

PROCEEDING FAIRLY

**REPORT ON THE EXTENT TO WHICH
ELEMENTS OF PROCEDURAL FAIRNESS
EXIST IN THE COURT SYSTEMS OF
THE JUDICIARY OF THE REPUBLIC OF
TRINIDAD AND TOBAGO**





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THE REPUBLIC OF TRINIDAD AND TOBAGO

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Any use of masculine nouns and pronouns in this book may refer to all genders.



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FOREWORD

FAIR PROCESS MATTERS.
EQUALITY AND RESPECT ARE FUNDAMENTAL.
INTEGRITY IS ESSENTIAL.

Legal systems exist essentially in order to regulate society in accordance with lawfully prescribed rules, regulations, and norms – that is, in conformity with the law. This way, society is governed by the rule of law; which in Trinidad and Tobago is recognised as one of the underpinning constitutional values that guarantees freedom; see clause d to the Preamble of the 1976 Republican Constitution.

Obedience to the law and legal authorities and compliance with court decisions, orders, and directions, are therefore essential for the creation and sustainability of a lawful society. Procedural Fairness can make a significant contribution to the fulfilment of this purpose and function of the law.

In April 2016 the Judicial Education Institute of Trinidad and Tobago (JEITT) held a three-day Continuing Education Seminar (CES) on ‘Workplace Integrity’ (this CES was facilitated by Lennox E. Joseph, PhD., Sr. Phyllis A. Wharfe PhD., and Edwin J. Nichols PhD.). That seminar explored and deconstructed “integrity”. As a consequence, the meaning of “integrity” was co-constructed and collectively defined as: the consistency between what is declared and what is done – the alignment between values, words and actions leading to a sense of wholeness providing internal steadiness and incorruptibility. It was understood that integrity operates at all levels in systems; individual, group, departmental, and organisational. Integrity is assessed by how closely behaviours and actions are consistent with and aligned to regulatory frameworks and institutional as well as personal and professional values and ethical principles. Significantly, it was agreed that integrity is linked to trustworthiness and fairness, exists in a cultural context, and is associated with the moral authority of the individual and of the organisation. Moral authority in this context is used to mean the sense of the symbolic and significant things that lead to upholding the legitimacy of a system and an institution. A loss of moral authority occurs when these symbolic and significant things, such as trust, confidence, integrity, and legitimacy in the case of the court systems, no longer exert significant influence and command the compelling regard.

Acting with integrity demands consistent behaviour at all times and in all circumstances, requires transparency and accountability, and contributes to a felt sense of social justice. Institutions and persons, especially leaders, who are experienced and perceived as consistently acting “in integrity” are considered trustworthy, reliable, and morally authoritative. They are consequently vested with credibility, legitimacy and found to be deserving of respect. Acting out of integrity has the opposite consequences.



To the extent that what is stated above about integrity is true, and it was found to be so by the collective members of the Judiciary of the Republic of Trinidad and Tobago (JRTT) at that CES, the implications are clear. For court systems to inspire public trust and confidence, to be seen and experienced as credible and legitimate, and to be considered to be morally authoritative, both the court systems and court personnel (including judicial officers) must be perceived, experienced, and assessed as consistently acting with integrity.

Procedural Fairness describes the kinds of behaviours and systems that inspire trust in, confer legitimacy on, and bestow authority upon court systems, judicial officers, court staff, and court administrators. It prescribes core non-negotiable values and standards that are necessary for the legitimate and trustworthy exercise of legal authority within a community and society. It therefore demands integrity of actions, behaviours, and systems in relation to its constitutive elements; an integrity that must be consistently experienced and perceived by all stakeholders in the court systems, Users of the Court Systems, potential Users of the Court Systems, and the public at large. The research described in this Report discloses that without Procedural Fairness and whole system integrity, the court systems of the JRTT will likely be perceived and experienced as untrustworthy, illegitimate, and non-authoritative spheres for the resolution of society's legal conflicts and disputes.

The 2016 Workplace Integrity CES revealed that in Trinidad and Tobago the generally normative cultural axiology places an extremely high value on the relatedness between and among persons. This insight into the primacy with which relationships are valued, is critical to understanding the salience of Procedural Fairness for the legitimacy of and public trust in the court systems of the JRTT. This is because Procedural Fairness is above all else concerned with the nature and quality of relationships and ways of interacting between and among court systems, court staff and judicial officers on the one hand, and Users of the Court Systems and observers on the other hand.

As was explained at that 2016 CES, Trinidad and Tobago's local epistemology is generally experienced as knowing through "symbolic imagery and rhythm" (as opposed to, 'counting and measuring'). This is to say that, in Trinidad and Tobago, experiences of meaning and value are driven more by the quality and nature of relationships and an intuitive whole-system felt sense of what is happening of the symbolic connotations of patterns of experiences; than by more purely cognitive, linear, and rational micro-assessments of data, or in the acquisition of things. The implications of this for court systems cannot be overemphasised. Assessing court systems and personnel performance solely on the basis of 'measurement and counting', by 'linear and sequential' modalities, or by an assumption that outcomes are predominantly what matters, may very likely not be evaluating how Trinidadians and Tobagonians actually interpret and judge (know and value) their court systems.

The fundamental insight of this research in the context of the court systems of the JRTT, is that process; and in particular a fair process, really matters in Trinidad and Tobago. It matters as much as and even more than outcomes only. What is valued,

sought and respected is a process that is perceived and experienced throughout to be fair, attentive, open, trustworthy, impartial, empowering and accountable. It is then seen as being respectful, caring, inclusive and positively responsive towards the legitimate and reasonable needs all Users of the Court Systems, irrespective of their individual circumstances or conditions. Relatedness is the context for meaning making in Trinidad and Tobago, and this is so even in the formal setting of the court systems of the JRTT. The quality and experience of that relatedness is of significance. Relationships matter that are premised on the mutuality of respect and regard for the inherent dignity of all persons and their justifiable needs. Procedural Fairness is one fundamental means by which the court systems of the JRTT meet these needs of Users of the Court Systems and of court system onlookers and monitors.

This research shows conclusively, that when Users of the Court Systems and the general public perceive and experience Procedural Fairness throughout their engagements with the court systems of the JRTT, they confer increased trust and confidence in the systems' decision-making process, consider it as legitimate, and possessing the moral weight to exercise its legal authority. Hence, they are more likely to comply with court orders, directions and regulations, and possibly lead to reduced recidivism. Every good reason exists to fully attend to the findings in this research and to take all reasonable steps to implement and operationalise interventions that will facilitate increasing Procedural Fairness in the court systems of the JRTT.

It is worth noting that the imperatives of this research are aligned with international treaty values to which Trinidad and Tobago has subscribed, including those contained in the Universal Declaration of Human Rights (UDHR, 1948) and the International Covenant on Civil and Political Rights (ICCPR, 1966). In this regard, Article 19 of the UDHR (the right to freedom of opinion and expression) and 14 of the ICCPR (the entitlement to equality before the courts), are apposite. The findings are also consistent with Fundamental Human Rights provisions contained in the 1976 Republican Constitution of Trinidad and Tobago and with the values espoused in its Preamble – see, sections 4 (a), (b), (d) and (i) and 5 (2) (e) and (h) of the Constitution and clauses (a) and (c) of the Preamble and note in particular the chapeau to section 4. There are therefore international treaty and local legally binding reasons for ensuring that the findings of this research are implemented throughout the court systems of the JRTT.

This research would not have been possible without the assistance of several persons. These include include the Research and Publications team of the JEITT: Kelsea Mahabir, Trisha Dassrath, Kamla Jo Braithwaite, and Elron Elahie, as well as research assistance from Sheia Leslie, Kendra Sandy, Carol Tyson-Pascal, Keeda Singh, and Armos Douglin. Without the vision of the Board of the JEITT to foresee this research as necessary, these findings would not have become apparent in this way. Its insightful wisdom and its confidence in the research team and writers are acknowledged. The researchers and their assistants worked long, hard, and enthusiastically for many months to complete and put together the primary research and analysis. Without it and their unwavering dedication, this report and its findings would simply never have



been possible. Immeasurable assistance was also received from our two consultants, Prof. Cheryl Thomas of the University College London Faculty of Laws and Dr. Dylan Kerrigan of the Behavioural Sciences Department at the University of the West Indies, St. Augustine. Indeed, this project would also not have been realisable without the support, guidance and advice of both consultants – and in fact, it was Prof. Cheryl Thomas who helped conceive the idea, gave the impetus to have the courage to undertake it, and who first recognised the potential for transformation in the undertaking. Sustaining commitment over a two-year period for a single project is never easy, but it was made much easier because of all the support that was so willingly available. Finally, analysing and writing up this report and publishing it has itself been quite a task. So often credit is disproportionately given to the most senior persons on a research team. In this case the truth is that without the diligence and sheer will to persevere by all involved, including our producers Paria Publishing Company Limited, this report would not have been completed. We are truly grateful to everyone.

On a more personal note, I am both proud and pleased that this project has been completed, written up, and published. I believe that the contents of this report are potentially transformative of the court systems of the JRTT and can make a positive difference in the experiences of all Users of the Court Systems, as well as for the entire justice sector.

With hope that the robust implementation of Procedural Fairness throughout all court systems of the JRTT, will contribute to increased trust and confidence, legitimacy, and compliance as well, possibly reduce recidivism.

Justice Peter Jamadar, JA

Chairman, JEITT

April, 2018

CONSULTANTS' COMMENTS

PROFESSOR CHERYL THOMAS

We know from many years of research elsewhere how crucial procedural fairness is in achieving a just court systems. But ensuring the four elements of procedural fairness has not inherently or historically been part of the judicial process in any jurisdiction. Procedural fairness has to be worked at. And perhaps the most challenging action any judiciary can undertake is the kind of detailed empirical assessment of procedural fairness that the JEITT has done in this report.

It is very important to recognise the ambition – and risk – the JRTT and JEITT have taken in carrying out such a thorough exploration of the issue in Trinidad and Tobago. Judiciaries and court administrations in most jurisdictions are often reluctant to submit themselves to this type of scrutiny, in part because most know they would come out poorly.

And many of the results of this research will make for uncomfortable reading for the judiciary and those who administer the courts in Trinidad and Tobago because, unsurprisingly, the project found some substantial gaps between what Judicial Officers and Court Staff believe they do in terms of delivering procedural fairness and how Users of the Court Systems and legal practitioners say they experience the systems. For instance, while the Public, Court Staff and Judicial Officers all believe Users of the Court Systems in Trinidad and Tobago should be granted a voice in legal proceedings, Users of the Court Systems feel Judicial Officers and Court Staff do not provide this but Judicial Officers and Court Staff believe they do give Users of the Court Systems a voice.

However, this same research has identified some areas from which the court systems of the JRTT can take encouragement. For instance, large proportions of all groups (Judicial Officers, Court Staff, Attorneys, Users of the Court Systems, and the Public) believe that legal proceedings are explained to Users of the Court Systems either sometimes, frequently or always. It is the way proceedings are explained and how Users of the Court Systems are dealt with in general that is the source of the problem.

The court observations carried out by the research team across Trinidad and Tobago have also made an important contribution to this project. The team identified a number of unacceptable conditions or lack of facilities for Users of the Court Systems in courthouses and courtrooms across the country which can fundamentally affect the public's experience of and access to the court systems of the JRTT. From the infrastructure improvements to better information provision that is needed, those responsible for the country's courts now have a clear to-do list to address these issues.

For judicial systems that are truly committed to achieving justice for all, the most important first step is to undertake this type of honest, in-depth assessment of procedural fairness in the courts. In this research report, the JEITT has created an invaluable roadmap for achieving more just and fair court systems of the JRTT.



DR DYLAN KERRIGAN

One of the biggest issues facing the citizenry of Trinidad and Tobago is the lack of comprehensive data collection and analysis around our institutions and their processes. Not to mention a sometimes disconnect between our local social scientists and the non-academic decision-makers in the society.

Because of this disconnect often improvements in our various institutions are hampered by a lack of hard evidence and data upon which decisions and enhancements in our institutions can be made. Instead, in this scenario, decisions around changes and enhancements to the institutions in our society are often made in one direction wherein the top of society tells the rest of society what needs to change and much of this decision-making comes to be based on local anecdotes or foreign best practices. As such, the improvements we choose to make and address in our own society can often be described as force-to-fit solutions that lack the local sociological context, historical peculiarities, and cultural experiences relative to our society.

Such top-down decision-making and pedagogy are always partial because they do not include nor capture the voices and experiences of all those citizens who look up at the powerful and how they personally experience the institutions in a society. Over the last two years the JEITT and its research team has endeavoured to change this picture by conducting intensive fieldwork and data collection. This new rigorous study, based around a plethora of data points combines input from all levels of society – from elites, from the middle and from the bottom up too – to provide meaningful coherence and analysis of what are the experiences of Users of the Court Systems within the local court systems and the court process. What the JEITT has produced with this research is rich, insightful, and full of clear, evidence-based suggestions for improvements and developments within the local court systems to enhance the process for Users of the Court Systems and all stakeholders. All of which I hope will be considered and where possible implemented by those responsible for the administration of justice in Trinidad and Tobago.

In a society where the academic research literature readily suggests that the general population has an in-built distrust of authorities, research of the type this project represents is a credible, trustworthy, and significant intervention into why exactly such distrust might exist in connection to the court systems of the JR TT and how by making changes to the court process, which are informed by rigorous research findings, that the legitimacy and credibility of court decisions can be rebuilt and lead to improved compliance amongst the wider citizenry. The JEITT must be congratulated for conceptualising such a grand project and executing it over the last two years to such a high standard. Having been a consultant on the project I can say that the leadership and research team was at all times thoughtful, sincere, ethical and open-minded, and demonstrated the hallmarks of a high quality social science research team.

A final comment looking forward, is that while this research around procedural fairness in Trinidad and Tobago can go a long way to improving how people feel about dealing with authorities and the court systems locally, we must remember that procedural fairness is but one level of change to improve society. Structurally, making people feel better about their court interactions does little to transform the generally uneven social relations of the society. So as we congratulate the JEITT on producing knowledge about Users of the Court Systems in the society and recognise how this new production of knowledge can improve the experiences of those who use and work in our court systems, we must of course remember that this is not the end of the road, but the continuation of one. A road where all our local institutions must come to recognise the importance of producing rigorous local data and establishing partnerships between professional and academic worlds to better understand ourselves and continue to improve society for all our citizens.

KEY TERMS

JRTT – Judiciary of the Republic of Trinidad and Tobago

JEITT – Judicial Education Institute of Trinidad and Tobago

RAE – Rapid Assessment Ethnography

Users of the Court Systems – the general category of those who utilise services in the court systems of the JRTT. This term also encompasses the group referred to in the quantitative research questions.

Public – the questionnaire category which included respondents who are current or prospective Users of the Court Systems and any other person who interacts with the court systems of the JRTT

Court Staff – respondents who were employed with the JRTT at the time the survey was distributed

Attorneys – respondents who were attorneys-at-law registered to practice in Trinidad and Tobago at the time the survey was distributed

Judicial Officers – respondents who were one of the following at the time the survey was distributed: Magistrate, Assistant Registrar, Registrar, Master, High Court Judge, Court of Appeal Judge, and Chief Justice

Court Users – interviewees from the RAE interviews



SOURCE REFERENCES

Survey Questionnaires:

Public

<http://www.ttlawcourts.org/index.php/component/attachments/download/5654>

Attorneys

<http://www.ttlawcourts.org/index.php/component/attachments/download/5651>

Court Staff

<http://www.ttlawcourts.org/index.php/component/attachments/download/5653>

Judicial Officers

<http://www.ttlawcourts.org/index.php/component/attachments/download/5652>

Courthouse Observation Form:

<http://www.ttlawcourts.org/index.php/component/attachments/download/5649>

Courtroom Observation Form:

<http://www.ttlawcourts.org/index.php/component/attachments/download/5650>

Rapid Assessment Interview (RAE) Protocol and Guidelines:

Magistracy

<http://www.ttlawcourts.org/index.php/component/attachments/download/5646>

Supreme Court

<http://www.ttlawcourts.org/index.php/component/attachments/download/5645>

RAE Thematic Code Summary:

Magistracy

<http://www.ttlawcourts.org/index.php/component/attachments/download/5647>

Supreme Court

<http://www.ttlawcourts.org/index.php/component/attachments/download/5648>

INTRODUCTION

Procedural Fairness, also known as Procedural Justice, has shown significant evidence of enhancing public trust and confidence in the administration of justice, as well as legitimising legal authority, improving compliance with court orders and directions, and reducing recidivism.

Against a backdrop of international research that supports the features of improved compliance, greater legitimacy, reduced recidivism, and increased public trust, were questions about the existence, nature, and degree of Procedural Fairness in the court systems of the JRTT and the impediments to it. With no such prior inquiry undertaken in Trinidad and Tobago, the JEITT, tasked with the responsibility of continuing education for Judicial Officers under its mandate of Transformation through Education, sought to ask these questions and find evidence-based answers. To instruct and inform this process, the academic literature on the topic proved invaluable. Thus, to understand and explore Procedural Fairness in the context of the court systems of the JRTT, the academic literature was considered and relied upon to provide initial insight on the elements of Procedural Fairness and as a preliminary frame of reference for research.

Tom Tyler (one of the foremost researchers on Procedural Fairness), throughout his work found that “people’s reaction to legal authorities are based to a striking degree on their assessments of the fairness of the processes by which legal authorities make decisions and treat members of the public” (2003, 284). Tyler’s research led him to conclude that people are more willing to accept decisions if they regard or perceive those decisions as being made fairly. Moreover, perceptions of legal authorities shape behaviour. Tyler puts forward that people’s experiences or ‘adult socialisation’ teach them about the nature of the legal authority and these views of the authority influence law-related behaviours. This places a crucial responsibility and role on the legal authority, as the manner of exercising its power can significantly shape people’s willingness to cooperate with the decisions and directives of the courts.

Burke and Leben (2008), also leading voices on Procedural Fairness, reviewed Tyler’s early pioneering work *Why People Obey the Law*. In their work, they provide succinct definitions of the four elements which Tyler identified as the landmarks of Procedural Fairness. These are as follows (Tyler 2006, 75, cited in Burke & Leben 2008, 6):



Voice: the ability to participate in the case by expressing their viewpoint.

Neutrality: consistently applied legal principles, unbiased decision makers, and a “transparency” about how decisions are made.

Respectful treatment: individuals are treated with dignity and their rights are obviously protected.

Trustworthy authorities: authorities are benevolent, caring, and sincerely trying to help the litigants – this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants’ needs.

Burke and Leben also remind us that these elements do not only impact positively upon the winning parties but, reiterating Tyler’s findings, “shape the reactions of those who are on the losing side” (2008, 6). This is crucial, as issues of compliance and perceptions of legitimacy are pragmatically more remarkable in relation to losing parties.

This expanded notion of fairness; Procedural Fairness, is thus informed by these four elements. A summary of the more relevant academic findings follows.

Voice

Avery and Quinones (2002) tested the contents of voice in their study. They identified different aspects of voice which, inevitably, impact upon the other elements of Procedural Fairness: voice opportunity (the availability of an opportunity to actually present voice), perceived voice opportunity (the perception of one’s ability to offer voice), voice behaviour (the expression of a suggestion with the goal of improving a process), and voice instrumentality (the influence of voice on the outcome). The study involved 102 participants (university students at a small, private, southern US school) constructing a two-part schedule which required different measures of involvement that tested the four voice elements above. To test for Procedural Fairness, participants answered three questions and the responses were measured on a seven-point Likert scale. The results indicated that those who experienced all four aspects of voice mentioned above, as opposed to just voice opportunity alone, have increased levels of trust and confidence in the authority. Notably, the conditions in which participants were tested (manipulation) in this study were explicit and well-defined. This is important to note, as such knowledge and clarity may not always be present in the social and legal context. Avery and Quinones make sure to highlight this limitation, reiterating findings from a previous study which state that “perceptions of procedural fairness are more polarised by explicit manipulations of voice” (van den Bos 1999, as cited in Avery and Quinones 2002, 84).

Neutrality

The presence of disrespect and bias impacts upon the public's perception of the authority's neutrality. Tyler (2008) reiterates the importance of voice's impact on neutrality, as the ability to participate shapes the perception of the decision making process. Burke and Leben (2008) state that the mediation process is an attempt to meet the needs of both groups; the public's need to be a part of the process, and the judge's duty to provide fair outcomes. Thus the studies looked at in the research compound the relationship between and among the elements but strengthen the element of neutrality as a requirement of Procedural Fairness, as it would allow for persons to both perceive and experience inclusion and fairness, which increases their trust and confidence in the authority.

Respectful Treatment

Burke and Leben (2008) posit that litigants often correlate the ability to speak and a judge's respectful treatment of them. Moreover, they reiterate that in court proceedings sanctioning alone (even when justified) is not enough to achieve Procedural Fairness; what is necessary is sanctioning in such a manner that the rights of the individual are not ignored. Additionally, they reference a study done in which she found that "almost all the judges observed used nonverbal behaviors...that are considered to be ineffective and in need of improvement" (Porter 2001, as cited in Burke & Leben 2008, 13). Some of these nonverbal behaviours include a lack of eye contact, sarcasm, or even expressions of negative emotion. These were found to contribute to perceptions of disrespectful treatment which have effects on whether Users of the Court Systems perceive the authority as trustworthy. Porter's study suggests that judges have to make a lot of improvements in this regard.

Trustworthy Authorities

The element of trustworthy authorities, thought partly constituted by voice, was looked at by van den Bos and Wilke (1998). In their studies, participants (employees in a mid-sized corporation) engaged with different scenarios where they either knew that they could trust the authorities or no explicit information was had. Premised on van den Bos and Wilke's postulation that people do not often have information about an authority's trustworthiness, they concluded that people resolve the question of whether one can trust others not to exploit them, by starting to form fairness judgements. Thus for Procedural Fairness to be experienced, there must be trust in authorities, and vice versa, the experience of fairness inculcated trust in authorities.



These four elements of Procedural Fairness are thus crucial to the public's perceptions and determinations about the courts. As Tyler explains, "the willingness to accept court decisions, in other words, was about the procedures used to reach those decisions, not the decisions themselves" (2008, 31).

What the above research shows, is that these elements of Procedural Fairness must co-exist harmoniously to ensure compliance, promote legitimacy and foster trust and confidence. When Procedural Fairness is engaged, public trust is achieved which means that outcomes will be perceived as fair and sanctions, orders, and directions will be obeyed. The international research confirms that Procedural Fairness is a "good way to build trust and encourage compliance irrespective of who the people using the court are" (2008, 28).

Thus in a diverse and cosmopolitan context like that of Trinidad and Tobago, Procedural Fairness can do much to ensure compliance with court orders and directions, as well as to increase public trust and confidence in the administration of justice. The academic literature shows that the four elements of Procedural Fairness: voice, neutrality, respectful treatment, and trustworthy authorities, are essential for ensuring public trust and confidence in the court systems; legitimising authority, and promoting compliance. The research of the JEITT on Procedural Fairness was undertaken to investigate whether this was also true in Trinidad and Tobago and to discover whether there were any unique, indigenous nuances to the concept and elements of Procedural Fairness.

METHODOLOGY

Central Research Questions:

- To what extent do the four elements of Procedural Fairness, as discovered in Tom Tyler's research, exist in the court systems of the JRTT?
- If found to exist, to what extent does Procedural Fairness positively impact public trust and confidence, legitimacy, and compliance?

Sub-research questions:

1. What is the presence and level of both perceived and actual 'voice', 'neutrality', 'trustworthiness', and 'respect' in courts across Trinidad and Tobago?
2. Are there other elements or nuances to the above four elements that shape Procedural Fairness in the court systems of the JRTT?
3. How can we devise ways of improving the elements of Procedural Fairness in courts across Trinidad and Tobago if their impact is found to be consistent with that revealed in the international research?

RESEARCH PARADIGM

The existence, effects, and signs of Procedural Fairness are empirically measurable even though these are partially rooted in a subjective field of experiences, feelings, thoughts, and opinions. Thus, to determine the aforementioned research questions, it was important that a research paradigm that allowed for mixed-method data collection – a combination of interpretivist and positivist research was engaged. Thus the pragmatist approach was adopted. Importantly, as Saunders et al (2009, 109) explains:

The most important determinant of the epistemology, ontology and axiology you adopt is the research question...Moreover, if the research question does not suggest unambiguously that either a positivist or interpretivist philosophy is adopted, this confirms the pragmatist's view that it is perfectly possible to work with variation in your epistemology, ontology and axiology.



RESEARCH METHODOLOGY

Mixed-method research was adopted for the primary data collection for this research project. Saunders et al (2009) define this as “the general term for when both quantitative and qualitative data collection techniques and analysis procedures are used in a research design” (152). They also instruct that both procedures can be used at the same time or one after the other. Each method of data collection and analysis has its shortcomings. However Saunders suggests that “it makes sense to use different methods to cancel out the ‘method effect’. That will lead to greater confidence being placed on your conclusions.” (2009, 154) The use of mixed-methods was also adopted because it allowed for triangulation, generality, aiding interpretation, and the study of different aspects. Triangulation refers to the “convergence, corroboration, correspondence or results from different methods.” (Bryman 2006, 105)

Secondary sources of data were collected from library holdings, academic journals, books, and newspaper articles which worked symbiotically and provided further data points. Peer-reviewed articles from academic journals were also used in order to ensure credibility and validity for the various claims of the research.

RESEARCH METHODS AND INSTRUMENTS

Quantitative Methods

To properly explore the research questions, Procedural Fairness as a phenomenon and set of practices had to be assessed from the perspectives of all relevant stakeholders including Judicial Officers, Attorneys, Court Staff, and the Public (which included Users of the Court Systems, potential Users of the Court Systems, and stakeholders invested in the court systems of the JRTT). A series of surveys was designed to capture the differences in perspectives of these various groups’, together with assessment protocols for court observations across courts in the country. This aspect of the research was carried out under the advice and guidance of Professor Cheryl Thomas, Co-Director of the University College London (UCL) Judicial Institute and Professor of Judicial Studies at UCL Laws.

Survey Questionnaires

The surveys were designed to give data to build the foundational research, as well as provide areas for more nuanced exploration. Each survey was designed with categories of questions. The categories were derived from Tyler’s presentation of the necessary elements to ensure Procedural Fairness, as well as local secondary sources (such as academic scholarship, newspaper articles, and cultural expositions) that identified gaps and issues based on perceptions of discrimination which led to a lack of legitimacy of authority and public trust and confidence in the administration of justice in Trinidad and Tobago. Importantly, the pragmatist paradigm from which the research emanated mandated that the research questions shape the research instruments to fill their

particular purpose (Saunders 2009). Thus, the categories included in the survey for data collection were: Court Users, Court Accessibility, Training, Compliance, Judiciary Relations, Treatment of Individuals, and Changing Courtroom Practices. The survey administered to the Public included a section on the impact of certain outcomes on their trust and confidence in the JRTT as this is crucial to legitimacy, as mentioned above. The surveys included questions that had to be answered using a Likert scale, i.e., a rating system with a minimum to maximum range. This allowed for the efficient quantification of responses.

Courthouse and Courtroom Observations

Observation forms were designed to cover the categories of Procedural Fairness as set out by Tyler. Additionally, and operating within the pragmatist paradigm, questions were also designed to allow for the fullest discoveries that aim to answer the research questions. Questions were framed with 'YES/NO' responses or evaluated elements based on a Likert scale of 'Never to Always', 'Strongly Agree to Strongly Disagree', or like ratings. As with the Survey Questionnaires, this allowed for the efficient quantification of results. All courthouses and select courtrooms across Trinidad and Tobago were visited.

Qualitative Methods

The survey responses were used to decide the next step in our research design. As the quantitative data produced many leads on different perspectives of Procedural Fairness across various stakeholders, the recognition was that a proper understanding of Procedural Fairness required more than just statistical data. It also needed interpretive data to get under the surface of peoples' surveyed responses, in order to understand their actual interactions with and lived experiences of the court systems of the JRTT. As such, to ensure a thorough examination of the experiences in courts and the perceptions of the JRTT were collected, Rapid Assessment Ethnography (RAE) was engaged. McNall and Foster Fishman (2007) contend that RAE is highly pragmatic. This type of qualitative data collection occurs when teams of researchers are "deployed to gather information from small samples of key informants and local residents using surveys, interviews..." (155).

Dr Dylan Kerrigan, Professor of Anthropology at the University of the West Indies, trained the team of nine (9) researchers in Rapid Assessment Ethnography, and this research was conducted under his guidance. Guiding questions were designed using Tyler's four elements of Procedural Fairness and the data collected from the survey questionnaires. There was a permissive 'informal' nature adopted, as researchers were encouraged to engage in guided conversation to ensure an authentic experience was captured. To reduce interview bias, interviews were guided by the researchers using a designed protocol, with no specific prompts given.



POPULATION AND SAMPLING

Population

Quantitative Sample: The population is the “full set of cases from which a sample is taken” (Saunders 2009, 210). Saunders points out that it might be possible to collect data from an entire population if it is a manageable size. All Judicial Officers were in receipt of the survey questionnaires. However, the population for the Court Staff, Attorneys, and Public categories made it impractical to attain responses from everyone. As such, a sample had to be taken. Sampling occurs when units from the population are selected. Sampling is used not only when it is impracticable to survey the entire population, but if there are time and budgetary constraints (212). The nature of the data collection, as responses were required from different groups, meant that there was no single population. A total of 358 survey questionnaires were obtained across all four categories (Public, Judicial Court Staff, Attorneys, and Judicial Officers).

For the courtroom observations, a total of 54 courtrooms were randomly selected and observed and a total of 20 courthouses were observed.

Qualitative Sample: Similarly, the population for the qualitative method: RAE included all Users of the Court Systems. Research scholarship suggests that 30 interviews might be adequate (Creswell 2005), but in fact, 80 interviews were conducted.

Sampling Methodology and Techniques

The sample engaged for the Survey Questionnaires was split into four categories: Public, Court Staff, Attorneys, and Judicial Officers. Stutely (2003) advised that a “minimum number of 30 for statistical analyses provides a useful rule of thumb for the smallest number in each category.” It is important to note, however, that the recommended number of 30 refers to the sample size for conducting statistical tests. As such, the largest number of responses from each category was sought to ensure representativeness.

The sampling technique used for the Public Surveys was different to the other three categories. Probability sampling (a simple random sample) was used for the Public Surveys. The survey was given out to members of the public in an ad-hoc basis and was distributed through social media, namely Facebook. This type of sampling was necessary as the surveys tested the general public’s perception of the court systems and were meant to capture Users of the Court Systems and prospective Users of the Court Systems. The other three surveys engaged a non-probability sampling technique as the sample was determined through existing listings and distributed accordingly. Court Staff surveys were sent via email to the Court Staff group, and Attorneys received surveys through the Law Association of Trinidad and Tobago via snowballing, which is used when there is difficulty in identifying members of the population. Judicial Officers received the survey via their JRTT domain email. The table below shows a

breakdown of the number of surveys distributed and number of responses received for each category. It must be noted that an approximate number of surveys distributed will be shown for Court Staff and Attorneys due to the on-going nature of the study and changes in staff counts and attorney contact.

Category	Number of Surveys Distributed	Number of Responses Received	Response Rate (# received/# distributed *100)
Public	n/a	160	n/a
Court Staff	500	108	21.6%
Attorneys	100	68	68%
Judicial Officers	112	22	19.6%

Courtroom Observations were undertaken and recorded using a standardised observation form. A total of 54 courtroom observations were obtained. All courthouses in Trinidad and Tobago (20) were visited, but not all courtrooms were, due to time and logistical constraints. As such, the simple random sampling technique proved most useful for courtroom observations. Standardised observation forms were also used in the courthouse observations.

As mentioned above, the suggested number of interviews for the qualitative data collection was 30. However, 80 interviews were obtained for this study to ensure greater representativeness in the data. These interviews were conducted using a purposive sampling technique so that individuals with experience and interaction with the court systems could be interviewed. This technique allows the researchers to use their judgement “to select cases that will best enable you to answer your research question(s) and to meet your objectives” (Saunders et al 2009, 237). As such, at least 5 interviews per court visit were obtained as a team of 9 researchers (divided accordingly among courts) visited ten (10) courthouses across Trinidad and Tobago, ensuring courts in each of the major districts were visited to make sure there was adequate representativeness.

DATA ANALYSIS TECHNIQUES

Quantitative data from all 4 Survey Questionnaires was entered into Microsoft Excel (2016). Each question’s responses were tabulated and checked to ensure representativeness; i.e. questions without a response or to which the response was “This does not apply to me” or “I do not know”, were removed from the calculation of percentages. Professor Cheryl Thomas provided guidance in this analysis of the quantitative data. Corresponding graphs were generated for each question so responses across all four could be compared.



Qualitative data from the RAE interviews required a detailed and layered approach. Each interview, after being audio recorded with permission, was transcribed and given a unique title. Notably, not all interviewees granted permission for the interview to be recorded, and as such, these were used as additional researcher field notes. The transcribed interviews then went through a two-stage coding process by different members of the research team. Open coding was used which “reduce the mass of largely textual data into manageable groupings” (Bowen 2008, 143). Once codes were established for each interview, they were input into an Excel spreadsheet into respective court categories and into a master sheet with the relevant tags from the transcriptions. This was done for each interview. New codes that emerged were added to the list and some codes were modified to reflect their frequency in the interviews. Themes were derived from the codes and were confirmed when saturation was achieved. That is, no new codes emerged; themes were settled based on how frequently the codes occurred. The themes allowed for the categorisation of the data codes and relevant explanations. The qualitative and quantitative data were triangulated, which meant that the conclusions/suggestions drawn and derived were as a result of more than three sets of data being matched against each other – surveys, observations, rapid assessment ethnography, thematic coding, and photographs. The thick descriptions are represented in the JEITT’s [“Reflections of Interested Observer”](#) which has been published and is available on the JEITT’s e-book Platform.

LIMITATIONS AND ETHICAL CONSIDERATIONS

It must be noted that this study is limited to Trinidad and Tobago, and as such, generalisations cannot be made outside of this jurisdiction. As the Public population was large and determining a sample size proved to be implausible, there is no response rate calculation. Although this is non-standard, the minimum suggested number of responses has been surpassed. It is important to note that the Survey Questionnaires were relatively lengthy, in furtherance of capturing depth and detail. This may have acted as a deterrent for some respondents. Some of these were also ineligible for entry into the database as they were not completed.

Even though the above response rates may be considered relatively low, these only impact one aspect of our research: the quantitative data, which is offset by the qualitative research and the triangulated analysis.

Each participant for all of the data collection methods engaged granted permission and consented orally for their responses to be used or recorded as was the case for the RAE interviews. Additionally, at all times researchers were outfitted with work ID cards and explained to each participant the nature and intended purpose of the research and answered questions about the JEITT in instances where such were asked.

DISCUSSION

To properly understand the data, the relationships shared between and among the types of data, and the inference drawn, this discussion will be separated into twelve sections. The first section will look at what the research shows on fairness as it relates to legitimacy and compliance. The next four will focus on the four international elements of procedural fairness; Voice, Neutrality, Respectful Treatment, and Trustworthy Authorities will be analysed, as they exist in the court systems of the JRTT, as evidenced by the findings, in order to answer the research questions. This is a necessary step as the findings will contextualise the existence of these elements. The next five sections will focus on the ‘new’ elements of Procedural Fairness which came to light from the consolidation of the data. These five additional elements are Accountability, Availability of Amenities, Access to Information, Inclusivity, and Understanding. While some may argue that these additional elements fall within the four internationally declared elements of Procedural Fairness, we have found that in Trinidad and Tobago they are sufficiently idiosyncratic to stand alone as autonomous elements. Definitions of these are therefore constructed based on the findings, and are unique to the court systems of the JRTT. The penultimate section will look at some aspects of Intersectionality as it relates to the findings, and the final section will detail desired court practices as discovered in the extrapolation of each of the nine elements.

This discussion draws from the three sources of primary data explicated in the Methodology (Survey Questionnaires, Courthouse and Courtroom Observations, and the RAE Interviews). The four categories of survey questionnaires were Public, Court Staff, Attorneys, and Judicial Officers. For ease of reference, respondents according to their category will be deemed ‘the Public’, ‘Court Staff’, ‘Attorneys’, and ‘Judicial Officers’. The term ‘Court Users’ will refer to respondents from the RAE interviews. The list of Key Terms on page 11 assists with the interpretation of these terms.



FAIRNESS, LEGITIMACY, AND COMPLIANCE

Main Findings:

- There is a general agreement among all respondents that compliance, legitimacy, and trust are affected by the perception of fairness;
- Legitimacy and compliance are more influenced positively by experiencing a case as being fairly dealt with than by the outcome of a case;
- There is a significant perceived deficit of Procedural Fairness in the court systems of the JR TT which negatively impacts legitimacy and compliance;
- There is also a significant perceived general lack of public trust and confidence in the court systems of the JR TT, which also negatively impacts legitimacy and compliance.

Discussion:

When asked whether trust and confidence in the JR TT would be affected if **they were successful** in a matter but experienced an **unfair court process**, 76% of the Public said their trust and confidence would be either negatively or somewhat negatively impacted (Figure 1). When asked if Users of the Court Systems are more likely to **comply with the court's decision** if they felt the **process was fair**, as shown in Figure 2, 84.7% of the Public either agreed or strongly agreed. 86.6% of Attorneys and 90% of Judicial Officers shared the same view.

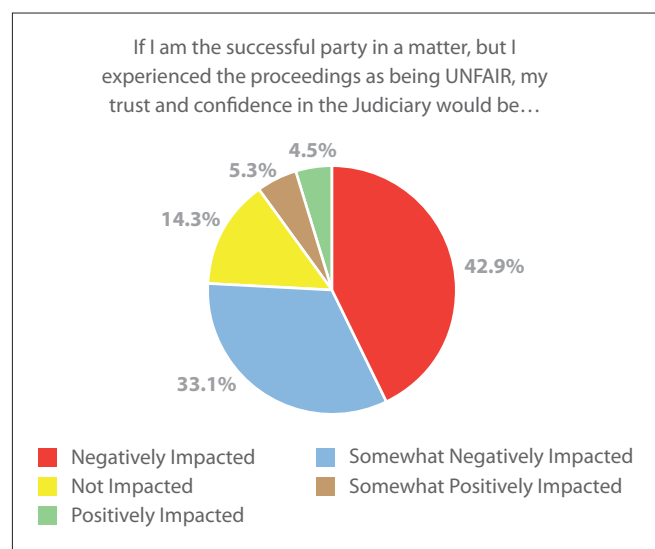


Figure 1

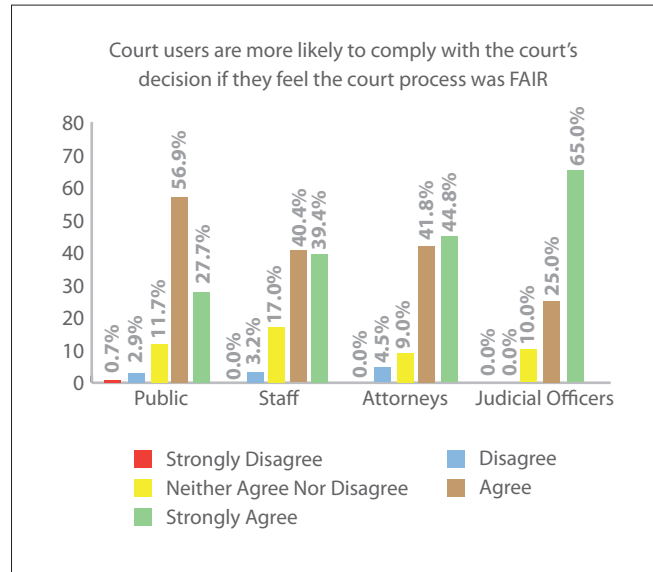


Figure 2

Tyler (2008) states that the relationship between compliance and legitimacy ought not to be forgotten when the outcome does not favour a particular court user, as compliance would mean the losing party has to abide and obey the court’s order. Thus, when asked if Users of the Court Systems are **more likely to accept a court’s decision**, even if it goes against them, provided they felt as through the **process was a fair one**, 60.1% of the Public either agreed or strongly agreed, and 82.4% of Attorneys and 84.4% of Judicial Officers either agreed or strongly agreed they would accept it, as seen in Figure 3. When it came to desired outcomes, Figure 4 shows that 77.6% of the Public believed that Users of the Court Systems are **more likely to comply with the court’s decision** if they feel the **outcome was in their favour**. 85.1% of Attorneys and 80.9% of Judicial Officers felt the same way.

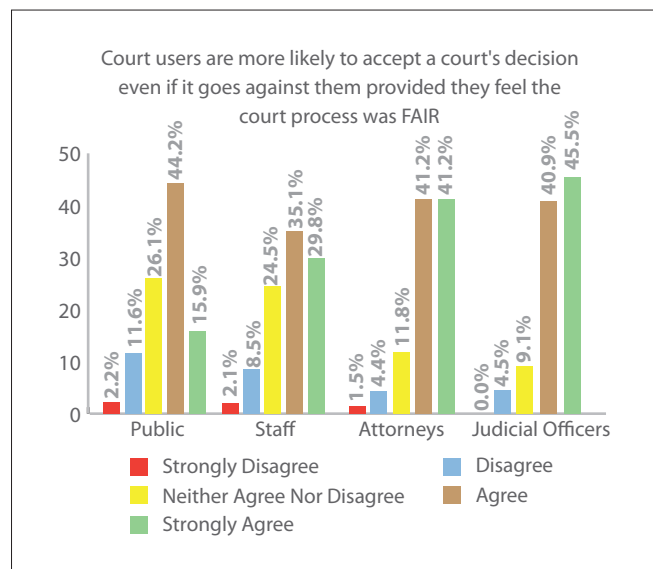


Figure 3

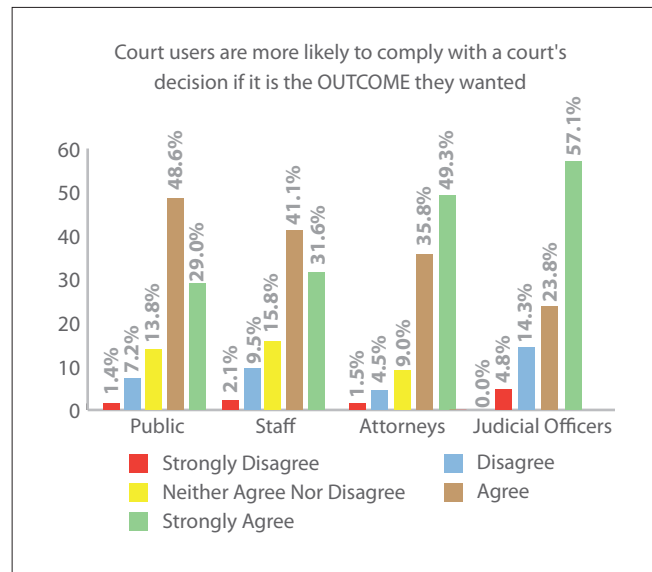


Figure 4

The evidence shows that the Public tends to be more concerned with fair processes as opposed to desired outcomes. Aligning with Tyler's research, compliance is fuelled by legitimacy, which is in turn driven by the perception and experience of a fair process. The absence of such a fair process, however, leads to a lack of trust in the authority. As seen in Figure 5, 90.5% of the Public either agreed or strongly agreed that there are problems with public trust and confidence in the court systems of the JR TT, with 83.8% of Attorneys and 72.7% of Judicial Officers sharing this view. This suggests that the perception or experience of a fair process which leads to legitimacy which in turn improves the likelihood of compliance, is woefully lacking. In fact, Figure 6 shows that 89.7% of the Public, 73.9% of Court Staff, 75% of Attorneys, and 56.3% of Judicial Officers either agreed or strongly agreed that repeat offending is a problem. To the extent that recidivism is reduced with increased perceptions and experiences of Procedural Fairness, this data also suggests a deficit of Procedural Fairness in the court systems of the JR TT.

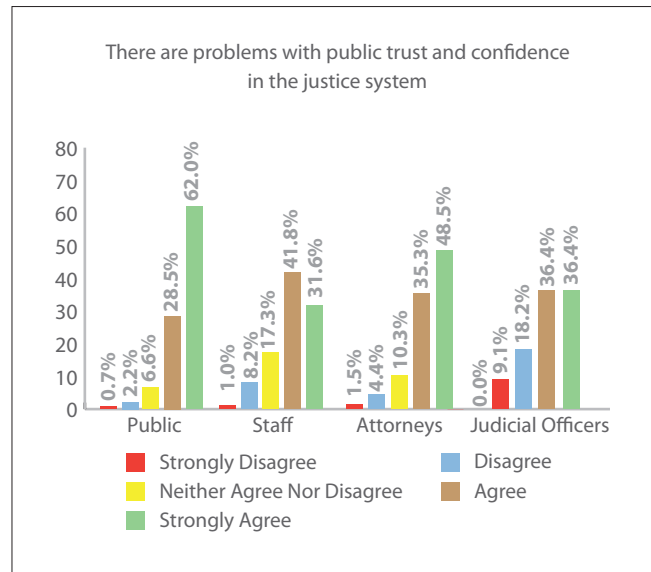


Figure 5

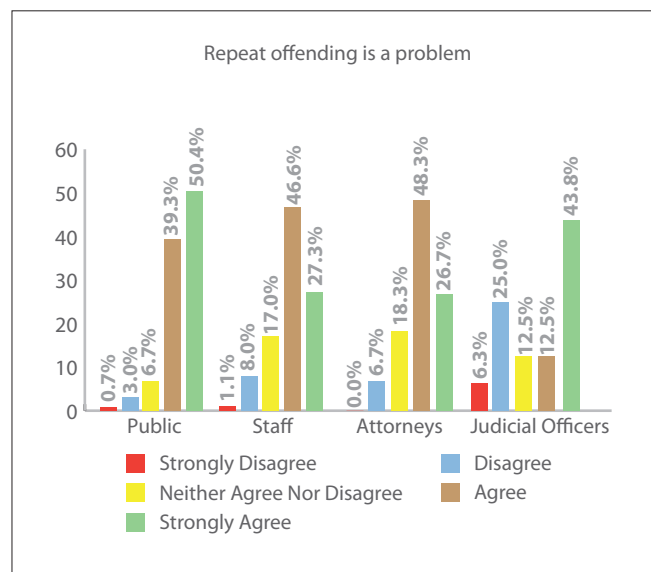


Figure 6

Based on the research data, we can reasonably conclude as follows. **In the court systems of the JRTT, there is a perceived general lack of public trust and confidence in the JRTT which, according to the secondary research, directly impacts on legitimacy and compliance.**



The Compliance Conundrum: Threat v. Acceptance

Tyler (1997) suggests a direct causal link between Procedural Fairness on the one hand and obedience to the law and legal authorities (obedience) and compliance with court decisions, orders and directions (compliance) on the other. Tyler's research indicates: (i) it is difficult to achieve widespread obedience and compliance by relying solely on the use of sanctions – the threat of punishment; (ii) greater degrees of general obedience and compliance are only achieved by willing and voluntary compliance; (iii) such voluntary compliance is linked to people's assessments about the legitimacy of the law and legal authorities (people's feelings that they ought to obey the law and legal authorities) and the morality of the law (people's feelings about what is right and wrong); and (iv) the public's views about the legitimacy of legal authorities are in turn linked to their judgments about the fairness of the processes, procedures and personnel through which and by whom those authorities make decisions – Procedural Fairness.

Sanction-based approaches to obedience and compliance do have some impact. However, that influence has been found to be minor. They have been found to be generally ineffective, because they depend on risk estimate assessments – the public's assessment of the likelihood that non-compliance will in fact be detected and punished. One reason for this is that “the judgment of risk has to be reasonably high to engage people and influence their behaviour” (Tyler 1997, 221). In Trinidad and Tobago, the issue is whether the public's general risk estimate assessments make sanction-based approaches to obedience and compliance any more effective than international norms, given local perceptions of detection and conviction rates, the effects of corruption on both, timeliness and delay in enforcement, economic considerations, and other relevant factors. There is no current evidence in the public domain that suggests that this is so.

To the extent then, that obedience and compliance are fundamental to the creation of a law abiding society, and to the upholding of the rule of law and a sustainable democratic way of life in Trinidad and Tobago, voluntary obedience and compliance are necessary, if not essential. Leslie Green (2002) points out that sanction-based compliance and obedience are alone incapable of fulfilling the obligatory nature and function of the law and of legal authorities. He makes the point that “while legitimacy is thus necessary for obligation, the converse is not true” (24). Thus, because legitimacy is directly linked to people's perceptions and experiences of fairness in the court systems of the JRTT, what this research reveals is that Procedural Fairness directly and significantly impacts legitimacy, which in turn impacts the likelihood of voluntary and willing obedience and compliance. Simply put, the more court users and the public experience, perceive, and access the court systems of the JRTT and personnel to be fair, the more likely they are to consider them legitimate, and to willingly and voluntarily comply with the law, legal authorities, and court decisions, orders and directions.

To use and adopt the expression of H.L.A. Hart as interpreted by Scott Shapiro (2006), when the “internal point of view” of court users and the public is in fact the practical and normative acceptance of the legitimacy of court decisions, orders, and directions, then willing and voluntary obedience and compliance is more likely to occur. What this research points to, is the insight that Procedural Fairness is integral to the creation and sustainability of this “internal point of view”, and therefore to increasing the likelihood of normative voluntary obedience and compliance within the society.

The next nine sections of this Discussion will thus look at the interrogated elements of this fair process (Procedural Fairness) in an attempt to answer the two main research questions: To what extent do the elements of Procedural Fairness exist in the court systems of the JRTT? And, if found to exist, to what extent does Procedural Fairness positively impact public trust and confidence, legitimacy, and compliance? As well, to inquire into the three sub-research questions.



VOICE

Main Findings:

- The perception and actual experience of having an opportunity to meaningfully participate and, if engaged, the participation be meaningfully considered, is necessary for improving and securing public trust and confidence in the administration of justice. This involves Users of the Court Systems being invited to ask questions and express views, and for any thoughts or opinions offered to be experienced as listened to and considered;
- The element of voice is somewhat present but perceived and experienced as generally lacking in the court systems of the JR TT;
- The Public believes it is not granted voice even though it thinks it should, and Judicial Officers think they ensure voice, as they believe they ought to.
- Members of the public are generally unaware of what goes on in court.

Discussion:

The Preamble to the 1976 Republican Constitution of Trinidad and Tobago (the Constitution) – Clause (c), asserts that democracy in Trinidad and Tobago is achieved when “all persons...to the extent of their capacity, play some part in the institutions of national life and thus develop and maintain due respect for lawfully constituted authority.” Section 4(1) of the Constitution declares freedom of expression to be a fundamental right, which the courts have acknowledged as not only ‘intrinsically important’ but also ‘instrumentally important’. This instrumentality exists because freedom of expression “promotes the self-fulfilment of individuals in society” and functions as a “safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them.” (Lord Steyn in *Ex parte Simms* (2000) 2 AC 115, 127 F). One can extrapolate and say, that respect for the law and legal authorities is achieved when there is meaningful participation in the legal process.

When asked if Judicial Officers **should actively encourage parties in a case to express their views in court**, 54.7% of the Public expressed support and deemed it necessary. Only 5.9% of the Public thought it wasn't necessary, whilst 9.3% thought it was not practical. Of the Public, only 7.7% thought that Judicial Officers actually engage this practice. Corresponding percentages for Attorneys were 16.6% and 7.9% respectively. However, 20.7% of the Judicial Officers supported encouraging parties to express their views and 10.3% thought it was necessary. This is represented in Figures 7 and 8 below.

An interesting revelation arises out of the responses from Attorneys, who were even less inclined (stating that this was neither practical nor something they would support) than Judicial Officers to encourage parties to express their views. To the extent that Judicial Officers and Attorneys comprise the ‘insiders’ of the court systems of the

JRTT, the disparity between the Public’s views and those of the systems’ insiders is noteworthy. Staff opinions fall between these two points of view – no doubt because they are in fact neither entirely ‘outsiders’ nor ‘insiders’. What is significant from the data is that the court systems of the JRTT appear to have a cultural resistance to public participation.

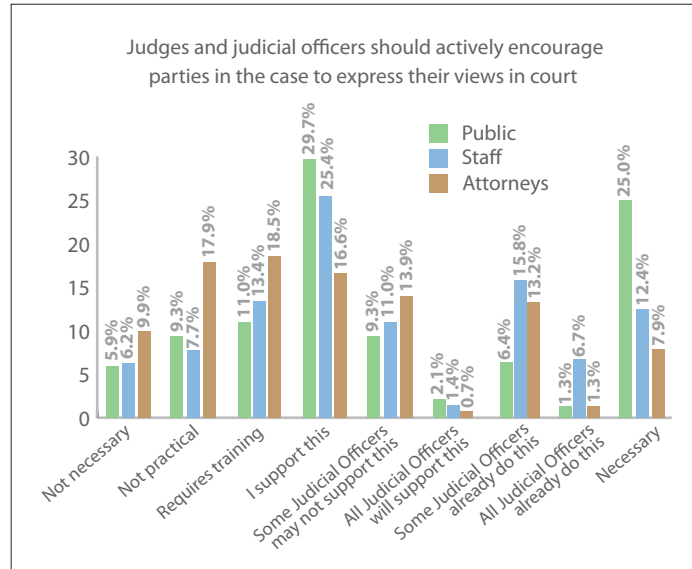


Figure 7

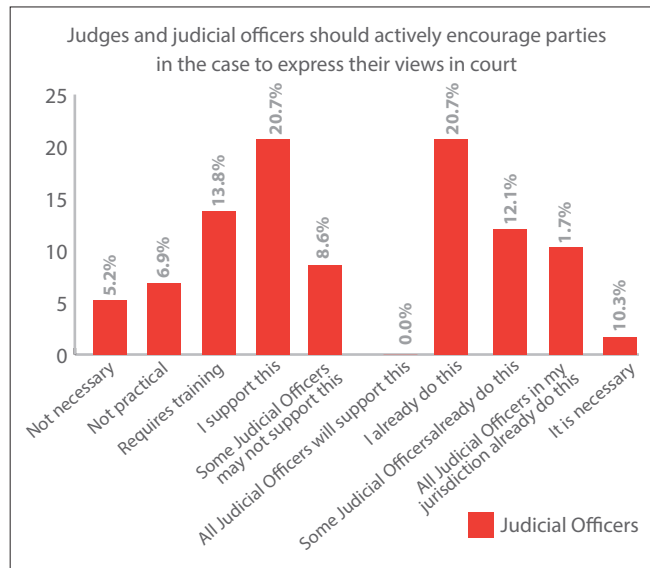


Figure 8



Interviews with Court Users compounded the contrast between the Public's desire to express views and what is commonly practiced by Judicial Officers; as the Public clearly believed they should have the opportunity to participate meaningfully in court proceedings.

“She doesn't give you the time to say anything. She doesn't know anything about my issues.”

-RAE Interview

The **Lack of an Opportunity to (meaningfully) Participate** in matters was a prominent sub-theme in the ethnographic research, along with others like **Poor Communication** which is directly linked to the Users of the Court Systems' experience of voice. These sub-themes frequently appeared in the data collected at both the Supreme Court and Magistracy. When asked about what they believed happens in courts, 63.1% of the Public surveyed believed that Users of the Court Systems are never or rarely **encouraged to ask questions** and an additional 29.3% thought that this only happened sometimes. Corresponding percentages for Attorneys were 65.6% and 20.9% respectively. Figure 9 represents this data.

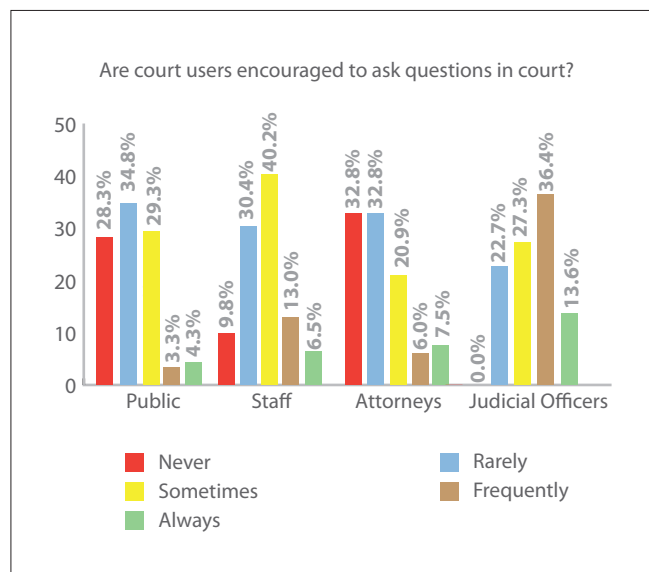


Figure 9

Avery and Quinones (2002) note that an important part of voice is the perception of voice opportunity in which the court user must first perceive that they have the opportunity to express thoughts and feelings. Figure 9 shows that 0% of the Judicial Officers claimed that they never encourage Users of the Court Systems to ask questions. Whilst 63.7% claim that they either sometimes or frequently invite Users of the Court

Systems to ask questions. When asked about **expressing views**, Figure 10 shows that 86% of the Public thought that in relation to being invited to express views, this never, rarely, or sometimes happens in court, while 95.5% of Judicial Officers claim that they sometimes, frequently, or always ask the public to express their views. Noteworthy is the Attorneys' response to this question. 6.1% claim that Judicial Officers always ask Users of the Court Systems to express their views, while 75.8% claim that Judicial Officers never, rarely, or sometimes invite Users of the Court Systems to express views. This rather dramatic divergence in perception, experience and opinion between Judicial Officers on the one hand, and the Public and Attorneys on the other, is cause for concern in relation to this element of Procedural Fairness. Also of significance, is that Staff are more aligned with the Public and Attorneys than with Judicial Officers on this matter, which adds to the sharp contrast in opinions.

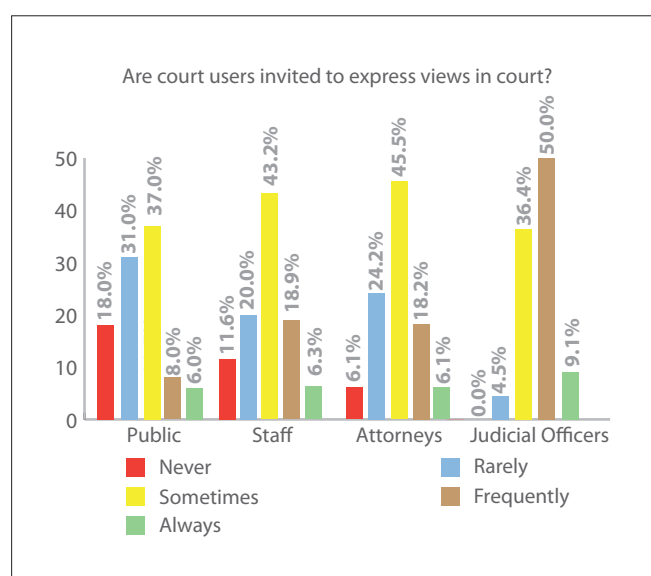


Figure 10

It is important to note at this stage, as Burke and Leben (2008) point out, that Procedural Fairness does not only apply to procedures in the courtroom. The perception and experience of Voice, as well as the other elements of Procedural Fairness, are also influenced by interactions with Officers of the court and Court Staff. Figure 11 shows that only 10.8% of the Public thought that **Court Staff encouraged them to ask questions**. The dissonance does not appear to be as alarming, though nonetheless important, as with the Public and Judicial Officers, as only 22.9% of the Court Staff claimed that they either frequently or always encourage the Public to ask questions. Similarly, when asked about being **invited to express views**, 17.1% of the Public believe that Court Staff either frequently or always extend such invitation and only 15.4% of the Court Staff claim that they frequently or always do. The contrast between the Public-Court Staff relations (both perceived and real) and Public-Judicial Officer relations (perceived and real) raise important questions of awareness, which will influence conclusions and



recommendations. Also of concern is the gap in the Public-Judicial Officer dynamic, which can pose a major potential threat to Procedural Fairness.

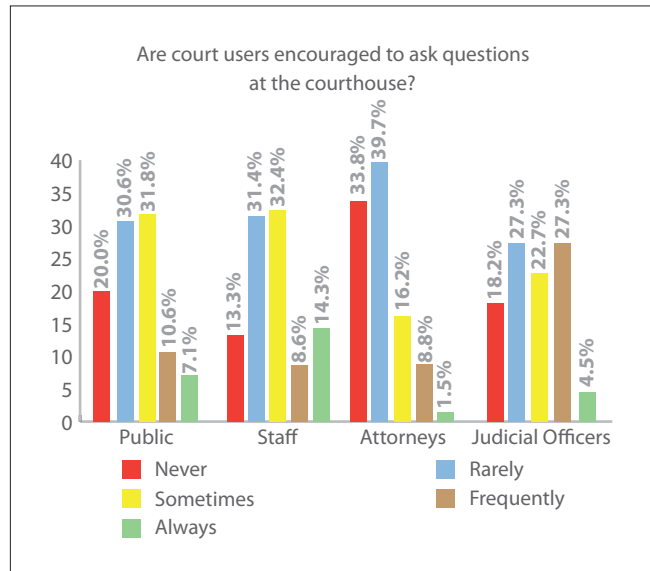


Figure 11

“When I came after that, the then Magistrate, which was a different one, I said, ‘I will explain what happened’. He said, ‘I don’t want any explanation.’”

-RAE Interview

From the findings discussed, there is a crucial tension that is revealed from the contrasts in the findings: that the Public believes it is not granted voice even though it thinks it should, and Judicial Officers think they ensure voice, as they believe they ought to. To compound matters, the views of Attorneys on this issue align significantly with those of the Public. Running parallel to this, is a similar contention between Court Staff and Public, though in this instance there is greater agreement about deficit.

A relatively obvious inference from this contrast is that Judicial Officers require focused training with regard to Procedural Fairness compliant communication with Users of the Court Systems. In fact, Judicial Officers of Trinidad and Tobago have received communications training, including training on Procedural Fairness in 2015 with Justice David Suntag and Kelly Tait and in 2017 with Justice Victoria Pratt. The survey questionnaires did explore the issue of training with regard to communication. 63.6% of Judicial Officers stated that courtroom communication skills training had been offered and accepted while an additional 4.5% stated that it had been offered but they did not accept. The Public, 76.1% at least, believed that Judicial Officers did in fact receive this training. Notably, Attorneys and Court Staff also had the same belief;

67.6% and 81.5% (respectively) were of the opinion that courtroom communication skills training was had by Judicial Officers. Though the figures between groups are not too far apart from each other, the point to note is that even though the Public believes that Judicial Officers did receive training on courtroom communication, they still believe that they are not adequately invited to express views and ask questions – their voice remains generally uninvited, unheard, and considered unhelpful. It is an irresistible conclusion that the communication skills training for Judicial Officers needs to be revisited, redesigned, and repeated to address the element of voice.

Some good news. A small fraction of the Public did think that they are invited to express views and ask questions in the court room. 14% of the Public thought that Users of the Court Systems are frequently or always invited to express views (Figure 10), while 97.6% said that they think invitations to ask questions are frequently or always had (Figure 9). Findings from the qualitative data, particularly at the Supreme Court level, supported this positive finding – though in proportional measure to the quantitative data. Under the sub-theme of Opportunity to Participate, these respondents used key phrases like “sufficiently heard” and “did not prevent me from explaining”. There is, therefore, data which suggests that the element of voice is not completely absent in the court systems of the JRTT. With appropriate education and training, an increase in the perception and experience of ‘being heard’ – of voice, can likely be achieved in the court systems of the JRTT.

“I would like the Magistrate to hear... the defender complain, to listen to hear what he have to say or she have to say and n make a judgment because right now they don't do that.”

-RAE Interview

Based on our research, it is important, at this point, to revisit the definition of voice as offered by Tom Tyler. He defines it as “the ability to participate in the case by expressing their viewpoint” (2006, 75). Necessary, however, is that the invitation to participate must be appreciated and meaningfully engaged – voice instrumentality. The ethnographic research found this to be by and large missing, in the appeal by Users of the Court Systems to be heard and invited to express their views. Court Users often linked a lack of opportunity to participate with a need for compassion and, in relating their experiences with Judicial Officers, used phrases like “she don't care” and “without any consideration for all the distress I have been going through.” This brings directly to light Avery and Quinones' voice instrumentality and Tyler's definition of voice; that experiencing voice as having an impact on the decision making process is necessary for Procedural Fairness to be engaged. The JEITT's findings, however, further ground and contextualise what the element of voice means to Users of the Court Systems, both current and prospective, in Trinidad and Tobago.



VOICE in Trinidad and Tobago:

The ability to meaningfully participate in court proceedings throughout the entire process, by expressing concerns and opinions and by asking questions, and having them valued and duly considered (“heard”) before decisions are made.

NEUTRALITY

Main Findings:

- Neutrality is perceived as being significantly compromised in the court systems of the JRTT;
- The Public widely believes, together with Court Users and Attorneys, that Judicial Officers commonly give significant preferential treatment to particular groups, which include those who are highly educated, wealthy, of a higher social status, of lighter skin colour, and who speak “proper” English. There were also perceptions and experiences of differential treatment based on gender and sexual orientation;
- All stakeholders perceive and experience senior attorneys as receiving favourable treatment from Judicial Officers.

Discussion:

Sections 4 (b) and (d) and 5 (2) (e), (f)(ii), and (h) of the Constitution states, in effect, that no person shall be deprived of a fair and public hearing by an independent and impartial tribunal. These notions of ‘fair’, ‘independent’, and ‘impartial’ are hallmarks of neutrality and are enshrined in the Constitution. Procedural Fairness, though concerned with the real, is no less constituted by the perceived. Both are essential aspects of what makes a court systems legitimate. As often stated in local culture, ‘perception is reality’ (one’s perception is one’s reality), or put more philosophically, one’s perceptions shape and even create one’s reality. Thus, if the court systems face empirically discovered perceptions of bias or unfair treatment, the authority’s legitimacy must be assumed to be tainted, its capacity to authorise compliance impeded, and public trust and confidence in it undermined.

“If you don’t have the means, crapaud smoke yuh pipe!”

-RAE Interview

When asked about the importance of the belief that **a fair court process will ensure compliance with court orders**, 100% of Judicial Officers said that such belief is either important or extremely important. 82.6% of the Public shared this view. Asked about belief in the Judicial Officer’s impartiality, Figure 12 shows that 85.3% of the Public thought it important or extremely important that **believing the Judicial Officer is impartial when hearing a case will ensure compliance with court orders**. 100% of Judicial Officers agreed. The data thus allows us to easily conclude that a vast majority of the Public and all Judicial Officers believe that neutrality tends to ensure compliance.

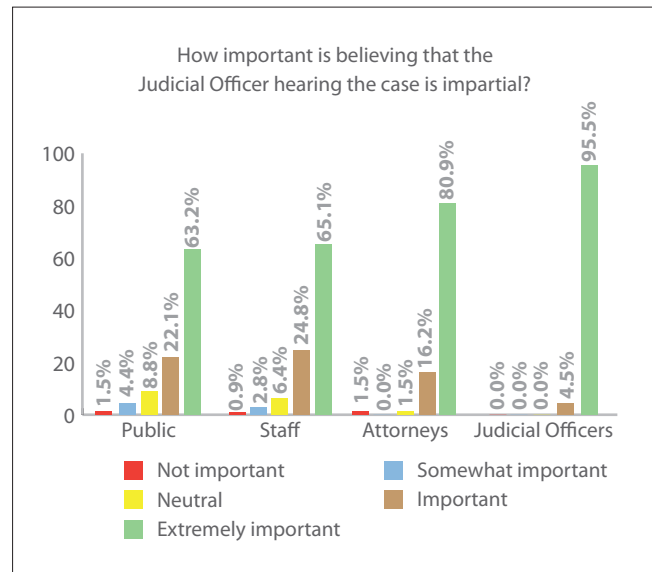


Figure 12

The research presents scenarios in which respondents were asked to say how probable it was that certain groups in society were more or less likely to receive favourable treatment from Judicial Officers. The Public, Court Staff, Attorneys, and Judicial Officers were all asked their views. Figure 13 shows that 49.3% of the Public either agreed or strongly agreed that a person of **light skin colour** is more likely to receive favourable treatment than a person of dark skin colour. 31.8% and 27.9% of Judicial Officers and Attorneys respectively shared this view. Neutrality also came under question in relation to **proper English**, as, seen in Figure 14, 66.7% of the Public either agreed or strongly agreed that those who speak proper English are more likely to receive favourable treatment. 40.9% of the Judicial Officers, 45% of the Court Staff, and 60.3% of the Attorneys also agreed, to make this view disturbingly resonant (especially between the Public and Attorneys). Related to these findings is a perceived bias towards those who are **educated**. Figure 15 shows that 65.7% of the Public either agreed or strongly agreed that those who appear educated are more likely to receive favourable treatment. 54.4% of Attorneys, 45.9% of Court Staff, and 45.5% of Judicial Officers agreed and shared this view.

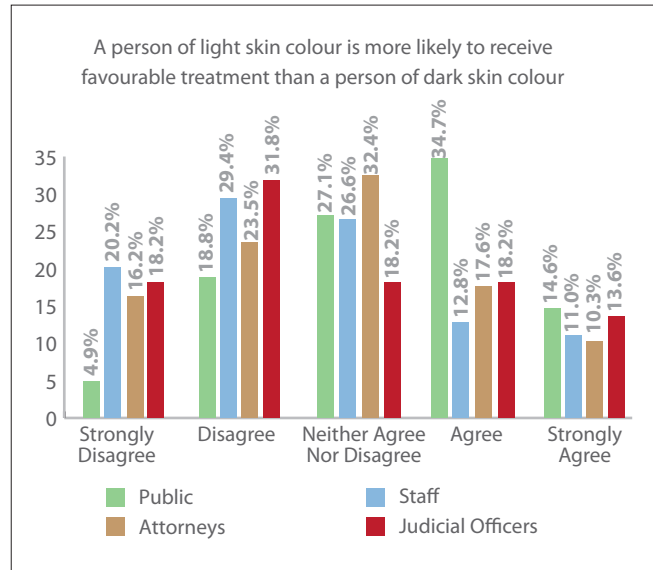


Figure 13

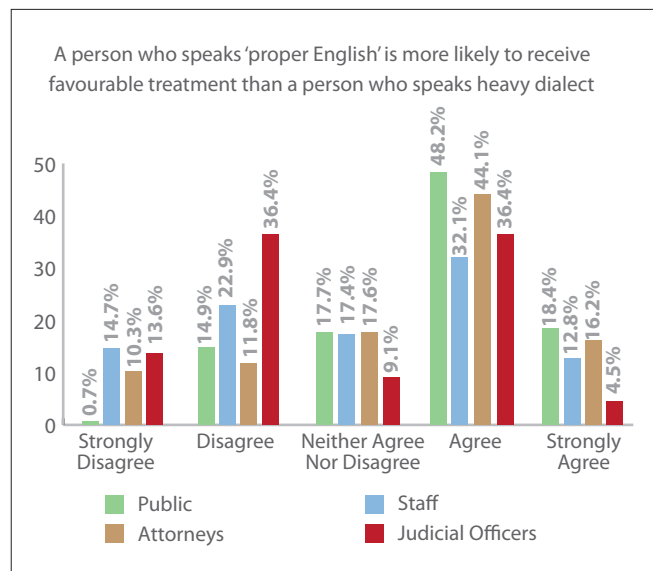


Figure 14

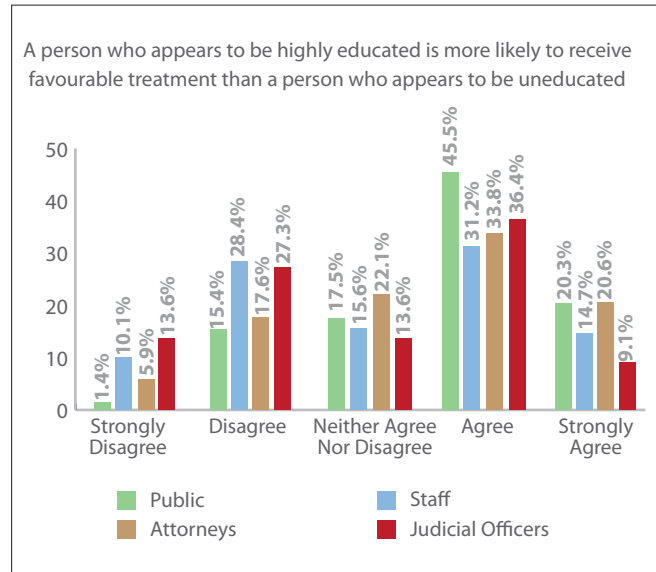


Figure 15

Status and wealth were strongly perceived to result in preferential treatment from the courts. Figure 16 below shows that 90.1% of the Public, 73.4% of Court Staff, and 79.4% of Attorneys thought that **social status was likely either to have some impact or significant impact on the outcome of a court matter**. Figure 17 shows that, 87.3%, 65.1%, and 79.4% of these groups respectively believed that **wealth has either some or significant impact on the outcome of a court matter**.

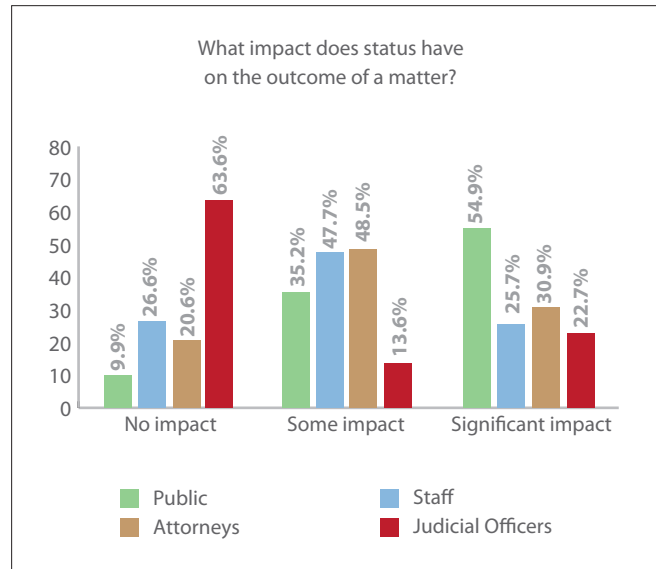


Figure 16

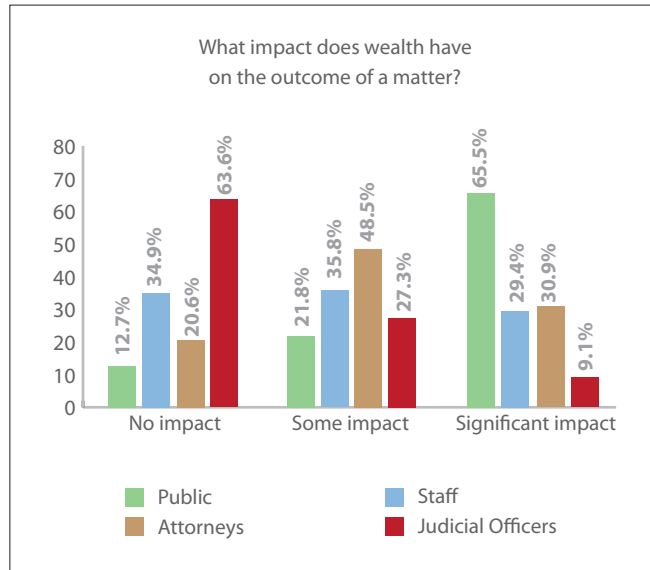


Figure 17

Respondents across all surveys shared a majority belief that people of **high status are likely to receive favourable treatment**. Figure 18 shows that 85.3% of the Public either agreed or strongly agreed with this, while 50% of the Judicial Officers shared the same view. Figure 19 shows that 76.1% of the Public either agreed or strongly agreed that those who **appear to be wealthy are more likely to receive favourable treatment than those who appear to be poor**, with 36.4% of Judicial Officers expressing agreement. 48.6% of Court Staff and 52.9% of Attorneys shared this view. The dissonance between the views of the Public on one hand and of Judicial Officers (and even Court Staff and Attorneys) on the other, is salient.

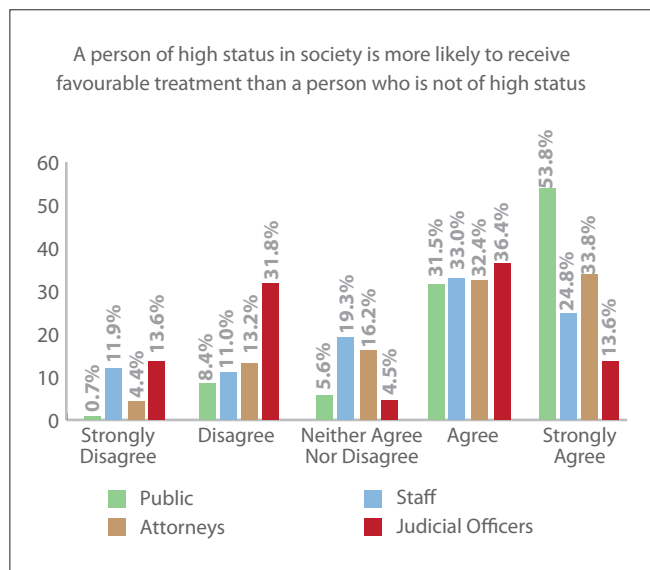


Figure 18

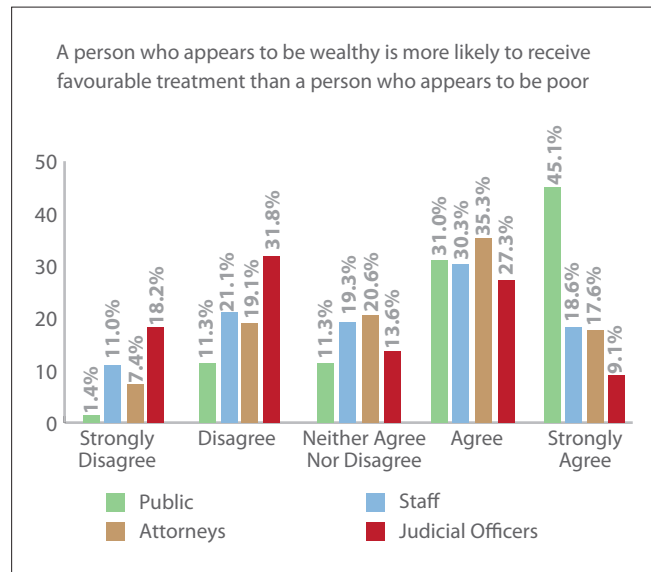


Figure 19

Data from the ethnographic research compounded this and provided an even deeper insight into this perceived lack of neutrality in relation to wealth and status. The qualitative data led to ‘**System Favours Wealthy**’ as a prominent sub-theme under the theme of Neutrality. Court Users used key terms like “more for the higher people than the poor people” and “a person like me who doesn’t have anything has to suffer.” Court Users were disenchanted with what they perceived as blatant favour for those who have wealth. And, as evidenced in the quantitative data above, Judicial Officers tacitly agree.

But people make decisions based on how you dress, how you look, and that’s how you get treated accordingly. They don’t treat every man equally.”

– RAE Interview

Potent in the qualitative data was the issue of ‘**Perceived Gender Bias**’; a sub-theme in the research. Male Court Users, particularly in Family matters, were of the view that Judicial Officers were biased to female claimants/respondents. Male Users of the Court Systems often described the process as “unfair” due to the Judicial Officer’s perceived bias against them, in which they experienced themselves as being immediately labelled as “delinquent” or the main cause of the problem.

“I still believe the male point of view, the man’s side of it isn’t always appreciated as much as the other side is.”

-RAE Interview

The Survey Questionnaires did consolidate this concern, as seen in Figure 20, 56% of the Public, 44.1% of Attorneys, 37.6% of Court Staff, and 31.8% of Judicial Officers believed that **gender has either some or significant impact on the outcome of a matter**. Significantly however, 44.0% of the Public and 68.2% of the Judicial Officers thought that gender had no impact on a matter. Figure 21 shows that 36.0% of the Public and 28.0% of Attorneys either agreed or strongly agreed that **a female is likely to receive favourable treatment at court**.

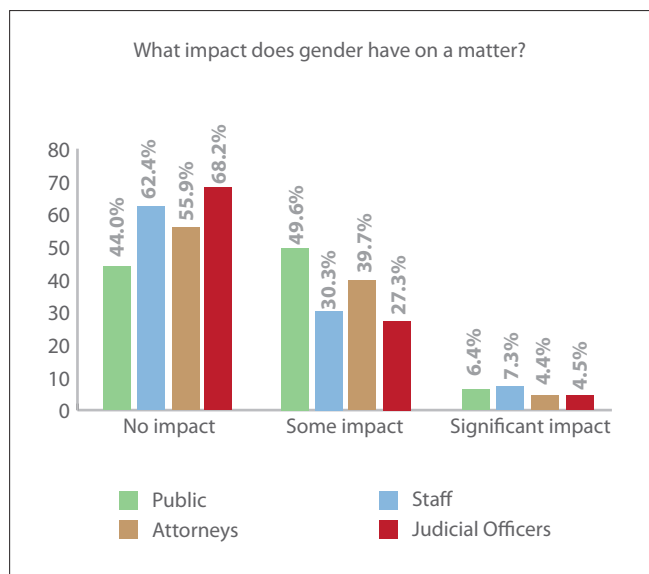


Figure 20

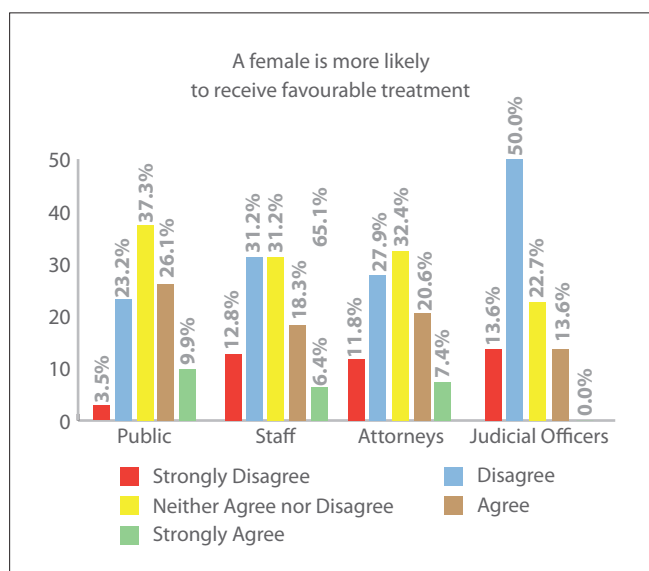


Figure 21



Attorneys' seniority was another issue which called the Court's neutrality into question. Figure 22 shows that 86.8% of Attorneys either agreed or strongly agreed that **senior attorneys are more likely to receive favourable treatment than junior attorneys**, and 77.3% of Judicial Officers, 73.9% of the Public, and 58.7% of Court Staff shared this view. There is therefore, based on the evidence, a recognition by almost all stakeholders that senior attorneys are perceived and experienced as receiving favourable treatment.

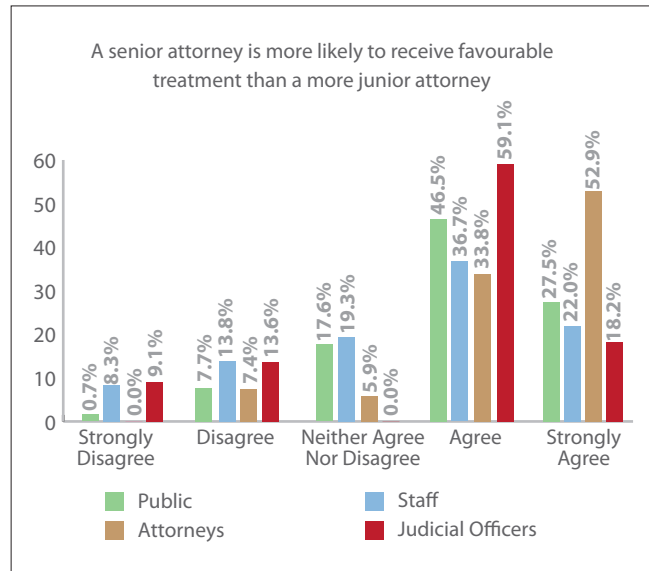


Figure 22

To me this senior attorney is always talking...To me she has been given an opportunity to talk...But to say my attorney getting an opportunity to voice and really stand up for me and thing, I don't think it was fair."

-RAE Interview

The survey questionnaires also explored the issue of **sexual orientation**. Though not as pronounced as the above factors, the research has revealed a noteworthy degree of **perceived bias towards persons who are known to or appear to be straight**. Figure 23 shows that 40.9% of the Public either agreed or strongly agreed that **a person who is known to be or appears to be straight will receive favourable treatment**. 18.1% of Judicial Officers shared this view along with 20.2% of Staff and 23.6% of Attorneys. The Public's perceptions are significantly different from the other groups polled.

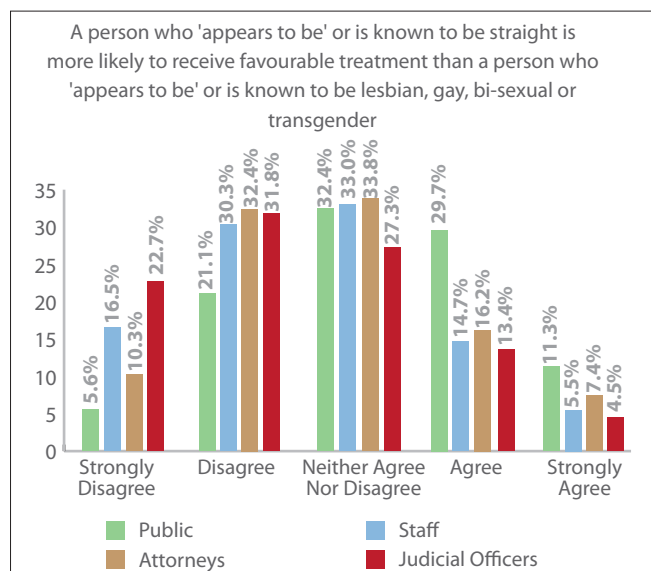


Figure 23

On the positive side of the Neutrality analysis, the ethnographic research revealed that there were Court Users who did express trust in the court systems of the JRTT due to proceedings they deemed “fair”. Some Court Users expressed confidence in the Judicial Officer to “look at both parties” and make a fair decision, while others said their experience in court allowed them to “gain some trust in the court system.” These were however proportionately small in comparison to those whose experiences were otherwise. The quantitative data also demonstrates, that there are members of all groups polled, including members of the Public, who to varying degrees disagree and strongly disagree that there is any discrimination in the examined subject areas.

Tyler’s definition of Neutrality remains true. Fairness, independence, and impartiality and the application of these without discrimination are hallmarks of Neutrality in Trinidad and Tobago, as discovered.

NEUTRALITY in Trinidad and Tobago:

The independent, fair, and consistent application of procedural and substantive legal principles, administered by impartial and unbiased decision makers and judicial personnel, without discrimination.



RESPECTFUL TREATMENT

Main Findings:

- There is a general feeling and experience of a lack of explanations offered/given to those who use the court systems of the JRTT;
- There is a general feeling and experience of a disregard for the time of Users of the Court Systems, their commitments, and their personal affairs by Judicial Officers, Court Staff and court systems of the JRTT. Matters are constantly postponed, Users of the Court Systems experience long wait times, and matters often take years to be dealt with;
- There is a general feeling and experience of unpleasant and disrespectful treatment from both Court Staff and Judicial Officers; manners of expression, tones of voice, eye contact, body language, and courtesy remain particularly critical aspects of behaviour;
- The perception and experience of being treated with respect, as part of a Procedural Fairness approach, contributes to compliance.

Discussion:

The Constitution also recognises and affirms “fundamental rights and freedoms” and the inherent “dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed...” – Clause (a) of the Preamble and sections (4) and (5) of the Constitution. Respectful treatment of all people is therefore a core constitutional value and mandate.

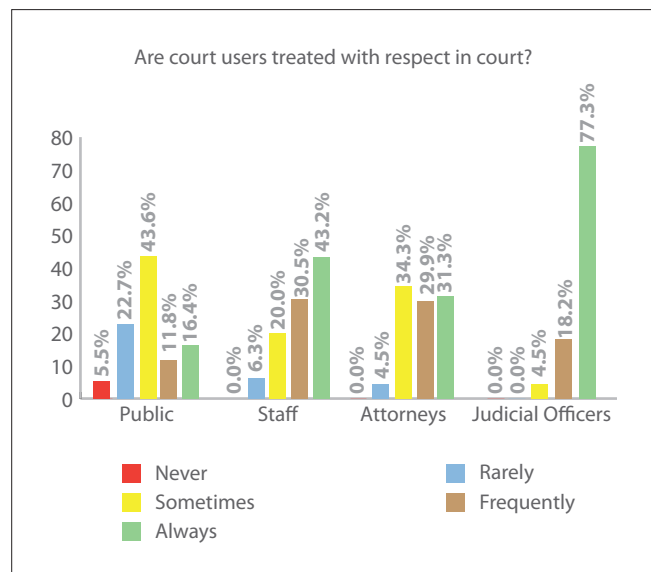


Figure 24

Figure 24 shows that when asked about how often persons who appear before the court are **treated with respect**, 95.5% of Judicial Officers said that respectful treatment occurs either frequently or always. In sharp and alarming contrast, only 28.2% of the Public shared the Judicial Officers' view. The corresponding figure for Attorneys was 61.2%, which corroborates the finding that the opinions of Judicial Officers are disconnected from the reality of what is both perceived and experienced in the court systems of the JRTT.

Tyler posits that respectful treatment is achieved when “individuals are treated with dignity and their rights are obviously protected” (2006, 75). This, however, requires further interrogation as respect is itself a dynamic concept. Ordinarily, it involves having due regard for the feelings, wishes, and rights of others. Raz (2001) claims that once we accept the moral duty to respect, then we have to subscribe to its constituent requirements. This moral duty is also a Constitutional mandate. As explained, Clause (a) of the Preamble to the Constitution emphasises the dignity of the human person, and it is this dignity that constitutes and demands respect. Frankfurt offers an interpretation of these ‘requirements’, which assists in understanding respect. He puts forward that respect involves “dealing with...exclusively on the bases of those...circumstances that are actually relevant to the issue at hand. Respect, therefore, entails...the avoidance of arbitrariness” (1997, 8). Respect requires that Judicial Officers and Court Staff engage attitudes, actions and behaviours that are relevant to and serve the legitimate needs and concerns of individuals and groups who are stakeholders in the court systems of the JRTT, taking into genuine consideration the factors that impact on all facets of those groups' lives when interacting, at any level, with the court systems of the JRTT, consistent with the requirements of the law and the Constitution. It includes having due regard of the inherent dignity of every person.

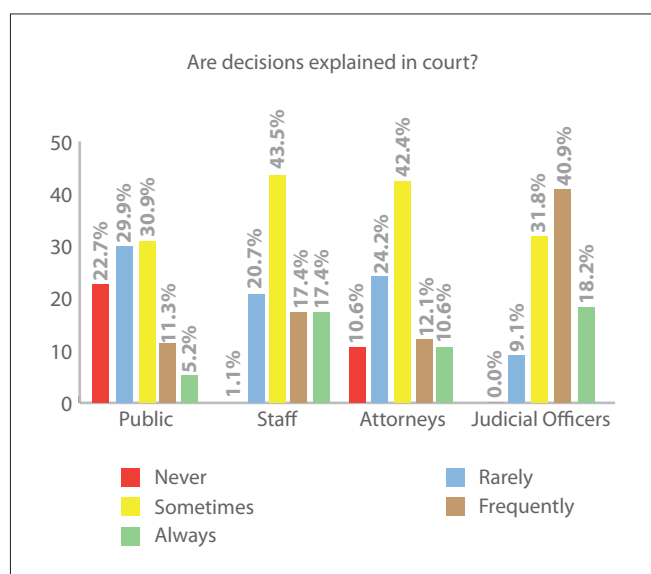


Figure 25



When asked if **court decisions were explained**, Figure 25 above shows that 16.5% of the Public said this was done either frequently or always while 59.1% of Judicial Officers said that they either frequently or always explained decisions. Noteworthy, is that 22.7% of Attorneys and 34.8% of Court Staff said that court decisions were explained frequently or always. This disparity in experience and perception, between Judicial Officers on the one hand and the Public, Attorneys, and Court Staff on the other, is disconcerting. Based on our understanding of respect, those who come before the courts require decisions to be explained so that they can understand what is being decided, have clear guidelines as to how to comply, and trust in the legal systems and authorities that administer the law. The explanation of decisions is a fundamental need, even a ‘right’ of all court users. Indeed, the judicial obligation to give reasoned decisions, encompasses the duty to explain all decisions in clear, comprehensive and understandable language.

Court Users consolidated this experience of disrespect as their perceptions lead to the sub-theme of ‘**Unclear Explanation**’ from the RAE interviews. They used phrases such as “personally cannot understand” and “I didn’t understand some of the jargon”. Additionally, Court Users often described instances of a ‘**Lack of Trust**’ (as coded and uncovered from the RAE interviews) due to issues being left unresolved and matters not being dealt with thoroughly.

“**Certain problems don’t get cleared up for both parties, so we still leave with a bit of issues as opposed to getting it resolved.**”

-RAE Interview

Issues related to **respect for time** frequently appeared in the qualitative data. Court Users often complained about a slow process, their time being wasted, matters being postponed, and facing inconsiderate treatment.

Court Users expressed that they have waited for years to have their matters dealt with because of issues which were caused by police service inefficiency, respondents’ absence, or a need for evidence. And they often also claimed that there seemed to be no positive effort by the court to rectify the issues; instead they experienced Judicial Officers as choosing the “lazy path” and so contributing to delay by postponing matters. Prevalent in the data were complaints about a ‘**Slow Process**’ and how long matters take to be deal with. This included the wait time at court houses for matters to be called. Court Users often lamented the late start of court cases, even though 77.2% of the Public and 90.9% of Court Staff stated that matters are either sometimes, frequently, or always scheduled for specific times.

“I can’t go to work today, he can’t go to work today to be here. Last we were here the same time. Year before that, we was here again. Why waste our time?”

-RAE Interview

Court Users also spoke at length negatively about **how they were treated** at court: **both in the courtroom and in their dealings with Court Staff**. Though some Court Users lauded both Court Staff and Judicial Officers for their perceived respectful treatment, saying that some of the Judicial Officers “make it their business to find out how the people [are] around them” and some Court Staff are “very helpful and courteous”; the majority lamented being spoken to with little or no regard, having to deal with hostile environments created by the Court Staff, and being subject to the attitudes and behaviours of Judicial Officers that they claimed were not conducive to being treated respectfully. Terms such as “you can’t feel welcomed”, “they just standoffish”, “they don’t ask if it’s good for me”, and “nobody seems to care”, were used to describe the behaviours to which they were exposed.

“I just feel disrespected when this particular matter...how it’s being done.”

-RAE Interview

Researchers who conducted the RAE interviews detailed, in their field notes, the element of frustration that manifested itself in the Court Users’ expressions. Whilst delivering their accounts, a few Court Users broke down in tears and had to be consoled before the interview continued. Very often, Court Users used the RAE interviews as an opportunity to vent their frustrations because they claimed the unhelpful attitudes of some Court Staff and Judicial Officers left them with no avenue to detail their challenges.

Based on the evidence collected, we can conclude that there is generally the perception and experience of a significant lack of respectful treatment of Users of the Court Systems in Trinidad and Tobago.

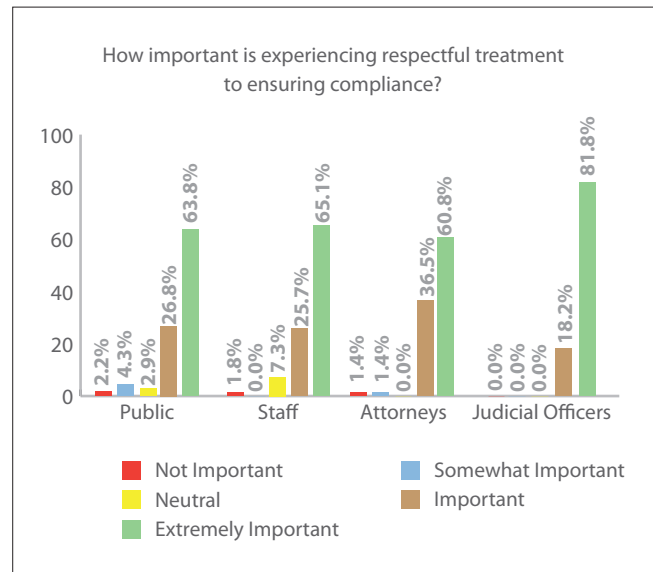


Figure 26

As previously stated, **compliance** is one of the main goals of any court system. The **perception and experience of being treated with respect, as part of a Procedural Fairness approach, does contribute to compliance**. Figure 26 shows that 90.6% of the Public believed this statement while 100% of Judicial Officers agreed. Additionally, 90.8% of Court Staff and 97.3% of Attorneys shared the same belief.

Tyler's definition of Respectful Treatment is confirmed. However, Respectful Treatment as discovered in the local research necessitates a contextualising of this element.

RESPECTFUL TREATMENT in Trinidad and Tobago:

The treatment of all persons with dignity and respect, with full protection for the plenitude of their rights, ensuring that they experience their concerns and problems as being considered seriously and sincerely, and having due regard for the value of their time and commitments.

TRUSTWORTHY AUTHORITIES

Main Findings:

- Users of the Court Systems, for the most part, do not view the court systems of the JRTT as a trustworthy authority;
- A slow process, lack of compassion, disrespectful treatment, time wasting, and unfair treatment contributed to the perception of the court systems of the JRTT as an untrustworthy authority.

Discussion:

The fourth element of Tyler's Procedural Fairness, Trustworthy Authorities, combines elements present in Voice, Neutrality, and Respectful Treatment, with the addition of benevolence and a direct addressing of the litigants' needs. Tyler defines it as when authorities are perceived and experienced as being: "benevolent, caring, and sincerely trying to help the litigants – this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants' needs" (2006, 23).

A succinct indication of the existing level of trustworthiness that exists in the court systems of the JRTT is captured in the questionnaire results. Figure 27 shows that when asked how often they **believe the court systems of the JRTT assess how Users of the Court Systems are treated by Judicial Officers, and Court Staff**, only 8.8% of the Public said they believed that this is done either frequently or always. Similarly, 9.1% of Judicial Officers thought the same. That these stakeholders do not believe that the treatment of Users of the Court Systems is assessed, is a clear initial underpinning indicator pointing to a lack of trust in the system – the perception of a systemic disregard for the treatment of the primary stakeholder in the court systems of the JRTT, the customer/client, the court user. This inference is further evidenced by the series of conclusions drawn in the analysis above of the prior three elements (Voice, Neutrality, and Respectful Treatment). It is important to note that the JRTT conducted a Customer Satisfaction Study in 2017 which outlines some similar concerns that were captured in this study. In that JRTT study, the delays in hearing matters and infrastructural inefficiencies stood out as impediments to customer satisfaction.

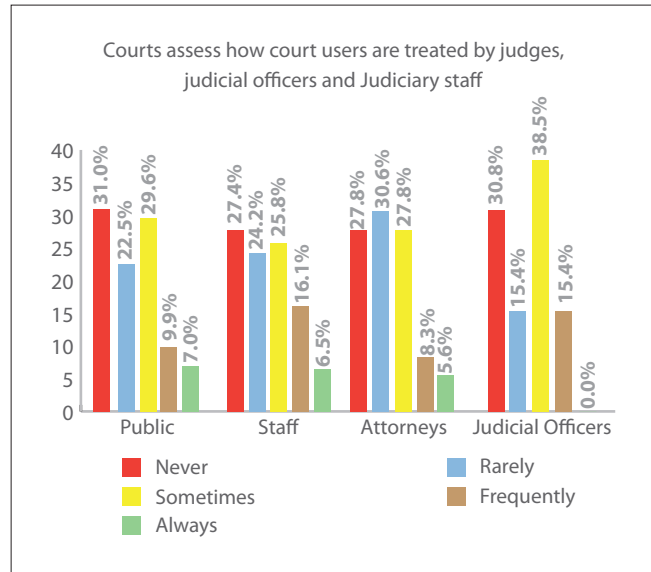


Figure 27

With only 14% of the Public stating that they are always or frequently **invited to express their views** (Figure 10 on pg. 33), and 12.8% claiming that **proceedings are always explained in court** (Figure 28 below), the environment required for trust to be built is underdeveloped. It is important to note, however, that “sometimes” garnered most responses to the latter question, which consolidates the finding that trust in the authority is not completely absent, but rather not at the level which it ought to be. As a general rule, court proceedings should always be explained and parties should be encouraged to express their views.

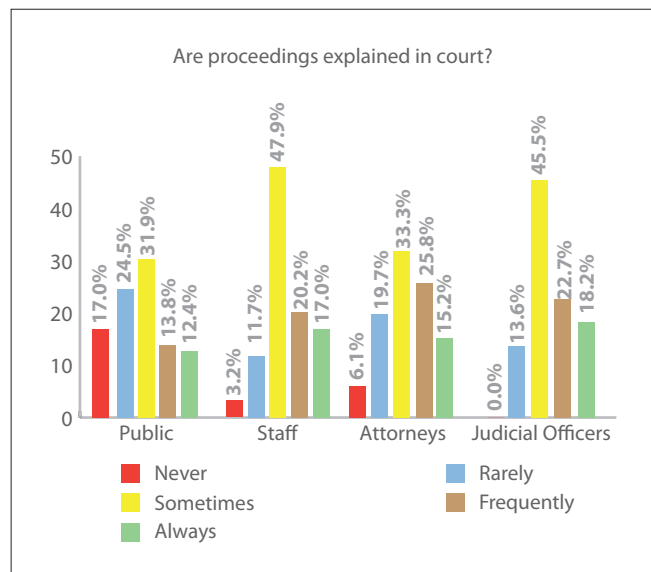


Figure 28

But what grounds the less-than-optimal levels of trust in the JR TT is the qualitative research in which Court Users have directly, and often with great anguish, expressed their lack of trust in the court systems of the JR TT. Based on the coded data, Court Users are unable to either trust the court systems of the JR TT or view it as trustworthy because of a **'Lack of Compassion'** shown to them, **'Slow Process'**, **'Perceived Corruption'**, **'Poor Customer Service'**, **'Disrespectful Treatment'**, **'Perceived Preferential Treatment'**, or what they deem as a **'Lack of Trust'** in the court systems of the JR TT (all of which were coded from the qualitative data). Notably, some Court Users did perceive and experience the court systems of the JR TT as trustworthy based on their experiences that encompassed **'Good Customer Service'** and **'Respectful Treatment'**. But these were overshadowed numerically by Court Users' laments over their inability to perceive the court systems of the JR TT as a trustworthy authority.

"I have no faith in the court systems at any level," provides an adequate summation of the general Court User's level of trust in the court systems of the JR TT. Mentioned above, Court Users had various reasons why their trust was so little. In addition, the slow process and time wasted, as coded in the qualitative research, were significant grievances that lead to the court systems of the JR TT being deemed an untrustworthy authority.

"They've been protracted and drawn out. It's been unnecessary."

-RAE Interview

Court Users believed that the disregard for the time spent at court, which they thought unnecessary because it is "too long" and wasted, was rooted in perceived lack of understanding or consideration by Judicial Officers and Court Staff for their personal affairs. As one Court User stated: "Because every time I have to go there, not only am I losing my business, but I am spending, wasting time for something I consider to be straightforward."

Moreover, this lack of consideration that contributes to the court as an authority being viewed as untrustworthy was experienced deleteriously in one Court User's default in attendance of her matter: "I've been present to every one [of the hearings] and nothing was done and just one day that we missed she just dismissed my entire matter."

Further to that, Court Users said that poor communication compounded the issues they already had, and make it even harder for them to put their trust in the court systems of the JR TT. Court Users echoed the common sentiment that there was "no communication whatsoever, just dismissed. I find it was very unprofessional and heartless."

Prominent among the Court Users was this sentiment of "heartlessness" which was coded as a **'Lack of Compassion'**.



In the RAE field notes, researchers detailed instances of Court Users breaking down in tears due to what they expressed as a lack of compassion and understanding from the Judicial Officer. One woman in particular, leaned on the shoulder of one of the researchers and sobbed because she felt hopeless. An elderly woman lamented over the disrespect she felt and how much time she had to spend waiting – mentioning her diabetes and how uncomfortable and unaccommodating the entire courthouse environment was. Without any perceived or experienced concern for their legitimate needs and expectations, Court Users are left disenchanting with the court systems of the JRTT and are unable to consider it as a trustworthy authority – taken directly from Tyler’s work, the authority appears to lack benevolence or compassion as defined by Court Users

“...and you just dismiss the matter without any consideration for all the distress that I’ve gone through, all the time off I have to take.”

-RAE Interview

As already explained, the elements discussed above (Voice, Neutrality, and Respectful Treatment) reveal severe deficiencies which render them inadequately present in the court systems of the JRTT. These deficits do little to aid the court systems of the JRTT being viewed as a trustworthy authority. To reiterate, the research has provided evidence that Court Users are unable to experience their voice as being heard and do not perceive the system as welcoming of it. They believe that Judicial Officers and the court systems of the JRTT are partial to those, inter alia, who are wealthy, educated, of high status, and speak proper English. They experience discrimination based on gender. They perceive discrimination based on sexual orientation. And Court Users believe that they are not treated with due regard as Court Staff and Judicial Officers engage in behaviour that is disrespectful, discourteous, and there is limited concern for their needs, time, and commitments.

However, the research has also shown instances where the Court Users have put a measure of faith in the court systems of the JRTT due to their positive experiences. In Figure 24 on pg. 45 (“Are Proceedings Explained?”) the high levels of respondents that said “sometimes” is a sign of the existence of some positive elements of Procedural Fairness. Further, of those members of the Public that expressed a view other than “don’t know”, the largest proportion said “sometimes”. In addition, the overwhelming majority of Judicial Officers, Court Staff, and Attorneys, feel that proceedings are explained sometimes, frequently, or always. This is critical, as it is evidence that the court systems of the JRTT have the capacity to be a trustworthy authority. As some Court Users detailed: “We are very optimistic and confident that it will resolve itself in truth and light according to the laws that exist,” and “I did gain some trust in the court system.”

What the research shows is that the various elements that contribute to the court systems of the JRTT being seen as untrustworthy validate Tyler's definition of Trustworthy Authorities. However, based on the JEITT's findings, Trustworthy Authorities in Trinidad and Tobago needs to be further contextualised.

TRUSTWORTHY AUTHORITIES in Trinidad and Tobago

Decision makers, judicial personnel, and court systems that have earned legitimacy by demonstrating that they are competent, and capable of duly fulfilling their functions, responsibilities and duties in an efficient, effective, timely, fair, and transparent manner; and by demonstrating to all users of the court systems compassion, caring, and a willingness to sincerely attend to their justifiable needs and to assist them throughout the court process.



ACCOUNTABILITY

Main Findings:

- The court systems of the JRTT are generally not seen and experienced as being accountable;
- Judicial Officers and Court Staff are not perceived as being held responsible for their actions and inaction;
- There is no perceived publicly known available and/or effective method of accountability for Judicial Officers in the court systems of the JRTT;
- There is a great Public desire for both accountability and transparency in relation to the actions and inaction of Judicial Officers and Court Staff.

Discussion:

The United Nations Nuremberg Declaration on Peace and Justice, declares that: “Justice is understood as meaning accountability and fairness in the protection and vindication of rights, and the prevention and redress of wrongs” (UN General Assembly 2008, 4). Accountability and fairness are inseparable aspects of how the court systems are expected to deliver justice. Article 11 of the United Nations Convention Against Corruption (2003), recognises that accountability, far from being a threat to the independence of the judiciary, strengthens integrity and public trust and confidence (once an appropriate balance is struck).

The element of Accountability arose as a prominent element of Procedural Fairness in Trinidad and Tobago. The public demand and need for Judicial Officers and Court Staff to be answerable and seen to be so for mishaps and delays, and for explanations to be forthcoming and communicated, were seen as necessary requirements to ensure public trust and confidence in the court systems of the JRTT. Interrogating the evidence reveals the inefficiencies and insufficiencies which appear to plague the court systems of the JRTT, making Accountability an element that is perceived and experienced as barely present.

Of the members of the Public surveyed, Figure 29 below shows that 20.4% believed that **court-related procedures** are either frequently or always explained. Interestingly, 36.3% of Judicial Officers agreed that procedures are either frequently or always explained. Most significantly, only 7.4% of Attorneys believed that procedures were either frequently or always explained. Figure 25 (above) shows that 16.5% of the Public and 22.7% of Attorneys believed that **decisions by Judicial Officers (in the courtroom)** are either frequently or always explained. 40.9% of the Judicial Officers’ surveyed said that decisions were either rarely or sometimes explained. There is, therefore, general agreement by the Public, Attorneys, and Judicial Officers that procedures and decisions are explained less than fifty percent of the time (for the Public and Attorneys, decisions and procedures are explained, on average, less than ten and twenty percent

of the time respectively). This deficit does not meet the standards of accountability required for court users to fully experience Procedural Fairness.

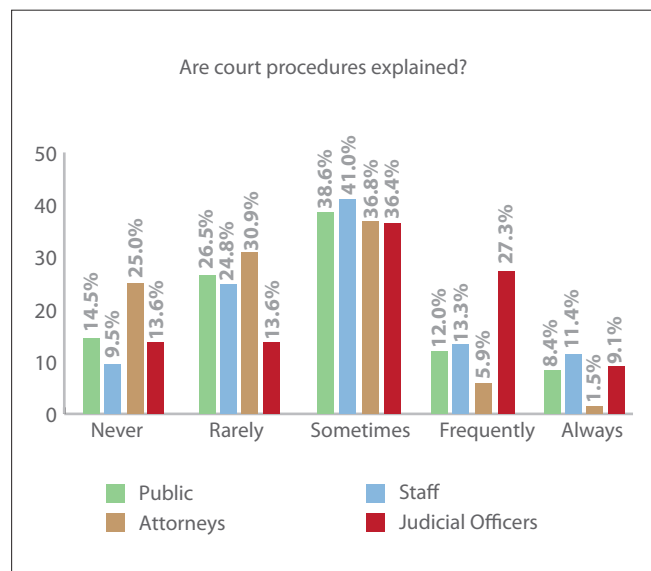


Figure 29

Particularly evident in the qualitative research on the Supreme Court jurisdiction, Court Users lamented the Judicial Officers' avoidance of clearly explaining decisions and proceedings. As one Court User put it: "None of the matters were explained. What happens is that the attorneys talk and then the judge sends back a written whatever to the attorneys a couple weeks after. Nothing is said." And even if decisions were explained, according to Court Users, it was done so in language that was not plain and simple; and was thus not clear and understandable.

In addition to a lack of explanations for court proceedings and court transactions, was the lack of proper reasons for delays, absenteeism, and long wait times. These issues were especially prominent in the qualitative data where Court Users detailed their frustrations with Judicial Officers and Court Staff.

"People paying passage, transport money, they have things to do. It's not all the time you could put off something. When you take time off work to come see about your business and you ent get it done, you hadda take a next day."

-RAE Interview

Labelling the court process as '**Inconsiderate**', Court Users lamented having to leave their jobs to attend a matter that requires them to wait all day. They explained that the protocols at designated court waiting areas, such as having to leave cellular phones 'downstairs', make doing work and business difficult and the time spent in court



unproductive. ‘**Poor Customer Service**’ was another theme which emerged from the RAE interviews, where no explanations, apologies, or care for Users of the Court Systems’ concerns were experienced. One Court User even detailed misinformation received from a Justice of the Peace, which left her with double the work and thrice the frustration. Court Staff was labelled as unhelpful and Court Users repeated that there was no known person to whom or apparent process by which these myriad of concerns could be reported with a reasonable expectation of corrective measures. Court Users complained that a ‘prickly’ disposition and unwelcoming attitude plagued their interactions with Court Staff. Court Users therefore felt lost, irate, and powerless due to a perceived lack of Accountability.

Judicial Officers were not immune to this complaint. Court Users experienced Judicial Officers as often not showing concern for others’ time by either showing up when they wanted or not showing up at all for fixed court appointments. One Court User detailed his issue with a magistrate, saying that: “It have a Magistrate that will come for 5 minutes in the court room and they will leave...go in the back. One particular Magistrate I know for sure will leave this court and for hours and come back in the court for like 10 minutes.” With an acute sense of futility in relation to change or improvements, Court Users seemed generally to have lost hope in meaningful accountability.

“When you look for help, there’s no time. Because either [Court Staff] now come in from breakfast and they hadda take their time to adjust, and they hustling you and buffing you when it’s really their responsibility to take time to assist you.”

-RAE Interview

Some Court Users have, however, detailed experiences which have led them to believe that there is Accountability in the court systems of the JRTT. A few Court Users were happy to tell of instances in which Judicial Officers took the time to explain decisions and proceedings. Important was the appreciation of good and clear explanations even where the decision ran contrary to the user’s desired outcome: “The Judge explain it, there’s no other way for him to explain it, even though I don’t agree with everything but he explain it beautifully.” But more frequent were the accounts of good customer service received from Court Staff. Court User’s felt respected and supported when Court Staff were polite, helpful, and understanding.

Thus, in Trinidad and Tobago, Accountability is understood as:

Defining ACCOUNTABILITY:

The need for decision makers and judicial personnel to fulfil their duties, to reasonably justify and explain their actions and inaction, decisions, and judgments and to be held responsible and accountable for them, particularly in relation to decisions, delays, and poor service.

AVAILABILITY OF AMENITIES

Main Findings:

- Courthouse infrastructure and facilities are often experienced as inadequate throughout Trinidad and Tobago, and especially so in the Magistrates' Courts;
- Access to courts, adequate seating, and sufficient cooling were the main infrastructural deficits reported and observed, particularly in relation to special needs Users of the Court Systems;
- Access to information about courts and signage in courts were generally reported and found to be deficient and inadequate.

Discussion:

A major issue for the Public and Users of the Court Systems alike was the unavailability of amenities (and the poor condition of amenities where they did exist) throughout many courthouses in Trinidad and Tobago. Access to justice, in its most literal sense, requires that each person is conveniently and effectively able to attend court and carry out court-related transactions. This, however, does not seem to be always possible for all Users of the Court Systems.

Researchers, in their observations across all courthouses in Trinidad and Tobago, noted that 45% of all courthouses and 44.4% of the courtrooms observed had inadequate **access for differently-abled persons**. This included a lack of infrastructure and mechanisms which allow for easy and comfortable access to and use of court facilities. Notably, differently-abled access for Witnesses, Attorneys, and Judicial Officers was even less evident in courthouses, as 77.8%, 53.4%, and 90.2% respectively, lacked such access.

The lack of proper and adequate infrastructure for all was not the sole contributor to the feelings of inconvenience, alienation, and unwelcome that Users of the Court Systems detailed. Court signage was a prominent issue, as Court Users often reported that they **felt lost and confused without proper directions**. In addition to unhelpful Court Staff, the lack of signage only served to exacerbate the issue of feeling irrelevant, excluded and uncared for. Based on the observation data, 32.2% of courtrooms observed had inadequate signage. From the qualitative survey, 33.4% of the Public, shown in Figure 30, believed that signage is either frequently or always adequate/available (29.4% believed it was never or rarely adequate/available). 50.0% of Judicial Officers and 40.3% of Attorneys reported signage as being frequently or always adequate/available. Clearly, more can be done to improve court signage, especially when one bears in mind context. For the Users of the Court Systems, courthouses and courtrooms are generally unfamiliar and stress-filled environments. Inadequate signage can only serve to increase feelings of alienation, unwelcome, and frustration.

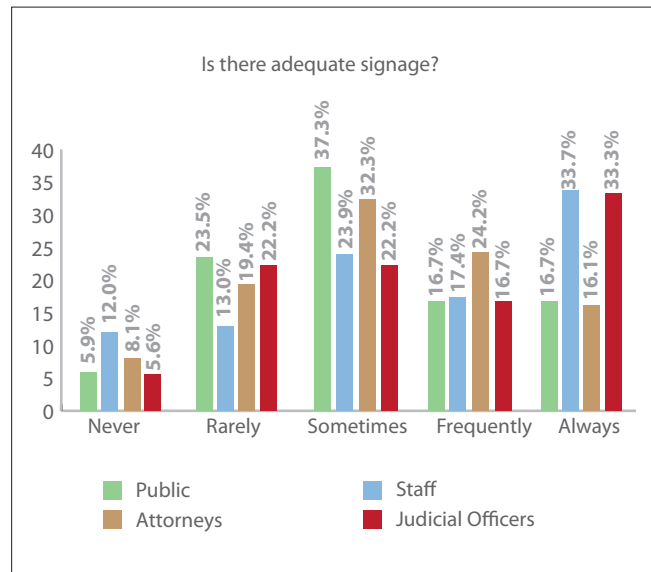


Figure 30

As one Court User detailed in the RAE interviews: “When you reach in court, you don’t know what court to go into. There wasn’t even a proper diagram downstairs to show you 8th Court is on the 2nd Floor, 1st Floor, 3rd Floor.” 75% of courthouses, based on the observation data, lacked a **map or directory** displayed upon entry. And only 5% of courthouses displayed their hours of operation. **Courtroom signage (the identification of courtrooms)**, however, was mostly present. 75% of courtrooms had signs with 90% of them being clearly visible. However, only 5% of these provided braille for visually-impaired Users of the Court Systems.

“And this system where they have we waiting outside here under this shed and it all crowded.”

-RAE Interview

Most noteworthy, however, was the lack of **seating and accommodation** for Users of the Court Systems. Field notes from the RAE interviewers revealed narrow stairwells lined with people standing waiting to go into the court rooms, seating areas that could only accommodate a fraction of the people at a courthouse, and inadequate cooling – objectively making waiting a stifling, uncomfortable, and unpleasant experience. Adequate accommodation was thus a standout issue. Court Users lamented this

issue in their interviews. In one courthouse in particular, Court Users had to wait outside the courthouse alongside the roadway, under a tent – exposed to the elements, dust, noise, and passers-by. Moreover, even Users of the Court Systems who were elderly, had health issues, or had young children accompanying them had to deal with inadequate facilities – there being generally no observable measures or systems in place to accommodate these (or any other) special needs categories of Users of the Court Systems.



Photo of seating accommodation at Princes Town
Magistrates' Court

Even where there was seating available, Court Users revealed that they would often be defective and unusable, which left them standing aside in a corner, waiting for their names to be called. Their problems were reflected in the court observation data as well; 88.8% of courtrooms visited in the observation did not have adequate seating.

Access to **proper washroom facilities** was another issue that Court Users detailed. As one Court User said: “Proper waiting areas, maybe? Proper bathrooms. You know, I mean I think they only have bathrooms for the attorneys.” Toilet facilities, even when they were present, were sometimes found to be in a deplorable and unusable condition. However, 60% of the toilet facilities observed at courthouses were deemed ‘well-maintained’ by observers. It was noted, though, that only 30% of the public toilets available catered for the differently-abled.



Photo of the outside of Sangre Grande Magistrates' Court
Public Toilet

As stated above, **inadequate cooling systems** was another issue that plagued Users of the Court Systems. Already combatting high environmental temperatures, having to stand in rooms filled with people made for reports of truly uncomfortable experiences. Courthouse observations revealed that this was the case in 25% of the courthouses across Trinidad and Tobago. This is exemplified by one Court User who detailed, "...because if in the waiting area for the High Court, I mean not enough fan and you sitting there and feeling the heat and so on." The court experience for Users of the Court Systems was thus often reported as miserable, as they experienced their distress, delays, and frustrations in often ill-equipped and inadequate infrastructure. This contributed to feelings of alienation and being uncared for.

Only one courthouse across Trinidad and Tobago had infrastructure designed for minors and children in the form of a waiting area which included a children's restroom and a playroom.

In addition to inadequate physical infrastructure, there were findings of little readily accessible **systems to provide relevant details about court information and processes** that are available to the public. When asked if courts provide information about courthouse **locations on a public website**, 15.9% of the Public surveyed in the questionnaire said that courts either frequently or always do this. Moreover, the Court Observers found that only 2 courts provided data on what types of matters are heard at that court, only 3 courts provided information on procedures, and only 3 courts provided information on court schedules, out of a total of 20 courts in Trinidad and Tobago.



Photo of Moruga Out Court exterior

These findings have led to a definition of available amenities that captures the local requirements necessary to engender greater public trust and confidence in the court systems of the JR TT, by eliminating feelings of alienation, disinterest, and unwelcome, and by facilitating caring, convenience, and accessibility.

Defining AVAILABILITY OF AMENITIES:

The need for all court buildings to be equipped with the necessary infrastructure (both structural and systemic) to enable users of the court systems full and free access to court buildings, efficient information systems, relevant operational systems, and the enjoyment of functionally and culturally adequate amenities.



ACCESS TO INFORMATION

Main Findings:

- Information is generally reported as not being readily or easily accessible to Users of the Court Systems;
- Inadequate and untimely communication of relevant and necessary information to Users of the Court Systems is also reported;
- Without adequate information about court matters, proceedings, and other court related issues, there is diminished faith in the court systems of the JR TT;
- Lack of timely access to relevant information can be a denial of access to justice and amount to inequality of treatment.

Discussion:

Another alienating and unfair factor for Users of the Court Systems was their experience of the lack of information, not only in relation to their court matters, but in relation to the entire court process. Court Users lamented the absence of matter schedules, the ‘how-to’s when carrying out any court-related transactions, and the timely and understandable delivery of any and all court-related information.

41.2% of the Public, when asked if **courts scheduled court appearances for specific times** said that this was either always or frequently done (Figure 31). Therefore, for 58.8% of the Public, this would not be their experience. Not only can this be frustrating, Users of the Court Systems have gone on to say that this leads to a lack of trust in the system. And the effect is compounded when they are already discommoded by not having their time regarded. But even more alarming, is the perceived lack of information on the court process accessible by the Public. Only 7.9% of the surveyed Public, as seen in Figure 32, said that courts either frequently or always **provide information on what happens at court before they attend**.

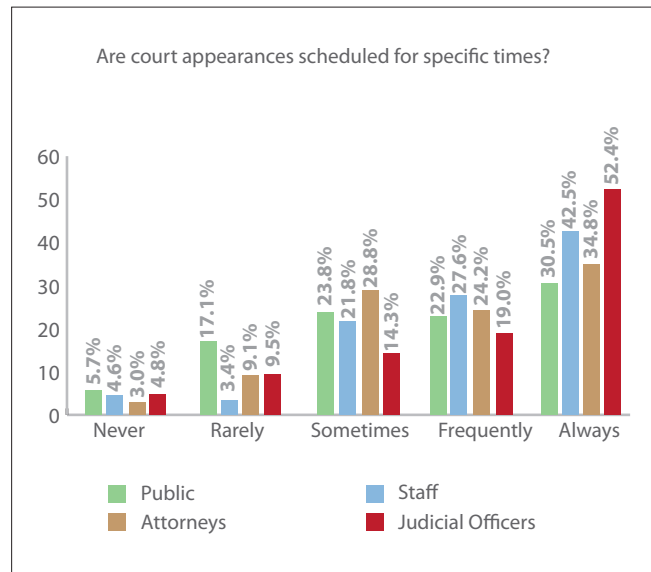


Figure 31

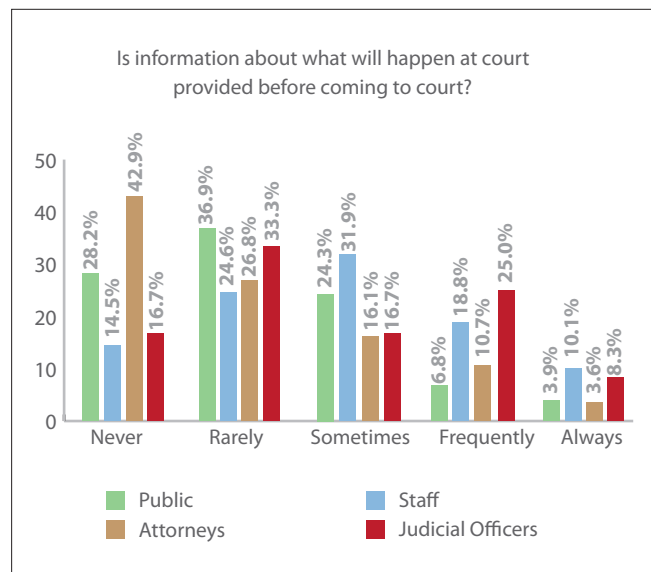


Figure 32

This evidence was affirmed in the RAE interviews where Court Users detailed their grievances with not having access to adequate information. Often terming the reality as “difficult” and “frustrating”, some Court Users expressed no choice in being completely dependent on their attorneys; and of course, this would only apply to those who have attorneys. As one Court User who did not have an attorney put it: “I wouldn’t really have knowledge of certain documents that they supposed to give to de individual or your lawyer or whatever. Only if yuh have a lawyer, that’s de only way how yuh go know.”



What the evidence suggests is a **legitimate need for reasonable process and procedural information support for those who are self-represented or under-represented**, if feelings of alienation and frustration are to be overcome, and feelings of welcome and inclusivity engendered. This deficit negatively impacts access to justice and equality of treatment, because without timely access to relevant information, the capacity to deal with a matter adequately is impaired. And, if others in the court systems of the JRRT have such access to information, then this may become an issue of inequality of treatment and unfairness.

“The JP might not give you the amount of information so that you understand exactly what you’re doing and what might be the repercussions of what you’re doing.”

-RAE Interview

Not only did Court Users experience a general lack of information, but **attempts at having queries addressed were further frustrated** by what they deemed as unhelpful Court Staff or misinformed employees. Court Staff members, according to Court Users, lacked the requisite knowledge or willingness to assist and the skills to communicate properly. Interestingly, some Court Users even said that Judicial Officers were not immune from this – they either lacked all the information about a case or didn’t provide adequate information for those without an attorney to offer meaningful assistance.

One Court User detailed her worries with her case at the High Court when she said: “You don’t know what’s said, what the decisions are. You don’t know what the judge is thinking. This is kinda strange. I have to keep wondering.” And another Court User, at the Magistrate’s Court, described her grievance: “[Magistrates] need to get information before to know how to deal with your case. They don’t have enough information.” This issue of an unavailability of information or unwillingness to share it, thus appears to be one that exists throughout the judiciary: Court Staff, Judicial Officers, and importantly, Court Administration.

Without this necessary element being experienced by Users of the Court Systems – both actual and prospective – public trust and confidence cannot be ensured. The experiences which Court Users have detailed have allowed for a proper definition for this element of Procedural Fairness as it relates to the court systems of the JRRT.

Defining ACCESS TO INFORMATION:

The timely availability of all relevant and accurate information, adequately and effectively communicated in clear, coherent language, through open, receptive, courteous, and easily accessible decision makers, judicial personnel and systems, particularly in relation to each stage of court proceedings.

INCLUSIVITY

Main Findings:

- Court Users feel alienated and unwelcomed because of the lack of: Voice, Neutrality, Trustworthy Authorities, Respectful Treatment, Availability of Amenities, and Access to relevant Information;
- The court systems of the JRTT are usually experienced as impersonal and disconnected from Users of the Court Systems and the Public, and uncaring and unconcerned about their legitimate needs and welfare in relation to court matters.

Discussion:

In Trinidad and Tobago, Inclusivity is a very important element of Procedural Fairness. Given our historical and cultural contexts of alienation and disenfranchisement, and of dehumanising objectification and disrespect – through the historical memories and lived experiences of slavery, indentureship, and colonialism, the need to belong, be respected, valued, and included is essential for trust and confidence in public authorities. Jamadar and Meighoo (2008) explain: “Our historical experience remains unconsciously embodied in our psychological, cultural, and sociological makeup, collective and individual” (79-79). Thus in Trinidad and Tobago, to be treated inclusively, is in fact to be treated fairly.

Inclusivity arose acutely from the qualitative data as an element with a unique feature; one that is hinged on the experiences of the other elements. Court Users are unable to feel or experience inclusivity if they have no voice, cannot meaningfully participate, are not genuinely and sincerely considered, are not provided for appropriately, and have little or no knowledge of what’s going on.

The above evidence detailed in each element above reveals that Users of the Court Systems experience a lack of inclusivity or inclusion in the very processes that they engage. Notably, when asked about the importance of relationships between and among groups, the quantitative data shows that the Public is of the view that effective communication is necessary. Figure 33 below shows that 87% of the Public polled believe that **effective communication between Judicial Officers and Users of the Court Systems is essential** and 82.5% of the Public thought that Court Staff and Users of the Court Systems require effective communication between and among them. That the Public places such importance on these relationships, but experiences ineffective communication and less-than-appropriate treatment, they detail feelings of alienation. One Court User lamented: “It’s like an uphill struggle and there’s no connection. There’s no way to communicate with anyone.”



“It just seems as though there is a disconnect between you and this matter and the persons who are dealing with it. There’s no direct connection...”

-RAE Interview

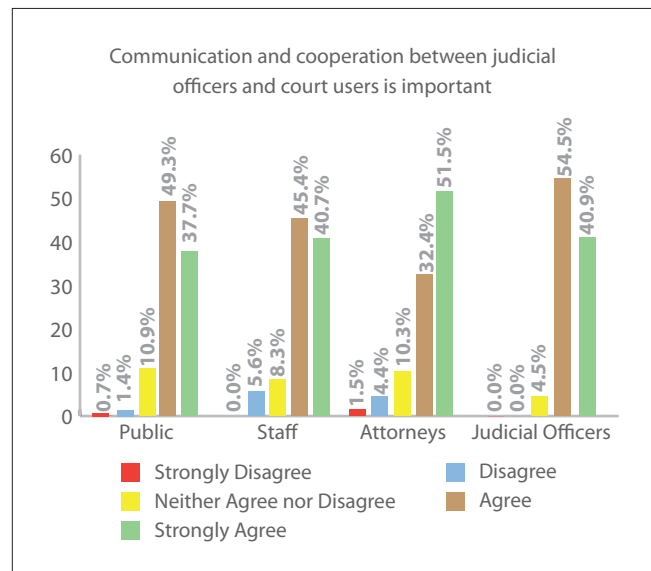


Figure 33

Court Users thus often feel ‘left out’ and as though they are unable to be an engaged party in the process. Moreover, when asked if they believe the **treatment of Users of the Court Systems from Judicial Officers and Court Staff is assessed**, only 8.8% of the Public said that they believe this is either frequently or always done. Without any perceived evidence of continued assessment on treatment, Users of the Court Systems experience feelings of hopelessness and despair, and as one Court User stated, of being ‘unwelcomed’. The cumulative evidence of experiences, manifested through the other elements and experiences of alienation, has allowed for a definition of inclusivity to be derived.

Defining INCLUSIVITY:

The need for users of the court systems to feel that they are, and experience themselves as, an important part of the entire court process, rather than outside of or peripheral to it; non-alienation, by being made to feel welcomed and included in court proceedings and to actively, easily, and effectively participate throughout the process.

UNDERSTANDING

Main Findings:

- Users of the Court Systems at the High Court level have reported experiencing a general lack of clear explanations, and a lack of knowledgeable or helpful Court Staff.
- Users of the Court Systems have reported coming before Judicial Officers who are generally experienced as not explaining decisions or explaining them but not in simple and understandable language.

Discussion:

Emanating primarily from the High Court level, evidence from the qualitative data (confirmed when looked at against the quantitative data) shows that there is a lack of understanding by Users of the Court Systems about court processes and proceedings. This lack of understanding is not the absence of compassion as was a constituent of some of the above elements, but strictly relates to the absence of and/or inadequate explanations of court proceedings and decisions at every stage, and to ensuring that Users of the Court Systems understand what is going on at all times and what their responsibilities are throughout the process and upon determination of a matter.

Figure 34 below shows that 94.2% of the Public believed that **having the court process explained in a clear and understandable manner is either important or extremely important in ensuring compliance**. 90.9% and 88.2% of Judicial Officers and Attorneys respectively, agreed. However, only 26.6% of the Public thought that **proceedings** are frequently or always explained, while only 16.5% think that **decisions** are frequently or always explained. This disparity between the recognition of the importance of explanation and understanding on the one hand, and the actual experience (occurrence) of it on the other, is cause for concern. Moreover, in the observation data, 95% of the courts had **forms which contained no printed or written instructions** on how to fill them. Notes from the court observations also revealed that some of the Registry Court Staff were “unable to answer basic operational questions.”

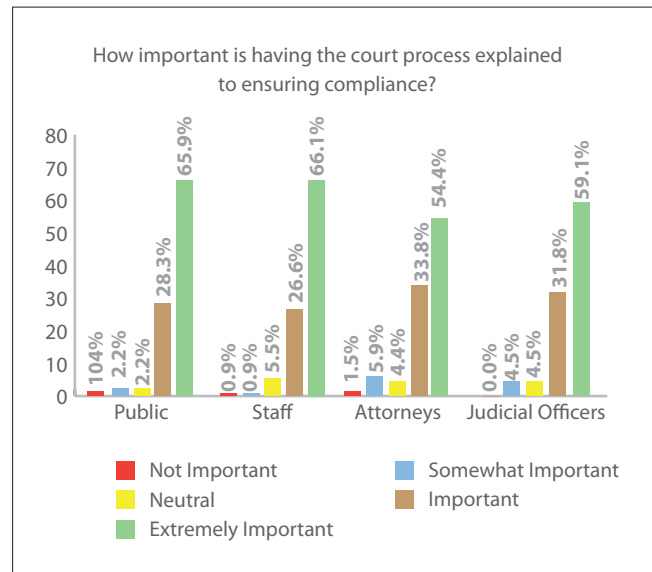


Figure 34

Qualitative data from the RAE interviews showed the lack of understanding from which Court Users suffer due to absence of adequate information and explanations from both Court Staff and Judicial Officers. Often mentioned was the use of legal language (“legalese”) which left Court Users confused. Others were often compelled to depend on their attorneys because of the lack of explanation and opportunity to ask questions as discussed above. Court Staff were also accused of being unable to provide them with information, and Court Users also described them as “standoffish”. Court Users even said that not only was there poor communication, but often no communication at all. And in Tobago, there were complaints that there were no Judicial Officers present so hearings often took place via teleconference. As one Court User explained: “The Judge is normally in Trinidad while we are in Tobago. To me, this is a disadvantage in the sense that sometimes you cannot hear effectively and communicate efficiently.” If there is no adequate ‘hearing’ or communication, how can there ever be proper understanding?

“They use terms that the ordinary man would not, for me personally cannot understand. They use...they don’t break it down for you. They use high terms that you can’t understand”

-RAE Interview

Notably, a small number of Court Users told of positive experiences with having clear explanations given to them. One Court User said, “The Judge explain it, there’s no other way for him to explain it, even though I don’t agree with everything but he explain it beautifully.” This effectively belies the need and responsibility for effective and clear communication which results in greater understanding; which in turn increases the experience of Voice, Respectful Treatment, and Trustworthy Authorities.

Users of the Court Systems cannot be expected or presumed to understand what is happening at court if things aren’t explained carefully, plainly or at all. Without these much needed clarifications and the care taken to ensure that they are effectively communicated and understood, Users of the Court Systems and the public lose confidence with the court systems and public trust is diminished. The evidence from the research at the High Court level thus allows for a definition of this element relevant to all the court systems of the JRTT.

Defining UNDERSTANDING:

The need to have explained clearly, carefully, and in plain language, court protocols, procedures, decisions, directions given, and actions taken by decision makers and judicial personnel, ensuring that there is full understanding and comprehension.



INTERSECTIONALITY

Intersectionality is defined as the “**interconnected nature of social categorisations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage**” (Oxford Dictionaries Online 2018). This interconnectedness of different categorisations is often used, in the social sciences, to observe and analyse differences that reveal certain ‘truths’ and realities about those who fall into the various categories. Though generally used in the context of discrimination and disadvantage, intersectionality analysis can also identify and map out individuals and groups that enjoy privilege and advantage.

I. Sex and Education Differences

The quantitative data collected, revealed interesting trends amongst the groups analysed. The categories of sex and education level: female-secondary school, female-undergraduate tertiary, female-postgraduate tertiary, and female-other (technical/vocational/professional qualification) as well as male-secondary school, male-undergraduate tertiary, and male-postgraduate tertiary, showed that these classifications often shared similar views on the court systems of the JRTT and the level of Procedural Fairness that exists in the Judiciary of Trinidad and Tobago. It is worth noting, however, that there are significant variations and nuances between and among categories.

Female-Education level

Of the female-education classifications, those who had attained up to a secondary school education largely believed that court matters are scheduled for a particular time; 14% as opposed to 3% for female-undergraduate, and 0% for both female-postgraduate and female-other. Notably, again, 36% of the female-secondary respondents believed that information about courthouse locations is provided on a public website, while 38% female-undergraduate shared this view, and 6% and 0% respectively for female-postgraduate and female-other believed this. Signage, however, was a big issue for female-postgraduate as only 15% believed that there is adequate signage in courthouses whilst the other three categorisations were each over 30% in their belief of such. This information shows that there is a disparity in the experiences of the members of the groups.

The opportunity to participate and be a part of the court process was consistently hailed as a necessary or important aspect of the court systems of the JRTT for Users of the Court Systems. In each female-education category, over 50% of the respondents believed that to have an opportunity to directly participate in the court process would increase compliance. Having the court process explained in an understandable manner

also stood out as all categories believed it was important. Among these, however, female-other showed a 100% belief in understanding's importance whilst the other categories saw ranges above 90% but below 100%. Voice and Respect, drawn from the quantitative data, is thus seen as necessary and essential for all Users of the Court Systems. The same can be said for Understanding, but with particular importance for the female-other category.

Data collected on the treatment of Users of the Court Systems, which prominently assisted in providing insight into respectful treatment and trustworthiness of authorities, also showed general consensus among the groups, but nuances between and among the groups are worth mentioning. Respondents were asked to determine whether certain social and biological characteristics have an impact on the outcome of court matters. All female categories noted that skin colour has at least some impact on the outcome of court matters. This, however, was less an issue for female-postgraduate, as 66% believed an impact would be had, whilst 83% of the female-other respondents said there would be an impact. A similar trend was noticed when asked if social status would affect the outcome of court matters. Though over 80% of each category stated that social status has an impact, 100% of the female-other category had this belief. Notably, 100% of the female-other category believed that religion has an impact on the outcome of a matter, whilst the other three categories see a 50% range of belief in such impact. The same trend was noticed for professional seniority and its impact on court matters, as 100% of female-other believed an impact is had, whilst the other three categories had a 70% range. The female-other category's unanimity of belief in a characteristic's impact on the outcome of a court matter was also noticed in relation to education and wealth whilst the other categories had a 70%-80% range of belief in their impact. Thus, even though there is general consensus on various characteristics' impact on a court matter – the presence of bias – females of 'non-traditional' education seemed to hold stronger views and beliefs as to the characteristics' impact.

Male-Education level

When asked about information provided prior to coming to court, 23% of male-secondary respondents believed that it is at least frequently provided, whilst 8% and 0% of male-undergraduate and postgraduate respectively, had this belief. A similar result was noticed when asked about information provided on a public website about courthouse locations. Of the male-education categories, male-secondary showed that 46% believed that there was signage across courthouses whilst the other two categories both showed 18% of their respondents having this view. The most notable difference among the categories, however, was noted in the male-undergraduate category when asked if court matters were scheduled for specific times. 67% of this category believed that matters were frequently or always scheduled for a particular time while below 30% of the other two categories shared this view. Thus, even though the data suggests that there is general consensus in the lack of information provided and lack of amenities, it appears that male-undergraduate respondents are of the view that matters are



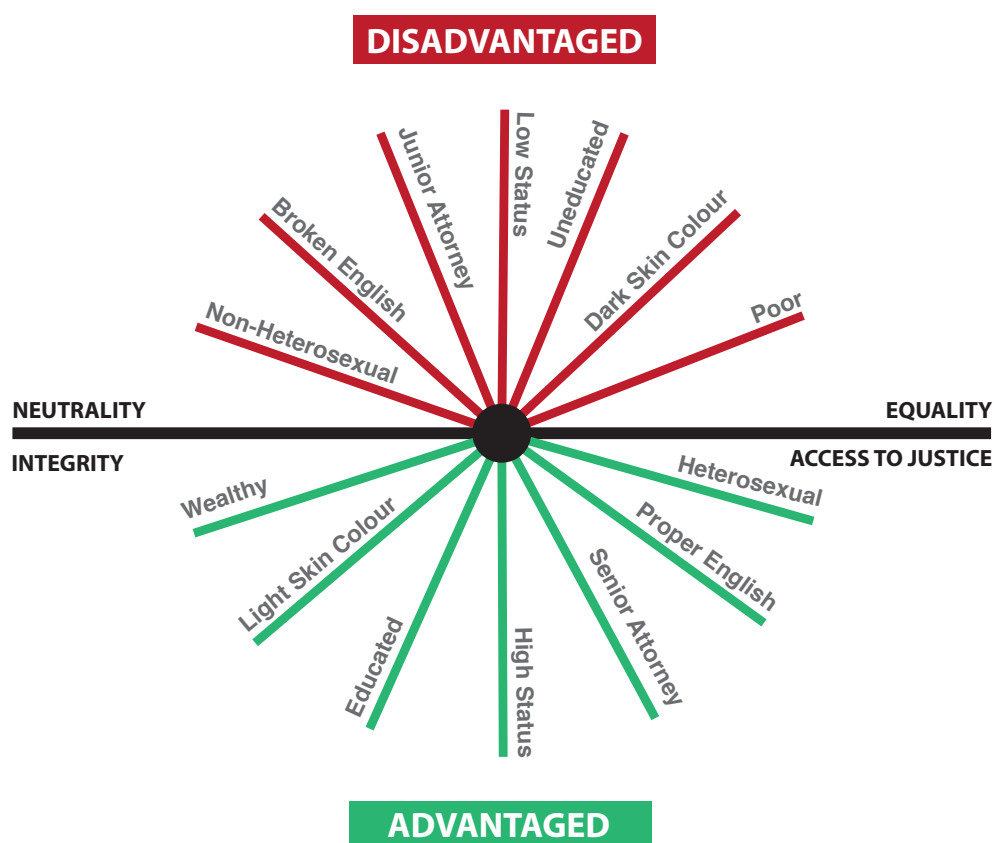
scheduled on time; a view contrary to the other categories. This corresponds with the female-undergraduate and female-secondary categories, as all three provide similar trends (over 50%).

Having an opportunity to participate was less an issue for male-undergraduate respondents than the other categories. 64% believed this opportunity is important whilst over 85% of the other two categories hold this belief. On understanding what happens at court, there was a general consensus as to its importance. All three categories showed an above 90% belief that understanding the court process and what occurs in court matters is important to ensure compliance.

Interesting trends were noticed when looking at views on particular characteristics' impact on the outcome of court matters. There was a general consensus among all three groups that skin colour, social status, ethnicity, and political affiliation do have at least some impact on the outcome of court matters. However, there were differences between groups as it relates to sexual orientation, age, and gender. 73% of the male-postgraduate believed that sexual orientation has an impact on the outcome of a matter, whilst significantly less (55% and 50%) of the male-undergraduate and male-secondary had this belief. The age characteristic saw difference across the board, as 73% of male-postgraduate, 50% of male-secondary, and 37% of male-undergraduate believed that age has an impact on the outcome of court matters. The male-undergraduate category saw fewer respondents (46%) believing that gender has an impact on the outcome of a court matter when compared to the other two categories (each over 70%). There is, based on the data, general consensus among the groups that certain social and biological characteristics influence the outcome of court matters. However, not all groups agree that each of the listed characteristics have the same degree of impact. And, interestingly, male-postgraduate respondents held the strongest belief that the characteristics do impact court matters.

The intersectionality data calculated on sex-education levels, thus represent the overall findings that the elements of Procedural Fairness do not prominently exist in the court systems of the JRTT. However, upon closer inspection, the sex-education classification revealed particular nuances that may be of importance to socio-analytical thought as it relates to their experiences and perceptions.

Whilst these categorisations are important, the salience of intersectionality is best represented in the groupings of persons who differently experience and perceive the court systems of the JRTT and administration of justice in Trinidad and Tobago.



2. Intersectionality and the Administration of Justice

In the context of intersectionality, the data, both qualitative and quantitative, permits us to identify two clearly defined groups who interact with the court systems of the JRTT: those who are able to experience and perceive the court systems of the JRTT, processes and personnel as working with and for them (the advantaged) and those who feel alienated and discriminated against by the court systems of the JRTT, processes and personnel (the disadvantaged).

The Advantaged

From the data collected and analysed, those who are wealthy, educated, of lighter skin-colour, speak 'proper' English, and are of a higher social status experience the court systems of the JRTT and judicial personnel as working for them or to be in their favour. This is partly because they have the capacity to enjoy certain facilities that not everyone can such as: access to senior attorneys, a reduced need for assistance with court procedures and processes (like the filling out of forms), and mechanisms to reduce negative impact due to time lost at court or waiting to perform court-related transactions. These factors bolster those in this group from experiencing the problems that the otherwise 'disadvantaged' person experiences. In addition, those in this group also enjoy the benefits of actual preferential treatment, because of the presence (perceived and experienced – implicit and real) of positive bias in their favour.



The Disadvantaged

The disadvantaged category does not simply comprise those who exist in stark opposition to the advantaged; i.e. not wealthy, un-educated, speak ‘broken’ English, of darker skin-colour, and of lower social status, but rather all those who do not enjoy the breadth and depth of the characteristics that the advantaged do. Thus, one might be educated but not wealthy and of high social class and, as such, experience many of the issues and problems highlighted in the findings of the research. Therefore, those who are not characterised by a considerable combination of the aforementioned ‘advantaged’ qualities are not ‘privileged’ enough to experience the court systems of the JRTT as working with and for them. This ‘disadvantaged’ group comprises of most people in Trinidad and Tobago and this is evidenced by the findings of this research. This means that the vast majority of people in Trinidad and Tobago experience the administration of justice with disadvantage, as biased and as not easily accessible or negotiable. This perception and experience leads to diminished trust and confidence in the court systems of the JRTT, which has a severe and direct impact on legitimacy and compliance.

3. Gender Revelations

The research findings lead to interesting revelations about gender perspectives in the context of Procedural Fairness, which may appear contrary to the usual socio-cultural assumptions of gender relations within the court systems of the JRTT i.e. female as a significantly disadvantaged group. Our research revealed the following. The quantitative data (Figures 20 and 21 above) shows that 56% of the Public and 44.1% of Attorneys believed that one’s gender expression has some or significant impact on court matters, while 36.0% of the Public, 28.0% of Attorneys, and 13.6% of Judicial Officers believed that women receive favourable treatment at court. The qualitative data nuanced this finding, as many male Users of the Court Systems expressed that women often receive favourable treatment at court in family matters.

The qualitative data also showed, however, that many women believe that they are (indirectly) discriminated against because the court systems of the JRTT, in the provision of court services, infrastructure, and time-related considerations, do not adequately take into account their role as primary caregivers.

4. Substantive Equality and Equitable Treatment

The court systems of the JRTT, however, must be experienced and perceived as working for **ALL** in order to ensure equality in the administration of justice. This is a Constitutional imperative and any deficit is a betrayal of the social contract with the Public. It undermines legitimacy in the administration of justice and in the democratic process. However based on the evidence in this research, with only a small fraction of citizens being able to have a positive experience of the court systems of the JRTT, due to privileges that are not shared or common to all, one can draw the inference that there is a broad-based and widespread deficit of trust and confidence in the court systems of the JRTT. This is an undesirable deficit for an authority that ought to serve, work with, and work for all, without any perceived or actual experiences of inequality.



CHANGING JUDICIARY AND COURT PRACTICES

The above discussion and explicit statements of desired outcomes and changes from Court Users in both the quantitative and qualitative data, allow for clearly defined actions, behaviours, and procedures (altogether practices) that Court Users suggest are necessary to enhance their experiences of Procedural Fairness. Very often, these practices will address Users of the Court Systems' concerns and grievances across one, some, or all the elements of Procedural Fairness and this is inevitable as the absence of experiencing even one of the nine discovered elements undermines the experience and perception of Procedural Fairness. Importantly, these practices speak to the final sub-research question as we aim to discover interventions that could improve the experience of Procedural Fairness across the court systems of the JR TT for all Users of the Court Systems.

The research suggests that from the Court Users' perspective the following practices can have a positive impact on the experience of Procedural Fairness in and across the court systems of the JR TT. The practices, as suggested by Court Users, will be separated into three categories: Before Going to Court, At the Courthouse, and In the Courtroom.

Court Users' Suggestions

BEFORE GOING TO COURT:

- Forms available on the Judiciary's website should be accompanied by clear and simple instructions. This is especially important for those Users of the Court Systems who are self-represented or may not be able to afford legal advice and guidance;
- Stagger the scheduling of matters so that all matters are not carded for the same time, thereby relieving time wasted waiting at court;
- Guidance as to the court process and Frequently Asked Questions (FAQs) on the Judiciary's website should be updated to include more information than is currently available;
- Put in place an on-line or mobile reminder system so that Users of the Court Systems have the option of receiving automated reminders of their upcoming matters.

AT THE COURTHOUSE:

- Court Staff ought to be trained in enhanced customer service so that Users of the Court Systems are treated with respect;
- Cashier booths at the courthouse ought to be open for longer hours or a shift system be put in place so as to conveniently facilitate Users of the Court Systems;
- Court Staff should undergo continued training and education so that they can best advise and guide Court Users with regard to court procedures and practices;
- Court Staff should be specially trained to deal with the differently-abled and elderly so that any impediments to accessing justice are minimised, or at the very least, not exacerbated;
- Information desks should be available, identifiable by all, and adequately staffed at all times to provide necessary assistance to Users of the Court Systems;
- Court Staff should be present and on-time so that Users of the Court Systems do not experience prolonged wait times;
- Adequate seating accommodation should be provided to facilitate the number of persons accessing the courts and their needs;
- Cooling systems should be installed so that Users of the Court Systems can wait in comfortable conditions for their matters or when performing court-related transactions;
- Water fountains should be installed and kept working for the convenience and comfort of Users of the Court Systems during their stay;
- Washrooms should be available, identifiable, and well-maintained for the use of all Users of the Court Systems, and should be equipped to accommodate those with special or different needs;
- Entry into courthouses should be easily accessible by all Users of the Court Systems. This involves adequately equipping entry points with facilities to accommodate those with special or different needs;



- Libraries should be made publicly available at courthouses to assist Users of the Court Systems who require information related to their matters and those who are self-represented;

- Family room facilities should be made available to carers who have to look after young children;

- All courthouses should be equipped with adequate, effective, and accessible signage where necessary;

- Court Staff should explain delays and provide information about when matters will be heard, whenever possible.

IN THE COURTROOM:

- Judicial Officers should introduce themselves by name at the beginning of each court day and the start of each case;

- Judicial Officers should actively encourage Users of the Court Systems to ask questions at appropriate stages in their matters;

- Judicial Officers should actively encourage Users of the Court Systems to express views at appropriate stages in their matters;

- Decisions, delays, and adjournments should be adequately explained to Users of the Court Systems in clear and simple language;

- Judicial Officers should maintain neutral eye contact with Users of the Court Systems during their matter;

- Judicial Officers should speak with Users of the Court Systems in a neutral tone of voice;

- Judicial Officers should refrain from using any behaviours or postures that communicate discrimination, pre-judgment, disrespect, aggression or frustration to Users of the Court Systems;

- Judicial Officers should use neutral language when speaking with Users of the Court Systems;
- Judicial Officers should refrain from taking sides or appearing to favour one party over the other during matters;
- Judicial Officers should refrain from giving unfair and/or disproportionate time to attorneys or self-represented parties to speak or express views;
- Judicial Officers should be present and on-time for court matters and if late, explain why;
- Judicial Officers should provide clear and coherent summaries of decisions and procedures at the appropriate stages of matters;
- Judicial Officers should ensure that Court Staff are made aware of how to deal respectfully and helpfully with Users of the Court Systems, and take responsibility for ensuring that this is always done.

These practices, as extrapolated from the findings, are suggested to enhance Users of the Court Systems' experience of Procedural Fairness. All deserve serious consideration by those charged with the responsibility for the administration of justice. We suggest that enhancing Procedural Fairness is at the core of the delivery of justice, and that these suggestions ought to be taken seriously and meaningfully considered and implemented.

Good news. In May of 2017 the JEITT used the preliminary data from this research at its 2017 CES for Judicial Officers of the JRTT. The theme was Fostering and Maintaining Public Trust and Confidence in the Judiciary of the Republic of Trinidad and Tobago. The nine elements of Procedural Fairness were presented and interrogated. In the end there was widespread acceptance and a genuine willingness and desire by participants to change and improve the court systems of the JRTT.

The final module of the CES was dedicated to Judicial Officers working in groups and with the nine elements of Procedural Fairness, with a view to coming up with short term and immediate steps that could be taken to improve Users of the Court Systems' experiences and perceptions of Procedural Fairness. These suggestions offered by Judicial Officers were made after considering the findings discussed in the Discussion section of this paper; including Court Users' suggestions detailed above in the section: Changing Judiciary and Court Practices. Following is a summary of the proposals:



Judicial Officers' Suggestions

VOICE

- Judicial Officers ought to remind themselves that each matter is important to the parties and those involved in it, and so, must carefully allot appropriate time for matters to be heard in as timely a manner as the case demands;
- Actively invite participants to speak or ask questions and give them reasonable time limits in which to do so;
- Make appropriate eye contact with participants, showing interest and concern regardless of how many matters are on your dockets;
- Explain, at each stage of proceedings, what is happening in the matter and give a brief summary of what happened and what will happen. This will help participants to ask more informed questions or clear up any misunderstandings they may have been hesitant to vocalise;
- Use Victim Impact Statements more often.

NEUTRALITY

- Communicate with and train Court Staff to effectively ensure that, from the time of entry into the courthouse, no one is made to feel unfairly treated;
- Be more conscious of body language, behaviours, and tone of voice;
- Listen to each party when they speak and give them reasonable time in which to do so;
- Be cognisant of any unconscious biases and take steps to eliminate them;
- Take a deep breath and think carefully before making an emotionally charged response.

RESPECTFUL TREATMENT

- Ensure a timely inquiry of persons with special needs is done so that their matters are dealt with so as to meet their reasonable needs;
- Indicate a reasonable timeline in which matters would be dealt with;
- Explain and apologise for any delays, and try your best to give an estimated time at which the matter will be heard;
- Have team meetings with all courtroom and courthouse Court Staff to ensure they understand what it means to treat Users of the Court Systems with respect;
- Place Suggestion Boxes in the courtroom and courthouses and consider and implement suggestions in a timely manner;

6. Adhere to reasonable timelines set;
7. If there has been disrespect in the courtroom, give a reasonable apology.

TRUSTWORTHY AUTHORITIES

- Stagger the scheduling of matters, as not all matters can be heard at 9:00 a.m.;
- Implement the Pledge of Fairness* which creates a two-way respectful treatment;
- Explain each decision carefully and succinctly. This extends to procedural decisions as well;
- Genuinely apologise where the court missteps;
- Ensure that each member of courtroom and courthouse Court Staff understands the principle of Trustworthy Authorities and knows how to treat with Users of the Court Systems.

* The Pledge of Fairness is the fundamental mission of the Alaska Court systems which is to provide a fair and impartial forum for the resolution of disputes according to the rule of law.

ACCOUNTABILITY

- Be punctual because punctuality plays an important role in increasing Users of the Court Systems' confidence: "be where you are supposed to be at the time you are required to be there;"
- Judicial Officers ought to be present for court matters and take steps to ensure that their entire teams "show up" so that the court process is not delayed;
- Apologise sincerely if any issues that inconvenience the Users of the Court Systems arise, such as delays or poor service, as well as offer an explanation where possible;
- Set reasonable time limits to provide decisions throughout court matters or court-related transactions;
- Provide immediate reasons for any decisions (procedural or substantive) to Users of the Court Systems wherever possible; and when not possible, provide reasons in a timely fashion.

AVAILABILITY OF AMENITIES

- Meet with the Building, Plant and Equipment Unit (BPEU) to ensure they undertake an operational audit for each court to identify the issues and implement reasonable solutions;
- Meet with the Head of Security to ensure Court Staff is made knowledgeable of proper security procedures so as to enhance Users of the Court Systems' access to justice;



- Meet with the BPEU to ensure public washrooms can be appropriately identified, labelled, and outfitted;
- Ensure that provisions are made for the effective treatment of Users of the Court Systems in the event of emergencies;
- Provide reasonable amenities for the convenience of all Users of the Court Systems.

ACCESS TO INFORMATION

- Prepare leaflets on relevant information and make them readily available to Users of the Court Systems;
- Make and use a checklist of relevant information for use in court e.g. a list of things that juries ought to know;
- Ensure that Court Staff has a proper grasp on how to communicate effectively with Users of the Court Systems;
- Include who is presiding in court when putting up signs to identify courtrooms;
- Ask all litigants, especially those who are unrepresented, if they have any questions.

INCLUSIVITY

- Address the litigant directly if the procedure allows for it;
- Give condensed but accurate explanations of the current court process;
- Explain the reasons for adjournments;
- Involve the litigant in the working out of orders, especially where children are involved;
- Apologise for delays if the court is at fault, but also explain to litigants where attorneys have failed.

UNDERSTANDING

- Explain procedures in clear and understandable language;
- Ask parties if they understand the procedures so that they can confirm whether they do;
- Ensure that communication remains a two-way process;
- Be precise and clear in the formulation of orders and decisions;
- Give an opportunity for questions to be asked at each stage of proceedings.



The above is concrete evidence that Users of the Court Systems and Judicial Officers have a relatively clear sense of what needs to be done to immediately improve Procedural Fairness in the court systems of the JRTT. Many of the suggestions are simple and easy to implement at little or no cost.



CONCLUSION

This research on Procedural Fairness was driven by the following research questions:

1. To what extent do the four elements of Procedural Fairness, as discovered in Tom Tyler's research, exist in the court systems of the JRTT?
2. If found to exist, to what extent does Procedural Fairness positively impact public trust and confidence, legitimacy, and compliance?
3. What is the presence and level of both perceived and actual 'voice', 'neutrality', 'trustworthiness', and 'respect' in courts across Trinidad and Tobago?
4. Are there other elements or nuances to the above four elements that shape Procedural Fairness in the court systems of the JRTT?
5. How can we devise ways of improving the elements of Procedural Fairness in courts across Trinidad and Tobago if their impact is found to be consistent with that revealed in the international research?

The first two were considered the primary research questions and the latter three, sub-research questions.

Our research has revealed that Tyler's four elements of Procedural Fairness – Voice, Neutrality, Respectful Treatment, and Trustworthy Authorities, do exist to some degree in the court systems of the JRTT. This is a most significant finding in light of the conclusive evidence that Court Users, Attorneys, Court Staff, and Judicial Officers all agree, that these four elements of Procedural Fairness positively impact public trust and confidence in the administration of justice, legitimacy of legal authority, compliance with court orders, directions and regulatory systems. The existence of elements of Procedural Fairness means that there is some foundation upon which the growth and development of these essential components can be undertaken. This is a positive and encouraging discovery. It is therefore a cause for hope.

However, what the research also reveals is that, though present, **the levels of these four elements of Procedural Fairness are alarmingly low.**

The research has also shown that whilst Tyler's definitions of the first four elements of Procedural Fairness are accurate, there are nuances which contextualise and ground them in the experiences in the court systems of the JRTT. We have therefore formulated

these nuanced understandings to meet and reflect local conditions – the Trinidad and Tobago *sitz im leben*.

In addition, the research has unearthed five additional elements of Procedural Fairness that have been discovered to be constitutive in the court systems of the JRTT (which some may choose to place these within the four Tyler elements, but which we believe are more effective if separated, appropriately defined and addressed). These are as follows: Accountability, Availability of Amenities, Access to Information, Inclusivity, and Understanding. In relation to these latter five elements, the research has also disclosed significant deficits in the court systems of the JRTT.

The discovery of these added elements together with the nuanced understanding of the international formulation of Tyler’s four elements, is proof that indigenous research is essential if local remedial interventions are to be both relevant and have meaningful impact. This research therefore provides evidence-based data for transformational personal and systemic changes that can have a direct and positive influence on improving four vital components for the constructive sustainability of both the democratic process and court systems of the JRTT. These components are: public trust and confidence in the administration of justice, legitimacy of legal authority, voluntary and cooperative compliance with court orders, directions and regulatory systems, and reduced recidivism. That these four are essential for the survival of a vibrant and orderly democracy is self-evident; as it also ought to be for the flourishing of a just and fair society, where justice for all is experienced and expected as normative.

The nine elements of Procedural Fairness found to be present in Trinidad and Tobago, the first four being nuanced and contextualised understandings of Tyler’s definitions, and the final five being treated as wholly indigenous, are as follows:

Voice: The ability to meaningfully participate in court proceedings throughout the entire process, by expressing concerns and opinions and by asking questions, and having them valued and duly considered (“heard”) before decisions are made.

Understanding *: The need to have explained clearly, carefully, and in plain language, court protocols, procedures, decisions, directions given, and actions taken by decision makers and judicial personnel, ensuring that there is full understanding and comprehension.

* This element arises out of the Supreme Court level

Respectful Treatment: The treatment of all persons with dignity and respect, with full protection for the plenitude of their rights, ensuring that they experience their concerns and problems as being considered seriously and sincerely, and having due regard for the value of their time and commitments.



Neutrality: The independent, fair, and consistent application of procedural and substantive legal principles, administered by impartial and unbiased decision makers and judicial personnel, without discrimination.

Trustworthy Authorities: Decision makers, judicial personnel, and court systems that have earned legitimacy by demonstrating that they are competent, and capable of duly fulfilling their functions, responsibilities and duties in an efficient, effective, timely, fair, and transparent manner; and by demonstrating to all users of the court systems compassion, caring, and a willingness to sincerely attend to their justifiable needs and to assist them throughout the court process.

Accountability: The need for decision makers and judicial personnel to fulfil their duties, to reasonably justify and explain their actions and inaction, decisions, and judgments and to be held responsible and accountable for them, particularly in relation to decisions, delays, and poor service.

Availability of Amenities: The need for all court buildings to be equipped with the necessary infrastructure (both structural and systemic) to enable users of the court systems full and free access to court buildings, efficient information systems, relevant operational systems, and the enjoyment of functionally and culturally adequate amenities.

Access to Information: The timely availability of all relevant and accurate information, adequately and effectively communicated in clear, coherent language, through open, receptive, courteous, and easily accessible decision makers, judicial personnel and systems, particularly in relation to each stage of court proceedings.

Inclusivity: The need for users of the court systems to feel that they are, and experience themselves as, an important part of the entire court process, rather than outside of or peripheral to it; non-alienation, by being made to feel welcomed and included in court proceedings and to actively, easily, and effectively participate throughout the process.

In relation to the delivery of justice, Procedural Fairness may be existentially described as the conscious creation of an environment in the court systems of the JR TT, which engenders positive experiences and feelings about the legitimacy of all of the court's processes and the administration of justice as a whole, and does so particularly in relation to actual and potential Users of the Court Systems. Positive feelings impact the perceptions of Users of the Court Systems in relation to the court process and how they experience and interact with court systems of the JR TT and personnel. At its

heart is the nature and quality of relationships between and among Judicial Officers, Court Staff, Users of the Court Systems, and court systems of the JRTT. Their nature and quality are defined by mutuality and recognition – of fairness, respect, trust, understanding, accountability, access, inclusivity, impartiality and equality, based on the inherent value and dignity of each and every human being and all living things.

It is this relational aspect of the court systems, in comparison to a more transactional model, that Procedural Fairness brings to light. This research demonstrates that effectiveness, efficiency, and excellence in the delivery of justice in a transactional sense (measured by, for e.g., disposition rates, time-based performance standards etc.), are unable to create and sustain public trust and confidence and to confer legitimacy on legal authority, unless Procedural Fairness is also present, experienced, and perceived; particularly so by Users of the Court Systems.

One of the interesting revelations of the ethnographic research in particular, is the potential for the practise of Procedural Fairness to create a flow of mutual respect between Users of the Court Systems (and the public at large) and court systems of the JRTT (and Judicial Officers). This may be described as the flow of ‘giving and receiving’ respect. **As litigants and Users of the Court Systems are treated fairly and with dignity and respect, are given relevant and appropriate information in a timely manner, and feel included and valued; they give in return respect, legitimacy to and bestow moral authority upon the court systems and Judicial Officers.** The result can be a spiralling and mutually reciprocating and fortifying trust and confidence in the administration of justice.

“I do believe that I was treated fairly. I do believe that my matter was treated with a sense of urgency and professionalism.”

-RAE Interview

In light of the seemingly dismal assessment that this research presents (and assuming that it is a true reflection of the current state of affairs), what can be done to improve Procedural Fairness in the court systems of the JRTT?

The first thing that is required is awareness leading to acceptance. This research is invaluable because of what it brings to light. It is robust in methodology, meticulous in detail, and compelling in conclusions. It has been supervised by international and regional experts of the highest standing and reputation. It has abided rigorous ethical standards. Denial is really not an option. What it brings to light may be what exists at present, but it is certainly not what has to continue to exist. This is because Procedural Fairness essentially has to do with how systems and people relate to one another, and both are susceptible to change. Thus, with proper educational initiatives personnel can be trained to change how they behave, and with appropriate alterations systems can be made more relevant and responsive to needs and expectations. Pure infrastructural alterations may be more challenging, as these may be dependent on economic and



other third-party considerations. The second requirement is therefore the willingness to change and to commit the time and resources to this transformational process. Sustainable change takes both intent and time, and inevitably the means to achieve it.

Improving Procedural Fairness in Trinidad and Tobago is eminently possible. The need for doing so is also unavoidable. Indeed we see this research as rendering it an imperative. In our considered view, the court systems of the JRTT will only operate more effectively and efficiently with Procedural Fairness protocols and provisions built in, operationalised and monitored. In Trinidad and Tobago at this time, when the administration of justice is widely perceived to be in crisis, this intervention may be a refreshing and confidence building initiative that will have long term effects for trust, legitimacy, compliance, and reduced recidivism. Surely something worth investing in!

CONTRIBUTORS' PROFILES

Consultants



Professor Cheryl Thomas is the Professor of Judicial Studies at UCL's Faculty of Laws, which is the first chair in judicial studies in the United Kingdom, and is also Director of the UCL Jury Project and Co-Director of the UCL Judicial Institute. Professor Thomas is the country's leading expert on judges and juries. She is the author of *Are Juries Fair?*, she runs the longitudinal UK Judicial Attitude Survey, and her empirical research examines judicial and jury decision-making, attitudes and processes. She is currently undertaking research on the how digital courts can affect fairness in the justice system.



Dr Dylan Kerrigan is a lecturer in Anthropology and Political Sociology at the University of the West Indies, St Augustine Campus, Trinidad and Tobago. From a Caribbean, global South perspective, his research focus is most concerned with how cultural and economic processes extend over long periods of time in the service of various systems of power. In particular his work provides cultural and socio-economic connections between the different political and economic climates/structures of colonialism, post-colonialism and neo-colonialism. His most recent academic publication is *Language-in-Use Living under Militarisation and Insecurity: How Securitisation Discourse Wounds Trinidad* published in the Journal of Latin American and Caribbean Anthropology.



Authors



Justice Peter Jamadar JA sits on the Court of Appeal of Trinidad and Tobago and has been the Chairman of the Board of the JEITT for the past nine years. A Director and Faculty member of the Commonwealth Judicial Education Institute (CJEI), Justice Jamadar develops programmes and trains judicial officers across the region and world in areas of Procedural Fairness, Judicial Education, and Judicial Arrogance. The author of two books and co-author of multiple papers, Justice Jamadar has dedicated much time to the pursuit of the Institute's mantra, Transformation through Education, and works assiduously to ensure that this transformation is felt, perceived, and experienced by members of the public who depend on the court systems and who seek justice. Justice Jamadar has spearheaded this research on Procedural Fairness and it is his hope that access to justice is not just understood but actually experienced by all.



Elron Elahie is the JEITT's youngest member of staff and has been with the Institute for almost two years. Equipped with an interest in securing rights for disadvantaged and minority groups, Elron has been a key researcher of Procedural Fairness and is also the author of the Institute's first ever ethnographic narrative: *Reflections of an Interested Observer* which uses direct quotes from Court Users across Trinidad and Tobago. Elron also works in the area of gender and development toward ending gender-based discrimination and stereotyping. A returned National Open Scholarship winner who pursued his LLB(Hons) at University College London (UCL) and current MA Human Rights and Global Ethics candidate, Elron fuses his enjoyment of writing and story-telling with a fervour to bring practical and meaningful change to those who experience unequal treatment and inequality of opportunity.

Research Team



Kelsea Mahabir served as the JEITT's Research and Publications Specialist from November 2015-June 2017. With guidance from Justice Jamadar JA, she led the team behind the 2-year research project around Procedural Fairness in Trinbagonian society. During this time she was trained in Ethnography by Dr Dylan Kerrigan, conducted interviews with numerous members of the public, and performed analysis to deduce what Procedural Fairness means to Trinbagonians. Her interest in this project stems from her academic background in Psychology and personal interest in Human Rights-related causes. Kelsea holds a BA (Hons) in English Literature with a minor in Psychology and an MA in English, both from the University of Waterloo.



Trisha Dassrath has been with the Judicial Education Institute of Trinidad and Tobago (JEITT) for the past three years. She is committed to the protection of human rights for all people. As Legal Research Officer, the projects Trisha has been involved in have allowed her to pursue her passion for human rights. These projects have spanned from conducting research on Procedural Fairness in the court systems of the JRTT to providing content and research expertise for several of the JEITT's legal publications. Trisha currently sits on the Gender Committee of the Judiciary and has been involved in the formulation and facilitation of training programmes for judicial officers. Trisha holds an LLB (Hons) from the University of London and LEC from the Hugh Wooding Law School.



Kamla Jo Braithwaite has been attached to the JEITT for the past three and a half years, having started to work with the Judiciary of Trinidad and Tobago in 2010. Kamla wants to see the court systems as a place where Procedural Fairness and Justice are accessible to, and operate (equally) for all. As Judicial Research Counsel II, she has been able to work on many projects to this end— from conducting research on Procedural Fairness in Trinidad and Tobago, to assisting with the JEITT's publication of handbooks and bench books (and other material), as well as the formulation and facilitation of training programmes for judges, judicial officers and other staff. Kamla holds an LLB (Hons) and LLM (Corporate and Commercial Law) from the University of the West Indies and an LEC from the Hugh Wooding Law School.

Research Assistants



Sheia Leslie has been with the JEITT for the past three years and is a BOA I in the Coordination team. She has previous experience working directly with people in assisting with their concerns and issues and found interest in the Procedural Fairness research. Sheia's effervescent personality greatly aided in interviewing Court Users as they were able to open up to her and detail their experiences. Sheia hopes that coming out of this research, the court systems are enhanced so that matters can be heard expediently and so that those using the court systems can feel as though justice was delivered.



Kendra Sandy has been with the JEITT for the past seven years and is one of the Institute's most senior administrative members of staff. Kendra is concerned with the experiences of the grassroots communities and ensuring that there is no inhibitor to access to justice. As one of the research assistants in the JEITT's Procedural Fairness research, Kendra was able to engage with Court Users of all different walks to better understand their experiences with the court systems of the Judiciary of Trinidad and Tobago. With her BBA in Human Resource Management, Kendra understands the idiosyncrasies of human relations and works towards building strong relationships in the pursuit to ensuring access to justice for all.



Carol Tyson-Pascal has been with the JRTT for the past twelve years as the Judicial Secretary to Justice Peter Jamadar JA. A mother of three who is actively involved in her community, Carol joined the research team eager to connect with the younger demographic and act as a conduit for their concerns and experiences to be shared. She hopes that this research project will bring about the necessary change that will forge greater bonds between communities and the Judiciary so that instances of violence and conflict will be reduced.



Keeda Singh has been with the JRTT for the past five years as Judicial Secretary to Justice Nolan Bureaux, JA. Keeda brings with her, over ten years of experience in the legal arena and has a critical understanding of the issues faced by the public in their pursuit of justice. It is important to Keeda that Users of the Court System receive outstanding and quick service and that the JRTT places greater emphasis on how it treats all those who interact with it.



Armos Douglin has been with the JRTT for the past four years. As the JEITT's Driver, Armos has met and interacted with people of different backgrounds and this shaped him into an ideal research assistant. With his charisma and infectious personality, Armos was able to talk with and understand each Court User he interviewed, and get to the root cause of their experiences and perceptions. He hopes that this research will bring change that allows justice to be delivered on time and for people's frustrations to be diminished.

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Training Seminars and Workshops

Court Administrative Unit (CAU) Continuing Education Seminar 2016, Facilitated by Dr Lennox Joseph, Sr. Phyllis A. Wharfe PhD., and Dr Edwin J. Nichols. April 19, 20, and 21, 2016.

Magistrates' Continuing Education Seminar 2015, Facilitated by Justice David Suntag and Kelly Tait. March 13, 14, and 15, 2015.

Continuing Education Seminar 2017, Fostering and Maintaining Public Trust and Confidence in the Judiciary of the Republic of Trinidad and Tobago, facilitated by Justice Victoria Pratt, Dr Dylan Kerrigan, and the JEITTT Team. May 19 and 20, 2017.

Procedural Fairness describes the kinds of behaviours and systems that inspire trust in, confer legitimacy on and bestow authority upon court systems, judicial officers, court staff, and court administrators. It prescribes core non-negotiable values and standards that are necessary for the legitimate and trustworthy exercise of legal authority within a community and society. It therefore demands integrity of actions, behaviours, and systems in relation to its constitutive elements; an integrity that must be consistently experienced and perceived by all stakeholders in the court system, Users of the Court System, potential Users of the Court System, and the public at large. The research described in this Report discloses that without Procedural Fairness and whole system integrity, the court system of the JRTT will likely be perceived and experienced as untrustworthy, illegitimate, and non-authoritative spheres for the resolution of society's legal conflicts and disputes.

- from The Foreword

For judicial systems that are truly committed to achieving justice for all, the most important first step is to undertake this type of honest, in-depth assessment of procedural fairness in the courts. In this research report, the JEITT has created an invaluable roadmap for achieving a more just and fair court system of the JRTT.

- Professor Cheryl Thomas

In a society where the academic research literature readily suggests that the general population has an in-built distrust of authorities, research of the type this project represents is a credible, trustworthy, and significant intervention into why exactly such distrust might exist in connection to the court system of the JRTT and how by making changes to the court process, which are informed by rigorous research findings, that the legitimacy and credibility of court decisions can be rebuilt and lead to improved compliance amongst the wider citizenry.

- Dr. Dylan Kerrigan

