An analysis of legal change: law and gender-based violence in the Caribbean

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Introduction: The politics of terminology

Violence against women

There is a remarkable history, process and politics that gives rise to the term ‘violence against women.’ Women’s activism pulled these words together to produce new social and legal meaning. The term represents the force of the political struggles at the national and international level that made visible the insidious forms of violence women experienced and the connection between this violence and women’s inequality. The term also speaks to the many initiatives to prevent these forms of violence and provide protection against them.

I am using the term gender-based violence in this paper as well, not because I think it is illegitimate to talk in terms of women today, but precisely because we often see the category as special interest lobbying and lose sight of why the focus on women. The term ‘violence against women’ was never simply about what happens to women. As Pat Mohammed says: “no one—man or woman—could say that it was an issue which did not affect them directly or indirectly”.

This form of violence remains in the Caribbean a pervasive and debilitating condition of women’s lives and the concept of gender is indispensable to understanding why and to whom it happens. Women continue to be a legitimate focus of attention, not because women are a special category or interest group, but because gender-based violence presents one of the greatest impediments to women’s well being and their right to equal citizenship.

Gender-based violence

Gender-based violence for me describes forms of violence, in which gender significantly explains the use or performance of violence and the experience of violence. In other

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1 “Rescuing and Re-inscribing Gender: A Prelude to an Agenda for Addressing Gender-Based Violence in the Administration of Justice”, feature address presented at UNECLAC Subregional Headquarters for the Caribbean/CIDA Gender Equality Programme "Regional Conference on Gender-Based Violence and the Administration of Justice”, 3-5 February 2003, Port of Spain, Trinidad.

2 The Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women 1994 (Belem do Para) represents the clearest commitment that Caribbean countries have made internationally in respect of violence against women. It describes violence against women as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

3 In Trinidad and Tobago in 1997, 80% of forced sexual behaviour was carried out by persons well known to the victim, who was usually a woman or girl (Trinidad and Tobago, CEDAW Report, para. 132). In the St. Lucia Family Court in 2000 30.2 per cent of the applications were for protection orders in respect of domestic violence (OECS-CIDA Judicial and Legal Reform Project, OECS Case Profile Review 2000: An Analysis of Criminal and Civil Cases in the magistrates Courts of the OECS August 2002. 22). One third of women in a survey in Suriname said they experienced sexual harassment at work (Trinidad and Tobago, Initial, Second and Third Periodic Report under the Convention on the Elimination of Discrimination Against Women (2000) 70-71.)
words, gender tells us something about **who does it and why**, and **who experiences and why**.

What do I mean by **gender** here? I am taking about those understandings we have about how women and men should be, behave and live and that contribute to materially different conditions of life for women and men and produce and reproduce relations of power within and between women and men.

Gender-based violence is a mirror to social relations. It profoundly tells us about life where we are. Gender based violence cuts across many areas of law, including family law, criminal law, and employment law. This violence comes in many forms including domestic violence, sexual offences, sexual harassment and child abuse.

The term gender-based violence may better capture a focus on the use of violence and the extent to which masculinity (ideas of how men should be, behave and live) has become invested in the performance of violence against men, women and children.

### Impetus for law reform

**International human rights developments**

These have established that:

- Violence against women is a violation of the human rights of women
- Violence against women is an obstacle to the achievement of equality, development and peace
- The state to take positive action to address violence against women whether it occurs in public or private domain

**Work of the Caribbean women’s movement and feminist activism**

There is no single issue on which there has been greater feminist engagement with the state in the Caribbean region in recent times than violence against women.

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4 Robinson, above n. 1.

CARICOM Model legislation

The then Women’s Desk at CARICOM developed model legislation in a number of areas at the end of the 1980s to address women’s inequality, including domestic violence, sexual offences and sexual harassment. The model legislation has been very influential.⁶

- The domestic violence model legislation was considered by virtually every country. These reforms are now the most important legislative initiative to advance the rights of women in the 1990s as well as the most significant family law reform effort in the region in that period.⁷ Suriname has made some steps towards the passage of domestic violence legislation.

- A few countries have reformed their sexual offences legislation, both the substance of the laws and the procedures for hearing sexual offences cases, with reference to the model legislation.⁸ There has been a move towards gender neutral rape laws.⁹ Generally, there is an increased range of sexual offences, such as grievous sexual assault¹⁰ and unlawful sexual connection,¹¹ and strengthening of penalties. There is

⁶ Go to http://www.caricom.org/.

⁷ Domestic Violence (Summary Proceedings) Act 1999 (Antigua and Barbuda); Sexual Offences and Domestic Violence Act 1991 (Bahamas); Domestic Violence (Protection Orders) Act, 1992, Cap 130A (Barbados); Domestic Violence Act 1992 (Belize); Domestic Violence Act 1997 (Bermuda); Domestic Violence Summary Proceedings Act 1992 (British Virgin Islands); Summary Jurisdiction (Domestic Violence) Law 1992 (Cayman Islands); Domestic Violence Act 2001 (Dominica); Domestic Violence Act 2001 (Grenada); Domestic Violence Act 1996 (Guyana); Domestic Violence Act, 1995 (Jamaica); Domestic Violence Act 2000 (St. Christopher-Nevis); Domestic Violence (Summary Proceedings) Act 1995 (St. Lucia); Domestic Violence and Matrimonial Proceedings Act 1984, Domestic Violence (Summary Proceedings) Act 1995 (St. Vincent and the Grenadines); Domestic Violence Act 1999 (Trinidad and Tobago).

⁸ Sexual Offences Act 1995 (Antigua and Barbuda); Sexual Offences and Domestic Violence Act 1991 (Bahamas); Sexual Offences Act 1992, Cap 154 (Barbados), Criminal Code (Amendment) Act 1999 (Belize); Sexual Offences Act 1998 (Dominica); Sexual Offence and Domestic Violence Act 1991 (Bahamas); Sexual Offences Act 1998 (Dominica); Sexual Offences Act 1986, Amendment Act 2000 (Trinidad and Tobago).

⁹ See e.g. Trinidad and Tobago Sexual Offences (Amendment) Act 2000:

(1) … A person (“the accused”) commits the offence of rape when he has sexual intercourse with another person (“the complainant”)—

(a) without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents: or

(b) with the consent of the complainant where the consent—

(i) is extorted by threat or fear of bodily harm to the complainant or to another;

(ii) is obtained by personating someone else;

(iii) is obtained by false or fraudulent representation as to the nature of the intercourse; or

(iv) is obtained by unlawfully detaining the complainant.

These changes have raised the question: When can a woman rape a man? This question was the subject of a very popular play in Jamaica titled “Against His Will”. See Gleaner 27 August 1997. It was also the subject of a court case in Barbados: A nurse was accused by her boyfriend, a doctor, of rape under section 3(1) of the Sexual Offences Act. Notwithstanding the gender neutral definition of rape in Barbados, it was argued before the magistrate that a woman could not rape a man. The attorney argued that for a woman to rape a man she must insert some object in his anus or mouth. The magistrate threw the case out of court.

¹⁰ Trinidad and Tobago Sexual Offences Amendment Act 2000, s. 3.

¹¹ Dominica Sexual Offences Act 1998, s. 4(1).
some criminalisation of non consensual sexual intercourse between a husband and his wife.

- There is very slow progress on passage of sexual harassment legislation.\textsuperscript{12} Treatment is variable across the region. It is made a criminal offence in the Bahamas and St. Lucia under the new Criminal Code, addressed through antidiscrimination laws in St. Lucia and Guyana (and by implication Trinidad and Tobago) and only in Belize is it the subject of specific legislation similar to the model legislation.

\textit{The goals of legal change}

The ideological project

An ideological project lay at the heart of law reform. The language, interpretation and application of the law have been a considerable force in marginalising gender-based violence and compromising gender equality. The goal is to change how people understand gender-based violence by naming it as a legal harm, attaching new meaning and import to the abusive behaviour, exploding public/private divides that made it legally insignificant, and undermining ideologies of gender inequality.

\textit{The Trinidad and Tobago Domestic Violence Act 1999}

Nowhere is this ideological project better laid out than in domestic violence legislation, especially the more recent ones. The Trinidad and Tobago Domestic Violence Act 1999 is the finest example of this. It begins:

\begin{quote}
"Whereas incidents of domestic violence continue to occur with alarming frequency and deadly consequences:
Whereas it has become necessary to reflect the community’s repugnance to domestic violence in whatever form it may take and further influence the community’s attitude and support social change in respect of this social ill: ..."
\end{quote}

The most powerful mechanism for signalling this ideological shift has been through definitions where the clear message is that domestic violence is not an ordinary incident of intimacy, or the ‘fair wear and tear of marriage’,\textsuperscript{13} that such abuse is violence, and that, as

\textsuperscript{12}Protection Against Sexual Harassment Act 1996 (Belize); Bahamas Sexual Offences and Domestic Violence Act 1991 (Bahamas); Anti-discrimination Act 2001 (BVI); Prevention of Discrimination Act 1997 (Guyana); Equality of Opportunity and Treatment in Employment and Occupation Act 2000, Criminal Code 2004 (St. Lucia).

\textsuperscript{13}In \textit{Llewelyn v Llewelyn} (1978) 27 W.I.R. 188 the petitioner instituted divorce proceedings against her husband on the grounds of cruelty. She gave evidence before Parnell J of four separate incidents during the course of which her husband punched her, hit her on the head with a flashlight, boxed and kicked her several times. The judge hearing the petition held that incidents described did not go beyond the \textit{fair wear and tear} one would reasonably expect in a marriage. Fortunately the Court of Appeal overturned this decision pointing out that the direct physical violence was of a fairly extreme nature.
with other types of violence, the state has an interest in preventing it and protecting those affected.

The ideological force of the domestic violence laws comes from both their depth, that is the range of their remedies and the strength of sanctions for breach, and their breadth, meaning who they cover and respect to what.\textsuperscript{14} This new law has been anxious to say that the concern is not only about physical battering within marriage. They have sought to encompass a much wider definition of family as well as a broader understanding of what behaviour constitutes abuse.

The Trinidad and Tobago 1999 Act is revolutionary in its expansive definition of psychological and emotional abuse, clear inclusion of sexual violation and novel extension to financial abuse. Very important to the ideological project, it provides extensive descriptions of each, explicitly countering deeply traditional views that focused only on physical violence. This law has transformed understandings of what is a family in law by allowing persons with a child in common or in a visiting relationship to get relief: along with those married, living together and children.\textsuperscript{15}

**The development of remedies**

Another important goal of law reform has been to strengthen legal protection against gender-based violence and to ensure that victims have effective remedies.

*The Belize Criminal Code (Amendment) Act 1999 & Trinidad and Tobago Sexual Offences (Amendment) Act 2000*

On the one side, this has been **penalty focussed** and has meant harsher penalties for certain gender-based offences. For example, the Belize Criminal Code now provides a mandatory sentence of life imprisonment for habitual sex offenders.

On the other side, there is a greater focus on **protection of victims**. Protection orders available in cases of domestic violence form a crucial part of this new approach. Provisions in the Trinidad and Tobago Domestic Violence Act 1999 obligating the police to respond to domestic violence complaints, strengthening their powers to intervene and requiring them to keep a careful record of all reports are another example. As is the requirement under the Trinidad and Tobago Sexual Offences (Amendment) Act 2000 that provides for mandatory medical examination of the accused in certain sexual offences.

*Emerging child protection regimes*

The emerging body of improved child protection laws in countries like Grenada, Belize, Trinidad and Tobago and St. Kitts-Nevis represent the best example of this new focus on protection.\textsuperscript{16} Typically, their provisions provide for mandatory reporting of child abuse and


for the removal of children at risk from the home and into facilities of care or with relatives.

**Institutional and procedural improvements**

*Family courts*

The introduction of family courts, designed to better integrate social services within the administration of justice, is a major institutional legislative change that has generally preceded the law reform initiatives to address gender based violence and has, in some instances, helped to facilitate a more multi-disciplinary approach to gender-based violence.\(^{17}\)

*Court proceedings in sexual offences*

There have been significant reforms to the way in which the courts conduct hearings in dealing with some forms of gender based violence to ameliorate the victimisation complainants experienced in the courts.\(^{18}\)

The reformed sexual offences laws region-wide provide for in-camera hearings. Limits have placed on the use of the past sexual history of the victim. Provision has been made to protect the privacy of the victim and sometimes the accused.

*Corroboration warnings*

In *Pivotte* (1995) 50 WIR 272, Satrohan Singh JA referred to the famous statement in *R v Henry and Manning* (1968) 53 Cr App Rep 150 to support a mandatory warning about corroboration in sexual offences cases:

> “...human experience has shown that in these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not know enumerate, and sometimes for no reason at all.”

He added that ‘sexual neurosis, fantasy, spite or refusal to admit consent because of shame’ are some of the reasons given for why women and girls lie. This summation was approved

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\(^{16}\) See the ECLAC UNIFEM, Eliminating Gender-Based Violence, Ensuring Equality: ECLAC/UNIFEM Regional Assessment of Actions to End Violence Against Women in the Caribbean (ECLAC, 2003). Families and Children’s Act 1998 (Belize); Child Protection Act 1998 (Grenada); Probation and Child Welfare Act (St. Kitts-Nevis); The Children Amendment Act (Trinidad and Tobago).

\(^{17}\) See the ECLAC UNIFEM Report (ibid.) for an analysis of these developments.

\(^{18}\) There is the infamous account of a rape trial in progress at the Supreme Court Building in Kingston, Jamaica on January 21 1997. A 22 year-old woman and mother from a rural parish, travelled into Kingston to give evidence. She was the complainant. Her voice was barely audible during her evidence and the judge repeatedly asked her to speak louder. Increasingly annoyed at his inability to hear what she was saying, he threatened to detain her if she did not speak up. At the lunch time adjournment, he ordered that she be examined by a doctor overnight and told the police to ‘take her safely, give her food and keep her at a safe place’., this meant she was being remanded in custody to the Fort Agusta Prison. The judge’s explanation was that this was in her interest because he was putting in place an arrangement that would allow her to obtain medical treatment and attention. He subsequently changed his mind, reportedly after speaking to the Chief Justice, and asked for the young woman to be released, but by this time it was said to be too late to have her released from the prison that same day.
by the Guyana Court of Appeal recently as being consistent with the corroboration warning:

“... children and women hallucinate, they tend to imagine and make up stories and they tend to do all sorts of things... So it became the practice over the years to look for corroboration before convicting....”\(^{19}\)

This longstanding rule of practice requiring the trial judge to give the jury a specific direction and warning in respect of the evidence of the complainant in a sexual offence case to the effect that it would be dangerous to convict on the uncorroborated evidence of the complainant alone now ruled to be based on a discredited belief by the Privy Council in \(R v Gilbert\) (2002) 61 WIR 174. The Privy Council said that the mandatory corroboration warning did not add to the fairness of the trial nor aid the achievement of safe verdicts and that the judge should have a discretion to determine what, if any, warning is appropriate.

**Structural reforms**

**Legal aid**

Poor access to legal services undermines the effectiveness of new remedies dealing with gender-based violence. In 2000, 24.2% of the persons coming to the Grenada Legal Aid and Counselling Clinic, a non-governmental organisation, for assistance were seeking help in dealing with domestic violence.\(^{20}\) In 98% of cases in St. Lucia Family Court in 2000 there was no legal representation for the applicant, in 97% no legal representation for the respondent.\(^{21}\)

Reforms to legal aid regimes and the introduction of legal aid clinics have marginally improved access to justice for victims of gender based violence in some countries. In the BVI, Dominica, Grenada and Trinidad and Tobago, there is legal aid for victims of domestic violence seeking relief in the lower courts.\(^{22}\)

**Growing prevention focus**

**Facilitating batterer-intervention programmes**

Prevention of gender-based violence is a slowly growing focus in law reform initiatives. The St. Kitts-Nevis domestic violence legislation makes specific provision for rehabilitation orders.

One can expect that over the course of time, legislation will give the courts jurisdiction to mandate perpetrators of violence to undergo batterer-intervention programmes and not

\(^{19}\) Summation and approved on appeal in *Williams & Khublial v State* (1997) 57 WIR 164 (CA, Guy).


simply counselling, which is therapeutic and less focussed on the perpetrator’s accountability.\textsuperscript{23} One can also expect these changes to be closely aligned to restorative justice initiatives in the criminal justice system.

\textbf{Deepening commitment: The challenges}

\textbf{Linking gender-based violence and gender equality}

\textit{Guidance from international human rights law}

The goal of gender equality is central to what I called the ‘ideological project’ of law reform on gender-based violence, although this is not always apparent. St. Kitts-Nevis had this firmly in mind and that country’s commitments internationally under the Belem do Para Convention when it drafted its domestic violence legislation.

Internationally, the connection between CEDAW, addressing gender discrimination, and violence against women has been firmly made. General Recommendation 19 of the CEDAW Committee in its 11\textsuperscript{th} Session in 1992 makes it clear that gender violence may breach specific provisions of CEDAW even if the provisions do not expressly mention violence, and that member states must adopt measures to combat violence against women whether by public or private act.

Closer to home, the CARICOM Charter of Civil Society for the Caribbean Community 1997 makes a clear link between securing gender equality and adequate remedies in respect of gender-based violence. Article XII provides that:

\begin{quote}
\textit{For the promotion of policies and measures aimed at strengthening gender equality, all women have equal rights with men in the political, civil, economic, social and cultural spheres. Such rights shall include the right: }
\textit{(d) to legal protection including just and effective remedies against domestic violence, sexual abuse and sexual harassment.}
\end{quote}

Although many acknowledge that the law should address gender-based violence, some see little connection between it and women’s right to life, liberty and security of the person, equal protection under the law, the highest standard attainable, just and favourable conditions of work, not to be subject to torture or other cruel, inhuman or degrading treatment or punishment and equality.\textsuperscript{24}

\textsuperscript{23} See UNECLAC UNIFEM Report above.
\textsuperscript{24} The Declaration on the Elimination of All Forms of Violence Against Women, adopted by the UN General Assembly in 1993.
The response of Caribbean courts

The Privy Council

The Judicial Committee of the Privy Council in two recent decisions from the Commonwealth Caribbean have developed the law in relation to gender-based violence.

First, there is their decision in the *Indravani Ramjattan v The State No. 1* case discussed below in which they held that evidence of battered women’s syndrome can be adduced in making out one of the established defences to murder. Second, their laudatory decision in *R v Gilbert* above on the mandatory corroboration warning in sexual offences. Starkly neither seeks to secure an understanding of these developments within the context of constitutional (higher law) standards (of gender equality), in very much the same way this court have done in other criminal matters.

Statutes assume that the goal of gender equality is at the substratum of gender violence laws, but judges can and should make this explicit. Why? Because these laws represent radical departures in how law conceptualises violence and understands the status of men and women. And as the government of Trinidad and Tobago put it in its last report to the CEDAW Committee: ‘Patriarchal ideologies and notions of male dominance still persist and are proving difficult to change. While legislation has been enacted and measures are being taken to address this situation, challenges exist in shifting the sociological context of gender equality.’

As an organ of the state, the judiciary forms an indispensable part of that national and international commitment to making our societies safe for all, including women and children. This goal is considerably aided by judges’ explicitly confronting the cultural and ideological impediments to progress.

Addressing domestic violence, a constitutional imperative

Caribbean judges are beginning to make this bold move, especially in the OECS courts. A St. Lucian lawyer whose wife had secured a protection order against him unsuccessfully challenged the constitutionality of the St. Lucian domestic violence law. It was constitutionally imperative for the state to address domestic violence, Barrow J (Ag) said in *Martimus Francois v AG of St. Lucia* (unreported) 24 May 2001 (HC, St. Lucia). He said the state must protect the right of everyone to be free from violence, including domestic violence.

As he put it, this is inherent in the constitutional right of person to those fundamental rights and freedoms including “life, liberty, security of the person, equality before the law and the protection of the law.” Similar provisions can be found in the Suriname Constitution.

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25 (1999) 54 WIR 383,
27 See Suriname Constitution, Article 8: All who are within the territory of Suriname shall have an equal claim to protection of person and property. Article 9: Everyone has a right to physical, mental and moral integrity. Article 16: Everyone has the right to personal liberty and safety.
Note the assumption that the bill of rights gives rise to positive duties on the part of the state, not just duties of non-interference.\textsuperscript{28} Barrow J (Ag.) continued:

\begin{quote}
Domestic violence is a scourge. It is a major source of violence in our societies. It is part of the bedrock on which rests the subjugation and servitude of women. The pervasiveness and social acceptance of violence against women point to the fact that such violence is the norm rather than the aberration in our societies.
\end{quote}

Balancing the rights of the individual against the rights and freedoms of others

In the Commonwealth Caribbean, the Bill of Rights of the Constitutions usually begin “Whereas every person in The Bahamas is entitled to the fundamental rights and freedoms of the individual, …” but go on to say that these rights are subject to limitations that are “designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.” The jurisprudence on the latter part of this provision and the balancing exercise it implies is relatively underdeveloped in the Caribbean.

Although not referring to this provision, Byron CJ firmly injected gender equality in this balancing exercise. A defendant charged with raping a girl child. There was very strong eye witness evidence. The defendant argued that his right to a fair trial had been infringed because of undue delay.\textsuperscript{29} The Chief Justice said:

\begin{quote}
In this case, however, despite the length of the delay, there is a special factor, which we feel the court must consider to determine whether that burden has been discharged. The complainant was a girl child. She was six years old. Her mother was the common law wife of the appellant. St. Vincent and the Grenadines is a member of the Convention on the Elimination of All Forms of Discrimination Against Women. The international norms therefore that are applicable in this society include the duty of the State to protect the interests of the girl child against domestic violence and sexual abuse. The society and the complainant had an important interest in the prosecution of this case."
\end{quote}

Byron CJ thus concluded that in determining the scope of the constitutionally protected rights of the individual, the court is obliged to balance the rights and interests of the girl child against domestic violence and abuse.

The ghettoisation of gender based violence

Unfortunately, sometimes legislative reform to address gender-based violence looks like a victim of its own success. The statutory regimes achieve a special discrete taxonomy which

\textsuperscript{28} In the Commonwealth Caribbean, the line of recent, albeit controversial, death penalty decisions that interpret the Constitutions as imposing duties on the State to improve the administration of justice if it wishes to carry out the death penalty seem to put this point beyond doubt.

\textsuperscript{29} Gladstone v R (unreported) 12 January 1998, Court of Appeal, St. Vincent and the Grenadines (Crim App No 13 of 1997).
give it a measure of prominence but conversely makes it increasingly difficult to show the legal significance of the violence outside the boundaries of the statute.  

**Domestic violence beyond the legislation**

Some police officers who see victims routinely suggest they get protection orders under the new legislation, ignoring their responsibilities to put the criminal justice process in motion. Ironically, the legislation has in some instances meant that domestic violence is pigeonholed as a family law matter, effectively sidestepping its criminal dimensions. This can have deadly consequences, as seen with the number of women, in Trinidad especially, who have been murdered while they had valid protection orders against the murderers.

There has been virtually no attention given by lawmakers or judges to the impact of domestic violence in other family law matters, including applications for custody and access to children and property distribution between intimate partners. Conversely, few domestic violence statutes allow courts to deal with custody and support issues as ancillary matters to applications for relief.

Of interest are the efforts by the courts to take domestic violence into account in cases of murder. On many different counts the case of *Ramjattan v State* is not without difficulties, but it clearly advances the development of defences to murder by acknowledging the admissibility of evidence that a woman who killed was suffering from battered woman’s syndrome.

**Naming the behaviour**

In much the same way that the presence of legislation leads occasionally to ‘ghettoisation’, the absence of legislation can produce almost complete obscurity. In the absence of a legislative intervention, judges are well placed to name specific forms of gender-based violence as harms.

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31 In an appeal from Dominica against sentence, Byron CJ considered the request that the Court exercise leniency and impose a fixed term of years on a young man of 26 years who it was said could be rehabilitated after serving a custodial sentence. He said:

“This crime, however, falls within the category of domestic violence. This is a man who killed his woman because she said she was going to leave him and because she had been having an affair with another man for a long time. The community is paying more attention to these crimes, which are on the increase. They are particularly horrible and undermine the equal status of women in our society. We have concluded that the maximum sentence allowed by law should be imposed…” *George v State* (unreported) 27 March 2000, CA, Dominica (No. 4 of 1999)

Sexual harassment

Sexual harassment presents one of the best opportunities to do so. Attempts by Caribbean judges to do so have not been entirely satisfactory. Employers’ common law duty to take care of their employees, to provide a safe place of work and not to conduct themselves in a manner likely to damage the relationship of trust and confidence provide fine opportunities for the development of the law in the Caribbean.

Ramjattan

While commendable on other fronts, the Ramjattan case was a missed opportunity to name various forms of gender-based violence their seriousness.

The convicted woman murdered a man whom she was sent by her family to live with at the age of 17. The much older man exerted considerable pressure on her family over the course of a number of years before they eventually gave in. The conditions under which she began this ‘relationship’ were those of sexual slavery.

The man’s horrific physical battery and threats of violence were well documented, but less noticeable was his repeated rape. In spite of all the advances in recognising domestic violence, sexual violation within intimacy remains relatively invisible despite strong evidence in the Caribbean that it often accompanies physical violation.

The convicted woman left this man with whom she eventually had six children and had been living for many years on a number of occasions but he always found her and returned her to the home in which they had been living. In the circumstances leading to the murder of the deceased, she had left the man yet again and he eventually found her. She was then living with a new partner and was pregnant. Using tremendous force and violence, he removed her from that house and kept her locked up at the house in which they used to live in the days preceding his murder.

The trial judge advised the jury: “Apparently, the husband found out about this (pregnancy) and he was, quite naturally, mad about the whole affair. And he ‘ill-treated’—I’m using the word quite neutrally—the accused.” (emphasis added). In the Court of Appeal’s oral decision on the hearing of the fresh evidence of battered woman’s syndrome, De la Bastide CJ insisted that while the courts were not in the business of apportioning

33 It is not surprising that almost all the decided cases that have come to attention involve a man who was dismissed for sexually harassing female employees and who invokes well established employment law remedies for unfair dismissal. Bank Employees Union v Republic Bank Trade Dispute No 17 of 1995 (March 25th 1996); Jones v BICO Ltd. (unreported) 2 August 1996, Court of Appeal, Barbados (No 3 of 1995). Jones v. BICO Ltd. (unreported) 16 February 1995, Magistrate’s Court, Barbados.


35 For example, data collected from the Shelter for Battered Women in Port of Spain, Trinidad indicated that 80% of the cases of spousal violence coming into the shelter involved sexual abuse (Women and Development Studies Group, Centre for Gender and Development Studies, UWI, St Augustine, Women, Family and Family Violence in the Caribbean: The Historical and Contemporary Experience with Special Reference to Trinidad and Tobago (1994) at 65 (prepared for the CARICOM Secretariat for International Year of the Family)).
moral blame, “we must not lose sight of the fact that she was carrying the child of another
man with whom she obviously … hoped to make a life.” 36

There are disturbing aspects of this analysis. The continued reference to the deceased, to
whom she had never been married, as Ramjattan’s husband completely elides her agency
in severing that relationship and her right to do so as an autonomous human being. At best,
the deceased was a former intimate partner. The assumed ‘naturalness’ of the anger of the
deceased is set within assumptions about the right of men to control the lives of women,
completely antithetical to assertions in the constitutions of women’s rights to life, liberty
and security of the person. The references to the deceased as ‘husband’ and to theirs as a
‘marriage-like’ relationship does little to challenge the integrity of any union in which
coevolution was the principal basis for cohabitation or to present marriage as a union freely
entered which must be viewed as a partnership of equals.37

Concluding Thoughts: The judiciary, an organ of the state and an
agent of change

Law reform

In the OECS, the ongoing Family Law and Domestic Violence Legislative Reform Project
began in the Supreme Court (and is now administered by the OECS Secretariat). 38 Such
radical reform will ultimately reside with members of the executive and legislature but
judges can encourage reform from the bench and extra-judicially. Still, the rule-making
powers of the courts in certain procedural matters offer an important opportunity to
strengthen the administration of justice in dealing with gender-based violence.

Law making

Parliament has been setting the pace is defining gender-based violence, but judges can do
more. Statutory intervention is only the beginning of the legal protection. As said before, it


37 R v R [1991] 4 All ER 481.

38 The project has two major concerns. The first concern relates to the need to improve the efficiency and
effectiveness of the judicial system thereby improving access to justice for all members of the society. The second
concern is for the eradication of gender-based inequality both in the content of the law as well as of unequal results
of apparently non-discriminatory legal provisions. In determining the direction of legislative reform, the project uses
as a guide the obligations elaborated in the international human rights instruments of the Convention on the
Elimination of all Forms of Discrimination against Women (the Women’s Convention) and the Convention on the
Action for Children.
is judges who will make the critical connection between gender-based violence and gender inequality.

Careful judicial interpretation is central to effective legal protection. Magistrates will play a key role in this process. In the St. Lucia Family Court in 2000 30.2 per cent of the applications before that court were for protection orders in respect of domestic violence. Magistrates should consider occasionally delivering written decisions on important questions that arise about the interpretation of domestic violence laws.

**Capacity building**

The training of judges and court personnel to deal with gender-based violence in the courts exists but tends to be sporadic. Such training should be multidisciplinary and institutionalised.

**Institutional reform**

Justice and court management improvement and technological reforms provide an excellent opportunity to strengthen the efficiency of legal processes dealing with gender-based violence. Protocols and practices relating to social service intervention and the collection of data can be better streamlined. Technological improvements offer an opportunity to introduce a refined mechanism for monitoring the implementation of new legislation like the domestic violence statutes.

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40 This recommendation came from Inter-Agency Roundtable: Developing Coordinated Approaches to Eradicating Gender-based Violence in the Caribbean, 11–12 May 2004.