on Females 2017-Sep 2022

Kingston and St. Andrew

Data Source: CISOCA

Centre for Investigation of Sexual Offences and Child Abuse (CISOCA)
 3 Ruthven Rd, Kingston 10
 Phone: 876-926-4079
 Phone: 876-966-5325

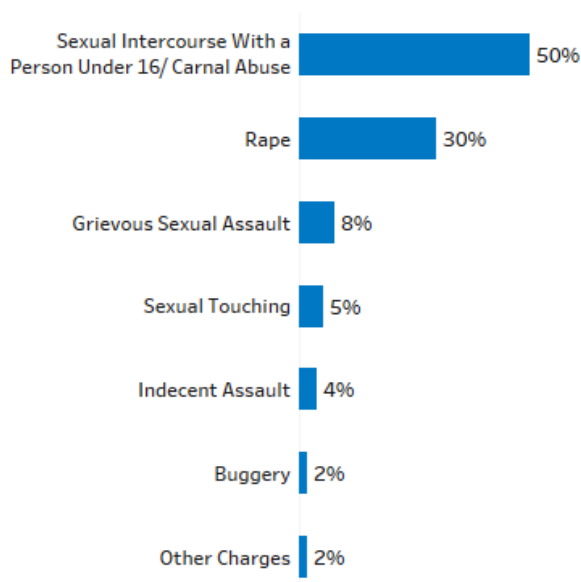
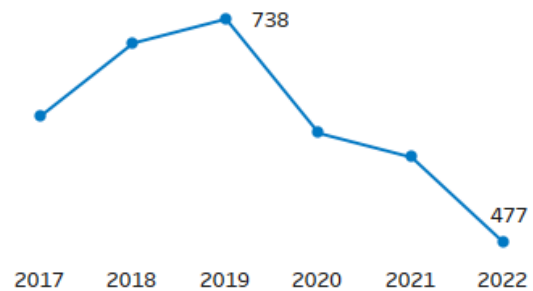
According to data reported by CISOCA for Kingston & St. Andrew, over the past 5 years, more than 85% of the victims of sexual assault that reached out to them were girls under the age of 18 yrs, with girls between the age of 11-14 yrs being the most vulnerable.



Over 50% of the cases (1,870) in Kingston & St. Andrew involved sexual intercourse with a child under 16 years, and 30% (1,114) were rape cases. Other Charges include aiding and abetting, assault with intent to rape, attempted rape, incest, marital rape, and violation of a person suffering from a mental disability.

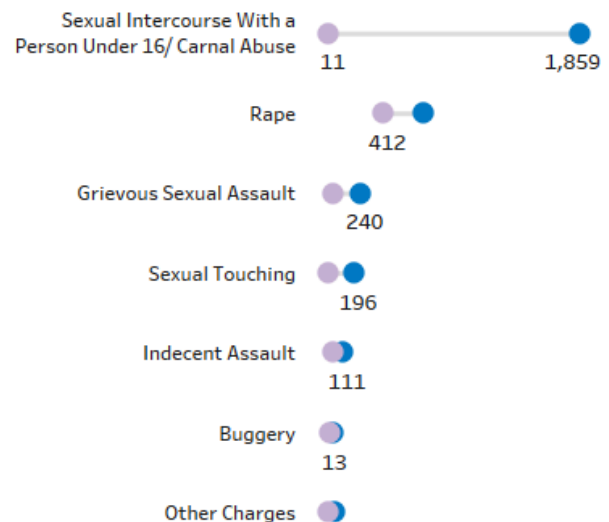
Though there has been a downward trend since 2020 in the overall number of victims and those reporting sexual intercourse with a child, rape, or grievous sexual assault, the number of victims reporting sexual touching, indecent assault, and buggery went up again in 2021 after a decline in 2020.

Offences over time



Sexual Offences 2017-YTD 2022

Adult/Child



click on the + sign to see offences included in Other Charges. Hover over each bar to see change in victim count over time.

Dashboard designed by ICAAD (www.icaad.ngo)

Figure 9: Sexual Assault on Females 2017-Sep 2022 (CISOCA Dashboard)

[Interactive Dashboard](#)

Investigation by CISOCA varies based on where the complaint is filed. At the CISOCA headquarters on Ruthven Road in Kingston, they attempt to replicate a one-stop shop model, where apart from police investigators, they have a medical office with a single doctor on staff with other volunteers from the South East Regional Health Authority (SERHA), a registry, an investigator's office, as well as two officers from the Child Protection and Family Services Agency (CPFSA). The headquarters has a total of 60 staff members, and there are 113 staff members in all of Jamaica.³³⁵ In data provided on female sexual violence reports to CISOCA for Kingston and St. Andrew, there were 2,984 cases of rape or statutory rape between 2017 and September 2022. In those cases, 86% were children (under the age of 18). On average, CISOCA headquarters is seeing about 650 sexual violence cases a year.

Once a case has been investigated, including any medical examination, a report is filed and it goes to a central registry where case files are vetted and recorded. If the case file is missing any requisite information, it is sent back to the reporting officer for further investigation. It was mentioned that when it comes to medical examinations that require rape kits to be used and sent to labs for certification, no backlog currently exists.³³⁶ At that point, CISOCA officers can make an arrest based on their investigation. Once the arrest is made and the case file reviewed, the prosecutor's office takes forward the prosecution. While court appearances are usually handled by prosecution liaison officers, CISOCA investigators are called upon occasionally to testify directly in court. Cases are generally assigned based on their complexity and to a more senior officer if, for example, a member of the JCF is accused. If a domestic violence case comes directly to CISOCA headquarters that does not involve sexual violence or children, it is usually referred to a DVI Centre. CISOCA refers adults to the VSD, which is a division of the Ministry of Justice that provides counselling generally (although counselling for children is provided by the CPFSA). CISOCA views its function as investigatory rather than prosecutorial in nature.³³⁷

In interviews with retired police, CSOs, and a judge, it was expressed that police have a difficult time placing children with the CPFSA during weekends and nights because staff are not available.³³⁸ There is also direct criticism of CISOCA by CSOs who believe that they are not providing enough services to women, and that some of their clients have

³³⁵ Interview conducted by ICAAD with police, 6 October 2022.

³³⁶ Interview conducted by ICAAD with police, 6 October 2022.

³³⁷ Interview conducted by ICAAD with police, 6 October 2022.

³³⁸ Grant, Novelette (Ret'd. Deputy Commissioner of Police). Interview conducted by ICAAD, 3 October 2022.

been unjustly turned away. This arises from what CSOs describe as an awareness and education gap, where survivors are not aware of the location of CISOCA offices and the full scope of services they provide.³³⁹ This sentiment was further confirmed by intake forms and interview data we have procured from CSOs.³⁴⁰

Furthermore, the interviewee stated that “if survivors say we don’t want to proceed, then we don’t proceed.” This happens during investigation and in court, which is frustrating for those investigating and seeking accountability for sexual violence, and echoes the points DSP Dillon made and goes back to a “survivor centred approach.” As mentioned previously, this approach does not seem to balance the lack of accountability and impunity with which perpetrators can continue committing acts of domestic and sexual violence. There appears to be a disconnect between what the law outlines in theory, the lack of clarity about its practical implementation by agencies like DVI Centres and CISOCA, and how a justice centred and survivor-centred approach can work in alignment with each other.

Finally, advocates pointed to specific cases where the evidentiary chain between healthcare providers working for CISOCA and the forensic unit was potentially compromised and undermined certain cases.³⁴¹ This requires further inquiry into its ultimate impact in ensuring effective prosecution.

³³⁹ Interview conducted by ICAAD with CSOs, 3-7 October 2022.

³⁴⁰ Please see retrospective analysis in section I, below.

³⁴¹ Interview conducted by ICAAD with a gender justice specialist, 6 October 2022.

D. Journey Mapping I-C: Child Protection and Family Services Agency (CPFSA)

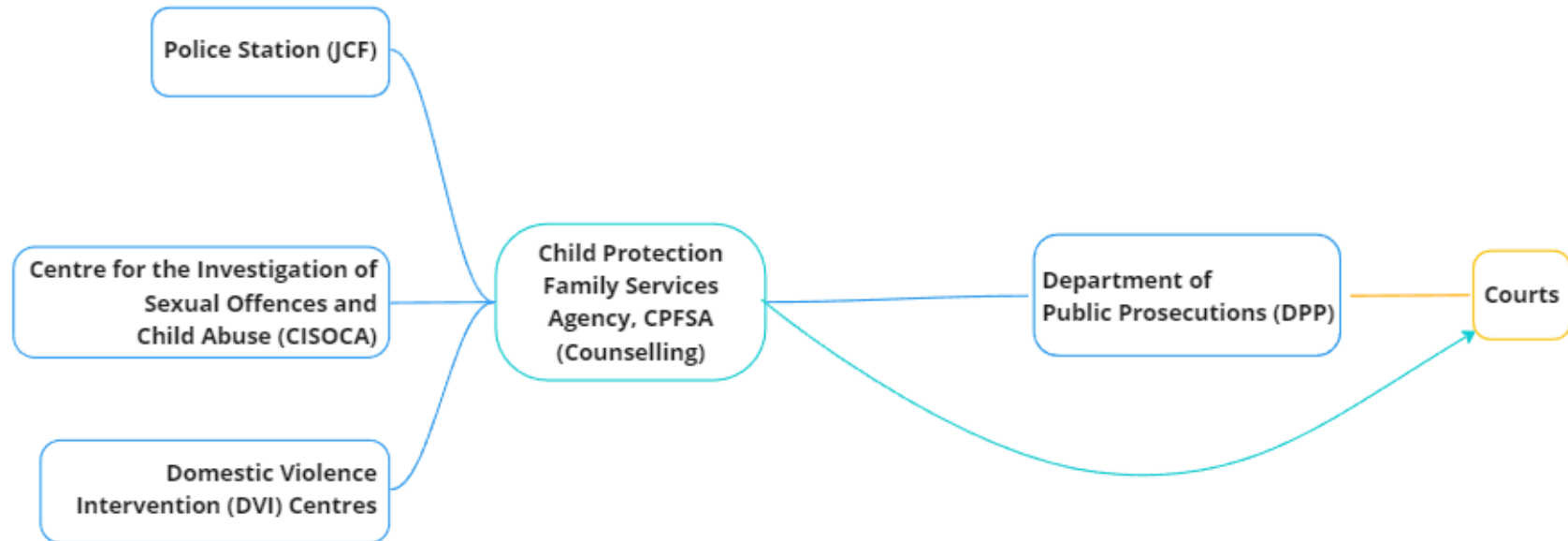


Figure 10: Journey Mapping: Child Protection and Family Services Agency (CPFSA)

Cases are referred to the CPFSA from a number of different sources, from the National Children's Registry and CPFSA offices, to police stations, hospitals, and schools. The primary function of the CPFSA is to care for children who are in need of protection because they are being abused, neglected, are exhibiting behavioural problems, or are otherwise at risk. Jamaica has a mandatory reporting framework which requires prescribed persons, or those whose professional capacity places them in having a duty of care to children, to report. The CPFSA gets roughly 1,000-1,500 reports per month, and CPFSA officers respond based on a risk assessment and the capacity of the agency. On an annual basis, the CPFSA receives approximately 3,000-4,000 reports of physical or sexual violence against children, and roughly 5,000 reports of children exhibiting behavioural problems, such as being deemed uncontrollable, or otherwise being neglected.³⁴²

Under the category of children who are deemed otherwise in need of care and protection, as specified under section 8 of the Child Care Protection Act (CCPA), are children who are wandering the streets, those who are abandoned, children living in a household where there is a convicted offender, or living with another child who is a victim of abuse. Some children also come into the facilities through police referral, where there has been an incidence of violence that does not involve the child, but it is not safe for them to remain in their home and there is no other family the child can be placed with. According to the CPFSA, their preference is for the child to remain with family, partially because they believe it is best for the child and there is a stated objective to move towards deinstitutionalisation, but also because space is a major constraint, and they do not have the capacity to properly assess the child, their level of trauma, and where they should be placed.³⁴³

Once an investigation is conducted and the risk is confirmed, the CCPA is applied and the child is remanded to the custody of the CPFSA, and the matter has to come before a court within 48 hours. The CPFSA has a number of agencies that it can refer cases to as well, depending on the situation; for example, if a family is in need of support, they are referred to the family support unit or to welfare services at the Ministry of Labour and Social Security. They also refer children to psychologists, psychiatrists, or conduct psycho-educational assessments for some children exhibiting behavioural problems. CPFSA officers appear in Juvenile Court, Parish Courts, and the Family Court, and are requested occasionally to appear in the Supreme Court which is a court that has unlimited original jurisdiction in civil and criminal matters and hears appeals from

³⁴² Interview with CPFSA conducted by ICAAD, 4 October 2022.

³⁴³ Newton Douglas, *'Beyond Institutionalization' Module I The process of transformation of Alternative Care Systems*, Unicef (2022), <https://www.unicef.org/lac/media/36666/file>.

subordinate courts such as the Family Court.³⁴⁴ If a child is not yet under care of the CPFSA, they are sometimes assisted by the VSD. In more rural areas, there is one officer in charge of investigation, reporting, and court appearances. While some courts and judges take special care, for example following a request by the VSD to have children come in chambers to speak or to testify via video conference, others refuse to speak with children altogether or require children to testify in front of parents or a perpetrator. This can be incredibly traumatising for children.³⁴⁵

Following the court proceedings, an order is issued, and children are either returned home under supervision where a CPFSA social worker checks in on them or, if that is not appropriate or viable, they might be housed by other relatives. If that is also not feasible, they could become wards of the state and placed by the CPFSA in residential care facilities, in foster care, or put up for adoption. Approximately 4,500 children are currently under care by the CPFSA, with approximately 60% of the children in family-based placement, and 40% in residential facilities.³⁴⁶

There are 50 residential care facilities, with eight that are run fully by the government as places of safety, and 42 that are children's homes that are privately run but licensed, registered, and monitored by the CPFSA. **Once placed in a residential care facility, children are not separated based on the concerns that brought them there.** As such, children who are victims of sexual abuse are not separated from children who are exhibiting behavioural problems or have been deemed uncontrollable. Currently, children exhibiting behavioural problems can be subject to a correctional order from the court which allows them to be placed in juvenile detention; the current cabinet has given approval for that section of the act to be repealed but it has not yet taken place.³⁴⁷

In preparation for that change, the CPFSA is creating assessment centres to be able to screen the children with behavioural challenges, since many of them are exhibiting problems because of past trauma, and they want to be able to triage and get a baseline assessment before the children are placed. The children will be placed in the assessment facilities for three to six months while their case is being handled in court, and then will be placed in the children's homes that are best suited for them based on the facilities' specialisation and who they can best offer support to. However, the CPFSA interviewee noted that while this placement process is the ideal and they are currently unable to

³⁴⁴ Supreme Court of Jamaica, *Jurisdiction*,

<https://supremecourt.gov.jm/content/jurisdiction#:~:text=The%20Supreme%20Court%20is%20regulated,an%20appellate%20and%20supervisory%20jurisdiction.>

³⁴⁵ Interview with CPFSA conducted by ICAAD, 4 October 2022.

³⁴⁶ Mobak, *CPFSA Residential Child Protection Sector Audit Report* (2022).

³⁴⁷ Interview with CPFSA conducted by ICAAD, 4 October 2022.

handle the numbers of reports and children that they receive and place the children accordingly.

Psychosocial and mental health are major issues impacting the standard of services. The capacity and staffing for therapeutic intervention at the children's homes does not exist at this time and upskilling is required. Some children are permanently hospitalised within facilities due to their behavioural conditions. There is only one facility, located in Kingston, that has a day-time therapeutic centre across the street from it that can provide mental health and psychosocial support to children who are not yet under care of the CPFSA, with an option to stay overnight at the facility.³⁴⁸

If a child is in CPFSA care and is abused, they are represented by a CPFSA officer in court, occasionally by the agency's legal officer, with assistance of the VSD depending on the severity of the case. When an incident of abuse occurs involving staff, a Critical Incident Service report is filed internally, and with the National Children's Registry (NCR), monitoring system, the police, and the Office of the Children's Advocate. Monitoring officers, who also conduct announced and unannounced visits to care facilities, are in charge of investigating and reporting the internal complaints, and supporting disciplinary proceedings or criminal charges following their investigation.

Academic, government, and civil society interviewees expressed that CPFSA officers are overburdened and unable to provide adequate services, and that the residential care facilities are more akin to penal institutions where many children suffer egregious harm while housed there. Sexual and physical abuse between children is commonplace, and cover-ups, inattention, and abuse by staff is not infrequent.³⁴⁹ According to JFJ's Critical Incidence Report, from 2002-2018, there were 1,782 incidents reported with around 7% of cases related to sexual activity/ abuse, including those suffering from mental disorders and disabilities.³⁵⁰

One interviewee shared pictures of a girl who had been burned by another girl while housed in the facility, and was unable to get any medical attention until a third-party had witnessed the injury. She began cutting herself after that incident. CPFSA acknowledged that there is a lot of peer to peer "physical contact" (violence) between children in the facilities. Corporal punishment is banned in all facilities, so when incidents between children and staff occur, the children have the ability to report to other officers and care providers. However, many incidents go unreported.

³⁴⁸ Interview with CPFSA conducted by ICAAD, 4 October 2022.

³⁴⁹ Jamaicans for Justice, *Quality of Care Critical Incident Report*, at 39-42; 61-71 (2020).

³⁵⁰ Jamaicans for Justice, *Quality of Care: Critical Incident Report*, at 9, 11 (2018).

The residential care facilities recently underwent an audit, where two facilities failed the audit, scoring a Grade IV on a scale of I-V, with V being the poorest. Those facilities were closed, but the others scored between I-III, with a grade of III meaning that the home met “60% to 74% of the provisions of the residential sector standards of care.”³⁵¹ The audit involved conducting interviews with staff and children, in addition to others who work with the CPFSA, and the audit focused on the standards of care and regulations governing child care and protection centres. The grading scale lumped many disparate standards together under numbered themes, which called into question the veracity of the grading system and the audit. For example, theme 1 combined nine standards of care, including safeguarding children and their rights, promoting educational development achievement, religious liberty, leisure/ recreational activities, and promoting positive behaviour and relationships and use of discipline, into one score. The audit report also failed to address concerns brought forward by CSOs regarding critical incidents in the facilities, and did not address the proposal by CSOs for the adoption of recommendations from the Armadale Report, an enquiry that followed a terrible fire in a facility in 2009 that claimed the lives of seven girls.

Role of the Office of Children’s Advocate (OCA)

The Office of the Children’s Advocate (OCA) is a Commission of Parliament established under the CCPA with a mandate to protect the best interests of children. In order to further the best interests of children, the Children’s Advocate speaks publicly on issues that directly impact children, and seeks to educate both adults and children about the rights of the child.

In a criminal setting, the role of the Children’s Advocate can sometimes mirror that of police officers to the extent that they have arrest and charge powers. The OCA or Duty Counsel on the Legal Aid List³⁵² can also provide counsel to children who have been charged with a crime and lack counsel.³⁵³

In a civil setting, the OCA can bring civil investigations to address systemic violations by institutions charged with oversight of children and recover damages on behalf of children who have faced violations of their rights. In matters with respect to legal custody and guardianship, the OCA may guide the court by making written submissions. Finally,

³⁵¹ Mobak (2022).

³⁵² Office of the Children’s Advocate, *Child Justice Guidelines*, at sec. 13 (2013).

³⁵³ Harrison, Diahann G. (Children’s Advocate of Jamaica). Interview conducted by ICAAD, 7 October 2022.

outside of court processes, the Children’s Advocate can send cease and desist orders to government agencies and make parliamentary recommendations to amend legislation.³⁵⁴

One of the important achievements of the OCA is the publication of the Child Justice Guidelines,³⁵⁵ which are geared toward “awakening the consciousness of justice sector participants to maintain the best interests of the child.”³⁵⁶ In addition to being vocal on the issue of corporal punishment,³⁵⁷ the Children’s Advocate, Diahann Gordon Harrison, had also been vocal on the issue of children in conflict with the law under section 24 of the CCPA. The OCA in 2021 made a submission to parliament asking for the amendment of section 24 of the CCPA dealing with “uncontrollable” children (those who are imprisoned for committing status offences like running away from home). Recognising the non-binding nature of the submission, the OCA has been advocating for judges to pursue non-penal routes for those children charged under this section of the CCPA.³⁵⁸ With the recent repeal of section 24 in June of 2023, the OCA must now focus its attention on ensuring compliance with the new amendment.

Another limitation that was highlighted in our interviews was that the OCA and Department of Correctional Services have no direct linkage, and therefore, the OCA does not have direct oversight into the juvenile justice system and the full extent of the exploitation and harm experienced by children in the juvenile system remains unknown. What is clear from our interviews and the CCPA is that children are sometimes placed in adult prison populations.³⁵⁹

The Children’s Advocate also acts as the Rapporteur on Trafficking. As of 2018, half of the victims of trafficking were children below the age of 18 years with women and girls being disproportionately represented among victims of sexual exploitation. Primarily, the sexual exploitation took place in bars and nightclubs, and instances within domestic servitude relied on violence and coercion. Special Anti-Trafficking Vice Squads have been created within the JCF. However, accountability is lacking in this field, mainly because of a lack of political will and the reluctance of key persons to come forward because of fear and intimidation.³⁶⁰

³⁵⁴ Harrison, Diahann G. (Children’s Advocate of Jamaica). Interview conducted by ICAAD, 7 October 2022.

³⁵⁵ Office of the Children’s Advocate, Child Justice Guidelines (July 2013), <https://www.welcome.oca.gov.jm/media/CHILD-JUSTICE-GUIDELINES.pdf>.

³⁵⁶ Harrison, Diahann G. (Children’s Advocate of Jamaica). Interview conducted by ICAAD, 7 October 2022.

³⁵⁷ Lewis, Anthony, Gordon Harrison backs PM’s call for ban on corporal punishment, Jamaica Observer, July 23, 2021 at <https://www.jamaicaobserver.com/news/gordon-harrison-backs-pms-call-for-ban-on-corporal-punishment/>.

³⁵⁸ Harrison, Diahann G. (Children’s Advocate of Jamaica). Interview conducted by ICAAD, 7 October 2022.

³⁵⁹ Harrison, Diahann G. (Children’s Advocate of Jamaica). Interview conducted by ICAAD, 7 October 2022; Interview conducted by ICAAD of CSOs, 4-6 October 2022.

³⁶⁰ Harrison, Diahann G. (Children’s Advocate of Jamaica). Interview conducted by ICAAD, 7 October 2022.

Despite the critical role that the OCA/ Children’s Advocate plays in the protection of children, advocates throughout our interviews commented on how the Children’s Advocate is not holding CPFSA accountable for severe violations that have occurred in children’s residential homes.³⁶¹ Even the Minister of Education, Youth, and Information acknowledged “incidents within our state care systems of abuse . . . incidents in the private care system of abuse”³⁶² are significant challenges. The frustration experienced by advocates stems from the OCA/ Children’s Advocate not using its powers of investigation, inspection, and compliance to hold governmental institutions accountable and recovering damages for children who have experienced abuse with the state care system.

³⁶¹ Interview of CSOs conducted by ICAAD, 7 October 2022.

³⁶² Lyons, Ramardo, *Almost 10,000 cases of child abuse reported in 2020*, Jamaica Observer, 14 April 2021, <https://www.jamaicaobserver.com/news/almost-10000-cases-of-child-abuse-reported-in-2020/>.

E. Journey Mapping I-D: Counselling to Support Victims

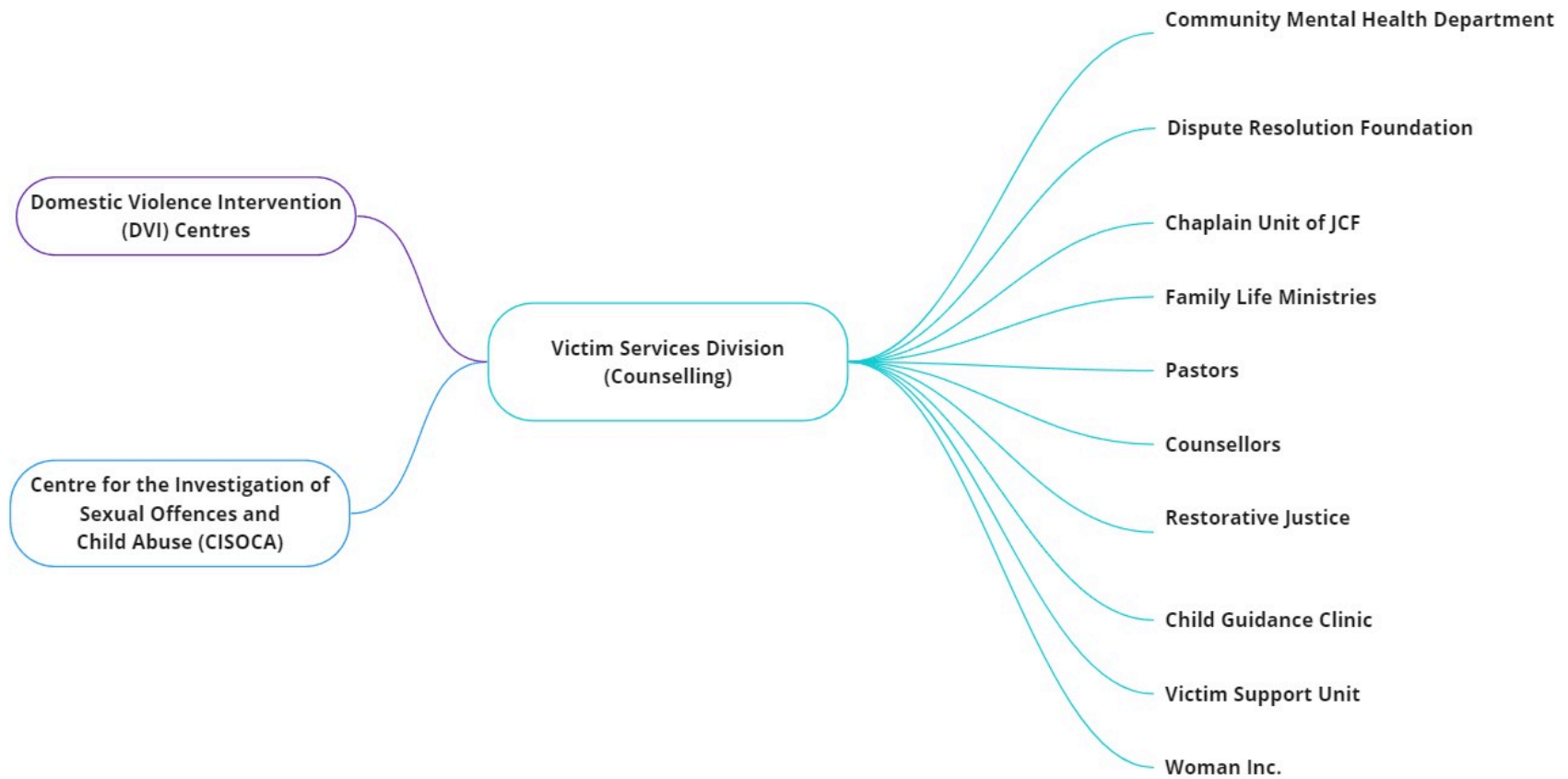


Figure 11: Journey Mapping: Counselling to Support Victims

Victim Services Division (VSD)



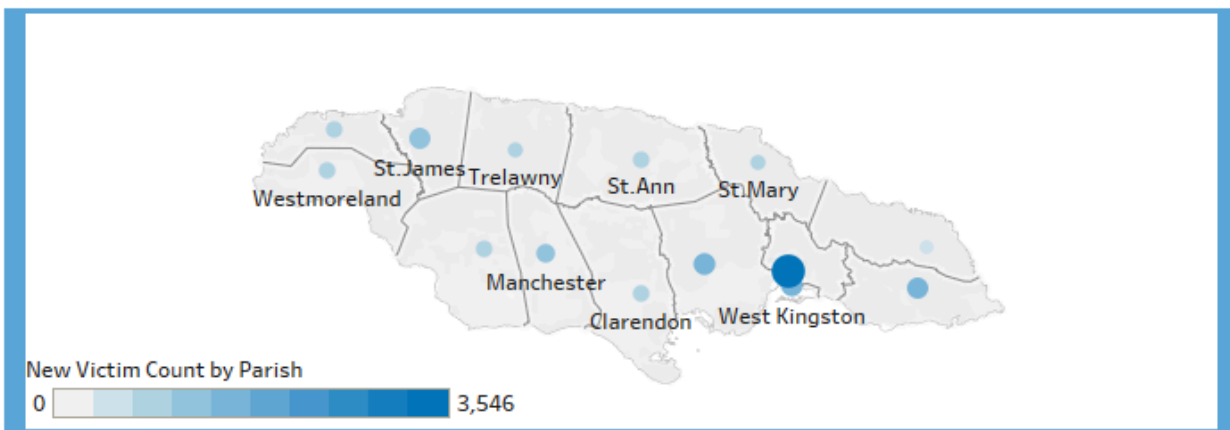
Victim Services Division (VSD)

Ministry of Justice, Jamaica

Source: Victim Services Division and UN Women Data from 2005-2021

New Victims Supported by VSD by Parish

Over the past three years, over 17,000 new victims/survivors were referred to/approached the Victim Services Division of the Ministry of Justice in Jamaica across 14 parishes. Of these, five parishes reported over 50% of the new victims. These include Kingston & St. Andrew (~20%), St. Catherine (~ 9%), West Kingston (~ 9%), St. Thomas (~8%), and St. James (~7%).

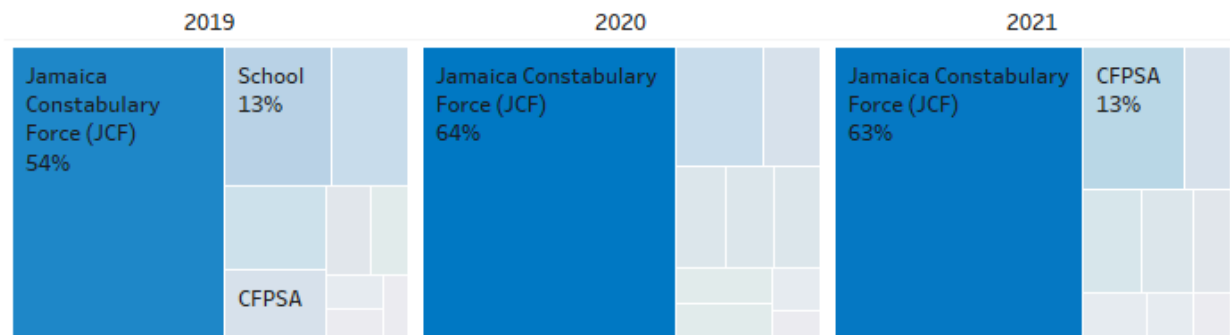


In the map, the size and colour of bubbles signify the number of victims reported by the parish office. The bigger and darker the bubble, the more the number of cases. Hover over each bubble to see the year-wise breakup of new victims reporting to each of these parishes since 2019.

Referral Source

The Jamaica Constabulary Force (JCF) referred over 50% of the new victims in the past three years. It is noteworthy that the number of referrals received by the VSD from schools dropped from 13% in 2019 to between 3-4% in 2020-21 due to Covid lockdowns. The referrals received by the CPFSA increased from 6% in 2019 to 13% in 2021.

See the top 10 referral agencies during the past 3 years referring new victims to the VSD for support.

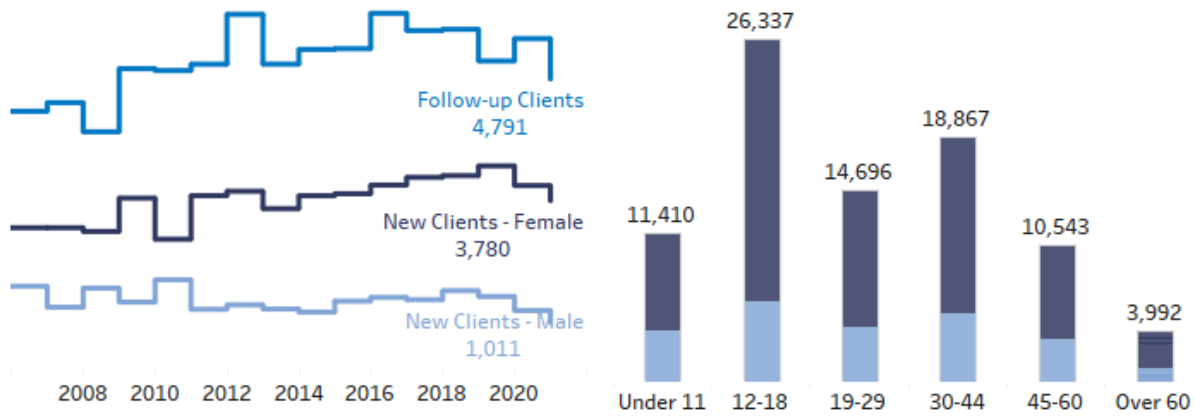


The top 10 agencies form ~100% of the referrals. The bigger the size and darker the colour of the box, the higher the contribution. Hover over each box for more details.

Gender and Age Distribution of New Victims/Survivors

Women and Girls are disproportionately affected by violence, and we can see that here, with over 70% of the new victims reported in the past 15 years by the VSD being females. We also see that girls between the age of 12 to 18 years are the most vulnerable, with over 32% of the female victims being in this age group. However, we also see that ~22% of the female victims are between 30-44 years of age.

Click on a data point on the line chart to filter the bar chart on the right to see the age-wise breakup of male/female new victims.

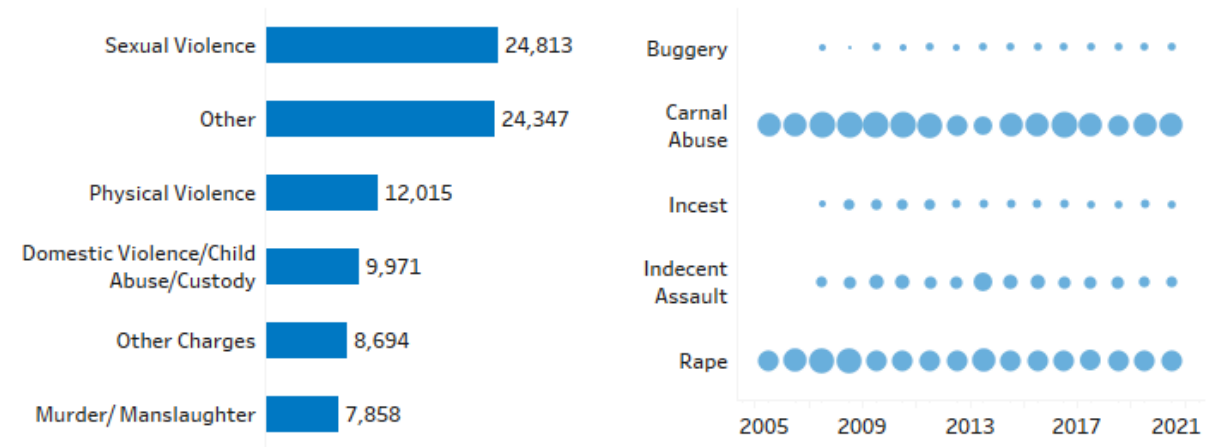


The line chart on the left shows the break of new victims by gender and total follow-up victims reported by the VSD. Hover over the line to get more details.

Types of Offences

VSD provides services to victims of different kinds of offences. These are broadly grouped into Sexual Violence, Physical Violence, Domestic Violence/Child Abuse, and Custody and Other Charges.

Select the bar on the left to see the details of the offences included in the category on the right.

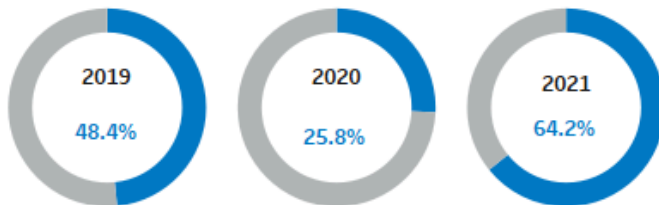


The bigger the bubble, the higher the number of new victims for each offence. Hover over the bubbles to see the details.

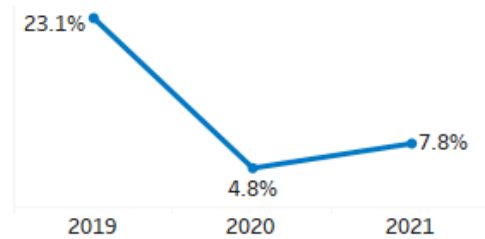
Court Support to Victims

Court Support and Preparation is one of the critical services provided by the VSD. Over the past three years, over 50% of the child victims (~64% in 2021) received these services, including Court Orientation and Court accompaniment. VSD also provided Court Readiness reports for these child victims. In comparison, however, less than 10% of adults received these support services on average in the past three years.

% of Child Victims getting Support in Courts



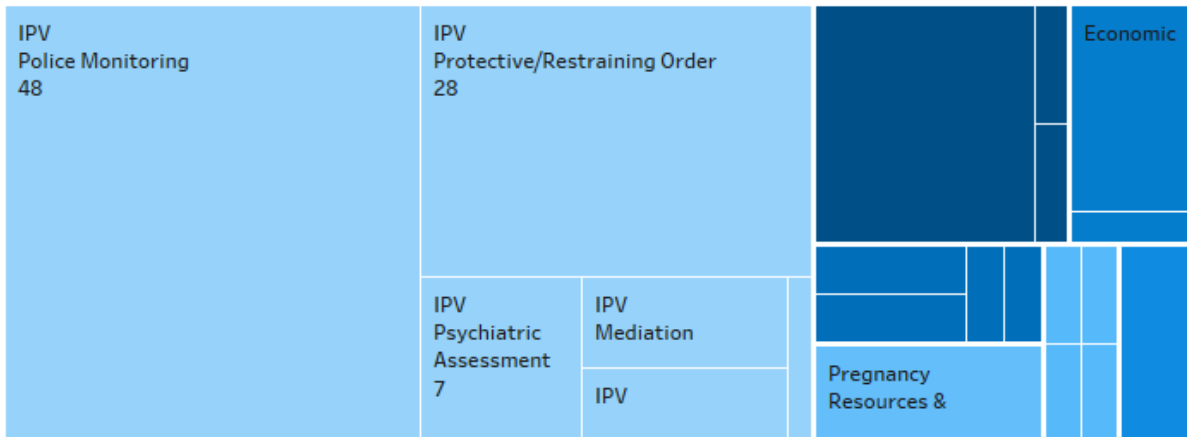
% of Adult Victims getting Support in Courts



Hover over the Doughnut Chart to see the breakup of services received by Child victims by type.

Reasons for Referral and Agencies Referred To

Since May 2022, VSD has started recording all the referrals it sends to other agencies to provide additional support to victims/survivors. See the reasons for the referral and the agencies the victims/survivors were referred to in the chart below. Over 50% of the referrals sent out were for Intimate Partner Violence (IPV) victims, with over 80% of those to agencies providing police monitoring and protective/restraining orders.



Hover over each square for more details.

Figure 12: Victim Services Unit – Data Dashboard

[Interactive Dashboard](#)

The VSD resides within the Ministry of Justice and functions as the main counselling and therapeutic intervention for victims of crimes. The VSD, like other government institutions, takes a victim-centred approach. Throughout Jamaica, VSD has 14 offices with three staff at each office (two technical and one administrative) that provide free counselling and emotional support for victims of IPV through in-person, at-home, and e-counselling meetings. Where victims need other social services, VSD will make referrals (warm transfers) to other agencies that provide: emergency shelters, psychiatric services, assistance getting a protection order, police monitoring, and mediation.³⁶³

Some of the key services provided by the VSD outside of counselling are court orientation, court accompaniment, and a court readiness report. Court orientation services provide both adult and child victims with an opportunity to visit the court before the day of trial and to understand the various personnel and their roles within the court. They are also provided with exercises to manage their anxiety and lessen retraumatisation. In certain cases a VSD officer will accompany a child victim to court. Accompanying adult victims only happens in exceptional cases.³⁶⁴

One of the essential roles of the VSD is to provide a court readiness report. Here, the VSD provides information to the court about the victim's ability to effectively participate in the court process [and whether special measures should be offered to the victims, which could include providing a 1\) screen in the court; 2\) video-based testimony; or 3\) recorded statement](#). Courts generally ask for these court readiness reports for children but not adults. Therefore, special measures are used disproportionately on behalf of child victims; however, especially for adult survivors, such measures should be extended to ensure that revictimisation will not occur. Unfortunately, adult survivors benefit from these special measures rarely, and each court may not be able to provide access to all the different types of special measures.³⁶⁵

One poignant example that shows the necessity of having special measures available in every courthouse was detailed to us by the Programmes Manager of VSD, Sheron Betancourt. Here, a child was waiting for their case to be called and moved to an area of

³⁶³ Data provided by Sheron Betancourt (Programmes Manager, VSD), 11 November 2022.

³⁶⁴ Betancourt, Sheron (Programmes Manager, VSD). Interview conducted by ICAAD, 7 October 2022.

³⁶⁵ Betancourt, Sheron (Programmes Manager, VSD). Interview conducted by ICAAD, 7 October 2022.

the courthouse to get some fresh air, and when they looked outside, they saw the parent of the accused gesticulating in an intimidating manner to them.³⁶⁶ Additionally, S. Betancourt identified some of the challenges faced by survivors in court, including: victim-blaming by judges, cross-examination that is extremely intimidating, and questions that are meant to confuse.³⁶⁷ We note that 60% of children interviewed expressed that the most difficult part of being a victim of crime “was related to the fear and ignorance of going to court” and that it clear how both the function and design of courts must be more accommodating to survivors.³⁶⁸

F. Journey Mapping I-E: Shelter Services

When women are in the process of obtaining protection orders or are otherwise in need of care and protection to escape abuse, they require shelter services. From 1988 onward, the primary provider for these services has been Woman Inc.³⁶⁹ The organisation offers crisis counselling, referral services, and shelter for victims of domestic violence, domestic crisis, rape, incest, and sexual harassment.³⁷⁰ They also provide advice to teenage girls who are pregnant and are in need of counselling.³⁷¹ They run a 24 hour hotline, which is accessible by calling 876-929-2997.³⁷² The organisation has one short-term shelter, with the capacity to house 8 women, along with their children, and a longer-term transitional housing shelter they just opened in the past year with capacity to house 4 women.³⁷³

In late November 2020, the Ministry of Culture, Gender, Entertainment and Sport opened the first government run shelter for abused women that is supposed to be able to care for up to 20 women.³⁷⁴ A second was opened in December 2021, and “was in a remote location and would focus on housing “very high risk victims.”³⁷⁵ Government shelter

³⁶⁶ Betancourt, Sheron (Programmes Manager, VSD). Interview conducted by ICAAD, 7 October 2022.

³⁶⁷ Betancourt, Sheron (Programmes Manager, VSD). Interview conducted by ICAAD, 7 October 2022.

³⁶⁸ Ministry of Justice/ VSD, *Court Support Available for Child Victims*,

<https://moj.gov.jm/index.php/pr/court-support-available-child-victims>.

³⁶⁹ *Woman Inc. – Fighting for those who Suffer in Silence*, Jamaica Information Service, 18 November 2004,

<https://jis.gov.jm/woman-inc-fighting-for-those-who-suffer-in-silence/>.

³⁷⁰ Woman Inc., <https://www.facebook.com/womanincjamaica/>.

³⁷¹ Woman Inc. Interview conducted by ICAAD, 4 October 2022.

³⁷² Woman Inc., <https://www.facebook.com/womanincjamaica/>.

³⁷³ Woman Inc. Interview conducted by ICAAD, 4 October 2022.

³⁷⁴ Patterson, Chris, *First Shelter For Abused Women Now Operational*, Jamaica Information Service, 26 November 2020, <https://jis.gov.jm/first-shelter-for-abused-women-now-operational/>.

³⁷⁵ *Grange opens second government shelter for women*, Ministry of Culture, Gender, Entertainment and Sport, 15 December 2021,

<https://mcges.gov.jm/index.php/gender/item/819-grange-opens-second-government-shelter-for-women>

services are accessible via a National Helpline at 876-553-0372.³⁷⁶ Both shelters can house a total of 15 victims and their families.³⁷⁷ There were problems with staffing the hotline when it was initially launched, however, as calls were being forwarded to Woman Inc., who were not made aware that they would be receiving the calls or how they should be handled.³⁷⁸ While the hotline now appears to be working, all CSOs that were interviewed including Woman Inc. reported that since the opening of the government shelters, they have not received any information about their locations or services that they could provide to their clients.³⁷⁹

This lack of information and the fact that some women report that they are still unable to receive assistance when they have called the National Helpline, has created uncertainty regarding what services the government shelters are providing and to how many women, or if they are even in operation. The police Domestic DVI Centres appear successful in referring victims to the government shelters.³⁸⁰ Woman Inc was engaged to train the hotline staff, but of the government staff who were invited, only twelve attended, and of those six engaged meaningfully with the training.³⁸¹

Woman Inc. has been a well-known primary service provider for so many years, therefore, many women facing abuse will access them directly.³⁸² They assist those in Kingston and St. Andrews and in the surrounding parishes, but they also get referrals from parishes that are further away.³⁸³ Previously, when police would assist in transporting victims from other parishes to the shelter, they would have to change transport at every parish border; this system was recently improved.³⁸⁴

Another pathway for referrals is directly through police and the DVI Centres, the staff of which were trained initially by Woman Inc. before the founding of CISOCA, who then took

³⁷⁶ Ibid.

³⁷⁷ Nunes, Hykel, *Grange Peeved with Members of Gender Committee*, Nationwide News Network, 21 April 2021, <https://nationwideradiojm.com/grange-peeved-with-members-of-gender-committee/>.

³⁷⁸ Woman Inc. Interview conducted by ICAAD, 4 October 2022.

³⁷⁹ CSO interviews conducted by ICAAD, 3-5 October 2022.

³⁸⁰ Dillon, Jacqueline (Deputy Superintendent of Police (DSP), Interview conducted by ICAAD, 7 October 2022.

³⁸¹ Woman Inc. Interview conducted by ICAAD, 4 October 2022.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Ibid.

over internal JCF and DVI training.³⁸⁵ From 2000-2009, CISOCA staff were also trained by Woman Inc., but since that time they have not been involved with training and are unaware of the content of current training provided.³⁸⁶ Since CISOCA came into existence, Woman Inc. no longer receives as many requests from victims of rape.³⁸⁷

As a direct service provider, from Woman Inc.'s experience, women face many challenges and barriers in attempting to access justice. When they provide shelter to victims seeking assistance, they counsel them to report violence to the police, but leave the choice to the survivor.³⁸⁸ They also counsel victims to document incidents of abuse, and also ask counsellors to document the stories the incidents the victims share.³⁸⁹ Some women who come in for assistance have attempted to get help from the authorities, but come in later because they have not gotten the support they need.³⁹⁰ For example, one woman reported that police did not intervene because the domestic violence they faced was "man and woman business," or that guidance counsellors at school tell girls to go and pray rather than reporting violence.³⁹¹ Furthermore, it is clear that pregnant women and HIV positive women face abuse at higher levels than average.³⁹² In rural areas, because of the lack of training and policy requiring reporting, women seek medical attention from midwives, even when they are not pregnant. In this process there is no documentation of violence.³⁹³ Gender discrimination arises there as well, as often people engage in victim-blaming, asking the question, what did the victim do to be abused?³⁹⁴

Where the perpetrator is involved or has any relationship with politicians, it is also difficult to access justice, as political intervention can occur at every level.³⁹⁵ For example, in the case of a politician who beat his wife with a stool, instead of prosecuting him, the case was dismissed despite there being video evidence of the altercation and a police report

³⁸⁵ Ibid.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

³⁹¹ Ibid. Also, interview conducted by ICAAD of a Parish Court judge, 4 October 2022.

³⁹² Woman Inc. Interview conducted by ICAAD, 4 October 2022.

³⁹³ Ibid.

³⁹⁴ Ibid.

³⁹⁵ Ibid.

filed that same day.³⁹⁶ Woman Inc. has also provided expert testimony in cases where women have chosen to seek asylum in another country because they were unable to obtain accountability through the courts.³⁹⁷ They have also witnessed issues of gender discrimination committed by judges, citing for example, a case where a woman had lost an eye after facing abuse by her boyfriend, and a female judge admonished the victim asking, “what more do you want? He’s paid your medical bills.”³⁹⁸

When queried about the organisation’s needs, it was expressed that they could use assistance with data collection, both from internal records and from hotline calls. They also would benefit from financial support for the hotlines, as mobile and land-line telephone bills for the organisation can be very high, and also sometimes victims who need assistance do not have enough credit on their phones to seek assistance. They also could use financial support for utility bills for the shelter, and would like to partner with the Ministry of National Security to secure their shelter with video surveillance under the Jamaica Eye program. Approximately 20% of Woman, Inc.’s budget is provided for by the government, and it continues to be a challenge to fundraise for the organisation, especially after event hosting facilities began charging heavily for the fundraising event they used to hold on an annual basis.³⁹⁹

G. Journey Mapping II: Healthcare Centre

For survivors who are required by their injuries to seek medical attention first, they go to health clinics, private doctors, or hospitals. If a child is involved, medical providers have an affirmative duty (active) to report the abuse of children if any evidence of harm is observed. There is, however, no mandatory reporting for other victims of domestic violence. In an interview with Dr. Rhonda Hutson, an emergency medicine physician at University Hospital of the West Indies’ and expert on the management of sexual assault cases, she expressed the opinion that there should be a duty to report GBV because survivors are often not in the position to report violence, are in immediate need of care and protection, and having the medical professional report would absolve the victim of being blamed for reporting.⁴⁰⁰ She explained that her facility treats many cases of repeat IPV, and believes that a major reason women endure violence is that women have nowhere to go. Jamaica does not have adequate infrastructure and support systems,

³⁹⁶ Abrahams, Michael, He beat her with a stool, Jamaica Gleaner, 4 April 2021, <https://jamaica-gleaner.com/article/commentary/20210420/michael-abrahams-he-beat-her-stool>.

³⁹⁷ Woman Inc. Interview conducted by ICAAD, 4 October 2022.

³⁹⁸ Woman Inc. Interview conducted by ICAAD, 4 October 2022.

³⁹⁹ Ibid.

⁴⁰⁰ Hutson, Dr. Rhonda (Emergency Medicine Physician and Sexual Assault Examiner UHWI). Interview conducted by ICAAD, 1 December 2022.

such as shelters or economic assistance, to assist women in leaving their abusers.⁴⁰¹ Additionally, in order to effectively guide a survivor through their trauma, social workers are critical in the healthcare context. Though their services are critical, there is a severe shortage of social workers to assist victims in the healthcare system.⁴⁰²

Medical reports for court cases are usually obtained when the police submits a request, or when a request is made by a lawyer. Survivors can also request their medical records themselves. There is no charge for police requests; however, when a lawyer requests the records there is a cost. Reports include past incidents of violence only if there is an express request for that information to be included in the report, since hospitals need permission to release this information. This is important, for example, in GBV cases where there is a history of medical injuries related to IPV, but a complaint has made its way to the court for the first time. Where records have only been requested and evidence submitted only for the most recent violent offence, a judge may impose a more lenient sentence on account of the perpetrator being a first-time offender, where past medical records would have shown evidence of prior offending.

The prevalence of teenage pregnancy combined with the criminalisation of consensual sexual behaviour of adolescents is also a major concern. While there is a National Family Planning Board which has the power to carry out family planning programmes in Jamaica and to operate and collaborate with the Government and other bodies to operate maternity and child welfare planning clinics, legislative shortfalls mean that adolescents under the age of 16 (the legal age of consent) have restrictions on their access to these type of services. The two main causes of this are that: (1) any sexual contact under the age of 16 is considered statutory rape; and (2) there are no ‘close-in-age’ exemptions which means that two individuals who willingly engage in sex under the age of 16 could both be prosecuted for statutory rape.⁴⁰³ As a consequence, schools do not provide adequate information about sex or reproduction to sexually active adolescents under the age of 16.

This also means there is no legal certainty for government agencies and healthcare providers about how to respond to adolescents who are in need of access to reproductive information and services. This position is complicated further by the Child Care Protection Act (CCPA) which mandates the reporting of any knowledge of sexual activity of adolescents below the age of consent to the Children’s Registry.⁴⁰⁴ The main

⁴⁰¹ Hutson, Dr. Rhonda (Emergency Medicine Physician and Sexual Assault Examiner UHWI). Interview conducted by ICAAD, 1 December 2022.

⁴⁰² Skyers, Nicola (Director of NCDs at the Ministry of Health). Interview conducted by ICAAD, 2 May 2022.

⁴⁰³ SOA sec. 10.

⁴⁰⁴ CCPA sec. 6. and SOA sec. 10.

purpose of the Registry is to record children who are reported missing or who are the subject of physical/sexual abuse (as opposed to sexually active adolescents). By criminalising consensual sexual activity between adolescents in this way, it makes it very difficult for healthcare workers to reach out to girls in need of support. In addition, healthcare workers are reluctant to provide adolescents with reproductive advice or treatment in case they are deemed to be ‘exposing’ children in contravention of the CCPA. This lack of access to reproductive information and services means that girls under the age of 16 are particularly vulnerable to GBV.

While there has been a lot of training and sensitisation around the treatment of PLHIV and LGBTQ+ individuals in healthcare settings,⁴⁰⁵ CSO interviewees from both communities expressed that differential treatment still occurs, with healthcare professionals or security staff double-gloving when unnecessary. Dr. Hutson suggested that trust needs to be built around these concerns in healthcare settings, and that, at her teaching facility, they are continuing to train doctors and nurses to be aware of nuances in their care and ensuring that care is the same in terms of outcomes.

⁴⁰⁵ Hutson, Dr. Rhonda (Emergency Medicine Physician and Sexual Assault Examiner UHWI). Interview conducted by ICAAD, 1 December 2022; Interview conducted by ICAAD with a gender justice specialist, 6 October 2022.

H. Journey Mapping III: Courts

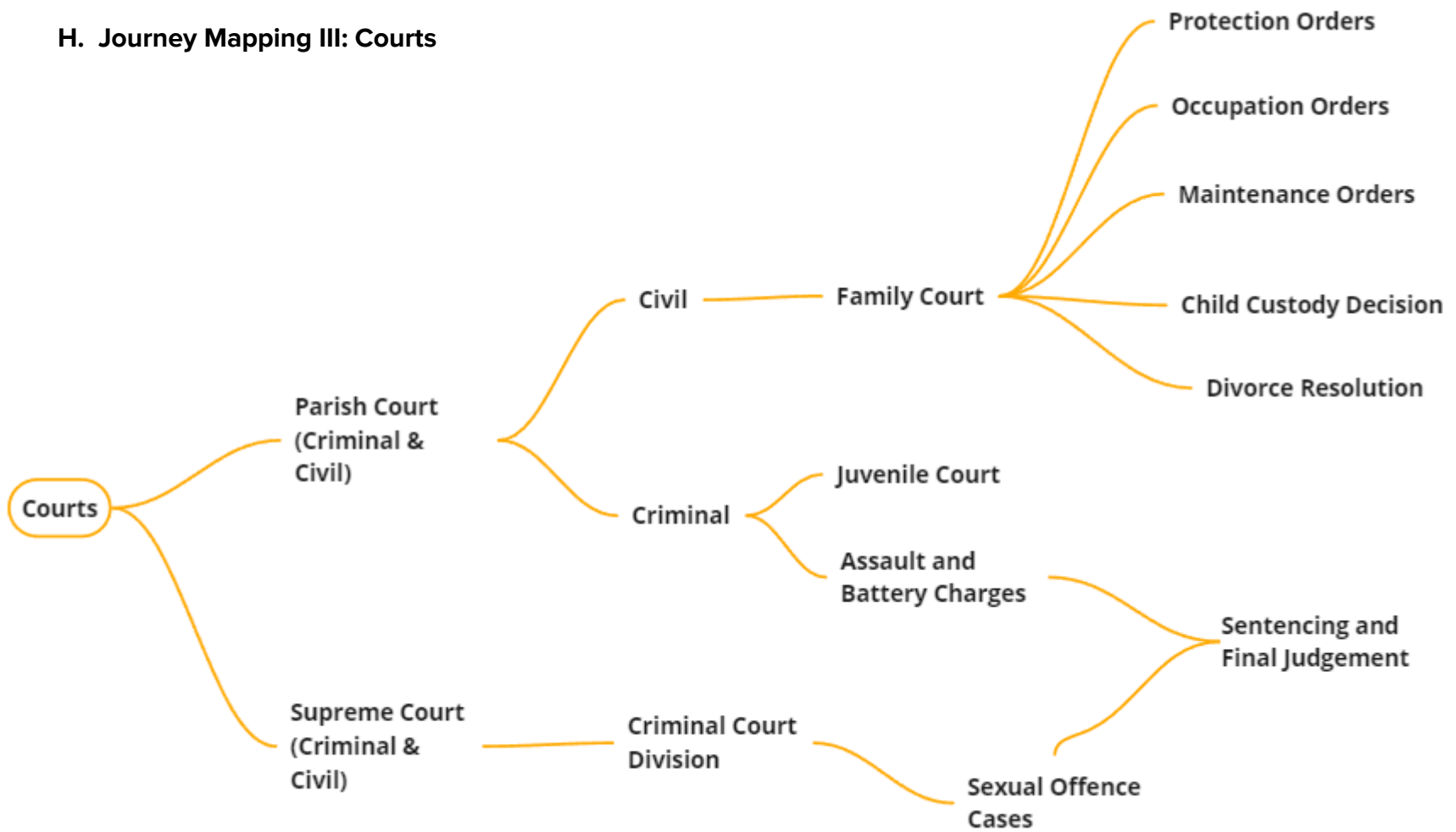


Figure 13: Courts

As relayed previously in relation to the Victim's Charter, once a police report is made, the focus on the state being the victim of the crime, rather than the victim themselves, places the victim in the position of being a witness rather than being at the centre of the administration of justice. Once a police investigation is completed, the case is referred to prosecution, and the office chooses whether to pursue the case in court or not. If it is a domestic violence case, **it will be handled in the Parish Courts, either in the Family Court or the Children's Court**. Parish Court decisions are not published and there is no court record outside of the hand-written notes of the judge.⁴⁰⁶ This is problematic because it is much more difficult to appeal cases, establish precedent, achieve consistency in decisions, and monitor the operation of the courts or specific judges.

Some cases have been overturned on appeal because lower court judges have been unable to produce their notes. For example, in *Evon Jack v R* [2021] JMCA Crim 31,⁴⁰⁷ the appellant appealed his 2013 conviction for sexual offences against a child which resulted in a sentence of concurrent terms of imprisonment of 15 years for carnal abuse, five years for buggery and two years for indecent assault.⁴⁰⁸ He appealed on the basis of, among other things, lack of evidence, an unfair trial, misidentification by the witness, and miscarriage of justice.⁴⁰⁹ As a result of the failure of the lower court to produce a transcript in over eight years of his imprisonment,⁴¹⁰ Evon Jack complained about the fairness of the appellate process, and of breaches of his constitutional right to a review of his conviction within a reasonable time under Section 16, subsections 1, 7 and 8 of the Constitution of Jamaica.⁴¹¹ Due to these reasons of excessive delay, the lack of a transcript, the fact that a transcript would not be produced and the inability of the appellate judge to undertake a fair review of his conviction on the basis of the trial judge's summation notes, the appellate court quashed the convictions and ordered Evon Jack's acquittal on all counts.⁴¹² The lower court's failure in this matter undermines survivors' trust in the justice system to ensure accountability for serious crimes.

Such miscarriages of justice can also be more mundane. For example, similar to the situation where survivors have been turned away because of their dress at police

⁴⁰⁶ Williams, Alexander (President of the Jamaican Bar Association), 3 May 2022.

⁴⁰⁷ *Evon Jack v R* [2021], JMCA Crim 31,

<https://www.courtsofappeal.gov.jm/sites/default/files/judgments/Jack%20%28Evon%29%20v%20R.pdf>.

⁴⁰⁸ *Ibid.*, at para. 3.

⁴⁰⁹ *Ibid.*, at para. 5.

⁴¹⁰ *Ibid.*, at para. 6.

⁴¹¹ *Ibid.*, at para. 18.

⁴¹² *Ibid.*, at para. 41.

stations, survivors have been dismissed from court because of dress or piercings that are deemed inappropriate by a judge or court staff. Furthermore, interviewees expressed that Parish Court judges look down on those who speak Patois or are perceived as being poor or lower class. Similarly, they noted that those who are brought before courts for charges of being “uncontrollable” only happen to those children whose families are impoverished.⁴¹³

There are five Family Courts in Jamaica. In parishes without an established Family Court, family matters are heard in the regular Parish Court on one designated day each month. Cases in Family Court usually take 6-12 months to be resolved, and joint mediation is not uncommon. The physical structure of Family Courts is one that places the parties in close proximity to one another. Because of the volume of people visiting the courts and tight spaces in the Family Court environment, it is virtually impossible to maintain adequate distance between litigants. A Family Court judge expressed that it is not uncommon for arguments and even physical violence to break out between the parties outside the building, in the hallways, in the waiting area, and occasionally even within a courtroom.⁴¹⁴

At a site visit and viewing of a family law case at the Kingston and St Andrew Family Court, there was a heated argument outside of the building, no more than three to six feet of distance separating people in the hallways, and tight and cramped spaces in the waiting area that would inevitably put litigants in close proximity to one another. While observing a hearing, a verbal altercation arose in the waiting room that was loud enough to interrupt closed-door proceedings, and required the court clerk and police officer to step outside to calm the situation. At the Family Court, there is the same line and same entrance for both parties to enter the building. Once they file in, they are led upstairs through a narrow hallway leading to a small waiting area that serves three small courtrooms, the smallest of which is approximately 15 ft. x 15 ft. Even the largest courtroom was no more than 30 ft. x 15 ft., with chairs along one side of the courtroom and each party sitting no more than one chair apart from each other. The mental and physical well-being of survivors cannot realistically be safeguarded in such an environment. As one Parish Court judge said with respect to courthouses, “the starting point of trauma starts with the physical space.”⁴¹⁵ Additionally, for survivors with physical

⁴¹³ Interview conducted by ICAAD with CSO colleagues, 4-6 October 2022.

⁴¹⁴ Interview conducted by ICAAD of a Parish Court judge, 4 October 2022.

⁴¹⁵ Interview conducted by ICAAD of a Parish Court judge, 4 October 2022.

disabilities, the court would be extremely difficult to access and navigate,⁴¹⁶ and there is no car park for court staff or for its citizens. And for those suffering mental disability or trauma related to violence, minimal psychological care exists.

Protection and occupation orders can be sought directly by victims through a form process at the Family Courts, but usually are sought after reporting to the police or an NGO. Protection orders are a civil order put in place to stop violence that is occurring in the home and essentially operate to provide some protection for the victim. This is accomplished by making an assessment in court as to what the party is requesting in court. Sometimes this includes specifying a set amount of distance between the parties, to not to make any physical, verbal, phone or online contact or in the alternative to only allow peaceful contact for limited reasons, such as childcare. This might require a probation officer to conduct house-visits. Typically, in the U.S., the minimum distance the abuser is ordered to stay away from the victim is 300ft.,⁴¹⁷ whereas in Jamaica, protection orders usually impose a distance of separation of no more than 6-20ft on average, with the distance sometimes expressed in terms of staying an arm's length away.⁴¹⁸ In our interviews, it was abundantly clear that protection orders are often violated and rarely enforced by the police; in some cases, part of the problem is the insufficiency of the order itself, where little is specified to ensure that the survivor is sufficiently protected.⁴¹⁹

Protection orders are sometimes granted alongside occupation orders, which are orders ruling who can stay in a jointly owned or rented residence. Occasionally, occupation orders specify both parties to remain in a particular section of the residence, stating, for example, that one party is to stay upstairs, while the other downstairs in a split-level home. Because the process of being granted a protection and/or occupation order can take one week to a month, victims can be left in extreme danger, and there is limited space in shelters or transitional housing to provide safety while they wait.⁴²⁰

⁴¹⁶ The courts were on the third floor and we didn't identify any elevators at the location.

⁴¹⁷ "Not have physical or violent contact with you or your property and **stay at least 300 feet away** from your home (even if you share the home with the abuser), from your work, from your children's school and any other specific place that you go to often (assuming the defendant has no good reason to be there)." WomensLaw.org, Legal Information: Alabama Restraining Orders, <https://www.womenslaw.org/laws/al/restraining-orders/protection-abuse-orders>

⁴¹⁸ Interview conducted by ICAAD of Parish Court judge, 4 October 2022.

⁴¹⁹ Interview conducted by ICAAD of Parish Court judge and CSOs, 4-6 October 2022.

⁴²⁰ Interview conducted by ICAAD of CSOs, 4-6 October 2022.

Sometimes, the court staff themselves can be a barrier to justice. For example, a Parish Court judge stated that their own court staff have given incorrect advice/ orders, such as rejecting third-party applications for protection orders when filed by police or CSOs because they have not previously seen such granted.⁴²¹ While the police can apply for temporary protection orders, as expressed previously, the police cannot issue such protection orders. Furthermore, the power to issue a protection order is limited to senior judges during nights and weekends, while junior judges can only issue them during regular business hours. An interviewee expressed that counsel have been unsuccessful in getting a protection order on the weekend because the senior judge has refused to see them *ex parte* outside of business hours.⁴²² Finally, there is also a serious gap in the enforcement of protection orders, where perpetrators are in breach of the protection order but the police will ignore the complaint and tell the complainant to go back to court. One CSO partner said that they have never had a client who said a breach of a protection order was successfully enforced.⁴²³ Occasionally, informal reconciliation can also bypass the judicial process altogether, with one interviewee stating that monetary payments are sometimes used to reconcile the parties.

Survivors are also particularly concerned about potential financial abuse, especially if there are children involved, or if living expenses are shared or primarily provided for by the abuser. This often results in victims compromising on their safety, in circumstances where they have or may have also become acclimated to living in fear. Maintenance can be provided alongside a protection order, with orders that the abuser pay through the court, but the victim must usually come prepared to ask for maintenance at the protection order hearing, or occasionally the judge may bring it up. If it is not brought up then the victim has to come to another hearing seeking a variance to the protection order, which again lengthens the process by weeks if not months. If a victim intends to ask for maintenance at the protection order hearing, they must fill out a separate application prior to the proceeding and be ready to present that before the court. In a case observed at the Kingston and Saint Andrew Family Court, the court clerk had intended to require the complainant to travel back to Kingston from Westmoreland for a separate hearing to seek a maintenance variance because the complainant had not filled out the requisite

⁴²¹ Interview conducted by ICAAD of Parish Court judge and CSOs, 4-6 October 2022.

⁴²² Interview conducted by ICAAD of CSOs, 4-6 October 2022.

⁴²³ Interview conducted by UN Women of CSO, 15 November 2021.

maintenance application. The judge in the case had to request that special measures be taken to resolve the issue that same day; having the clerk draw up an order to be later filled out once the complainant went back downstairs to fill out the appropriate application and file it with court staff.

If the case involves sexual violence or another criminal charge, it will be handled at the Supreme Court, Criminal Division. At this stage, the VSD should provide some support to the survivor in their position as a witness, to assist such witness in providing evidence. The support does not go far enough however, because it does not cover transport costs to the court, childcare costs, or wage-replacement for missed work. The VSD is also much more active in cases involving children rather than those involving adults.⁴²⁴

Once a case is before the Criminal Court, judges can ask for social enquiry reports which can give more colour to the situation of the victim and the impact on them of the crime. Despite being proven to be contrary to the interests of justice, victim corroboration is still sought in some rape cases. On the other hand, limited hearsay evidence is allowed in court, so that the first person the victim mentions the sexual violence to is allowed to testify in court. If the accused is considered a first-time offender (a status that is not well-defined) and they plead guilty, the combination can result in a 50% reduction of their sentence.

“The example was given of certain rural areas in Jamaica where it is considered hard to get a guilty verdict for a sexual offence due to ingrained norms and biases regarding ‘just a little sex’, ‘the girl did want it’. Cultural beliefs that married individuals cannot be raped by their spouses or that men and boys cannot be raped by women and girls contribute to underreporting.”⁴²⁵ Many more insights are revealed about the experience of users and the operations of the courts through the case law analysis section hereinafter.

⁴²⁴ Betancourt, Sheron (Programmes Manager, VSD). Interview conducted by ICAAD, 7 October 2022; data provided by Mrs. Betancourt, 11 October 2022.

⁴²⁵ *Swift, Sure & Inclusive Justice* (2020) at 46,

<https://uwi.edu/salises-mona/sites/salises-mona/files/PDF/IntegratedStrategicPlan.pdf>.

I. Case Law Analysis: Mixed Methods Research

After following the journey of a survivor as they navigate the justice sector, one key missing piece is how judges themselves view GBV cases. By reviewing case law and using a mixed methods research approach that values and utilises both quantitative and qualitative data, we are able to 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.

1. Methodology

TrackGBV⁴²⁶ 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,⁴²⁷ the review of Jamaican GBV cases reveals the presence of similar 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 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.”⁴²⁸ 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

⁴²⁶ ICAAD, TrackGBV Data Dashboard, <https://icaad.ngo/trackgbv/>.

⁴²⁷ ICAAD, *SGBV Sentencing Handbook* (2019), <https://icaad.ngo/wp-content/uploads/2019/01/ICAAD-SGBV-Sentencing-Handbook-119.pdf>.

⁴²⁸ *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.

or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”⁴²⁹

- **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.”⁴³⁰

- **Contentious factors:** Those factors which, when used in mitigation by the court, discriminate against the victim/ survivor on the basis of her gender. This may be through gender stereotyping and rape myths, the consideration of customary practices which 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”).

⁴²⁹ Council of Europe, *Convention on preventing and combating violence against women and domestic violence* (2011), at Article 3, <https://rm.coe.int/168008482e>.

⁴³⁰ *Ibid.*, at Article 36.

- **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.

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

Figure 14: Stereotyping, Rape Myths & Victim Blaming: Incorrect Assumptions

Using a specific search methodology,⁴³¹ our research identified 61 GBV cases on the Jamaica Court of Appeals website and one on the Supreme Court website. Of these 62 applicable cases,⁴³² 45 are between 2016 to 2023, the remaining 17 cases are from 2011-2015. This section is a summary of the insights we drew from this analysis about judicial decision-making in domestic and sexual violence cases. It is important to note that 62 cases is a small sample size of cases, and therefore we should be careful not to draw too many conclusions from them. Rather, this subset of cases provides a pathway for further exploration and a rationale for why additional research, including case law analysis, would be warranted.

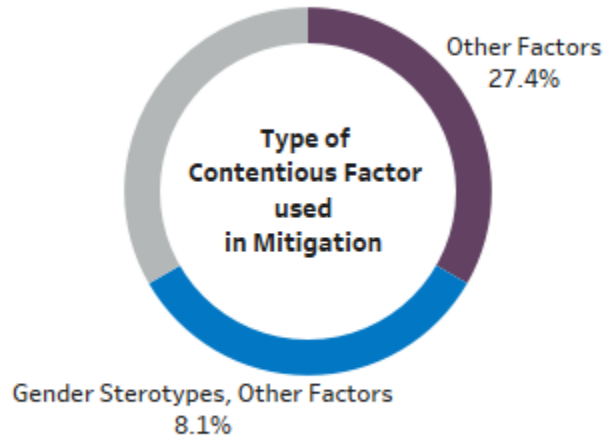


Figure 15

Within this subset, contentious factors were raised in over 50% of cases. These contentious factors played a part in the mitigation of sentences in over 35% of cases (22), thereby leading to a sentence reduction.

2. Quantitative Data

Unfortunately, lower courts such as Petty Sessions Courts and Parish Courts are not courts of record. Therefore, domestic violence cases that typically originate in those courts are going to be underrepresented in the data set. In our analysis, 13% (8) were domestic violence cases, 63% (39) were sexual violence cases, and 24% (15) presented with attributes of both domestic and sexual violence. Over three-fourths of the cases were for the charges of rape or sexual intercourse with a child or incest (81%, 50), with

⁴³¹ ICAAD, SGBV Sentencing Handbook (2019), <https://icaad.ngo/wp-content/uploads/2019/01/ICAAD-SGBV-Sentencing-Handbook-1.19.pdf>.

⁴³² Sentencing decisions involving gender-based violence-related charges.

murder (related to domestic or sexual violence) being the next most common charge (13%, 8).

In 50% of the cases (31), the victim/survivor was a child. The perpetrator was known to the victim/ survivor in over 70% of cases (43). In 16% (10) of the cases, the perpetrator was the victim's partner/ ex-partner. In 23% (14) of the cases, the perpetrator was a member of the family, and 61% (38) of the cases involved non-partner violence.

Relationship between perpetrator and victim

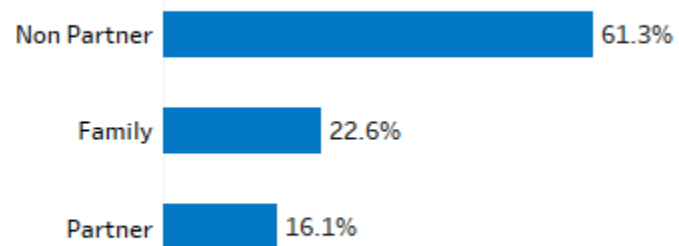


Figure 16

The anonymity of victims/survivors was not maintained in over 58% (36) of the cases. This includes cases where even though the victim was not identified by name, there was a mention of identifying details about them.



Figure 17

Medical reports were referenced in 29% (18) of cases, which is particularly low especially given the proportion of rape and manslaughter cases, which tend to heavily rely on medical reports. This does not mean that medical reports were not factored into the decision-making in the case, only that they were not referenced in the judgement/ sentencing decision.

Social Enquiry reports were mentioned in 48% (30) of the cases, including 22 rape and sexual intercourse with a child cases, three murder cases and two manslaughter cases.⁴³³ Though social enquiry reports are not mandatory, the sentencing guidelines describe that in serious crimes, including rape and murder, these reports should be requested and reviewed by judges as part of the norm.⁴³⁴ However, when viewing data on Family Courts, the top reason for adjournment/ continuance was the request of social enquiry reports, which accounted for 14% of the total sample size.⁴³⁵ That said, it did not seem as though judges were effectively weighing the social enquiry reports against the criminal act committed. For example, in *Leighton Rowe v R* [2017] JMCA Crim 22,⁴³⁶ a 33 year-old step father pleaded guilty to raping and impregnating his 11 year-old stepdaughter, and the sentencing and the appellate judges gave undue weight to his “good character” and “Christian upbringing” raised in his Social Enquiry Report. More details about this case are discussed below in the next section.

Even though most of the cases were from 2016 onwards, a lot of them did not have a discussion about the factors that were taken into account during sentencing unless the appeal was specifically about the sentence. However, we found commentary involving contentious factors led to sentence reductions in 22 cases. These factors included: what the judge deemed as a positive social enquiry report; antecedent reports (history and record of the defendant); character witness reports that included testimonies of family and community members; that a weapon was not used; and being gainfully employed. Additionally, gender stereotypes such as the sole breadwinner argument and family circumstances were used in five out of the fifteen cases.

Perpetrators were granted first time offender status in 40% of cases (25), with the status arguably being misapplied in five of those. In three of the cases where the first time offender status was arguably misapplied, the perpetrator had a previous conviction for different violent offending. In the remaining two cases, there was an established pattern

⁴³³ For example, *Janet Douglas v R* [2018] JMCA Crim 7,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Douglas%20%28Janet%29%20v.%20R.pdf>.

⁴³⁴ Sentencing Guidelines, at 2-1.

⁴³⁵ The Court Statistics Unit, *Family Courts of Jamaica: The Chief Justice's First Quarter Statistics Report*, at 12 (2021), https://parishcourt.gov.jm/sites/default/files/THE%20CHIEF%20JUSTICE%27S%20FIRST%20QUARTER%20STATISTICS%20REPORT%20ON%20THE%20SPECIALIZED%20FAMILY%20COURTS_Q1-2021.pdf.

⁴³⁶ *Leighton Rowe v R* [2017] JMCA Crim 22,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Rowe%20%28Leighton%29%20v.%20R.pdf>.

of violence which was part of the factual evidence in the case that was disregarded by the judicial officer in assessing first time offender status. We recognise judges have discretion in this arena, however, we have argued and convinced judiciaries in other jurisdictions that the spirit of the law, when it comes to granting leniency for first time offenders, is undermined when the facts stipulate previous violent offending (even if it is not the same as the current charge), or when it is clear that there has been a pattern of violence against the victim/survivor even though there has been no previous conviction.⁴³⁷

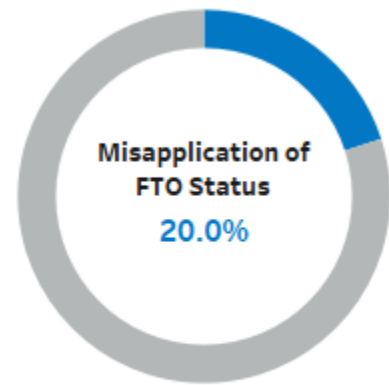


Figure 18

Count of Cases and Average Final Sentence by Charge Category

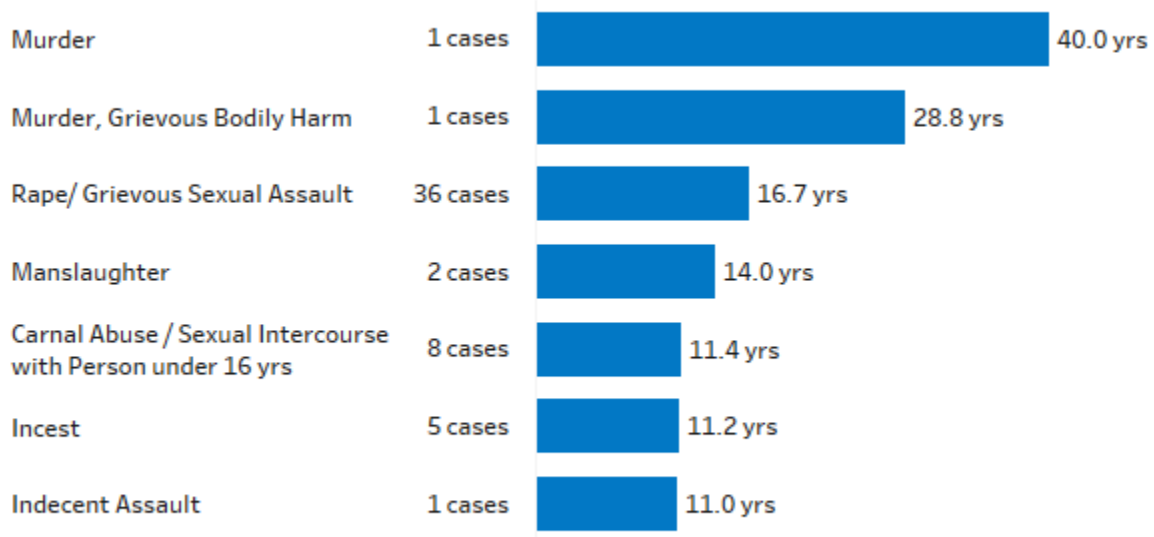


Figure 19

⁴³⁷ Fijian Judiciary Collaborates with ICAAD to Improve Access to Justice (2018), <https://icaad.ngo/2018/07/20/fijian-judiciary-icaad-improve-access/>.

3. Qualitative Data

a. Courts' Reliance on Contentious Factors

Out of the 22 cases where contentious factors, such as gender stereotyping and privileging the interests of the accused over the survivor were used in mitigation, 11 cases involved sexual violence against children. The perpetrator was a family member in seven of these 11 cases.⁴³⁸

In the most recent case from 2023, *Rashane Desouza v R*⁴³⁹, 22-year-old student Rashane Desouza appealed his conviction and sentence for indecent assault and rape following a trial in September 2019. The trial judge imposed a three-year-and-two-month sentence for indecent assault and a 15-year sentence for rape, with a stipulation of serving 10 years before parole eligibility, to run concurrently. Additionally, the trial judge issued a certificate under section 42K of the Criminal Justice Administration (Amendment) Act 2015, allowing reconsideration of the sentence.⁴⁴⁰ The incident took place at a bar, where Desouza, convicted of leading the 19-year-old victim to a room and threatening her with a knife, claimed they were in a relationship, contradicting the victim's description of their connection as a friendship.⁴⁴¹ The differing accounts led to credibility concerns during the trial.⁴⁴² His appeal focused on the trial judge's handling of the case, specifically addressing issues related to the complainant's credibility, the judge's warning to the jury about the need for corroboration, and the assertion that the sentence was manifestly excessive.⁴⁴³

Despite the limited availability of the trial transcript,⁴⁴⁴ the appellate court upheld the conviction, asserting that the trial judge provided appropriate guidance to the jury about the victim's credibility during the summation.⁴⁴⁵ The court also found the judge's general

⁴³⁸ If the perpetrator is a family member, the case is tagged as both domestic and sexual violence in the TrackGBV methodology.

⁴³⁹ *Rashane Desouza v R*,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Desouza%20%28Rashane%29%20v%20R.pdf>.

⁴⁴⁰ *Ibid.*, para 1.

⁴⁴¹ *Ibid.*, para 5 and 6.

⁴⁴² *Rbid.*, para 10 and 14.

⁴⁴³ *Ibid.*, para 18.

⁴⁴⁴ *Ibid.*, para 4.

⁴⁴⁵ *Ibid.*, para 57.

caution to the jury was sufficient.⁴⁴⁶ Concerning the sentence, the court recognized that while the certificate issued by the trial judge is not binding, compelling reasons existed to consider the minimum 15-year sentence for rape as manifestly excessive and unjust in this case. The court underscored the severity of the offense, stating that “the offence of rape is an egregious violation of the body and psyche of the victim, which explains the legislature’s enactment of a minimum sentence.⁴⁴⁷” In determining an appropriate sentence, the court used the suggested 15-year starting point from the Sentencing Guidelines.⁴⁴⁸ Aggravating factors such as betrayal of friendship or age difference were not considered, and the court acknowledged the jury's doubt about the use of a knife.⁴⁴⁹ Several mitigating factors, including the lack of previous convictions, enrollment in an educational institution, a positive social report, and community shock at his conviction, led to a reduction of six years.⁴⁵⁰ Consequently, the Appellate Court sentenced Desouza to nine years in prison, specifying that he must serve at least two-thirds of his sentence (six years) before parole eligibility.⁴⁵¹ This brought the final sentence below the mandatory minimum of 15 years, which we have previously highlighted as being problematic, even though permitted under the CJAA.

In another recent case, *Richard Salmon v R*⁴⁵² from 2023, the court heard an appeal against Salmon's murder sentence, arguing it was "manifestly excessive."⁴⁵³ In September 2017, Teri Ann Morris and her eight-year-old daughter were brutally attacked with acid by Richard Salmon, Morris's estranged husband, at their home in St. Andrew, Jamaica. The acid caused severe burns, leading to Morris's tragic death three weeks later, while her daughter remained critically injured. Initially charged with wounding, Salmon was later expected to face a murder charge following Morris's death.⁴⁵⁴ He pleaded guilty to murder and causing grievous bodily harm with intent. He was sentenced to life in prison with a chance for parole after 26 years for murder and 9 years for the other charge.⁴⁵⁵

⁴⁴⁶ Ibid., para 63.

⁴⁴⁷ Ibid., para 68.

⁴⁴⁸ Ibid., para 69.

⁴⁴⁹ Ibid., para 70 and 71.

⁴⁵⁰ Ibid., para 72.

⁴⁵¹ Ibid., para 73.

⁴⁵² *Richard Salmon v R*

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Salmon%20%28Richard%29%20v%20R.pdf>.

⁴⁵³ Ibid., para 2.

⁴⁵⁴ Tanesha Mundle, *Accused Learns in Court that Acid Attack Victim had Died*, Jamaica Observer (Oct. 17, 2017), <https://www.jamaicaobserver.com/2017/10/17/accused-learns-in-court-that-acid-attack-victim-had-died/>.

⁴⁵⁵ Ibid., para 1.

In the appeal, the defence mentioned that the sentencing judge had erred by focusing on deterrence and punishment rather than rehabilitation. The judge had initially used a starting point of 40 years' imprisonment, surpassing the maximum of 30 years, which is applicable when calculating a reduction for a guilty plea under Section 42F of the Criminal Justice (Administration) (Amendment) Act.⁴⁵⁶ The court corrected this by determining a more appropriate starting point of 28 years, considering the use of a corrosive substance, the victim's extensive suffering, and other aggravating factors such as premeditation and the prevalence of domestic violence in Jamaica.⁴⁵⁷ It adjusted the sentence, increasing it by six years for these aggravating factors.⁴⁵⁸ For mitigation, the court noted Salmon's remorse. However, despite him committing such a heinous crime, it also considered mitigating factors including a favourable social inquiry report, stable employment, and dependents, reducing his sentence by two years.⁴⁵⁹ After an additional 10% (3 years and two months) discount for a guilty plea and accounting for the two years Salmon had already spent in custody, the court established a pre-parole period of 26 years and 10 months.⁴⁶⁰ Despite the appeal, the court decided not to disturb the original sentence, emphasising fairness to the applicant in its final judgement.⁴⁶¹

In a 2023 appeal, *Simon Daley v R*,⁴⁶² Simon Daley pleaded guilty to having sexual intercourse with a person under 16 and was sentenced to 15 years' imprisonment.⁴⁶³ The offence involved his 14-year-old stepdaughter and occurred in 2013.⁴⁶⁴ Daley appealed, arguing that the sentence was harsh and excessive.⁴⁶⁵ The appeal highlighted errors in the sentencing process: the judge incorrectly believed she couldn't impose a sentence below the statutory minimum, and she failed to give Daley credit for time spent on pre-sentence remand.⁴⁶⁶ The court agreed with these errors, noting that Section 42D(3) of the Criminal Justice (Administration) (Amendment) Act 2015 allowed a sentence below the statutory minimum for a guilty plea.

⁴⁵⁶ Ibid., para 3.

⁴⁵⁷ Ibid., para 19.

⁴⁵⁸ Ibid., para 20.

⁴⁵⁹ Ibid., para 19.

⁴⁶⁰ Ibid., para 21.

⁴⁶¹ Ibid., para 23.

⁴⁶² *Simon Daley v R*

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Daley%20%28Simon%29%20v%20R.pdf>.

⁴⁶³ Ibid., para 1.

⁴⁶⁴ Ibid., para 2.

⁴⁶⁵ Ibid., para 4.

⁴⁶⁶ Ibid., para 8.

The court recalculated the sentence and a starting point of 15 years was adopted. It went on to increase that by 5 years on account of aggravating factors like significant premeditation, the age disparity between Daley (37 yrs) and the victim (14 yrs), psychological impact on the victim, and the prevalence of sexual offences in society. The court gave a concession of 5 years for personal mitigating factors including Daley's prior good character, his reputation as a hard worker, providing support to the victim since infancy, and absence of aggravating factors such as a lack of previous convictions. The Court further provided a discount of 25% (3 years eight months) for the guilty plea and a four month credit for time spent in pre-sentence remand which resulted in a final sentence of 11 years.⁴⁶⁷ Daley was deemed eligible for parole after serving nine years. The court set aside the original 15-year sentence and substituted it with the revised 11-year sentence, with the term starting on June 8, 2018.⁴⁶⁸

In *Garfield Elliot v R*,⁴⁶⁹ the perpetrator, 44-year-old Garfield Elliot was convicted in March 2019 for three counts of sexual assault offences including grievous sexual assault, buggery, and sexual touching, all committed on separate dates on an 11-year-old child. He was sentenced to a mandatory minimum of 15 years' imprisonment for the grievous sexual assault and four years' imprisonment for each of the other two offences, with all sentences to run concurrently. The judge also granted the appellant a certificate in relation to the mandatory minimum sentence under section 42K of the Criminal Justice (Administration) Act.⁴⁷⁰

The court commenced the sentencing decision with a mandatory minimum starting point of 15 years, considering the absence of gratuitous violence and the offender's previous good character.⁴⁷¹ It cited aggravating factors including the victim's age, potential long-term trauma, perpetrator's maturity, threats, and the prevalence of the offence. Despite the repeated offending, the judge gave him credit for being a first time offender, his "unblemished character", lack of previous convictions, positive community report, and prospects for rehabilitation. While the court did not specify the exact number of years added or subtracted, it determined that, when balanced, mitigating factors neutralised

⁴⁶⁷ Ibid., para 14.

⁴⁶⁸ Ibid., para 15.

⁴⁶⁹ *Garfield Elliot v R*

<https://www.courtsofappeal.gov.jm/sites/default/files/judgments/Elliott%20%28Garfield%29%20v%20R.pdf>.

⁴⁷⁰ Ibid., para 1.

⁴⁷¹ Ibid., para 22.

the impact of aggravating factors, resulting in a sentence of 15 years in prison.⁴⁷² This sentence was then adjusted by 3 years to reflect credit for the 34 months spent on remand, leading to a final sentence of 12 years.⁴⁷³

In the 2023 appeal of *Oneil Forrest v R*,⁴⁷⁴ the appellant, a private security guard, contested his 2018 conviction and an 18-year sentence for rape.⁴⁷⁵ While the appeal against conviction was dismissed,⁴⁷⁶ the appellate judge scrutinised the sentencing. He highlighted that the trial judge deviated from the typical starting point of 15 years for rape, opting for 18 years based on these factors and the adverse impact on the complainant and did not discuss a clear mathematical computation of the sentence factoring in both mitigating and aggravating elements.⁴⁷⁷ In his opinion, the trial judge erred in treating the perpetrator's denial of guilt, claiming the victim fabricated the story under paternal influence, as an aggravating factor.⁴⁷⁸

The appellate court deemed the standard starting point of 15 years appropriate. It then stated aggravating factors including the applicant's role as a security guard, breaching trust; being on duty during the offence; using the company's vehicle; and the circumstances of meeting the complainant.⁴⁷⁹ The court also used a lack of aggravating factors such as the absence of weapon use and no additional violence incorrectly as mitigating factors.⁴⁸⁰ The court added 5 years for aggravating factors and reduced the sentence by 2 years for the mitigating factors leading to a final sentence of 18 years.⁴⁸¹ It therefore deemed this sentence not manifestly excessive, leading to the dismissal of the appeal against the sentence.⁴⁸² The applicant was required to serve 12 years before parole eligibility.⁴⁸³

⁴⁷² Ibid., para 23.

⁴⁷³ Ibid., para 24.

⁴⁷⁴ *Oneil Forrest v R*

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Forrest%20%28Oneil%29%20v%20R.pdf>.

⁴⁷⁵ Ibid., para 1 and 4.

⁴⁷⁶ Ibid., para 160.

⁴⁷⁷ Ibid., para 148.

⁴⁷⁸ Ibid., para 149.

⁴⁷⁹ Ibid., para 151.

⁴⁸⁰ Ibid., para 152.

⁴⁸¹ Ibid., para 158.

⁴⁸² Ibid., para 159.

⁴⁸³ Ibid., para 160.

In *Dwayne Miller v R* [2022] JMCA Crim 7,⁴⁸⁴ the perpetrator, a 29-year-old male who pleaded guilty to having sexual intercourse with his 12-year-old cousin, appealed his sentence for being too excessive. He was sentenced to 18 years' imprisonment on the charge of having sexual intercourse with a person under the age of 16 years under section 10(1) of the SOA.⁴⁸⁵ During the appeal, the judge agreed with the defence that the mitigating factors far outweighed the aggravating factors and thus revised the sentence.⁴⁸⁶ She started with a sentence of 15 years and added five years for the large age gap between the perpetrator and the victim.⁴⁸⁷ However, she went on to discount the sentence by five years⁴⁸⁸ because of factors such as no violence or force being used by the perpetrator, and also that it was not a premeditated offence.⁴⁸⁹ The judge considered "the social enquiry report showed that the appellant was highly regarded in the community," the perpetrator's 'unblemished character,' and lack of any previous offence as mitigating factors.⁴⁹⁰ The reasoning here is contentious because the court uses the absence of aggravating factors as mitigating factors to discount the sentence. Rape is, in itself, a forceful and violent act. To mitigate a sentence because no additional violent act took place is to minimise the severity of the criminal act itself. In this matter, the judge further reduced the sentence by 40% (six years) on account of the perpetrator's guilty plea on the first available date leading to a final sentence of nine years and bringing the final sentence below the mandatory minimum of 15 years, which as we have discussed previously is permissible under the CJAA, though deeply problematic.⁴⁹¹ His name was also placed in the sexual offenders' registry.⁴⁹²

Similar contentious reasons were used to mitigate the sentence of a 26-year-old perpetrator in *Terron White v R* [2022] JMCA Crim 8,⁴⁹³ where he was charged with illegal possession of a firearm, rape, and robbery with aggravation⁴⁹⁴. The perpetrator, who was

⁴⁸⁴ *Dwayne Miller v R* [2022] JMCA Crim 7,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Miller%20%28Dwayne%29%20v%20R.pdf>.

⁴⁸⁵ *Ibid.*, para. 2.

⁴⁸⁶ *Ibid.*, para. 6.

⁴⁸⁷ *Ibid.*, para. 5.

⁴⁸⁸ *Ibid.*, para. 6.

⁴⁸⁹ *Ibid.*, para. 2.

⁴⁹⁰ *Ibid.*, para. 3.

⁴⁹¹ *Ibid.*, para. 6.

⁴⁹² *Ibid.*, para. 8.

⁴⁹³ *Terron White v R* [2022] JMCA Crim 8,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/White%20%28Terron%29%20v%20R.pdf>.

⁴⁹⁴ *Ibid.*, para. 2.

the victim/ survivor's second cousin, and another man invaded her home, raped and robbed her at gunpoint in the presence of her young children, even though he was family and she had shared a relatively close relationship with him.⁴⁹⁵ The sexual offence was exacerbated by additional threats of violence targeting her and her children. While the judge acknowledged these aggravating factors during sentencing, she also took notice of the mitigating factors raised by the defence which included the perpetrator's positive character evidence in his social enquiry and community reports, where the perpetrator was described as "a well behaved, hardworking, industrious young man with no previous convictions."⁴⁹⁶ Even though the perpetrator denied committing the offences, the judge also gave him credit for remorse for his acknowledgment of the victim's ordeal.⁴⁹⁷ The severity of the crime and what we consider to be a lack of remorse would typically not justify mitigation of a perpetrator's sentence.

Another case is *Levy (Levi) v R* [2022] JMCA Crim 13.⁴⁹⁸ In this case, the perpetrator, who was the victim's Facebook friend, was found guilty of rape and grievous sexual assault under section 6(2) of the SOA.⁴⁹⁹ The appellate judge noted that the perpetrator betrayed the trust of the victim, tricked her into having sex with him and then threatened her with scandal, and equated her to a prostitute who contrived the story when she was not paid.⁵⁰⁰ However, the perpetrator was given relief for the fact that he had a favourable social enquiry report with a positive community report which indicated that he was a "hard worker, not a troublemaker or idler in that community".⁵⁰¹ The judge also considered the perpetrator's family circumstances that he had a wife and two children and was the sole breadwinner of the family.⁵⁰² The judge noted that the perpetrator had a past conviction in 2012 but opted not to place too much weight on it.⁵⁰³ Though the judge did not detail the exact number of years added or subtracted, she used a starting sentence of 15 years,⁵⁰⁴ and shared that the aggravating factors outweigh the mitigating

⁴⁹⁵ Ibid., para. 5.

⁴⁹⁶ Ibid., para. 83.

⁴⁹⁷ Ibid., 84.

⁴⁹⁸ *Levi Levy v R* [2022] JMCA Crim 13,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Levy%20%28Levi%29%20v%20R.pdf>.

⁴⁹⁹ Ibid., para. 1.

⁵⁰⁰ Ibid., para. 88.

⁵⁰¹ Ibid., para. 89.

⁵⁰² Ibid.

⁵⁰³ Ibid.

⁵⁰⁴ Ibid., para. 91.

factors and that a sentence between 17 to 20 years would be reasonable.⁵⁰⁵ Therefore she did not change the sentence of 18 years that was originally imposed on the perpetrator. She also agreed with the concurrent sentence of 18 years' hard labour for the two counts of grievous sexual assault.⁵⁰⁶

In another appeal *Delton Smikle v R* [2020] JMCA Crim 48,⁵⁰⁷ a taxi driver responsible for transporting children, including the victim/ survivor to school every day, was found guilty of forcible abduction and having sexual intercourse with an 11-year-old girl in 2017.⁵⁰⁸ The judge recognised the presence of aggravating factors, such as the age of the victim (three years), premeditation (five years), the breach of trust that the victim's family had in him to transport their daughter safely to and from the school, the perpetrator offering a phone to the victim on the way to the police station, and the prevalence of the offence and its impact on the victim.⁵⁰⁹ However, in the instant case, the perpetrator was still granted an overall three-year reduction in sentence for: the remorse he expressed in his social enquiry report and having a favourable report overall, being a first-time offender, and for not using a weapon (two-year reduction).⁵¹⁰ The appellate judge, on the other hand, considered the fact that the perpetrator did not take responsibility for his acts and lacked remorse, as per the social enquiry report, as an aggravating factor, and added five years to his sentence.⁵¹¹ Again, considering the lack of use of a weapon (absence of aggravation) as a mitigating factor as the lower court had done, is contentious. Delton Smikle was sentenced to 18 years' imprisonment on the charge of sexual intercourse with a person under the age of 16 years under section 10(1) of the SOA.⁵¹²

In *Leighton Rowe v R* [2017] JMCA Crim 22,⁵¹³ a 33-year-old stepfather pleaded guilty to one count of carnal abuse, contrary to section 48 of the OAPA.⁵¹⁴ The victim/ survivor had been repeatedly sexually abused by her stepfather when she was 11 years old. It was

⁵⁰⁵ Ibid., para. 90.

⁵⁰⁶ Ibid., para. 98.

⁵⁰⁷ *Delton Smikle v R* [2020] JMCA Crim 48,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Smikle%20%28Delton%29%20v%20R%20.pdf>.

⁵⁰⁸ Ibid., para. 1, 5.

⁵⁰⁹ Ibid., 62.

⁵¹⁰ Ibid.

⁵¹¹ Ibid., para. 28.

⁵¹² Ibid., at 74.

⁵¹³ *Leighton Rowe v R* [2017] JMCA Crim 22,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Rowe%20%28Leighton%29%20v%20R.pdf>.

⁵¹⁴ Ibid., para. 1, 2.

brought to the mother’s attention when she became pregnant.⁵¹⁵ In addition to a 33% (four years) discount for his guilty plea,⁵¹⁶ the judge gave him credit for being a first time offender and “a man of previously good character,” despite the repeated offending. Other mitigating factors taken into account included his “appearance of remorse, his excellent background, his Christian upbringing, his positive social enquiry report.”⁵¹⁷ He was ultimately sentenced to eight years in prison.⁵¹⁸

In *Ian Green v R* [2016] JMCA Crim 3,⁵¹⁹ the perpetrator was given concurrent sentences of 10 years’ and 12 years’ of imprisonment with hard labour for two counts of rape of a woman who rented a car from him.⁵²⁰ The victim/ survivor owed him money since she was unable to return the car to him on time. He overpowered her, threatened to kill her with a knife and throw her over a precipice, and raped her.⁵²¹ The trial judge found a lack of remorse in the perpetrator to which the appeal judge stated, “in the circumstances of this case where there were what might be regarded as aggravating factors (such as the use of a knife in respect of the second count on the indictment), the applicant might well consider himself fortunate to have received the sentences that he did. So that, although we think that, in the sentencing process, the learned trial judge might have articulated somewhat more the considerations that guided her in arriving at the sentences that she ultimately arrived at, that would not have mattered at the end of the day, the sentences falling below the accepted range of 15–25 years.”⁵²² Here, the appellate court recognised the failure of the lower courts to render a sentence commensurate with the statutory guidelines.

b. Sentencing in Rape Cases that Fall Under the Mandatory Minimum

Women continue to be deterred from pursuing justice for sexual offences due to fear of reprisals and delays in the judicial process. According to data provided by the Statistical Institute of Jamaica (Statin) and the Jamaica Constabulary Force (JCF), a total of 6,573

⁵¹⁵ *Ibid.*, para. 5.

⁵¹⁶ *Ibid.*, para. 21.

⁵¹⁷ *Ibid.*, para. 15.

⁵¹⁸ *Ibid.*, para. 4.

⁵¹⁹ *Ian Green v R* [2016] JMCA Crim 3,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Green%20%28Ian%29%20v%20R.pdf>.

⁵²⁰ *Adrian Brown v R* [2022], para. 1.

⁵²¹ *Ibid.*, para. 5.

⁵²² *Ibid.*, para. 14.

acts of rape were reported between 2011 and 2020. Of that number, only 3,254 (50%) have been cleared up. The term “cleared up” means that charges have been levied against the accused persons. Women also find the process of proving GBV in court to be daunting, with the cross-examination of victims often taking an approach which is confrontational and, according to one interviewee, “brutal.” In these instances, it is the victims which feel they are on trial as opposed to the accused, which further acts a deterrent for women and girls to come forward.

We have 39 cases involving rape/grievous sexual assault in the dataset including nine cases between 2014-23 where the perpetrator pleaded guilty to all the charges. Of these, in three cases, the prescribed sentence for the charge of rape fell below the mandatory minimum of 15 years. The main reason for the sentence falling below the minimum is the significant discount given for the guilty plea. Two cases demonstrate this in practice.

In *Cornel Dawns v R* [2022] JMCA Crim 17,⁵²³ the perpetrator pleaded guilty to the charges of abduction, rape, grievous sexual assault, and murder. While he was sentenced to life imprisonment for the charge of murder, his sentences for rape and grievous sexual assault were below the prescribed minimum. For rape, the judge used a starting sentence of the minimum prescribed 15 years and provided a sentence discount of 30% for the perpetrator’s guilty plea. By accounting for time spent on remand, the court arrived at a final sentence of nine years and eight months for the charge of rape. For the charge of grievous sexual assault, the judge used a starting point of the mandatory minimum of 15 years. The judge added five years for aggravating factors including the act being committed by two offenders, the perpetrator’s previous convictions (gun-related robbery when he was over 14 years of age) which “showed previous resort to violence,”⁵²⁴ and the prevalence of sexual offences and murder in the community. The judge then went on to discount the sentence for mitigating factors including the perpetrator’s young age (17 years) and his “rehabilitative state,”⁵²⁵ and also that his age signified his “immaturity as a consequence of his youth.”⁵²⁶ The judge also

⁵²³ *Cornel Dawns v R* [2022] JMCA Crim 17,

<https://www.courtsofappeal.gov.jm/sites/default/files/judgments/Dawns%20%28Cornel%29%20v%20R.pdf>.

⁵²⁴ *Ibid.*, at para. 39.

⁵²⁵ *Ibid.*, para. 40.

⁵²⁶ *Ibid.*, para. 41.

mentioned the perpetrator's cooperation with the police, his guilty plea, and that he had expressed remorse. To the sentence of 18 years, a discount of 30% was applied, or 5 years 4 months, arriving at a sentence of 12 years and 8 months.

Similarly, in the 2022 appeal *Miguel Moss v R* [2022] JMCA Crim 10,⁵²⁷ the defendant appealed his sentences on the basis of it being harsh and excessive, and that his guilty plea was not taken into consideration. He had pleaded guilty to the charges of rape and grievous sexual assault in the Home Circuit Court in Kingston in Nov 2016 and was sentenced to 15 years, the prescribed minimum. The judge also issued a certificate to the defendant under Section 42(K) to apply for leave to appeal. The appellate court recognised that this was a case where the accused pleaded guilty, and hence was potentially eligible for a discount. The appellate court therefore considered a starting point of 15 years, and added five years for aggravating factors including the use of a firearm, and invading the victim's home and humiliating her, all with another offender. The court then discounted the sentence by four years for mitigating factors including the perpetrator's young age (17 years), being influenced by an adult, being remorseful, cooperating with the police, and exhibiting "a capacity for reform."⁵²⁸ Additionally considered were his "good social enquiry report," which stated, "[m]embers of the community in which he lived thought he was of good character and not a trouble maker, and his mother had expected good things of him."⁵²⁹ To this sentence of 16 years, a 40% discount was applied on account of the perpetrator's guilty plea resulting in a final sentence of nine years and seven months, well below the 15-year minimum sentence.

In *Adrian Brown v R* [2022] JMCA Crim 3,⁵³⁰ a 17-year-old high school student was charged with raping his 16-year-old schoolmate.⁵³¹ The perpetrator pleaded guilty⁵³² to the offence in February 2020 on the basis of a sentence indication given by the sentencing judge of the Manchester Circuit Court that she would impose a probation order if the social enquiry report was favourable but a suspended sentence if it was

⁵²⁷ *Miguel Moss v R* [2022] JMCA Crim 10,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Moss%20%28Miguel%29%20v%20R.pdf>.

⁵²⁸ *Ibid.*, at 9.

⁵²⁹ *Ibid.*, at 7.

⁵³⁰ *Adrian Brown v R* [2022] JMCA Crim 3,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Brown%20%28Adrian%29%20v.%20R.pdf>.

⁵³¹ *Ibid.*, para. 1.

⁵³² *Ibid.*, para. 2.

unfavourable.⁵³³ The judge granted this indication before obtaining a social enquiry report. However, she found an immediate custodial sentence of five years to have been more appropriate once she received and considered the social enquiry report.⁵³⁴ This was in direct conflict with the sentence indication and this formed the basis of the appeal. Despite the social enquiry report highlighting the victim/ survivor's vulnerability and the impact of the ordeal on her, as well as the starting sentence being well below the 15-year mandatory minimum,⁵³⁵ the appellate judge had to uphold the sentence indication given by the Circuit Court judge and issued a fully suspended sentence of three years.⁵³⁶

c. Court Pushing Back Against Contentious Factors

Unlike the abovementioned cases exhibiting contentious factors, there are courts who reject defendants' attempts to rely on stereotyping, rape myths, and victim blaming.

For example, in *Samuel Blake v R*, [2015] JMCA Crim 9,⁵³⁷ the Court of Appeal upheld the sentence where the applicant pleaded guilty before the Circuit Court for having sexual intercourse with a girl under the age of 16, in violation of section 10(1) of the SOA. The perpetrator was in a serious relationship with the underage girl, but the matter was brought to the attention of the police when the complainant discovered she was pregnant and there was a dispute regarding the defendant's paternity (tests showed he indeed was the father).

To absolve himself from responsibility, the defendant argued that he was lured and tempted by the victim/survivor, who he stated would visit his store in revealing clothes and make sexual advances to him. The defendant's appeal was based on the fact that the four-year sentence was manifestly excessive. His counsel also argued that the girl was just six months away from the age of consent, and the sexual intercourse was consensual. Despite this, the Court of Appeal found that the lower court's reasoning on sentencing was reasonable. The court also noted that Parliament has recognised this offence as a serious one, thereby signalling their commitment against it.

⁵³³ *Ibid.*, para. 11.

⁵³⁴ *Leighton Rowe v R* [2017], para. 20.

⁵³⁵ *Ibid.*, para. 49.

⁵³⁶ *Ibid.*, para. 51.

⁵³⁷ *Samuel Blake v R* [2015] JMCA Crim 9,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Blake%20%28Samuel%29%20v%20R.pdf>.

This case is particularly important because the Court of Appeal stated that Jamaica has particular difficulties in dealing with offences involving young girls constantly being abused and exploited by older men, and wanted to ensure that society understood that children must be allowed to transition into adulthood without being subjected to sexual advances by older men. Furthermore, the Court stated that the pregnancy of the girl must not be taken as a mitigating factor, because that would send the message that a man who gets a girl pregnant is likely to be treated more favourably by the courts. Finally, the Court insisted that these pronouncements, in the context of the alarming local circumstances, should be guiding principles in sentencing these matters and cases.⁵³⁸

The case of *Robert Rowe v R*, [2014] JMCA Crim 3⁵³⁹ is also instructive. Here, an underaged female complainant was raped in the perpetrator's home. The perpetrator then attempted to bribe the complainant to stay quiet. After rejecting the perpetrator's bribe, the complainant did not disclose the incident until two weeks later. At trial, the perpetrator was convicted for the offences of rape and indecent assault for which he was sentenced to 12 years and 2 years imprisonment, respectively, to be served concurrently. The jury had been instructed to base its decision on the credibility of the witnesses.

On appeal, the perpetrator argued, among other things, that there was a presumption of doubt on which the trial judge ought to have instructed the jury regarding the complainant's credibility given the 'delay' in reporting the crime. According to the perpetrator, the complainant had several opportunities to promptly speak to a third party after the incident but did not do so, which should have called the truth of her testimony into question. The Court of Appeal dismissed the appeal because it was in the jury's discretion whether to believe the complainant. Moreover, the Court noted that it is a well-established fact that many victims of sexual crimes remain silent for a considerable length of time, even years, before making disclosures to third parties.

J. Retrospective Analysis of Survivor Interviews

Another approach to supplement the GBV data gap has been to collect redacted interview and intake forms from survivors who approach CSOs for assistance in GBV matters. In collaboration with Jamaicans for Justice (JFJ), we were able to review anonymised case files of 105 victims/ survivors who reached out to JFJ and Jamaica AIDS

⁵³⁸ Ibid.

⁵³⁹ Robert Rowe v R [2014], JMCA Crim 3,

<https://www.courtofappeal.gov.jm/sites/default/files/judgments/Rowe%20%28Robert%29%20v%20R.pdf>.

Support for Life (JASL) between 2018-2023.⁵⁴⁰ These include 95 GBV cases and ten Other civil/family cases such as custody & maintenance, discrimination and property. Of the 105 cases, in six of the cases, clients were girls under 18 years old. The vast majority of these cases are of intimate partner violence/domestic violence, which fills a critical gap in our analysis because, as stated earlier, case law on domestic violence cases is not available as lower courts (Parish/ Magistrate) are not courts of record, and lower courts are primarily where domestic violence criminal cases originate.

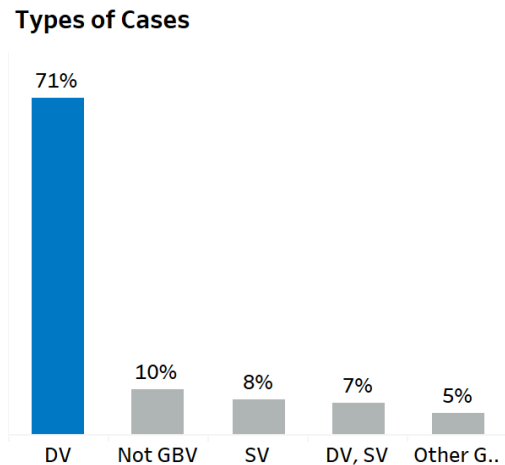


Figure 20

Type of Cases

Domestic Violence cases are the majority (75 cases) in the dataset. However, there are a small set of sexual violence cases (eight) and seven cases involving both domestic and sexual violence. These are cases where the perpetrator of sexual violence is a family member. We also had 5 cases involving Stalking and Other Acts GBV.

Type of Gender Based Violence

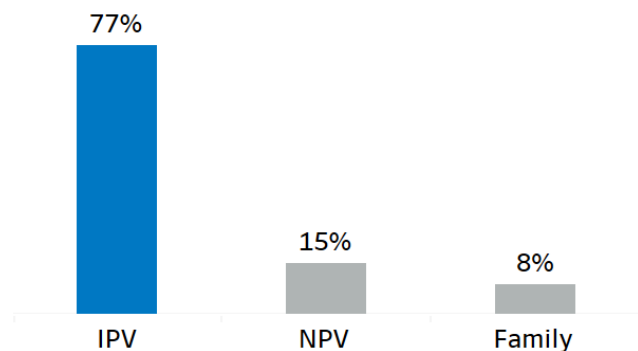


Figure 21

⁵⁴⁰ ICAAD Retrospective Analysis, JFJ & JASL Legal Case Database (2018-2023).

Intimate Partner Violence

As discussed earlier, with the lack of a comprehensive definition of domestic violence in the DV Act, Jamaica has no reliable estimate of the prevalence of intimate partner violence.⁵⁴¹ The UN Women Health Survey, 2016 put lifetime prevalence of intimate physical and/or sexual violence at 27.8%.⁵⁴²

In our dataset, in 77% (73) of the 95 GBV cases, victims suffered IPV (the perpetrator was the victim's partner/ex-partner). Non-Partner Violence (NPV) stood at 15% (14 cases). IPV was present in 91% in domestic violence cases. In 100% of the sexual violence cases (8) in dataset, the perpetrator was either a stranger or an acquaintance (non-partner).

Recidivism

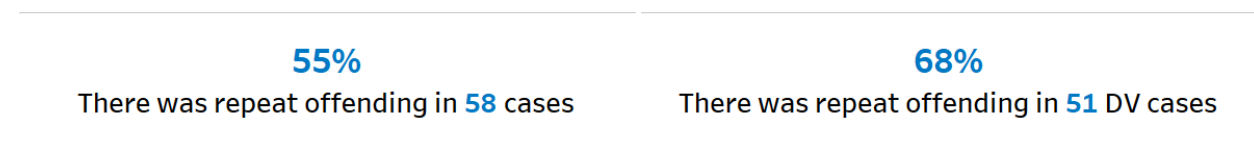


Figure 22

What is noteworthy is that in over half of the cases in our datasets (55%), the perpetrators are repeat offenders. This includes cases in which victims have documented evidence of past violence, but the perpetrator was never prosecuted.

Marginalised Communities

In a little less than half of our dataset (40%, 42 cases), the victims belonged to a marginalised community. These include people who have been facing discrimination after testing positive for HIV (27 cases),

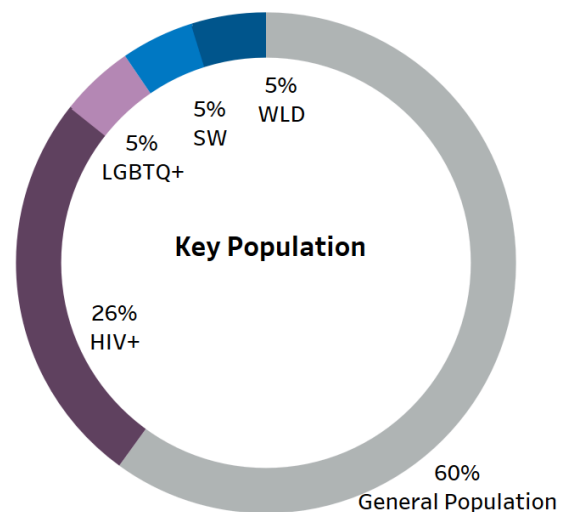


Figure 23

⁵⁴¹ Williams, at 23.

⁵⁴² Williams, at 16.

people from the LGBTQ+ community (five cases), sex workers (five cases), and people with disabilities (five cases). Each of these victims have their unique set of challenges but there are common patterns that we were able to identify that affect those communities as a whole.

Charge Categories

Child care, custody and maintenance cases were well represented in our datasets (26 cases). In 77% of these cases (20), the clients are victims of IPV who decided to leave their abusive relationships or were victims of IPV in the past and were seeking an increase in maintenance support to be able to raise their families, amidst numerous challenges. 13 of these 20 cases have also been labelled as IPV.

Charge Categories

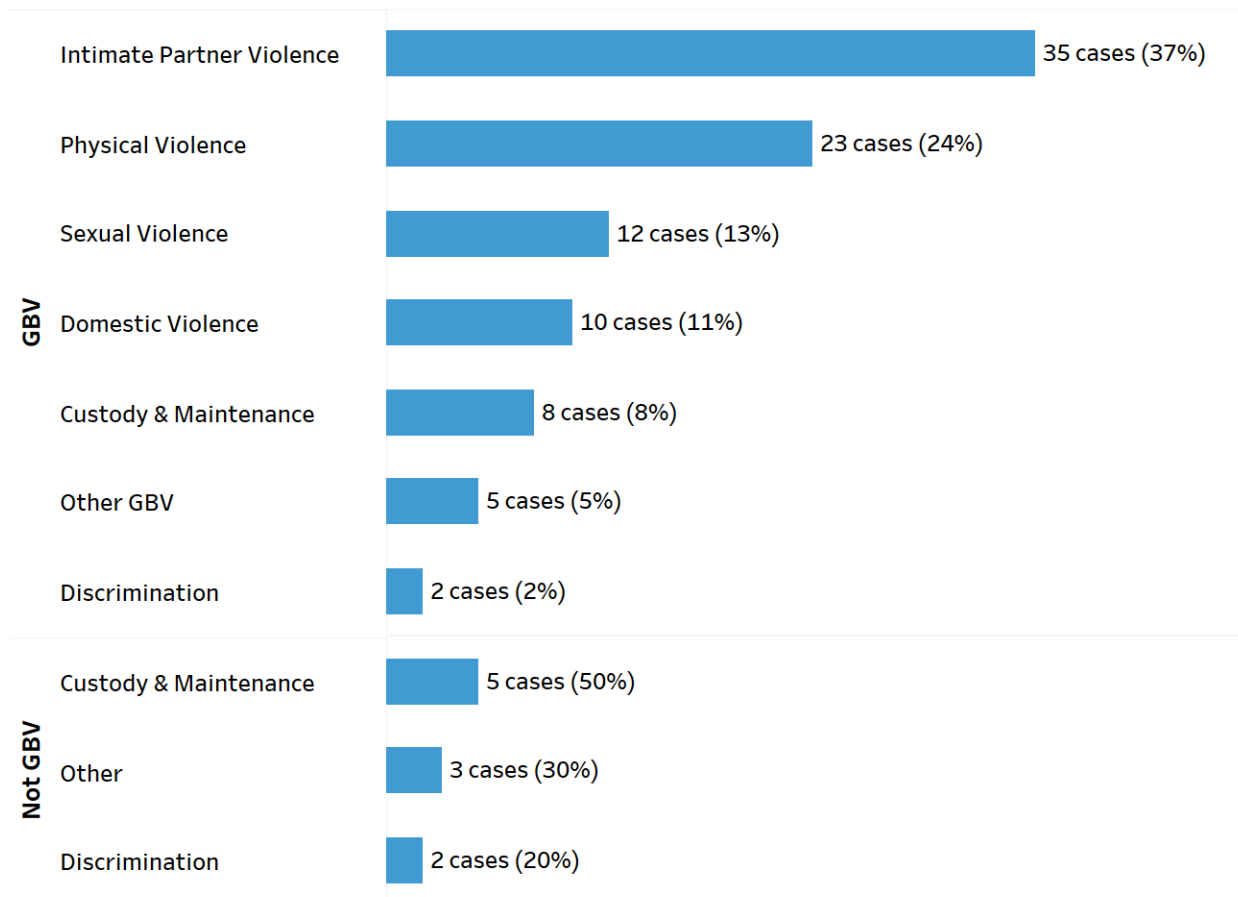
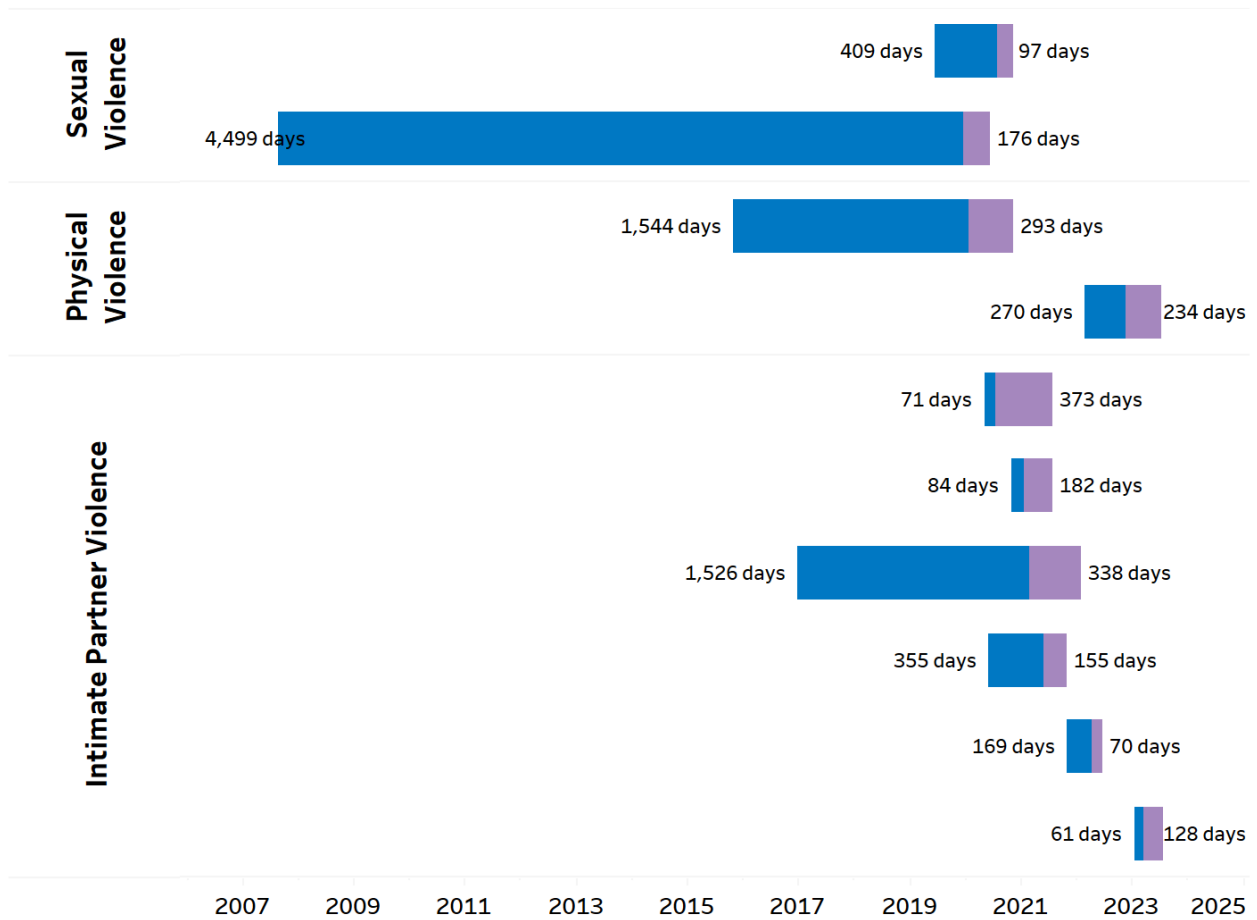


Figure 24

Victims/ survivors face hurdles at every step of the criminal and judicial process. The power imbalances that lead to GBV also manifest in barriers to accessing justice. This can result in limited reporting of GBV, recanting of evidence for fear of retaliation, ineffective documentation of GBV in health care settings, non-cooperation by police leading to inadequate investigation or prosecution, and biased decision-making in the judiciary. Each barrier undermines the trust survivors have in the justice sector.

Below, is a timeline for ten individual cases (six IPV, two Rape and two physical violence). The purple portion of the timeline shows the time between the latest incident faced by the victim and the date their case was received/opened with the CSO. The next part

Timeline - Incident Date to Case Consideration and Last Action Date



shows the number of days between the case open date and the last action date reported by the victim/ survivor to the CSO.

Inaction by Police

The victim’s journey cannot be viewed from a simple binary lens of whether they did or did not report to the police. Where there is inaction by the police, through a failure to properly investigate, and interactions between victim/survivors and the police are tinged with gender bias, trust and reliance on the very systems meant to protect citizens are eroded and effectively allow violence to continue unabated.

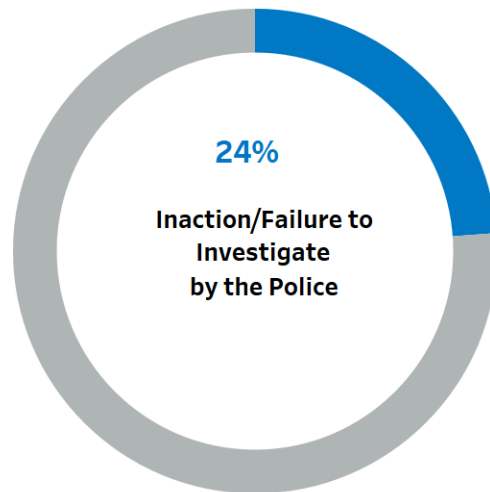


Figure 26

One such incident (not reflected on the timeline in Figure 25) puts this into context.

The victim had been in an abusive marriage for 22 years. When she decided to consult with a CSO as to her options to seek redress, she detailed instances of physical, emotional, and financial abuse, and was even more concerned as the abuse was now extending to her children. The client, in the past, had made numerous police reports with little or no assistance given. Initially, she had indicated a willingness to file for divorce, maintenance, and a protection order. Later however, she feared the adverse consequences once these documents would be served on the perpetrator. Part of the victim’s reasons for not moving forward were law enforcement inaction, which made the victim lose faith in the justice system. She continued to endure an abusive marriage, even where legal help was potentially available, fearing for both herself and her children.⁵⁴³

In a more recent case from 2023, a HIV+ woman endured ongoing abuse from her partner despite a previous conviction. After being released, he resumed his abusive behaviour, which intensified after her child's birth. She sought help from the police, filing two reports and receiving receipts promising intervention, but no action was taken.

⁵⁴³ ICAAD Retrospective Analysis, JFJ & JASL Legal Case Database (2018-2022).

Despite ejecting her abusive partner from her home, he continued to stalk and assault her. He even threatened to publicly disgrace her if she did not comply with his demands. In a dire situation, her partner physically assaulted her in a store, leading to his arrest. The victim remains fearful and worries for her children's safety.⁵⁴⁴ The distressing recurrence of abuse in the first case exposes the inadequacies of the legal response, leaving the survivor in a perpetual state of fear. Despite multiple attempts to seek assistance from law enforcement, the lack of meaningful intervention further compounds the victim's vulnerability.

In a second instance from 2021, a comparable scenario unfolds pointing to a larger dilemma of ineffective law enforcement. When the victim went to the police station to report a physical assault (hitting and strangulation until she became unconscious) by her stepbrother, the police refused to register her complaint.⁵⁴⁵ The gravity of the issues faced by these victims extends beyond the individual incidents.

The gravity of the third case, which centres on a police officer charged with buggery, highlights a need for reform and accountability within law enforcement. In this sexual violence case from 2020, the victim, having been threatened by other members of the armed forces, sought assistance from the CSO for legal representation and witness protection. Unfortunately, her plea for protection was denied by the DPP, who asserted, "she doesn't seem to need it."⁵⁴⁶ This denial further underscores the challenges and deficiencies in the support mechanisms available to victims within the system.

Another case, marked by discrimination and police inaction towards a sex worker seeking help, underscores the pervasive biases within the system. She was physically and emotionally assaulted by a stranger while visiting a friend, and when she called the police, they referred to her as 'Mad Gyal' and discarded her clothes.⁵⁴⁷ This denial further underscores the challenges and deficiencies in the support mechanisms available to victims within the system.

⁵⁴⁴ *ibid*

⁵⁴⁵ *ibid.*

⁵⁴⁶ *ibid.*

⁵⁴⁷ *ibid.*

As these narratives converge, it becomes evident that the challenges faced by survivors extend beyond the immediate acts of violence. The systemic failures in addressing these issues demand a comprehensive reevaluation of existing protocols, emphasising the need for empathy, sensitivity, and accountability within the justice system.

Gaps in Training

There is a major gap in training with regards to the urgency of complaints and intake processes, sensitivity to offer support to victims, getting them the required medical attention, and directing them to agencies who can support them better.

In a child maintenance and IPV case from 2018, a visually impaired victim, who was in an abusive situation with an ex-partner who visited her on occasion and physically abused her, reported calling the police on several occasions and lodging complaints, but to no avail. In one instance she was injured and, on arrival, the police ordered the accused to take her to the hospital to address an open head wound, instead of arresting the accused and either organising transport for the victim to get to the hospital or driving her there. No charges were brought against the accused. Instead, the victim was referred only to a psychologist to assist with her trauma.⁵⁴⁸

Better training is needed for all GBV stakeholders to take GBV seriously, implement safety plans, document cases correctly, and proceed through referral systems in a way that prioritises the needs of victims, but also balances the need for accountability.

Data Collection Gap by the Police

There is a lack of resources to support the maintenance of data and records of perpetrators (including their addresses, which are needed to serve protection orders and re-issue statement receipts). There are five cases in our database where the victims reached out to CSOs for help since the police did not have an address where the perpetrator could be served protection orders / cease and desist orders, and there was no effort from the police to do so either. In four out of these five cases, the victims belong to vulnerable populations -- LGBTQ+, HIV+ and disability.

⁵⁴⁸ Ibid.

In a rape case from 2007, a victim suffering a physical disability was still seeking justice in 2020. The perpetrator, who was once a friend, was still roaming free. She reached out to the CSO for help getting a copy of the receipt of the police complaint she had filed in 2007. In another unrelated incident, she had also filed a complaint at another police station for robbery with aggravation and unlawful wounding. After repeated visits to the police station and multiple follow ups by the CSO, the victim was advised to make another report at the same police station where she had reported her rape the first time. She was also informed that the viability of pursuing justice for the aggravated robbery and unlawful wounding matter was questionable, due to time elapsed and low likelihood of apprehension of the culprits.⁵⁴⁹ This case highlights the enormous gap in the victim's journey to seek justice – a lack of willingness, concern, and support by law enforcement. Of course, the lack of resources committed to digitisation of data (police complaints) is another big factor at play here.

Inaction in Sexual Violence Cases

There are also a few cases involving sexual violence in our database. Those cases present their own set of challenges. In a couple of these cases referred to CISOCA, there was a lack of action by the agency and the victim/survivor was turned away.

In a 2022 case of IPV and child maintenance, the victim reached out to a CSO for help and to seek advice. She had been abused multiple times by her husband of 12 years. Even after multiple reports, the police took no action. The husband wanted the victim to move out of the house with her incapacitated father and two children, and she had nowhere to go. She also reported that her five-year-old daughter was sexually assaulted by her husband's 22 year old nephew. When referred to CISOCA, the agency did not take any action since "there was no penetration" and referred the case to the CPFSA. The victim's husband blamed their daughter for lying.⁵⁵⁰

In a rape case from 2019, a victim reached out to a CSO to seek help since the investigation of her case by CISOCA was stalled due to lack of a detailed medical report.

⁵⁴⁹ Ibid.

⁵⁵⁰ Ibid.

The victim was raped by her father and an examination using a rape kit was conducted by the doctor who noted that she was likely drugged. The victim and the CSO have been following up with the hospital, who despite charging \$4,000 JMD for the report, continued to delay releasing it. In the meantime, her father was stalking her and she was in fear for her life.⁵⁵¹

Violence faced by LGBTQ+ Victims/Survivors

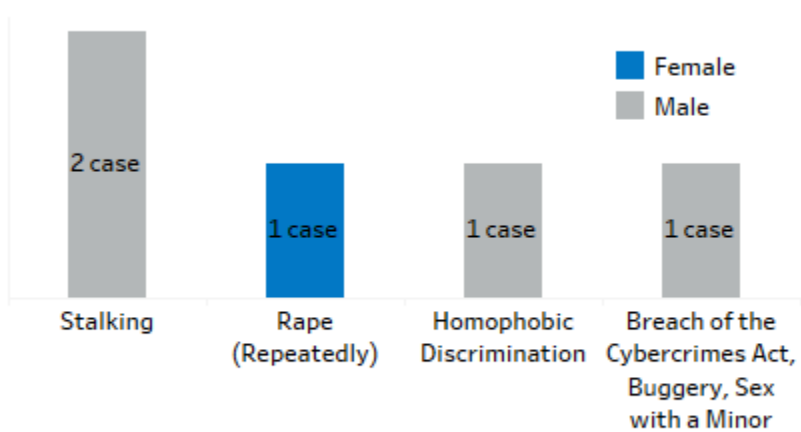


Figure 27

Discrimination faced by LGBTQ+ victims

Homophobic and transphobic violence, discrimination, and “corrective rape” are commonplace and people live in constant fear.

The LGBTQ+ population is extremely vulnerable to gender based violence in Jamaica. In one such case, a victim and her partner were raped by gang members who had broken into their house. Every time they tried to move out of the community, they were found, brought back and raped. They were severely traumatised and reached out to a CSO for counselling. The perpetrators even had links with law enforcement, which made the victims terrified of pressing charges. Threats were made on their lives and the lives of their loved ones. They eventually attempted to report the crime to law enforcement; however, there was a total failure of law enforcement in the case, and the victims faced discrimination because they were lesbians. The officers at the station told the lesbian couple that they deserved the abuse they were receiving. In consultation with the CSO partner, a decision was made that the only way to extract them from the situation was to

⁵⁵¹ Ibid.

apply for asylum. They received support from the CSO and were finally able to relocate to a different country.⁵⁵²

Societal Stigma Against People Living with HIV/AIDS

People living with HIV/AIDS face discrimination and violence and are often even forced out of their own homes and shunned by their communities. They hesitate in reporting any violence or abuse against themselves out of fear of stigma. This lack of knowledge, awareness, and training extends to all parts of the justice sector.

Violence faced by HIV+ Victims/Survivors

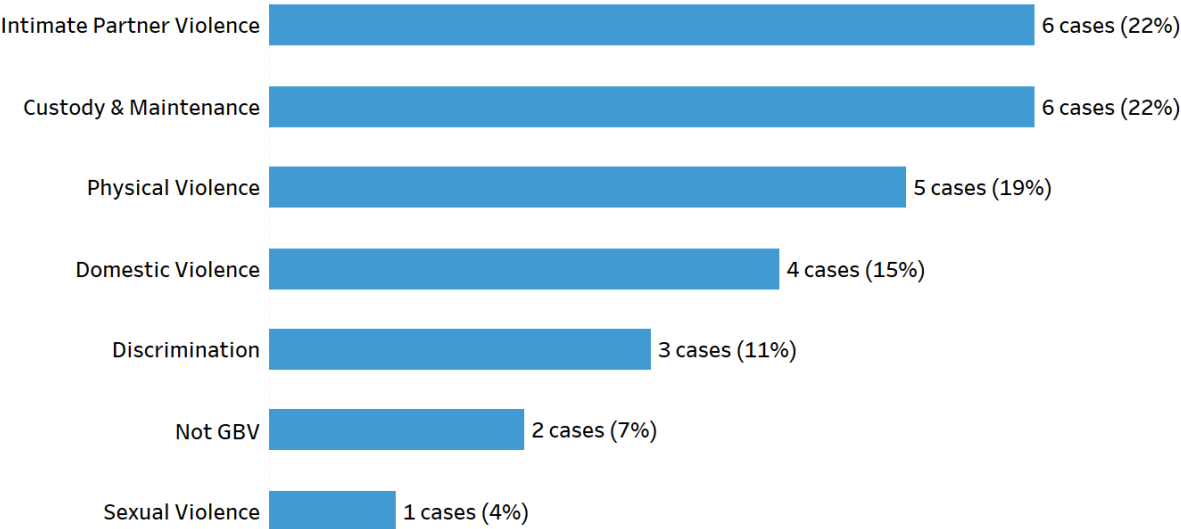


Figure 28

In a case from 2021, the victim was repeatedly abused physically, mentally, and socially by her husband of 10 years. They have a 10 year old child. The perpetrator threatened her with a machete, hit her with utensils, called her employer and reported that she is HIV+, and threatened to stigmatise her in the community. When she returned from a trip abroad, he took away her phone and documents and did not let her step out of the

⁵⁵² Ibid.

house. When she did, he insulted her in front of their child. The victim reported to the police multiple times, pressed charges and got a court date, but she did not attend the court out of fear that the perpetrator would disclose her HIV status publicly in court. While she received a protection order against her husband, there was no recorded police action in this case.

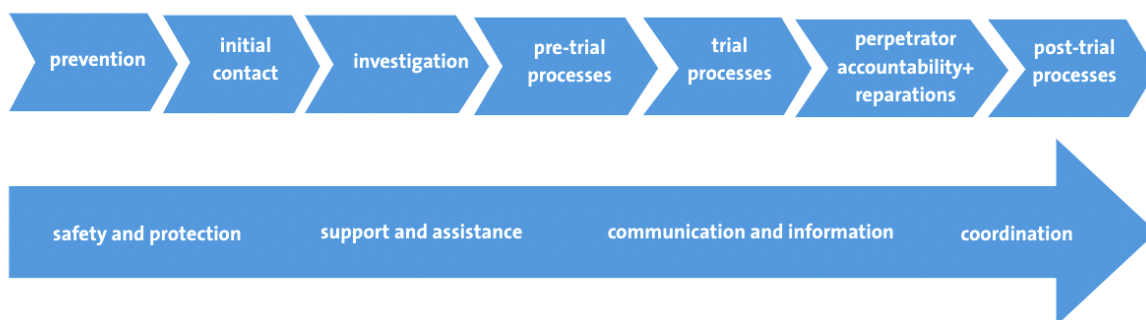
In 2020, a victim reached out to a CSO to seek help because her ex-boyfriend was stalking her and making violent sexual threats, and threats against her life and her daughter's. The threats began when she broke up with him. He physically attacked her on a few occasions, and once injured her badly enough to require medical attention, including stitches. The victim made numerous attempts to report the matter to the police, but the police were either hostile or unwilling to intervene. The victim even obtained a restraining order that the police then refused to serve. Fearing for her life, she changed her routines to avoid harassment and attacks from the abuser. This included closing her shop early, which in turn has affected her income. The CSO wrote to the police supervisor asking for a reason for their inaction, but received no response. The victim got some relief only after the perpetrator moved away from the community.

VIII. Best Practices to Improve Court User-Experience for Survivors



VIII. BEST PRACTICES TO IMPROVE COURT USER-EXPERIENCE FOR SURVIVORS

Framing the court experience holistically, as shown in the table below from the Justice Continuum from Essential Services for Women and Girls, the “Justice Continuum” naturally starts with prevention and moves through various stages of the judicial process to conclude with post-trial processes. At the prevention stage, police play a larger role in encouraging reporting, increasing awareness about gender-based violence, and conducting effective investigations. The CEDAW Committee has also noted the connection between the lack of reporting from women and girls and the fear of retaliation and delayed judicial processes.⁵⁵³ Understanding that court processes are connected to prevention, this section will focus on the stages of initial contact to post-proceeding processes in both criminal and civil courts as it relates to gender-based



violence victims/ survivors.

Figure 29: The Justice Continuum from Essential Services for Women and Girls, Module 3: Justice and Policing, UN Women (p. 8)

As detailed in the UN Joint Programme on Essential Services for Women and Girls Subject to Violence materials,⁵⁵⁴ improving the court user-experience consists of improving safety and protection, support and assistance, communication and information, and coordination. These materials provide useful guidance on international best

⁵⁵³ CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, United Nations, at 5, para. 21d (27 July 2012),

<https://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-JAM-CO-6-7.pdf>.

⁵⁵⁴ UN Women, *Essential services package for women and girls subject to violence*, (2015),

<https://www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence>.

practices that span these stages. This section will highlight specific examples of innovative approaches that are relevant for Jamaica.

A. International & Foreign Jurisdictions

1. Criminal Courts

When exploring victim/ survivor experiences with the courts, research points to the common disconnect between the requirements of legal proceedings and their needs. This can lead to interventions that fail to centre the needs of victims/ survivors. In addition to survival needs, victim/ survivor “justice needs” include the “desire to tell their story, be heard, have input into how to resolve the violation, receive answers to questions, observe offender remorse, and experience a justice process that counteracts isolation.”⁵⁵⁵

Many jurisdictions have responded to access to justice challenges around GBV by establishing specialised courts. The establishment of specialised courts for sexual and/or domestic violence can expedite cases and respond to case attrition with the benefits of additional capacity and specialised court staff.⁵⁵⁶ Research on specialist courts tends to focus on re-offending rates as opposed to victims/ survivors’ experiences; however, specialised courts around the world have managed to reduce delays, and in many jurisdictions, improve victims/ survivors’ experiences with the courts.⁵⁵⁷ Further, specialist prosecution can also lead to improved outcomes. In Victoria, Australia, the Specialist Sex Offences Unit, which began in 2007, led to improved support for victims/ survivors before and during court processes.⁵⁵⁸

As an example, New Zealand ran a pilot Sexual Violence Court in two District Courts in 2016. In the evaluation of the pilot,⁵⁵⁹ stakeholders considered it a success as it reduced delays and improved experiences with case and trial management. This success was

⁵⁵⁵ Kathleen Daly, *Conventional and innovative justice responses to sexual violence*, ResearchGate No. 12, at 8 (2011), https://www.researchgate.net/profile/Kathleen-Daly-2/publication/267374169_Conventional_and_innovative_justice_responses_to_sexual_violence/links/54d871420cf2970e4e77afe3/Conventional-and-innovative-justice-responses-to-sexual-violence.pdf.

⁵⁵⁶ UN Women, *Specialized courts/tribunals for violence against women* (2010), <https://www.endvawnow.org/en/articles/144-specialized-courts-tribunals-for-violence-against-women.html>.

⁵⁵⁷ Daly.

⁵⁵⁸ *Ibid.*, at 13.

⁵⁵⁹ Gravitas, *Evaluation of the Sexual Violence Court Pilot* (2019), https://www.districtcourts.govt.nz/assets/Uploads/2019_Publications/Sexual-Violence-Court-Pilot-Evaluation-Report-FIN-AL-24.7.19.pdf.

attributed to the key difference with the specialised court including highly trained and specialised judges, designated case managers, courtrooms for only sexual violence cases, and increased communication among involved stakeholders. Other best practices for the pilot included separate court entrances, secure waiting spaces, communication assistance, and assistance from independent victims' advocates.⁵⁶⁰

In Jamaica, the Citizen Scorecard points to important gaps that remain in these areas including court design, support services, and sensitivity training. Often, the access to justice challenges for victims/ survivors are so pervasive that broad reforms, like specialised courts, are necessary. However, sometimes the key challenges are more around implementation, and tailored training programmes could prove effective. Evaluation of various training initiatives suggest that training is most effective when staff at all levels participate in training and that the training is linked to substantive change within institutions.⁵⁶¹ Further, the planned Victim's Charter would go a long way in beginning the process of institutionalising best practices, and the draft already includes aspects of court design and victim/ survivor safety.

2. Civil Courts

GBV also comes up in civil proceedings with protection and occupation orders, child custody and visitation, child support, divorces, and child protective orders. We note that an international best practice is to ensure there is an integrated family law approach to matters of child protection and family violence.⁵⁶² The retrospective analysis and case law analysis points to several examples in which both criminal and civil processes were required for victims/ survivors. An integrated approach allows for better protection of parties and their children because the relevant cases are managed holistically between both criminal and civil courts.

International best practices call for collaboration through better information sharing across courts in order to inform decisions, assess the level of risk, monitor compliance with court orders, and ensure parties have access to the resources they need.⁵⁶³ This is

⁵⁶⁰ Ibid.

⁵⁶¹ The World Bank, *Research Observer* 22(1) at 36 (2007),

<https://documents1.worldbank.org/curated/en/645591468175467081/pdf/453450PUB00Box327423B01PUBLIC1.pdf>.

⁵⁶² Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System* 135 (March 2019), https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_summary_report_web_0.pdf.

⁵⁶³ Rebecca Thomforde Hauser, Nida Abbasi, Kathryn Ford, *Increasing Collaboration between Criminal and Civil Courts in Domestic Violence Cases*, Center for Court Innovation (March 2021),

https://www.courtinnovation.org/sites/default/files/media/document/2021/Monograph_DV_Criminal_Civil_Collaboration_03292021.pdf.

particularly important when, for example, domestic violence victims/ survivors access the courts for the first time through a separate but related matter, such as accessing the civil courts for a child protective order or divorce.

For all GBV related matters, safety is crucial. For civil matters, victims/ survivors may have significant concerns about their and/ or their children’s safety when accessing the courts. This was noted in the Family Court site visit as a part of the research. The Center for Court Innovation has developed a useful checklist of recommended practices for domestic violence victims/ survivors in particular which includes considerations around physical access to the courts as well as protocols for safety during virtual hearings.⁵⁶⁴

Given an integrated approach, as mentioned above, it is crucial to train all stakeholders involved in GBV cases, so they are prepared to support victims/ survivors in court processes.

Checklist of Recommended Practices to Support for Domestic Violence Victims/ Survivors

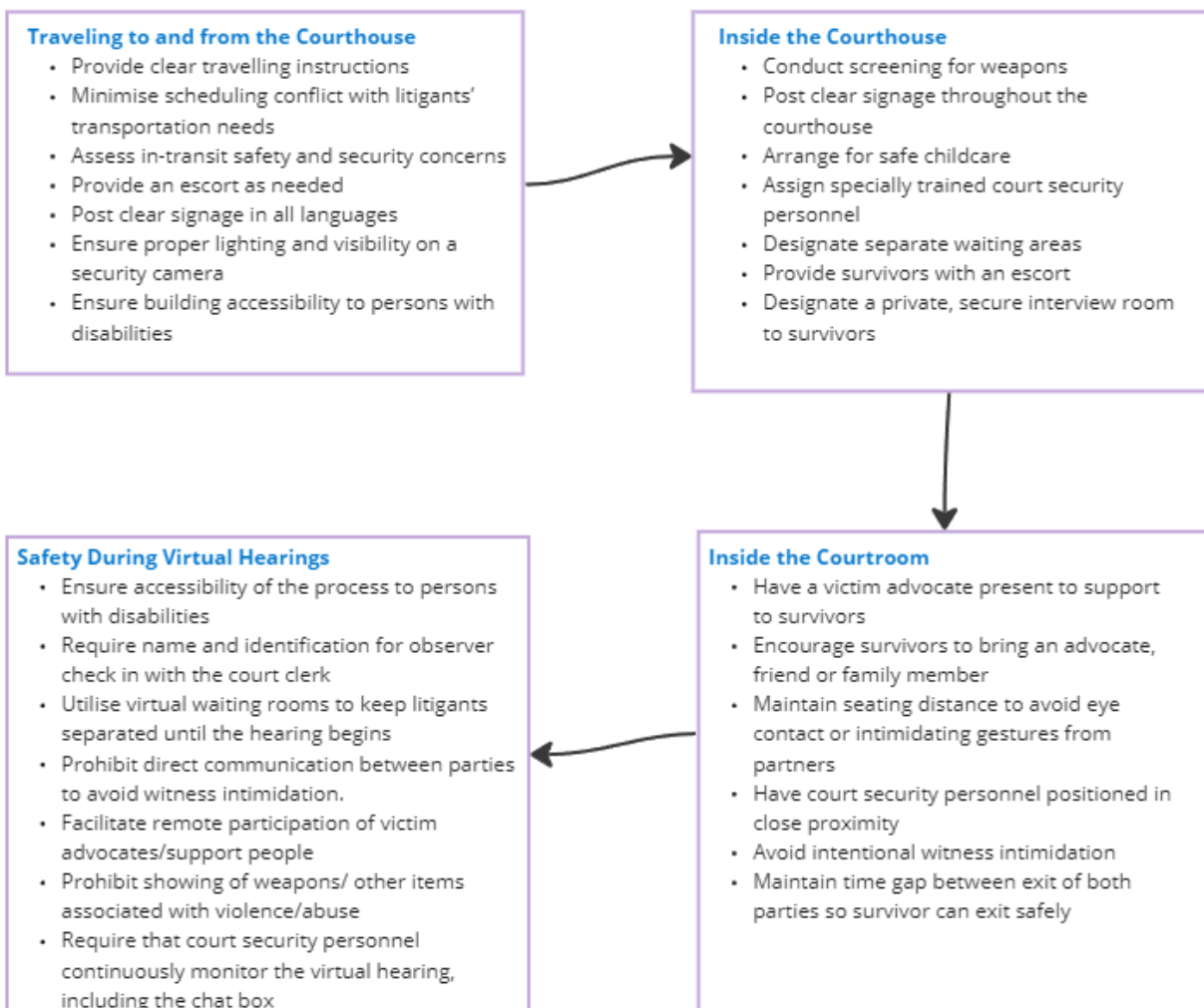


Figure 30

B. Regional (Caribbean)

1. Criminal Courts

In 2017, the Jamaican government endorsed the Caribbean Model Guidelines for Sexual Offence Cases.⁵⁶⁵ The document was drafted through support from the Canadian Government-funded 90 CAD million Judicial Reform and Institutional Strengthening (JURIST) Project. It “offers a rights-based approach to the treatment of complaints and vulnerable witnesses, including children involved in sexual assault cases.”⁵⁶⁶ The Chief Justice of Jamaica confirmed that the document was aimed at the “removal of anomalies and [to] facilitate the achievement of consistency, predictability and transparency in how sexual offence cases are handled.”⁵⁶⁷ The guidelines respond to the key deficiencies in Caribbean justice systems when it comes to sexual offences specifically, including poor police investigations, inordinate delays in completing cases, undervaluing sexual offence cases, victim/ survivors’ fears of revictimisation, and lack of coordination with other key agencies.⁵⁶⁸ The guidelines seek to remedy these deficiencies by reducing the backlog of cases, reducing secondary victimisation, improving monitoring of cases, and increasing coordination among key actors.⁵⁶⁹

In the long term:

“[i]t is hoped the Guidelines will be adopted by all countries in the Caribbean region and that its implementation will result in:

- speedy adjudication of cases and reduction of case backlogs over time;
- improved responses to survivors that will enable their full participation in the justice system, increase offender accountability and reduce secondary victimisation;

⁵⁶⁵ Douglas McIntosh, *Govt Endorses Caribbean Model Guidelines for Sexual Offence Cases*, Jamaica Information Service (27 November 2017), <https://jis.gov.jm/govt-endorses-caribbean-model-guidelines-sexual-offence-cases/>.

⁵⁶⁶ Ibid.

⁵⁶⁷ Jurist project.

⁵⁶⁸ Jurist project, at 4.

⁵⁶⁹ Jurist project, at 5.

- a trained and skilled cadre of cross-sectional professionals including judges, court personnel, police and attorneys to efficiently respond to sexual assault cases, survivors and witnesses; and
- increased public confidence in the justice system as it relates to the handling of sexual assault cases.⁵⁷⁰

When it comes to implementing these guidelines, Antigua and Barbuda led the way in establishing a Sexual Offences Model Court in 2018.⁵⁷¹ In line with international best practices around specialised courts, the model court aims to reduce delays, offer specialised training for judges and court officials, coordinated support services, and additional safety considerations for victims/ survivors and witnesses. In order for specialised courts to operate effectively as intended, legislative reforms must follow as well. For example, in Antigua and Barbuda, new legislation limited the ability of defence attorneys to make arguments based on a complainant's sexual history.⁵⁷²

2. Civil

Antigua and Barbuda has also created a specialised Family Court, learning from the example set by the Trinidad and Tobago judiciary. When it comes to civil proceedings, the Specialised Family Court in Trinidad and Tobago has implemented several features that institutionalise global best practices for victims/ survivors. Notably, the court is structured to respond to user challenges and ensure meaningful access to justice for victims/ survivors. This includes the court system functioning as a one-stop shop that offers a range of support services, including family mediation and court-ordered counselling all at the same location. They have also designed hearing rooms to be more comfortable and less intimidating to facilitate more open discussion of issues. Another structural refinement is child-friendly waiting rooms. Not only is space available, but the court provides well-trained court staff to supervise children while parents and guardians conduct business in the court. The waiting rooms are equipped with books, toys, and educational material for children.⁵⁷³

In addition to maintenance orders that can be made under domestic violence legislation in many Caribbean jurisdictions, victims/ survivors of domestic violence can receive

⁵⁷⁰ Loop Caribbean News, JURIST Project launches Model Sexual Offence Guidelines (3 October 2017), <https://barbados.loopnews.com/content/jurist-project-launches-model-sexual-offence-guidelines>.

⁵⁷¹ Antigua Observer, *Gov't lauded for establishment of sexual offences model court* (23 January 2019), <https://antiguaobserver.com/govt-lauded-for-establishment-of-sexual-offences-model-court/>.

⁵⁷² Jurist project, *Sexual Offences Court to be Set Up in Antigua* (2018), <http://juristproject.org/news-stories/sexual-offences-model-court-to-be-set-up-in-antigua/>.

⁵⁷³ Trinidad and Tobago Judiciary, *Things to know about the family court*, <https://www.ttlawcourts.org/images/FCD/Family%20Court%20Fact%20Sheet.pdf>.

compensation from the abusive person for losses (earnings, medical expenses, moving or accommodation expenses, legal costs) in Belize, Dominica, Trinidad and Tobago, and the Bahamas.⁵⁷⁴ Allowing for this ensures that the dynamics of perpetrators often being household breadwinners do not preclude victims/ survivors from bringing a case.

⁵⁷⁴ UN Women, *GBV Developments in the Law*,
<https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-developments-in-the-law>.

IX. Conclusion & Recommendations



IX. CONCLUSION & RECOMMENDATIONS

GBV is one of the most pressing challenges in Jamaica – rooted in gender inequality, reinforced by repressive legislation and accompanied by colonial, patriarchal mindsets. High rates of GBV persist in the country due to a culture of silence and impunity that is supported by institutional and implementation shortcomings.

Awareness about GBV has risen in the country over the past few decades and there have been improvements made to laws and policies, but additional gaps in legislation and implementation remain to reach the standard set by CEDAW and international human rights best practices.

This report details the gaps in service delivery in Jamaica for GBV victims/ survivors as they engage with the courts, law enforcement and the health care system. By mapping the journey of survivors as they interact with these institutions, patterns of bias and discrimination emerge and it becomes possible to identify where improvements can be made to strengthen access to justice.

Data collection, analysis and research point to areas where legislative change would improve the user-experience of victims/ survivors. This includes expanding legal protections to ensure domestic violence covers emotional and psychological abuse as well as physical violence, prohibiting corporal punishment and amending the Charter of Fundamental Rights to include protections against discrimination on the basis of sex. There are areas where Jamaican law remains outdated and thus facilitates discriminatory practices – arcane “buggery laws,” for example, legitimise discrimination against the LGBTQ+ community. A step towards addressing this would be for justice sector institutions to incorporate CEDAW provisions around non-discrimination, including the ratification of the CEDAW Optional Protocol which creates international pathways for accountability for survivors should the state fall short.

Alongside legislative changes, closing the implementation gap is a second pressing issue in the realisation of accountability and justice for GBV survivors. This includes addressing the lack of training for staff, lack of access to information and data, and provisions and policies that do not work to protect victims/ survivors in practice. For example, while occupation and protection orders exist, there is rarely (if ever) accountability if they are violated, and there is a lack of knowledge that law enforcement or third parties can file these orders on a victim’s behalf. Lack of information regarding what services are available is a recurring issue throughout this report, and analysis points to a trend of courts favouring efficiency over the well-being of victims.

It is critical to highlight that across justice sector institutions, marginalised communities including people living with HIV/AIDS, LGBTQ+ individuals, and disabled persons, face distinct challenges including increased exposure to violence and police indifference. This report recounts the testimony of two lesbian women who were raped by two men at gunpoint in their own home over the course of four hours. When they reported the incident to the police, they were verbally abused at the station and made to feel that the rapes were their own fault. No police report was filed.⁵⁷⁵ This incident is one of many experiences of LGBTQ+ individuals not reporting incidents of GBV for fear of reprisals or being “outed” by police. In addition to legislative and implementation changes, specific attention should be given to the experiences of marginalised groups where the gaps in access to justice are typically most pronounced.

The findings of this report show the gaps of service delivery and offer areas where recommendations can be implemented to improve the experience for women navigating the justice sector. Based on these findings, the following nine recommendations are made:

1. Integrate GBV training across all levels of staff within courts, law enforcement, and healthcare systems that is linked to substantive change within their respective institutions.

Frontline personnel across all levels should be equipped with bias and discrimination training as well as sensitivity training on a continuous basis. They are often the first point of contact for a victim/ survivor engaging with the justice sector, and this interaction is critical to building trust. Moreover, frontline personnel should be reminded consistently of any requirements to mandatory reporting and how such information should be documented and shared with other frontline workers.

- Ensure training includes how to implement safety plans, document cases correctly, and proceed through referral systems in a way that prioritises the needs of victims while balancing the need for accountability.

2. Establish a national, digitised data collection system for GBV reports and cases that can be used to promote accountability.

There is a scarcity of data around the prevalence of GBV. As a result, the government and stakeholders do not have a reliable estimate of the prevalence of violence against women. A comprehensive monitoring system would increase accountability of both GBV prevalence and legislative and judicial efforts to address it.

⁵⁷⁵ ICAAD Retrospective Analysis, JFJ & JASL Legal Case Database (2018-2022).

- Conduct public education campaigns to improve awareness of the justice system, including ensuring there are accessible forums for individuals to provide feedback to the MOJ.
- Conduct community consultations and a national survey across the country every 3 years, including rural and impoverished areas and marginalised groups, and accounting for intimate partner violence – all areas where there is a more pronounced gap in information.
- Aggregate data on disability alongside data on age and gender.
- Build a monitoring system of new survey results, including prior indicators such as the Citizen Scorecard (2012), so that retroactive analysis can be conducted.

3. Strengthen the system around applying for, receiving, and enforcing protection and occupation orders.

There is a lack of awareness about the protocols for applying for protection and occupation orders, and a pervasive lack of enforcement. Holding the accused accountable for protection or occupation orders is rare, and while the DVA has increased monetary penalties, that can even make it more difficult for the survivor who may rely on the income of their partner.

- Ensure that law enforcement and relevant third parties know they are allowed to apply for a protection or occupation order on a survivor's behalf, and that court staff are aware of this provision.
 - In circumstances, such as weekends or nights where it will not easily be possible to obtain a protection order, make provisions for law enforcement to issue temporary/ emergency protection orders.
- Ensure that survivors are informed of their right by police to pursue protection or occupation orders either by themselves or with the assistance of police or other third parties.
- Address the gap in the length it takes for protection and occupation orders to occur, from six to eight weeks to 24-48 hours as occurs in other Commonwealth jurisdictions like the U.K. and Australia..
 - Establish monetary penalties for when the accused violates a protection or occupation order. These penalties should be allocated to the survivor or put in a victims' compensation fund.
- Enforce a minimum distance that the abuser is ordered to stay away from the victim of 300ft, in line with international best practices.

4. Ensure that the well-being of victims, accountability, and redress are prioritised above court efficiency.

At present, the existing “survivor-centred approach” is flawed with respect to its implementation. It is often bound up in reducing court backlog and/or keeping families together rather than the well-being of victims.

- Institutionalise the proposed Victim’s Charter, including provisions for improved court design, victim/ survivor safety, and compensation for victims to cover earnings, medical expenses, moving or accommodation expenses, and legal costs.
- Establish mandatory reporting by healthcare providers to absolve the victim from any blame for reporting themselves.
 - Ensure there are enough social workers to assist victims in the healthcare system.
 - When health records are requested by police in cases of IPV, they should request all records where a doctor has noted signs of physical abuse. If there is a history of violence, prosecutors should request that first-time offender status not be granted, and judges should not grant the status.
- Offer shelter services and economic assistance to victims in cases where there is mandatory reporting to work.
- Ensure that anonymity is maintained for survivors, including omission of any identifying details.

5. Improve court infrastructure so that basic needs are met and information is shared to facilitate better decision-making.

- Ensure there is adequate seating and that there are separate waiting areas for different parties.
- Ensure court facilities are accessible to individuals with special needs.
- Change Parish Courts to courts of record to make it easier to appeal cases, establish precedent, achieve consistency across decisions, and monitor the operation of the courts or specific judges.
 - Ensure the Victim Support Division is connected to each Parish Court, with a mandate to ensure that victims (children and adults) are aware of every step of criminal proceedings.

6. Strengthen legal protections against discrimination to ensure they cover marginalised groups.

Despite improvements to legislation and policy around gender-based violence, discrimination against marginalised groups remains protracted.

- Incorporate CEDAW provisions around non-discrimination in all justice sector institutions.
- Ratify the CEDAW Optional Protocol so that survivors have a forum to elevate their cases if the state has not provided an effective remedy.
- Amend the Charter of Fundamental Rights to include protections against discrimination on the basis of sex.
- Amend the savings clause within the Charter of Fundamental Rights so the court cannot use it to uphold the criminalisation of homosexual activities and abortion.
- Amend language around protection for a “prescribed person” under the Domestic Violence Act so as to not only consider the safety of a person in a heterosexual relationship.
- Expand legal protections under the Domestic Violence Act to cover not only physical violence, but also psychological, emotional, and sexual violence.
- Repeal the outdated buggery laws and associated criminalisation through legislation, which legitimises discrimination against members of the LGBTQ+ community.

7. Implement specific legislation that incorporates both the civil and criminal aspects of domestic violence, and formalise information-sharing across civil and criminal courts.

Specific legislation and an integrated approach that incorporates an expansive view of both the criminal and civil aspects of domestic violence is vital to ensuring proper forms of redress, including sentencing that matches the gravity of the offence.

At present, the limited definition of domestic violence, combined with no criminal penalties based on the degree of the domestic violence act committed, creates an environment where law enforcement is not compelled to investigate manifestations of domestic violence – outside of those resulting from visible physical abuse.

- Broaden the definition of domestic violence to cover psychological, emotional, and sexual violence, and amend the OAPA to include these forms of violence as a basis for charging someone with a crime.

- Formalise information-sharing across criminal and civil courts to be able to better inform decisions, assess the level of risk, monitor compliance with court orders, and ensure parties have access to the resources they need.
- Ensure there is an integrated family law approach to matters of child protection and family violence. With an integrated approach, cases will be managed holistically for parties and their children without having to undergo both criminal and civil proceedings.
- Establish specialised courts for sexual and/or domestic violence which can expedite cases and respond to case attrition, with the benefits of additional capacity and court staff.

8. Amend provisions within the Sexual Offences Act and the Child Care Protection Act to better protect children from harm.

There are several provisions that can be amended to better protect children from harm, including prohibiting corporal punishment, reducing the criminalisation of children for behavioural issues, and ensuring that children and their families in need of support are aware of the full scope of services that can be provided to them.

- Amend the SOA's contradictory definitions of the age of a child, to ensure statutory rape remains a criminal act for adults who have sex with minors while not bluntly criminalising consensual sexual relationships between minors under 16.
- Amend the CCPA to prohibit corporal punishment and ensure that the paramount consideration in law is the "best interests of the child."
- Define the definition of "uncontrollable" under the CCPA so that judges do not have the authority to criminalise behavioural issues or status offences.
- Ensure that CISOCA agents are able to receive assistance from social agencies outside of normal business hours, including weekends and nights.
- Conduct outreach to ensure victims/ survivors are aware of the location of CISOCA offices in their communities and the full scope of services provided.
- Allocate resources to CPFSA assessment centres so that children are screened and given a baseline assessment while their case is being handled in court, so as to place the children in homes that are best suited for them.

9. Address bias and discrimination within judicial decision-making.

Data collected from 49 GBV cases identified that in judicial sentencing, contentious factors such as gender stereotyping were raised in over half of the cases. In 30% of cases, these contentious factors played a part in the mitigation of sentencing – leading to a sentence reduction. Other issues identified include the misapplication of first-time

offender status (in 27.8% of cases) and inaction/failure to investigate by the police (in 26% of cases). Of further concern within judicial sentencing are the significant discounts provided for a guilty plea – the rationale being that it saves the court's time and resources when time intensive trials are avoided. Addressing bias and discrimination in judicial decision-making is a critical aspect of ensuring access to justice as victims/survivors navigate the justice sector, and will help build trust in institutions.

- Address the significant discounts given by judges in Jamaica for egregious offences, in line with the best practice of a maximum of a one-third discount if the defendant pleads guilty at the first stage of the proceedings.
- Ensure that leniency is not given to first-time offenders when the facts stipulate previous violent offending (even if it is not the same as the current charge), or when it is clear there has been a pattern of violence against the plaintiff even though there has been no previous conviction.
- Minimise the court's reliance on contentious factors in sentencing decisions, which include gender stereotyping and privileging the interests of the accused over the survivor.