

**OVERVIEW OF JAMAICAN JUSTICE SYSTEM REFORM:
ISSUES AND INITIATIVES**

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This document provides an overview of Jamaican justice reform issues and initiatives. It is a preliminary draft based on written sources made available to the author. The accuracy and completeness of this overview document will be verified through consultations with the Jamaican Justice System Reform Task Force (JJSRTF) and other key informants and a revised draft will be prepared. It is anticipated that this document will serve as a base document for the reform process and in particular, as a briefing document for members of the JJSRTF, the Working Groups and the Canadian Advisory Committee.

This overview is divided into three sections: (I) a list of current justice system reform issues; (II) a list of recent and ongoing justice reform initiatives; and (III) summaries of past justice reform reports and studies (focusing on recommendations that have been made).

I. JUSTICE REFORM ISSUES

A preliminary review of available documents and initial interviews with key informants reveals that a large number of justice reform issues have already been identified. These issues are listed below under three general headings: (A) general court system and administration; (B) criminal justice issues; and (C) civil justice issues. No attempt has been made to filter or reduce this list of issues.

A. General Court System and Administration

Justice reform issues arising generally in the court system and with the administration of justice include:

Access:

- Inadequate access to the justice system
- Low levels of public knowledge and understanding of the justice system
- Very little public legal education, no coordinated efforts
- System is insufficiently citizen-centered
- System is not cost-efficient
- Uneven quality of service
- Lack of public confidence and trust in justice system
- Need long-term public education about how to access the courts
- There is a public perception that justice is not available to the “small man”
- Courthouses must be more “user-friendly” with washrooms etc...
- There is a lack of information about social services available in the community

Dispute Resolution Processes:

- Backlog and excessive delay in the Supreme Court
- Backlog and excessive delay in the Court of Appeal
- Concerns about the jury selection processes
- Need to re-examine the role of Justices of the Peace
- Inadequate access to legal sources (i.e. law reports, laws and regulations)
- Need greater use of technology in the courts (at hearings)
- Too few family law matters are being referred for mediation
- Too few referrals to dispute resolution from the police - their authority to refer cases is not clear and a law is needed in this area
- Coroners' Courts are a problem
- Jury panels are difficult to constitute since many members of the public are exempt from jury duty due to their profession. This has led to the same jurors (regulars) being used in different cases. This is particularly a problem in police shooting cases.
- RM Court rules need to be revised
- Gun Court is overburdened and should be abolished
- More specialization of the judiciary
- Need to increase jurisdiction of Justices of the Peace

Court Administration and Structures:

- Antiquated courthouses and infrastructure
- Inadequate recordkeeping, data collection and statistical capacity
- Inadequate strategic planning
- Inadequate scheduling and listing practices
- Inadequate transparency and accountability (i.e. no court performance standards)
- Outdated court management practices
- Outdated court administration structure and practices
- Reform measures taken without adequate consultation, adaptation and implementation
- Inadequate integration of technology
- Court administration is totally uncoordinated
- There is no one at the MoJ with overall responsibility for court administration
- No clear line of authority governing court administrators
- The position of Chief Court Administrator was abolished
- No uniformity in the role of court administrators
- Lack of cooperation between actors and organizations involved in justice system
- There needs to be a Family Court in every Parish
- Case management in the DPP's office needs to be addressed
- Need a strategy for the renewal of courthouses
- Location of courts needs to be re-examined
- Each court wants to have their own system of data reporting
- Regionalization of the Supreme Court would be helpful.
- Insufficient funding to set up Parish Mediation Centers.
- Some RM Courts are inappropriately located above police stations

- Inadequate collaboration between MOJ and MNS; no institutional framework to encourage cooperation
- A Court Users' Committee exists but it has been inactive
- Inadequate development and use of policies and guidelines

Professionalism:

- Inadequate collaboration between the public and private bar
- A code of conduct for judges is needed
- Training of court administrators is inadequate
- Inadequate human resources plan and training plan
- Lack of cooperation between actors and organizations involved in justice system
- Judicial appointment process is inadequate
- Insufficient number of Supreme Court judges
- Insufficient number of Court of Appeal judges
- Most mediators are volunteers – this is problematic. Need to be paid so that they can earn a living.
- Capacity of Justice Training Institute needs to be increased
- No initial training of judges; little skill training of judges
- Minister of Justice has no clear way of determining when additional judicial appointments are required
- Most judges are appointed from the “public bar” (DPP or AG) and there is a need for more representation from the private bar on the bench
- Inadequate training for Justices of the Peace
- There is a lack of a proper legislative framework for judges of the Magistrates' Courts
- Magistrates are required to carry out both judicial and executive functions
- Magistrates have received no computer training
- There are personal security issues for Magistrates
- Magistrates need greater authority to deal with misbehaviour by counsel
- Magistrates need constitutional security of tenure

Enforcement:

- The system for location of Crown witnesses and service of subpoenas needs to be reviewed
- The bailiff system for the enforcement of civil jurisdictions needs serious review and attention
- Fines should be increased

B. Criminal Justice Issues

Justice reform issues arising in the criminal justice sphere include:

- Spiralling increase in crime/large increase in numbers of criminal case and their relative proportion within the court dockets
- Uneven charging and investigative practices and case preparation

- Ineffective case management strategies and procedures
- Inadequate restorative justice component
- Insufficient attention paid to role and interests of victims within criminal proceedings
- Inadequate legal aid
- Uneven sentencing practices
- Inadequate witness protection programs
- Ineffective plea bargaining practices
- Ineffective use of preliminary inquiries
- Inadequate facilities for pre-trial detention
- Concerns about use of juries
- No overall restorative justice policy, although there are ongoing initiatives
- Witness protection programs difficult to administer due to lack of funding
- Inadequate witness assistance
- Inadequate victims assistance
- Bribery of jurors is a problem
- Witnesses do not show up in court
- Use of forensics needs to be improved. There is currently no way to compel suspects to give bodily samples suitable for DNA analysis. Also, need better ways to get telephone records.
- Victims have no voice in the justice system and there is no fund to compensate them
- Need case management in criminal matters
- Police investigation and case building-skills are inadequate
- Inadequate cooperation between police and DPP
- Need better ways to deal with vulnerable children who are victims or witnesses
- Restitution is not ordered as a part of sentences
- There is little communication between prosecutors and victims. It is common for prosecutors not to have even read the victims' statements.
- There is no provision in the law for victim-impact statements.
- Judges show greater respect to defence lawyers than to prosecutors
- Need for alternate techniques for the presentation of the evidence of children in court.
- Restorative justice is particularly needed in domestic cases.
- Victims should have the right to make statements at parole hearings.
- Protocols need to be established at hospitals for dealing with victims of violence.
- Something needs to be done to address the low conviction rate in cases where the police have killed individuals. Investigative capacity needs to be improved.
- Too many dangerous individuals are granted bail and go on to intimidate witnesses or to reoffend
- Preliminary Inquiries take up too much time and contribute to court delay
- Extradition proceedings are too lengthy and need to be streamlined
- The length of arguments and examination of witnesses by counsel should be restricted
- Prosecutors should be involved earlier in the criminal proceedings during the investigative stage.
- Need for DNA warrants and a DNA bank.
- Need for more non-custodial sentences for juvenile offenders.

- Inadequate supervision of Community Service Orders.
- The parole system needs to be reviewed
- There are no interview rooms in the courthouses. Clients cannot be interviewed at the prisons after 4pm.
- Gun Court should not be held in camera
- Prosecutors are responsible for the majority of adjournments
- Police officers are not diligent in getting the evidence before the courts. The quality of investigation is poor.
- Prosecutors lack the confidence to make decisions to terminate weak cases.
- There is a need for greater use of prosecutorial discretion through diversion.
- More guidelines are needed for prosecutors
- The private bar should be involved in prosecuting
- Most judges tend to favour the prosecution since most of them are former prosecutors
- There is no judicial intervention at the pre-trial stages of the criminal proceedings.
- Duty counsel do not sufficiently explore the possibility of guilty pleas by the people they represent.
- Accused persons in Gun Courts are particularly poorly represented
- Problem of adjournments caused by prosecutors not being ready for trial. This results in overbooking by defence counsel. The reason for criminal case backlogs is that it is too difficult to get a matter tried.
- Judges will not dismiss cases for want of prosecution
- Judges look upon accused persons as “low class” and are reluctant to release them from custody even when the prosecution is not ready to proceed
- Legal Aid does not cover Petty Sessions Court
- There is a need for greater consistency in sentencing. Particular attention must be given to non-custodial options for juveniles due to the detrimental effects of prison sentences.
- The conditions in prisons and police cells are very poor
- The *Domestic Violence Act* is very good but underutilized
- The use of alternate dispute resolution needs to be expanded
- Good lawyers are not interested in judicial appointments because of the low salaries
- A mobile legal aid clinic is needed
- Preliminary Inquiries are used as a “holding court” and could be replaced by effective case management
- Greater use should be made of diversion
- Juvenile Court is not being conducted with the appropriate degree of informality
- Excessive length of detention pending trial
- Police regularly fail to pick up prisoners for transport to court
- The courtroom at the Horizon Remand Center is not being used
- There should be 3 regional remand centers
- More probation officers are required
- Electronic monitoring should be introduced
- Police are not monitoring compliance with bail conditions
- Prisoners released before the expiration of their sentences are not subject to any supervision in the community

- Offenders are usually not present at parole board hearings
- There is a very low solution and conviction rate for murders. Despite the enormous murder rate (over 1500 in 2005) only approximately 50 people are sentenced to life imprisonment each year
- Intermittent sentencing needs to be expanded

C. Civil Justice Issues

Justice reform issues arising in the civil justice sphere include:

- Litigation too expensive
- Litigation too slow, too much delay
- Complexity of litigation procedures
- Unequal access, better resourced parties able to intimidate less resourced parties
- Lack of proportionality between procedure and size of claim
- Litigation processes insufficiently transparent
- Inadequate integration of alternative dispute resolution options
- Inadequate integration of case management techniques
- Almost no civil legal aid
- Areas needing attention include: use of technology, revision of the jury system, evidence, costs, and data collection.
- New rules (2003) not working properly
- Ongoing concerns over implementation of automatic referral to mediation (initiated in September 2006)
- Problems with case management system
- Case management takes too much judicial time
- Preparation of transcripts takes a very long time

II. JUSTICE SYSTEM REFORM INITIATIVES

A number of justice reform initiatives have been undertaken or are currently underway in Jamaica. These include:

- increases in number of Resident Magistrates and increase in court personnel;
- increase in legal aid available in criminal cases;
- a mobile legal aid clinic is planned and could start operations in 2007;
- Introduction of revised Civil Procedure Rules 2002 – in effect on January 1, 2003 (in Supreme Court);

The major changes are as follows:

- A. The language of the rules has been simplified and can be more easily understood by the public;
- B. The method of starting an action has also been simplified. A claim is begun by either a Fixed Date Claim Form; a Claim Form; or a Notice of Application for Court Order. It should be noted that the Claimant participates in a very real sense from the outset, as he is required to sign the Certificate of Truth, which is attached to the claim;

- C. The introduction of the Case Management Conference and the Pre-Trial Review;
 - D. The provision for Alternative Dispute Resolution/Mediation;
 - E. The use of Witness Statements at the Trial as evidence in chief;
 - F. Provisions with respect to Expert Witnesses who are stated as having a duty to the Court;
 - G. The provision for hearings to be held “at any place and time that [the Court] considers appropriate” This provision allows for hearings to be conducted by means of a telephone conference, video conference or other form of electronic communication; and
 - H. The provision of Wasted Cost Orders.
- Review of rules for Resident Magistrates’ Court (ongoing);
 - Introduction of computerized case management (completed in Supreme Court; ongoing in Resident Magistrates’ Court);
 - Introduction of automatic referrals to mediation in Supreme Court civil cases;
 - Court Specialization both in civil (Commercial Court, Revenue Court, Family Court) and criminal areas (i.e. Gun Court and Drug Court);
 - MOJ has started to publish Annual Reports (since 2002);
 - Establishment and operation of Night Court (since 1995);
 - Establishment and operation of the Judicial Training Institute since 1997 (including computer training);
 - Establishment of a successful clerkship program funded by private law firms;
 - Establishment of the Consultative Committee of the Bench and Bar (A sub-committee of the Jamaican Bar Association);
 - Establishment of Dispute Resolution Foundation – has assisted in the training of 240 mediators through the Social Conflict Legal Reform Project (see below);
 - Increase in court report training/court reporting technology;
 - Investment in renovations of court buildings, building of one new courthouse (10 year building plan is ongoing) - Construction of new buildings to increase number of family courts and the creation of two more regional gun courts;
 - Proposal to introduce case management in criminal cases;
 - Re-engineering and automation of the Office of the DPP;
 - Regionalisation of prosecution services to strengthen and guide the investigative capacity of the Jamaica Constabulary Force;
 - Phased introduction of court reporters in the Resident Magistrates’ Courts (based on the successful completion of the training programme);
 - Move to continuous sitting of the circuit courts;
 - Initiatives to strengthen and upgrade the court management function;
 - Introduction of evidence by TV link to deal with vulnerable witnesses;
 - Introduction of Plea Negotiation Act (awaiting regulations before coming into force);
 - Ongoing consultations on the Victims’ Charter);
 - Initiation of a juvenile justice initiative;
 - Some restorative justice initiatives; and,
 - Drug Court is seen as highly successful.

Overview of recent and ongoing justice initiatives funded by international donors:

- ***USAID Democracy and Governance Project (2001-2006?)***: (1) strengthening civil society and (2) establishing computerized integrated management information systems.
- ***CDB – Strengthening of the Financial Sector: Adjustment Component (2000-2003)*** – emphasis on judicial training; equipping the Judicial Training Institute to do ongoing training and upgrade the library.
- ***CIDA/Social Conflict and Legal Reform (SCLR) (2002-2004?)*** – implement conflict resolution programs in conjunction with the Dispute Resolution Foundation (DRF) and Peace and Love in Schools (PALS); training of trainers, teachers and mediators; establish Peace and Justice Centres in some pilot communities; and working with the Ministry of Justice, the Chief Justice, the Judges and staff of the Supreme Court and Family Court to improve specific aspects of the Jamaican legal system. Some 240 mediators have been trained to date.
- ***IDB/Citizens Security and Justice Programme (CSJP) (2001-??)*** – Purpose to enhance citizen security and justice. The objectives of this project are to: (1) prevent and reduce violence; (2) strengthen crime management capabilities and (3) improve the delivery of judicial services. The major components of the program designed to achieve its objectives were: (a) the development of national strategy; (b) capacity building of the ministry of national security and the ministry of justice; (c) strengthening of the criminal justice system community actions; (d) a social marketing and public education program. This programme included increased court automation and training of judges and court personnel and funding for infrastructure.
- ***Justice System Computerization Project*** started in January 1999. The main components of the project are: (1) computerized case management; (2) document management/imaging; (3) office automation; (4) Internet access; and (5) electronic case filing. The scope of the project covers not only the Supreme Court but will extend to the Resident Magistrates' Courts including the Traffic Courts, Family Courts, Coroners Court, Dispute Resolution Foundation and the Court of Appeal. Also publishing laws of Jamaica on the Internet for free access (Office of the Chief Parliamentary Counsel).

III. SUMMARY OF JUSTICE SYSTEM STUDIES, REVIEWS AND REPORTS

A. Overview

This section contains a summary of existing studies, reviews and reports on the Jamaican justice system. The following 16 reports have been reviewed to date:

- Final Report of the sub-committee of the Consultative Committee of the Bench and Bar on the Criminal Justice System (1986);
- Jamaican Court Efficiency Study – USAID/GOJ (1992);
- Report of the Review Team Appointed by the Cabinet of the Republic of Trinidad and Tobago (1992);
- Report of the National Task Force on Crime (Chaired by Hon Mr. Justice Wolfe, 1993)
- Crime-Fighting Strategies of the Ministry of National Security and Justice. 1989 Forward (1996);

- KPMG Report – Ministry of National Security and Justice: Judiciary. Strategic Performance Review (December 18, 1998);
- KPMG Report – Ministry of National Security and Justice: Central Directorates. Strategic Performance Review (December 17, 1998);
- Sentencing Variations Study by Donna Moncrieffe MNSJ Criminal Justice Research Unit (October 1999);
- The Police Executive Research Forum (Washington DC). Violent Crime and Murder Reduction in Kingston. Final Report January 2001;
- Crime Peace and Justice in Jamaica – A Transformative Approach. Dr. Barry Chevannes – facilitated by The Faculty of Social Sciences University of the West Indies Mona Campus (2001);
- A Correctional Needs Assessment for Jamaica- Final report. Prepared for the Ministry of National Security by Technical Assistance Team Correctional Service of Canada (date?);
- Jamaican Bar Association – Submissions on Justice System Reform (2000-2006);
- A Report on the Safekeeping of Court Records in the Resident Magistrates’ Courts of Jamaica (Judicial Development International Inc., Donald Rose, February 3, 2005);
- Jamaican Court Administrators’ Training Course – June 6-10,2005 – Participation Evaluation Results and Next Steps (Judicial Development International, October 1, 2005);
- National Security Strategy for Jamaica. Towards a Secure and Prosperous Nation – A Green Paper (2006); and,
- (Draft) Justice Strategic Plan: (Draft Final Report of Jamaica (Criminal) Justice System Diagnostic and Strategic Planning Study. The Citizen Security and Justice Program. (Justice Development International Ltd., Robert Hahn et al. October 5, 2006).

This list of reports may not be complete. Efforts will be made to locate copies of other reports and add them to this summary.

The report summaries are set out in chronological order following the above list. Each summary contains (a) a brief description of the objectives and methodology of the study; (b) an overview of the issues and problems identified; and (c) a list of the recommendations contained in the report. Only the portions of report that address issues within the mandate of the JJSR are set out here. For example, where a report covers issues such as policing or corrections, only those recommendations directly related to court processes as described in the JJSR’s terms of reference are covered here.

This report does not undertake an assessment of the status of implementation of any of the reports. In the case of the 1993 Wolfe Report, a status report was published and the contents of that implementation report are included in the summary. In some cases, it will be obvious that a recommendation has or has not been implemented. These summaries are a first step in the reform process. It is anticipated that during the course of further research and consultations the utility and practicality of recommendations that have been proposed in the past will be fully considered.

B. Final Report of the sub-committee of the Consultative Committee of the Bench and Bar on the Criminal Justice System 1986

A sub-committee of the Consultative Committee of the Bench and Bar was established in October 1985 in order “enquire into and identify problems and to make recommendations for the improvement of the practical administration of the criminal justice system”. In its 1986 Report, the Sub-Committee made a number of findings and recommendations with respect to the (a) appeals; (b) trials and (c) RM courts. The Report focuses on the “general slothfulness” of the criminal justice system.

With respect to **appeals**, the Report found that:

- There were no significant delays in the hearing of appeals once the record of appeals was in the hand of the Registrar;
- The delay occurs due to tardy preparation of the Record and in the case of Resident Magistrates’ of tardy typing; and
- There was a serious breakdown of Appeals from the RM court.

The recommendations made with respect to appeals were that:

- The typists in RM courts be upgraded;
- The Clerk of the court be required to notify the Registrar of the Court of Appeal when an Appeal was filed; and
- As far as the Circuit Court was concerned the problem was preparation of transcripts due to shortage of staff. The employment of modern computerised transcribing systems and increased staff was recommended

With respect to **trials**, the Report found that the problem of delay was caused by:

- Non-appearance of crown witnesses;
- Conduct of defence attorneys;
- Judicial conduct;
- Failure to assign legal aid; and
- In the case of the Gun Court inexperienced Crown counsel being assigned.

The solutions proposed with respect to trials were that:

- The Commissioner of Police appoint a senior police officer as a liaison to the DPP’s office who would coordinate the process and ensure the services of witnesses perhaps with the use of a radio-base at the DPP’s office;
- Recommendations be made to the General Legal Council regarding the conduct expected of Counsel and their duty to their client and the court;
- As regards trials in the Circuit Court counsel should arrange for trials with the Director’s office from the moment they were retained;
- With respect to the conduct of judges it was felt that judges granted adjournments too readily;
- Judicial appointments should be based on quality, merit and experience;
- Judicial emoluments and conditions of service should be carefully considered;

- Steps should also be taken to improve punctuality for all concerned;
- The legal aid system be examined with a view to increasing the fees offered;
- As regards the conduct of prosecuting counsel, it was suggested that more senior counsel be assigned to the Gun Court so that there can be proper vetting;
- Crown counsel be assigned for a period of six weeks rather than a three week period; and
- One of the three courts in Home Circuit be provided to hear current cases, that is, cases committed to the ensuing circuit and the others be used for cases which can be traversed.

The Report contains these recommendations with respect to the **RM Court**:

- The MOJ ought not to be responsible for organising and administering the RM court and that the Chief Justice be given this responsibility;
- Court administrators be appointed;
- The prosecuting staff in the RM Court be attached to the department of the Director of Public Prosecutions;
- Kingston and St. Andrew be made one jurisdiction, that is, the Metropolitan Resident Magistrates' Court;
- In the case of St. Catherine parish, it was recommended that an out station be created in Portmore;
- Preliminary enquiries be abolished and that provisions similar to the UK 1967 Criminal Justice Act be used; and,
- With respect to the Coroner's Court, it was suggested that a centralised Metropolitan Court be created and staffed by retired RMs.

C. Jamaican Court Efficiency Study – USAID/GOJ (1992)

The 1992 Jamaican Court Efficiency Study was not available for review. The following summary is based on a summary prepared by David Batts for the Jamaican Bar Association in 1995.

This study referred to and adopted many of the recommendations set forth in the Bench and Bar report of 1986. The following were the most noteworthy problems identified:

With respect to the **Management Role of Resident Magistrates**, the Study:

- Discussed the effect of Magistrates not being resident in their parish, their late arrival to court and the consequent reduced time available due to commuting to attend administrative and judicial work;
- Highlighted the lack of trained clerks to assist magistrates
- Recommended that court administrators be appointed and that Senior Resident Magistrates should remain ultimately responsible for all judicial and administrative matters;
- Recommended that the Senior Magistrate should oversee all case flow management and distribution of cases; and,
- Recommended that training programmes for magistrates should be introduced.

With respect to **Personnel**, the Study recommended that:

- Graduates from the Norman Manley Law School be required to serve the public for 18 months; and
- Office procedures should be set forth in an operational comprehensive manual.

With respect to **Records**, the Study recommended that:

- The heavy reliance on various books and files would be relieved if a proper card system was implemented for the RM court so that the progress of a case could be traced without reference to the original file or book which the magistrate has in court; and
- A colour code be used for the filing system in the Supreme Court.

With respect to **Noise**, the Study noted the problem of noise in and outside of the RM court but it was not practical to enclose and air condition all Magistrates' Courts.

With respect to **Reporting**, the Study identified the problem of court reporting and late arrival of staff as applicable to both the Supreme Court and RM Court. It recommended that:

- An efficient transcript production process be implemented and that steps be taken to have staff attend on time;
- Trial time should be started earlier in the Supreme Court;
- As far as the Supreme Court was concerned, it was recommended that one reporter sit for the day to transcribe a matter rather than the current practice of two for each case;
- The implementation of the CAT systems was accepted as having been successful and that the bottle-neck should gradually decline;
- A permanently assigned reproduction technician and a photo-copier capable of high volume be introduced;
- There should be firm deadlines for the production of transcripts by the court reporters;
- As far as the RM Court was concerned the suggestion was that firm deadlines be introduced and that electric typewriters be supplied to the typists;
- Alternative methods of audio or video recording were not considered feasible because most Jamaican courts are not enclosed and there was too much ambient noise; and,
- Daily transcript production was an achievable goal.

With respect to **Trials**, the Study considered delay in disposition of cases at all levels and considered data in the RM court in various parishes. It was felt that the causes related to:

- Absent witnesses;
- Attorney scheduling conflicts;
- The backlog of cases;
- The fact that when the Circuit Court sits, the RM has no facility to continue business as usual; and,
- The increase in the criminal case load reduces the work done by the civil court.

The solutions proposed were that:

- The method of quarterly return could be revised to provide more information to the Chief Justice;
- First trial dates should be set and the calendar set for one day reduced;
- Pre trial settlement conferences before the magistrate should be considered;
- A system to allow for setting dates without appearances in court between 8:30 am and 10:00 am could be introduced;
- Witnesses should only be subpoenaed for a trial date which is certain;
- Adjournments be granted upon a written application;
- As far as the Circuit Court was concerned, statistical data was reviewed and it was suggested that a time standard should be introduced, circuit terms be lengthened, and a strict adjournment policy be introduced; and
- In the Supreme Civil Court a study should be done to consider whether the setting down practice is making optimal use of judicial resources.

With respect to **Facilities**, the Study found that there were inadequate court facilities and inadequate equipment. A detailed look was taken at the conditions in the various court houses and recommendations were made as to public address systems, typewriters, photocopy machines, ventilation, lighting and temperature control, facsimile machines and noise reduction.

D. Report of the Review Team Appointed by the Cabinet of the Republic of Trinidad and Tobago (1992)

The Report of the Review Team Appointed by the Cabinet of the Republic of Trinidad and Tobago (1992) was not available for review. Many of the problems identified in the Trinidad and Tobago study are considered to be applicable to Jamaica. It is included here because it has been discussed during Jamaican reform projects. The following summary was prepared by David Batts for the Jamaican Bar Association in 1995:

Their **Supreme Court** has problems with staffing, case flow, transportation of prisoners and general infrastructure. Their recommendations were:

- a) Introduction of computerisation to increase case flow.
- b) Introduction of trained law clerks for judges.
- c) That non-contested divorces be done in Chambers by the Registrar with no need for judicial pronouncement.
- d) That rate of interest on judgements be increased so that the debtor has less reason to delay proceedings.
- e) The Plaintiff be given the right to serve the insurance companies at the inception of the action under the motor vehicle insurance *Third Party Risks Act*.
- f) A review of the rules of the Supreme Court be done and that the pre-trial procedure in the Supreme Court be reviewed with specific reference to the Summons for Directions.
- g) That the mode of assigning Chamber matters be changed and a short list introduced for matters to be adjourned or dealt with by consent.
- h) That the system of taxation of costs be reviewed.

- i) That the Summons to proceed to assessment be abolished and the date for assessment of damages be assigned at the same time the judgment in default is entered.
- j) That a court community relations educational unit be introduced.

As far as the **Magistrates' Court** is concerned they recommended:

- Computerization;
- An increase in the number of magistrates and the number of vehicles available to transport prisoners;
- Training the magistrate's staff;
- Elimination of some out stations;
- The provision of chauffeurs for the magistrate;
- Introduction of an expeditious committal system;
- Increase in the Petty court jurisdiction; and
- The establishment of a small claims court.

E. Report of the National Task Force on Crime (Chaired by Hon Mr. Justice Wolfe, 1993)

The National Task Force on Crime, Chaired by the Honourable Mr. Justice Wolfe reported in 1993. It carried out extensive consultations including: holding public meetings in every parish; inviting submissions; carrying out interviews; and, visiting correctional facilities. The forums held in rural areas were well attended, but the one in Kingston was not. The Task Force reported that it met with some negativity because nothing had been done to implement earlier Task Force recommendations.

The Wolfe Report concluded that there was no serious ongoing plan to address crime – that when there are upsurges in crime a task force is set but nothing comes out of it. One of the overall recommendations was that a national advisory council on crime and the criminal justice system ought to be established on a permanent basis so that the process of transformation can be ongoing.

The Wolfe Report recognized that crime control is more about people than the system and that criminal justice system reform does not solve problem of crime. Crime prevention involves moving toward a just society and increasing opportunities for self-actualization through transforming educational structures and social structures.

The following summary draws out the main findings and recommendations most relevant to justice system reform. They are set out under the Task Force's specific terms of reference (TOR).

TOR#2: Recommend measures likely to result in a substantial reduction of crime in the short and medium term and ensure its continued abatement in the long term

- Publicly denounce, castigate and penalize politicians and other power holders in industry and commerce who engage the services of known criminals to terrorize opponents, rivals and witnesses to their corrupt and illegal activities; and who attempt to subvert the administration of justice; and,
- Develop community organizations with training in dispute resolution and with opportunity to participate in policy formulation regarding criminality at the community level.

TOR#9: Examine the penal system and propose such changes and improvements as appear necessary

- Recommends Bail Act including making specific recommendations with respect to process;
- Bail should not be used as a form of punishment for accused persons;
- Bail reviews should be held every 8 days; and,
- Also makes recommendations regarding sentencing.

TOR#10: Examine the legislative and judicial framework so as to avoid undue delay in the trial and appellate processes and provide the requisite support in the maintenance of law and order consistent with the principles of justice

- Any effective control of crime in society requires an efficient justice system. This is so because offenders must feel that in the adjudication of their cases, fair play is assured. Failure to guarantee a just system will ultimately result in more crime as people take law into their hands and execute what in their perception is justice;
- The effect of delay on the justice system has been devastating;
- Many serious criminal cases are often concluded without a word of evidence being breathed in court in support of the allegations. Inordinate delay results in witnesses losing interest and ultimately not being available to give evidence when required to do so. Practitioners are not unaware of this situation and often exploit it by way of adjournment.
- Long delays also provide greater opportunities for dishonest persons to suborn witnesses by way of threats to scare them off from giving evidence;
- Very often, accused persons are remanded in custody, in cases of serious crimes to await trial only to be adjudged innocent after period of long delay. This in itself is injustice; and,
- Causes of delay include:
 - an overburdened justice system
 - unavailability of witnesses
 - unavailability of counsel to represent persons under the Poor Prisoners' Defence Act (due to small remuneration and difficulty in receiving payment)
 - lack of support services (courts reporters, qualified clerks of courts, crown counsels)
 - appeals – difficulties in obtaining transcripts – up to one year.

The Wolfe Report made the following recommendations:

- Jurisdiction of RM courts should be reviewed and they should be relieved of responsibility for adjudicating simple offences which could otherwise be disposed of;
- Increase the number of RMs;
- A bill should be introduced to abolish preliminary examinations as soon as possible;
- Committal to current session of circuit court where possible (where witnesses threatened or likely to leave jurisdiction);
- Quality of staff should be improved through training;
- Circuit Court in St-Catherine, Clarendon and St. James should sit on a continuous basis as in the home circuit due to heavy workload;
- Further reduction of number of offences triable by jury (e.g.: wounding with intent, motor manslaughter, causing death by dangerous driving, dangerous driving – in fact all offences except murder and treason should be triable without jury);
- Public bar is unable to attract counsel into its ranks due to low salary – all persons educated out of public funds at Norman Manley Law School should be required to serve a period of two years at the public bar before becoming eligible for a practising certificate;
- Fees for legal aid significantly increased;
- Mass recruitment of personnel to be court reporters
- Repeal Suppression of Crime Act;
- Abolish the hearsay rule and permit the trial judge to exclude only such evidence as in unjustly prejudicial;
- Abolish the rule which requires corroboration in sexual offences and in further protection of women and girls cross examination should not be allowed about sexual relationship with any person other than the accused;
- A special team of policemen trained in intelligence should be attached to the DPP office to ferret out and serve witnesses;
- A proper witness protection programme should be put into place to instil confidence in witnesses who fear for their safety;
- Trial judges should be less generous in granting adjournments and should be more diligent in ensuring that time wasting tactics are not employed to unnecessarily lengthen the trial of cases;
- A national law reform commission should be established on a permanent basis charge with the responsibility of constantly updating the laws of the country and removing from the statute books laws which are anachronistic and introduce laws relevant to the 21st century;
- Special training courses should be implemented for justices of the peace with a view to preparing them to take on increased jurisdiction, as well as enable them to discharge their present functions with efficiency. Such courses could be designed by a committee of judges of the CA and SC to be named by the CJ. Lecturers could be drawn from RM Assoc and DPP;
- All interrogations in police stations as well as the recording of caution statements should be video taped (very often there is a fierce contest as to the admissibility of caution statements and this could shorten trials);

- Great hardships are experienced by jurors and witnesses who attend court – allowance should be significantly increased and paid promptly. Cost of transportation and food is prohibitive for most jurors and witnesses in rural parishes;
- A person who has been kept in custody for an inordinately long period of time and who is acquitted should be entitled to some form of compensation if it is shown that the prosecution has been dilatory in disposing of the case – this would bring about expedition in the hearing of criminal cases;
- Time for appealing from CA to JCPC should be fixed by law (and consider abolishing PC);
- Separate MOJ and MNS. There is a widespread opinion that the two portfolios are strange bedfellows. People cannot accept that the same minister who must ensure that the police rigorously perform their duties can at the same time adequately protect the rights of the citizen.

The Wolfe Report included a proposed implementation plan detailing issues such as the establishment of a Cabinet sub-committee, resources, and setting out a short time frame. A report of the State of Implementation of Recommendations (the Wolfe Report) was published in September 2001.

The status report notes:

- That the witness protection plan had been reorganized and steps were being taken to move toward legislation;
- Abolish rules regarding corroboration in sexual offences – offences against the person amendments had been drafted, but not yet passed;
- Law reform commission – it was decided not to proceed with this recommendations, however there had been a small increase in resources for the existing law reform agency;
- The review of the jurisdiction of RM courts has been completed and justices of the peace now had wider jurisdiction; Small Claims Court was established; Night Court was established; monetary jurisdiction of RM Court increased to avoid long wait in Supreme Court;
- The number of RMs had been increased from 40 to 54;
- A bill to abolish preliminary examinations had been presented, but there was too much opposition to proceed;
- The power to commit to current sitting of Circuit Court in certain cases had been done; and
- With respect to the recommendation for a continuous sitting of circuit courts in St. Catherine, Clarendon and St. James it was reported that “The calendar of cases in the Circuit Courts for the aforementioned parishes have been dramatically reduced”.

F. Crime-Fighting Strategies of the Ministry of National Security and Justice. 1989 Forward (1996)

This Government report provides a brief overview of justice-related strategies and actions. It reported on the activities under the Sustainable Justice Reform Project funded jointly by Government of Jamaica and USAID which focussed primarily on improvement in 12 areas

including: training, statistical and record-keeping services and major civil works developments. More specifically it reported that:

- There was a focus on legal aid reform including the establishment of the Legal Aid Council in 1995;
- Court administrators had been hired and trained to improve the backlog of existing case. They also help to: establish and manage a sophisticated computerised system that will put an effective data base for the Courts in place; accelerate the movement of documents into and out of the court offices; assist in making the overall record-keeping more satisfactory;
- All RM courts will have a new system of record keeping – new rules and forms; “The system of record keeping in the courts is revolutionary and will improve the efficiency of the system for litigants, practitioners and workers”;
- The statistical unit has been established, a court statistician in place, trained and “accurate information on criminal and civil cases is now being provided”;
- A computerized fixed asset tracking system is being established with emphasis on the justice segment of the Ministry;
- The accounting system had being computerized;
- The court reporters unit has been upgraded and physical facilities refurbished;
- Training was being given a high priority ;
- A procedural manual was being developed to cover the following topics: bail, jury service, functions of jps available at police stations, court offices, justices of the peace etc...;
- Training of attorneys was being undertaken;
- The law reporting service was being restarted;
- A jurisprudential database (cases, laws and so on) was being developed and there was a proposal for all courts to have access to this database;
- Civil works – “The model courthouse at Half-Way-Tree has been fully refurbished re-organized and is to be computerized”;
- Courthouses had been remodelled and refurbished and in some cases air conditioned;
- A new court house was built in Port Marin (1995) and another was being built in Spanish Town;
- Police stations were being refurbished; and
- 59 major administrative logjams have been identified by the Justice Coordinating Committee. A sub-committee has been established to eliminate these logjams. The proposed solutions include: (a) extended circuit sittings, (b) fixed trial dates for SC, (c) granting of adjournments restricted, (d) incomplete cases re-assigned, (e) police and DPP to deal with non-appearance of crown witnesses; (f) bench and bar committees to deal with conduct of defence attorneys, (g) procedural matters improved, (h) capital murders alone require full transcripts; (i) judges’ summing up used for appeal purposes including Gun Court cases; “a, b, e, f, g, h, i, have already been implemented.”

G. KPMG Report – Ministry of National Security and Justice: Judiciary. Strategic Performance Review (December 18, 1998)

KPMG was commissioned to undertake a strategic performance review of the Ministry of National Security and Justice. It issued two reports: (1) on the judiciary; and (2) on other aspects of the Ministry's mandate and operations (see below). The consultants worked closely with the Chief Justice, senior judges and managers in conducting the review. A number of high level workshops were held, detailed questionnaires were completed and a program of interviews and discussions with the heads of the Judiciary's various units was undertaken. The Review takes a "high level view." It is not a detailed review of organisation or staffing; nor does it examine in detail the efficiency and effectiveness of systems and procedures.

The Review sets out the judiciary's mission statement: "Timely delivery of a high standard of justice for all."

The Review sets out the following strategic objectives:

- To hear, consider and judge cases, in order to dispose of them quickly and fairly in accordance with the laws;
- To ensure that the provisions of the Constitution and precedent established by case law are followed by the courts;
- To promote modalities for out-of-court dispute resolution mechanisms, so that cases can be fairly disposed of by the parties in a dispute without recourse to the courts; and
- To improve the efficiency of operations, deliver core services to agreed performance standards and generate additional revenues through value added services.

The Review identified a number of redundant activities by comparing the activities that the judiciary currently performs with the core activities that it must perform in order to produce its outputs. It concluded that the following were redundant:

- Carrying out preliminary inquiries in the RM courts;
- Providing personal servants (orderlies) for judges and RMs; and
- Providing assistance and attendants to fetch and carry for staff.

The Review also looked at activities which must be performed, but which could be better performed by others. These are the functions that the Judiciary should devolve:

- Collecting and disbursing monies for the maintenance of children covered by Court orders;
- Courthouse security;
- Courthouse maintenance;
- Courthouse cleaning; and
- Printing standard forms and documents.

The Review contains a Chart setting out indicators, current performance and proposed targets. Of particular note, the Review found that:

- The average sitting hours per day was 2.5 and suggested a target of 5 hours per day;
- The average daily courtroom utilisation in hours was 1.5 and the suggested target was 5 hours per day;

- The average length of case in days from filing to disposal was 90 days and recommended that the target should be 60 days;
- The percentage of cases disposed of against total cases filed was 55% and the target should be 95%;
- The percentage of cases not disposed six months from filing was 25% and the target should be 5%);
- The percentage of customer satisfaction was about 45% and the target should be 70%;
- The cost per case disposed of was J\$ 1,700 and the target should be J\$ 1,400; and,
- The average number of days an accused person was held on remand was 120 days and the target should be 60 days.

The Review concluded that the proposed target levels for performance could be achieved by 2001/2002 (i.e. in three to four years) if the recommendations implemented.

The Review found that the main constraints to performance improvements were:

- **Management and staffing:**
 - Most cases are delayed by frequent adjournments because courts make poor listing decisions and fail to manage properly the case flow process;
 - Nearly all staff work about 20% less than the hours they are paid for and many of the junior staff in the courts are temporary and unqualified;
 - Many cases may be more appropriate for ADR but these faster and cheaper facilities are not yet fully developed; and
 - Preliminary examinations of more serious charges in the RM courts delay the process of getting cases to the High Court. The High Court visits every parish on a circuit, only sitting about 18 weeks each year. This means that accused persons, often on remand, have to wait some time from one circuit to the next.
- **Systems and Processes:**
 - Systems are mostly manual and management information systems are almost non-existent. Magistrates and judges make hand written notes in court, which delays proceedings.
- **Finance:**
 - Fines are too low to offer a sufficient deterrent and RMs tend to impose custodial sentences rather than insignificant fines;
 - Fees for civil complaints, including the rate for judicial stamps are very low. Fee income is insignificant compared to the costs of providing the civil adjudicating service;
 - The judiciary is not involved in corporate planning, controls none of its administrative staff and finds that its business needs are not well met by MNSJ's financial support functions;
 - Courts have insufficient financial resources to cover the costs of minor repairs to buildings or equipment; and
 - MNSJ has insufficient funds to quickly reimburse witness and juror expenses.

- **Physical facilities:**
 - RMs courts each have a number of outstations which are poorly utilised.

Some of the other interesting findings contained in the KPMG Report include:

Preliminary Enquiries:

“Preliminary enquiry is held where the RM and the Clerk of the Court believe that the case should be tried at the High Court but need to be satisfied that this is so. The preliminary enquiry is a mini trial, in that it requires all parties to the case to attend the hearing, including all witnesses. It is therefore as expensive and time consuming as a trial and subject to the same problems of delay and multiple adjournment. It can also lead to issues that interfere with the subsequent trial of the case in the High Court. For example, attorneys may challenge High Court witnesses where the presentation of evidence differs, however slightly and whether it is material or not, from that given at the preliminary enquiry. Defence attorneys are also aware that the preliminary enquiry lengthens the judicial process. Witness recollections, and sometimes the level of willingness to testify, can fade rapidly with time.

There is still a need to establish a prima facie case for committal to the High Court, but this could be achieved more quickly by a shorter hearing, which the accused and his or her lawyer would attend, but where other evidence would be adjudged on the basis of witness statements and other written evidence.” (at pp. 19-20)

Appropriate listing decisions:

“Most court listings include more than double the number of cases that are actually heard as planned. An appropriate listing decision should be one where there is a strong likelihood that a case will be heard as planned. The effectiveness of listing decisions can therefore be indicated by the percentage of cases that go ahead as planned on the due date.” (p.25)

Reasons for cases not going forward include last minute or court room request for adjournment by either defence attorneys or police “The courts should be able to improve court management to the point that last minute courtroom requests for adjournments are only made and granted when essential to the delivery and administration of justice. The judiciary should therefore monitor the average number of hearings per case as an indicator of how effectively it manages defence attorneys and police officers. Courts should be aiming to double their current level of effectiveness to meet best practice standards of three hearings per case on average.”

The Report noted the problem that witnesses are often not properly identified and therefore cannot be served.

The judiciary needs to know the effectiveness of the serving process so that it can take management action to correct the performance of police officers and others in serving and bringing back returns of summonses for witnesses and notices for jurors.

Most RMs and judges together with their clerks or registrars list more cases for each day in court than they know can be dealt with. They do this because they also know that there will be a significant number of requests for adjournment and that if they do not list more cases, then the court would be under utilised. We were told that the defence attorneys were the principal source of requests for adjournments in indictable cases before the RMs Court and High Court. In our meeting with the Bar Association, the problem was acknowledged, but attorneys are reluctant to accept the blame for a practice that is now being generally applied by RMs and judges. Secondary reasons given were the non-attendance of witnesses and jurors. The police were held accountable for most adjournments in summary cases in the RMs courts.

The problem has all the hallmarks of the “chicken and the egg”; it is not easy to see how it started, although there is plenty of anecdotal evidence that many attorneys request adjournments because their clients have not paid them. However, to improve the listing decisions, over-listing and the all too easy granting of adjournments must stop. The courts are at the centre of the judicial process and in the best position to influence both attorneys and police officers to attend Court at the right time. Warrants can be issued for police officers who do not attend. The Bar Association can discipline its members if judges and magistrates complain about certain individuals continually breaking their commitments to the courts.

Court Satisfaction:

A previous study of court facilities¹ found that the major causes of customer dissatisfaction were:

- Witness summons not issued on time;
- Judge or RM late or absent
- Four to six appearances required per case;
- Attorneys late or absent;
- Attorneys not briefed and request adjournment;
- Court personnel arrive late; and,
- Courts sit too infrequently.

In the KPMG review, a number of court users were polled and the Review estimated that current levels of satisfaction are about 50%, with timeliness being the major cause of customer dissatisfaction.

Witness and juror expenses are rarely paid.

¹ Draft Final Report of a Study on Rationalisation of Jamaican Court Houses – Trevor Hamilton and Associates, Jan. 23, 1992.

Miscellaneous:

Interestingly, the recent almost doubling of the number of RMs and clerks of court has not been reflected in a commensurate increase in the number of cases disposed of, which has increased by about 30% over last year.

One of the key issues identified is the time prisoners spend on remand before their cases are tried and disposed of – this is costly to the system.

In many summary criminal cases the defendants are unrepresented because they cannot afford an attorney, nor can they access legal aid. These defendants tend to offer unsubstantiated not guilty pleas when in fact they are often guilty but with mitigating circumstances to take into account. This often leads to a guilty verdict with a stiffer sentence, often custodial. The cost of legal aid for representation in these cases may be less than the cost of incarceration. We understand that the new Legal Aid Act will shortly provide the right for defendants in summary cases before RMs to be legally represented.

In 1998-99, there was a substantial increase of legal officers in relation to other grades in the public service (about a 50% increase). However, court administrators work at level of clerk of the court but are paid same or less than deputy clerks. There is a need to review salary and conditions of court administrators.

There are also issues regarding the discipline of staff as such situations are handled poorly. More attention should be paid to training and the development of human resources policy.

The KPMG Review made the following main recommendations for performance improvement:

Management and staffing:

- Staff should work their normal contractual hours – this would increase productivity by about 20%.
- Court working hours should be extended by two hours each day to increase potential sitting times by 50%.
- Judges and RMs should take the lead in making better listing decisions. They should better manage their courts and administrative staff so that documents are properly served and that attorneys, police, witnesses and jurors attend for Court as required. Greater use should be made of ADR options such as mediation. Preliminary examinations should be replaced with a simpler procedure for committal to the High Court.
- Performance management in the courts should be monitored and supported by a new executive arm of the judiciary under the new post of Inspector of Courts. Temporary staff should be retrenched when necessary productivity improvements have been secured from permanent staff working their proper hours.
- Night security, cleaning and maintenance should be contracted and the staff currently employed on these duties should be retrenched. Court orderlies, office attendants and assistants should also be retrenched and remaining staff should work more flexibly to absorb these minor duties.

- The High Court circuit should be rationalised into a small number of permanent regional High Courts to provide a faster hearing of the more serious cases. This would help to reduce remand times. Witness attendance levels may improve and testimony may become more reliable by providing a faster trial date. The permanent Courts would also cut down on the travel and subsistence costs of judges, prosecutors and court reporters.

Systems and Processes:

- A review should be instituted to identify how systems and procedures could best be changed to assure better service delivery to customers and better value for money to Government. This project should envisage the use of computerised technologies to support the new systems and procedures.
- The Judiciary should be included in the Government's executive agency programme under the Public Sector Modernisation Project. This would allow it greater control over finance and human resources management in order to adapt its processes, systems, staffing and organisation to meet required levels of performance. It may also allow it to access Government and donor funds for the equipment required for successful modernisation.

Finance:

- We recommend that the levels of fines and fees should be substantially increased. Also that the judiciary may retain, initially as appropriation in aid and later as part of the executive agency governance arrangements, funds from these receipts to maintain their buildings and equipment and to defray the costs of witnesses and juror expenses and any other day to day running expenses of the courts.
- Responsibility for collecting and disbursing maintenance payments should be transferred to Tax Offices.

Physical facilities:

- A number of the RMs court outstations should be closed.

The KPMG Review made a number of other recommendations including:

- More cases should go to ADR, especially mediation and the court should monitor effectiveness of this action by monitoring the percentage of cases that are sent for ADR;
- Ways should be found to measure/monitor judicial decisions (beyond appeal mechanisms), the consistency of judicial performance and identifying and meeting communications and training needs: "Judges and RMs could be regularly assessed using a balanced scorecard of qualitative and quantitative indicators by a central unit of the Judiciary. This would involve the development of a weighted competence framework for judges and magistrates against which individually demonstrated competencies could be assessed. A high level of performance will be required against this indicator."
- The judiciary should also monitor the percentage of times that a non-custodial sentence is given when that sentence is an option for the judge or RM: "We would expect the

judiciary to maintain a near 100% level of performance against this indicator. But first it will be essential that the sentencing policy developed by the judiciary is clear, communicated and understood by RMs and judges. Second, it will be important that the judiciary monitors and evaluates the implementation of those policies. However, many offenders are given custodial sentences where the level of fines available is not considered a sufficient deterrent or punishment. Increasing the level of fines, a responsibility of MNSJ, will be key for this performance target to be met.”

- The judiciary should measure overall efficiency by measuring the average hourly cost of running the court.
- The level of fines and fees should be raised to realistic levels and to continue to monitor and revise them as part of the annual business planning cycle of the judiciary. The judiciary should set revenue targets in order to regularly take the necessary actions to review fines and fees and get the agreement of MNSJ to take action to make the necessary legislative changes in time.
- The judiciary should measure the overall effectiveness by monitoring the average time taken for a case to be disposed of. The judiciary should also monitor the extent to which a case flow backlog exists by measuring cases disposed of in a period against cases filed and the percentage of cases still not disposed of after six months from filing.
- Effectiveness can also be measured by an index of customer satisfaction. This index could be derived from a survey that takes a weighted average of stakeholder comments about court accessibility, condition and case management performance.
- To address the expeditious treatment of cases where the accused is held on remand (a key priority) they proposed the average number of days spent on remand pending the outcome of cases be monitored. Time spent in police custody before charges are laid before the court would not be included. It was expected that the police would be monitoring and measuring this indicator.
- The RMs and judges take the initiative in managing the lists and take a harder line with attorneys and police officers who do not comply with the instructions of the court. This may also require an information campaign to signal the change. It will also require RMs and judges to allocate more time to discussing and allocating listing dates and times for cases. Still some allowance for over-listing
- Magistrates and judges, together with clerks and registrars should agree on the anticipated court time for each case. This should include a consideration of the plea, the number of witnesses to be called and the evidence that they are to give and the time that is to be allowed for testimony and cross-examination.
- Better listing decisions will not in themselves improve case flow. It will also require greater efforts from clerks and administrative staff within the courts to improve performance in identifying parties and serving summonses.
- There is a need to hire more qualified staff at the level of assistant clerk – basic qualifications or competencies required for civil service entry and training from JTI - Even where staff is competent, they often lack legal training and understanding to help them effectively to perform their duties
- Level of fines for non-attendance by jurors and witnesses should be revised to a more realistic level and a public information campaign should be conducted before the judiciary starts to apply them – tied in with witness protection issues;
- Computerisation of court records will have a positive impact upon good case preparation

- Good case flow management will depend on the co-ordination of listing decisions, preparing and serving documents and preparing case material. To manage the case flow system properly it would be necessary to know where each case was in the system at any time (was it listed, had documents been prepared and served and was the case material prepared for Court) and to monitor its progress against a set of performance standards or targets. This would be achieved by the production of exception reports showing where action is overdue and diary lists showing what actions are planned. This is hard to achieve when information about each of these three aspects of preparing for a hearing or trial is held in manual form.
- Registries be computerized so that any member of staff, dealing with any aspect of a case, can see the status of that case in the system and see the actions that need to be taken to take it to the next stage. This computerisation should be part of a more detailed review of staffing and systems.
- All forms used for filing civil claims and all documents served on respondents contain a section that asks if the parties to the case are willing to attempt mediation before a Court hearing.
- RMs, judges, clerks and registrars consider mediation as an option prior to making a listing decision in a particular case.
- The MNSJ continues and increases its support to the DRF.
- The judiciary enable RMs better to take advantage of the facilities offered by the DRF and other reputable social and religious organisations that may provide an effective mediation facility. This would be by providing a budgetary provision for each RM court to facilitate the work of mediators and training the mediators themselves in conflict resolution, counselling, and some legal skills. This training should be designed and delivered, regionally wherever possible by the JTI.
- Standard court starting times move from 10 to 9 in the morning and finishing times from 3 to 4 in the afternoon – this may allow a reduction in Night Court sittings and a reduction in the cost of employing private sector attorneys who act as RMs.
- There is an urgent review of fines and that recommendations are made to Government for substantial increase in both fines and the levels of jurisdiction to impose them in the various courts. (i.e. 10x or 20x but probably less for traffic offences).
- RMs and judges take handwritten notes of proceedings. This delays the giving of evidence and lengthens the time taken to reach judgments. Some four courtrooms at the SC have been equipped with modern transcription equipment. We recommend that this equipment together with training for judicial officers and typists be provided to each main courtroom at the RMs courts and in each courtroom at the High Court.
- Delays in producing written judgments at the Court of Appeal delay the closing of cases. This is particularly a problem with criminal appeals where Correctional services need to know quickly the outcome of an appeal and any change required for the care, custody or release of the prisoner. The CA sits in a newly refurbished building with sufficient computers to produce written judgments more quickly. However most secretaries continue to use typewriters as they are not trained in word processing. We also understand that Judges of Appeal continue to produce hand written judgments for typing. We recommend that Judges of Appeal are trained in the use of word processors and are provided with sufficient desktop or laptop computers to use. Training for secretaries is also recommended.

- A review be initiated within the judiciary to develop and design a computerised case flow management system that:
 - Provides key information to all those involved in planning case flow within each court;
 - Monitors case flow and prompts management decisions at the court level when actual performances varies from the plan;
 - Provides statistical information to the judiciary to improve overall performance management decisions at the centre; and
 - Provides statistical information to the MNSJ to aid policy development through monitoring and evaluating policy implementation.
- The management issue within each court has been addressed to some extent by the introduction of a new post of court administrator. With the abolition of the post of Chief Court Administrator in MNSJ there is no dedicated central function to monitor court and judiciary performance and develop proposals to address them. They recommend the creation of the post of Inspector of Courts – who would report directly to the Chief Justice and would be responsible for monitoring judiciary performance and advising him on key executive actions to correct any problems.
- A cost benefit analysis with a view to the introduction of permanent regional High Courts co-located with the proposed remand centres, so that accused persons spend less time spent waiting on remand for the next circuit in their parish, remand costs are reduced and High Court case flow is improved. The High Court would no longer go on circuit to every parish and there would be further savings in the requirements for courtrooms and outstations in each parish, where RMs sit when the circuit is on.
- Court administrators were recently introduced into RM courts in order to take some of the administrative burden off Clerks of Court. However, many of these posts have been relegated to that of office manager, as there are still issues of role clarity to resolve between administrators and clerks. The job description of the Court Administrator should be revised to integrate its role more properly within a new case flow management system. It was further recommended that court administrators should directly report to the senior RM in each RMs court. The JTI should offer training in basic legal procedures in order to improve their legal understanding and increased integration and acceptability to legal professionals within the courts.
- The creation of a Commercial Court as a division of the SC to deal with cases involving company management and intellectual property registration and protection (time consuming).
- Senior managers and judges are unaware of MNSJ corporate plan. The plan proposed new construction and refurbishment, some to buildings that the judiciary already has plans to close. Notwithstanding this, the budget included no capital provision for new construction or refurbishment.
- The judiciary should be involved in the development of the corporate plan of the Ministry, to the extent that it affects the judiciary, and the budget should also be developed with the support of the judiciary.
- The liaison post in the judiciary for corporate planning and budgeting should be the new Inspector of Courts.
- In the longer term, a diagnostic review to determine if the Court service (and/or the Judiciary) should become an executive agency under the Public Service Modernization

Plan. Advantages include: more freedom to manage financial affairs; higher standards of public service; in house training for judicial officers and administrative staff; access to government and donor funding to do the detailed diagnostic work involved in setting up an executive agency and fund investment in an improved resource base.

- Detailed recommendations regarding new posts of Inspector of the RM Court, finance manager and training manager and a model management structure for the RM Court were made.

H. KPMG Report – Ministry of National Security and Justice: Central Directorates. Strategic Performance Review (December 17, 1998)

The KPMG strategic performance review also carried out reviews of the JDF, JCF and Correctional Services and how the efficiency and effectiveness of the Ministry could be improved. The Report identified much work to be done to provide the newly integrated Ministries for Justice, Legal Affairs and National Security (brought together to deliver an integrated approach to the criminal justice system), with better policy co-ordination and more efficient use of human resources. The challenge (at that time) was to produce a fully integrated Ministry which capitalises on the linked administration of legal, judicial and security affairs and defence matters.

The KPMG Report finds the following general operational constraints:

- Staff are more involved in routine operational tasks rather than policy advice function;
- there is a lack of overall planning at the highest level in the Ministry (need a senior management board and central corporate planning, policy and evaluation directorate);
- Lack of information technology and information systems and restrictions on the allocation of human resources;
- Personnel are not employed within a performance culture which rewards the achievement of objectives;
- No performance indicators and targets; and,
- A full training needs analysis and long term training strategy is required.

The KPMG Review made the following findings and recommendations with respect to the Office of the Director of Public Prosecutions:

- The DPP office experiences resource difficulties as a result of case backlogs. This impacts on the Ministry through the increased costs of housing offenders in correctional institutions and remand centres. For DPP, there are additional travel and accommodation expenses for public attorneys. Backlog results from a combination of factors including court procedures, listing procedures, communication systems and the location of courts and court outstations.
- The DPP's relationship with the central directorates is remote. The DPP neither receives nor collates performance information, lacks any budgetary discretion or operational information over the office's financial position and operates without the benefit of IT or electronic links to the centre or the courts. A key and basic constraint to DPP operations

is the lack of legal reference material at the DPP's disposal, including up to date Laws of Jamaica and research facilities.

- Computerisation of the DPP office leading to a reduction in the reliance on paper and manual processes is recommended. A network is required to integrate DPP with regional and home courts, the library, Tower Street, Court Inspectorate and MNSJ centre.

In discussing implementation strategies, the KPMG Report lists a number of key factors which if left unaddressed would reduce the effectiveness of implementation as identified by senior MNSJ officials. These include:

- The organisational culture. The combination of the system of regulations, existing competence of staff, work ethic of some staff, and lack of delegated authority are believed to act as constraints to reform;
- Perceived constraints of existing financial management arrangements and a lack of financial resources to implement change or deliver capital investment where required for an increase in value for money in services delivered; and
- The resistance of staff who have experienced numerous review programmes in the past and not seen change result.

The KPMG Report concludes that a failure to implement the key recommendations resulting from this review would further demotivate MNSJ staff.

I. Sentencing Variations Study by Donna Moncrieffe MNSJ Criminal Justice Research Unit (October 1999)

This report focuses on sentencing practices in the Supreme Court. It reviews the determinants of sentence length and whether individual sentencing patterns meeting common goals. Sentencing practices are seen as an access to justice issue since access extends beyond physical access to equitable justice, that is, a court system that serves everyone in an equitable fashion.

The study involved an empirical review of sentencing variation in rape sentences and murder parole eligibility dates. The study concludes that there is a large variation in sentencing for rape (i.e. 18 years difference between shortest and longest custodial sentences) and that over half of the variation in sentences cannot be accounted for by mitigating/aggravating factors. The study does not encourage use of strict sentencing guidelines as in US. It recommends 'presumptive' sentencing guidelines which have been found to significantly reduce variation and provide stronger administrative accountability.

J. The Police Executive Research Forum (Washington DC) . Violent Crime and Murder Reduction in Kingston. Final Report January 2001

This study carried out by members of the Police Executive Research Forum (PERF) is a preliminary evaluation of violent crimes and murders in city of Kingston with a focus on the development of strategies aimed at their reduction. A team of senior law enforcements practitioners and subject matter experts collected relevant data, interviewed key individuals, solicited views and opinions and acquired a general overview of the problems.

The PERF Report is wide-ranging and makes some recommendations with respect to the effectiveness of the criminal justice system:

- Technologically is severely restricted: heavy reliance on log books, fax transmissions – it is commendable they are able to share as much data and information as they do given the existing lack of networking capability and computerisation;
- Shortage of resources is only partly responsible for lack of confidence in the justice system as there is widespread speculation of corruption;
- Laws of evidence should be taught to police through ongoing training;
- The use of an expanded definition of domestic violence² has little impact on the investigation of murders, but it does mask just how many persons are the victims at the hands of a family member. This is most important because there are program and intervention strategies that can be targeted at victims and offenders before violence escalates to murder. By not understanding the scope of the domestic violence problem in a community and not identifying those at risk, there is less likelihood that the rights programs will be in place and offered to the right people;
- A serious problem exists in the legally governed practice of not processing (fingerprinting and photographing) accused persons until their conviction results in incarceration;
- There is a need for better training of persons responsible for the collection of evidence;
- Witness protection is essential to effective prosecutions and more resources are required: “When criminals do not fear the criminal justice system they continue to perpetrate their crimes – knowing that witnesses seldom, if ever, come forward because they fear reprisal or knowing that witnesses are actually unprotected and vulnerable helps to establish this lack of fear of system;
- The JCF and DCS should create and implement a criminal justice coordinating council that would open dialogue and improve communications between the various agencies involved in the public safety process which includes: investigation, arrest, pre-trial detention, prosecution, trial, probation, incarceration or alternatively, parole (with representatives from police, military, the court system, corrections, parole and probation, the legal aid group, prosecutors, health and mental health professionals). Through better communications and the creation of a top-level joint committee, improvements that benefit each entity can be achieved;

² The designation of domestic violence in Jamaica is much more inclusive than the traditional definition in the US. Domestic violence when used to report death or injury in Jamaica refers to a much wider span of relationship than that of domestic partners and immediate family members. It includes workplace, school-mate, neighbourhood and other friendship/acquaintance based relationships (although there is disagreement as to just how far reaching domestic relationships extended in this context)

- Jamaica has enacted legislation which if effectively enforced can be the basis for a meaningful criminal justice process – laws are quite progressive in the criminal justice area (i.e. Drug Court, Bail Act), most solutions do not need new laws;
- Investigation and prosecution are inextricably linked – identification and preservation of both inculpatory and exculpatory evidence is critical to any trustworthy justice system;
- It appears that there could be significant improvement in cooperation and communication between prosecutors and police. Consistent team work between the two is lacking, particularly in the investigative stages of a prosecution;
- Moreover the lack of communication and cooperation between police and prosecutors can result in the loss or spoliation of essential evidence thus contributing to unwarranted acquittals at trial. Acquittal or unsuccessful prosecution rate for defendants in Jamaica is striking when compared to the US, particularly when taking into account that guilty pleas are a rare occurrence in Jamaica – as high as 40-50% (no official stats). One judicial officer suggested that half of the acquittals could be attributed in whole or part to faulty investigative work;
- Influence of organized crime on prosecutions is also apparent. One common theme of all interviews was the pervasive effect organized crime has not only on the crime rate, but on the relationship between law enforcement and the public. A prosecutor described the influence of the organized crime Dons as so pervasive that many members of the public rely on the neighbourhood “Don” for effective street “justice” rather than the criminal justice system. Witnesses and crime victims are regularly intimidated which has a pernicious effect on police and prosecutions;
- While there is no single reason for delays – one contributing factor is the lack of formalized plea bargaining; inhibited by cultural differences (compared to the US) and high acquittal rates – plea bargaining not viewed as effective or efficient means to reduce delay and provide for swift and certain punishment for those defendants willing to accept responsibility for their criminal misconduct;
- “Overwhelmingly, the public believes the country’s political system has contributed to corruption in the criminal justice system and the power of the “Dons.” Political leaders who could lead change in this area, are believed by many to be resistant to change. Many of those interviewed feel the rate of violence will continue unabated until there is commitment to bold, radical political reform from the very top. There is general agreement that if Jamaica’s leadership wanted to make changes to reduce violence, it would happen. Many put stock in the self-interests, creativity and entrepreneurial character of Jamaica’s business sector to facilitate changes in the criminal justice system in order to protect its people from violence while reverting the steady economic decline of the country.”;
- A high level, broad based leadership task force that has credibility with the political and criminal justice leadership of Jamaica should be convened. In addition to the private sector, the task force should include respected leaders, such as Father Albert of St. Patrick’s Foundation and Father Ho Lung of the Missionaries of the Poor, representations from social action groups, the president of the Jamaican Bar Association, a representation of the international donor community such as Tyrone Rajnauth (head of IADB Citizen’s Security and Justice Programme), or Harold Robinson (of the UNDP) and others. Establishment of co-chairs from the private sector and the community would contribute to the task force’s power;

- The purpose of the task force would be to work with the JCF and other governmental entities to facilitate the implementation of the recommendations within this report that can only be acted upon with resources or support from outside of the JCF. This work will require the establishment of priorities and agendas, interactive relationships at every level including bold and constructive relations with the political and criminal justice systems, wise use of – and support by- the media, etc. This should be organized and operational by early 2001;
- The task force should strongly endorse the establishment of parish development committees, a mechanism for coordinating the planning, implementing and monitoring process of public service delivery at the parish level. An organizational structure has been carefully crafted to be fully representatives of given parishes and supportive of their individual agendas. The PSOJ is supporting this newly revamped form of local government;
- Excellent work is being done by numerous community action groups as well as by the faith community, to prevent violent crime and promote self-sufficiency among Jamaicans. Though these various groups are working to achieve similar outcomes, they are isolated from one another and do not build on one another's knowledge and successes. Many of the executive directors of these groups appear to be unfamiliar with each other, much less working in a coordinated fashion; and,
- The Leadership Task Force should convene a separate organization made up of community action groups and churches to serve as an issue forum and to help determine where there is room for collaboration. Each month, this group could focus on a different facet of prevention program and determine how they can cooperatively strengthen the program and identify opportunities for replication. While the task force could develop a model for the process to be used, the executive directors could alternate taking the lead and chairing each meeting. Once the task force is established, it should decide how to incorporate the talents and experience of the community action groups into accomplishing its mission.

K. Crime Peace and Justice in Jamaica – A Transformative Approach. Dr. Barry Chevannes – facilitated by The Faculty of Social Sciences University of the West Indies Mona Campus (2001)

This Report is the result of a consultative process that engaged approximately 50 scholars from various university campuses and colleges across Jamaica. A team of scholars prepared a working paper with an overview of the issues. Three meetings were held to discuss and revise the report. The Report was sent to various government ministries involved seeking their input. Some of the key findings and recommendations from the Report which deal with the justice system include the following:

- If the solutions are to be thorough, far-reaching and effective, then our structures, procedures and relations have to be fundamentally transformed – everyone has a role to play and there is a need for individual and collective engagement in transformation process toward peace.
- There is a pervasive reliance on traditional and generally non-productive measures such as: new legislation; further centralization of law enforcement; more intimidating policing.

- Firm agreement is expressed with 1993 Wolfe Report.
- The Report calls for the establishment of Peace Institute at UWI to: i) facilitate dialogue at different levels and sectors of the society that are in conflict; ii) help develop and enhance indigenous peacemaking capacities; and, iii) facilitate peace-oriented development work amongst grassroots organizations.

- **Recommendation #3: Legal justice must be real in practice and in appearance.** TIME AND AGAIN, in surveys and media reports, the urban poor have said that it is entirely at them that police have trained their guns; and that they are the objects of the tougher enforcement measures whenever there's heightened concern over crime. The high numbers of extra-judicial killings (at an estimated rate of 100-150 per year for the past three years or so), and reliable stories of police abuse and excessive use of force in urban ghetto areas, support this contention.

IF LAW ENFORCEMENT is to receive the full, sustained support of all segments of the society, justice in the courts and on the streets will not only have to be real; it will also have to *appear* real. This will require extensive reform in key sectors of law enforcement and the judiciary, where what are needed over the long term are:

- i. major redefinition in the relationship between police and citizen, so that all citizens will receive greater respect from the police
- ii. greater accountability of police agencies to the communities they serve, which will require among other things concentrated movement toward relevant models of community policing
- iii. increase in number of police officers, especially in light of credible threats to national security due to narcotics trafficking – doing so, though, while educating new recruits in matters of human relations and acceptable police conduct
- iv. measures to bring the court system closer to the people.

ALONG THESE LINES, we also hold that if the system of justice is to remain consistently credible, *all* classes of criminal wrongdoers will have to be held responsible for their wrongdoing. This goes especially for white-collar offenders and corrupt public officials, whose misdeeds are often several times more costly to the nation than that of the average street-corner or gully thug. We cannot continue with the appearance of a dual system of laws and justice: one for the poor and another for the well heeled and well connected.

- **Recommendation #7: Support localized efforts at peacekeeping, peacemaking and community justice.** GOVERNMENT DOES NOT have all the answers to crime, neither should it have the final say-so on what to do about crime. Grassroots initiatives directed at fostering long-term peace between rival gangs and at restoring, through community and restorative justice, bonds sundered by crime should be endorsed, encouraged and facilitated.

RESTORATIVE JUSTICE SEEKS to redefine the roles and goals of criminal justice agencies to include a broader mission: to prevent crime, address local social problems and conflicts, and to involve neighbourhood residents in planning and decision-making. Both restorative and community justice are based on the premise that communities will

be strengthened if local citizens participate in responding sensibly to crime; and both envision responses tailored to the preferences and needs of victims, communities and offenders.

THE PRACTICE OF restorative justice, aspects of which are already in place in areas around the country, holds that criminal justice systems should actively engage the parties touched by crime in repairing the injustices caused by crime. This means that individual offenders should indeed be held accountable for having hurt real people and real communities; and that they should be required to help make their victims (or the families of victims) whole again. Making restitution or reparation to crime victims is essential to individual rehabilitation, healing and reconciliation, and to restoring a community that has been sundered by a crime or crimes.

L. A Correctional Needs Assessment for Jamaica- Final report. Prepared for the Ministry of National Security by Technical Assistance Team Correctional Service of Canada (date?)

Correctional Services of Canada undertook an external review of the Jamaican Department of Correctional Services (DCS). This involved a needs analysis, interviews, site visits, as well as a documentary review of previous studies, reports and correspondence.

The needs assessment made the following findings and recommendations with respect to the modernization of correctional services:

- Despite enlightened legislation enacted in the 1970s and revitalized by a mission vision and policy in 2000, the actual implementation of the rehabilitative aspects of the law is not complete.
- Jamaica, like most other countries, over-incarcerates first time offenders.
- There should be a review of applicable legislation to ensure that it supports judges in giving sentences that can best serve society in terms of the rehabilitative infrastructure and deterrence.
- There should be a reform of the legislative framework to support overall goals of criminal justice system based on legal principles and best practices.
- Legislative direction governing actions during the correctional and conditional release phase should include all the critical/mandatory steps to be taken by professionals.
- Consideration should be given to a mandatory accelerated review of first time non-violent inmates.
- Amended legislation could direct the DCS in partnership with non-governmental community-based faith-based and private organizations to increase the community service capacity of Parishes to support the release of offenders i.e. a system of Community Based Residential Facilities or rural private home placements.
- Reliance by DCS staff on policy is less strong than reliance on law and on an oral tradition.
- Policy promulgation would allow the DCS the opportunity to clarify for employees and offenders the direction and expectations implied in law. The availability of knowledge for

staff in the form of guidelines, checklists and ‘how to’ documents can greatly reduce the need for large amounts of policy.

- The DCS needs to have a policy framework with knowledge and practice manuals that outline clearly for all DCS staff, the public, inmates and released offenders the expectations of law, policy priorities and those practices that require standardization .
- International standards are a culmination of best practices that can serve as a guide in the policy development process. A scheduled review of policy components should be done in light of these standards.
- Policy manuals should incorporate international standards, an accountability framework and monitoring process.
- There should be an annual strategic plan of defence, justice, crime prevention, police, corrections and parole – collaboration – clarify how each partner contributes to coherent approaches to the overall goals of government.
- Organizational culture is seen as an impediment to implementation:
- Despite good plans – management reported a significant difficulty in implementation-initiatives lose steam.
- Beliefs and attitudes within the system still reflect the old way of doing things.
- There is a sense of hopelessness – that nothings matters anyway.
- When the department has decided to embark on improvement initiatives the message does not seem to penetrate very deeply in the organisation - lack of follow up.
- Better training is required for implementation.
- Overall the implementation of corporate intentions needs to be strongly accompanied by a sense of stability in direction so that new directions are seen as serious and the behaviour of leaders is consistent with the corporate messages being delivered.
- If a research-based correctional program is adopted, as recommended in this report, judges should be given the opportunity to know the effects of this type of approach to risk reduction for offenders. Judges and other court officers might benefit from training in the area of mental health as it impacts mentally ill persons in conflict with the law.

M. Jamaican Bar Association – Submissions on Justice System Reform (2000-2006)

Members of the Jamaican Bar Association (JBA) have been actively involved in promoting justice system reform and participating in reform initiatives. Representatives of the JBA have made a number of written and oral submissions in this area. The following section contains excerpts from four submissions provided to the author.

Report of the Special Committee to Consider the Problem of Backlog and Delay in the Civil Jurisdiction of the Supreme Court of Judicature of Jamaica (Dr. Lloyd Barnett, Nancy Anderson, Dorothy Lighthouse, David Batts; undated)

At a meeting convened to consider the heavy backlog of cases, it was the general consensus that the introduction of the Certificate of Readiness has not worked. Matters are still being adjourned without being disposed of conclusively. There is a heavy backlog and a further problem is that once commenced matters are often unnecessarily protracted.

The focus of the Report is to help to ensure that only matters which are ready are placed on the cause list and to assist in then narrowing of issues and the discovery process completed prior to trial dates being fixed. The Special Committee made many specific recommendations to make use of certificate of readiness more effective. Its recommendations include:

- The Registrar should have more powers;
- A second Master should be appointed;
- Clerks should be trained to assist masters;
- Judicial specialisation was encouraged; and
- “Counsel should also be reminded that they may be personally liable for costs in the event that they certify a matter to be ready and then it is not on the date of trial.”

JBA presentation to the Joint Select Committee regarding the abolition of appeals to the Privy Council by David G. Batts (May 2, 2000)

Deplorable Physical Condition of Courts

- “In the Resident Magistrates’ courts air conditioning and noise control are virtually non-existent. Photocopying machines and fax machines are either lacking or non-functional. This applies even at the Half Way Tree and Sutton Street Resident Magistrates’ court here in Kingston. Toilet facilities are mostly absent for the public and those available for court staff are generally in very poor condition. The courts, most of which were built to accommodate far fewer cases, suffer chronic overcrowding. People waiting to have their cases heard stand in crowded aisles and along the exterior staircases. Inside, the few usable benches overflow. In practice the noise, the pressure of the cause list and the desire to “clear the list” lead to a certain summary form of quick “justice” to which all contribute, lawyers and judges alike. In short, the conditions are not conducive to that careful ventilation and consideration of matters that are pre-requisites of justice.

Lack of Resources

- In addition to physical conditions “our resource starved system of justice has even greater problems with its support services and tools of trade. Reading material is mostly absent. Our judges are not even provided with the Jamaican Law Reports or the West Indian Reports. A system of law reporting is a prerequisite for the development of jurisprudence.” A JBA project is working to revive the Jamaican Law Reports – but these remain largely unavailable and are not up to date. There are also some problems with availability of Laws of Jamaica and subsidiary legislation is absent.
- Each parish or region should have a proper legal library.
- All courts are obliged to take down in long hand all the notes of evidence. This slows down the process considerably, results in errors and is extremely laborious. Judges do not have personal secretaries or assistance and must compete to have their judgements typed.
- “Finally I should mention the archaic administrative system in place. The filing is a single book system. Missing court files and “lost” dates are not unusual. Computerization started in the Supreme Court last year. There is a long way to go and there has been no mention of the Magistrates courts in this program although the jurisdiction in these courts continue to be increased.

- “We do not deny that there has, in recent times, been an effort at improvement. However, it has been too little, not sustained, apparently haphazard and therefore inadequate to arrest the general decline.”

State of the Justice System

- “These conditions have resulted in staff which is unmotivated and in a system which carries a heavy backlog of cases. There is chronic delay in the disposal of cases. In 1992 the Jamaican Court Efficiency Study, USAID/GOJ Caribbean Justice Improvement Project estimated that one quarter of all cases in the Supreme Court took 4-5 years to be scheduled for trial. Half the cases took approximately 33.5 months from filing to disposition. Most civil practitioners will tell you that not much has changed in that regard since 1992.”
- “Our system of justice is in crisis. The average litigant may be justified if having experienced these conditions and delays he or she concludes that justice has not been done to his cause. Even a successful Plaintiff for example may have waited so long to get his judgment that in real terms he has lost. A man acquitted in a criminal trial may have had extended period in custody awaiting trial. Sometimes acquittals are the result of absent crown witnesses frustrated by the delays and inconvenience of the system.

“Reforming the Justice System: What do we need to do!” David G. Batts and Stacy Mitchell (June 26, 2000) [NOT official views of JBA]³

The focus of this submission is on trial and appellate structures and the chronic problems that beset them. However, the authors note that it is important to understand that the courts operate in a broader justice system with broader problems.

- “The delay in having matters tried is a fundamental problem in the trial court and it is self-sustaining. Adjournments become the norm rather than the exception. People lose confidence in the system and so for example it becomes an acceptable basis for adjournment that, “*Your Honour, this is only the first trial date.*”
- Important to address cause of delay without dispensing with rules and safeguards which exist to ensure that the process does justice to all.

Appeals:

- The main cause of delay in appeals is the production of the Record of Appeal – because notes of evidence and judgment from the court below take a long time in preparation. From RM court it can take years because the insufficiency of typists and photocopy machines compounds the problem of record preparation.

Supreme Court

³ Similar views were expressed in Delays in the Justice System – Civil Jurisdiction. David Batts (June 20, 1995)

- Causes of delay:
 - a. the backlog of cases because any new case has to join the list;
 - b. present system is operated in a manner which gives no incentives to parties to agree to that which can be agreed or to settle matters and therefore clear the list or otherwise shorten proceedings;
 - c. administrative difficulties: operation of registry; difficulty in locating files; takes a long time to obtain dates; information difficult to access; letters not answered; formal orders and judgments in default take months to be executed;
 - d. attitude of counsel: counsel seeing themselves as officers of the court first; not give matters the consideration they require before entering the court room; documents not agreed, pre-trial discovery not utilized sufficiently, witnesses not prepared or contacted and the court is not given the type of assistance which could lead to a smoother flow of cases; and
 - e. judges also contribute to the problems; while parties control the proceedings, a judicial attitude can make a world of difference.

In RM Courts

- Causes of delay:
 - a. inadequate physical plant and staff;
 - b. out of date methods of date fixing and listing;
 - c. administrative problems in the system of records and filing was designed for a previous era;
 - d. late arrival of magistrates and staff; and
 - e. attitude of counsel and magistrates.
- “Sometimes the same magistrate does criminal and civil lists. The latter lists are not given priority so that adjournments are the order of the day. Civil trials are so rare and it is more a battle of attrition to see which litigant will stop coming to court first.”

Proposed Solutions:

- “Unfortunately, there is no magic wand. The approach to work of counsel, judicial staff and judge is itself a function of the conditions for work and the century old system we work in. And so, delay creates backlog which leads to negative attitudes and frustration which leads to further delay. A break in this chain needs to be made now as we simultaneously seek to dispose rapidly of new matters coming in while though a process of elimination we clear up one way or another those pending matters in which litigants have lost interest.”
- Improvement in physical plant and infrastructure;
- Amendment of Civil Procedure Code and current system;
- Far better use needs to be made of pre-trial mechanisms in order to narrow issues;
- Makes a number of specific recommendations for procedural changes;
- Administrative improvements including filing and computerization;
- Review of backlog to update cause list and take out cases that will not be pursued;

- Reform of position of bailiff: “There needs to be a complete overhaul as the enforcement of judgments and the collection of debt by Writ needs review island wide. It is my view that our bailiffs should be properly trained, supervised and should function as true officers of the court. Presently, there appears to be too little accountability and too much delay in the execution of process. I believe a thorough review should be made of their terms and conditions of service so that we can have an effective system of court appointed Bailiffs in operation.” (p.17)

Causes of delay in criminal courts

- Backlog - new matters joining up to an already substantial list;
- The absence of Crown witnesses;
- The unavailability of jurors in the Circuit and Coroner’s Court – the system of jury selection is in my view a contributing factor;
- The failure to make use of available and often cost-effective technology; and
- The attitudes of the bench and bar.

Proposed Solutions:

- More judges and Magistrates.
- More Court stenographers.
- **Police:** there should be in each parish members of the JCF charged especially with the responsibility of securing the attendance of civilian and police witnesses at Court. They should liaise with the prosecutors and investigating officers with a view to having witnesses advised of the Court date or served with summonses for attendance as the case may be. A part of their responsibility would be to advise the Court in a timely manner of what steps have been taken to locate a witness. If it appears that a witness will not attend a court may take such action as may be appropriate. Where there is no compelling reason to explain the absence of a police witness this should be communicated to his superior officer for disciplinary action.
- **Jurors:** current system for compiling the jury list from the voters list has not worked well. The alternative of using the TRN Records which is arguably the most comprehensive list of adults available is recommended. Further the increase in fines for failure to attend by persons who have been served must be communicated to the public so that persons are inclined to think twice before failing to attend.
- **Technology:** time consuming and tedious process of taking evidence. Witnesses and attorneys must pace themselves to facilitate the taking of verbatim notes in long hand. In the circuit court the official record is taken by a stenographer and transcribed if needed for a re-trial or appeal. While computers have been introduced in the Home Circuit Courts, their use has served only to expedite the preparation of transcripts for appeal. Terminals are not available to the attorneys who still take verbatim notes. The printed text of the evidence is not immediately available and the Judge also has to take a longhand note in order to be able to direct the jury on the evidence. Whereas appeals may be expedited the ‘computerisation’ of the criminal courts has so far done nothing to speed up the actual conduct of a trial or increase the throughput of the Court. In Trinidad and Tobago the court’s throughput was increased by 100% after computerisation.

Whereas computer aided transcription may not be currently feasible for the RM courts, there are other tested methods of real time recording including video and audio taping. In this way, the court's proceedings may be recorded and later transcribed should that be necessary.

Efficiency of registries would be greatly assisted by photocopiers, fax machines and computers.

An appeal from a decision rendered in the RM court today would result in a typist producing multiple carbon copies of the Notes of Evidence and Reasons for Judgment, both of which will be several foolscap pages long. The same process is adopted for the production of dispositions taken in preliminary enquiries. In almost any RM court, clerks on a daily basis send out to photocopy witness statements and forensic reports to be supplied to Attorneys because the facility for photocopy is not usually available. Technology can also improve the access of judges to legal material at ultimately cheaper prices.

- **Attitude:**
 - Counsel and judges must be prepared to proceed.
 - Courts must send a message to the prosecutors that their duty is not to convict but to ensure that justice is done. To that end supplying the defence with copies of statements and forensic reports should be as a matter of course and may indeed have the effects of 'shortening the matter' (i.e. forcing a guilty plea)
- **ADR:** greater use of ADR- especially in large number of what are essentially domestic disputes (in the sense that the parties know each other).

Conclusion:

- Problems of the system of justice and the reforms necessary have been the subject of many studies and expert opinions – what is now necessary is a concerted consistent and planned approach to reform.

David Batts "A Note on – Required Improvements to the Jamaican System of Justice" February 2006

"In a nutshell our system of justice suffers because it is utilizing the same infrastructure, systems and conceptual framework that existed 100 years ago. To the extent that changes have been attempted these have been implemented in a piecemeal manner and without adequate consultation, evaluation and adaptation."

Suggested reforms:

- Improved infrastructure and facilities are required;
- Improved staffing and changes to recruitment policy and principles including: i) review of judicial appointment process; ii) constitutional security of tenure for RMs; iii) acting appointments should be discouraged; and, iv) increased judicial training;

- Judicial independence – remove judiciary from the Ministry of Justice, separate administration; recommends Trinidad and Tobago model;
- Courts should be manned by own cadre of officers; police replaced by bailiffs or sheriffs;
- Review of the Civil Procedural Code and Rules of Court: 2003 changes to rules implemented without adequate consultation and adaptation; effect is tying up of valuable judicial time in case management and reducing the availability of judges for trials and contested matters; urgent review of rules is needed and detailed recommendations made elsewhere;
- Judicial specialization at least partial needs to be implemented: SC judges should be required to sit for a term or a year in the Civil Division; better control of diaries; fewer part heard cases; develop expertise; and,
- A small paid Professional Rules Committee (or Law Reform Committee) should be established to replace the present larger volunteer committee. This will enable law reform and the consideration of changes to the Rules to be done effectively and professionally.

Suggested Reforms for Criminal Jurisdiction:

- Recognizes some improvements including merging the jurisdiction of Kingston and St. Andrew and the Night Court.
- The RM Courts are overloaded due to a failure to increase the number of magistrates commensurate with their increased jurisdictional responsibilities. Studies have shown that there has been a steady transfer of offences from trial by jury to trial by RMs alone. It is my view that this trend should be reverse. The RMS (who needs only to be a lawyer of five years) should not be responsible for criminal offences of grave consequence.
- Terms and conditions of RM working situation needs improvement.
- Backlog of cases in the Supreme Court is largely due to the slow rate at which transcripts are made available. The transcripts from the Preliminary Enquiry are still typed and have to be checked by the RM and approved. Cases in the Supreme Court are often delayed as transcripts are not ready or legal aid assignment is not complete.
- The Gun Court is overburdened with cases for trial. The Gun Court needs to be abolished and all cases dealt with at Circuit in the normal way.
- The rules applicable to the Preliminary Enquiry needs to be revamped and the Judicature Act reviewed. The Preliminary Enquiry should be set down and completed instantly. Adjournments to facilitate counsel should not be allowed; it is really only a process whereby the RM satisfies himself that there is prima facie evidence against an accused. If so the evidence is vouched by the RM and the transcript prepared and remitted to the court for trial. With adequate technology this process should not require the weeks and months now occasioned.
- In the Circuit Court the trial process can be expedited with the use of technology – instant stenographic notes are still not available – the trial judge still has to take all evidence in long hand.
- The role and function of the jury should be expanded and the system should be overhauled. Issues for review include: the “control” of the jury list; selection of jurors; provisions for jury compensation and accommodation; and so on. The authors note: “The greater the participation of civil society will restore confidence in the system and will

ultimately mean the Jamaicans will decide the issues. Also with a jury trial there are reduced possibilities for adjournments and cases are almost never part heard.”

- The system for location of Crown witnesses and service of subpoenas as well as the bailiff system for the enforcement of civil jurisdictions needs serious review and attention. These matters should be dealt with by a “Court Services Department” falling under the ultimate control of the Chief Justice. Accountability is woefully lacking in the present arrangement. It is often helpful for the investigating officer to assist in locating and bringing witnesses to court. It has been my experience that the witness’ reluctance to attend court increases in direct proportion to the number of times s/he is required to attend for an adjourned hearing. If the matter of delay is addressed a large part of witness’ absence will also be addressed.
- It has long been proposed that a superintendent of police be located at the Office of the Director of Public Prosecutions to act as liaison between the Director’s office and the police, mainly to assist with witness location. It is my view that cases would be more effectively investigated and presented if the co-ordination between public prosecutor and the police commenced earlier and was more structured.

Conclusion

“What is necessary is implementation on a structured basis and reduced reliance on volunteers to oversee the process. Little in the way of statistical data and review to enable serious analysis of the problem and hence diagnosis of a solution. Reform therefore should begin with a six month to one year review of the role and function and efficiency of the justice system. When this is done the areas for immediate attention can be ascertained and addressed. A period of consultation with respect to the proposed changes should precede any implementation so that when change comes, and come it has to, the stakeholders will have been sensitized.”

N. A REPORT ON THE SAFEKEEPING OF COURT RECORDS IN THE RESIDENT MAGISTRATE’S COURTS OF JAMAICA (Donald J. Rose, Justice Development International February 3, 2005)

This study was undertaken to conduct an assessment of the record keeping system including security of court files in the RM Courts. The objective was to provide recommendations to ensure the security of records and/or processes that would provide continuity of record keeping and case filing notwithstanding any disasters, natural or intended. The immediate background to the study included three fires in court houses. Arson was suspected particularly in one case where a serious criminal case was about to be commenced.

Terms of Reference/Methodology used in this study was: (1) review of background materials; (2) in-depth interviews of key personnel; (3) observation of current court record filing processes, active and inactive case archiving and security measures being taken in selected courts; (4) exit interview; and (5) written report.

Major findings and recommendations were:

- Security of courthouses is a major problem that needs to be addressed through ongoing security surveillance in order to ensure security of records;
- Immediate file reconstruction is almost non-existent in Jamaica and needs to be addressed within the policy and court community;
- Storage capacity is drastically lacking due to non-destruction of old records and inadequate space provision;
- Management accountability needs to be strengthened in order to ensure better controls
- Current systems in the registries are cumbersome and inefficient in modern court record systems need to be implemented;
- The system of traffic tickers requires a complete overhaul as extensive benefits will result
- The destruction policy as articulated by statute needs to be reassessed in order to provide for destruction of non-essential records;
- Records management expertise is required by the Jamaican judiciary for the RM courts; and,
- A computerized case tracking system will resolve many of the problems with records management if it is combined with a colour-coded filing system and piloted to test it out at the court level.

Other findings made in the Report include:

- Unique feature in RM courts – Clerk of Court is really a prosecutorial officer responsible for prosecuting the case; the result being that the prosecutorial file and the court file are one and the same file (not same in SC);
- Police often do not keep a proper copy of the file – so many times if a court file is destroyed police will have to reinvestigate and reconstruct file – this is one of the fundamental causes of persons wanting to destroy files;
- Now purchasing very expensive fire proof cabinets for serious cases but does not address underlying problem of inability to reconstruct files;
- Security of records linked to security of courthouses and police properly maintaining files
- Internal control of files not a major problem;
- Organization of court registries contributes to inefficiencies and lack of file control (assistant clerks responsible for areas i.e. civil, criminal, family) – better for one person to be responsible for storage of court files and records;
- Up to 12 record keeping systems per court – tendency to create a system based on court type rather than most efficient manner of handling cases;
- Record systems should be able to immediately produce information and also be conducive to the production of management information and statistics to measure court performance – in RM courts this is impossible due to the labour-intensity required to determine case status and create management reports and statistics;
- Recommends colour-coded system but notes: *“It is important to note that a change management process and a complete reorganization of the staff functionality of the court registries would be required in order to successfully implement this system.”* ;
- Need to combine indexing and tracking of case files;

- Problem with traffic tickets: court receives the tickets and the tax department receives the payment – results in extensive work; problems – current system very inefficient lots of court time and police time; lots of mistakes;
- Retention and destruction policy in Supreme Court should be starting place for new RM policy;
- Records management is a modern art that not only deals with the management of records but also provides expertise in the design of forms and records – need for expertise – one person/position – existing records manager at MOJ – unclear of her exact responsibilities /accountabilities relative to the judiciary;
- Need computerized system in RM courts that would allow: (1) management and information reports that would allow the Senior RM and the Court Administrator to plan, monitor and measure the performance of each of the courts in the particular court site, and (2) statistical reports that would measure the overall court performance and satisfy the needs of the CJ and the MOJ as to planning and measuring all the RM courts [recommends not scanning]; and,
- Careful planning of the reallocation of human resources supplanted by such a system would need to be undertaken – *“Complete re-engineering of court registries would be mandatory should computerized case tracking be implemented in order to ensure the efficiency of the court operation and capitalize totally on the benefits of the system.”*;
- A comprehensive approach is essential; and,
- 19 detailed recommendations are made.

The author makes a number of other observations:

Recording of Evidence: RMs do not have an activity of formally recording and transcribing the evidence in preliminary inquiries and trials – spend much time writing as much “into the record” as they possibly are able. This causes preliminary inquiries and trials to take more time than necessary. A recording and transcribing activity utilizing electronic devices should be seriously considered;

Management of Information: lack of management information available to the court administration and RM Courts to measure the performance of the court. If computerization is considered for RM courts – serious effort should be made to develop management reports that incorporate internationally accepted standards of performance through indicators such as clearance rates, congestion rates, cost per case, delay times, etc;

Training: modern management reports not available – subject to proper statistics being available, RMs and court administrators could benefit from training in how to manage their courts based on the management reports provided;

Staff Recruitment and Selection: at present CA assists RM in selection of support staff – CA could have authority to perform this work;

Kingston RM Gun Registry: recommends integrating this work into the larger criminal court registry;

Case flow management: (1) currently reasonable (worst case 5 months from date of fixing the trial to date of trial) civil trials generally delayed more than criminal due to restrictive number of days provided – need for more flexibility in civil trial days; (2) case flow management – all dates set in court – need for trial scheduling by trial schedulers outsider the

operational court thus relieving RMs of this task and freeing up their time (3) likely other issues;

Scanning the Civil Cases in Supreme Court: questions utility – no linkage between scanned documents and takes long time (almost a year behind) – more resources or different operational tactics?;

Re-engineering the registries: court support staff in most registries are assigned to court type rather than by functionality. This can create unequal amounts of workload and inefficiencies within the court registry. A review as to how staff is organized relative to work demands may result in more effective and efficient operations in the courts;

Templates for document production: RM courts utilize printed forms for the preparation of documents by inserting them into manual typewriters. Major productivity gains could be made if computerization is implemented in the courts. In the meantime productivity could be increased through the use of templates in the word processing machines (nearly all courts have word processors). This would allow typists to enter the individual data into the form through word processing, and productivity would increase through the speed of doing so rather than the manual insertion of pre-printed forms and the shipping costs would be eliminated; and,

Demonstrated willingness by RM, CA and court staff to embrace modern court management techniques and strengthen the skills of everyone in the administration of the RM courts: COURT ADMINISTRATION REFORM PROGRAM – lead to avoidance of trial delay and improved public service through modern court management and increased accountability.

O. Jamaican Court Administrators' Training Course – June 6-10,2005 – Participation Evaluation Results and Next Steps (Justice Development International – October 1, 2005)

The Jamaican Court Administrators' Training Course was presented by Pamela Ryder-Leahy and Dr. Carl Baar. The evaluation results were tabulated by Robert Hann. The objectives of workshop (a 5 day course) were to:

- Understand the role of the courts in a democratic society
- Understand the role of the court administrator in modern courts
- Understand what undermines access to justice and how to improve access
- Know how to conduct a case flow management review
- Know how to complete a practical step-by-step re-engineering process that can be applied to every work process in the Jamaican courts
- Understand how their court is performing against pre-determined criteria, and
- Understand the reasoning for and benefits of strategic planning

The Report includes the identification of additional training needs including:

- Need for course for RMs and particularly Senior RMs who supervise more than one court – consideration of management functions and what could and should be done by officials other than RMs;

- Teams of Senior RMs and CA (executive component) attend together and work together on ways to improve administration in their courts and how to both divide and share their responsibilities;
- Re-engineering exercise – one group came up with a revamped process for bail and sureties that would eliminate the need for multiple appearances by a surety; the ideas were both feasible and sensitive to the needs of the public; and
- Re-engineering, case flow management, client awareness – in conjunction with a program on “model courts” – training as a part of a process to stimulate court administrative reform – a selected RM court or Court committed to reform would receive additional training linked to particular areas of reform – i.e. case processing, delay reduction and/or records management. The concept of re-engineering could be used to identify changes from the beginning of judicial proceedings through post-judgment processes, from the front counter to case disposition.

A number of system needs were also identified during the training workshop and evaluation process including:

- No official functioning as a system-wide director of court services or executive court administrator. An official whose responsibilities are focused exclusively on the courts could not only champion court administration issues within the MOJ, but also start planning for model courts, supervising the reform process and clarifying the vision for model court innovations – institutionalize the change process for court administration.
- Participants recommended that retired judges help clear backlog;
- Participants frequently commented that court administrators are not involved in strategic planning; and
- There is a recognized need to bring all players together.

P. National Security Strategy for Jamaica. Towards a Secure and Prosperous Nation – A Green Paper (2006)

This National Security Strategy (NSS) presents the Government’s overarching policies on national security matters through a process of a strategic environmental analysis relating to security, describing the threats that work against the full achievement of the country’s security goals, determining Jamaica’s security priorities in relation to the capabilities and policies required to counter those threats, and establishing the responsibilities, structures, and timelines for implementation. Careful attention has been given to providing just enough detail for implementers to have sufficient guidance to understand their responsibilities and how they relate to others involved. The National Security Strategy aims to enhance coordination and cooperation among the different ministries and national security agencies as the new security environment results in a blurring of traditional agency boundaries.

The NSS approaches the process of transformation in a three-fold way, as it requires the transformation first of attitudes, then processes and systems and finally practices. The NSS aims to TRANSFORM ATTITUDES to promote security awareness and zero tolerance. National security is everyone’s business! National security must have first priority and a culture of zero tolerance for disorderly, corrupt and criminal conduct promoted. The NSS aims to

TRANSFORM PROCESSES to achieve unity of effort. Existing mechanisms must be developed and strengthened to encourage cooperation and collaboration for multi-agency security efforts locally and with international partners. The NSS aims to TRANSFORM PRACTICES for greater efficiency. Capacity must be built and strengthened in all areas of need and the sustained provision of appropriate and affordable resources ensured.

Goal 2 of the NSS is “to strengthen the Criminal Justice System (CJS) and Promote Respect for the Rule of Law”. The following is the excerpt of the NSS dealing with this goal:

There is need for an effective CJS which is accountable and demonstrates fairness in the way people are treated and decisions made. The application of law should be without fear or favour, requiring that all persons, regardless of their role in society, comply with the law and deal justly with others. Legislation ought to be continuously reviewed and revised as offenders use new methodologies, new technology and other creative ways to avoid prosecution.

Upholding the rule of law will serve the interest of both primary and secondary violence prevention, public disorder and any disillusionment about the quality and exercise of justice. This goal also addresses the need to effectively bring to account those who choose to offend the law with little fear of legal consequences.

CAPABILITY 1

A more integrated and efficient CJS which engenders public confidence.

Objective

Transform Criminal Justice System to be better able to prevent and investigate crime, prosecute, convict, punish and rehabilitate offenders.

Specific Actions – Short Term

- a. A temporary CJS Review Task Force will be established by the Cabinet Office, MOJ and MNS to review and oversee the necessary changes to the overall CJS, including legislation.
- b. MNS and DCS to continuously monitor the provision of diagnostic services to assess offenders (in support of sentencing decisions with information on levels of risk to society especially for young/first offenders).
- c. MOJ and MNS to ensure the availability of adequate multi-disciplinary support including psychiatrists, forensic scientists and other medical practitioners, and increased access to social workers for both the investigative and rehabilitative processes.
- d. MOJ and MNS to install a comprehensive Criminal Justice Management Information System.
- e. MOJ and CPC to ensure more effective policy formulation and preparation of drafting instructions by the responsible ministries. All Ministries should also examine the adequacy of the laws they are required to administer.

f. With guidance from MOJ, all Ministries will broaden consultation among the relevant stake holders including civil society in policy formulation and legislative drafting processes in order to ensure participation, support and Collective ownership.

g. MOJ to ensure the timely and effective disposal of legal matters through modernized court processes (e.g. computerization, steno recording, court hours), and continued strengthening of administrative capability of the courts.

h. MNS supported by MFAFT and MOJ will develop extradition treaties including the development of reciprocal working arrangements with countries with which Jamaica does not currently have this arrangement. On an ongoing basis, JCF supported by the DPP, MNS and MOJ will increase its use of, and expedite and exploit the opportunities of the extradition process.

CAPABILITY 2

Legislation to enhance the effectiveness of the rule of law.

Objective

Continuously review and amend as necessary all legislation to confirm their relevance, levels of punishment and remedies, and to enhance the administration of justice.

Specific Actions – Short Term

a. MOJ supported by MNS will establish a Law Commission to identify required legislation for drafting/enactment, with the mandate to carry out the continuous proactive amendment and creation of legislation to ensure the continued viability of the CJS.

b. MNS with the support of MOJ will develop, expeditiously enact and systematically enforce effective laws that would lead to the dismantling of organized criminal gangs and networks (e.g., racketeering laws, Proceeds of Crime Act, money laundering legislation). Citizenship laws, regulations and procedures to make it more difficult for marriages to be arranged to provide cover for organized criminal activity, will be strengthened. Improved mechanisms, including a regulatory framework, to eliminate illegitimate business enterprises, which provide outlets for hiding the proceeds of crime, are also to be provided.

CAPABILITY 3

Law enforcement agencies in the broadest sense need to accept, develop and enforce a zero tolerance approach to public order issues when conducting their duties.

Objective

To accept, develop and enforce a zero tolerance approach to public order issues.

Specific Actions – Short Term

MOJ, MNS, JCF and all other MDAs with law enforcement responsibilities are to put in place the necessary measures to enforce a zero tolerance approach to public order issues. Concurrently, MNS and MOJ will conduct a review of the components of the CJS (JCF, Courts, Corrections) to ensure that the necessary supporting procedures, laws and systems are put in place in a timely manner, to cope with the anticipated initial increased burden on the system. Law enforcement personnel would include diverse appointments such as traffic wardens, local government building inspectors, forest rangers, fisheries inspectors, customs and police officers. There may be a requirement to increase the levels of the law enforcement authority of non-JCF organizations.

CAPABILITY 4

Sentencing guidelines that support restorative justice and reflect current realities, including the use of non-custodial sentences.

Objective

Review and update sentencing guidelines and supporting structures to for greater use of non-custodial sentences where appropriate.

Specific Action

Periodic reviews of sentencing guidelines and supporting supervisory structures by the MOJ in collaboration with the MNS, will be done, taking into consideration alternative sentencing options in order to reduce the burden on the correctional centres and to provide for appropriate punishment for low risk offenders.

CAPABILITY 5

Anti-corruption measures in all arms of the CJS should be strengthened in order to address the apparent prevalence of corruption.

Objective

Elimination of corruption in all arms of the CJS.

Specific Action – Short Term

MOJ, MNS and DPP will re-examine and strengthen anti-corruption measures.

CAPABILITY 6

Extensive public education system on the functions and operations of the Criminal Justice System, including information on procedures at service locations.

Objective

Educate citizens about their rights and responsibilities, and the meaning and application of justice within the context of the Constitution and Laws of Jamaica.

Specific Action– Short Term

MOJ and MNS to expand existing programmes to educate the public on the CJS.

CAPABILITY 7

Humane facilities for safe, secure custody in police lock-ups, remand and correctional centres.

Objective

Provide safe and secure facilities to accommodate detainees, remandees and prisoners.

Specific Action– Short Term

MNS, JCF, DCS and MOJ will re-examine their detention facilities in accordance with international standards and modify or rebuild where possible.

CAPABILITY 8

Mechanisms to promote acceptance of alternative methods of dispute resolution as a problem-solving tool in order to counter the pervasive use of violence, including domestic violence.

Objective

Promote use of alternative dispute resolution mechanisms.

Specific Action– Short Term

MOJ, MNS, MEYC and JIS, with the support of NGOs, the church and other civil society groups to enhance public education efforts concerning alternative methods of dispute resolution.

CAPABILITY 9

Quality legal aid, witness protection and victim support services.

Objective

Expand access to strengthened legal aid, witness protection and victim support services.

Specific Action – Short Term

MOJ and MNS will identify sustainable finance schemes regionally and internationally to fund enhancement of legal aid, witness protection and victim support services, promote their availability through a public awareness programme and increase accessibility to those in need.

CAPABILITY 10

Mechanisms to improve the preparation of cases for prosecution to include enhancing collaboration between the DPP and the relevant investigative agencies including the JCF.

Objective

Improve the preparation of cases for prosecution.

Specific Actions– Short Term

- a. MOJ, DPP and MNS and all other MDAs with prosecutorial powers are to strengthen formal mechanisms to provide for better collaboration in the preparation of cases for prosecution.
- b. JCF to improve its investigative capacities through increased training and effective coordination between intelligence and all law enforcement agencies.

CAPABILITY 11

Mechanism to act in consort with CARICOM in developing a common negotiating position with regards to the issue of criminal deportees.

Objective

Strive to conclude agreements with deporting countries to have consultations before final decisions for deportations are made.

Specific Actions– Short Term

MNS supported by MFAFT, where it is not inconsistent with Jamaica's immediate national interests, will seek to adopt a common negotiating position on relevant issues with respect to deportees as discussed in the meeting of CARICOM minister's responsible for national security. These issues include: verification procedure for identification; pace of deportation; health status; duration of domicile in the deporting country; support for reintegration programmes.

CAPABILITY 12

Policies and programmes geared towards effective rehabilitation and reintegration of ex-offenders, criminal deportees and youth at risk.

Objective

Effective rehabilitation and reintegration of ex-offenders, criminal deportees and youth at risk.

Specific Actions– Short Term

- a. MNS, JCF and DCS to develop/enhance policies and programmes with appropriate legislative support geared towards effective rehabilitation and reintegration of ex-offenders, criminal deportees and youth at risk.
- b. MNS supported by MOJ, MLGCDS and MLSS will ensure that existing social support systems, in addition to visible referral and follow-up programmes are expanded to meet the needs of all ex-offenders and criminal deportees.
- c. A database system will be established by MNS, to identify and monitor criminal deportees who may re-engage in criminal activities and high security risk visitors, and provide for increased and effective collaboration between MNS and Immigration, JCF, MFAFT and CAA.

CAPABILITY 13

Diversion programmes that provide intervention for misguided youth in order to prevent/minimize delinquency and criminal activity.

Objective

Provide diversion programmes to allow for alternative means of gainful employment for persons normally engaged in illegal activities with emphasis on youth.

Specific Actions– Short Term

MOJ, MNS and DCS to introduce diversion programmes that provide opportunities for misguided youth in order to prevent/minimize delinquency and criminal activity.

Q. Justice Strategic Plan: (Draft Final Report of Jamaica (Criminal) Justice System Diagnostic and Strategic Planning Study. The Citizen Security and Justice Program. (Justice Development International Ltd., Robert Hahn et al. October 5, 2006)

This project, the Jamaica (Criminal) Justice System Diagnostic Study has been funded through the Citizen Security and Justice Program (CSJP) and carried out by 5 senior justice consultants headed by Robert Hann. Initially, the project had a very broad criminal justice-wide scope and twofold overall objective:

1. Diagnostic

“Prepare an objective, and where possible, empirically-based, *analysis of the current situation* of Jamaica’s criminal justice system that meets the citizens’ needs, i.e., that is efficient, mindful of individual rights and freedoms, allows for equity of access and builds trust among citizens, while responding to the new types of crimes facing the system (drug-related and international crimes);

2. Strategic Plan

“Based on that diagnostic analysis and review of current reform/institutional strengthening attempts, define a *comprehensive strategy for modernizing the system*, clearly identifying priorities as well as identifying any follow-on studies that may be required to gather additional statistical data.”⁴

This objective has been modified somewhat during the course of the project in order to adapt to the dynamic justice reform environment in Jamaica.

The Draft Justice System Plan is largely based on an intensive series of interviews covering key senior persons within the judiciary and within each of the key agencies of the criminal justice system, personnel within other government departments, and representatives of a number of important civil society groups. Over 40 interviews and meetings—many attended by a number of officials (over 60 in all)—were carried out over a nine-day period between September 26 and October 4, 2005. Considerable efforts were made to conduct detailed consultations with the full range of judicial and governmental and non-governmental groups who deliver or are impacted by criminal justice services, services ranging from: crime prevention, law enforcement, provision of legal services to defendants, prosecution, court services, to corrections and after-care services—as well as overall services such as strategic planning and development, communication and evaluation of policies, laws and procedures.

The consultants also searched for reliable, directly relevant and sufficiently comprehensive research and statistics on many of the issues to be explored. However, in most cases this type and/or quality of type of quantitative information was either simply not available, or in early stages of development. The qualitative information from the interviews and workshops therefore became especially important to the analysis to be undertaken.

This situation is often faced by similar studies undertaken in other jurisdictions. However, the worth of other types of information—including qualitative information from well-structured interviews and surveys from persons knowledgeable about issues being examined—is well established in the research literature. As well, waiting until one has reliable, accurate and comprehensive statistical or other empirical information on the issues would be equivalent to advocating unacceptable delays in addressing issues which are of immediate and significant concern to Jamaica.

The consultants also compared many of the comments made to findings and recommendations made in earlier and concurrent, well-respected studies done in Jamaica. All findings and recommendations that the reader finds in this report are based on qualitative evidence that has passed this test of cross-validation by multiple, reliable sources.

The inception diagnostic report was completed in January 2006 and was the subject of an intensive workshop in June 2006 – 28 persons participated in the review workshop. This draft Justice Strategic Plan is based on the diagnostic and takes into account the feedback received at

⁴ “Jamaica (Criminal) Justice System Diagnostic Study Terms of Reference”, in Section II, “Consultancy Objective”.

the workshop. A further workshop is planned for November 2006, after which the plan will be completed.

The Draft Justice Strategic Plan is a comprehensive review of the criminal justice system. The draft recommendations are reproduced in full below.

INTRODUCTION

Recommendation 2.1: the MOJ continue efforts:

- to define the demands or requirements for quantitative and qualitative information, focusing on planning and operational requirements of the courts and the Ministry of Justice, but also including the Office of Public Prosecutions, the police and corrections, i.e.,
 - identifying the specific justice policy, planning and operational decisions that could be improved by more relevant, accurate, comprehensive, reliable and timely information
 - identifying the specific data that would meet those requirements
- identifying and developing protocols, systems and procedures to provide those data to decision-makers on an ongoing and regular basis.

Recommendation 2.2: that the MOJ continue efforts to obtain feedback on this document from the Ministry of National Security, and in particular officials responsible for policing and corrections.

SYSTEM-WIDE FINDINGS

Recommendation 3.1: the JSP focus on the courts and the Ministry of Justice, but also include within its scope the Office of Public Prosecutions, the police, corrections, the private defence bar, and other relevant governmental, non-governmental, private and civil society groups.

Recommendation 3.2: that the JSP produced by this project include provision for an extensive review of its scope and contents by stakeholders both within the agencies of the criminal justice system, other government agencies and civil society.

Recommendation 3.3: That the JSP give priority attention to developing the institutional capacity of the components of the criminal justice system, with highest priority being given to developing capacity related to leadership, organization and partnerships and resources, tools and support systems. Within those areas, the specific issues shown above should be added to the issues to be addressed in subsequent work of this project.

Recommendation 3.4: The JSP place priority on creation of an integrated approach to reducing delays in all parts of the CJS, with emphasis on delays that affect the processing of cases through the criminal courts.

Recommendation 3.5: the JSP specifically address issues related to improving the strategic planning, project management and operational management capacities of the courts, prosecution and Ministry of Justice.

Recommendation 3.6: the JSP include initiatives to improve performance measurement and accountability of all Justice components of the Criminal Justice System.

Recommendation 3.7: The JSP include initiatives to improve case management systems available to and utilized by all Justice components of the Criminal Justice System.

Recommendation 3.8: The JSP place high priority on developing strategies for addressing the serious inadequacies of the budgetary and other resources available to components of the Criminal Justice System.

Recommendation 3.9: The JSP include initiatives to introduce and develop improved human resource management capacities of Justice components of the Criminal Justice System.

Recommendation 3.10: That the JSP include initiatives to improve inter-component and intra-component communication and co-operation within all parts of the Criminal Justice System.

Recommendation 3.11: That the JSP include initiatives to support development of a system-wide approach to the Criminal Justice System, including the development and implementation of:

- common system-wide goals and standards regarding the creation of a safe and just society through: the prevention and deterrence of crime; the apprehension, punishment and treatment of offenders; and the mitigation of the costs of crime for both individual victims and for civil society and the economy as a whole.;
- effective organizational structures and responsibilities for planning, developing and managing overall initiatives;
- integrated system-wide strategic and tactical initiatives (in areas such as backlog reduction, protection of children, and restorative justice), and
- the development of resources and tools necessary to support system-wide decision making (such an integrated approach to developing different components of a system-wide information network of operational and management information systems).

Recommendation 3.12: That the Ministry of Justice be given the lead responsibility in developing implementing a system-wide approach to Criminal Justice in Jamaica. However, there must also be a commitment from the Ministry of Justice and all other components of the criminal justice system to ensure that the courts and all other components play a strong role in all stages of planning, developing and implementing such an approach.

Recommendation 3.13: That a special high-level Task Group be created to lead further work of the JSP process. This Task Group would be chaired by the Permanent Secretary of the Ministry of Justice, and would include very senior members of other governmental criminal justice agencies, the courts and civil society. In addition, to address the planning capacity issue, the Task Group would be supported by a group of senior project managers and analysts who would conduct the further overall program and project planning, development, implementation and evaluation needed to ensure its success. This *Support Group* would be augmented by senior planners seconded for periods of time from the different components of the criminal justice system, as well as the necessary consultant resources.⁵

FIVE INTEGRATED COMPONENTS

COURTS

Recommendation 4.1: That the JSP cover both the Supreme and Resident Magistrates' levels of court, as well as the Court of Appeal, the Court of Petty Sessions and other courts within Jamaica.

Recommendation 4.2: That the JSP place considerable emphasis on initiatives to clarify the (perhaps different) role of the judiciary and the Ministry of Justice in different administrative activities—and to develop the organizational mechanisms to ensure that both the judiciary and the Ministry have the appropriate level of involvement in different administrative activities.

Recommendation 4.3: That the JSP place considerable emphasis on modernizing criminal court case flow and case management and other court administrative processes. In addition, developing the organizational structure and capacity to undertake the necessary modernization processes should also be a top priority for the JSP.

Recommendation 4.4: That the JSP recognize that there is a need for substantial reform in virtually all areas of court administration. The reform effort needs to be broad in scope and will require a substantial commitment of resources to be effective.

Recommendation 4.5: That the JSP therefore include initiatives to consider:

⁵ Given the existing limitations to planning capacities in the separate components of the criminal justice system, capacity strengthening in each of those components would also be required.

- i) *First*, development of *Court Performance Standards* (both outcome standards and process standards—for the overall court system, for parishes, for Resident Magistrates courts and for the Supreme Court and for Coroner’s court)⁶. Judicial officials should lead the development of standards that relate to areas within the responsibility of the judiciary (for instance, standards related to the independence of the judiciary or to judicial education). The lead for developing standards in other areas might be led by the Ministry of Justice, or leadership might be shared by the Judiciary and the Ministry.
- ii) *Second*, development of a set of related *performance measures and indicators*, empirical measures of whether or not, and if so how well, standards are being met. Certain indicators have been identified—for the courts—as part of the MOJ strategic and operational plans. However, few if any specific standards have been developed (such as: an appropriate time from charge to being placed on the trial list, time between first and last appearance, number of appearances, time lines for disclosure) and the measures and indicators require considerable refinement to relate them to current Ministry policy and operational priorities. Attention is also needed to developing different indicators for different types of cases—and identifying circumstances in which “normal” time standards can be exceeded in the interests of justice and due process.

Consistent with the TORs of this project, performance standards, measures and indicators are specially required regarding

1. being mindful of individual rights and freedoms,
 2. equity of access,
 3. building trust among citizens,
 4. responding to new types of crimes,
 5. expeditious justice,
 6. fairness of sentencing, and
 7. other areas (e.g., those used by other courts such as the Family Court in Trinidad and Tobago)⁷
- iii) *Third*, development of systems, procedures and practices to incorporate performance standards and measures into ongoing strategic and operational functions (such as performance appraisal, design of information systems, evaluation of new initiatives, annual reports and reward structures).

Recommendation 4.6: That the JSP therefore consider developing significant enhancements to capacities within the judiciary and court administration for:

⁶ It should be emphasized that we are not talking here about tools for measuring or assign the performance of individual judicial officials or court administrative personnel.

⁷ It is strongly recommended that Jamaica utilize the experience of other jurisdictions—including those in the Caribbean Region—in going beyond the five areas traditionally examined through court performance standards.

See for instance, Hann, R.G., D. Boucaud and F. Murrell, Family Court Evaluation First Year Report, prepared for the Judiciary of Trinidad & Tobago (2005)

- i) Undertaking Environmental Scans to identify developing trends in caseloads, in the nature of those cases, in rules and laws, and in judicial and court administration resources and capabilities
- ii) Identifying and communicating Best Practices and important relevant research in other jurisdictions
- iii) Developing consultation processes to tap the expertise and win the support of key stakeholder groups
- iv) Preparation of Strategic Plans

Recommendation 4.7: That the JSP consider developing capacities for developing statistical and other Reports covering, for instance:

- i) Trends in types of cases initiated, disposed, pending (what offences, what types of victims, what types of accused, whether or not represented/ in or out of custody)
- ii) Lengths of delays (overall and between key events)
- iii) Size of backlogs/ for different types of cases
- iv) Numbers and types of adjournments per case/ time between appearances
- v) Workloads of different court functions
- vi) Decisions made (e.g., pleas, dispositions, sentences)
- vii) Court resource utilization.

Recommendation 4.8: That the JSP consider developing capacities for:

- i) Production and dissemination to internal managers and to the public of regular reports documenting court performance vis-à-vis the agreed upon performance standards and measures.
- ii) Particular attention is also required to developing and making available to the public an annual report for the courts.

Recommendation 4.9: That the JSP should therefore include initiatives to consider developing a job description for and staffing the position of Court Chief Management Officer (CMO). This position would be of sufficient seniority and status (i.e., at roughly the level of a registrar) to ensure the respect of members of the judiciary, the bar, and senior officials from other ministries. This CMO would have a dual line reporting relationship to the Chief Justice and the Permanent Secretary of the Ministry of Justice. Reporting to the CMO would be all senior managers of the Supreme Court Registry, and the court administrators of the RM courts.

Recommendation 4.10: That the JSP therefore include initiatives to further investigate the advisability of establishing a position analogous to the CMO, but at the Resident Magistrates Court level. That investigation should also explore the appropriate responsibilities and reporting relationships for such a position.

Recommendation 4.11: That the JSP include initiatives to consider establishing and staffing the position of an Information Systems (IS) Manager devoted full-time to the Supreme Court, with supervisory authority of related efforts in the RM courts. This manager would have a line reporting relationship to the court CAO and a functional reporting relationship to the head of Information Technology (IT) in the Ministry of Justice. All Information systems

(both automated systems and manual records management) staff within the Supreme Court would report directly to the IS Manager. IT and records management staff in the RM courts would also have a functional reporting relationship to the IS manager.

Recommendation 4.12: That the JSP include initiatives to consider, for instance, whether modifications would be helpful regarding the precise nature of the organizational mechanisms that exist to ensure productive relationships between:

- i) The judiciary and the MOJ generally (on matters of court administration),
- ii) The Chief Justice, the (new) Court CAO, the Registrars, the PS of the Ministry of Justice,
- iii) The judiciary and the bar,
- iv) The judiciary, the registry and DRF (for mediations), and

Among relevant groups for major modernization initiatives (e.g., criminal case management) or special projects (e.g., backlog reduction)

Recommendation 4.13: That the JSP therefore include initiatives to consider alternative organizational mechanisms to better ensure that judicial considerations are incorporated into administrative initiatives—and visa versa. (An example would be a joint systems development committee, or a Criminal Case Management Working Group. N.B. this should not be an IT function, but a judicial-led function.)

Recommendation 4.14: That the JSP include consideration of initiatives to develop mechanisms for regular discussion among a broad range of stakeholder groups of court registry administrative matters. One option would be a monthly meeting of a court “operations committee”.

Recommendation 4.15: The JSP should therefore include initiatives to consider:

- i) Alternative responsibility and authority structures for court administrators, clerks and paralegals within multi-magistrate RM locations, and
- ii) Alternative responsibility and authority structures for leading and managing RM court administrators, perhaps by assigning line authority for supervision to the (proposed) CAO of the Supreme Court.

Recommendation 4.16: That the JSP consider creation of a multi-stakeholder task force (led by the Chief Justice and with adequate research staff and/or consultant resources) on Delay and Backlog reduction. The terms of reference for that task force would include:

- i) Defining the extent of delays and backlogs (for different types of cases),
- ii) Identifying the location and causes of bottlenecks and backlogs (steps in process, types of decisions, resources, rules, etc., e.g., non-appearance of police and other witnesses, jury selection delays, adjournment policies), and
- iii) Assessing the impact (on delays and backlogs) and developing initiatives to facilitate more timely trials and backlog reduction, including:
 1. Shifting the jurisdiction of certain types of matters to the RM or Supreme Court, e.g., extraditions,

2. Changes to legal procedure (e.g., the elimination of preliminary inquiries and impact on court workloads),
 3. Plea bargaining,
 4. Cadres, structures and other systems,
 5. More restrictive adjournment practices,
 6. More reliable attendance of police witnesses,
 7. Improvements to the Coroners' Courts (e.g., provision of bailiffs to serve process, increases in the number of coroners, increased staff of secretaries, reporters)
 8. The impacts, including resource requirements, on, e.g.,
 - a. police resource requirements (as witness or prisoner transport),
 - b. prison populations and workloads (for remand prisoners),
 - c. judicial and administrative resources, and
 - d. witness (including victim) attendance and effectiveness.
 9. The use of Masters to alleviate certain workloads of judges and free the latter up for trying cases.
- iv) The work of the task force should also build on previous work undertaken to develop a framework and priorities for delay and backlog reduction in the Supreme Court—for instance, the work done earlier in Jamaica for the Social Conflict and Legal Reform Project.⁸

Recommendation 4.17: That the JSP also consider creation of a multi-stakeholder task force (led by the Chief Justice, with adequate research staff and/or consultant resources, and the participation of key stakeholder groups such as the Office of Public Prosecutions and the Bar) on Criminal Case Management. The terms of reference for that task force would include:

- i) Required Legislation, Rules, Practice Directions,
- ii) Required organizational bodies—including, establishing a criminal case management committee
- iii) Policies and practices,
- iv) Extent to which it follows principles of best-practice case management (including judge-led, differentiated case management, early intervention, use of ADR, pre-trials, plea negotiation, time standards, etc.), and
- v) Specific case management strategies to implement (e.g., different plea bargaining policies and practices, Early neutral evaluation, case management conferences,

⁸ See for instance,

“Baar, C. and R. G. Hann, “The Reduction of Case Backlog in the Courts: A Framework and Strategy for the Supreme Court of Jamaica”, Social Conflict and Legal Reform Project (August 2003) .

This paper was also expanded in a subsequent paper delivered to the Third Biennial Meeting Commonwealth Judicial Education Institute, Hosted by the National Judicial Academy, Bhopal, India (March 2005)

evidence by affidavit, pre-trial conferences, remand policies, performance standards, individual vs. master vs. hybrid systems).

Recommendation 4.18: That the JSP consider:

- i) Policies and procedures to ensure fairness and uniform application of basic principles in sentencing, and
- i) Mechanisms to collect, analyze and report basic information on the types of sentences given for different types of offences and offenders—especially alternative sentencing, community service sentences, and victim-offender mediation.

Recommendation 4.19: That the JSP undertake a comprehensive review of the jury system including:

- i) Current use of jury trials/ whether jury trials should be used as extensively,
- ii) Current jury duty system,
- iii) Whether there is a failure to serve (and if so, reasons),
- iv) Management of juror databases, juror notification,
- v) Juror/citizen attitudes to serving, and
- vi) Effectiveness of juror protection.

Recommendation 4.20: That the JSP consider HR issues such as:

- i) Whether adequate HR resources are available to the courts,
- ii) The adequacy of salary levels for court registry positions,
- iii) Administrative/ Management training of judicial officers and senior court administrators,
- iv) Needs assessment and training capabilities for administrative staff,
- v) Judicial Education requirements: in particular for criminal case management, judicial administration, management of a modern court registry and administration office,
- vi) Training of Magistrate’s Court human resource personnel and court administrators in law and procedures,⁹
- vii) Management, supervision and mentoring capabilities and practices, and
- viii) Requirements and strategies for developing productive work environments and reacting positively to change opportunities.

Recommendation 4.21: That the JSP consider reviewing the adequacy of the judicial complement and the use of alternative measures for carrying out certain judicial tasks. Particular attention should be paid to:

- i) The use of Masters to alleviate certain workloads of judges and free the latter up for trying cases.
- ii) The adequacy of the current number of judicial officers for continuous sittings at what have in the past been circuit points serviced on a part-time basis (e.g., as recently done with success in Ste. Catherines and Clarendon).
- iii) The adequacy of salary levels for court registry positions.

⁹ As noted by a reviewer of an earlier draft, “The curricula for training Deputy Clerks of Courts should be looked at as a useful tool to expose them to some of the subjects” (i.e. law and procedures).

Recommendation 4.22: That initiatives to identify and deal with the levels and types of facilities infrastructure requirements should be addressed within the JSP. This initiative would include the establishment of facilities standards, and the assessment of existing facilities against those standards.

Recommendation R.23: That the JSP include mechanisms to consider and develop solutions to a number of issues related to the developing the required court information systems, including:

- i) Developing clear and complete specifications from different stakeholder groups of their priority requirements for different types of information, e.g.,
 1. obtaining from the Judiciary specification of the specific types of information required to support an effective criminal case management process, or backlog reduction initiatives), and
 2. obtaining from the judiciary, the Ministry of Justice and others, the specifications for the types of tables and statistics needed for regular statistical reports (on performance related to objectives and standards) to the government and to the public.
- ii) Development of an Information Systems Strategic Master Plan that lays out a long-term plan describing the overall system required, a schedule for obtaining or developing, and for implementing the different priority components of such a system, plans for modifying existing systems, and a feasible plan for obtaining the resources necessary to develop and operate such systems.
- iii) Developing a framework and process for ensuring the continuous monitoring and evaluation of system development initiatives.

PROSECUTIONS

Recommendation 5.2: That the JSP consider developing capacities for:

- i) Production and dissemination to internal managers and to the public of regular reports documenting OPP performance vis-à-vis the agreed upon performance standards and measures.
- ii) Particular attention is also required to developing and making available to the public an annual report for the OPP.

Recommendation 5.3: That the JSP include consideration of mechanisms to enhance the relationship between the OPP and the police without sacrificing the independence of the OPP.

In particular,

- i) Police-OPP task forces are already established on a case by case basis in complex or high profile cases. The strategic plan should consider whether measures of this kind should be a standing feature of the prosecutions culture.
- ii) The strategic plan should also examine whether the OPP should be more involved in police training and, without impinging on prosecutorial discretion, in police activities relating to prosecutorial discretion, such as “charge screening” following investigation and arrest. (CONCERNS EXPRESSED)

Recommendation 5.4 The JSP include a consideration of how budgeting from the executive could be more stable, to allow the OPP to engage in planning and global prioritization of resources. Options to investigate will include: greater participation of the OPP in prioritizing the budgetary allocation for the Department, greater fiscal autonomy within the Ministry of Justice budget envelope, and/or creating an OPP envelope separate from the Ministry budget.

Recommendation 5.5 That the JSP include the examination and development of overall case and case flow management strategies—strategies both suitable to the Jamaican context and which allow the OPP to allocate its existing resources more efficiently. Such strategies may involve better oversight over individual cases (e.g., ensuring unnecessary expert reports are not sought) and also better overall procedures for different types of cases (including alternative measures or diversion), and streaming cases into the appropriate procedures. Particular attention should be paid to promising approaches such as “vertical case management”.

Recommendation 5.6 That the JSP include the examination and development of specific OPP case and case flow management tactics and procedures. Of particular interest would be the following:

a) Witness Protection Programs could be strengthened

Witnesses tend to have extended families and deep links to communities which makes resettlement challenging. This program needs to overcome a lack of resources and a lack of suitable alternative communities in which to place witnesses if it is to achieve the goals of more effective prosecutions. In addition, the size of the Island does not allow for many alternative locations. Another difficulty to overcome is the challenge of finding gainful employment when the witness is removed to the new environment.

b) Procedural Re-classification of Offences

It may be desirable to review whether the current distinction between felonies and misdemeanours should be eliminated or, at least, an amendment be made to permit felonies and misdemeanours to be tried together. Police resistance to “charge screening” results in charges reaching OPP with inappropriate or inadequate evidence.

c) More Effective Use of Plea Bargains

The new *Plea Bargain Act* has now been enacted and is designed to facilitate prosecutions of more serious offenders by permitting more lenient treatment of those willing to testify. Time will tell if this new Act will significantly enhance the options available to the police and this will require greater coordination between the police and OPP.

d) More Appropriate Use of Jury Trials

i) The compensation of jurors is cited as a serious barrier to empanelling juries – especially the fact that no compensation is provided to those people called in for jury duty who are not in fact chosen to serve.

ii) With respect to the current classification of crimes that may/must go to trial by jury, it may make sense to broaden the category of offences that may be tried without a jury. Presently, only gun court offences are routinely adjudicated by judge alone - this may be too narrow. It could also be argued that if gun crimes can be tried by a judge alone, then surely less serious offences could be as well.

- e) *Changes to the Jurisdiction of Justices of the Peace*
It may be advisable to expand the jurisdiction of JPs to handle additional minor criminal matters.
- f) *More Effective Measures for Performing Function of Preliminary Inquiry*
For instance, the JSP could consider legislation needed to allow for paper committals in appropriate circumstances.
- g) *Enhancing Resources for the Pre Trial Detention of Accused*
Pre-trial detention (remand) may need to be expanded to cover all classes of offenders including those such as juvenile females or the mentally infirm where separate facilities do not yet exist
- h) *Enhancing Case Preparation (including to reduce delays and backlogs)*
 - i) As indicated above, it may be necessary to create a more efficient disclosure process so as to reduce the cost and delay of prosecuting offences.
 - ii) Securing more effective cooperation from the police in building case, and securing witness cooperation, all could materially improve the case preparation process.

Recommendation 5.7 That the JSP include the examination of the benefits and costs of decentralizing the operations of the OPP.

Recommendation 5.8 That the JSP include examination of the gains to be made from better availability and use of management, supervisory and support staff. Estimates of additional resource requirements and organizational structures would also be addressed.

Recommendation 5.9 That the JSP include examination of improvements to the following systems that provide support to OPP work.

- a) *Forensic Sciences supports*
- b) *Video conferencing capabilities*
(both for vulnerable witnesses and to permit appearances by the accused without transportation to court)
- c) *Automation of Information Processes*
Finally, The OPP could achieve greater efficiency and effectiveness if its information technology and management capacity were improved. Moving from recording prosecution records by hand to computerized systems could allow for the reallocation of significant human and institutional resources.

MINISTRY OF JUSTICE

Original Recommendation 6.1. That the project's TORs be expanded to include capacity-building within the Ministry of Justice. Alternatively, it is recommended that the MOJ be included as a full participant within the GOJ internal "Public Sector Modernisation Project".

Recommendation 6.1. That the JSP support capacity-building efforts of the GOJ internal "Public Sector Modernisation Project". Further, special attention must be given to ensuring that efforts made by the Modernization Project and the JSP are carefully co-ordinated to ensure the most effective and efficient use of scarce public resources.

Recommendation 6.2. That the project’s TORs be expanded to include capacity-building within the MOJ related to the follow “leadership and direction” areas:

a) Overall Direction of the Ministry (mission, vision)

The Ministry has a strategic plan—but the plan is only in draft form. The Ministry needs a long-term vision to provide a longer-term focus for planning and making strategic choices among alternative approaches.

b) Information Essential for Effective Strategic Planning

The Ministry currently does not have the personnel resources or ongoing information base to provide strategic decision makers with up-to-date information, including:

- (1) Environmental Scans/ Risk Assessments that identify current and developing challenges, vulnerabilities, and capabilities of the Ministry. These assessments would also provide the information required to identify what groups should be the key risks and targets to be dealt with by the Ministry (e.g., what offences, what victims, what perpetrators — e.g., mentally ill, children, families, victims, gunmen, youth)
- (2) Lists of Best Practices used in other jurisdictions—to provide MOJ planners with lists of options that might be modified to be suitable within a Jamaican culture and environment

c) Performance Standards (overall, and for specific parts of the Ministry)

The Ministry has begun the performance measurement process by developing different indicators of performance for different parts of the Ministry. These performance indicators (e.g., the time to obtain legal assistance through legal aid) appear in a number of Ministry reports such as: the 3-year business plan (based on direction from the Minister, PM and cabinet) and the 1-year operational plan (which is reviewed by Finance, the cabinet office and the PM). However, the Ministry has not yet developed the levels (or standards) that must be achieved in each of the areas measured (e.g., how much time should it take to obtain legal aid assistance). Without such standards, it is impossible to set expectations as to what is expected and to determine whether or not expectations are reached. The setting of such standards should be a priority.

d) Accountability, Evaluation and Performance Measurement

In our preliminary interviews we repeatedly heard that there is insufficient follow-up on performance and commitments—in general, insufficient monitoring of performance and enforcement of accountability internally. In terms of external accountability for performance, we certainly noted the absence of key documents normally used to demonstrate such accountability, namely annual statistical reports for the courts, the MOJ, or the OPP.

Recommendation 6.3. That the JSP include initiatives to change the culture of the Ministry from a reactive, internal focused and tradition-bound organization—to a proactive, customer-focused, learning environment searching for positive change.

Recommendation 6.4. That the JSP include initiatives to develop the required level of expertise and the level of resources available to undertake strategic management functions within the Ministry.

Recommendation 6.5. That the JSP include an examination of the organizational decision-making structure at middle and senior levels within the Ministry—and a consideration of its appropriateness given the managerial and analytic capabilities of senior and middle levels of the organization.

Recommendation 6.6. That the JSP include initiatives to review and improve the following organizational mechanisms:

a) *With The bar*

The criminal bar can in most countries have a strong impact on efforts to modernize the criminal justice system. Whether or not that impact is positive or negative depends on a number of factors, but it stands to reason that the chances for a positive contribution is increased if the bar is given a meaningful role in all stages of the modernization efforts. In Jamaica, the bar has, through its various associations and their subcommittees, and through various organizations such as the Rules Committee of the court, a voice in certain modernization activities. The Bar also has access to an MOJ Consultative Committee. Nonetheless, in our meetings with senior members of the Jamaica Bar Association concern was expressed that this role could be improved. We have elsewhere in this document recommended mechanisms for increased bar involvement such as court “operations” committees. However, the JSP could explore mechanisms for better facilitating bar involvement in areas of concern such as commenting on new legislation and improving technology in the court registry. (NOT ACCEPTED SUFFICIENT MECHANISMS ALREADY EXIST)

b) *Between the OPP and other components of the CJS*

Elsewhere in this document we have noted to need to examine the organizational relationships between the OPP on the one hand, and the police, courts, and judiciary on the other. The MOJ could usefully provide the lead in those examinations.

c) *Victim Support*

Especially if the CJS is to adopt a restorative justice approach, it is important that effective organizational mechanisms be in place for offering assistance to victims of crime, and giving them an enhanced role in the justice process. Currently the responsibility for different victim services is split between the police and MSN. Consideration should be given to examining and either clarifying or changing these relationships—and whether additional or different relationships are needed to support key aspects of restorative justice approaches.

d) *Role of JPs*

Suggestions have been made to alleviate the workloads of Resident Magistrates by enhancing the responsibilities of Justices of the Peace.

e) *The public generally*

The public play an important role in virtually all aspects of the criminal justice system—from reporting (or not reporting) crime, to helping (or not tolerating) the

reintegration of offenders back into the community during or after they have served their sentences. That said, it was often repeated during our interviews that Jamaica is a culture-driven society, and that many aspects of the traditional culture present challenges for implementing some of the most promising approaches to criminal justice reform. Specific examples include: mistrust of the police, distrust of authority generally, a tendency to always dispute accusations (and unwillingness to plead guilty), and a tendency to favour retribution and revenge over reconciliation. Exploring efforts to increase the positive involvement of the public in criminal justice by changing public attitudes through public education would constitute an important component of a JSP.

f) *With regard to the re-integration of offenders back into their communities during or after they have served their sentences*

“A number of mechanisms already exist for this. These include half-way houses managed by the Department of Correctional Services, rehabilitation programmes also administered by Correctional Services, Parole, as well as the *Criminal Records (Rehabilitation of Offenders) Act*, 1988 administered by the Ministry of Justice.”¹⁰

Recommendation 6.7. That any initiative to enter into RJ should ensure that leadership, organizational structures and partnerships, strategies and resources and support systems are developed to ensure that each of the above principles is achieved. Such an initiative should proceed slowly, start small, and begin with a careful planning and developmental phase.

Recommendation 6.8. That this developmental process begin with the creation of a Jamaican task force composed of representatives of government, interested church groups, and existing Jamaican experts and practitioners in related fields such as mediation and non-violent conflict resolution. The first initiative of that task force would be the development of draft principles and policies appropriate to the Jamaican situation and culture, to guide planning and development in the restorative justice area.

Recommendation 6.9. Once agreement has been reached on principles and the government has approved these principles, the task force should consider policies related to RJ, covering such issues as:

- the types of offences and offenders which should be eligible for RJ initially, and potentially later (many countries begin with relatively trivial offences and juvenile offenders, only expanding into more “controversial” offences and offenders after gaining experience with these cases);
- the referral mechanisms (e.g., screening tools) and authorities which should be in place to trigger RJ consideration;
- the stages in the justice process at which RJ may be made available (many countries begin with initiatives at the pre-charge stage – cases which may never result in “full-blown” prosecution anyway – or with victim-offender confrontation following conviction and imprisonment of the offender) ;
- the types of situations, victim-offender relationships, and communities in which RJ

¹⁰ MOJ memo, *ibid* p 2.

- should and should not be made available;
- the means by which communities will be consulted about RJ initiatives beginning in their midst;
 - the safeguards for ensuring free and informed consent by victims and offenders;
 - professional standards for mediators and other facilitators;
 - methods and personnel to ensure the enforcement of restorative agreements; and
 - accountability and evaluation methods.

Recommendation 6.10. Once these policies are well developed and have the agreement of government, a stepwise plan for implementation can be addressed, e.g., through pilot projects in selected parishes for pre-charge diversion of juvenile property offenders to community service programs – or whatever approach is deemed most suitable to Jamaica.

Recommendation 6.11. Evaluation of initial programs is considered essential to clarifying the lessons learned and deciding how to proceed in future. Ongoing evaluation should be built into any RJ strategy for Jamaica.

Recommendation 6.12: That the JSP consider methods of obtaining the level of resources needed to meet the expectations placed on the Ministry of Justice, the courts and other agencies under its aegis.

Recommendation 6.13: That the JSP explore the nature of and possible solutions to concerns about the effectiveness and appropriateness of the manner in which certain legal aid and other legal services are made accessible. In particular, that exploration would include:

a) *The establishment of a pilot project at a high volume police station in Kingston to examine the cost-effectiveness of alternative procedures and models for ensuring the availability of Legal Services at Police Stations, and the procedures for gaining access to those services.*

One suggestion to explore would be the assignment of specific Duty Counsel to specific parish stations during particular periods—with perhaps the Duty Counsel assigned at specific high volume times being present on site. Another suggestion would be rotating attorneys serving in this function. It would also be important to explore more appropriate ways of linking accused persons with specific Duty Counsel. Whatever the particular model of delivery chosen, active coordination, case management and supervision are integral to an effective service.

b) *Development of alternative procedures and models for improving the access to legal services in the Horizon Remand Centre.*

It is, for instance, recommended that—as a pilot project—Duty Counsel be stationed at the New Horizon Adult Remand Centre (HARC) to serve the roughly 700 persons there on any given day. This pilot could be run on a half-time basis. HARC staff told us that communication between remandees and their attorneys often had to be carried out via family members, with few attorneys traveling to the Centre. Stationing a duty counsel service at HARC would be a cost-effective way to serve a majority of the remandees in Jamaica. The exact model for the service

should be the subject of a needs analysis and review of different staffing and supervision models.

It is also recommended that improvements be made to procedures facilitating contacts between prisoners and their individual attorneys.

- c) *A review of the extent of the challenges (if any), and possible remedies related to the timeliness with which payments are made for legal aid services..*

There are clearly differences in perceptions regarding the facts related to this issue. Providing an accurate picture would be a productive step forward in bringing the debate to a conclusion.

Recommendation 6.14: That the JSP include as one of its main themes the improvement of services to victims—using the general approach outlined in the MOJ Victim’s charter. Particular issues to be addressed would include: enunciation of appropriate victim’s rights in proceedings in parts of the criminal justice system, victim compensation, protection for victim witnesses, the establishment of victims services attached to the courts, special protection and procedures for child witnesses, and the role of victim generally in restorative justice programs.

POLICING AND LAW ENFORCEMENT

Recommendation 7.1: That the JSP examine the possibility of having developed a fully announced statement of commitment from government regarding the renewal plans for the *Jamaica Constabulary Force*. For example, transparency will be important. If the government is attempting a renewal of the JCF via the lateral entry of senior officers from abroad, this should be clearly stated and shared with the JCF as a whole.

Recommendation 7.2.2: That the JSP examine how decisions regarding the introduction of outside, lateral entry officers are currently being made, with possible recommendations for a more strategic approach.

Recommendation 7.3: That the JSP examine the outcomes from the previous two Jamaica Constabulary Force Strategy documents that currently exist pertaining specifically to *organizational issues*. Many of the concerns relating to direction and leadership have been addressed but follow-up is as yet unknown.

Recommendation 7.4: That the JSP examine the previous strategic recommendations made by or for the *Jamaica Constabulary Force* and that these recommendations be compared to outcomes and evaluations.

Recommendation 7.5: That the JSP address these four types of accountability: violence/killings; liability; oversight; technology.

Recommendation 7.6: That the JSP examine these three areas and make recommendations for a better fit between the work of the police and the work of the courts/lawyers.

Recommendation 7.7: Specific to community-policing, given the number of previous reports that have advised Jamaica to implement community-policing, that the JSP recommend that a study be undertaken to look at what is being done in this area and with what degree of success or failure.

Recommendation 7.8: That the JSP compare policing budget allocations and budgeting process to those of other Jamaican government departments.

Recommendation 7.9: That the JSP recommend that a study be carried out to determine the current and best practice formula for budget allocations.

Recommendation 7.10: That the JSP address salary issues—such as the question of police receiving an adequate salary for professional and recruitment purposes.

Recommendation 7.11: That the JSP recommend that a more holistic look at the training needs and training being received is required.

Recommendation 7.12: That the JSP examine the legislation that is in place with a special focus on the “criminal membership” and “proceeds of crime” legislative powers. The proposed Crime Bill must be passed into force. Legislation must be developed within Jamaica and adapted specifically to the needs of Jamaica. Any anti-money laundering legislation must include all cash businesses, real estate dealers, financial institutions, lawyers etc.

Recommendation 7.13: That the JSP examine “infrastructure issues” such as the availability and effectiveness of systems for data and intelligence collection, analysis and sharing.

CORRECTIONS

Recommendation 8.1: That the JSP include a resourcing analysis, to be conducted of community sentencing and corrections, which would address the true human resource needs of a fully staffed probation and parole service and the community rehabilitation, reintegration and restoration programs that it should encompass.

Recommendation 8.2. That the Department of Correctional Services stay the course set by the comprehensive 2003 Review, not altering its corporate direction except as dictated by the unavoidable restrictions on available resources to implement the recommendations.

Recommendation 8.3.: That the JSP explore options to shift responsibility from police to corrections for delivery of remandees for scheduled court dates and back to remand.

Recommendation 8.4: That the JSP establish a formal training program for judges and magistrates regarding community-based sentence alternatives and their use. As well a component of the JSSP should establish regular and frequent strategic communications between judiciary and corrections regarding sentencing and correctional operations and issues, including presentence reports, the risk and needs profiles of offenders, and community correctional capacity.

Recommendation 8.5: That the JSP include establishment of a continuous, full-time duty counsel on site at the New Horizon Adult Remand Centre (HARC).

Recommendation 8.6: That the JSP include initiatives to eliminate legal and structural barriers to programming for remandees.

Recommendation 8.7: That the JSP include entering into discussions with CSC or other Canadian correctional authorities to obtain assistance and advice concerning:

- prison population forecasting;
- private-public partnerships for constructing and operating prisons;
- the creation and maintenance of a database on offender risks and needs; and
- building community corrections capacity.

DELAY REDUCTION A PRIORITY INITIATIVE

Recommendation 9.1: that a project be begun as soon as possible to address the issue of backlogs and delays in the courts. Such a project would follow the approach outlined in recommendations in earlier sections--especially, recommendation 4.17.

IV. CONCLUSION

This overview paper demonstrates that there have already been substantial efforts at examining the Jamaican justice system and that some important initiatives are underway. There appears to be some consensus about the major concerns, some identification of possible causes of problems and many ideas concerning potential directions for reform. At the same time, there appears to be very little available reliable data about the status of the justice system and little evaluation or monitoring of reform efforts. As noted at the outset, this paper is very much a preliminary draft and serves the purpose of pulling together various opinions and documents about justice system reform. It does not evaluate or synthesize previous reviews – although the recurring themes are easily discernable. Readers are invited to provide comments on the content of this document so that a complete and accurate revised overview can be prepared. It is anticipated that this initial draft overview and subsequent revisions will help to inform the JJSR as it carries out its mandate and develops of a comprehensive framework for coherent and sustained justice system reform.