

# Domestic Violence and Access to Justice during COVID 19 in Trinidad and Tobago: Responses to domestic violence during crisis by the courts and its implications for access

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The declaration of COVID-19 as a global health pandemic by the World Health Organization (WHO) altered lives globally. Many have been subject to stringent 'stay at home' orders which ensure limited movement to slow the spread of the virus. As more persons stayed in-doors across the globe, there was a marked increase in the reporting of domestic violence cases internationally (Taub, 2020; Usher et al., 2020). In Trinidad and Tobago there was a drastic rise in domestic violence reports, in March 2019 reports numbered 42; compared to March 2020, there were 203 reports (Ramdass, 2020). The increase in domestic violence reports may be the result of social isolation, a central feature of the public health response to the pandemic but also a feature of coercive control (Stark, 2013; Usher et al., 2020). This forced social isolation enabled abusers to use the stay at home orders to further traumatize their victims. Moreover, it meant victims were cut off from sources of assistance, unable to communicate privately with supportive networks such as extended family or friends or community-based networks or access shelters and other outreach programs (Usher et al., 2020). This also meant that advocacy groups, support services as well as the criminal justice system, needed to find alternative measures to assist victims to escape their situations (*COVID-19 and Ending Violence Against Women and Girls*, n.d.).

While some victims can make a police report, their journey through justice does not end after making a report but includes access to the courts for the application for protection orders and hearings at the court. During this crisis, most jurisdictions deemed their courts an essential service, and consequently these institutions were required to adjust their operations to work in a world where social distancing and limited social contact are the new norm. This analysis seeks to explore the measures implemented in Trinidad and Tobago in response to the needs of domestic violence

victims during this time of crisis and the possible challenges such victims may encounter. Through a review of COVID-19 directives and practice directions for court operations, I undertake a brief discussion on their possible impact on victims accessing justice during the crisis and its association to the barriers they experienced pre-pandemic.

The criminal justice system in Trinidad and Tobago reflects its colonial past, and in some fashion mimics the processes and procedures of the criminal justice system in the United Kingdom. The Judiciary, as the third independent arm of the State established by the Constitution comprises the Supreme Court of Judicature and the Magistracy, and is responsible for the timely resolution of legal disputes between individuals and bodies including the state and promoting access to justice (*The Judiciary of Trinidad and Tobago: About the Judiciary: Overview*, n.d.). More importantly, the system is required to facilitate people who find themselves in a state of “brokenness”. For victims of domestic violence, it serves as a last line of defense that protects them from their abuser. In the court, victims can make an application for a protection order and obtain other legal support services to assist in helping with their situations.

The system, however, is characterized by physical interaction in centralized locations at city centers and towns, face to face exchanges and a high turnover of handling physical documents is often critiqued as archaic, bureaucratic as well as dysfunctional (Greenberg and Agozino, 2012). This is exemplified in victims’ applications for protection orders which require the victim or applicant to physically interact with the court and its representatives. The application requires the victim or applicant to go to the court’s registry at the respective Magistrate’s court; speak to the Clerk of the Peace to identify the problem and determine if it is domestic violence matter or a matter for another court. If it is decided, the victim (applicant) pays TTD\$3.00 in cash or this value in stamps for filing a domestic violence complaint and a complaint and summons are prepared with a fixed date of hearing seven days after filing the application. After the complaint is signed, the victim or applicant takes the summons to be served on the respondent to the police or may be served by the applicant or his/her agent (*The Judiciary of Trinidad and Tobago: Public Guidance: FAQ’s: Magistrates’ Court: Domestic Violence*, n.d.). However, the occurrence of COVID-19 meant the closing of courtrooms, the limiting of in-house services and operations by the courts, the

suspension of trials and delays in justice which affects victims already awaiting protection orders and hearings and those seeking access to justice.

The response of the Judiciary was the use of technology to replace certain services and operations and digitalization of services to administer justice. In its earliest practice directions by the Judiciary, domestic violence cases (matters) were amongst the few matters deemed fit for hearing in any event during this period. However, all in-person appearances were discouraged, with Judges, Masters, Magistrates, Supreme Court Registrars and Magistracy Registrars being encouraged to use telephonic or video technology for all hearings (*Revised Practice Direction - COVID-19. Emergency Directions as Stated in Gazette No.31, n.d.*). The latest practice direction issued by the Judiciary provided the option of in-person and electronic hearings for some matters, with domestic violence matters being mentioned. It reflects the opinion that in such matters the interest of justice can be compromised by an electronic hearing and therefore should be conducted in person. However, in keeping with the need to maintain appropriate health and safety requirements the practice directions stipulated that these matters such as domestic violence matters are encouraged to be conducted by electronic means as far as possible. Additionally, the Judiciary in its direction encouraged the electronic filing of documents. For self-represented members of the public and persons with no other means to file electronically, documents are to be filed via the electronic filing kiosks available at centralized locations (urban centers) (*Practice Direction, Court Operations COVID-19 Pandemic Directions with effect from June 16 2020, No. 4, pp.788-791*). Additionally, applications for a protection order could be made at the available Family Courts and Magistrates Courts with a specific email and contact number for domestic violence.

The implementation of 'stay at home orders' as well as the suspension and limiting of services and operations by the court complicates victims' ability access justice services. The limited physical access to courts and its services curtails victim's ability to make applications for protection orders, or even leave the homes they share with their abusers. The reduction in days and times of operation led to a reduced opportunity for face to face cases being heard, also limiting the victim's ability to be heard. Consequently, victims and those who assist them are required to find ways to make applications and attend hearings (virtual or face to face) that will not hamper their safety. Additionally, the nature of the pandemic altered our modes of interaction

from physical to virtual, the increased use of technology and virtual communication can impact access for domestic violence victims. In some places, especially rural communities, victims may not have access to a mobile phone, computer, or internet to access services or be able to safely use these at home as they may be closely monitored by the perpetrator and other family members. Such limitations to access are also heightened in situations where officers are given the authority to assess whether removing the victim from the home serves in the best interest of all parties (Ramdass, 2020). Consequently, victims may be unable to make the applications for orders electronically or attend electronic hearings. While it seems the court attempted to provide victims with priority access, the current pandemic adds to some of the barriers victims faced pre-pandemic.

Prior to the COVID-19 pandemic domestic violence victims faced institutional barriers when accessing justice. For many their experiences with court processes such as the application for protection orders and other forms of legal protection was traumatizing and intimidating. Lazarus-Black (2007, pp. 91-118) elucidates that this intimidation stems from the listener(s) in the courtroom, usually the judge holding physical, social, psychological, and economic power over the victim and as such creates an environment of intimidation. Moreover, magistrates and judges at times lack a clear understanding of the dynamics of victims' abuse and the risk exposure to victims and their dependents (Meyer, 2011). Judges also determine the kind of attention paid to domestic violence and could determine which matters should be subject to legal redress (Douglas, 2012; us, 1986; Weissman, n.d.). Other barriers in the court relate to delays in justice as victims' hearings for protection orders can take some time although it is stipulated that such applications are to be heard in seven days. Such delays have resulted in approximately 8000 protection orders before the courts. These delays may be due to adjournments resulting from the lack of available magistrates (Gopaulchan, 2020). These pre-pandemic and potential pandemic related issues faced by domestic violence victims are reflective of the lack of a gendered approach when creating strategy to deal with their access to justice needs.

COVID-19 has created a challenge for the operation of the criminal justice system. In Trinidad and Tobago, the decision to go virtual and digitized in short manner demonstrates a willingness to reform. However, the pandemic has contributed to a greater burden on an already burdened system. More importantly, there is a need for

a more comprehensive and gendered strategy to ensure that victims of domestic violence can co-exist with the protocols of COVID-19. This pandemic presents an opportunity for the courts and the wider criminal justice system to consider reforms that allow for the implementation of victim-centered solutions. Such solutions should focus on training of court workers and judges on the needs of this victim group and thereby improve social and cultural attitudes towards domestic violence victimization. Additionally, consideration should be given to reforming the processes and procedures that may be too complicated for victims and ensuring that orders and hearings are quick and accessible. This may include the decentralization of certain services that would make applications for orders and other services more accessible to victims that may lack resources or live in rural communities. The pandemic has demonstrated the ability of the court to adapt and therefore there is hope for reform.

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