

Jamaican Justice System Reform Task Force

Final Report

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Jamaican Justice System Reform Task Force (JJSRTF)

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CHAIRMAN'S MESSAGE

Justice as a word encapsulates even-handedness and fairness, qualities that are fundamental to any self-regulating social order. Without them social order is maintained through force, and only temporarily as our history so well teaches. Jamaica's declaration of Independence in 1962 with the motto *Out of Many One People*, was intended to mark the beginning of the end of the "Two Jamaicas" of Paul Bogle, of Alexander Bedward, of the Rastafari. That what should have been the comforting quiet of a satisfied people nearly fifty years into this Independence is the grating cacophony being sung over and over in the refrain *We Want Justice*, tells of how deep is the unfulfilled promise of 1962. And tells as well how deep into our reserves we as a people must reach if we are to build a Just Jamaica.

Reaching deep is how one could characterise this Review which represents the first step in the process of reforming Jamaica's system of Justice. Efforts were made to make the Task Force broad and inclusive in its representation of all the stakeholders, its process of consultation as wide and as transparent as possible, its conclusions consensual, and every one its Recommendations open to public scrutiny and comment.

To be sure, the judicial system which constitutes the parameters of this review is not all that there is to the system of Justice. There are the law-enforcement and the penal institutions components, as well as the laws regulating the social order. The reform of all three *pari passu* with judicial reform is a necessity if Jamaicans are to get the justice they cry for. While the efforts required cannot be overestimated—especially legal reform, which can only take place on the basis of a Caribbean jurisprudence taking our cultural realities into account, if the resolute will that has so far gone into the judicial reform begun with this Report is anything to go by, our people will at last get the justice they so richly deserve.

We who made up the Task Force are proud to be part of what surely is going to be seen ten years from now as a turning point in our history. We are therefore grateful not only for being asked to serve but also for being the recipients of the participation of hundreds of our fellow Jamaicans, young and old, the commitment of the Minister and the Permanent Secretary, the support of the project team and the expertise of the Canadian Bar Association, all of whose inputs have ensured that the reform of Jamaica's Justice system could not have got off to a better start.

Barry Chevannes

INTRODUCTION

A. THE JAMAICAN JUSTICE SYSTEM REFORM PROJECT

1. The Jamaican Justice System Reform Project (JJSR) was established by the Government of Jamaica to undertake a comprehensive review into the state of the justice system and to develop strategies and mechanisms to facilitate its modernisation so that it is better able to meet the current and future needs of Jamaicans. A modern justice system will be more efficient, accessible, accountable, fair and able to deliver timely results in a cost-effective manner.

2. The Government of Jamaica has assigned a high priority to improving the justice system as part of its public sector modernisation programme. Many reforms have been introduced in specific areas and other initiatives are currently underway. However, these measures are largely piecemeal rather than applied to the justice system as a whole. The old structures and the traditional ways of doing things remain basically in place. In order for reforms to be truly effective, the entire system needs to be assessed and a cohesive, broad ranging strategy to modernise the justice system needs to be developed and implemented. This is the objective of this JJSR comprehensive review – an initiative of the Government of Jamaica led by the Ministry of Justice and the Public Sector Reform Unit of the Cabinet Office, with support provided by a team from the Canadian Bar Association.

3. The JJSR Task Force was established by the Government to provide guidance to the comprehensive review and to make practical achievable recommendations to achieve modernisation of the justice system. The Task Force is comprised of representatives from the various sectors of the justice system and civil society. This report contains the JJSR Task Force's findings and recommendations. It is based on an extensive and ongoing research and consultation programme that has included a wide-ranging conversations with stakeholders and members of the public across the island.

B. THE SCOPE OF THE REVIEW

4. The notion of justice is one that extends far beyond the formal court system and includes ideals such as social justice and environmental. Within our society, cries of “We want

justice” are a familiar example of this widely understood and accepted broader term. In this review process, the term ‘justice system’ is used to describe the legal system integral to our democracy and its qualitative character of attempting to achieve essential fairness and an appropriate balance between individuals and groups within society.

5. The justice system is made up of a number of operationally independent actors who together, are responsible for the system of criminal and civil law, maintenance and enforcement. This system embraces the courts, judges, justices of the peace, lawyers, the police, the prisons, correctional officers, other service providers such as mediators and victim support workers, the Ministry of Justice and the Ministry of National Security.

6. The central focus of the JJSR is on courts and court-connected resolution processes. It does not directly address broader justice-related concerns such as crime prevention, policing and corrections, except to the extent that they relate to and interact with court processes. At the same time, it is important to acknowledge that modernisation of the courts is affected by and will in turn have an impact on these justice-related sectors and initiatives. The Task Force has attempted to take the interdependent nature of the justice system into account throughout the review and reform process.

7. The JJSR has focused on reform of the justice *system* and therefore has not addressed the need for reform of the substantive law nor the desirability of constitutional reform. However, the Task Force has made some recommendations for reform of the justice system that will require legislative change and potentially constitutional amendment.

C. THE REVIEW PROCESS

8. The Task Force embarked on a broad research and consultation programme in carrying out its mandate of a comprehensive review of the Jamaican Justice System. Throughout its mandate, the Task Force has been ably assisted by a Canadian Advisory Committee that consists of eminent jurists and court administrators experienced in justice system reform. The members of the Canadian Advisory Committee are listed in Appendix A to this Report.

9. The research programme resulted in the completion of a number of studies including:

- 6 major research papers
- 2 discussions papers
- 2 compendia of justice reform options in other jurisdictions (general court reform/civil justice reform and criminal justice reform) and
- 17 issue papers on specific reform options.

10. These studies were reviewed by Task Force members, project staff and by Issue Working Groups established by the Task Force under the major reform themes of: Access to Justice; Civil Justice Processes; Court Administration and Management; Criminal Justice Processes; Professionalism in Support of Justice Reform; Promoting a Civil Liberties Culture; and Restorative Justice. The Issue Working Groups provided the Task Force with reports including recommendations for reform relevant to their terms of reference. The list of studies and membership of the Issue Working Groups are set out in Appendices B and C to this Report. It is anticipated that the studies will be made available including on the JJSR's website.¹

11. The JJSR consultation programme consisted of 6 components:

- key informant interviews
- focus group interviews
- the solicitation of written submissions
- the establishment of Regional Working Groups
- the establishment of a Youth Working Group; and
- the convening of public consultation sessions islandwide.

12. Over 75 interviews were held with individuals and groups and over 40 written submissions were received from individuals and organisations. Four Regional Working Groups were established and their membership is set out in Appendix D to this Report. The Regional Working Groups assisted in the convening of the public consultation sessions and provided

written reports to the Task Force. 21 public consultation sessions were held and approximately 720 individuals participated in these sessions. The locations and dates of these sessions are set out in Appendix E. The Youth Working Group travelled to various locations around the island to meet with young persons and ascertain their views about the justice system and the need for reform. The membership of this Working Group is listed in Appendix F. The information gathered through the focus group interviews, written submissions and public consultation sessions is summarised in a Consultation Report will also be available on the website.

13. In early May 2007, the Task Force published its Preliminary Report and reform proposals. The Preliminary Report was made available on the website and presented at a National Justice Summit under the theme of *Setting the Agenda for Action* held on May 10 and 11, 2007. Approximately 400 individuals attended all or part of the Summit and provided feedback on the preliminary proposals. This input has been integrated into this document, which is our Final Report.

14. The Task Force thanks everyone who has participated in the JJSR research and consultation programmes and in the National Summit. In order to present a cohesive set of recommendations, we have decided not to attribute specific recommendations or comments to individual research papers or written and oral submissions.

D. OVERVIEW OF THE REPORT

15. The JJSR Task Force's Final Report and reform recommendations are set out in nine parts.

16. **Part 1 – The Justice System Today.** The first part provides a brief overview of the status of the Jamaican justice system today. The focus is on identifying the major problems and challenges to be addressed during the reform process.

17. **Part 2 - The Justice System of Tomorrow.** The second part provides a vision of what the Jamaican justice system should be like in 10 years. The focus is on identifying the

¹The JJSR website is available at www.moj.gov.jm and click on JJSR logo; or www.cba.org/jamaicanjustice/

major foundational changes that need to be made in order to have an effective and accessible modernised justice system.

18. **Part 3 – The Framework for Change.** The third part sets out the general parameters of the change process envisioned by the Task Force under the themes of reinvestment, modernisation and transformation.
19. **Part 4 – The Foundations of the Justice System.** The fourth part sets out reform recommendations concerning the main components of a modern justice system: the physical plant, court management and administration, justice system personnel, increased capacity for training and access to legal materials.
20. **Part 5 – Structure, Jurisdiction and Accountability.** The fifth part sets out reform recommendations concerning how the components of the justice system should be structured so that they can work together in an effective and accountable manner.
21. **Part 6 – The Public and the Justice System.** The sixth part sets out reform recommendations concerning how the public interacts with the justice system, focusing on the issues of access and participation.
22. **Part 7 – Criminal Justice Reform: Transforming Practices and Legal Culture.** The seventh part sets out recommendations for the reform of criminal justice practices, processes, procedures and legal culture with a focus on reducing delay and increasing effectiveness.
23. **Part 8 – Civil Justice Reform: Transforming Practices and Legal Culture.** The eighth part sets out recommendations for the reform of civil justice practices, processes, procedures and legal culture with a focus on reducing delay and increasing effectiveness.
24. **Part 9 – Institutionalising Justice System Reform.** The ninth and final part sets out recommendations for implementing justice system reform on an ongoing and continuous basis.
25. There is an important underlying logical structure to the order in which the Task Force presents these major reform themes. We begin with the foundation of the justice system

and assign a priority to strengthening this foundation so that it can support the weight of the demands on the justice system. Then we move to the two major themes dealing with how the various parts of the system connect and interact. First, the components of the justice system and how the various levels of courts and other justice system agencies interact, which we have brought together under the main topics of court structures, jurisdiction and accountability mechanisms. Next, we address how the public interacts with the justice system. The third layer of reform encompasses recommendations dealing with the processes, practices and legal culture. These recommendations are divided into those that focus on criminal justice and on civil justice respectively. The report structure is illustrated in the following diagram of *The Pyramid of Justice System Reform*.



E. AN INVITATION TO PARTICIPATE

26. The Task Force regards this Final Report as an invitation to all participants in the justice system to work together to achieve the vision of the Jamaican justice system of the twenty-first century set out herein. Without this cooperation and active involvement of all

participants, meaningful change is impossible. We hope that the work of the Task Force will assist in achieving renewed commitment to this collective enterprise and that our work and recommendations will prove useful in this endeavour.

PART 1 - THE JAMAICAN JUSTICE SYSTEM TODAY

27. Part 1 of this Final Report contains a snapshot of the state of the Jamaican justice system today, in 2007. The comprehensive review process has involved extensive research and consultation into the major problems facing the Jamaican justice system and issues that should be addressed in the reform process. More detailed accounts of these challenges are contained in documents prepared for the JJSR and are available on the JJSR website.²

28. This short synthesis of the findings to date is meant to provide the context for the discussion and reform recommendations contained in the remainder of this Report. We need at least a preliminary understanding of the system that we are moving away from in order to decide the general direction for reform and to develop a vision of the justice system that we want to move toward. More detailed examples of problems and issues are discussed under the specific reform areas in other parts of this Final Report.

29. Jamaica is not alone in facing the challenges of justice system reform. We are very much part of the world community in this regard as every country is engaged in meeting these challenges. The Task Force has drawn inspiration from approaches to reform throughout the Commonwealth and in particular from the Caribbean region.

A. OVERVIEW OF CURRENT PROBLEMS AND STRENGTHS

a. Problems

30. The following twelve main problems have been consistently identified through the research and consultation programmes:

- Delays: the time it takes to achieve a fair disposition of matters is often unreasonable in both civil and criminal matters and there is a consequent growth in the age of cases within the system (the “backlog”);
- Lack of respect is usually accorded to individuals who come in contact with the justice system (disrespect for their personal dignity, their time, and their rights to privacy);

² These documents include: *Overview of Jamaican Justice System Reform: Issues and Initiatives* (November 2006) which summarises findings from previous reports and the *JJSR Consultation Report* (to be posted in June 2007) which summarises the input received through the consultation programme.

- Court houses and other infrastructure are in very poor condition;
- The justice system is not under-funded;
- There is a lack of consistency in the enforcement of laws and outcome of various legal processes, including for example inconsistency in sentencing, which contributes to uncertainty;
- Procedures and language are too complex and in some cases archaic;
- There are many barriers to accessing the justice system, including the inaccessibility of legal information, legal assistance and the courts;
- There is a perception that individuals are not accorded equal treatment by the justice system nor to they receive the equal benefit and protection of the law;
- Insufficient attention is paid to human rights and some of Jamaica’s obligations under international human rights treaties some of which have not yet been integrated into domestic law and practice;
- Justice personnel do not always carry out their duties in a professional manner (and related concerns about low remuneration, insufficient numbers of personnel to handle job, and inadequate training);
- Many practices and procedures are outdated and inefficient (specific issues include: the use of juries, the use of preliminary inquiries, scheduling practices; court management and administration practices; filing and recording keeping); and
- Actors and institutions within the justice system are not fully accountable.

b. Strengths

31. The greatest strength of the Jamaican justice system is the widespread confidence and belief in the integrity and commitment of the judiciary. This general perception is validated by the fact that there has only been one charge of judicial corruption in a generation and that charge led to a successful conviction.

32. Other perceived strengths include the adoption of the new Civil Procedure Rule which, while not fully implemented, and supported, has already led to higher settlement rates and shorter trials. The integration of mediation into both criminal and civil processes and the work of the Dispute Resolution Foundation are also often highlighted. These and other important reforms have also contributed to increased knowledge about, and engagement in, the justice system which operates with the mission “timely delivery of a high standard of justice for all.”

33. Many other specific reforms have been initiated. These include: an increase in legal aid in criminal cases; the introduction of specialised courts (e.g. the commercial division of

the Supreme Court, Drug Court, Small Claims Court); the development of a modernisation plan for court houses; an increase in the number of Resident Magistrates; establishment of a training facility (the Justice Training Institute); establishment of some peace and justice centres; the Justice System Computerization Project started in 1999 (including an increase in the use of court reporting technology). Recent specific governmental initiatives include: a National Plan of Action for Child Justice; a restorative justice initiative; and steps towards the adoption of a Victim's Charter. A number of bills are currently before Parliament to improve the efficiency of the justice system, particularly in the criminal sphere.

34. The Chief Justice, the Minister of Justice and the Ministry of Justice have been champions of justice system reform and have laid a strong foundation for the work that lies ahead.

35. At the same time, it is important to acknowledge that because many of these reforms are quite new and, in some cases, not yet fully implemented there is a gap between the law and actual practices. Due to this time lag, some of the Task Force's recommendations may overlap, in some respects, with recent or planned justice reform initiatives. Rather than being perceived as duplication, we are of the view that our recommendations should serve to reinforce some of the important directions for reform already initiated by the Ministry of Justice as well as pointing to some new paths that have yet to be embarked upon.

B. ROOT CAUSES AND CONSEQUENCES OF EXISTING PROBLEMS

36. A comprehensive review cannot stop at the identification of the main problems. In order to develop workable and effective solutions, we need to diagnose these problems, to understand their root causes and their consequences.

37. The major problems of access, delay and lack of understanding are the results of a number of interrelated factors. One could argue that today's justice system is destined to produce access and delay problems, because each aspect of the system can be used to the advantage or for the convenience of various participants - lawyers, clients, judges, court administrators, police, jurors, and witnesses. Together these practices culminate in a system marked by a general culture of delay.

38. Impediments to access and the causes of delay are in part systemic in nature. The systemic barriers include:

- lack of a sufficient user orientation;
- low levels of public knowledge and understanding about how the justice system functions;
- complexity and inflexibility in often antiquated practices and procedures;
- the impact of traditional approaches to litigation and models for managing and handling cases;
- insufficient collaboration between justice system participants;
- drastically inadequate financial and human resources;
- inadequate management tools and resources;
- insufficient accountability and transparency (including an absence of performance standards);
- insufficient strategic planning; and
- outdated court administration and management models and practices, as well as a lack of clarity concerning overall responsibility for court administration.

39. These same factors are also major contributors to reluctance to reform or to change the system. Reform solutions must take into account all of these systemic barriers and how they interact in order to succeed. For example, the introduction of civil procedural reform and case flow management has been hampered by inadequate attention to consequential issues such as training, change in court staff functions, and related facilities issues. Reform measures have in some cases been based on foreign models without adequate adaptation to the Jamaican context and taken without adequate consultation of stakeholders and users of the justice system.

40. The experience with justice reform efforts to date highlights the need for a comprehensive reform plan and sustained consistent implementation. The absence of a coherent institutional policy framework has generated a lack of clarity on what the problems are and how they should be addressed. The result has been ad hoc policymaking, as well as inadequate funding support and piecemeal implementation, that have undermined the effectiveness of planned reforms.

C. TRENDS AND PRESSURES ON THE JUSTICE SYSTEM

41. There have been increasing demands on the justice system in Jamaica as a result of changing social, technological and economic conditions. The fragmentation of some communities, lack of social and economic progress and the sharp rise in violent crimes are significant factors contributing to inordinate pressure on the justice system. One direct result has been a dramatic increase in case loads, at the same time that there is an asserted need for greater speed in the handling of cases.

42. The problems in the Jamaican criminal courts are not just caused by the heavy volume of cases. A major contributor to the breakdown of the system is the high level of fear that members of the public have for their own safety as a result of endemic violence. The court system is dependent on the cooperation of the public in their roles as victims, witnesses, and jurors. The level of public fear makes it very difficult to get this cooperation, which is essential for the proper functioning of the justice system.

43. Demographic trends also have an impact on the justice system. The population of Jamaica was estimated at 2.6 million in 2005 and projected to increase to 3.2 million in 2025 and 3.8 million in 2050. It is forecasted that there will be a decrease in the proportion of children and an increase in the size of the working age population and the size of the elderly population. The elderly population will surpass the size of the child population by 2050. Growing urbanisation will also significantly affect the courts. The urban population was estimated at 38.0 per cent in 1970, 52.0 per cent in 2001 and is projected to reach about 56.0 per cent in 2025.

44. Like all public institutions, the justice system is also subject to heightened demands for greater real accountability. There is increased pressure to impose on the judiciary management efficiencies, performance indicators and standardisation that have been part of the reform of other branches of government but which judges have to reconcile with their abiding duties of professional autonomy and constitutional independence.

45. The rapid rate of legal change and the continuous need for adaptation and reform and the related need for ongoing education and training also places great pressure on the justice system and its personnel. The integration of technology is one aspect of this trend.

46. One of the main consequences of the problems of access and delay has been a decrease in public confidence in the justice system. It is clear that there is public distrust about the courts. Additionally, there has never been a sense of public ownership of the justice system. However, this trend is being reversed to some extent as people are beginning to become more involved as participants in the justice system, including through community-based mediation and restorative justice initiatives.

47. Police abuse of civil rights including illegal application of the state's power and authority over its citizens by some of its staff and the application of physical and verbal abuse, further contribute to waning public confidence and alienation from the justice system. While steps are being taken to strengthen safeguards against abuse of police authority, this legacy continues to affect the relationship between citizens and the state.

48. Confidence has also been eroded because of the frustration with proposed reforms that have not been fully implemented and due to the failure of successive governments to prioritise funding for justice reform. This experience has resulted in cynicism and distrust on the part of many stakeholders and some members of the public.

49. The Task Force wishes to convey the sense of urgency that the people of Jamaica feel about the need for justice system reform. Many of those consulted used terms such as “on the brink of collapse” to describe the current situation. Without public confidence the justice system cannot fulfil its role effectively in contemporary Jamaican society.

D. SUMMARY OF THE CURRENT STATUS

50. In 2007, the Jamaican justice system is:

- too *unequal*: there is a lack of equality between the powerful, wealthy litigant and the under-resourced litigant;
- too *expensive*: the costs often exceed the value of the claim and also some ways of proceeding are cost-ineffective from the perspective of the justice system;
- too *uncertain*: the difficulty of forecasting what litigation will cost and how long it will last, induces fear of the unknown; there is also a lack of consistency in outcomes;
- too *slow* in bringing cases to a conclusion;
- too *complicated*: both the law and procedure can be incomprehensible for many people;

- too *fragmented* in the way it is organised: there is no-one with clear overall responsibility for the administration of justice;
- too *adversarial*: while proceedings must respect the adversarial process, there is room for cooperation to make proceedings and the system more efficient.

The major problems are:

- the speed with which disputes are resolved in the courts;
- the affordability of dispute resolution in the courts;
- public understanding of the work of the courts and the system as a whole; and
- lack of public confidence in the system.

The systemic problems are:

- lack of a sufficient user orientation;
- complexity and inflexibility;
- the impact of traditional approaches to justice which limit needed innovation;
- inadequate management tools and resources; and
- insufficient accountability and transparency.

The problems and barriers to reform include:

- a general culture of delay;
- wholly inadequate resources resulting in deplorable physical conditions in the courts and lack of material support needed for an effective and efficient system.

PART 2- THE JAMAICAN JUSTICE SYSTEM OF TOMORROW

51. Part 2 of this Final Report sets out a vision of what the Jamaican justice system should look like in ten years. The purpose of this vision is to guide the reform process and to provide a template against which progress can be measured. While 2017 seems far away and the need for reform is urgent, experience in other jurisdictions demonstrates that it is a realistic time frame for the reform process given the current state of the justice system and the number and complexity of the problems and proposed solutions. This Part also lists the foundational shifts that must be undertaken in order for this vision to be achieved and a series of benchmarks that should guide both the reform process and justice system operations. This vision, foundational shifts and benchmarks will help to monitor the reform process that must start as early as possible in 2007 in order for the 2017 vision to be achieved.

A. A VISION OF THE JAMAICAN JUSTICE SYSTEM IN 2017

52. The existing mission statement for the Jamaican courts is: “Timely delivery of a high standard of justice for all.” This statement encapsulates the fundamental goals of the justice system and provides a strong foundation for the reform process. However, some elaboration and expansion is required. The Task Force recommends that the renewed vision statement should be:

The Jamaican justice system is available, accessible, accountable and affordable on a timely, courteous, respectful, flexible, fair and competent basis for all.

53. If this vision statement is achieved, in 2017 the Jamaican justice system will embody the following features that can be related to elements of the vision statement.

AVAILABLE AND ACCESSIBLE:

- It will **provide adequate and safe facilities** that fully respect the dignity of individuals working in and served by the justice system and are reflective of the important role of the courts in Jamaican society.
- It will be **understandable, easy to use and free of barriers.**
- It will be **comprehensible to users and will provide high quality information** that responds to public needs.
- It will **help to ensure assistance and legal representation for those who need it.**

TIMELY AND AFFORDABLE:

- It will provide **timely justice** at a reasonable speed without unreasonable delay.
- It will **encourage early resolution** of matters.
- It will offer appropriate procedures at a **reasonable cost**.
- It will be **cost-effective**.

FLEXIBLE:

- It will be a multi-option system that provides **flexible, responsive and proportional dispute resolution options**.
- It will **integrate the various dispute resolution techniques and case management mechanisms into a co-ordinated whole**.

COURTEOUS, RESPECTFUL AND FAIR:

- It will **ensure the fair and equal treatment of all participants** including the accused, witnesses, victims and litigants.
- It will be **responsive to the diverse needs of users and the general public and provide prompt, courteous, respectful and effective service**.
- It will ensure the **protection and promotion of civil liberties and human rights** in line with constitutional and international legal obligations by ensuring due process and equality before the law.

ACCOUNTABLE:

- It will be a more **integrated and efficient justice system which engenders public confidence**.
- It will **encourage and value public involvement**.
- It will be **managed in a transparent and accountable manner** that respects organisational boundaries, monitors and controls operations, meets established performance standards and promotes openness to public scrutiny.
- It will **incorporate a unified management, administrative and budgetary structure** with clear lines of responsibility and accountability that integrates modern management structures and techniques.

COMPETENT:

- It will provide a **high standard of justice** and provide as much certainty in outcome as the nature of the case allows.
- It will contribute to **peace and enhanced safety and security within Jamaican society**.

- It will be **equipped with modern computer and electronic technology** to enable participants in the system to work together as an integrated whole.
- It will utilise the **right blend** of judicial, quasi-judicial and administrative **personnel** with clearly designated responsibilities.
- It will be **underpinned by a strategically and properly funded infrastructure** and supported by excellent people, tools and education.
- It will **carry out reform on an ongoing, sustainable, dynamic basis to continuously foster excellence and innovation.**

B. FOUNDATIONAL SHIFTS IN APPROACH

54. In order to achieve this vision of the Jamaican justice system by 2017, a number of foundational shifts in approach must be undertaken. These nine foundational shifts are:

- (a) A move away from a tradition-bound system to one that values and rewards **problem-solving and innovation**. Modernisation requires abandoning a “this is the way we have always done it” mentality and adopting a general openness to redefining tasks, reviewing procedures, streamlining and so on. The right balance must be found between valuing tradition and ensuring that the central pillars of justice remain unchanged, while being open to needed innovations.
- (b) Developing a new organisational **performance culture** that emphasises integrity, professionalism and accountability in all sectors of the justice system.
- (c) Developing a customer service or **user orientation** to replace the current approach geared toward the needs of the judges and lawyers and which demonstrably values the role of the public.
- (d) Developing a **knowledge culture** that takes the development of statistics and information, monitoring and evaluation, training, and extensive public legal education seriously, as an essential aspect of promoting a healthy legal culture.
- (e) Developing a **human rights culture** where there is a strong general understanding of rights and responsibilities and effective mechanisms for promoting and protecting human rights and civil liberties.
- (f) A move away from an ad hoc approach that depends upon individual strengths and towards **greater professionalism and enhanced systems** for court administration.
- (g) A shift away from control over the process by litigants and their attorneys and toward **court management of processes** with a clear focus on outcomes.

- (h) A move from a strictly adversarial system to a more collaborative one, including more **effective collaboration** across and among the many independent actors and agencies within the justice system.
- (i) A move toward the **greater integration of court-related services** including legal aid, victim support, family law counselling, dispute resolution options, restorative justice initiatives and so on.

C. **BENCHMARKS FOR EVALUATING REFORM RECOMMENDATIONS**

55. In addressing the concept of a modern justice system and what its features should be, the Task Force determined that it would measure its recommendations against the following criteria or benchmarks:

- **ACCESS TO JUSTICE:** reform should make the machinery of the courts and court-related processes more accessible to those they serve and more flexible and responsive to the public's needs.
- **EXPEDITIOUS AND TIMELINESS:** reform should increase the capacity of all actors and institutions to meet responsibilities in a timely and expeditious manner.
- **EQUALITY, FAIRNESS AND INTEGRITY:** reform should increase the quality of decision-making including through the provision of due process and equal protection of the law to all who engage with the justice system.
- **INDEPENDENCE AND ACCOUNTABILITY:** reform should establish appropriate legal and organizational boundaries so as to protect the independence of the judiciary and the Bar, enhance the monitoring and control operations, and increase public accountability for performance.
- **STREAMLINED PROCESS AND ADMINISTRATION:** reform should contribute to the streamlining of judicial processes and administration.
- **PUBLIC TRUST AND CONFIDENCE:** reform should contribute to increased public confidence and trust that the justice system is accessible, fair and accountable.
- **PROPER FUNDING:** reform should contribute to ensuring that funding for the justice system is reliable and at appropriate levels in order to function smoothly and to meet the evolving demands placed upon it.
- **PEACE AND SECURITY:** reform should contribute to increased peace and security across Jamaica.

56. This first report contains our preliminary views on how to achieve these benchmarks through a comprehensive justice reform process.

PART 3 - REINVESTMENT, MODERNISATION AND TRANSFORMATION: THE FRAMEWORK FOR CHANGE

57. Part 3 of the Final Report sets out the general parameters of the change process envisioned by the Task Force. We are calling for a fundamental reorientation of the justice system. 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 this transformation process.

58. Realising this vision will require fundamental change in a number of areas and on many dimensions. In our view, the framework for change is guided by the themes of reinvestment, modernisation and transformation.

A. REINVESTMENT IN THE JUSTICE SYSTEM

59. Many of the serious problems facing the justice system can be attributed in whole or in part to the lack of investment in the justice system. Many years of under-funding have resulted in an antiquated and archaic system – symbolised by the decayed state of the Jamaica’s courthouses.

60. A strong government commitment to reinvestment in the justice system over the next decade is an essential feature of the reform process. While many reform measures are not costly, without the substantial infusion of new resources for the foundations of the justice system facilities, equipment and personnel – reform is impossible. Furthermore, reform measures will often entail some upfront investment even where money will be saved down the road.

61. The justice system must be properly and adequately funded. However, "funding" is a difficult and elastic concept and gives rise to a conundrum. Questions related to the form and quantities of resources cannot be accurately assessed and answered until the structures, systems, management techniques and human resources are in place to ensure the system operates in as effectively as possible. At the same time, the system cannot be re-thought and re-structured to allow this to happen without the allocation and re-allocation of appropriate funding.

62. The Task Force is hindered in our efforts to make firm recommendations concerning resource allocation by the lack of adequate management information about the costs of justice, let alone the cost-effectiveness of the current system on an overall basis. As a result, we do not have sufficient information upon which to base a detailed assessment courts' budgets and funding levels at this time. Few countries have been able to develop this type of detailed information, but enhancing the capacity to do so is in itself important part of justice system reform. Priority should be given to developing this requisite information to serve as the basis for future funding decisions. Through its Court Administration Project, the JJSR has taken some important steps toward increasing this information base. Another method for developing measurements of the adequacy of funding, is through the development of standards for court operations. Standards for court operations serve a number of functions including assisting in the proper allocation of resources across the board and to individual courts. Recommendations for the development of standards for court operations and other performance standards are set out in Part 5.

63. The Task Force is acutely aware of, and sensitive to, the current climate of fiscal restraint and constraint. However, a failure to reinvest in the justice system will severely jeopardize the reform process and seriously erode the integrity of the entire system. A momentum toward fundamental change is growing and a will to change is coalescing. This opportunity must be seized and adequately resourced. We act at the public's peril, if we do not follow through with the required funds.

64. The reality is that the legal system has traditionally been a very low priority when it comes to the overall responsibilities of the Government in Jamaica and in most other countries around the world. Justice has not rated highly compared to other government responsibilities such as health, education or defence. In fact, it would not be going too far to say that until now, many people saw the legal system and lawyers as a hindrance to the operation of a fair and just society, rather than an essential component of such a society.

65. Leadership must be demonstrated by politicians on a bi-partisan basis to commit to appropriate levels of funding to achieve agreed goals, to work toward increased recognition of the importance of the justice system within society. An effective justice system is essential to a

functioning of democracy and the rule of law. The rule of law vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs. The relationship between the rule of law and the justice system can be understood in these terms:

The rule of law can, in the end, only be maintained if it rests on the absolute confidence and support of the people. The people must believe that the justice system will give them a fair hearing, that rules and procedures will be simple and work in the interests of justice, not against it, and that the law will be applied without fear or favour to the strong and weak alike.³

66. The rule of law and effective functioning of the courts and the justice system underwrite the wealth and prosperity of Jamaica by providing the legal certainty, clarity and predictability which are the essential pre-conditions of a successful investment, commerce and finance. The strategic importance of an effective justice system and its relationship to social and economic development is ever more true today in our shrinking, global world with ever-increasing mobility of people and capital.

67. There are a myriad of arguments to be made in support of reinvestment in the justice system. Economic and social development are hampered by an inefficient justice system which has a direct impact on investor confidence. The justice system is the generic platform on which all other sectors of the society must depend and build. When our justice system fails, our democracy cannot be sustained. Justice is the bedrock of a safe and secure society and is inextricably linked to development. An efficient justice system sustains society and facilitates its peaceful evolution.

68. The Task Force is aware that the Government of Jamaica has already earmarked additional funding for the justice system in anticipation of the outcome of the JJSR process. Given the singular importance of adequate funding for reform, we call for all-party support for greatly enhanced and sustained funding for the justice system.

³ D. Kerr quoted in Australia, Access to Justice Advisory Committee, *Access to Justice Action Plan* (Canberra: 1999) p.3.

RECOMMENDATION 3.1

The Task Force calls upon all political parties to publicly commit to a 10-year reinvestment strategy in the justice system.

RECOMMENDATION 3.2

The Task Force calls upon the Government of Jamaica to set aside an envelope of funding for justice system reform, in addition to an increase in the regular funding for the Ministry of Justice, on an annual basis beginning in 2008 and continuing until at least 2017.

69. Government has the primary responsibility for funding the justice system at an appropriate level. However, the potential for investment by the private sector and for public-private partnerships should also be enhanced. In this context, the private sector includes not only businesses but all sectors of civil society including: trade unions, faith-based organisations and academia. Some local businesses and other organisations have already begun investing in the improvement of the justice system in Jamaica under the general rubric of responding to the social needs of the society.

70. A case for private sector investment in the justice system can be made both on the basis of benefits to the community at large and the direct financial benefits that accrue to private enterprise through the improvement in the administration of justice. The direct benefits to business and to society include:

- a more productive workforce since workers will spend less time away from work to participate in the justice system as parties, accused persons, witnesses or jurors;
- a more secure workforce that is more productive because workers enjoy enhanced psychological well-being;
- decrease in violent crimes through a more effective justice system which would reduce the amount of time workers are away from work due to injuries and could reduce the number of individuals who migrate from Jamaica which is a real challenge for businesses especially due to the reduction in the pool of skilled labour;
- a justice system that has been revamped to refocus the way in which the courts punish offenders with a view to their rehabilitation, can serve to enlarge the pool of labourers available to the business community;
- local businesses are also subject to victimization and intense criminal activity can prevent businesses from operating effectively;
- some businesses have reported that they do not take formal legal action to enforce their rights because the justice system is inefficient and not cost-effective;
- justice reform could lead to reduced security costs;
- crime also creates expenses for the consumer, which would in turn result in a decrease in the available income of the consumer to purchase its goods;
- violent crime has a negative impact on the investment climate;
- a justice system that delivers timely decisions in these types of civil disputes will, therefore, be more attractive to investors; and
- local businesses also benefit from the rule of law and from a system in which disputes are handled quickly and effectively.

71. By investing in the reform of the justice system the economic circumstances of the country promises to improve. By partnering with government in this sense, there is the potential benefit of improving or confirming the good relationship between various sectors in the community and the Government.

72. Creative ways should be developed for businesses and others to invest in the justice system through civic participation or for financial returns. While one can readily recognize and welcome monetary investment, which is clearly useful to fund projects such as the improvement of the physical infrastructure of the justice system, the business community can “invest” in other ways. For instance, it has been recognized that as part of the reform effort, there is a need for a public legal education programme. Businesses can provide facilities for hosting legal education seminars. Also, businesses may “invest” in the process by encouraging

their workforce to volunteer in school-based programmes geared at educating students in this regard.

RECOMMENDATION 3.3

The Task Force recommends that the private sector establish a Justice System Reform Investment Committee with a mandate to develop a plan to facilitate business investment in justice system reform. A special focus should be on creative, non-monetary ways for businesses to invest in reform measures.

73. In many countries, support to the justice system is provided through the vehicle of a law foundation. Generally speaking, law foundations are established by statute and funding is generated from the interest that accrues on monies held in trust by lawyers. In Canada, there are law foundations in each province, operated by independent volunteer boards and a small paid staff. Some of these jurisdictions are smaller and have substantially fewer legal transactions than Jamaica. Canadian law foundations contribute to various legal system endeavours including: public legal education, legal aid, legal research, law libraries and legal education. This law foundation model should be considered for Jamaica as an additional source of funding for the justice system.

RECOMMENDATION 3.4

The Task Force recommends that a Law Foundation Working Group be established with a mandate to investigate possibility of establishing a Law Foundation of Jamaica to help fund innovative justice-related services. The Working Group should consider, among other things:

- creative ideas for generating funding including:
 - (1) a nominal real estate transactions levy;
 - (2) a request to private sector organizations and companies that have legal departments to contribute a nominal percentage of their annual legal services budget;
 - (3) investigating ways to increase the interest that accrues on monies held in accounts by lawyers for their clients, given that these accounts tend to be for small amounts and held for short periods of time;
 - (4) the possibility of awards of costs payable to Law Foundation
- the statutory framework and organisational structure for the proposed Law Foundation of Jamaica
- the mandate and funding priorities of the proposed Law Foundation of Jamaica and
- models from other jurisdictions could serve as the basis for the proposed Law Foundation although they should be adapted to fit the Jamaican context.

B. THE ELEMENTS OF MODERNISATION

74. The JJSR process is not a stand-alone government initiative. Rather it is one aspect of the modernisation of the public service and government in Jamaica. The principles applicable to the modernisation process are therefore highly relevant. The following discussion is based on *Government at Your Service - Public Sector Modernisation Vision and Strategy 2002-2012* (Ministry Paper no. 56. Cabinet Office January 2003). This paper provides the framework for all modernisation initiatives.

75. The Public Sector Modernisation Plan focuses on:

- improved accountability and transparency;
- improved access to and better quality services;
- a commitment to customer service;
- the appropriate use of technology to bring government closer to the people;
- a new emphasis on human resource development in the public sector;
- the inclusion of public servants *and the public itself* in the decision-making process; and
- a long-term approach to reform and an end to the short-term multi-project approach taken previously.

76. As can be readily appreciated there is a large degree of commonality between the vision of the justice system of 2017 set out in Part 2 and the elements of public sector modernisation. The challenge is to adapt these elements of modernisation to the justice system – which is comprised on many independent actors and agencies.

77. In addition to establishing this general framework for change, the Public Sector Modernisation Plan set out a number of priorities for good governance that relate directly to the justice system. These include:

- Providing information on citizens’ rights, responsibilities and procedures to exercise their rights, through community notice boards and the public information system.
- Publicising the existing channels of participation available to the public and actively involving citizens through focus groups, citizens’ juries and other forums.
- Designing and enforcing mechanisms/sanctions to maintain the rule of law, which will facilitate economic growth, security and social capital formation through better access to timely, affordable and just resolution of disputes/judicial matters, by:
- Continuing and accelerating reform within the security and justice sectors

- Ensuring that resources are provided for laws to be enforced
- Ensuring that citizens are aware of their obligations to support the force of law
- Ensuring the timely disposal of legal matters through the strengthening of administrative capability of the courts
- Making legal aid and other legal services available at the local level
- Promoting the use of Alternative Dispute Resolution mechanisms
- Revising civil procedures and rules to make the judicial process more client-driven with a customer service orientation.

78. The specific initiatives highlighted in the Public Sector Modernisation Plan should be accorded priority status within the comprehensive justice reform process. A particular focus of modernisation should be on encouraging a sense of public ownership of the justice system so that the people of Jamaica feel that they “own” the system rather than being merely users of the system.

C. REFORM AND TRANSFORMATION

79. The JJSR is a historic mission, for despite all of the studies that have been undertaken in the forty-five years since independence none of them has approached the task of a fundamental overhaul of the justice system. The system today remains essentially what it was at the turn of the 20th century since the only fundamental change has been the separation of the Court of Appeal from the Supreme Court in 1962 and the introduction of outsourced mediation services to the courts since the mid 1990s.

80. In using the term “transformation”, the Task Force means a programme of coordinated and integrated fundamental changes to the justice system that will involve its structures, operating systems, strategies, capabilities and culture. This holistic set of changes must embrace the way all justice system personnel think of their roles and objectives. It cannot be mere tinkering with the existing system.

81. The Task Force considers that the underlying philosophy for transformation of the justice system rests on the central ideal and principle upon which all other human rights are founded – the right of equality. Independent Jamaica inherited a justice system of intentional exclusion and inequality. Today our challenge is to move to a system of intentional equality.

However, equality does not always mean uniform treatment since treating people who are differently situated the same often results in perpetuating inequality. Rather, we refer to a more profound understanding of substantive equality, which takes into account and responds to actual conditions and aims to rectify disadvantage.

82. Transformation of the justice system must safeguard and promote human rights for all, under all circumstances. A liberal rights-based approach is completely consistent with an efficient justice system including flexible, tailored options. Human rights provide the strong foundation and boundaries for reform, but do so in a manner that allows for fundamental change. It is important to distinguish between human rights, which are unchanging, and the mechanisms and procedures utilised to protect and promote those rights and our understanding of those rights, which do evolve over time.

83. Realising the Task Force’s vision for the Jamaican justice system in 2017 requires transformation at the level of attitudes, behaviours, processes, systems and practices. The legal system is particularly resistant to change given that it is based on a system of precedents and steeped in the preservation of tradition and order. These qualities are valuable but they also inhibit transformation.

84. Legal cultural resistance to change has been attributed to: (a) tradition or comfort with the status quo; (b) the general human trend towards inertia; (c) feelings of powerlessness; (d) lack of time and energy; (e) fear about losing status, power or income; and (f) liability concerns and professional ethics. The Task Force has attempted to address these barriers to change in its recommendations.

85. In addition, the history of truncated reforms has resulted in a disengagement and lack of trust on the part of some individuals and organisations. The JJSR process has focused on mobilising individual and collective engagement in the review and reform process and this mobilisation effort must be continued through the implementation phase.

86. Meaningful and effective communication is essential to facilitate and manage individual and systemic change. Successful justice reform measures in other jurisdictions have been introduced where there has been honest discussion about problems, clear statements about

what is meant to be achieved by proposed changes, and close consultation among the various participants within and outside of the courts.

87. Fundamental change theory defines transformation within an organization as creatively destroying something and remaking it around a new vision. This theory sets out a number of principles concerning how to achieve fundamental and ongoing change within institutions. It can be stated as a number of elements of a strategy to achieve transformative change within the Jamaican justice system:

- gain acceptance of the basic premise that fundamental change is required;
- develop a shared vision of the desired end state;
- develop structures for ongoing learning/diagnosis toward this end; and
- establish a system of positive and negative rewards.

88. This theory forces us to confront some of the oversights made in past reform efforts. It tells us that the basic premise that fundamental change is required cannot be assumed: it must be created. All of the how-to recommendations, best practices and model policies in the world cannot effect change in the absence of a good faith belief in the value of change. The Task Force has begun the dialogue toward developing a consensus amongst stakeholders and members of the public on the need for transformation. Given that transformation of the justice system requires a long-term process and approach, leadership from the Ministry of Justice must be in place to continue this dialogue for the next ten years. Further discussion about implementation and fostering ongoing processes for reform are discussed in Part 9 of this Final Report.

RECOMMENDATION 3.5

The Task Force recommends that the Ministry of Justice take appropriate steps to continue and expand the mobilisation process for dialogue and engagement during the implementation phase of the Jamaican Justice System Reform and as a permanent feature of the system.

PART 4 - THE FOUNDATION OF THE JUSTICE SYSTEM

89. Part 4 sets out recommendations concerning the main components of a modern justice system. Efficient court procedures are merely superstructures that will not stand if a foundation of adequate physical facilities, efficient court administration and management practices that is well-coordinated with all other branches of legal services and efficiently integrates relevant technology is not put in place.

90. The justice system is a people-based system – it is highly people intensive. Its successful operation is dependent upon the co-ordinated and effective activity of large numbers of employees, judges and lawyers. As a Task Force, we have been highly impressed by the dedication and capacity for work demonstrated by each of these groups of people. We believe that with the innovations that we are proposing they will be able to work more effectively in their individual efforts.

91. Fundamental change must begin with a focus on the skills, responsibilities and training of justice system personnel. Capacity-building measures and enhanced accountability are key. The recommendations made in this Final Report usher in a new day and a paradigm shift in the mind-set required for an effective justice system that can meet the demands of the 21st century. This transformation will require significant attention to change management and attention to transitions to prepare justice system personnel for this shift to provide them with the support that they require to carry on in the new order.

92. The foundational components of the justice system identified and discussed are: (A) the physical plant; (B) modernisation of court administration; (C) judicial independence and accountability; (D) Justices of the Peace/Lay Magistrates; (E) the prosecutorial arm of justice (D) accountability, conduct and competence of the legal profession; (F) bailiffs; and (H) enhanced training capacity and access to legal materials.

A. THE PHYSICAL PLANT

93. Courthouses and court facilities are an integral part of the administration of justice. They are symbols of the presence of justice in the community, and they provide the physical space from which justice is made available to the public.

94. Court facilities are important from the perspective of all groups involved. The adequacy and accessibility of court accommodation influences the public's perception of the quality of justice being dispensed. A significant portion of a court administrator's time is spent maintaining, improving, and reorganizing limited court space. Judges and court staff must live daily with the working conditions created within this space. Finally, the Bar looks upon the courts as a place where they need to conduct case - related business of all kinds.

95. The condition of the courthouses and other facilities is in many cases very poor. Some of the specific problems include:

- court structures generally are in a dilapidated and antiquated condition;
- some courthouses are located in or connected to administrative buildings such as police stations which raises concerns about the independence of the courts;
- maintenance and cleaning of facilities are inadequate;
- many courtrooms are so noisy or have such poor acoustics, that it is difficult to carry on court business;
- many courthouses have insufficient lighting, ventilation and air conditioning;
- many courthouses do not have minimally acceptable facilities for the public or court personnel (restrooms, parking, etc...);
- the physical plant for the Supreme Court Civil Registry is grossly inadequate;
- there is insufficient space for the safekeeping of court files and records;
- many courthouses have insufficient space and suffer from chronic overcrowding in both the public and operational areas;
- there is insufficient functional basic equipment such as telephones, facsimile machines, typewriters, etc...;
- the location of court facilities does not necessarily reflect the demand for service;
- there is a lack of specialised spaces for different court activities;
- security is poor;
- lack of facilities for the disabled;

- working conditions are substandard;
- significant physical barriers exist to the efficient application of case flow management, to the ability to adapt to re-thought processes, and the flexibility for implementation of new technology and services;
- jury and public waiting areas are insufficient;
- there are no counsel rooms or libraries in most courthouses;
- there is a lack of space for expansion.

96. It is very difficult if not impossible to render high quality justice in the physical conditions that exist in most Jamaican courts.

97. The most critical facilities issue is the deplorable condition of lock-ups, in police stations and in transport. The completely unacceptable conditions under which detainees and accused are kept have a deleterious effect on the spirit and morale of these individuals and their ability to give coherent instruction to counsel and to testify in court. In addition, these physical conditions make it extremely difficult, if not impossible, for client and attorneys to conduct their meetings, which are essential to due process and the right to legal representation. Attorneys, and in particular less experienced counsel, often have to struggle to gain access to their clients. It should be made clear that facilities for interviewing “in sight but not in hearing” be made available as a matter of course.

98. At present, Justices of the Peace play an important monitoring function in visiting lock-ups and other places of detention and reporting on conditions to the Custos. In some parishes, Resident Magistrates also visit lock-ups to ascertain the physical conditions either on their initiative or when problems are brought to their attention. Despite these efforts, the conditions in these facilities remain dire in many parishes. In addition to immediate government action to address this critical situation, mechanisms for regular ongoing monitoring and reporting on these conditions be enhanced to ensure that problems are identified and addressed on a timely basis.

RECOMMENDATION 4.1

The Task Force recommends that the deplorable conditions in lock-ups and police stations experienced by accused persons be immediately improved and in particular that:

- adequate physical facilities be provided at all police stations for the interview of persons in custody by their lawyers and for examination by medical doctors and other professionals;
- rules be introduced to make it clear that these facilities be made available as a matter of course;
- the conditions in which detainees and remandees are transported to court be immediately improved; and
- mechanisms for regular, ongoing monitoring and reporting on these conditions be enhanced to ensure that problems are identified and addressed on a timely basis.

99. Court facilities must be improved to accommodate witnesses. This includes a separate area for witnesses to enter and exit, proper and adequate seating arrangements inside and outside of the courtrooms and general sanitary conveniences for witnesses and the public. Facilities to accommodate vulnerable witnesses must be a priority. Water coolers, telephone facilities, announcement of the cases and the courtroom each will be heard in, proper direction signage and general information as to how to contact the Court staff and what is appropriate court attire, visibly and permanently placed, may be small improvements that can make the court compound more user-friendly.

100. Enhancement of the physical plant should prioritise access to the public, including social groups, such as disabled persons, that have special needs. All Stakeholders should have

appropriate spaces to carry out their functions. For example, there should be interviewing rooms for counsel to meet with their clients.

101. Actions to address these concerns within the physical plant of the justice system have been inadequate as they tend to be either piecemeal improvements or overly ambitious plans that are often delayed due to the high costs involved. Renovations and renewal have also been hampered by inadequate consultation and lack of follow up.

102. In order for the justice system to function properly it must provide adequate and safe facilities that fully respect the dignity of individuals working in and served by the justice system and are reflective of the important role of the courts in Jamaican society.

103. The Government of Jamaica has embarked upon a renewal plan. A programme of repairs and new construction is ongoing. This plan should be revised to take into account the reforms proposed under the JJSR. One ongoing issue is the need to rationalise the number of courthouses across the island, particularly the outstations. A study of this type was undertaken in 1992 and led to the closure of several outstations. The implementation of the JJSR is a timely opportunity for the commissioning of an up-to-date study of this type. Such a rationalisation study should be conducted in conjunction with a review of the option of the regionalisation of the Supreme Court and the Resident Magistrates Courts discussed in Part 5.

RECOMMENDATION 4.2

The Task Force recommends that the following factors be taken into account in renewing courthouses, other facilities and equipment:

- all new courthouse designs be based on the model of a consolidated courthouse, and that, to the extent possible, current facilities should accommodate all courts and court offices;
- a standard set of courtroom and courthouse designs be created to be used whenever new facilities are to be built or present facilities are to be renovated;
- courthouses should be designed to ensure that judges and jurors have secure access to the courtrooms and that accused persons also have secure but separate access to the courtrooms from the holding areas;
- public spaces in courthouses should be maintained and not renovated into courtrooms and offices; and,
- courthouses should be well signposted, with information pamphlets available for public use. Priority should be given to ensuring that existing facilities are safe and meet all building standards;
- facilities should meet the needs and interests of users of the justice system (including interview rooms, counsel rooms, libraries, restrooms etc...);
- accommodation needs should also take into account the space required by the use of information technology and the provision of improved facilities for litigants and advice agencies;
- members of the public should be accommodated in the courtrooms so that judicial proceedings are truly open and accessible;
- barriers to persons with disabilities should be removed to the extent possible;
- local court committees should be consulted early and on a continuing basis during the planning and implementation of renovations;
- each court should have budgetary control over regular maintenance, cleaning and repair and consult with the local court committees about these issues on a regular basis;
- planning should focus on a preventative rather than corrective approach to maintenance and more attention should be paid to monitoring and maintaining buildings to avoid major deterioration; and
- a system of janitorial, maintenance and security contracts for the various court buildings should be put into place.

RECOMMENDATION 4.3

The Task Force recommends that current and future plans for court facilities take into account the changing needs of the court system as outlined in this Report. For example, secure working space for judicial and administrative decision-making teams should be built in such a way as to support the process. Courtrooms should be kept available for trials, so other types of rooms are available for meetings, other dispute resolution processes, and court-related support services including various forms of counselling.

RECOMMENDATION 4.4

The Task Force recommends that the Government undertake a study and rationalisation of courthouses, particularly outstations.

104. The issue of courthouse security is closely related to the upgrading of the physical plant. The Task Force received many submissions concerning the difficulties experienced due to the fact that the police force is responsible for courthouse security. There is a strong tendency for police officers to make the public feel unwelcome at court: “the people are shouted at, spoken down to and cross-examined about the purpose and why they are entering court.” At the same time, security searches are perfunctory and anyone who looks like an attorney is generally accorded free passage. Once inside a courthouse, an individual may roam about and, as the judge’s chambers are easily accessible, may enter such chambers at will. Similarly, both police officers and members of the public tend to enter freely into court offices despite the fact that this

gives the appearance of potential conflict of interest and inappropriate access to court staff documents and has the potential for inappropriate use of government resources and equipment.

105. It is time for our courts to be manned by its own cadre of police officers for a number of reasons including: (a) much of police manpower is tied up in court duty; (b) sometimes court cannot begin because officers have been called away; (c) it would enhance public confidence in the independence of the judiciary; and (d) it would allow for more efficient and effective service of summonses, subpoenas and warrants.

106. The responsibility for court security should be removed from the JCF and placed in a court marshal or sheriff service within the Court Services Unit at the Ministry of Justice and should ultimately report only to the Chief Justice. This service should be staffed by appropriately trained individuals. This service could also become responsible for the service and execution of court process currently carried out by Bailiffs and for the delivery of jury summonses. Specific protocols and administrative procedures should be developed to regulate access to the courts. However, the notion that the citizen has a right to attend court and is encouraged to do so needs to be emphasized

107. No firearms should be allowed within the court building. All firearms (including those carried by police officers, detectives, etc... should be checked and handed in at the entrance and certainly there should be none within the court room. The JCF could be responsible for providing additional security where warranted in exceptional circumstances.

RECOMMENDATION 4.5

The Task Force recommends that court house security be provided by a newly-constituted and specially-trained court marshal or sheriff service administered by the Court Service Unit but ultimately responsible to the Chief Justice. The new court security service could also be granted the responsibility to serve summonses, subpoenas, and warrants.

Protocols and administrative measures should be developed to ensure appropriate and safe access to the courts and appropriate monitoring and verification technology should be at every court. Public and police access to court offices and judges' chambers should be restricted. No guns should be allowed in courtrooms.

B. MODERNISATION OF COURT ADMINISTRATION

108. A modernised justice system will incorporate a unified management, administrative and budgetary structure with clear lines of responsibility and accountability that integrates modern management structures and techniques, and effectively employs technology.

109. Much of the work performed by court staff is highly manual, duplicative and repetitive. Current processing activities are very time-consuming and there is great scope for the re-engineering of administrative processes to increase effectiveness and efficiency. At the same time, there is a paucity of information about the actual operations of the courts.

110. The JJSR has initiated two projects to ensure that court administration issues are studied in-depth so that detailed recommendations can be made. These are the Court Administration Project and the Pilot Court Site Project.

111. One of the components of the Courts Administration Project focuses on the development of statistical data elements or management information reports. Currently an initial draft of the types of data elements has been prepared and definitions for each element are being drafted to provide a clear understanding of each piece of data as well as ensure consistency in reporting information.

112. In addition, a table showing the aging of the caseload is being developed to assist with the identification of the status of cases currently on active courts lists. For example, cases may be reported in the following aging categories shown in days on an active court list:

0-60	61-120	121-180	181-240	241-360	Over-360
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This type of analysis allows the courts to identify potential backlog situations as well as compare improvements in reduced aging times as a result of delay reduction initiatives.

113. Also being developed are a number of “survey tools” which will be used to conduct a detailed analysis of cases on the active courts lists and possibly cases that have been completed. This will help us to understand the types and reasons for adjournments from one court date to another and allow the courts to consider possible solutions to reduce delay. Early drafts of a number of the survey tools have been created for testing at the Pilot Site. These surveys will also help to determine if further analysis is required in an operating courtroom.

114. All of the foregoing data elements, aging information and survey information will also contribute to the introduction and design of the automated case management system currently in place in a number of locations across Jamaica called JEMS or the Judicial Enforcement Management System.

115. A Pilot Court Site has been established to test and evaluate a variety of business changes, organizational restructuring both within the courts as well as the offices and specific technologies. The Pilot Site is the Parish of Clarendon at May Pen. The information obtained from the test site experiences will be shared with other court locations as well as the Supreme Court to encourage the development of additional ideas and support synergy among the justice community.

116. A user committee has been established at the Pilot Site consisting of a range of stakeholders to provide feedback on initiatives as well as to offer additional suggestions on other opportunities that may exist.

117. A number of activities are currently underway at the Pilot Site. They include such things as:

- Process Mapping;
- Organizational Chart Development;
- Office Workflow Analysis;
- File systems review and file storage such as:
 - a. Moving to flat filing in criminal cases from the current folded documents
 - b. Alternatives for the storage of old files
 - c. Improved processing and storage of traffic tickets.
- Activation and use of the JEMS application to support the business processes and reduce the amount of paper processing and duplication of effort in recording information related to court cases. This includes the training of court office staff in the use of JEMS.
- Another technology, digital recording, will be demonstrated and evaluated for the Resident Magistrates' Courts as an option for court reporting. This technology has the potential to free up valuable judicial time currently expended making copious notes of court proceedings required in the event that a transcript of the proceeding is required since no court reporting solution is currently used in the Resident Magistrate's Courts.
- Testing of an in-court structure similar to the Supreme Court of Jamaica is anticipated. This relates to the introduction of a courtroom registrar and court reporter / monitor as part of the administrative staff complement. This initiative together with moving administrative responsibilities to the Court Administrator has the potential to free up judicial and prosecutor time in the courtroom allowing them to focus on adjudication and legal aspects of prosecution respectively.

118. In addition to these specific projects, a further initiative involves the establishment of a number of committees composed of experienced Court Administrators from across the island. These committees will be structured along specific court business lines or practice areas such as family, criminal, civil, etc. These committees will provide procedural advice as change occurs, help in the development of procedures manuals, identify and share "best practices", assist with the development of customer service improvements and ensure a continued capacity for change.

119. Many of the early activities can be introduced under current legislation and court rules with minimal expense. There will be additional initiatives and suggestions that will require

changes to legislation and court rules, financial planning and stakeholder consultation that will result in longer term implementation timelines. Examples of these initiatives are the introduction of case management, changes to case scheduling practices and the possible creation of the trial co-ordinator position.

120. Detailed recommendations for reform and an action plan for implementation will be developed based on the experience with these court administration projects and initiatives.

121. At this time, the Task Force is ready to make some general recommendations on a number of broader issues that will complement this more detailed work focused on administrative reform. The topics addressed here are: (1) technology and management information systems; (2) court administration personnel; and (3) establishment of a Court Services Agency.

1. Technology and Management Information Systems

122. Prior to 1999, the use of technology in the courts was limited to the telephone system, typewriting machines, photocopying facilities and the system of court reporting for the production of transcripts. Even these older technologies are still not uniformly and reliably available across the island.

123. The Justice System Computerization Project was initiated in January 1999. The main components of the project are computerized case management, document management/ imaging, office automation, internet access and electronic case filing. The scope of the project will extend to cover all court levels within the island. The objective is to strengthen the rule of law by improving the operational environment of the justice system through the establishment of computerized integrated management information systems to enable the court to store, access and disseminate information in more efficient forms.

124. In 2000, the use of the Judicial Enforcement Management Systems (JEMS) was commenced on a pilot project basis in the Supreme Court and the Dispute Resolution Foundation for civil, family and probate matters.

125. In the Supreme Court, court reporting is carried out through a mix of old and new computer programs. Real time court reporting for Jamaica can be very challenging due to the patois dialect as the shorthand when translated conflicts with the English language.

126. Current planned initiatives include:

- Automation of the Juror Selection Process which will facilitate the more timely selection of juries for all parishes (Circuit Court);
- Court of Appeal and Office of the Director of Public Prosecutions to interlink with JEMS;
- E-JEMS. This will enable judges to access their cases by way of the internet;
- E-Filing. Attorneys would be able to access the cases they have filed by way of the internet and file documents pertaining to their files. Parties would be informed by way of email of documents that have been filed;
- Judges will be given interactive access to JEMS to facilitate the setting dates;
- Interlink the data system of the Supreme Court with that of the Dispute Resolution Foundation;
- Introduction in select courts, T.V Video Link to facilitate the provision of timely witness statements/ evidence in court and;
- Introduction of Real Time Court Reporters into a pilot group of Resident Magistrates Courts.

127. Experience to date with integration of technology has been mixed. Problems that have been identified include:

- Insufficient numbers of computer equipment for some functions;
- Equipment is not being fully utilised;
- Resistance on the part of some judges and some court personnel to move toward more automated systems;
- Problems with updating of software programs;
- Insufficient software licenses;
- Technical support is insufficient;
- Insufficient persons assigned to the task of data entry (clerks/court aides continue their traditional duties and function as data entry clerks); court personnel have too many duties to facilitate developing the software to ensure its optimal use;
- The Information Technology Department is being reformed and expanded without the proper infrastructure;
- No follow up, encouraging and monitoring the entry of information on the network;

- There has not been the requisite shift in organisational culture to facilitate the integration of technology (combination of the system of regulations, existing competence of staff, work ethic of some staff and lack of delegated authority act as constraints to reform);
- Computerisation of existing procedures is putting the cart before the horse;
- The benefits of ongoing scanning of documents filed in the Supreme Court are not being realised as the system is not as yet organized to allow for a complete file in any matter to be viewed electronically, because the scanning is not being done within the JEMS and;
- Insufficient strategic planning and support to implementation of technology plan.

128. In the Resident Magistrates' (RM) Courts, there is currently no real computerisation of daily court processes. The RM courts computerization project will involve the implementation of computerized case management system island-wide to enable these courts to capture information about each case in a central database. A Wide Area Network is to be implemented linking all RM courts to the Supreme Court in Kingston where the central database server will be housed. The objective is to equip all RM courts with computers, printers and scanners and to employ JEMS for all business lines (civil, financial, criminal, traffic).

129. One of the priorities for the Pilot Court Site in May Pen is to activate the JEMS system. It is anticipated that this will provide important insights and assist in the development of an effective strategic plan for system-wide implementation of this technology.

130. The current list of priority technology initiatives should be revised to take into account the reform priorities identified through the JJSR. For example, questions have been raised about the priority assigned to scanning of documents and e-filing in the Supreme Court. As currently carried out, the scanning of documents has little utility given that there is no linkage between the scanned documents and it is labour intensive.

131. The new Court Services Unit should have the overall responsibility for developing and implementing the technological plan for Jamaican courts and for monitoring and evaluation its implementation. Implementation will have to be phased and take into consideration actual experience. Summit participants emphasized the need for intranet connections and in particular, email connections between agencies involved in the bail process. They also recommended that a cost-benefit analysis be undertaken of installing public access

kiosks island-wide and noted the importance of security features especially where public access is concerned.

RECOMMENDATION 4.6

The Task Force recommends the following priorities for the technological plan:

- Introduction of court reporting in RM courts and in Supreme Court civil matters;
- Technology is key to effective case flow management and modern information management but computerisation should follow and implement redesigned procedures not lead them;
- Proper case management by Judges.
- Computerization of the office of the DPP leading to a reduction in reliance on paper and manual processes;
- Develop a network to integrate the office of the DPP;
- Provide public access terminals to offer accurate real-time information about cases;
- Automation of juror selection process in Supreme Court;
- Jury management system.
- A system that allows for the synchronization of the final digital audio recording with annotations made by judges during hearing.
- Provide proper storage facilities for transcripts and notes on a server with a database.

RECOMMENDATION 4.7

The Task Force recommends that a concerted, consistent and planned approach be taken to the integration of technology including the following elements:

- The introduction of new technologies should be gradual and accompanied by proper planning, evaluation and monitoring. The use of pilot projects to test implementation is recommended;
- Building capacity through training more staff;
- Establish procedural standards and manuals for the court;
- Machines, personnel, and the current software and software licenses should be provided in the right quantity and quality, with a maintenance and upgrading and replacement plan;
- The Ministry of Justice should implement follow-up measures to ensure that the new procedure is followed to facilitate the transition from manual to computerized methods;
- The advantages of the computerized system needs to be promoted amongst members of the judiciary as well as other staff members who have, in the past, been resistant to some technological changes;
- Compliance with the new standard should be made compulsory, i.e. be incorporated into the rules;
- The method of data entry used in the corporate area differs from the methods used in the rural areas, If this is not corrected it will lead to a corruption of the database for both rural and urban courts; and
- In relation to introducing court reporting in the RM Courts there should be: (1) an upgrading of the court rooms including sound proofing and enhancing the acoustics of the court room and (2) an increase in staff complement to meet increased demands.

RECOMMENDATION 4.8

The Task Force recommends that the implementation of computerisation of the RM Courts be based on the lessons learned through the Pilot Court Site Project. Consideration should be given as to whether other pilot sites are also necessary.

2. Administration Personnel

132. The move toward professionalized court administration and management in Jamaica began sixteen years ago. Large strides have already been taken to develop and implement training programmes in support of this reform. One of the key elements of a modernised justice system is the utilisation of the right blend of judicial, quasi-judicial and administrative personnel with clearly designated responsibilities.

133. At present, Judges and Resident Magistrates have to grapple with the stresses of their judicial roles and are also expected to perform administrative, non-judicial functions, which they themselves might not have sufficient training to undertake and which is not the best use of their time and expertise. With mounting caseloads and increased pressure for more case dispositions, judges and magistrates have little time to direct the day-to-day operations of the court system, plan for the implementation of new technologies, or integrate new procedures that can improve system performance.

134. Court administration personnel face significant challenges including:

- There is a high turnover of staff due to resignations, vacation and sick leave. There is frequent absenteeism and late arrival for work, as well as poor work ethics.
- The loss of experienced staff is made worse by the fact that there is no ‘handover’ period available between outgoing and incoming staff. In particular, the work of the registries is of a specialist nature that has to be learned on the job.
- Training for all types and levels of court staff is completely inadequate; and
- Registry staff, including Registrars, are not equipped to deal with the specialised work required under current conditions.

135. Human resource developmental challenges including inconsistent and unclear recruitment, transfer and orientation policies and lack of training and development for existing staff. These challenges can be addressed through standardization of the recruitment, orientation, transfer and promotion processes for the human resource component of the system. Open, transparent recruitment practices are also encouraged.

136. This situation is aggravated by a lack of senior personnel with the expertise and responsibility for court administration within the Ministry of Justice. Several senior posts have been created to address this gap but are yet to be filled. A Court Services Unit should be established within the Ministry of Justice on a priority basis to provide support, including strategic planning, and to facilitate court administration and management throughout the Island. More detailed recommendations about the structure and functions of the proposed Court Services Unit will be made at the conclusion of the Court Administration Project.

137. In order to achieve this objective of the effective deployment of judicial, quasi-judicial and administrative personnel, a corps of professionally trained administrators to manage and direct the court operations is needed so that judges and magistrates can concentrate on their primary duty of judging and leadership.

138. Courts need professional administrators to organize and manage non-judicial matters under the guidance of judges. In the United States of America, Canada and Australia, court administration has evolved as a profession and other countries have been following this modern development in the reform of their courts.⁴ Professionally trained administrators who are trained and certified in judicial processes, procedures and modern administrative practices can provide the court systems with the administrative competences that the courts traditionally lacked.

139. It follows therefore that court administration should be seen as a discipline with its own philosophy, body of specialized and applied knowledge, codes and guidelines as would

⁴ See for example the Association of Canadian Court Administrators:(www.acca-aajc.ca) and the National Association for Court Management (www.nacmnet.org).

be seen with other professions such as the legal profession, the judiciary, hospital administration, educational administration, and so on.

140. The core functions that a court administrator would be required to perform would be:

- Human Resource Management
- Case Flow Management
- Strategic Planning
- Resources, Budgeting and Financial Management (including asset and property management)
- Statistics and Data Analysis
- Customer Service

141. Court administration personnel must have a firm grasp of the work that courts do including the basics of case preparation, adjudication and enforcement so that they are able to carry out their duties with an understanding of how their duties fit into the system overall within the context of the independence of the three components (Bench, Bar and court administration).

142. Given the complex nature of the court environment, a court administrator would be required to possess the following skills and competencies:

- Good interpersonal skills
- Teamwork skills
- Negotiation skills
- Leadership skills
- Excellent communication skills
- Technology skills
- Problem Solving and Creativity skills

143. Under the current system, court administration is not recognized as a profession. Rather, persons are recruited generally with qualifications, usually a Bachelor degree in general management/administration and are placed as Court Administrators. There is no special preparation for these persons to assume these roles and so problems usually emerge. For some, the learning curve is longer than others and most times, some of the negative attitudes and

practices are perpetuated because they are taught the rigors of the job by some of the same persons who themselves would have cultivated and perfected the negative attitudes over time. Steps must be taken to foster the development of professional court administration.

144. The Justice Training Institute has been providing some training for court personnel and this training is highly regarded although there are additional training needs that are not being met at present. Additionally, practical training can be reinforced through establishing mentoring networks through which experienced court administrators can help to build the capacity of newer recruits. In-house or on the job training is also essential. More court administration manuals would also provide great assistance in this regard.

145. A two-stage approach should be employed so that people who have the expertise and skills but are not certified are protected during the transition to the new criteria. Over time certification should be encouraged for all court staff, not only court administrators.

146. New court staff positions will also have to be developed in order to take on the new functions required by the reform recommendations contained in this Final Report. For example, there should be a Trial Coordinator for each RM Court and the Supreme court with the following responsibilities: assisting the court in scheduling trials; monitoring the trial lists and making adjustments as required; maintaining contact with counsel about adjournment applications and expected pleas of guilty in criminal matters. Steps should be taken to ensure that a full complement of court administration personnel is in place to support reforms. For example, more Masters are required to support civil case flow management. This specific issue is discussed in Part 8.

RECOMMENDATION 4.9

The Task Force recommends that the importance of the role of an independent Court Administrator with lead responsibility and accountability for the administrative functions of the courts be recognised and supported. Specifically:

- emphasis should be placed on retention of staff, including through special attention placed on the remuneration of these new professionals if they are to be retained;
- the Court Administrator should work closely with the Chief Justice/ President of the Court of Appeal/Senior Resident Magistrates/Magistrates for the implementation and monitoring of court policy and;
- the Court Administrator should have a line relationship to the Director, Court Services Unit at the Ministry of Justice (see Recommendation 4.10 below).

RECOMMENDATION 4.10

The Task Force recommends that the profession of court administration be fostered through the following steps:

- minimum levels of academic qualification should be a Bachelor degree in General Management, Human Resource Management, Business Administration, Administrative Management or Management Studies and a certification in computer applications;
- a unique professional qualification and certification system should be developed, for example, Diploma in Court Administration could be offered by the Justice Training Institute;
- this certification should be phased in and become a mandatory requirement as soon as practicable;
- measures should be taken to accommodate current court administrators who have the skill and experience but do not meet the new criteria; and
- membership in international professional associations should be fostered as this will create the kind of links that will be necessary for networking purposes and for the administrator to keep abreast of emerging trends etc through the attendance at workshops, seminars and conferences.

RECOMMENDATION 4.11

The Task Force recommends that a Court Services Unit be established within the Ministry of Justice. This new unit would:

- be headed by a director who reports directly to the Permanent Secretary;
- have the institutional independence required for court administration;
- have responsibility for improving the administration and customer services of the system;
- implement strategic planning initiatives for the overall improvement of the working environment;
- be responsible for procuring equipment and furniture for court use, supervising the renovation and refurbishing of facilities occupied by the courts; and
- liaise with other agencies in connection with these duties.

RECOMMENDATION 4.12

The Task Force recommends that a staffing gap analysis be conducted in the courts and Ministry of Justice and staff be recruited for approved critical positions on a priority basis.

3. Establishing an Independent Court Services Agency

147. A modernised Jamaican justice system will incorporate a unified management, administrative and budgetary structure with clear lines of responsibility and accountability that integrates modern management structures and techniques. An effective administrative structure is a fundamental element of the reform of the court system, which requires that the judiciary and the executive work together while at the same time ensuring that the separation of powers between the two branches of government is upheld. The administrative structure establishes the framework for decision-making regarding court administration and operational practices.

148. The question about where the responsibility for court management and court administration should lie raises issues about judicial independence and accountability for public funds.

149. The present model of court administration in Jamaica is based on the traditional executive model based on the British system and one which is still in existence in most commonwealth countries. Under the present system, decisions are made by the Ministry of Justice through the Attorney General who holds the portfolio of Minister of Justice, in consultation with the head of the judiciary, the Chief Justice. The system is supported by funding provided for by Parliament and administered by the Ministry. This model is largely dependent on relationships of trust and goodwill between the executive and the judiciary to function. There is the likelihood that these relationships may change with each new Minister of Justice or Chief Justice and the vicissitudes of the political climate.

150. In this model, the judiciary and the court system on the whole, is not seen or even treated as a separate arm of government, but as a department of the Ministry of Justice. The placing of the budget for courts as part of the ministry's budget reflects this view in addition to the fact that salaries for all levels of staff are paid by the Ministry of Justice. The responsibility for the operation of the court system being divided between the executive and the judiciary is a bifurcated approach, which has led to confusion because the lines of authority, responsibility and accountability are not definable.

151. Through a combination of statutory and administrative measures, the two Registrars of the Supreme Court function as Chief Executive Officers of the Supreme Court and

exercise control over the administrative processes of the Supreme Court only. The Resident Magistrates and court administrators in the RM Courts and courts presided over by Resident Magistrates control the administration processes in those courts along with the Ministry of Justice. The courts have no authority to develop or administer any part of the budget slated for court administration independently of government. Neither the Chief Justice nor the Resident Magistrates or Court Administrators in the RM Courts have the kind of fiscal and operational authority that allows them to function apart from the Ministry of Justice.

152. This model is the traditional executive model of court administration whereby decisions on policy and operations are in the hands of the executive, notwithstanding the input by way of suggestions or advice by the head of the judiciary. A new model for the administration and management of the court system is required to meet the growing demands on the court system. This model should incorporate the following features:

- preserve judicial independence;
- enhance public trust and confidence in the judicial system;
- improve the delivery of judicial services by ensuring a timely delivery of a high standard of justice in keeping with the mission of the judiciary;
- cure deficiencies in the current model such as lack of involvement by the judiciary in administrative processes and decision-making, including budgeting;
- avoid placing too high an administrative burden on judges that would shift the focus away from their role as adjudicators;
- give greater autonomy in management and administration to the courts while ensuring that there is accountability for the use of public funds;
- provide clear lines of responsibility and accountability for administrative and operational matters;
- ensure the government's commitment to provide adequate funding and proper administrative structure; and
- provide greater independence from the government given that the Attorney General is a major litigant in the civil courts.

153. Across the Commonwealth, there is a relatively new recognition of the value of moving away from the traditional executive model or partnership model to models in which the judiciary has greater autonomy and complete or substantially greater authority over the resources of the courts. However, it is recognised that this fundamental change should be accomplished

slowly given the wide implications. A prominent alternative model is that of the independent commission model or “Court Services Agency” in which a range of decision-making in court administration is undertaken by an independent commission, which by definition, would be beyond the exclusive control of either the executive or the judiciary. Court Services Agencies usually comprise representatives of the executive and judicial branches as well as representatives of the community at large and have an independent staff lead by a Chief Executive Officer. Whatever the management model selected, an effective consultative arrangement between an independent court services agency and the Ministry of Justice Court Services Unit would be needed to ensure effective management and delivery.

154. The Task Force recommends that the Government of Jamaica move toward a more independent model of court administration as part of the comprehensive reform process. The first step is to examine the advantages and disadvantages of establishing a new court management decision-making model, one that gives the courts more authority and makes them more accountable for their operations. It is recognised that this reform will take some time given the complexities involved and the potential constitutional ramifications. The first step should be the commissioning of a study to investigate and recommend options for the establishment of an independent Court Services Agency.

RECOMMENDATION 4.13

The Task Force recommends that a study should be commissioned to investigate and recommend options for the establishment of an independent Court Services Agency. The following factors should be taken into account in implementing this recommendation:

- the experience in other countries should be studied but these models should be adapted to the Jamaican context;
- a detailed proposal or options should be developed and should be the subject of extensive consultations with stakeholders and members of the public;
- consideration should be given to a two-stage implementation of the transition from the current executive model to an independent court services agency model; and
- the new court services agency would have to be guaranteed adequate support and infrastructure.

C. JUDICIAL INDEPENDENCE AND ACCOUNTABILITY, THE APPOINTMENT PROCESSES AND CONDITIONS OF WORK

155. Judicial independence is the foundational principle upon which our justice system is based and must be granted pride of place in reform discussions. Reform of the justice system must see greater enhancement of the independence of the judiciary, not less. As the Judicial Committee of the Privy Counsel has reminded us, the independence of the judiciary is not for office holders but for the population at large.

156. Judicial independence means that judges are able to dispose of their caseloads and render their decisions without fear of interference, threat, or pressure from any source – be it Government, police, or any interest group or other actor in society. Judicial independence is

generally understood to have three components: (i) security of tenure (that is, a judge cannot be fired simply because someone in Government or someone who is in a position to influence Government, doesn't like the decisions he or she is making); (ii) financial security; and (iii) administrative independence.

157. The state must provide the necessary material and legislative support for the maintenance of judicial independence. Additionally, holders of public office must be vigilant in their defence of judicial independence and must take constant care to not intrude upon this sphere.

158. A modern justice system will ensure that the best candidates are appointed to the judiciary and that their conditions of work allow them to carry out their duties effectively and preserve and promote judicial independence.

159. Accountability is built into our judicial system. Traditionally, it is seen to be fully provided for in the common law system by having judges functioning in open courts; hearing both sides of the question in dispute; providing written reasons for their decisions; and subject to review by higher courts. This institutional scrutiny is supplemented in practice by other (formal and informal) mechanisms used for 'checking' judges, including peer pressure, the moral and administrative authority of the chief judge in each jurisdiction, Parliament, the media, appellate courts, the legal profession and the writings of academic commentators.

160. However, criticisms have been made that these accountability mechanisms are inadequate in today's world. While there is no evidence of political interference in the appointment of judges, the lack of transparency in the process is unsatisfactory in that it is structured so as to pose a real risk that such interference could occur.

161. A proper examination of the accountability frameworks relevant to the judiciary necessitates examination of its transparency and independence. The aim of any reforms should be to promote accountability of the courts, lawyers and legal institutions to the public while preserving and promoting judicial independence, and should also promote openness to public scrutiny and encourage public participation.

1. Judicial Complement and Appointment Processes

162. The current system for the appointment of judges at all levels of the judiciary is inadequate and insufficiently transparent. Some have raised concerns that the appointment process is politicised, although the general view is that the appointments are of very high calibre. Another concern is that there is a tendency to focus on recruitment from the public bar, although this is more of an issue for appointments as Resident Magistrates and only indirectly to the Supreme Court. The main problem is that the consultation and review process is very informal and is in need of more openness.

163. In the last few decades, several countries have legislated new systems for judicial appointments. They establish norms by which appointments

- are made on the basis of merit;
- broaden the pool of candidates for judicial office;
- utilise systems that maintain public confidence in the process, the courts and the judiciary;
- follow procedures that are fair, and are based on clearly established criteria;
- protect the privacy of applicants, (especially unsuccessful applicants), and those consulted during the selection process, while providing an opportunity for applicants to correct any factual errors;
- are transparent; and
- provide for accountability.

164. The objective of the reform of the judicial appointments process is to underwrite the commitment that the Judiciary is (a) capable of independent, impartial and competent decision-making; (b) reflective of the society it serves; and (c) avoids inappropriate politicization in the appointment process and avoids the appearance of politicization or bias in judicial decision-making.

RECOMMENDATION 4.14

The Task Force makes the following recommendations with respect to the appointment process that can apply to the separate processes for appointments to the three levels of the judiciary:

- vacancies should be advertised broadly within the legal profession in both the public and private bars;
- judicial appointments should only be made from candidates who formally apply or are nominated, or through a formalized search committee process in order to generate the widest pool of candidates through an open process;
- criteria should be developed and published for the selection of judges based on merit (could include core criteria and supporting abilities required for judicial office);
- the process for the appointment of judges should be codified and publicised;
- Independent Judicial Appointments Committees or Commissions with a broader membership than the current Judicial Services Commission should be established to solicit, receive and review applications, interview candidates and references and make recommendations to those vested with the constitutional authority to make the appointments; and
- various models and practices used in other countries should be studied and adapted to be responsive to the Jamaican context.

165. Many recommendations have been made for an increase in the judicial complement at all levels of the judiciary, and in particular the Court of Appeal and the Resident Magistrates Courts. It is difficult to assess the need for additional judges since this question is

inextricably related to whether or not the systems are as efficient as possible. For example, if provisions are made to relieve Resident Magistrates of their responsibilities for note-taking as the official record of proceedings and for preliminary inquiries, this could make a significant contribution to reducing the workload. These issues are discussed further in other parts of the report. A full analysis of the situation is also made more complicated by the fact that there have been many vacancies (and/or individuals on leave) on the Resident Magistrates Court during the period of this review. For example, only 4 of the allotted 8 RMs at Half-Way Tree Court have been carrying out their duties during this past year.

166. Judges are the pinnacle of the justice system and therefore the most valuable resource. Before additional judicial positions are created, steps should be taken to increase efficiencies, inclusive of devolving some tasks of an administrative or quasi-judicial nature to other court personnel including Masters, Registrars and Court Administrators. Judges should also be provided with the resources and support needed to do their work effectively. This issue is addressed below under the heading of conditions of work.

167. It is important to bear in mind that the process of adjudication has become more complex at all levels of court. Judges need to be afforded the time to prepare properly for hearings, trials, to write judgments, keep up to date in the law and participate in judicial education programmes. Consideration also should be given to the time needed for the judicial role in proposed reform such as settlement conferences.

168. Even taking account of all of these factors, it is important to have a system and structure in place to measure the sufficiency of the judicial complement. While it is very difficult or impossible to develop a precise formula for the number of judges required, standards and practices in other jurisdictions can offer some guidance in this effort.

169. There is a clear consensus that the complement of the Court of Appeal should be increased to permit three courts sitting at a time, with one or two judges in reserve. It is proposed that the number of Judges of Appeal should be increased from 7 to 10 or 11.

170. The issue of part-time judges is discussed in Parts 7 and 8 of this Final Report in the context of delay reduction and backlog reduction strategies. However, this option could also

be used on interim basis to relieve the tremendous pressure on the RM Courts. Some clarification is required concerning whether retired judges could act in this capacity given the prohibition on their return to private practice. Another suggestion is that a number of RMs could be appointed but not assigned to specific parishes, rather they be assigned on a temporary basis to the busiest courts to relieve significant pressures.

RECOMMENDATION 4.15

The Task Force recommends that the Ministry of Justice develop a system and structure to measure the sufficiency of the judicial complement at all levels of court.

RECOMMENDATION 4.16

The Task Force urges that the existing vacancies in the Resident Magistrates Courts, caused by whatever reason including leaves, be filled without delay. Consideration should also be given to filling these vacancies on an interim basis by retired judges and/or qualified Attorneys at Law.

RECOMMENDATION 4.17

The Task Force recommends that the complement of the Court of Appeal be increased from 7 to 10 or 11.

2. Conditions of Service and Working Conditions

a. Supreme Court and Court of Appeal

171. Judicial independence is protected by ensuring that the conditions of service and working conditions of judges are adequate and that the decision-making process on these issues is independent and impartial. Furthermore, a modernised justice system depends upon a judiciary that is able to meet the changing demands that result from rapid changes in the law, the introduction of new judicial functions such as case management and judge-led dispute resolution processes, and the introduction of new technologies.

172. The following issues have been identified relating to the conditions of service and work for judges of the Supreme Court and/or the Court of Appeal:

- judges need more time to write judgments;
- judges need more research assistance;
- judges need more training and education; and
- the level of remuneration of judges is low when compared with the level of responsibility and the volume of work;

173. Judicial independence is safeguarded to a large extent by constitutional provisions relating to the security of tenure and financial security. However to ensure the independence and impartialities of judges in a practical sense, their salaries are expected to be generous. Generous salaries are considered to lessen the risk of judges succumbing to bribes and giving favourable judgments in hope of real or imagined rewards. Generous salaries can also help to attract the best candidates. There have been criticisms that the remuneration of our judges is too inadequate to serve these purposes. At the same time, it must be recognised that judges at this level are remunerated at the same level as the highest paid civil servants and have their full salary for life.

174. Given the current judicial workload, it has been suggested that the age of retirement be raised. In some countries, judges can choose to continue to serve after the formal age of retirement on a “supernumerary” basis, usually on a part-time basis and without judicial administrative responsibilities. In Canada, these judges who choose to continue to serve receive some salary in addition to their retirement pension but the total amount of salary and pension

cannot exceed that of a regular judicial salary. While this system cannot be directly imported into Jamaica given that judges are paid their full salary for life, it would be worthwhile to explore other options to permit the extension of the working life of judges. In many common law jurisdictions, retired judges return to the legal profession as senior counsel and/or provide dispute resolution services such as mediation and arbitration. Consideration should also be given to removing the prohibition of judges returning to legal practice.

175. The process of judging has become more complex over time, reflecting the increasing complexities and rapid pace of change in society and the law. The work of judging has to be arranged and supported in a fashion that supports current and changing conditions. For example, all judges should have access to the internet and to research assistance. It is recommended that there should be a minimum of one professional law clerk for three judges. For similar reasons, the scheduling of judges should take into account the time required to write judgments on a timely basis and to carry out other newer responsibilities arising from case management systems.

176. Judges must be afforded the opportunity to participate in training and continuing judicial education not only on the substantive law and procedures but also in techniques and skills such as judgment-writing, jury addresses, case management techniques, judicial resolution processes, the use of technology and so on. Access to continuous education is the key to ensuring the highest level of competence on the bench.

RECOMMENDATION 4.18

The Task Force recommends that:

- each judge be assigned a law clerk to assist with research;
- all judges have access to the internet to carry out legal research;
- judges be afforded one judgment week after each three week sitting period;
- newly-appointed judges participate in an in-depth training course on a mandatory basis;
- consideration be given to developing a mentoring system among judges; and
- judges have the opportunity to participate in continuing legal education on a regular basis and that they are consulted in the development of such programmes.

b. Resident Magistrates

177. Resident Magistrates (RMs) face even more challenges in their current working conditions by comparison with judges of the Supreme Court and Court of Appeal. RMs do not have security of tenure as they are currently a part of the public service and therefore fall within the executive arm of the state. This has serious implications for their independence. The Governor General acting on the advice of the Judicial Services Commission has the power to remove and exercise disciplinary control over magistrates, although some safeguards are in place to prevent political interference. In addition, the level of remuneration has also been repeatedly criticized as being too low and the conditions of service are very difficult.

178. The role and functions of the RMs have changed dramatically over the past decades. They have increasingly been granted jurisdiction over serious matters. It is clearly time that the magistracy be recognised as a court and that magistrates be accorded full judicial

status similar to Supreme Court judges, including security of tenure, financial security and institutional administrative independence. This latter issue is discussed further in Part 5.

179. While there is general recognition and support for RMs to be granted security of tenure, some concerns have been raised about this reform because of the relatively low qualifications currently required for a RM appointment (5 years of legal practice) and inadequate training of RMs, both of which have contributed to the uneven quality of work performance. Another practical concern is whether the granting of security of tenure to RMs would result in the same prohibition against returning to legal practice after retirement.

180. The Task Force recognizes the validity of these concerns but remains firmly of the view that we must confront the reality that RMs exercise critically important judicial functions and that their status and situation should clearly reflect this and encourage the best possible performance. Rather than remaining mired in current concerns about quality and qualifications, we must focus on the future and the important principle of judicial independence that is at stake here and find ways to ensure that the selection, training and working conditions of these lower court judges are improved.

181. As Justice Robert Blair of the Ontario Court of Appeal explained at the National Summit, Ontario faced a similar situation whereby the magistrates courts presided over by lay magistrates were transformed into a full-fledged lower court presided over by legally-trained judges who must have practiced 10 years before their appointment and who enjoy the full protection of judicial independence. This transformation was achieved through enhancing the stature of the Court and by appointing experienced and qualified candidates. Quality is also ensured through (a) paying those judges at a slightly lower level than High Court judges and (b) by a transparent appointment process that encourages applications from a broad spectrum of lawyers and effectively screens and bring forward the best candidates, together with a complaints procedure that is consistent with judicial independence and the development of the principles of judicial ethics.

182. The Task Force recommends that a transitional plan be developed to progress from the current situation toward this goal of a full-fledged lower court with all of the features discussed here.

RECOMMENDATION 4.19

The Task Force recommends that the conditions of service and working conditions of Resident Magistrates be improved and their judicial independence protected through these measures:

- the granting of constitutional security of tenure;
- designation as the lower judiciary and referred to as judges;
- the granting of financial security and substantial salaries raises to reflect their important functions and workload;
- improvements made to their chambers, equipment, access to legal resources and support (telephone, fax, computers, and internet access, up to date laws and secretarial services are commonly not available to them);
- provisions made for the physical security of the judges in the courthouses and en route to and from the courthouses;
- transfers to other Parishes should only be done with appropriate consultation and notice;
- newly appointed judges participate in an in-depth training course on a mandatory basis;
- that consideration be given to developing a mentoring system among judges of this Court; and
- Resident Magistrates have the opportunity to participate in continuing legal education on a regular basis and that they are consulted in the development of such programmes.

3. Judicial Codes of Conduct

183. Judges are a profession in service of the community. The exercise of judicial power by an independent judiciary is a centrepiece of the democratic values of our democracy and critical to the preservation of the rule of law. Intrinsic to this system are the precepts that judges, individually and collectively, must respect and honour the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.

184. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to his and her responsibility. Public trust and confidence in the judiciary rests on the public's belief that each person will be given a fair hearing in court. Judges have a responsibility to uphold this trust and confidence.

185. The ability of Jamaica's legal system to function effectively and to deliver the kind of justice that Jamaicans need and deserve, depends in a large part on the ethical standards and performance standards of its judges.

186. Judicial Codes of Conduct embody principles that enable judges to benefit from the knowledge and good judgment accumulated by judges over many years. They set standards and benchmarks to which both the new and the experienced can commit themselves, and are a reference point which the general public can consult to keep the judiciary faithful to values that have guided great judges of past times. It is an important means of ensuring the accountability of judges.

187. Codes of Conduct play an important role even in countries such as Jamaica where the ethical standards of the judiciary is already very high. While judges are undoubtedly required to maintain certain professional and ethical standards, these standards have not been codified. In addition, little or no work has been done to establish individual performance standards for members of the judiciary. There is no code of conduct for judges to parallel the Canon of Ethics to which lawyers are subjected. This is a deficiency in the current accountability framework.

RECOMMENDATION 4.20

The Task Force recommends that the Jamaican judiciary develop codes of judicial conduct that set out the ethical standards and performance standards to which they adhere. The Codes should be developed on the basis of a broad consultation process and could take into account existing Codes in the Caribbean (including the Caribbean Court of Justice) and other commonwealth jurisdictions.

Once adopted, the Codes should be publicized to make the public familiar with how judges are to perform, involve them in the system of checks and balances and facilitate their recognition of the judiciary's responsibility to them.

4. Mechanisms for Complaints and Discipline

188. The issue of the establishment of mechanisms for receiving and investigating complaints concerning judges' behaviour and for the discipline of judges is a separate but related issue to that of establishing Judicial Codes of Conduct.

189. There are constitutional and legal safeguards to the removal of judges of the superior court and the Final Report has proposed that similar safeguards be accorded to judges of the inferior courts. However, concerns can arise about judicial conduct that does not rise to the threshold of misbehaviour sufficient to warrant removal from judicial office.

190. There is currently no mechanism by which public concerns about judicial conduct may be received and considered.

191. No other formal sanction other than removal from office is presently part of the judicial accountability framework. Sanctions of varying degrees of seriousness may be

considered to suit the possible variance in the seriousness of the acts and consequences of ‘misconduct.’ Other penalties should be considered for sanctions such as the impositions of admonitions/ reprimands, fines, requirement of payment of compensation. These may be prescribed in the Code of Conduct. Careful thought should be given to the process for reviewing of complaints and the prescription and enforcement sanctions, and also to ensure both the fairness to all parties of any procedures that are established for this purpose and the protection of the public interest.

RECOMMENDATION 4.21

The Task Force recommends that a mechanism for the receipt of public complaints and comments should be introduced for all levels of the courts. Further study and consultation should be carried out to determine the best mechanisms for the review of complaints and whether there should be an imposition of sanctions.

D. JUSTICES OF THE PEACE/LAY MAGISTRATES

192. The Justice of the Peace (JP) is a judicial public officer with limited powers and is significant in the system of administration of Justice in Jamaica. In addition to a large number of duties and functions within the community, JPs can perform a number of quasi-judicial functions including serving in Petty Sessions or Children’s Court. However, they are not required to do so. It is estimated that approximately 15-20% of JPs serve in these courts. For the sake of clarity, when we are referring to this aspect of the functions of JPs, they are referred to as Lay Magistrates. The other 80-85% of JPs serve their various communities in relation to the attestation and authentication of documents, in writing recommendations, and/or they are actively involved in restorative justice programmes.

193. In Part 5, the Task Force makes a number of recommendations to increase the role of JPs in terms of their quasi-judicial functions. If these recommendations are to be implemented then steps will have to be taken to increase the number of JPs willing to serve as Lay Magistrates and to ensure that the training is in place for JPs willing to serve in this capacity.

194. One alternative that was raised during the public consultations is to exercise the power to appoint Stipendiary Justices under Section 73 of the *Justices of the Peace Jurisdiction Act*. Stipendiary Justices could serve in a number of capacities in the proposed expanded court of summary jurisdiction (Court of Petty Sessions) or in the proposed expanded neighbourhood peace and justice centres discussed in Parts 5 and 6 of this Final Report. It has further been recommended that these positions be renamed “Community Magistrates”.

195. One can become a JP by application or nomination in writing to the Custos Rotolorum of the Parish in which the applicant or nominee resides. Reports received are that this process can take between 3 months and 8 years. The current system requires the application to be reviewed by an Advisory Committee consisting of the Custos, the Resident Magistrate of the Parish and the Police officer in charge of the parish who makes ‘discreet enquiries into the background of the applicant or nominee. Reports received are that these ‘discreet enquiries’ are not forthcoming for various reasons, which creates a long delay in the recommendation being sent to the Minister by the Advisory Committee.

196. Some individuals have expressed a concern that the appointment process is overly political. This perception appears to be unfounded since the appointment of JPs is based on their general standing in the community rather than their political affiliation. Nevertheless, this perception should be addressed through increased public information about the appointment process.

RECOMMENDATION 4.22

The Task Force recommends that the following steps be taken in order to expedite the appointment of Justices of the Peace and to increase the number of Lay Magistrates:

- Upon receipt of the application the Custos requests a police record instead of a ‘discrete enquiry’;
- The Custos refers the application to the Parish Executive of the Justice of the Peace Association/Lay Magistrates Association to carry out an investigation and the applicant’s involvement in the community and to assess their physical and mental capability to serve. This confidential report would be provided to the Custos, who in turn then recommends to the Minister who in turn recommends to the Governor General;
- A mechanism should be in place for an applicant for the designation of JP to reply to a negative report that preserves the confidentiality of the informant;
- In the case of those who wish to serve as Lay Magistrates in the courts their recommendation must be subject to an overview by the Resident Magistrate after completion of training; and
- Information should be made available to the public concerning the appointment process.

RECOMMENDATION 4.23

The Task Force recommends that further consideration be given to the appointment of Stipendiary Justices as provided by existing law.

197. The statutory framework provides that every person who the Minister recommends to the Governor General to be appointed as a JP is required to receive training prior to taking the oath of office. However in practice, this training is not always done and in fact even after taking the oath of office training is not mandatory. This situation must be addressed in order to ensure that JPs are able to fulfil their important functions, which are integral to the smooth functioning of the Jamaican justice system. One way to achieve this would be to refrain from issuing the JP Commission until after the candidates have completed training.

198. Steps have been taken to provide mediation training to JPs. The Task Force is of the view that mediation training should be widely available to JPs at no cost to them. JPs have an important role in the community and this will be enhanced through strengthened dispute resolution skills.

199. All JPs should be required to upgrade this knowledge annually on legal matters which affect them as JPs, e.g. signing of Bail Bonds, signing of passport forms and so on. JPs selected for specific services should be duly trained in these matters, e.g. Family court, Children's Court, Drug Court, Spirit Licence, and Traffic Court. Other training needs that have been identified include: how to deal with children and the special needs community and how to adopt a customer service approach.

200. JPs are strongly of the view that they should not be remunerated for their services. However, reimbursement should be made for travel and lunch expenses incurred by JPs while carrying out their duties. Consideration should also be given to providing JPs with free stationery and postage.

RECOMMENDATION 4.24

The Task Force recommends that

(a) all persons recommended to become Justices of the Peace should complete a prescribed training course as determined by the Justice Training Institute before being commissioned. JPs who choose to preside in the lay courts must receive further training.

A training manual should be updated and made readily available.

(b) JPs who choose to participate in Restorative Justice processes should receive further training.

201. The Justices of the Peace (Appointment and Code of Conduct) Rules 2006 established a statutory Code of Conduct for Lay Magistrates with the object of reinforcing the effective administration of justice by promoting high moral and ethical conduct among Justices of the Peace and the eradication of any tendency to corrupt practice. It includes a section on the duty to act with integrity, independence and fairness. It also contains a list of duties in the Administration of Justice that include the obligation to “exercise patience and restraint and act in a dignified and courteous manner to litigants, lawyers, witnesses and others with whom justices deal when sitting on the bench”. No further action is currently required on this front.

E. THE PROSECUTORIAL ARM OF JUSTICE

202. The Office of the Director of Public Prosecutions, public prosecutors and Clerks of Court are under tremendous pressure within the Jamaican justice system today. On the whole, the prosecutorial arm is under-staffed, under-resourced and not structured or managed in a manner that allows them to carry out their duties independently, effectively and efficiently.

203. The Ministry of Justice is embarking on a project designed to enhance the effectiveness of the prosecutorial arm to ensure that criminal case flow management can be successfully implemented. Modernisation of this Office is pivotal to reform of the Jamaican justice system. It is anticipated that this project and needed changes will be implemented by early 2008.

204. Several reforms can be instituted in the shorter term. One critical concern is the issue of the workload borne by the prosecutorial arm. It is clear that the lack of adequate staffing and the high turnover of staff have contributed to delays in the criminal justice process. Approaches taken to measuring prosecutor workload developed in other jurisdictions can provide assistance in this regard. Some jurisdictions have very complex formulas to guide these decisions whereas others rely on more general rules of thumb. For example, in Ontario, Canada, the general rule is three prosecutors for every judge who hears criminal matters on a full time basis. This increase in the prosecutorial complement would assist in the proper presentation of cases both in the Supreme Court and the RM Courts.

205. In addition, preparation time should be factored into workload assessments. Consideration should be given to scheduling one day per week out of court so that prosecutors can carry out important pre-trial activities, such as early review of files, liaison with police, and preparation for trial. Similarly, given the list of serious cases in a 3-week circuit court, prosecutors should be scheduled to have one week of preparation before a 3-week circuit. While this is the current scheduling practice it is honoured more in the breach.

206. Some of the administrative work currently carried out by Clerks should be devolved to other court staff. A human resources plan should be developed to fill existing gaps and increase the retention rate of prosecutors. Special attention should also be paid to developing a comprehensive basic training, mentoring and specialised training programme.

207. The under-staffing of the prosecutorial arm is already critical and the introduction of criminal case management will change the workload. A major increase in the number of prosecutors will be required in order to allow them to work at the “front end” of the system. It should be borne in mind that many of these tasks can be done by paralegals and a holistic approach should be taken to building prosecution teams. Further consideration should be given

to these roles and functions and to the potential use of experienced Deputy Clerks and other paralegal staff in this new system.

208. Another urgent area of reform required for the modernisation of the justice system is the severing of the reporting relationship between the Clerks of Courts and Resident Magistrates. No prosecutorial functions should be vested in the judge. The term Clerk of Court should be discontinued and they should have the title of prosecutors. They should fall under the jurisdiction of the Office of the Director of Public Prosecutions with the creation of positions of Regional Senior Public Prosecutors to assist in this oversight function.

209. One way to address the current shortage in prosecutorial staff is to increase the hiring private defence attorneys to prosecute selected cases including through the development of a roster of attorneys willing to serve in this capacity. This recommendation has the added advantage of enhancing collaboration between the public and private bars. The current level of antagonism between the prosecution and the defence hinders the effective functioning of the criminal justice system in Jamaica.

RECOMMENDATION 4.25

The Task Force makes the following recommendation concerning the prosecutorial arm of the justice system:

- a human resources plan should be developed and implemented to fill existing gaps and increase the retention rate of prosecutors;
- a comprehensive and continuous training and mentoring program should be established for all prosecutors;
- no prosecutorial functions should be vested in the Resident Magistrate;
- the title Clerk of Court should be abolished and replaced by the title of Assistant Public Prosecutors;
- Assistant Public Prosecutors should report to the Office of the Director of Public Prosecutions;
- the position of Regional Senior Prosecutor should be created and should be responsible for monitoring the work of Assistant Public Prosecutors;
- all prosecutorial staff should have access to basic training, mentoring and specialised training programmes; and
- consideration should be given to developing a roster of private defence attorneys and retired and former prosecutors to prosecute selected cases at all levels of court.

F. ACCOUNTABILITY, CONDUCT AND COMPETENCE OF THE LEGAL PROFESSION

210. Attorneys-at-law, like all justice system personnel, must be fully prepared to participate in a modernised justice system. The changing requirements pertaining to the

accountability, conduct and competence of the legal profession mirror those of judges and court personnel.

211. Lawyers' roles and responsibilities will undergo a shift in the multi-option justice system. Like the system itself, lawyers must become more attuned to clients and be focused on early settlement and the potential use of dispute resolution techniques. Law firms, the General Legal Council, the law school and professional associations such as the Jamaican Bar Association, Advocates' Association and the regional bar associations all have a responsibility to assist lawyers in meeting these expectations and requirements. In particular, these organizations must support an enhanced quality of legal services through education, training, policies and regulation to ensure the competency of lawyers in the twenty-first century.

212. The accountability framework relevant to attorneys encompasses:

- the Courts inherent power to discipline attorneys;
- Disciplinary Proceedings of the Disciplinary Committee of the General Legal Council; and
- the possibility of a finding of liability in negligence for failure to perform with the skill of a reasonably competent lawyer in providing legal services including in the conduct of litigation.

213. *The Legal Profession Act* and Canons of Ethics create a mechanism by which the General Legal Council (GLC) prescribes codes of conduct for attorneys who are obligated to comply and face the possibility of sanctions by the Disciplinary Committee of the GLC. The GLC is charged with upholding standards of professional conduct. The framework is fairly effective. However, concerns have been raised regarding the following:

- Inadequate guidelines for prosecutors and defence attorneys, especially as regards disclosure;
- Limited jurisdiction of the GLC – the GLC can only consider misconduct and criminal offences as defined in the Canons. Many breaches of the Canon rules are not considered misconduct, for example making a false statement of law or fact is not professional misconduct under the Act. (See Canon 4(O))
- Inadequate sanctioning power of the GLC - There are conflicting views on the sanctions imposed by the Disciplinary Committee of the General Legal Council. Some persons criticise them as being inadequate while there have been concerns raised by both

members of the Bar and the judiciary about the heaviness of the sanctions imposed by the Disciplinary Committee in some cases. The possibility of appeals to the Court of Appeal from the Committee's sanctions however provides some check on this.

- Case delays by requesting adjournments – Attorneys are criticized as delaying cases with unnecessary requests for judgments. However, it is submitted that the solution to this problem lies not in disciplinary proceedings, but rather in a change in legal culture achieved through education and training and also in the Court's power to refuse unnecessary adjournments and impose sanctions in some cases.
- Inadequate Public Information on Standards of Professional Conduct and Disciplinary Mechanisms - While the GLC receives a substantial number of complaints concerns have been expressed that much of the public is not informed on the standards attorneys are required to adhere to, the possibility of penalties for failure to do so and the jurisdiction of the Disciplinary Committee of the GLC.
- Need for additional provisions - There are no provisions presently guarding against frivolous complaints against attorneys and so the process may become so burdened that it cannot perform efficiently. Also, despite the compulsory mediation provisions in the amended Civil Procedure Rules perhaps a requirement that practitioners should, as early as possible, advise clients of relevant non-litigious avenues available for resolution of the dispute which are reasonably available to the client should be introduced.
- Need for Increased Enforcement of Accounting rules – The level of scrutiny and enforcement of guidelines of Canon 7 is uncertain.

214. Furthermore, it can reasonably be anticipated that public expectations of lawyers in a multi-option justice system will be heightened. The education and training opportunities available to law students and lawyers must reflect these changing expectations and responsibilities. The GLC must also be prepared to play a more active role in the regulatory and disciplinary processes to ensure the competency of lawyers in the modernised justice system.

215. A comprehensive review and reform should be undertaken of the powers of the GLC and its operation generally. This reform process should take place before any further powers are reposed in it. Additional staffing may be required to meet growing demands.

216. In particular, concerns have been raised regarding inadequate transparency regarding the methodology for and how complaints are treated from the time they first come to the General Legal Council's attention, accounts are not offered for scrutiny to the general profession and there has been long term and consistent dissatisfaction expressed with the methods of appointment.

217. During its consultation process, the Task Force became aware of the low level of public awareness concerning the ethical requirements imposed on attorneys and the processes for regulation and disciplinary action within the legal profession. A public education campaign is required to address this deficit in knowledge.

RECOMMENDATION 4.26

The Task Force recommends that a comprehensive examination of the General Legal Council and how it operates be undertaken. Issues to be examined include but are not limited to: the method of selection of members; potential expansion of this membership to include persons other than members of the profession; staffing requirements; regulatory requirements for transparency in accounting practices; the disciplinary process; sanctions imposed for particular breaches; and the criteria used for deciding whether there is a prima facie case.

RECOMMENDATION 4.27

The Task Force recommends that a public education campaign be launched to inform the public on the role and duties of attorneys and their liability to disciplinary procedures and sanctions for professional misconduct.

218. Attorneys have continuing education needs in both the ever-changing substantive law, in technical subjects (i.e. case flow management, dispute resolution techniques, the use of technology) and awareness training (cultural diversity, equality and cross-cultural issues).

Traditionally, mentoring has played a crucial role in lawyer training and development. Formalized mentoring systems have declined under current pressures and approaches to law firm and practice management. The legal profession must develop means to revitalize mentoring systems where feasible and also to develop alternatives to them.

219. To deal with the challenges of the current economic climate and be prepared to meet the demands of a multi-option justice system, methods must be found to encourage and facilitate the acquisition of new business, technological, cross-disciplinary and legal skills.

Professional development programmes should include:

- staying current with case law, legislation, ethics, and policy development;
- improving existing skills while acquiring new ones, such as mediation or plain language drafting;
- learning new attitudes toward clients to make lawyering more client-centred;
- sharpening personal practice management skills and learning more productive supervisory skills;
- acquiring business development knowledge;
- integrating computer skills and technology awareness with practice skills;
- acquiring cross-disciplinary education to meet the needs of clients; and
- reflecting on the practical know-how that exists in order to reapply it and pass it on to others in practice.

220. Mandatory continuing legal education is required to meet these needs and ensure the competence of the legal profession. Active steps need to be taken to provide a high standard of continuing legal education programme to meet this objective. The strengthening of Bar associations is one important step in this direction. Bar associations are encouraged to take active steps to increase their membership in order to provide themselves with a stronger foundation from which to meet these expanded needs.

221. The issue of mandatory continuing legal education has been on the table for some time but progress has been stalled because of the lack of resources for implementation. An Advisory Committee should be struck to review the status quo, continuing legal education requirements and to develop a plan to address obstacles to implementation. This review should address: a potential role for the Justice Training Institute as a coordinator; the establishment of a Continuing Legal Education Committee with membership from the various Bar associations;

delivery models that address the needs in rural areas; and the potential for collaborative efforts with Canadian Bar Association and Canadian law societies to assist in programme development and delivery models. An expansive approach should be taken to the range and flexibility of options for obtaining the required continuing legal education credit.

RECOMMENDATION 4.28

The Task Force recommends the introduction of mandatory continuing legal education program for all lawyers both at the public and private Bars. Participation in the educational programs should become a condition precedent for the renewal of practising certificates. Steps should be taken to ensure that the continuing legal education programme is of a consistently high standard and to encourage joint public and private Bar training initiatives.

A Continuing Legal Education Advisory Committee should be established to conduct a needs assessment and make recommendations to implement mandatory continuing legal education.

RECOMMENDATION 4.29

The Task Force recommends that specific and practical ethical training be provided to lawyers and that a mentorship program be established and implemented by respected senior lawyers.

RECOMMENDATION 4.30

The Task Force recommends that active steps be taken to increase active membership in the various Bar associations and to enhance the capacity of these professional associations to play a leading role in justice reform including through the provision of continuing legal education and active participation in law reform initiatives and implementation.

G. BAILIFFS

222. The main purpose of the Bailiff is to ensure a reliable, efficient and impartial method of serving processes in civil matters, which originate from the Courts and as requested by attorneys and litigants. Provision is also made for the position of Assistant Bailiffs.

223. A number of problems have been identified with respect to the recruitment, training, remuneration and supervision of Bailiffs and Assistant Bailiffs. In particular, concerns have been raised about the lack of accountability and delays in executing their duties. The system is considered to “break down” at the point of post-judgment handing of cases because the Bailiff seems in most cases somewhat overburdened by matters. As one individual described it: “The Bailiff seems to be a law unto himself. Months pass and documents remain unserved until they expire. The plaintiff reaches out in vain to appeal to a higher level but there does not seem to be one.” The justice system should recognise to a greater extent that plaintiffs invest a lot of money in their matters and that at the end of it all, for the whole thing to be wasted because of the inadequacy of the bailiff system is unfair.

224. Bailiffs are integral to the proper functioning of the justice system and it is vital that they should be adequately trained and that steps are taken to ensure that they carry out their

duties in a competent and professional manner. Some of the specific recommendations for reform are:

- the bailiff service needs to be expanded so as to enable it to cope with the increased level of litigation today;
- there needs to be a supervisor who is empowered to review bailiff performance and to take disciplinary measures if it is poor; and
- the process by which bailiffs can be deputised to act on behalf of the client should be simplified. This would take a lot of pressure off the system at no cost to the government.

225. In Part 8, the Task Force recommends a thorough and comprehensive Civil Enforcement Review with a view to developing a modern regulatory structure for effective enforcement. This Review should encompass the issues of the training, remuneration, supervision, conduct and competence of bailiffs. As noted above, consideration should be given to transferring these responsibilities to the new court marshal or sheriff service to be established pursuant to Recommendation 4.5.

RECOMMENDATION 4.31

The Task Force recommends a thorough and comprehensive Civil Enforcement Review set out in Part 8 of this Report with a view to developing a modern regulatory structure for effective enforcement. This Review should encompass the issues of the training, remuneration, supervision, conduct and competence of bailiffs.

H. ENHANCING TRAINING CAPACITY AND THE AVAILABILITY OF LEGAL MATERIALS

226. This Final Report contains many recommendations for increased training of justice system personnel. Ongoing and continuous training as an integral part of justice system reform. The Justice Training Institute (JTI) is doing excellent work but will need an increased capacity to play this central role in reform efforts. Options for increasing the JTI's training capacity include: providing it with more resources; encouraging specialisation (for example programme coordinators for the various groups of justice system personnel); collaboration with institutes in other countries including the National Judicial Institute in Canada and other justice system training and education providers; and increased regional coordination and collaboration.

RECOMMENDATION 4.32

The Task Force recommends that the capacity of the Justice Training Institute be enhanced so that it is able to provide increased training to justice system personnel to support the justice reform process.

227. Basic legal materials are not readily available to justice system personnel. Some judgments are available on the Supreme Court website, but there is no timely reporting of decided cases. The full array of case law is only readily available in the Supreme Court Library. Similarly there is no electronic database of judgments. The jurisprudence from other countries is much more accessible to Jamaican lawyers and judges than is their proper national jurisprudence. For attorneys outside of Kingston who cannot access the Supreme Court library, it is impossible. If lawyers are poorly informed, the service that they provide to the public will suffer.

228. A similar situation obtains with respect to Jamaican legislation regulations. While again the Laws of Jamaica are available on the web, the updated versions of statutes and

regulations are not available on a timely basis. The Laws of Jamaica are considered so valuable that they are often kept under lock and key at the courthouses, but the effect is to make them inaccessible to those who need them.

229. The public is at an even greater disadvantage in accessing legal information and these concerns are addressed in Part 6. Increased public access to judgements would be beneficial for the members of the public and the media who would be interested in reading the detailed reasons for judgments which are of significant interest: “A justice system which is accessible to the public will command more confidence and support.”

230. Modernisation of the Jamaican justice system cannot occur unless the unavailability of basic legal materials is addressed on a priority basis. The goal should be to have all written judgments posted on the courts’ websites within 24 hours of being handed down. Furthermore, some have recommended that the Jamaican Law Report, last published in 1997, ought to be publicly funded: “How can our system of law develop and our judges encouraged to write proper judgments if their judgments are never published or are published 5 or 10 years later?”

231. The Task Force’s central recommendation to address the deficit in the availability of legal materials is for the establishment of a Jamaica Legal Information Institute. Following the release of its Preliminary Report, the Task Force received offers of assistance in establishing such an Institute, including by the Canadian Legal Information Institute. A Working Group should be set up to begin work immediately on a detailed proposal to implement this recommendation, including budgetary and funding issues.

RECOMMENDATION 4.33

The Task Force recommends that immediate steps be taken to make all judgments of the Supreme Court and Court of Appeal available on the courts’ websites and that the goal of posting new judgments within 24 hours of their release be set and steps be taken to meet this standard as soon as practicable.

RECOMMENDATION 4.34

The Task Force recommends that a Jamaica Legal Information Institute be established as an agency of the Ministry of Justice in order to increase accessibility to legal materials in a timely and effective manner. The Canadian Legal Information Institute can serve as a model for this initiative.

A Working Group should be set up to design a detailed implementation proposal including budgetary and funding issues.

PART 5 - STRUCTURE, JURISDICTION AND ACCOUNTABILITY

232. Part 5 sets out the Task Force's recommendations concerning how the components of the justice system should be structured so that they can work together in an effective and accountable manner. These recommendations focus on the issues of institutional structures, jurisdiction and accountability. The focus of this Part is on the courts of Jamaica.

233. Inefficient court structures can contribute to delay. Complexity and lack of clarity in jurisdictional divisions of responsibility – which types of cases are dealt with by which court – can be serious barriers to access to justice. Reform at the structural level through streamlining and simplification can act as an important catalyst for change. Structural reform involves considering the relative benefits of unification and specialisation and the allocation of matters to different types of courts or tribunals.

234. The process of modernising the Jamaican justice system must involve a significant effort toward establishing an enhanced accountability framework. This framework has three important components: (1) clarity in reporting relationships between agencies and within agencies; (2) forms of organisation that promote collaboration and innovation; and (3) the development and implementation of performance standards.

A. COURTS OF GENERALISED JURISDICTION

235. One of the drivers of court reform is to ensure that the nature of the tribunal to which a case is allocated and its procedures should be proportionate in form, time, and cost to the seriousness and/or complexity of that case. Although different cases may call for different tribunals, practices and procedures, each must be capable of providing a fair hearing and of securing a just outcome.

236. Concerns about the quality of justice in one level of court should not be a basis for allocation of cases to another and higher level if they are not sufficiently serious and/or difficult to warrant its practices and procedures. No system of justice should be structured or operated on the basis that part of it is not working properly; it should be made to work properly at all levels.

237. The structure of the courts should contribute to the efficient working of the justice system as a whole and the administration of justice should be organised in such a way as to achieve justice, efficiency and economies in the shared, coordinated and flexible use of accommodation, judiciary, administrative staff and other resources.

1. Appellate Courts – The Caribbean Court of Justice

238. The Task Force has heard relatively little about the need for reform of the structure of Appellate Courts in Jamaica. The general consensus appears to be that issues related to the efficiency and effectiveness of the work of the Court of Appeal can be addressed through minor procedural reform and increasing the complement of appellate judges.

239. The central issue pertaining to the structure of the appellate courts currently facing this country is the issue of Jamaica's final court of appeal. At present, this function is served by the Judicial Committee of the Privy Council in the United Kingdom. The Government of Jamaica has entered into a treaty with its CARICOM partners to establish a Caribbean Court of Justice (CCJ), vested with an original jurisdiction to settle disputes between member countries in respect of trade and economic matters and appellate jurisdiction to act as the final court of appeal from each appellate court of the member countries. Jamaica contributes to the operational costs of the CCJ but has been unable to access the appellate jurisdiction.

240. Litigation arose as a result of concerns about the constitutionality of transferring the function of the final court of appeal from the Privy Council to the CCJ and the related concern about the potential diminution to the protection of human rights. This matter ultimately resulted in a decision by the Privy Council itself, which required that the constitutional amendment necessary for this change must be passed with the support of the Parliamentary Opposition.⁵ The decision has resulted in a political stalemate that has yet to be resolved.

241. The Task Force is of the view that appropriate steps be taken to substitute the CCJ for the Privy Council as the final court of appeal for Jamaica in a manner that is consistent with the Constitution and ensures the protection of constitutional rights. There are strong practical

⁵ *Independent Jamaica Council for Human Rights (1998 and Others v. Marshall-Burnett and Anor (Jamaica)* [2005] UKPC 3.

reasons for this structural change, perhaps the most important of which is that the CCJ will be more accessible to Jamaicans. In addition, this reform would reflect Jamaica's status as a sovereign and fully independent national. While Jamaicans have been extremely well-served by the Judicial Committee of the Privy Council, it is long past the time that we should have our Constitution and legislative enactments interpreted in accordance with the dictates of a tribunal established to unify the legal systems of an empire. In the words of the Privy Council referring to itself at paragraph 4 of its decision on this matter: "The Board exists in this capacity to serve the interests of the people of Jamaica. If and when the people of Jamaica judge that it no longer does so, they are fully entitled to take appropriate steps to bring this role to an end." The Task Force urges that steps be taken to determine the will of the people and move forward on this important issue.

RECOMMENDATION 5.1

The Task Force recognizing and appreciating the enormous service with the Judicial Committee of the Privy Council has provided to Jamaica and the Commonwealth Caribbean in its role as the final court of appeal nevertheless considers that it is time that we moved on and hereby recommends that appropriate steps be taken by Parliament to agree on the course to be followed to entrench the Caribbean Court of Justice as required by the Judicial Committee of the Privy Council, after consultation with the people, consistent with the Jamaican Constitution and ensuring the protection of human rights.

2. Supreme Court

242. The main issue currently under discussion with respect to the structure of the Supreme Court is whether to replace the existing Circuit Court system with a regionalisation of the Court.

243. Another important issue is the rationalisation of jurisdiction between the Supreme Court and the Resident Magistrates Courts. The Task Force has received submissions to the effect that jurisdiction over specific offences including arson, dangerous driving causing death, housebreaking with larceny and wounding should be transferred from the Supreme Court to the RM Courts. This issue is related to the availability of jury trials for these offences. One option would be to make the jurisdiction over some offences subject to election by either the prosecution or the defence.

244. In civil matters, the issue of monetary jurisdiction should be carefully reviewed with a focus on promoting greater access to justice for litigants. This issue is discussed in Part 8.

RECOMMENDATION 5.2

The Task Force recommends that the decision regarding regionalisation of the Supreme Court be made after careful study in the context of the comprehensive reform of the Jamaican justice system and guided by the vision, principles and reform recommendations set out in this Report.

RECOMMENDATION 5.3

The Task Force recommends that a Working Group be established to conduct a detailed examination and make specific recommendations on the rationalisation of the division of jurisdiction between the Supreme Court and the Resident Magistrates' Courts.

3. Resident Magistrates Court

245. Resident Magistrates' Courts (RM Courts) were established to meet the unique needs of colonial Jamaica. While Jamaican society and the nature of the matters dealt with by RM Courts have significantly increased, the structure and organisation of the RM Courts has not been adequately reformed to reflect these important changes.

246. The RM Courts adjudicate on the largest number of disputes that are presented for adjudication. It is in these courts that ordinary Jamaicans are most likely to encounter the civil and criminal justice system, as witnesses, accused persons, litigants in civil disputes or simply in support of their friends or members of their families who are involved in litigation. The RM Courts are of fundamental importance in the Jamaican justice system.

247. Historically and at present, a Resident Magistrate is not merely a judicial officer, but has significant administrative responsibilities in relation to the staff of the Court and over the work of the Bailiff for the parish and in relation to the collection of overdue taxes and granting of certain licenses.

248. In their judicial capacity, Resident Magistrates have jurisdiction in respect of criminal and civil disputes and a probate jurisdiction over estates of deceased persons. Their jurisdiction is established through a statutory framework. They are, by virtue of appointment, Coroners for the parish in which they serve. They may also be appointed to preside in the Family Court, the Children's Court, the Traffic Court for Kingston and St. Andrew and have jurisdiction under the *Drug (Treatment of Offenders and Rehabilitation) Act*. In practice, there are at least two Resident Magistrates in each parish and the Chief Justice makes administrative assignment of each appointee to preside in specific courts. The Resident Magistrates report to the Chief Justice of Jamaica with respect to administrative matters and he is responsible for the assignment of duties.

i. Change Status and Name

249. In Part 4, the Task Force proposed that Resident Magistrates be provided with constitutional security of tenure and that their designation and conditions of service be changed

to reflect their current status and functions. Matching reforms need to be undertaken with regard to the appellation, structure and organisation of the RM Courts.

250. The reference to the magistracy should be omitted from the name of the lower court. This level of court should be renamed the Parish Court of Justice. A change in name will be a tangible symbol of the elevation in status, reflecting the important judicial functions served and the respect that is required in order to carry out these functions.

RECOMMENDATION 5.4

The Task Force recommends that the lower courts be renamed Parish Courts of Justice.

ii. Jurisdiction and Functions

251. The jurisdiction of the lower courts should be reviewed both on a geographic basis and in terms of subject matter jurisdiction. Subject matter jurisdiction should be reviewed both vis-à-vis the Supreme Court (as discussed above in Recommendation 5.2) and the matters heard by Lay Magistrates (discussed below).

252. The other major jurisdictional issue is whether Parish boundaries should remain as the basis of the organisation for the lower courts. This issue is closely tied to the issue of court facility renewal and regionalisation of the Supreme Court. While efficiencies and cost-effectiveness can almost certainly be achieved through regionalisation of the lower court, this move would have an impact on access to these courts given the continuing transportation issues on the island.

253. Parishes have traditionally been the administrative units outside of the Central Government. Over time, however, these classifications have softened, with local government remaining as the most faithful adherent to parish jurisdiction while the administration of tax collection, water distribution and police administration have tended to be organised through regional structures.

254. The administration of justice has to take into account locating court facilities in locations that are: (1) convenient to users; (2) relevant to the other government facilities on which the court rely; (3) changing demographics including the demographics of crime; and (4) conducive to good order and the dignity that should surround the centres at which the State undertakes dispute resolution. There is no special merit in retaining Parish jurisdiction merely because it has been in place since the late 19th century. On the other hand, Parish jurisdictions should not be replaced with new geographical boundaries merely for the sake of innovation. A change of this type change should not be made if its effect will be to place greater expense on the main users of the courts system.

255. These related issues of location of courthouses and potential regionalisation of the lower courts and the Supreme Court should be resolved on the basis of demographic data relating to the areas from which judicial work is being generated and the forecasting of trends in this regard. It is only with this empirical data that rational decisions can be taken on whether the Parish-based jurisdiction of the courts is the most efficient way of using available resources. This study should take place with the active participation of the judiciary, the legal profession, business and civic interests and the law enforcement agencies.

RECOMMENDATION 5.5

The Task Force recommends that a comprehensive review of the geographic basis of jurisdiction of Jamaican courts and the location of courthouses be carried out with a specific focus on demographic data and forecasted demographic trends, and with the active participation of all stakeholders.

256. On a functional level, judges of the lower courts should be relieved of many of the existing administrative functions currently carried out by the Resident Magistrates. The Court Administrator should be given responsibility for a greater range of administrative responsibilities

than is currently the case, including supervision of the Bailiffs. It is anticipated that more detailed recommendations on this issue will be made by the Court Administration Project. As discussed in Part 4, judges of the lower court should have no role in supervising Clerks of Court.

RECOMMENDATION 5.6

The Task Force recommends that judges of the lower court be relieved of existing administrative functions that can be transferred to the Court Administrator.

257. Under the existing statutory framework, Resident Magistrates must take hand written notes of all evidence in the serious criminal matters over which she or he presides. These notes are the only official record of judicial proceedings. This seriously outdated practice places an undue burden on Resident Magistrates, slows trials and gravely affects efficiency. All necessary steps to devolve this official function should be taken as soon as practicable.

RECOMMENDATION 5.7

The Task Force recommends that function of official keeper of the court record be transferred from the Resident Magistrate to the Court Administrator as soon as practicable.

258. Given the change in status of the lower courts, it would be anomalous to maintain the existing day-to-day reporting structure between individual judges of the lower courts and the Chief Justice. An appropriate administrative structure should be designed for the lower court

through the establishment of a judge with overall administrative responsibility for the court, including the assignment of duties and general supervision of court activities. This recommendation is in keeping with standard modern administrative principles. Consideration should also be given to establishing the position of Regional Senior Resident Magistrates.

RECOMMENDATION 5.8

The Task Force recommends that consideration be given to establishing the position of chief Parish Court Judge for the lower court in Jamaica (currently designated the Resident Magistrates' Court to be renamed Parish Court of Justice).

iii. Coroner's Court

259. Each Resident Magistrate is, by virtue of holding that office, a Coroner for the parish to which she or he is appointed. The Coroner has the duty to hold an inquest into the cause of death wherever a person has died, (a) either a violent, or an unnatural death, or (b) has died a sudden death, of which the cause is unknown, (c) in prison, or (d) in such place, or under such circumstances, as to require an inquest in pursuance of any law. The *Coroner's Act* was substantially enacted in 1900 and although there have been some amendments notably in 2005 no substantive modernisation has been carried out.

260. There are extremely long delays and a very low disposal rate in the Coroner's Court. Based on the incomplete data available, there were 4,099 pending inquests in 2003, of which 484 were processed, while in 2004, 492 of 3,962 pending inquests were processed. Some cases date back several years.

261. In general terms, the Coroner's Court suffers from the same systemic weaknesses as other Jamaican Courts, including: inadequacy in the provision of professional staff relative to caseload; inadequate use of technology; inadequate number of support staff; and problems with

the availability of steady flow of jurors. One of the biggest problems is the infrequent sittings; in some parishes only one or twice per month and the inability or failure to schedule hearings on consecutive days.

262. Some of the specific problems identified include:

- delays in the pre-inquest procedures (police investigation and reporting phase) before the cases reach the coroner – partly due to the low priority generally accorded by the police to coroners’ matters vis-à-vis other aspects of their work, and the absence of an official specifically mandated to oversee such cases. (Recent amendments have been made to have a designated senior police officer in each parish responsible for these matters but these officers are not yet in place);
- delays in completing post-mortem examinations;
- given the extensive other duties borne by Resident Magistrates Coroner’s Court matters are often only partly heard at a sitting – this leads to further delays;
- difficulties in the selection of jurors and concerns over the frequency of repeat or “professional” jurors;
- absence of witnesses is a perennial problem; some witnesses are not served with summonses; (recently Bailiffs have been empowered to assist in this process but this reform is not yet in effect);
- the long delays means that many witnesses have lost interest or may no longer be available to give evidence;
- interested parties now have the right to cross-examine witnesses and to view material intended to be adduced in evidence with the Coroner’s permission – this has made the inquests more adversarial and time-consuming;
- the important changes introduced by the *Coroners (Amendment) Act* of 2005 will not result in any real improvement to the system unless more administrative support is provided;
- there are difficulties in obtaining death certificates where no inquest is held; and
- there is a general deficit in knowledge concerning the Coroner’s Court and related functions.

a. Independent Agency for the Investigation of Police Killings

263. Generally speaking, it is only when agents of the State are implicated in extra-judicial killings that the Coroner’s role in the administration of justice assumes great importance. The State’s responsibility to carry out effective and independent investigations into the death of

persons, particularly those who die as a result of the conduct of its agents, is essential to the practical demonstration of the constitutional guarantee of the right to life.

264. Given the fundamental importance of this protection, the question is whether the Coroner's Court as presently constituted is the best means of carrying out an investigation capable of leading to the identification and punishment of the person(s) responsible for the deprivation of life. It seems clear that a fully independent, integrated, effective and properly resourced agency is required to carry out investigations into police shootings. The status quo cannot be maintained given the large number of incidents of this type and the incredible harm done to public confidence in the justice system by delayed, ineffective or insufficiently accountable investigations and prosecutions of these matters.

265. The Task Force is very aware of the extremely high number of shootings of civilians by security forces every year in Jamaica. (In 2006 there were 189 deaths by this means as of early December.) The Task force also recognizes that policing in Jamaica is a complex, dangerous and difficult task and that a significant number of police officers are killed while performing their duties every year. (10 police officers were killed during the same time period in 2006).

266. During consultations, the Task Force heard concerns about the integrity of the process by which investigations involving police shootings of civilians are conducted. The Task Force believes that these concerns contribute substantially to the overall low level of public confidence in the justice system and must be addressed if public trust in the system is to be restored. The specific problems identified include:

- failure or delays, sometimes by days, to visit the crime scene resulting in loss of vital evidence;
- failure to preserve crime scenes by prematurely moving bodies;
- failure to collect evidence;
- failure to conduct adequate autopsies;
- failure to adequately document autopsies;

- inadequate collection of samples; and
- failure to protect vital evidence.

267. These poor professional practices and inadequate investigative procedures will never command the confidence of the public and lead to justice ultimately being served.

268. Concerns with the process have also been described in the 2001 Amnesty International Report entitled, Killings and Violence by Police: How many more Victims? and more recently, in the US Department of State's Country Report on Human Rights Practices-2006, released in March 2007.

269. The official procedure in the case of a fatal shooting or killing committed by a police officer is as follows. In the event of a fatal shooting or other type of killing by a staff member of the JCF, the JCF's Bureau of Special Investigations (BSI) must undertake an investigation. An assistant commissioner of police, who reports to the Commissioner of Police, heads the BSI. The BSI employs approximately 25 investigators. Once an investigation by the BSI is completed, the file is transferred to the DPP, who will either decide to go ahead with criminal charges or refer the case to the Coroner's Court, which will conduct a coroner's inquiry. This inquiry is essentially intended to clarify whether criminal charges should be presented. The verdict of the inquiry, along with the case-file is referred back to the DPP, who must once again decide whether to continue with a prosecution or close the case.

270. In 1992 The Police Public Complaints Act was passed, which established the Police Public Complaints Authority (PPCA). The PPCA is an independent body that reports annually to the Minister of Justice and Attorney General. It is tasked with monitoring and supervising the investigations carried out by the police with regard to killings of civilians by the police, as well as other issues and complaints presented against the police. The PPCA can also investigate cases on its own accord and submit cases for prosecution to the DPP. The PPCA is currently staffed by a total of 15 investigators. It is headed by an executive director and overseen by a three-member board.

271. The concerns that have been expressed about the above process include the following:

- The police (BSI) should not be the main agency investigating serious incidents involving fellow police officers since it is not independent.
- The PPCA does not presently have the capacity to independently investigate the high volume of cases.
- The DPP is dependent on the quality of the investigation conducted by the police.
- The Coroner’s Inquest is not an effective tribunal to investigate these cases.

272. The concerns appear to be reinforced by the fact that few criminal prosecutions are brought against police officers in relation to the killing of civilians and those that are brought usually result in acquittals. No officer was found criminally liable in relation to the killing of a civilian in 2006.

273. The Task Force believes that the current structures in place for the investigation of the killing of civilians by the police are inadequate and not sufficiently independent.

274. The type of agency that could provide an appropriate model for dealing with this serious problem is the Special Investigation Unit (SIU) of the Ministry of the Attorney General of Ontario, Canada. The SIU is a civilian law enforcement agency with a jurisdiction to conduct criminal investigations. The SIU’s mission is to increase the confidence of the people of Ontario in their police services by conducting professional and independent investigations of incidents involving the police that have resulted in serious injury, including sexual assault, or death. It is the primary investigating agency for all such incidents, it is well-resourced, and governed by legislation and regulations.

275. The Task Force proposes that the primary responsibility for investigating all cases where the actions of members of the security forces have caused death or serious injury to civilians should rest with a well-resourced agency that is completely independent of the Jamaican Constabulary Force. All such investigations should be the responsibility of either the PPCA, whose mandate and resources would have to be very substantially expanded, or that of a new agency established specifically for this purpose. The Special Investigation Unit of the Ministry of the Attorney General of Ontario, Canada, provides a good model for such an agency.

RECOMMENDATION 5.9

The Task Force proposes that the primary responsibility for investigating all cases where the actions of members of the security forces have caused death or serious injury to civilians should rest with a well-resourced agency that is completely independent of the Jamaican Constabulary Force. All such investigations should be the responsibility of either the Police Public Complaints Authority, whose mandate and resources would have to be very substantially expanded, or that of a new agency established specifically for this purpose. The Special Investigation Unit of the Ministry of the Attorney General of Ontario, Canada, provides a good model for such an agency.

b. Options for Reform of the Coroner's Court

276. The law currently, is that the jury's verdict in the Coroner's Court must say upon the evidence, who the deceased was and how, when and where the deceased came by his death and "*if by the evidence they find that murder or manslaughter has been committed, then also the person whom they charge with the murder or manslaughter will be included in the verdict.*" The Coroner is empowered to issue a warrant for the arrest of the person named in the inquisition returnable at the next sitting of the Circuit Court. Once there is such a finding the Director of Public Prosecutions may seek to quash the inquisition or may enter a *nolle prosequi*. The net effect of Section 2 of the *Criminal Justice Administration Act* and *Coroners Act* is that the decision to prosecute ultimately rests with the Director of Public Prosecutions irrespective of a jury's verdict.

277. It is this charging aspect of the inquest that has contributed to the more adversarial and prolonged proceedings in recent years. In the United Kingdom and Canada, the coroner's inquest does not include findings of any person guilty of murder or manslaughter or result in

charges of persons with these offences. It is time for Jamaica to also separate the inquest function from the prosecutorial one.

278. The Task Force received numerous submissions concerning reform of the Coroner's Court including that the current procedures relating to coroner's inquests be substantially revised and/or that the Coroner's Court be phased out and abolished. The following specific reform options have been made:

- abolishing the Coroner's Court;
- relieving Resident Magistrates of the responsibility to carry out coroner's inquests;
- establishing a system of Regional Coroners dedicated to carrying out these duties;
- different types or models of coroners should be considered including legal officers, medical officers and so on;
- implementing case management procedures for the coroners' inquests, including establishing and enforcing time guidelines within which to complete the various stages of the investigation and inquest process;
- developing simplified procedures and forms for the issuing of interim coroner's certificates and for deaths where no inquest is held;
- taking steps to ensure that the designated police officers are in place and that their work is fully coordinated with the work of the Regional Coroners;
- providing adequate support to case management procedures in the inquest process;
- taking steps to ensure that post mortem examinations are carried out in a timely manner;
- ensuring that each Regional Coroner maintains a register of particulars in respect of each death reported to his or her office;
- abolishing the use of juries in coroner's inquests;
- abolishing the power to make a finding of guilt or charge anyone with an offence at the conclusion of a coroner's inquest.
- more resources and commitment to address the inadequate number of Coroner's Court sessions, magistrates, clerks and support staff;
- special coroners should be appointed throughout the island to enable the court to clear the existing backlog;
- the Coroner must utilise his authority to appoint a special bailiff in the event that the person entrusted to serve the subpoenas fails to do so within 14 days;
- superior officers must enforce the participation of investigating officers in ensuring that witnesses are both served subpoenas and appear in court;

- superior officers must discipline those officers who though subpoenaed don't attend and the court must start to impose penalties on such officers;
- amend the Coroner's Act to allow the Coroner to appoint a full time bailiff, preferably not a police officer, to serve subpoenas on witnesses and jurors; and
- groups and organisations with extensive experience of the functioning of the court should be given due respect, voice and consideration regarding any proposed changes to the *Coroner's Act*.

279. Amendments to the legislative framework of the Coroner's Court were recently carried out. For example, the problem of "professional jurors" has been addressed at least to some extent. Nevertheless, given the serious problems experienced in the Coroner's Courts and the implications for the public's trust in the justice system as a whole, the Task Force recommends that further review of the operations of the Coroner's Court be undertaken to ensure greater and more acceptable levels of efficiency.

RECOMMENDATION 5.10

The Task Force recommends that further review of the operations of the Coroner's Court be undertaken to ensure greater and more acceptable levels of efficiency.

c. Backlog Reduction Strategy

280. The backlog in the Coroner's Court is in need of urgent attention and serves to undermine confidence in the impartiality of the system as a lot of cases involve police homicides. It appears as if the state is deliberately dragging its feet or allowing its agents to deliberately tie up matters in court in order to protect these policemen. This perception is particularly strong as the families are often poor and helpless.

281. The backlog has been years in the making and will require a sustained effort with an immediate outlay of human and financial resources to arrest the current trend and bring the

situation under control. Success in this area will shore up confidence in the system as a whole. A backlog reduction strategy should be developed and implemented as soon as possible to run concurrent with the review of the legislation and overhaul of the administrative procedures recommended above.

282. The first step in the development of this backlog reduction strategy is the definition of the backlog based on statistics from every Parish as well from the Coroner’s Court in Kingston. It is estimated that the caseload in Kingston alone is huge, with an average of 200 new cases per year – a caseload that would take approximately 48 years to dispose of at the current rate of disposal. Once the required information is gathered, a team should be assembled with a mandate to develop a proposal including recommendations concerning funding and management.

283. Furthermore, a public education campaign is needed to apprise Jamaicans about the roles and functions of the current system for coroner’s inquests and their rights and responsibilities within it.

RECOMMENDATION 5.11

The Task Force recommends that a backlog reduction strategy be developed and implemented in the Coroner’s Courts.

RECOMMENDATION 5.12

The Task Force recommends that the reform the coroners’ inquest proceedings be accompanied by a public education campaign to increase public understanding of the role of the office of the Coroner and the publication of a booklet explaining the duties of the Coroner and the rights of relatives of victims.

4. Lay Magistrates' Court (Petty Sessions Court)

284. Justices of the Peace (JPs) play an important and singular role within the Jamaican legal system and more broadly in the community. Within the context of this comprehensive review the focus is on the role of JPs in their capacity as Lay Magistrates in the court of summary jurisdiction, the Court of Petty Sessions.

285. The term “Petty Sessions” is considered to be outdated and demeaning. It is not reflective of the important matters brought before Lay Magistrates and contributes to disrespect sometimes shown to Lay Magistrates while they are sitting. This Court should be referred to as the Lay Magistrates' Court. Concerns have also been raised about the facilities used for Petty Sessions Court and, in particular the absence of the Jamaican flag, which is required by the Constitution of Jamaica.

286. JPs are also concerned about the lack of respect that is often shown to them by both lawyers and police officers. For example, on occasion the police have adjourned Petty Sessions Court on their initiative without the presiding JP's approval. Steps should be taken to establish better public understanding of the role of the Lay Magistrate while presiding. In addition, consideration should be given to providing Lay Magistrates with a power analogous to the contempt power available to the judiciary in order for them to have greater power to maintain discipline during hearings.

287. There is an opportunity to enlarge the jurisdiction of this level of Court in order to relieve the current RM Courts of some the pressures that they face. Two specific suggestions of matters that could be transferred to lay magistrates are traffic offences and mention dates. Specific jurisdictional reforms and the relationship between the Lay Magistrates Court and the RM Courts should be made in conjunction with the proposed re-design of RM Court. Further consultation should be carried out with stakeholders and in particular with Custodes and the Lay Magistrates' Association. Enlargement of jurisdiction should bear in mind that JPs are volunteers and demands on their time have to be realistic. In addition, new responsibilities should be fully supported by new training and through adequate resources and coordination with court administration and prosecutorial services.

RECOMMENDATION 5.13

The Task Force recommends that the Court of Petty Sessions be renamed the Lay Magistrates' Court and that the law be appropriately amended.

RECOMMENDATION 5.14

The Task Force recommends that the legislation governing the jurisdiction of the Lay Magistrates be amended to include power for them to deal with disruptions of proceedings and inappropriate behaviour in courts over which they preside.

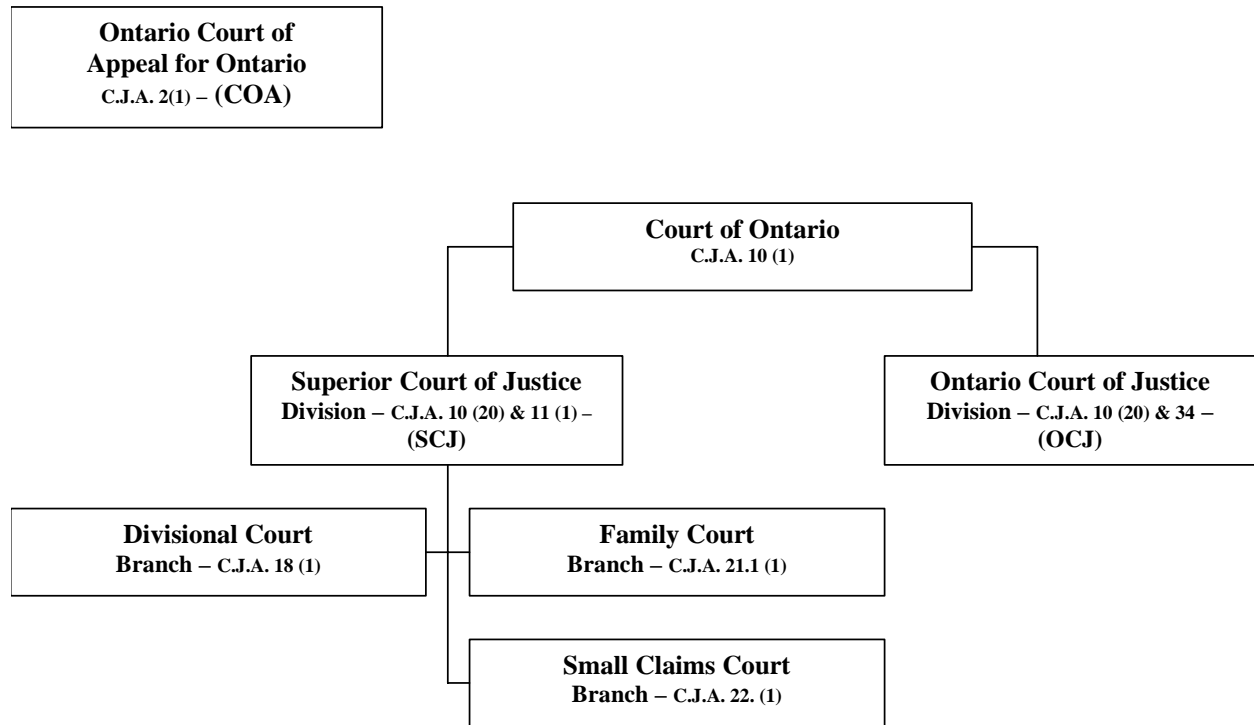
RECOMMENDATION 5.15

The Task Force recommends that some of the matters currently under the responsibility of Resident Magistrates could be transferred to the jurisdiction of the Lay Magistrates' Court. This transfer of jurisdiction should be done in consultation with stakeholders and as part of the re-design of the Resident Magistrates' Court.

5. Considering A Unified Court for Jamaica

288. A more radical approach to modernising the court structure in Jamaica is to establish a unified court. One possible model for a unified court is an administratively unified court with three levels: lower trial court (to be renamed the Parish Court of Justice); the superior trial court – the Supreme Court; and, the Court of Appeal. The two levels of trial courts could each be organised into criminal, civil and family divisions. The administrative structure of the Ontario Courts of Justice is attached to illustrate this unified organisational structure.

Courts Structure



289. One rationale for establishing a unified court is that the current differences in practices, procedures, and management of the two levels of trial court and their respective administrative cultures may be inefficient and contribute to a fractured justice system as a whole, aggravating the difficulties in providing fair and efficient procedures for all.

290. Furthermore, the concept of instituting a unified court would act as both a focus and catalyst for reforms. In particular, the creation of a single administrative framework would expedite modernisation as it could be a vehicle through which the Government of Jamaica can ensure citizens a faster, simpler, more effective and more integrated access to the court system. A unified court would be a distinctive new vision with the potential to apply justice-related resources in a more effective way. It would have the advantage of being more understandable to the public since the court system would have only one point of entry.

291. The vision of a unified court structure with specialised divisions has the potential to better address the new developments and increasing complexities of our rapidly changing world. Specialised courts (discussed below) would be easier to implement in an effective way through a unified court structure. A unified court is a more horizontal, comprehensive and integrated approach and would provide a single focal point for the integration of innovations, new techniques and tools including technology.

292. The main drawback of such a profound structural change is that it would be complex and time-consuming to implement by comparison with the more modest structural reforms proposed above. There is an urgent need for change now and so an interim and transitional plan would have to be carefully thought out if the decision is made to work toward a unified court.

RECOMMENDATION 5.16

The Task Force recommends that a feasibility study be commissioned of the potential benefits and costs of organising the courts with special divisions such as criminal, family and civil divisions.

B. SPECIALISED AND PROBLEM-SOLVING COURTS

1. Specialised Courts

293. Experience and recent court changes in many countries show that specialised courts are able to make better use of the knowledge and experience of the judges, allowing these individuals to, in turn, better serve in critical and increasingly complex areas like criminal, family, youth and commercial law.

294. The advantages of specialisation are that procedures can be tailored to the types of cases heard, and the judiciary can develop a heightened level of expertise. The expectation is that the specialised court will be faster and deliver more consistent and predictable decisions. A specialised judge is in a better position to effectively impose and monitor case management controls, including supervising disclosure, ruling on motions, conducting trials, instructing juries, and so on. The specialised judge requires less time to research and reflect and, to that extent, can provide direction and guidance earlier than a generalist judge. Specialist judges, with their expertise, familiarity with the subject matter and fewer numbers, will likely produce decisions that are much more uniform than will generalist judges. At the same time, specialisation of the judiciary can increase inefficiency since, for example, the transitional training costs of having judges who have specialised for a great length of time undertake duties in a different subject matter.

295. A number of jurisdictions are exploring the benefits of specialised or problem-solving courts and processes. Within the criminal sphere, these courts may be able to deal with certain offenders more quickly than the regular courts. Even more importantly, they are seen as a better criminal justice response to the underlying social problems facing offenders/victims that give rise to anti-social behaviour.

296. Jamaica is already quite advanced in terms of the establishment of specialised courts including the Gun Court, the Drug Courts, the Commercial Court (discussed in Part 8), and Family Courts/Children's Court (discussed below). At the Summit, some participants recommended that establishment of a Fraud Court given the complex nature of these crimes and the voluminous evidence required. However, it may be that these special requirements could be

through specialised training within the judiciary with special procedural or administrative changes.

297. The Drug Courts are well-regarded and perceived to be effective. The Drug Court has already been the subject of two positive reviews and their expansion is recommended here. These Courts suffer from the same problems of inadequate resources and facilities as all courts in Jamaica and therefore the reform recommendations made throughout this report apply to them.

RECOMMENDATION 5.17

The Task Force recommends the expansion of the Drug Court based on the positive evaluations carried out to date.

298. The Gun Court was established several decades ago as an “emergency measure” to deal quickly with escalating gun violence. Given the ongoing rise in gun-related crime in Jamaica it is hard to see that this specialised court has been a successful development. While the Gun Court in Montego Bay is able to deal with gun offences in a timely way, the Gun Court in Kingston is plagued by the same kind of delays as other Jamaican courts. Concerns have been raised about the differential treatment accorded to similar crimes simply on the basis that a gun was involved or not. For example, rape at gun point is under the jurisdiction of the Gun Court while rape at knife point is not. Other concerns have been raised about the fact that Gun Court proceedings are *in camera*. Views are highly divided on whether or not the Gun Court should continue to operate as it is currently constituted and in particular whether its proceedings should generally be open to the public, subject to a judge’s decision to the contrary. However, there is general agreement that the Gun Court should be reviewed.

RECOMMENDATION 5.18

The Task Force recommends that the Gun Court be reviewed.

2. Problem-Solving Courts

299. Problem-solving courts are a specific type of specialised courts established to take a problem-solving orientation and to integrate related support services. Problem-solving courts tend to provide more satisfying outcomes for parties in a dispute and for society in general by dealing with the fundamental problems the justice system is called upon to resolve, in a more meaningful, integrated and comprehensive manner.

300. In addition to Drug Courts, there are other three other main types of specialised courts currently in existence in some jurisdictions. These include:

Mental Health Courts

These courts deal with offenders that commit less serious offences because of mental health disorders. They focus on processes and dispositions intended to link the offenders with appropriate social services or treatment. They are staffed by specially trained probation officers and mental health workers who assist clients in obtaining basic living essentials, such as housing, financial management, access to health care services and access to mental health treatment providers. The court monitors and attempts to assist the offender's progress. The goal is to reduce offending and incarceration in prisons.

Domestic Violence Courts

These specialised courts seek to break cycles of violence that repeatedly bring offenders before the courts. In appropriate cases offenders may be referred to counselling programmes geared to changing their attitude about the use of physical violence in a domestic relationship.

Community Courts

These specialised courts seek to bridge the gap between courts and communities and intervene in matters involving minor offences in order to avoid a revolving-door syndrome and foster a local problem-solving approach to criminal justice. They focus on the use of diversion and alternative sanctions.

301. In the criminal sphere, the specialised courts place emphasis on treatment and rehabilitation in a positive and supportive, court supervised programme. They constitute a multi-disciplinary alternative to the traditional criminal justice focus on prosecution and punishment.

Common features they share are:

- 1) A different approach from traditional adversarial criminal proceedings;
- 2) Focus on rehabilitation;
- 3) Informal and flexible procedure;
- 4) Caseworkers who provide court centred services;
- 5) Judicial follow up or community supervision; and
- 6) Focus on specific social problems (e.g. drugs, mental health, cultural inequities, and abusive behaviour).

302. One important concern is that access issues can arise where a specialised court sits in only one location. In Jamaica, these concerns have been raised with respect to the Family Court and Children’s Court. There is a trade-off between (1) trying to make these services available island-wide which is difficult because it means providing specialised training to all judges and court personnel and spreading out inadequate support services across the whole system, and (2) providing a more effective service in a smaller number of locations on the island. A regionalised court system could mean that problem-solving courts could be available in each region.

303. Defining the jurisdiction of the specialised court can sometimes be difficult, as real-life disputes often spread over many fields of law. If courts are specialised, this can lead to fragmented judicial consideration of related issues. To alleviate this, the specialised court should, when a case involves additional issues, be given case-wide jurisdiction to adjudicate all the issues raised, including those that normally fall outside of its jurisdiction.

304. Studies and evaluations of problem-solving courts in the United States have demonstrated that they are cost-effective and the feedback has been positive. However, the evaluations have tended to focus on process rather than outcomes and so it is difficult to make firm conclusions in this regard. These courts are consistently highly ranked in terms of procedural fairness by participants.

305. A recent study on specialist courts in three jurisdictions commissioned by the Government of the United Kingdom concluded that the following factors were the key factors in successful specialist courts:

- a flexible judicial attitude with a willingness to experiment with new ‘team’ approaches to diverting offenders from criminality; participation in the on-going monitoring of offender behaviour; and communication to others about the benefits of the work they do;
- an adequate pool of committed and trained professionals – in particular lawyers, administrators, probation officers and others supervising court programmes – who are sympathetic to the ethos of the specialist court and its operational methods; and
- budget holders with vision who are willing to invest resources in an enterprise that is likely to deliver tangible benefits only in the longer term.

306. Continued reform and modernisation of the justice system depends upon an increased capacity to gather and analyse information about court functioning to serve as a basis for evaluation and planning. This capacity is particularly important in developing new types of court structures such as problem-solving courts. Steps should be taken to increase the gathering and sharing of information in this regard.

RECOMMENDATION 5.19

The Task Force recommends that all problem-solving courts should expand their information gathering and sharing capacity through the development and enhancement of integrated information sharing systems. This information gathering should include compliance with court orders and alternative sanctions in order to facilitate better decision-making.

307. The Task Force is of the view that consideration be given to the ways in which the justice system currently deals with domestic violence and mentally ill offenders, including exploration of the potential utility of Domestic Violence Courts and Mental Health Courts. In addition, the Task Force has received a large number of submissions with respect to reform of the Family Courts/Children’s Court. These issues are discussed in the following three sections.

a. Domestic Violence

308. The Task Force has heard numerous concerns expressed about the extent of domestic violence in Jamaica. The National Security Strategy describes the problem in the following terms:

Domestic violence is one of the more pervasive and common forms of violence plaguing the society. It contributes to the overall pattern of crime and violence due to its debilitating effects on the social fabric and its role in socializing the youths to violence as a means of dispute resolution. Women and children are disproportionately at risk from domestic violence.

309. The National Committee on Crime and Violence reported that in 2000, the motives for 33% of all the homicides that year were classified as “Domestic”. The term “domestic” for the purpose of these statistics relates to spousal, partner, and parental relationships.

310. Many countries have developed specific criminal justice policies to combat domestic violence involving partners or former partners in relationships. These policies include, for example:

1. The establishment of a network of shelters for women and children in order that they may escape violent domestic situations.
2. Strict criminalization of any form of physical violence in a partner relationship. This usually involves a mandatory charging policy for the police in all circumstances where they have reasonable grounds to believe that an offence has taken place.
3. A rigorous prosecution policy that provides that criminal charges will be proceeded with and not withdrawn by prosecutors even on the request of the complainants. One of

reasons for such a policy is to reduce the incentive that the accused persons may have to pressure and intimidate complainants into dropping charges.

4. A general approach that mediation is not usually appropriate as an alternative to prosecution in partner abuse cases due to an inherent power imbalance in the relationships.
5. Support services for complainants before, during, and after the court proceedings.
6. Special rehabilitative programmes for sentenced offenders that are aimed at changing their attitudes towards the use of violence in domestic situations.
7. Specially designated and trained police officers, prosecutors, judges and victim support workers to deal with domestic violence cases.

311. Although some steps have been taken under the rubric of the *Domestic Violence Act* of 1995, however it is clear that more needs to be done. Some of these approaches may not necessarily be appropriate for Jamaica. For example, rather than rigorous prosecution, mediation is frequently used to resolve “partner assault” cases following referrals from the Resident Magistrates. It is not easy to determine which approach is most likely to promote the reduction of domestic violence and be in the best interest of the victims. Given the serious problem of domestic violence in Jamaica, and realizing that the criminal justice system can only be a partial solution to this problem, the Task Forces is of the view that a study should be conducted to review how cases of domestic violence are currently being dealt with and to consider whether any new approaches may help address the situation. This study should specifically include consideration of the benefits and costs of establishing Domestic Violence Courts or Domestic Violence panels within the Family Courts as well as specialised training for judges and court staff to deal with dispute resolution in this context and providing appropriate support services such as Victim Support Unit to parties.

RECOMMENDATION 5.20

The Task Force recommends that a review be conducted of how cases involving domestic violence are currently being dealt with in the criminal justice system and to consider new approaches that may help address this serious social problem. This study should include consideration of the benefits and costs of establishing Domestic Violence Courts.

b. Mentally Ill Offenders

312. The Task Force has heard numerous concerns expressed about the treatment of mentally ill offenders when they come into contact with the criminal justice system. They included the following issues:

1. The lack of proper facilities to hold mentally ill persons in detention at police and courthouse lock-ups.
2. The lack of proper medical care, including medication, for those being held.
3. The lack of “diversion” programmes that could be used as alternatives to criminal prosecution in less serious cases.
4. The length of time mentally ill offenders are required to remain in detention until they are assessed and dealt with by the courts.
5. The housing, in the prison system, of those found unfit to plea or not criminally responsible by reason of mental illness because of the absence of a secure forensic unit in a psychiatric hospital where they could be held and treated.
6. The lack of proper facilities for the mentally ill in the prison system.
7. The failure to transmit adequate information from the courts to the prisons system about those found unfit to plea or not criminally responsible by reason of mental illness.
8. The inadequacy of the review process for those found unfit to plea or not criminally responsible by reason of mental illness, resulting in situations where mentally ill persons may be confined to prisons for very lengthy periods even for minor offences.
9. Lack of proper training for police, judges, prosecutors, defence lawyers, probation officers, and prison officials about appropriate ways to deal with the mentally ill.

313. The Task Force recommends that the treatment of the mentally ill by the criminal justice system be made the subject of special review. Appropriate policies, programmes, and legislation must be put in place to ensure they are dealt with in a caring and sensitive manner with emphasis on their rehabilitation while at the same time, taking into account the need for public protection in certain cases. These initiatives should have the following features:

- There should be alternative programmes, outside the formal criminal justice system, to deal with certain mentally ill persons who commit less serious offences.
- Mentally ill persons who are found unfit to plead or not criminally responsible by the courts should be assessed whether they are a danger to themselves or to others. Those who constitute a danger should be held in a secure forensic ward of a psychiatric hospital or in a special “hospital like” unit of a prison with appropriate services for their care and treatment. Those who are not a danger should be supervised and cared for in the community.

- The above assessment, and particularly the need for continued detention in a custodial setting, should be reviewed on a regular basis by a body with appropriate legal and medical expertise.
- All personnel who deal with mentally ill persons in the criminal justice system should receive adequate training in this area.
- The individual cases of every person currently held in a prison in Jamaica as the result of a court finding relating to fitness to plea and of those being held at the “Pleasure of the Governor General” be thoroughly reviewed to ensure that their continued detention is justified.

314. One avenue for integrating the appropriate support services and ensuring proper treatment of mentally ill offenders in the justice system is through the establishment of Mental Health Courts. The Task Force recommends that a Mental Health Court be established on a pilot project basis subject to monitoring and a full evaluation. A pilot court of this type would provide a focus for introducing a range of innovative approaches and service delivery options. Evaluation of this pilot court experience would provide a sound basis for decisions concerning how best to serve this segment of the population.

RECOMMENDATION 5.21

The Task Force recommends that the treatment of the mentally ill by the criminal justice system be made the subject of special review and appropriate policies, programs, and legislation must be put in place.

RECOMMENDATION 5.22

The Task Force recommends that a Mental Health Court be established on a pilot project basis. The pilot project design should include an evaluation to promote evidence-based future planning and decision-making.

c. Family Courts/Children’s Court

315. There is universal support for the expansion of Family Courts/Children’s Courts across the island. Interim steps should be taken to provide outreach services in family law matters until such a time as these specialised courts are available to all. This could include the creation of the position of Community Counsellor who could operate from the neighbourhood peace and justice centres and/or legal aid clinics discussed in Part 6. It is also recommended that these courts have designated “Child Court Days” dealing with children in conflict with the law

316. One larger issue identified is the problem that arises because the Family Court has concurrent jurisdiction with the Supreme Court on some family law matters. Because the two levels of court are physically and organizationally separated, difficulties often arise from duplicate hearings, conflicting orders and imperfect information about previous legal proceedings between family law litigants. The main recommendation to address these problems is the establishment of a Unified Family Court in which both levels of court share the same facilities, a single registry, a common staff and a single database. However, the two levels of judges would continue to exercise their respective jurisdictions. The Trinidad and Tobago Family Court is an excellent model in this regard.

317. While some of the concerns over information sharing could be addressed through the operationalisation of JEMS, the main benefit of a Unified Family Court would be more timely resolution of disputes since the management of family law cases will be rationalised and family issues pertaining to the same matter will not be filed in one court without awareness of the other court. There could be in camera proceedings at both levels thus assuring privacy in the hearing of family matters before the court. Judges in the Unified Court could be appointed for their expertise and interest in family law and will be able to improve their expertise in this field by concentrating only on matters of family law.

318. Users Committees should be established for Family Courts and the Children’s Court as soon as practicable as these Committees could serve as an important mechanism for implementing the recommendations contained in this Report. In addition, in relation to disputes between parents over matters concerning children, consideration should be given to providing

advocates for the children separate and apart from the parents' attorneys. These advocates would not have to be trained lawyers.

RECOMMENDATION 5.23

The Task Force recommends that the Family Law Courts/Children's Court should be expanded so that they are accessible across the whole island. In the interim, a court-connected intermediary family law outreach program should be established through which the new position of Community Lawyer could be a first point of contact and provide family law, Restorative Justice, mediation and counselling information in the community through neighbourhood peace and justice centres/legal aid clinics.

Counsel could be a first point of contact and provide family law and counselling information in the community through neighbourhood peace and justice centres/legal aid clinics.

319. Task Force has received numerous submissions concerning improvements to be made to the Children's Court so that it has the capacity to fulfill its mandate under Jamaican statutes and the Convention on the Rights of the Child. The Ministry of Justice has worked hard to develop a National Plan of Action for Child Justice and it is anticipated that the Plan of Action will be approved and implementation begun this year.

320. In preparing its submission to the Task Force, the Child Development Agency interviewed a number of children in the child protection system all of whom have had some level of interaction with the justice system. Their responses concerning the way that they were

treated and what they would like to see changed are very telling. One recurring comment was the desire to have the judge listen to them.

321. Many of the issues outlined below will be addressed through this Plan of Action. Nevertheless, they are set out here as a record of the reform measures that are required:

- Courts across Jamaica should operate in keeping with the *Child Care and Protection Act 2004* when interfacing with children including where the child is victim, perpetrator and/or offender at all levels of the court system and would include: in camera trials; separation from adults; explaining the law to children; and, explaining reasons for being in court.
- There should be an emphasis on specialised training for staff at all levels in the court system (including child development and psychology, psychosocial supports, children's rights and international obligations).
- Court hearings should be streamlined to separate children who come before the courts for different reasons from those in conflict with the law and those in need of care and protection;
- There should be regular and frequent sittings of designated multi-disciplinary courts on a daily basis in each parish.
- There is need for more sensitization of all citizens (since some will serve as potential jurors and witnesses on the rights of the child). There is evidence that there is much room for improvement in the attitude of the jurors to children and this influences the outcome of the case.
- Children during the child court process are often detained in places of safety and remand centres – measures and resources need to be put in place to ensure total compliance with the *Child Care and Protection Act 2004*, the Beijing Rules and the Convention on the Rights of the Child.
- There is concern with the conviction rate in cases of violence and abuse against children. Every effort should be made to help young and frightened children to be effective in giving evidence (amendments to Evidence Act for use of video links, other technologies and paper trial to reduce any risk of a face to face meeting of child and abuser in court; use of liaison officers to assist children to prepare them for and assist them with court experience.
- Restorative justice a good option for children and more emphasis should be placed on helping children to take responsibility for their actions and to seek to make amends;
- The concept of a Youth Court – that is court which enhances youth participation is also worth more exploration for use in the restorative justice scenario; would need to

be carefully developed and managed in a culturally appropriate way; more study but could be innovative and creative in dealing with crimes committed by children or against children.

- In the long term the facilities should be redesigned with a view to: provide designated multi disciplinary Children's Courts in each parish meeting on a daily basis or as the caseload of each parish dictates – space for social services, mental health, medical and other justice and social services professionals involved in family matters; secure and private areas for families and children in conflict with the law with spaces designed for children in the courthouse; separate waiting areas for children whose parents are in court and secure areas for children who are in protective custody and child care facilities, hearing rooms, arbitration rooms and for family to have discussion; family friendly interior designed including courtrooms that are scaled and designed for children; provisions for children with disabilities such as ramps for the physically challenged and interpreters for those who are mute or deaf.
- Technology should be implemented on an urgent basis – help to dispose of cases, trace repeat child offenders who may move from district to district and parish to parish.
- Remand centres: the need for adequate locations to house children in conflict with the law is a major challenges; there is a need to expand such locations to include children waiting to appear before the court; separate from adults; separate children in need of care from those charged with serious offences;
- Fragmented treatment of young offenders: there is apparent lack of knowledge of individuals such as police or clerks of court in addressing matters before the courts – children being treated as adults; need for a broader justice system reform to deal with increasing numbers of young offenders including filtering of minor offences to other mediatory avenues rather than through the RM courts; need to expand the Witness Protection system to cover children where placement is separate from existing child care facilities; lack of special programme or unit for child witnesses; long postponement/delay in processing children's cases; holding child witnesses in lock ups to facilitate attendance; a lack of specialised assistance for witnesses (i.e. psychiatric/psychological support); an absence of witnesses through lack of resource (i.e., no money for transportation); the need to transport children in unmarked vehicles;
- Child victims of crime: the most pressing issues revolve around the need for confidentiality by staff and all others involved in the child care system (confidentiality agreements with strong non-disclosure clauses with penalties); court officers and the police must dress in a non-intimidating manner; where possible mediation rather than court action must be pursued against children in order not to clog up the court system; officers assigned to work with children must be aware of the CCPA and other child protection issues and be sensitive to children's issues; develop a code of conduct governing issues of confidentiality, recruitment., training,

professional discipline for relevant personnel including law enforcement officers, court officers, probation officers and other support personnel;

- Standards of practice within the system must be lifted especially where direct contact with children is involved; practitioners within the system must have the ability to listen and exercise patience
- There is a need to promote best practices in: interviewing techniques from a child-friendly perspectives; listening to children and not value-judging their opinions when making reports; interviewing/interrogation techniques; devising alternatives to corporal punishment; investigating skills where a child is involved.
- There is a need to standardize practice by courts and police stations regarding children including issues such as the frequency of court sittings; standards in police lockups, notification of relevant agencies when a child is remanded, transportation of children to and from court; interviewing children outside of the presence of parents/legal guardian and/or legal counsel – a child must not be questioned by law enforcement personnel without either one or more of these individuals present (legal representative; social worker; parents; guardians);
- A shift system should be introduced or personnel placed “on call” for legal and social worker personnel to be available to support the initiative in instances where a child is remanded in the nights;
- Speedy resolution needed to avoid further scarring of children: the need to assisting more judges; increase frequency of sittings; allow lead time in which to conduct investigations that can adequately apprise the court before action is taken; establish a court stakeholder committee;
- The key is ensuring multi agency collaboration to drive the development of networks among the justice, protection and security systems so as to create a more effective justice system with regard to children.
- Legal aid lawyers must be made widely available to provide support for children in need of legal assistance/representation;
- Agencies working in the justice, care and protection and security system must also be trained on all aspects of the justice system – summer education programmes, workshops and seminars
- All public entities working with children must make child-friendly instructional material available and accessible; equip more places with this material (libraries, schools, training institutions).
- Children must be told their rights and there must be proof if this is done and be fully apprised of methods of access of such services

- Efforts must be made to ensure that our rural locations are adequately equipped to support the effective hearing of cases in each parish – guidelines – family court in each parish or at least regionally; children’s court must have more than one sitting per month per parish; desist from holding court sessions for extended hours such that children especially the very young ones are forced to remain in the environment for the entire day, often without their case being heard.
- Where possible seek to identify other locations which serve as arbitration centres to be used as alternate court rooms.

322. An aggressive plan must be adopted and fully implemented in order to increase capacity, build and strengthen collaborative efforts through the establishment of inter-agency networking, and increase training and sensitization to child justice issues.

RECOMMENDATION 5.24

The Task Force makes the following specific recommendations with respect to reform of the Children’s Court:

- should provide full and integrated services to meet the needs of children, including psychiatric evaluation, drug testing, counselling and mediation;
- facilities should be “family friendly”, designed so as to meet the needs of children for privacy and security, address the needs of disabled children, and have sufficient space for social services, mental health, medical, and other justice and social services professionals involved in family law matters;
- children in conflict with the law and children in need of protection of the law should not be transported to court together;
- children in conflict with the law and children in need of protection of the law should be separated within the court facilities;
- proceedings involving children should always be held in camera in this court;
- greater preparation and information about the nature and effect of proceedings should be provided to children and their parents and in particular, counselling and support should be provided to children before their first appearance in court;
- children should be treated in a respectful manner by all justice system personnel, including judges;
- steps should be taken to ensure that proceedings involving children are dealt with according to the time limits established by law pursuant to international legal obligations;
- judges sitting in Children’s Court should have the benefit of training in matters related to child developmental psychology, child justice issues and other relevant disciplines;
- all staff who deal with children at the courts should be trained in relevant areas to ensure they are properly equipped to deal with children and the varying issues coming before them;
- procedures should be established, and supported by training, to ensure that the best interest of the child is protected notwithstanding their reason for being brought before the court; and
- increased staffing and resources should be provided to Children’s Courts and strategic relations established with the Child Advocate, Child Development Agency, MOEYC, MOH, VSU, child-focussed civil society organizations and the DRF.

C. ORGANISATIONAL STRUCTURES AND REPORTING RELATIONSHIPS

323. The implementation of the Task Force’s reform recommendations will involve a redesign of the organisational structures and reporting relationships within the justice system. The new elements of this organisational structure proposed so far include: the establishment of a Court Services Unit at the Ministry of Justice; a chief administrative judge for the redesigned RM Court; and the change in designation of Clerk of Court to prosecutors reporting to the Office of the Director of Public Prosecutions. Other potential reform options that require further study include: the establishment of an independent Court Services Agency; the organisation of the lower trial court on a regional rather than a parish basis; regionalisation of the Supreme Court; the creation of a unified court; and the expansion of specialised courts.

324. The revised organisational structure should clearly separate out the three arms of the justice/court system: (1) the executive and administrative arm; (2) the judicial arm; and (3) the prosecutorial arm. At present there is some overlap in the functions of these arms and a lack of clarity in some of the reporting relationships. In addition, the three arms should be organised on a regional basis for administrative and reporting purposes. For example, there should be regional heads of the prosecutorial arm that report to the Director of Public Prosecutions; regional senior judges that report to the chief administrative judge of the redesigned RM Court and regional Court Administrators that report to the Director of the Court Services Division.

325. A clear organisational structure will contribute to an effective, accountable and transparent justice system.

326. Consideration should be given to having each of these functional arms organised on a regional basis for administrative and reporting purposes. For example, a regional public prosecutor could supervise all of the assistant prosecutors (formerly Clerks of Courts) in a given region. Similarly, there could be regional court managers to supervise and assist the court administrators in each Parish Court. The absence of sub-managers to provide guidance at the regional level was one of the key problems identified during the Task Force’s consultations. Creation of several regional sub-managers at the Magistrate’s Court level namely- Regional Magistrates, Regional Court Administrators and Regional Clerks of Court.

RECOMMENDATION 5.25

The Task Force recommends that the revised organisational and reporting structure of the justice/court system clearly separate out the executive/administrative, judicial and prosecutorial functions.

D. FOSTERING BETTER COMMUNICATION AND COLLABORATION BETWEEN AND AMONG JUSTICE INSTITUTIONS

327. One of the three fundamental approaches developed out of the JJSR civic dialogue is the need for enhanced collaboration:

Courts do not exist in isolation, but are linked to other agencies that impact citizens' experiences of safety, security and social justice. In order for real change to occur, government administrations must be held accountable to invest the resources required to overhaul all institutions in the chain of justice. This will involve significant increases in physical and human capacity, as well as a new culture of openness and dialogue.

328. The "chain of justice" is comprised of a number of operationally independent "link" or actors who together are responsible for the system of criminal, family and civil law, maintenance and enforcement. This system embraces the courts, judges, JPs, lawyers, the police, the prisons, correctional officers, other service providers such as legal aid, mediators and victim support workers, the Ministry of Justice and the Ministry of National Security.

329. While the focus of the JJSR is on courts and court-connected resolution processes, modernisation of the courts is affected by and will in turn have an impact on these justice-related sectors and initiatives. Implementation of the modernisation process will require collaboration, the exchange of information and cooperation at every level including at the operational and policy levels.

330. Due to the fact that the justice system comprises a number of organisationally independent actors, full co-operation and involvement among all the parties involved in the administration of justice in the search of fair yet efficient procedures, is essential. Since all the participants in the system are independent of each other, the full participation of all of them to devise procedures to make the system more workable, yet still fair, is strictly a matter of co-operation. New procedures cannot be imposed. In addition, all of these actors have a shared interest in improving the administration of justice.

331. At the same time, the justice system is adversarial by nature and so cooperation does not always come easily. Cooperation and communication have to be fostered through mechanisms designed to enhance collaboration. Collaboration can also be enhanced through informal mechanisms such as joint training sessions and other opportunities to build relationships, deepen understanding, and strengthen mutual respect.

332. Effective and meaningful communication is essential to facilitate and manage individual and systemic change. Successful justice system reform has been introduced where there has been honest discussion about problems, clear statements about what is meant to be achieved by proposed changes, and close consultation among the various participants within and outside the justice system. This involves operationally independent parties in the justice system working cooperatively on specific issues such as delay reduction or facility design. It also involves implementing a proper system of collaboration with other components of the justice system through appropriate ongoing organisational linkages. Specific recommendations are made in this regard throughout this Report.

333. What is required is a broad culture of collaboration, which will be the new way of “doing business” in the justice community. It will not be enough to have *ad hoc* practices; rather a universal approach is required. More fundamentally, modernisation requires the cultivation of a culture of collaboration within an adversarial system. This culture of collaboration is based on the shared interest in improving the justice system, on a respect for the independence of actors and institutions but one that equally emphasises the interdependence of all participants.

334. On an operational level, the “Users Committee” established to help design and implement the Pilot Court Site Project in May Pen is an excellent model for fostering a culture of

collaboration. This Committee is made up of the Resident Magistrates, Court Administrator, Clerk of Court, Deputy Clerk of Court, court staff, several local Justices of the Peace (many of whom are trained mediators), representatives of various positions in the local police constabulary, a lawyer, a Probations Officer, and a Victims Support Worker.

335. The purpose of this Users Committee or local justice committee is to improve the delivery and quality of justice through local initiatives. Many of the solutions to the problems in the court system can and should be developed at the local court level. One of the best ways to identify problems and find practical solutions is through a local justice committee where everybody involved has input into what needs to change and how and is part of putting those solutions into effect. From the Canadian experience, it is clear that the most successful local justice committees meet about once a month and operate in a collaborative way with everyone prepared to listen, communicate and compromise where needed.

336. Committees of this type have operated from time to time in various courts in Jamaica, however these efforts have not been sustained nor adequately supported. Users committees should be seen as an indispensable part of the justice landscape. In addition, lessons learned by the Users Committees can be shared and addressed through advisory committees of stakeholders and members of the public that operate at the broader court level (See Recommendation 6.37).

337. On a policy level, it is very clear that justice system reforms must be synchronized across Ministries and government agencies. This is particularly true with respect to criminal justice reform where there is the greatest need for collaboration between the Ministry of Justice and the Ministry of National Security and related agencies. This objective should be accomplished through both joint, working committees on specific areas of reform as well as through a high level inter-ministerial and inter-agency committee with the mandate to facilitate justice sector reform initiatives.

RECOMMENDATION 5.26

The Task Force recommends that users committees be established for each court, including the Supreme Court, the Court of Appeal and specialised courts in order to improve the delivery and quality of justice at the local level. The users committees should be innovative and operate collaboratively with everyone prepared to listen, communicate and compromise where needed.

RECOMMENDATION 5.27

The Task Force recommends that Ministries and government agencies and civil society establish joint working committees on specific areas of reform where their responsibilities overlap.

RECOMMENDATION 5.28

The Task Force recommends that at the Ministerial level a national strategy integration inter-ministerial and inter-agency committee be established with the mandate to facilitate justice system reform initiatives.

E. ORGANISATIONAL PERFORMANCE STANDARDS

338. One of the key elements of modern management techniques and systems is the establishment of measurable targets, goals, or guidelines designed to enhance effectiveness and accountability. The courts and justice systems across the world have been slow to encompass this aspect of modernisation. However, the development and implementation of court performance standards have been key to successful justice system reform in the last two decades.

339. Modernisation of the Jamaican justice system must be based upon an enhanced accountability framework involving the development of performance standards and a process for evaluating and monitoring progress in achieving those standards. Performance standards can and should be developed both for internal control purposes and as well as for external purposes such as reporting to the public.

340. It is important to be clear that the purpose of performance standards is to define and measure *court performance* and not judicial performance. The objective is not to gauge the performance of individual judges but rather, of all who perform judicial and administrative court functions, including clerks, managers, probation officers, lawyers, and social service providers.

1. Purpose of Performance Standards

341. Court performance standards serve the following purposes:

- they provide a standard against which qualitative assessments of court operations can be made;
- they contribute to efforts to improve the operations of the courts by setting goals and objectives;
- they assist in the proper allocation of resources;
- they alleviate the problem of disparities in support between levels of courts;
- they apply to the actual, real life work of the court. The standards aren't an add-on to "real" work—one more chore; they fit and are part of our real work;
- they provide a foundation to work from;
- they articulate the core values of courts — help courts gain public trust and confidence;
- they recognize the interdependence of courts and other agencies and court users;
- they allow courts to have some independent control over their own evaluation and monitoring;

- they enable administrators, judges, and the community to focus their thinking on the same items at the same time. That will focus on and result in community collaboration and community efforts;
- the goals, measures, and standards are fundamental priorities that all court officers are concerned about and care about;
- the standards make the legislature more responsive to the needs of the courts through public support and create credibility for the courts with those outside of the courts;
- they offer a vehicle for strategic planning;
- they define excellence; and
- they provide motivation for staff.

2. Establishing and Implementing Performance Standards

342. The National Centre for State Courts has identified twenty-two standards or guiding principles for courts that fall into five broad performance areas. These general principles have been adapted for use by different courts across the United State. They are reproduced here as an illustrative example of what court performance standards can encompass.

AREA 1 - ACCESS TO JUSTICE

- 1.1 *Public Proceedings.* The trial court conducts its proceedings and other public business openly.
- 1.2 *Safety, Accessibility and Convenience.* Trial court facilities are safe, accessible and convenient to use.
- 1.3 *Effective Participation.* The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.
- 1.4 *Courtesy, Responsiveness and Respect.* Judges and other trial court personnel are courteous and responsive to the public, and accord respect to all with whom they come in contact.
- 1.5 *Affordable Costs of Access.* The costs of access to trial court proceedings and records – whether measured in terms of money, time or the procedures that must be followed – are reasonable, fair and affordable.

AREA 2 - EXPEDITION AND TIMELINESS

- 2.1 *Case Processing.* The trial court establishes and complies with recognized guidelines for timely case processing, while, at the same time, keeping current with its incoming caseload.
- 2.2 *Compliance with Schedules.* The trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

2.3 *Prompt Implementation of Law and Procedure.* The trial court promptly implements changes in law and procedure.

AREA 3 - EQUALITY, FAIRNESS AND INTEGRITY

3.1 *Fair and Reliable Judicial Process.* Trial court procedures faithfully adhere to relevant laws, procedural rules and established policies.

3.2 *Juries.* Jury lists are representative of the jurisdiction from which they are drawn.

3.3 *Court Decisions and Actions.* Trial courts give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.

3.4 *Clarity.* The trial court renders decisions that unambiguously address the issues presented to it and clearly indicate how compliance can be achieved.

3.5 *Responsibility for Enforcement.* The trial court takes appropriate responsibility for enforcement of its orders.

3.6 *Production and Preservation of Records.* Records of all relevant court decisions and actions are accurate and properly preserved.

AREA 4 - INDEPENDENCE AND ACCOUNTABILITY

4.1 *Independence and Comity.* The trial court maintains its institutional integrity and observes the principle of comity in governmental relations.

4.2 *Accountability for Public Resources.* The trial court responsibly seeks, uses and accounts for its public resources.

4.3 *Personnel Practices and Decisions.* The trial court uses fair employment practices.

4.4 *Public Education.* The trial court informs the community about its programmes.

4.5 *Response to Change.* The trial court anticipates new conditions and emergent events and adjusts its operations as necessary.

AREA 5 - PUBLIC TRUST AND CONFIDENCE

5.1 *Accessibility.* The public perceives the trial court and the justice it delivers as accessible.

5.2 *Expeditious, Fair and Reliable Court Functions.* The public has trust and confidence that basic trial court functions are conducted expeditiously and fairly, and that court decisions have integrity.

5.3 *Judicial Independence and Accountability.* The public perceives the trial court as independent, not unduly influenced by other components of government, and accountable.

343. Once the standards are developed the next stage is to develop measures to help a court gauge how well it is performing with regard to performance goals. The measures use a variety of data collection methods and techniques, including: (a) observations and simulations, (b) structured interviews, (c) case and administrative record reviews and searches, (d) surveys of

various reference groups, such as the general public, court employees, and members of the media, and (e) group techniques, such as brainstorming and focus groups. The use of multiple measures and diverse sources of information increases confidence in the accuracy and validity of the assessments.

344. Another, simpler approach is illustrated by “CourTools” - a set of ten trial court performance measures that are designed to offer court managers a balanced perspective on court operations. These are:

- **Measure 1: Access and Fairness**, which surveys individual satisfaction with access to the court’s dispute resolution services and the fairness of the legal process.
- **Measure 2: Clearance Rates** examines court productivity in keeping current with the incoming flow of cases.
- **Measure 3: Time to Disposition** calculates the length of elapsed time from case filing to case resolution with a comparison to some agreed-upon case-processing time standard.
- **Measure 4: Age of Active Pending Caseload** is the amount of time cases have been pending or awaiting resolution. A court can show expeditious processing of disposed cases, yet still have undesirably high figures for the age of its pending caseload. This happens when routine cases move smoothly through the court system while problematic cases are allowed to continue aging. Moreover, an increase in the age of pending cases foreshadows difficulties a court might have in continuing its past degree of expeditiousness.
- **Measure 5: Trial Date Certainty** provides a tool to evaluate the effectiveness of calendaring and continuance practices. Trial postponement delays case resolution and frustrates the constitutional guarantee of a speedy trial.
- **Measure 6: Reliability and Integrity of Case Files** is vital to the public interest in that the records of court decisions and actions officially determine the rights and responsibilities of individuals and the government, and inaccessible or incomplete case files seriously compromise the court’s integrity and undermine the judicial process.
- **Measure 7: Collection of Monetary Penalties** focuses on the extent to which a court takes responsibility for the enforcement of monetary penalties.
- **Measure 8: Effective Use of Jurors** addresses a court’s ability to effectively manage jury service.
- **Measure 9: Court Employee Satisfaction** uses a survey, drawn from contemporary management literature, to gauge employee perspective on the quality of the work environment and relations between staff and management.
- **Measure 10: Cost per Case** provides information essential for deciding how to allocate funds within the court and for understanding the link between costs and outcomes.

345. Standards developed in other jurisdictions including CARICOM countries and international standards should be used as the starting point for the development of a set of performance standards adapted to the Jamaican context. Reform recommendations that flow from the JJSR Court Administration Project will also furnish detailed objectives of reform that could be integrated into the standards. Close attention should also be paid to the mechanisms and processes for measuring and reporting on actual court performance relative to these standards. The new Civil Procedure Code in the Supreme Court has established time standards and after a Pilot Project introduced Part 74 with clear time standards for the entire process. The education of the Bench, court staff and Bar was an initial complementary activity to ensure effectiveness.

346. An Independent Commission should be established to determine and establish the standards. The new Court Services Unit at the Ministry of Justice should support this work and then be responsible for monitoring and reporting on compliance with the standards. The standards should distinguish between those steps that are within a court administrators' control (i.e. processing a document within 2 days; people not waiting longer than 30 minutes to be served by court staff) from those steps that are within the control of judges and lawyers (e.g. 80% of cases disposed of within 2 years).

RECOMMENDATION 5.29

The Task Force recommends that an Independent Commission be established to develop a set of general performance standards and processes and mechanisms to measure and report upon court performance building on existing measures such as Part 74 of the Supreme Court Civil Procedure Rules. The Commission should undertake an effective consultation process in carrying out its mandate.

3. Time Disposition Guidelines and Standards

347. Time disposition guidelines and standards are a discrete set of quantitative evaluation measures that complement the multi-faceted qualitative overall court performance standards. There is a value in establishing a goal target time line for the overall time it takes for different matters to be completed as well as for the completion of each step or stage of legal proceedings.

348. Time disposition guidelines cannot apply to every case given the wide range in complexity of matters that come before the courts. Often time guidelines are expressed as a percentage target. For example, that 65% of criminal matters are disposed of within 6 months and the remaining 35% be disposed of within 12 months. Time guidelines are often implemented as part of a case flow management system through the setting of time limits for various stages in an action.

349. Again, time disposition standards can serve as a basis for the development of time standards by Jamaican courts. Here are some examples:

- A limit on the number of years that a civil case can remain on a court docket without demonstrated reasons for its continuance (automatic dismissal subject always to the discretion of the court to order otherwise in compelling circumstances).
- General Civil Matters - 90 per cent of all cases should be settled, tried or otherwise concluded within 6 months of filing of readiness and within 12 months of the date of the case filing; 98 per cent within 9 months of filing of readiness and within 18 months of such filing; and the remainder within 12 months of filing of readiness and within 24 months of the case filing; except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.
- Summary Civil Matters - Proceedings using summary hearing procedures, such as in small claims should be concluded within 90 days of filing.
- Domestic Relations - 90 per cent of domestic relations matters should be settled, tried or otherwise concluded within 3 months of filing of readiness and 6 months of the date of case filing; 98 per cent within 6 months of filing of readiness and 9 months of case filing; and 100 per cent within 9 months of filing of readiness and 1 year of the date of case filing; except for individual cases in which the court determines exceptional circumstances exist and for which continuing review should occur.
- The American Bar Association adopted a 280-day time standard for appellate courts. This standard is broken down into three stages: (1) from notice of filing of appeal to perfection of the appeal: 60 days; (2) from perfection to date of hearing: 100 days; (3) from date of hearing to date of judgment: 120 days. The Canadian Bar Association adopted an overall

standard of 12 months from the date of filing the notice of appeal to the hearing of the appeal.

350. A good starting point for the development of time disposition standards in criminal cases in Jamaica are: less serious offences should be disposed of within 6 months; other criminal cases should be disposed of within 12 months; and exceptional and/or complex cases should be disposed of within 18 months.

351. The Bar has an important role to play in adopting time guidelines that address the phase of litigation within a lawyer's control. For example, the Canadian Bar Association adopted the following guidelines for civil matters focusing on the initial period in the dispute resolution process, with the following modifications:

- new matters should be acted on within 30 to 90 days or less of initial retainer, depending on urgency, including garnering facts and providing initial legal advice on a proposed course of action, probable outcome and settlement prospects; and
- generally matters should be filed and served within 90 to 120 days of initial retainer or exhaustion of initial dispute resolution attempts, whichever is later.

And these guidelines regarding appeals:

- appeals should be initiated within 30 days of filing and service of the trial judgment; and
- appeals should be set for hearing and heard within 9 to 12 months after the filing of a notice of appeal.

352. In many jurisdictions courts have developed their own time frames for the rendering of judgments. This guideline serves an important objective of increasing accountability on the part of judges. In Canada, the usual standard is that civil judgments should be rendered “promptly and by no later than 6 months of the completion of a trial”. The same 6-month standard applies at the appeal level except in complex cases or where new questions of law are being developed.

353. When the completion of a written judgment is delayed beyond the set time standard, the usual practice is for the judge to be responsible for informing the Chief Justice or other chief administrative judge of the reasons for the delay. Alternatively, the Chief Justice can follow up informally with the judge when the targeted time period has elapsed. Ameliorative steps such as relieving the judge burdened with the decision of some of his or her duties so that

he or she can complete the judgment can be taken. In some jurisdictions, the public has access to a list of cases indicating outstanding decisions and the time elapsed since the trial.

RECOMMENDATION 5.30

The Task Force recommends that each level of court develop time standards for the disposition of civil, family and criminal matters and, where possible, mechanisms to enforce these standards.

RECOMMENDATION 5.31

The Task Force recommends that all associations of legal professionals develop and adopt time guidelines for the phases of litigation within an attorney's control.

RECOMMENDATION 5.32

The Task Force recommends that the judiciary further develop time standards for the rendering of judgments at trial and appeal.

PART 6 - THE PUBLIC AND THE JUSTICE SYSTEM

354. Part 6 sets out recommendations concerning how the public interacts with the justice system focusing on the issues of access and participation. Public confidence in the Jamaican justice system is low and yet without public confidence the justice system cannot work properly. Public confidence is undermined by unequal treatment, unreasonable delay, lack of information and barriers to access.

355. Accessing the courts and the machinery of justice is essential for the enforcement of rights, the resolution of disputes and the prosecution and defence of alleged offenders. Justice is not limited however to the courts, but also must take into account the determination of how a dispute or other action is considered and information on the rules and regulations that govern a citizen's behaviour and actions.

356. Access to justice is a complex issue. Effective access to the justice system is diminished by various kinds of barriers to the system itself. Barriers are a result of a variety of diverse elements. Some barriers are financially-related and due to issues such as systemic delay, process and procedural complexities, prohibitively high litigation costs, losses of opportunity and even income losses. Other access issues are due to geography and distances. Some barriers are based on education and even on diversity issues of culture and language. Some are procedural and rule-based barriers that increase complexity, resulting in delay and make prohibitive time demands on citizens seeking effective and efficient access to the justice system. Still other barriers are a function of the citizenry's overall lack of knowledge and understanding of the justice system, even as to its fundamental role and purpose.

357. The complex number of interrelated barriers to equal access to justice defies simple solutions. In this Part, we address access issues from the outside in: starting with general public access to legal information and public legal education and the role of the media; access to legal advice, assistance and representation; and the treatment that members of the public receive when they access the justice system in various capacities such as witnesses and jurors. The separate but related issue of public participation in justice system reform, operations and management is also discussed.

358. The most important participants in the justice system are members of the public, both individuals and organizations, seeking to have disputes resolved. The justice system was created for the benefit of the public. It follows that the system should continue to exist, in its current or an adapted form, only so long as it serves the needs of Jamaicans and is considered by them to be relevant, accessible and fair. It is essential that members of the public have a direct role in justice system reform –as they have had through membership on this Task Force and their considerable voice in the recommendations made by us. It is equally important that appropriate structures be developed for the ongoing participation in oversight of the justice system.

359. The JJSR has taken many steps to encourage public dialogue about the justice system. We have been encouraged by the growing public interest and the valuable contributions made by members of the public during our consultation processes. It is essential that this public dialogue continue as the reform process begins in earnest.

A. PUBLIC LEGAL EDUCATION AND ACCESS TO INFORMATION

360. Access to justice starts with access to legal information at the community level in a non-threatening environment. The Jamaican public is uninformed about how democracy generally works, the role of the judiciary and standards it should maintain, and its accountability in the society.

361. Information to the public will serve to build a justice system that is accessible, efficient and fair. An informed public will assist in the prevention and detection of crime, ensure the peaceful resolution of disputes and protect the rights of the all citizens.

362. Information about the law is important for several reasons:

- People who are aware of the laws that govern them are less likely to be in conflict with them.
- People who come in contact with the system for whatever reason – as an offender, as a victim, as a witness, as a litigant – may not be aware of their obligations or where to get information about their situation.
- Information and education are important aspects of crime prevention.
- Every citizen in a democratic society has a need and a responsibility to be aware of his or her rights and responsibilities and of the rights and responsibilities of others.

- Knowledge about the law can help people better identify the kind of legal advice or assistance they may require.
- Knowledge about how to access legal services within the system can be essential to citizens who are at a disadvantage for economic and other reasons, including discrimination.

363. The Jamaican people need to know what standards to expect – both in terms of their own behaviour and how they can be treated by others. This knowledge will empower them in their dealings with the justice system. One simple example is the need for information about how to dress for court. We have heard many stories of individuals being turned away from courtrooms because their attire is unsuitable – causing much dismay and occasionally real hardship. While notices about proper clothing are posted in many courthouses, this information is usually too late for the individuals who have already travelled for court to participate in or observe court proceedings.

364. A general knowledge base about the justice system should be seen as an essential aspect of citizenship and full participation in Jamaican democracy. It would facilitate for example a more efficient jury system. Public legal education also helps people take responsibility to resolve their disputes peacefully, often without going to court. Well-informed about problem-solving services, people are able to choose the option most suited to their needs, from mediation to a trial.

365. The goal of a public legal education strategy is that all Jamaicans understand the fundamental elements of justice but not its procedural complexities. More detailed information will also be required when disputes or legal situations arise. This first basic layer of public legal education should be provided through the schools to ensure that future generations are well-informed about their justice system. A strategy should also be undertaken to facilitate general public legal education through community channels.

366. A public legal education strategy must be guided by a deep understanding of the day-to-day lives of Jamaicans. This understanding should be based on an investigation that identifies the core needs of the Jamaican people with respect to access to justice. This will provide the framework dealing with justice issues as people issues. Based on this understanding,

a review should be carried out of the current policy objectives and programmes of the Government of Jamaica with respect to public legal education and access to legal information.

367. A public education strategy should take into account an assessment of the institutions that most Jamaicans find the most credible and “authentic” in terms of their ability to identify with and relate to them. The Government should provide the structure and infrastructure necessary to leverage the credibility and authenticity of these institutions by, for example, having gospel and reggae musicians present advertisements/infomercials about the justice system and new government programmes aimed at increasing access to justice.

368. The Government and the Jamaican courts need to partner with partners such as the Bar, non-governmental agencies, churches and community groups to provide public legal education and conflict resolution from the earliest years through adulthood. It is only through this type of network that a responsive and comprehensive public legal education strategy can be achieved. While the Ministry of Justice should take the lead in establishing a public legal education strategy and network other government departments and agencies should also be involved, especially the Ministry of Education.

369. In Jamaica there are several non-governmental organizations that provide information on legal matters and assist citizens with accessing the courts. These organisations are important partners for the development and implementation of a comprehensive public legal education strategy. Recognition of their work and cooperation on projects which these partners have undertaken would enhance the government’s efforts and help the government fulfil its duty to inform citizens.

370. For example, the Independent Jamaican Council for Human Rights worked in conjunction with the Ministry of Education, Youth and Culture to publish two Resource Manuals for teachers in grades 1-3 and 4-6 to empower the teachers to incorporate human rights concepts into various subjects they teach in the primary schools. Since the Manuals were published in December 2005, the Council has been conducting workshops throughout the Island with teachers from schools selected by the Ministry. Not only is this a revolutionary project, it is an example of best practices in the level of cooperation and support between a government ministry and a non-governmental organisation. The experience gained through this initiative and others like it

should be shared and the lessons learned should be integrated into both the comprehensive public legal education strategy and could inform other specific initiatives undertaken in the future.

371. The justice system also has a duty to provide information to citizens, which in today's modern world should be done through leaflets, videos, telephone help-lines and information technology. In many countries, courts have established school programmes through which students can come and see the court in operation.

372. While many strides have been taken, the Task Force has been told that it is not easy for citizens of Jamaica to obtain printed material from Parliament, Ministries and courts. The printing office has been privatized but the basic issue of prompt dissemination of material has not been addressed. There are many instances in which neither Parliament nor the printing office have the requested material and there are significant delays in getting some Acts and more often rules and regulations.

373. Specific emphasis should be placed on informing Jamaicans about their legal rights, constitutional rights and international human rights standards. This is an essential aspect of promoting a human rights culture, which is one of the goals of this modernisation and reform process. Human rights commissions in Canada and other countries have extensive experience in developing and implementing human rights education campaigns. Human rights education should also be part of training for justice system personnel, including police officers, prosecutors and judges. The United Nations Commission on Human Rights has excellent curriculum materials that could be used to achieve this objective.

374. The supreme law of the Jamaica, the Constitution, is available from the printing office in Kingston for \$200.00. It is unavailable in the rural areas and inaccessible to many for whom \$200.00 is too much to spend. This extremely important law should be available to all citizens, free of cost, and should be distributed widely through out the Island. In South Africa, a pocket size version of the Constitution of South Africa is available free of cost to all.

375. Technology can be harnessed to facilitate a public education campaign. The Laws of Jamaica are already available on the Ministry of Justice website but other types of documents that are easier to understand should also be prepared and accessible through the

internet. At the same time, it must be borne in mind that there is still a fairly low rate of access to internet in Jamaica – a recent study suggested that only 8% of Jamaicans regularly access the internet. Special initiatives such as access to internet portals through public libraries and post offices (since many rural areas don't have a library) could be developed. Part 4 proposed the establishment of a Jamaica Legal Information Institute. If established, this Institute could provide leadership in this regard.

376. Other technology that could be useful is the production of low cost, television, cable and DVD shows. The cable industry in particular is reaching more and more people with 'local' productions that are of great interest to citizens.

377. The media has an important role to play in informing Jamaicans about the law, the justice system and legal events. Television and radio are the two main media that Jamaicans rely on for information. As a first step, it is essential that accommodation for the media be always provided in every court. The media should not be barred from any court hearing although restrictions maybe placed on their reporting on sensitive issues/cases.

378. Concerns have been raised about the way in which justice issues are reported and the problem of inaccurate information. Steps should be taken to educate the media about the justice system and justice issues. For example, a workshop could be held on an annual basis. In many countries, the Bar plays a large role in responding to inaccuracies in the media, especially when they deal with specific cases where the judiciary is not in a position to comment. There is also a general trend for the courts to become more active in education efforts about the justice system. Chief judges and justices have become open to speaking publicly and with the media about justice issues at a general level. Some courts have executive officers or communications officers who can play this important role of clarifying issues that arise relating to specific proceedings before the courts.

379. Steps should also be taken to provide information to the public on a regular basis concerning justice system reform including, for example, updates on new court buildings as well new approaches to court management and administration using appropriate media and methods to reach diverse groups.

380. A large number of ideas concerning the implementation of a comprehensive public legal education strategy were developed at a workshop convened as part of the National Justice Summit. Workshop participants emphasized the need for different approaches to meet different information needs and for the use of multiple and varied media from different sources (not only government). Some of the specific recommendations included: school children visiting the courts; an annual law awareness day; role playing and mock courts; and the role of JPs in facilitating orientation to the court system and access to legal information.

RECOMMENDATION 6.1

The Task Force recommends that the Ministry of Justice lead the development of a comprehensive public legal education strategy working in partnership with a broad network of partners including other Government departments and agencies, particularly the Ministry of Education, the courts, the Bar, justices of the peace, non-governmental organisations, churches and community groups.

The comprehensive public legal education strategy should:

- be based on a thorough assessment of the justice information needs of the Jamaican public and existing initiatives;
- include a school-wide approach in which elementary and secondary schools, universities and community colleges play a greater role in the education of the public with respect to the purpose, values and processes of the justice system;
- provide increased access to general legal information and in particular to the laws and Constitution of Jamaica;
- include information about legal rights, constitutional rights and international human rights standards;
- be delivered through culturally appropriate models;
- be delivered through diverse media and take advantage of technological developments, including the internet, television cable and DVDs;
- international and local best practices, curriculum and resources should be reviewed and adapted to the Jamaican context;
- public legal educators should be encouraged and supported in efforts to share information and identify local best practices and
- all workers within the justice system should be seen as information resources.

RECOMMENDATION 6.2

The Task Force recommends that accommodation for the media should always be provided in every courtroom and that the media should not be barred from any public hearing although restrictions maybe placed on their reporting on sensitive issues/cases. Access to court offices and files should be subject to the Access to Information Act.

PROPOSAL 6.3

The Task Force proposes that steps be taken to help to educate and inform the media about the justice system so that the media can in turn provide accurate information to the Jamaican people including by:

- holding an annual workshop for the media about the justice system and legal developments;
- encouraging the Bar to take an active role in providing accurate information to the media and correcting false impressions; and
- encouraging the Courts to develop media relations strategies that are appropriate given their institutional constraints and role within the justice system.

B. ACCESS TO LEGAL ADVICE, ASSISTANCE AND REPRESENTATION

381. Public legal education will help to provide the first layer of information that Jamaicans require in order to understand and participate in the justice system. However, more specific needs with respect to information arise when a member of the public has a legal issue or

dispute. People will often need assistance to sort out whether their problem can be addressed through the legal system, and if so, how this should be done. Generally speaking, this will require diagnosis by an individual informed about the justice system and the options available to the individual under their specific circumstances. Once it is clear that the justice system is the appropriate avenue for pursuing a remedy to a given problem, the individual involved will need legal advice and assistance and in many cases legal representation. For persons of modest means, both legal advice and legal representation may be inaccessible without state support. This section discusses the three related issues of legal advice, assistance and legal representation.

1. Legal Advice and Assistance

382. The Task Force's vision is founded on modernised, accessible, multi-option system. In order to achieve this vision, citizens need access to advice on whether or not to proceed with a court action, the consequences of legal proceedings, how to go about protecting their assets and freedom, measures that can be taken to resolve disputes and many other matters too numerous to enumerate. The justice system must be responsive to the needs of citizens for this type of advice and assistance through a variety of court-based, duty advice and other assistance schemes. Not only would such schemes promote a culture that protects and enforces people's rights but they could also aid in the reduction of the number of cases that actually come before the courts.

383. One priority for reform should be the strengthening of point of entry advice that is, the information that is available to members of the public at their initial encounter with the justice system. Courts have an important role in this regard and much can be done to improve the customer-service capacity and orientation of the courts. These issues are addressed below in the section of the treatment of the public participants in the justice system.

384. The courts cannot fulfil this role alone for five reasons. First, members of the court staff have difficulty currently meeting the needs of users of the system – it would be difficult to expand these services to a broader advice role. Second, most court staff do not have the training required to provide general legal advice. Third, court staff must be and be seen to be independent which places a limit on what they can properly do to assist a party. Fourth,

courthouses are not always accessible, either geographically or in terms of people’s perceptions and comfort level. Fifth, the vast majority of civil disputes are resolved without going to court. As a result, the Task Force recommends the establishment of neighbourhood peace and justice centres that could provide this service. Some public peace and justice type services could be located in courthouses where there is room and where the public views this location as the best alternative.

385. A number of Peace and Justice Centres have been established in Jamaica, notably Hanover and in Flankers, St. James that have been in operation since 2002. The experience to date has been very positive and recommendations have been made to expand to other locations based on this successful model. An objective assessment of these centres and the work that they do should be carried out to see whether they are meeting their objectives, impact of funding, which services are in greatest demand, to determine best practices and whether or not they are a good “blueprint” to be followed in other communities.

RECOMMENDATION 6.4

The Task Force recommends that the experience with neighbourhood peace and justice centres should be reviewed and evaluated in order to provide a sound basis upon which to base decisions regarding their expansion and establishment in other communities.

386. Lawyers will continue to have a crucial role in providing point-of-entry advice to members of the public. The more experienced and complete the legal perspective brought to bear in the initial analysis, the more cost-effective and productive an information and referral structure will be. The General Legal Council has the primary responsibility for and is ideally placed to facilitate initial contact between the public and lawyers. The Council could consider steps to improve this function including by developing and maintaining a legal information

telephone line, consultation clinics or other methods of facilitating contact between the profession and members of the public.

387. Neither the courts nor the legal profession can fully serve the needs of the Jamaican public for legal advice and assistance. Both the legal aid clinics and some non-governmental organisations such as the Independent Jamaican Council for Human Rights play an important role in providing this needed assistance. However, these services are not comprehensive in terms of the subject matters covered and in terms of accessibility across the Island. This is why the Task Force supports the establishment of community-based neighbourhood peace and justice centres such as those operated by the Dispute Resolution Foundation on shoestring budgets.

388. The neighbourhood peace and justice centres would be a place where people could obtain information about their options when facing a legal situation and to obtain referrals to appropriate resources. An optimal information and referral system would be widely publicized and be readily accessible by telephone or through computer connections. It should permit quick and accurate initial analysis of the problem and result in referrals to a variety of potential resolution processes, particularly mediation.

389. The neighbourhood peace and justice centre would be the first stop and the hub for individuals engaging with the justice system. At the neighbourhood justice centre people could have access information on their own through written material, DVDs, audio recordings, and perhaps through an interactive computer terminal, as well as meet with paralegal personnel to receive particularised advice and referrals, and/or to meet with a lawyer. Ideally, the centre could also provide outreach services. While emphasis is placed on having a friendly “walk-in” set up, the centre should also be accessible by internet and telephone.

390. The neighbourhood peace and justice centre would need to call upon a multidisciplinary team, both legal and non-legal to assist in providing a “diagnosis” of the problem and referral to whatever services are appropriate for the problem. Services could include debt counselling, mediation, facilitation, neutral evaluation, legal advice and legal representation. For example, there should be a linkage with the Community Lawyer or legal volunteers who would provide assistance to people with family law problems (see the

recommendation in Part 4 on family court outreach). One issue to be resolved would be the relationship between these centres and the expanded legal aid clinics recommended below. It could be that in some communities all of these services would be available in one location. Alternatively the centres could simply refer persons in need of legal representation to the nearest clinic.

391. The neighbourhood peace and justice centres should be established with paid staff and managed with the support of a local committee composed of the relevant agencies and community leaders as part of a larger network of centres run by an experienced, innovator, advocate and partner, such as the Dispute Resolution Foundation. After the review proposed above is carried out, the experience to date with the Flankers Centre should be adapted to meet the needs in other communities across the Island. Other examples of these types of hubs or centres in other jurisdictions could also be helpful models for the establishment of neighbourhood peace and justice centres in Jamaica. These include the Citizen Advice Bureau and Neighbourhood Law Centres (part of the concept applied) in England. Excellent resources have also been developed by the California courts and in some Canadian jurisdictions, particularly Ontario.

RECOMMENDATION 6.5

The Task Force recommends the establishment of neighbourhood peace and justice centres to act as local hubs where people with legal problems can find help. The centres should be staffed and supported by a local committee as part of a national managed network and have a mandate to:

- provide legal and other information in various formats;
- establish a multidisciplinary assessment/triage service to diagnose the legal problem and provide referrals to appropriate services;
- provide access to legal advice and representation;
- provide access to mediation and other dispute resolution services; and
- coordinate and promote existing legally-related services; and
- provide other community specific activities and services.

2. Legal Representation and Legal Aid

392. For the individual, the greatest cost of accessing the justice system is legal fees. Steps such as simplification of procedures and the increased use of alternative dispute resolution make it easier for individuals to navigate the justice system without lawyers. Implementation of the above recommendations for increased general public legal education and the enhanced legal information and legal advice through neighbourhood peace and justice centres will also make a significant contribution toward self-help and self-representation. Even with all of these reforms, however, legal representation will still be required in numerous cases in order to ensure a fair hearing. The adversarial system is premised on the principle of the relative equality of strength

of all parties. Legal representation ensures that all interests of all parties are effectively and meaningfully protected and that the justice system is efficient and fair.

393. For Jamaicans of modest means, legal representation is normally unaffordable unless there is some form of state assistance through legal aid. In some cases, lawyers will provide legal representation at a reduced rate or on a *pro bono* or free basis. However the legal profession cannot meet the unmet demand for legal services in today's complex justice system on a completely charitable basis. The Government has the primary responsibility for ensuring equal access to justice.

a. Criminal Legal Aid

394. The Government of Jamaica has taken many measures to increase the availability of legal aid in serious criminal matters over the last few years. At present, legal aid is generally available to needy individuals charged with serious offences but not offences under several sections under the *Dangerous Drugs Act* and the *Money Laundering Act*, nor offences which are minor and under which a person is not liable to incarceration. Legal aid is delivered through a combination of duty counsel, services delivered through the Legal Aid Council and the Legal Aid Clinics in Kingston and Montego Bay, and through the services of the private bar on a block fee basis. Steps have also been taken toward increasing awareness of legal aid programmes and to enhancing access to legal aid services across the Island through the planned introduction of a mobile legal aid clinic.

395. These developments, and the increased Government funding that they have entailed, are beginning to have a substantial impact on access to justice in the criminal sphere. Nevertheless, the Task Force has heard that difficulties are still encountered by some individuals in accessing legal aid services, particularly those of duty counsel, in a timely way.

396. Most lawyers who practice at the criminal bar will agree that more cases are won or lost at the police station than in the courtroom. This illustrates the importance of the proper investigations and the guarding of the rights of the accused/detainee. Since 2000, the Legal Aid Council in Jamaica has operated a Duty Counsel scheme at police stations where all persons detained or arrested are entitled to the services of a lawyer during their contact with the police.

The responsibility is on the police to inform the citizen of his right to counsel and to contact the lawyer for the person.

397. This is a scheme which has the potential for a far reaching impact on the justice system for several reasons:

- A person who has his rights observed at this stage is more likely to cooperate with the police;
- With this level of cooperation, there should be less innocent persons incarcerated or detained;
- Where a person's rights are respected and protected by a lawyer, he or she will have more trust in the system, including the functions of the police, and more confidence in the system that offers him protection from the first contact with it;
- The evidence adduced and the information gathered through following proper procedures with protection for a suspect's rights will be more acceptable in court;
- A confession statement taken after proper advice from counsel is more likely to be unchallenged at trial and may alleviate the necessity for a voir dire; and
- The detainee/accused and his family are more likely to support a police force that safeguards his rights by contacting duty counsel for him.

398. Many citizens however remain unaware of their right to duty counsel. This can be addressed in several ways, of which five are suggested here:

- Increased public education and information concerning the scheme – i.e. brochures at courthouses and in police stations (it is acknowledged that some major steps have already been taken in this regard by the Ministry of Justice);
- Strengthening understanding and consistent application by police of the requirement that the police inform a person of this right and contact duty counsel before proceeding with any interrogation of the detainee/accused citizen within the training and enforcement of Force Orders;
- Police officers who fail to inform detainees of their rights or fail to contact duty counsel or legal aid on their behalf should be penalized with a fine and/or disciplinary action.
- to eliminate the possibility of select lawyers being called, officers should phone the Legal Aid Counsel office and a third party should contact the appropriate available attorney at their discretion as opposed to the preference of the arresting officer; and
- Support for the scheme by the Judges, so that if a citizen appears before them for the first time unrepresented inquiries are made as to the information given to him concerning the scheme and the reason why he is not represented by duty counsel.

399. It is only when all actors in the justice system – police, lawyers and judges – support the scheme that the impact envisioned above will become a reality.

400. As noted in Chapter 7 on criminal justice reform, the introduction of criminal case management will require early and active participation of defence counsel. Legal aid duty counsel will have to play an integral role in ensuring the efficient functioning of the criminal courts at the pre-trial stage for criminal case management to be effective. The structure of public funding of defence fees in the criminal courts should properly reward and encourage pre-trial activities. There is also a great deal of merit in expanding legal and/or paralegal assistance in the bail hearing process. Many countries have found that an expanded duty counsel programme is a cost-effective reform to meet these increased demands.

401. Interestingly, there has been a decline in the use of criminal legal aid in the last two years, as shown below:

<u>Year</u>	<u>Number of persons using a legal aid lawyer</u>
2000/1	1,123
2001/2	2,478
2002/3	2,173
2003/4	2,139
2004/5	1,488
2005/6	1,333

402. The explanation for this decrease requires in depth research and investigation: there are several possible reasons, including a fall in the number of arrests and the inadequate information and assistance to offenders concerning their right to representation.

403. The Task Force has also been made aware of a number of other concerns:

- while accused are all represented in the Supreme Court, there are problems with a lack of representation in the RM Courts;
- a lawyer's experience and competence is not always commensurate with the nature and complexity of the case; and
- there are problems with the lack of confidentiality in the communications between attorneys and legally-aided clients.

404. The Government has recently dealt with the large backlog in payments to attorneys providing legal aid services. Nevertheless, the system remains grossly under-funded relative to the demand. Many people believe that the available resources for payment to the

private attorneys who are assigned to represent citizens are insufficient. In addition, some concerns have been expressed about potential abuse of the legal aid system by lawyers who do not provide adequate service for the payment received. The Legal Aid Council should undertake a review of the fees paid for criminal legal aid services and work with the legal community to develop quality assurance standards for this work.

405. In our consultations, inmates were vocal in expressing their view that they had received very poor legal aid service, including meeting their attorney for the first time on the date of the trial. The low level of service is likely related to the low remuneration and the conditions under which attorneys provide these services. Nevertheless, the concerns about competency in the provision of criminal legal aid could be addressed by: assignment of cases must be made in keeping with counsel's experience, competence and skill; more training for duty counsel; and strong persuasion for senior counsel to be more active in accepting assignments and train juniors.

406. In addition, the Legal Aid Council should investigate the possibility of expanding access to legal aid services through the establishment of clinics in other locations across the Island. It is recommended that the Legal Aid Council play a more proactive role in developing legal aid policy and resources to support the expansion of legal aid services. This larger policy role could include: practical steps such as increasing the number of counsel on rosters and simplifying administrative procedures related to legal aid applications; developing training materials and other resources to assist attorneys who provide legal aid. The Legal Resource Clinic operated as part of the legal aid plan in Ontario could serve as a good model.

RECOMMENDATION 6.6

The Task Force recommends that steps be taken to ensure timely and consistent access to duty counsel at police stations including through enhanced public legal education, increased training and accountability of police to ensure that accused are advised of their rights and proactive inquiry by judges when an unrepresented accused appears in court.

RECOMMENDATION 6.7

The Task Force recommends that a study be undertaken to determine if an expanded duty counsel program would assist in ensuring the timely, consistent and cost-effective delivery of criminal legal aid services.

RECOMMENDATION 6.8

The Task Force recommends that the Legal Aid Council undertake a review of the fees paid for criminal legal aid services and work with the legal community to develop quality assurance standards for this work.

RECOMMENDATION 6.9

The Task Force recommends that steps be taken to ensure a high level of quality in the delivery of criminal legal aid including by:

- ensuring that assignment of legal aid cases is made in keeping with counsel's experience, competence and skill;
- providing more training for duty counsel; and
- strongly persuading senior counsel to be more active in accepting assignments and train juniors.

RECOMMENDATION 6.10

The Task Force recommends that the Legal Aid Council investigate the possibility of expanding access to legal aid services through the establishment of clinics across the Island and that the Council play a more proactive role in developing legal aid policy and resources to support the expansion of legal aid services.

b. Civil Legal Aid

407. At present, the need for legal aid services in non-criminal matters is partially addressed by the Legal Aid Clinics in Kingston and Montego Bay and at the Norman Manley Law School and *pro bono* services offered by some NGOs, principally the Independent Jamaican Council for Human Rights and private attorneys. There is strong support in Jamaica for the Government to take steps to fulfil its responsibility to increase access to justice by funding civil legal aid.

408. During the consultations, the Task Force received many recommendations for the provision of civil legal aid including for the following matters: general civil actions, small claims, family law matters, and constitutional actions.

409. Many countries find it challenging to meet the needs of their citizens for legal aid in civil matters. It is often the case that civil legal aid is considered to be a low priority given the many demands on the public purse. At the same time, civil legal aid plays an important role in assisting the state to work toward equality before the law and to help citizens attain the equal benefit and equal protection of laws. Many countries have experimented with cost-effective mechanisms for the delivery of civil legal aid. These mechanisms include:

- court-based family law duty counsel;
- the strategic use of trained paralegals;

- a focus on “test cases” so that large numbers of individuals can be assisted through a single action;
- programmes that combine service delivery through paid staff lawyers and by lawyers (of the public or private bar) assisting on a *pro bono* basis; and
- unbundling legal services so that individuals take the steps which of they are capable leaving fewer steps to be taken by the lawyer.

410. Sometimes, these civil legal aid services are court-based but more often these services are delivered in an integrated manner with the legal information and advice services at a legal aid clinic or an organisation like the neighbourhood peace and justice centres proposed above.

411. The Task Force recommends that steps be taken to investigate options for the introduction of cost-effective delivery of civil legal aid services. The first step should be to investigate the extent of the unmet need for civil legal aid services and the areas in which the need is the most pressing. This investigation would help to establish the priority areas for reform. A second aspect of this investigation process should be to review best practice models from other jurisdictions in order to develop cost-effective mechanisms for the delivery of civil legal aid adapted to the Jamaican context. This should expand the current *pro bono* and contingency services provided by the Bar and free mediation services provided through a civil society organization in some cases.

RECOMMENDATION 6.11

The Task Force recommends that a study be undertaken to investigate options for the cost-effective delivery of civil legal aid services, including through an inquiry into unmet civil legal aid needs and a review of best practices in other jurisdictions.

C. TREATMENT OF PUBLIC PARTICIPANTS IN THE JUSTICE SYSTEM

412. During the course of public consultations in connection with the JJSR, one of the most consistent problems in the justice system identified by members of the public is the lack of respect with which they are treated in the courts. They complained of disrespect for their personal dignity, their time, and their rights to privacy.

413. The first part of this section deals with general issues related to the treatment of public participants in the justice system and makes recommendations for fostering a stronger court-user or customer-service orientation and promoting a civil liberties culture. The other parts address the treatment of members of the public with specific roles within the justice system: victims, witnesses, and jurors.

1. Fostering a Customer Service Orientation and Promoting a Human Rights Culture

414. Two of the central aspects of the Task Force’s vision are a Jamaican justice system that is more user-friendly or customer-oriented and that better reflects and promotes a human rights culture. The goal should be to provide friendly, quality service on a fair and non-discriminatory basis to all members of the public at all points of contact in the justice system.

415. The Australian Law Reform Commission determined that a best practice model for improving court service to the public incorporates the following features:

- A Court Charter setting out service standards and referring to public feed-back (and complaint) mechanisms.
- Display of the Charter on court and other relevant premises as well as internet sites.
- A “Feed-Back” Form having the following features:
 - (a) Place for commendation;
 - (b) Place for comment or suggestion;
 - (c) Place for complaint;
 - (d) Address and identity of addressee;
 - (e) Possibly usable by “reply paid” mail;
 - (f) Optional inclusion of author's identity.
- Suggestion boxes on court counters into which the “Feed-Back” Forms may be placed.
- Feed-Back Forms could be utilised in relation to court systems and staff conduct.

- A time level for response to complaints should be set in the courts service standards.
- Staff training should include training directed to resolution of negative feed-back.
- Related points of complaint – such as Attorney-Generals or Ombudsmen – should be informed of the processes implemented by the Court.
- Courts must have a commitment to making the public aware of their complaints handling mechanism.
- Each Court should establish a web site designed to disseminate information in relation to the Court's complaints handling mechanism.

416. One mechanism that has been used with success to help courts foster a user orientation is the development of a court charter. A court charter can also assist in addressing a broad range of access issues and the need for greater public information on court operations:

A court charter is a document specifying a number of performance standards to which courts and their administrators are committed. Development of a court charter is a way for a court to analyze its role, functions and responsibilities and reflect that analysis in a detailed and publicly accessible document. Court charters have been developed in England, Scotland and Australia and are seen to have the following benefits:

- they have symbolic value as a statement of aspirations for the delivery of accessible justice through the court system;
- they provide a framework for identifying and systematically addressing deficiencies in court practices;
- they inform court users about the standards they can expect and assistance available to them;
- they allow structured assessment of court administration and practice and the development of improved practices over time; and
- they establish a more informed basis for the allocation of resources to maintain standards.⁶

417. Charters should be developed by individual courts and with the assistance of a consultative committee, including representatives of the bench, lawyers, governments, court administrators, and organizations and individuals capable of representing those who use the court. The types of issues that can be addressed in court charters include:

- the physical facilities of the court;
- information made available by the court;

⁶ Canadian Bar Association, *Report of the Systems of Civil Justice Task Force* (Ottawa, 1996).

- performance standards, including timelines for the determination of cases;
- courtesy toward members of the public and by members of the public to court representatives and staff;
- access to the courts; and
- accountability for service delivery, including complaints handling procedures and methods of informing the public about the existence of these procedures.

418. The Pilot Court Site at May Pen should develop a Court Charter as part of its reform efforts. Two of the specific issues to be considered in Court Charters are the need to increase access to the courts by opening earlier in the morning to allow for court-related business to be conducted before the sittings begin and to consider re-introducing night court in those parishes where they are no longer operational.

RECOMMENDATION 6.12

The Task Force recommends that every Jamaican court develop and implement a charter specifying standards of service to be provided to members of the public coming into contact with the court.

Once a court charter has been developed and published, a process should be developed to monitor progress in implementing it. Training and performance reviews of court staff will be key to implementation. Use of annual reports to describe progress in implementing court charters should be considered.

419. Another initiative that assists in fostering a customer-service orientation is the use of customer feedback forms. The Supreme Court of Trinidad and Tobago has developed a number of customer feedback forms in order to seek regular input from court users. These include: Customer Feedback Form on Access to Justice and Information; Attorney Feedback Form; Judges/Masters/Registrars Feedback Form; and Staff Feedback Form. These completed forms provide important information to court staff and allow them to monitor and improve their performance. Again, the Pilot Court Site should implement this recommendation as soon as possible.

RECOMMENDATION 6.13

The Task Force recommends that every Jamaican court develop and utilise user-feedback forms.

420. Additionally, members of the public should have recourse to a complaints handling mechanism and complaints should be responded to on a timely basis. Each Court should establish a web site designed to disseminate information in relation to the Court's complaints handling mechanism (among other issues). At the present time, many Jamaican courts utilise suggestion boxes as a mechanism for public feedback. Steps should be taken to build on this practice and develop strengthened complaints handling mechanisms.

RECOMMENDATION 6.14

The Task Force recommends that every Jamaican court establish and/or strengthen complaints handling mechanisms and take steps to inform the public about how it works.

421. In order to promote a human rights culture, all justice system personnel must have a good understanding of civil liberties and human rights and know how to apply this knowledge in a practical way on the job. Achieving this objective is primarily a function of training, setting standards and monitoring for achievement of those standards. It should be clear that all police officers, lawyers, court officials, the judiciary and prison wardens are appropriately trained to respect the rights of the public and of prisoners who, they sometimes must be reminded, have lost only their right to freedom. The people are their customers and should be treated with the utmost respect and courtesy. Written manuals and other documentation should be developed to support this training initiative. JTI should develop a module and consider testing it in the Pilot Court Site.

RECOMMENDATION 6.15

The Task Force recommends that steps be taken to ensure that all justice system personnel have a good understanding of customer service, civil liberties and human rights and are trained to apply this knowledge in a practical way on the job. This should be reinforced through organisational and individual performance standards.

2. Victim Complainants

422. Several issues arise relating to the treatment of victim complainants by the justice system. These are: (1) the treatment of the victim by justice system personnel; (2) the role and function of the victims in the criminal justice process; and (3) the support services provided to victims by the state. Issues relating more generally to the treatment of witnesses in criminal proceedings are discussed in the next section.

423. The Government of Jamaica is in the process of finalising a Victims' Charter after extensive public consultations. The draft statement of purpose of the Victims' Charter states that:

- The aim of the Victims' Charter is to address the status of victims of crime and to institute policies, programmes and initiatives that will support such victims and provide them with fair and just treatment throughout criminal justice proceedings; justice for victims and witnesses of crime must be assured, while safeguarding the rights of accused persons and convicted offenders.
- There is considerable advocacy promoting victims' rights and the need for victims to be more central to the process of the administration of justice. Currently, there is the strong belief and perception that victims are secondary to the process. It is thought that suspects and offenders, whose rights are vigorously championed, have an unfair advantage over victims whose needs are sparingly addressed in the process.
- This view has, over the years, helped to erode citizens' confidence in the justice system. This lack of confidence is manifested by the frequency with which citizens resort to instituting and administering their own form of restorative and retributive 'community justice'.
- The government is seeking, by way of a Victims' Charter, to address this perceived imbalance between the protection of the rights of offenders and those of victims.

424. The Ministry of Justice is in the process of developing a plan to support the introduction of the Victims' Charter to make it effective in meeting these goals. This is likely to involve both changes to laws and practices and an increase in related support services.

425. During its consultations, the Task Force heard quite a few complaints concerning the treatment of victims at the hands of justice system personnel as well as by some other service providers including medical personnel in hospitals. The main problem identified though is that many victims are victimized a second time by their experiences in the courts. In particular, delays and adjournments take a hard toll on victims. Many of these issues need to be addressed through the overall reforms including for example reforms of the preliminary inquiry and trial scheduling practices. The facilities issues also have a particularly heavy impact on victims given the nature of their participation in the justice system. Separate waiting rooms should be available to ensure that they have privacy and do not come into contact with the accused and his/her relatives and witnesses for the defence.

RECOMMENDATION 6.16

The Task Force recommends that additional steps be taken to improve the treatment of victim complainants by all justice system personnel and by other service providers, particularly medical personnel in hospitals including by:

- developing protocols for police treatment of victims from first contact onward;
- developing protocols concerning dealing with victims at hospitals, particularly for victims of sexual offences;
- developing protocols for the treatment of victims by prosecutors;
- a written policy for the police and the prosecutors that specify which victims should be referred by them to the Victim Support Unit and outlining how police and prosecutors should relate to Victim Service Workers;
- all justice system personnel including police, prosecutors and judges should receive sensitisation training in how to deal with victims, particularly vulnerable victims such as children;
- legal advice and assistance should be provided to victims who require it and cannot afford it themselves;
- steps should be taken to make courthouses and courtrooms more friendly for victims including by having separate waiting rooms for victims;
- the scheduling of court cases should take victim needs into account where possible;
- it should be made clear that victims do not have to appear in court for mention dates; and
- funding should be available for the costs incurred by victims to participate in court proceedings (i.e. transportation, lunch).

426. Traditionally, the victim has a limited role in criminal justice proceedings relegated to his or her ability to give information to investigators and to testify at trial. In many countries and under international human rights instruments, there has been a move towards greater recognition and involvement of victims in the decision making process through mechanisms such as victim impact statements, alternative dispute resolution and restorative justice. Both the Government of Jamaica and many other individuals and organisations across this society are actively working toward integrating alternative dispute resolution and restorative justice initiatives into the criminal process. These are discussed in Part 7 on criminal justice reform under the heading “Diversion, Mediation and Restorative Justice”.

427. Other procedural reforms could be undertaken to recognise the victim and enhance his or her role in decision-making processes. One avenue to achieve this objective is to expand the use of social inquiry reports and to include an interview with the victim where she or he wants to participate in this manner.

RECOMMENDATION 6.17

The Task Force recommends that measures be adopted to enhance the participation of victim complainants at appropriate stages of criminal proceedings, including through the use of expanded social inquiry reports.

428. The issues pertaining to victims include the question of whether there should be greater state involvement in the psychological care, medical attention, social services, and legal advice and protection. In other words, how much of the burden should the state bear.

429. At the national level there is a Victim Support Unit in the Ministry of Justice, which has a branch in all 14 parishes. This unit has the responsibility of providing comfort and assistance to victims in the aftermath of the offence which they have suffered and advising them of the remedial processes and guiding them through the ensuing prosecution of the person

accused of the offence. These are burdensome tasks for the highly understaffed Unit with only 35 members across the Island. Many services are also provided on a voluntary basis. These important functions need to be adequately staffed, including through administrative support. Inadequate office space and also space at the courthouses is also a concern.

430. Victim Support Workers (VSW) themselves face a range of problems both due to the heavy workload and conditions of work. As a result, there is a high turnover in VSW.

Specific problems include:

- VSW need resources to access support, counselling and guidance for themselves;
- VSW are exposed to dangerous circumstances and need personal security and security in their offices (none is provided);
- VSW are not recognized as being officials of the Court in the same way as probation officers; there is no special seating arrangements for them in the courtrooms; and
- VSW are paid at a much lower rate than probation officers.

431. Generally speaking the criminal courts do not compensate victims. A Victims Compensation Fund should be established for this purpose. An increased range of services to victims could be funded in part through a victim fine surcharge. This model is currently in existence in Canada and works well.

RECOMMENDATION 6.18

The Task Force recommends that services for victims be improved and increased including by:

- increasing the staffing for Victims Services Units, including administrative support;
- improving the conditions of work for Victim Support Workers;
- providing more shelters for victims, including a “Safe House” where vulnerable victims can be placed immediately; and
- increasing the range of victim services available and ensuring that services are available right from the beginning to the very end of the process.
- establishing a Victims Compensation Fund and
- implementing a victim fine surcharge to partially fund an increase in victims services.

432. In addition, there appears to be considerable confusion among justice system officials concerning the authority of the criminal courts to order restitution or compensation to victims in conjunction with the sentence and to enforce such orders if they are not complied with. The law needs to be clarified or restated in accordance with the following principles:

- As part of the sentence, all criminal courts should have the authority to order that the offender make compensation for losses to victims that are readily ascertainable. This would include, for example, medical expenses, loss of wages, the cost to replace damaged or stolen property etc.
- The awarding of compensation for matters such as “pain and suffering” that are difficult to measure, would however be better left to the civil process and to the Victim’s Compensation Fund.
- Payments should generally be made by the offender to the court for distribution to the victim. The court administration should monitor compliance with payment schedules.

- There should be a simple way to register criminal compensation orders with the civil courts and enforce them in the same way as civil judgments.
- There should be authority to make the payment of compensation to the victims a condition in a probation orders. A person who willingly refuses to make compensation should be subject to the same consequences as exist for breaching any other condition of a probation order.
- The courts should have the authority to order, when appropriate, that the offender compensate the victim by performing services directly relating to the offence, for example, repairing damaged property, if the victim consents. This could also be made a condition in a probation order.

RECOMMENDATION 6.19

The Task Force recommends that steps be taken to clarify and/or ensure that all courts have the authority to order compensation to victims of crime incidental to sentencing, with appropriate measures to enforce compensation orders.

433. Formal procedures should be implemented to inform witnesses of the outcome of the case. Victim complainants should be provided with information about the period of incarceration of the convicted offender and the likelihood of early parole. Victims of crime should be given the option of being informed when persons are about to be released from prison and advised of protective measures that can be implemented if necessary.

RECOMMENDATION 6.20

The Task Force recommends that the following steps be taken to improve the treatment of victim complainants at the conclusion of proceedings:

- they should be informed about the sentence and the likelihood of early parole; and
- they should be given the option of being informed when persons are about to be released from prison and advised of protective measures that are available.

3. Witnesses

434. Delays and inefficiencies within the justice system have a large impact on witnesses both in civil and criminal matters. In particular, the reluctance of some witnesses to participate in hearings can be attributed to those inefficiencies. We have heard this complaint from, for example, expert witnesses including medical professions. Issues also arise with respect to reluctant defence witnesses, which should be addressed where practical.

435. The witness is often considered the linchpin of the justice system. Witnesses often dictate the outcome of a case by their willingness to participate, their actual participation or their non-participation at the various stages of the legal proceedings.

436. While some of these concerns, particularly those relating to delay, will be addressed through general reforms proposed throughout this report, special attention should be paid to specific issues that arise in the treatment of witnesses when they come into contact with the justice system. The challenge posed is to restore witness confidence in the legal process through the encouragement of witness participation and the elimination of barriers that presently preclude effective witness participation in the process.

437. This section deals with general barriers to witness participation, special protections for vulnerable witnesses, especially children, and witness intimidation and protection. Many of the recommendations apply equally in criminal and civil matters. Where the recommendations apply to only one type of proceeding this should be clear from the discussion.

a. Barriers to Witness Participation

438. There are a vast number of problems with the full participation of witnesses in the Jamaican justice system. The problems and proposed solutions are set out here according to the various stages of the legal process.

439. **Investigation and identification of witnesses:** Subject to certain legal exceptions, every person is a potential witness in a case before the Courts. The mere-factual witness is usually involved in the matter due to his/her possession of knowledge or information that is directly related to the case or to persons involved in the case. At the initial stages when a criminal matter is reported to the police, the expected practice is that the names of all potential witnesses would be recorded and their statements taken and submitted with the case file to the Courts. The general practice however, is that case files appear before the Courts incomplete and without witness statements. The Court must then issue process to summon witnesses to attend Court and, upon their attendance, issue instructions to police officers to collect statements in the matter. The initial delays occasioned within the criminal system often begin here.

440. The following barriers to the effective participation of witnesses have been identified with respect to the investigation and identification of witnesses:

- Potential witnesses often have little information as to what the initial legal processes entail and are often unaware of their role in the process.
- Potential witnesses may be willing to give information but often feel inconvenienced and exposed when they have to attend at a police station, in full view of the public, to make enquiries as to whom to give their information.
- General mistrust of the police and reluctance to volunteer personal details and information which is perceived as not being kept confidential by the police.
- Potential witnesses fear for their personal security and for that of their families and also fear the consequences of being labelled as “informers” in their communities.

441. A range of strategies should be undertaken to address the barriers to witness participation in the early stages of proceedings. First, a witness handbook/ pamphlet should be prepared to familiarize the general public as to the role of witnesses in the court process, and what witnesses should expect at all stages of the process. This handbook should include information about the various protective mechanisms that are available and how to request such measures.

442. The central reform proposed is the establishment of the post of a Witness Liaison Officer to be part of the proposed expanded Police Court-Liaison Unit discussed in Part 7. The Witness Liaison Officers should be attached to each divisional Police Court-Liaison Unit and be tasked with contacting and providing support and information to witnesses, including vulnerable witnesses, at all stages of the process. Once a Witness Liaison Officer is assigned to the matter, he or she is accountable to the court for all matters related to the witness. This should ensure the submission of case files with complete witness statements or the immediate identification of problematic situations regarding the locating of witnesses. This in turn will allow the Judge to determine at an early stage how the case is to be treated.

443. The specialized office dealing with witnesses should be located away from the general areas of the police station. This separation could facilitate the feeling of confidentiality and could also create less inconvenience for potential witnesses through the making of appointments and the avoidance of long waiting periods. Any area set aside for witnesses should at least contain proper seating and sanitary conveniences for witnesses.

444. Police officers investigating crimes should be equipped at the scene of a crime or anywhere necessary, to distribute information cards (business cards) to all attendant persons as these persons could be potential witnesses. The cards should detail the location of the relevant police station and the name and numbers of contact persons, for example the Witness Liaison Officers.

445. The participation of witnesses could also be encouraged through witness hotlines that could provide emergency assistance to witnesses where required.

RECOMMENDATION 6.21

The Task Force recommends the following to address barriers to investigation and the identification of witnesses:

- A witness handbook/ pamphlet should be prepared to familiarize the general public as to the role of witnesses in the court process, and what witnesses should expect at all stages of the process.
- Witness Liaison Officers should be established as part of each Police-Court Liaison Unit; and
- Witness hotlines should be established where witnesses could obtain information and/or report on crimes they have witnessed.

446. **Securing the Attendance and Participation of Witnesses:** Competent witnesses can appear before a Court or commission of enquiry in Jamaica to give evidence in relation to a case. Attendance of witnesses can be voluntary i.e. unrequested by the Court or by subpoena. To prepare a subpoena Court officials must have a name by which the proposed witness can be clearly identified and his/her address or usual location in order to ensure that he/she can be found and served. The subpoena will identify the name of the parties, the particulars of the case and the date and time to attend Court and the penalty for failure to attend.

447. In civil matters the witness summons/subpoena can be issued by the Clerk and is usually served by the Court bailiff upon the charge of a fee. Some courts in Jamaica allow the parties to collect and serve their own witness summons. Failure to attend when summoned in a civil matter can result in a fine.

448. In criminal matters the duty to serve subpoenas rests with the police. Subpoenas in criminal matters can only be issued by a Resident Magistrate in the Resident Magistrates

Court or a Justice of the Peace in the Courts of Summary jurisdiction (Petty Sessions). In the Supreme Courts, the Registrar is authorized to issue subpoenas.

449. A unit has been established within the Office of the Director of Public Prosecutions specifically for the purpose of contacting and securing the attendance of witnesses who are to appear before the Home Circuit Court. Attached to this unit are three members of the Island Special Constabulary Force. Regarding the Circuit Courts, which are held periodically in each parish, a police officer from the relevant parish is assigned as Court Detective. Before the start of each Circuit, that Court Detective receives a list of cases and the names and addresses of the required witnesses. He/she is tasked with contacting and securing their attendance before the Circuit Court, including the arranging of transportation where necessary.

450. The following barriers have been identified with respect to the securing of witness attendance and participation:

- Persons are unable to give correct information to the clerk for the preparation of the witness subpoena. This results in court delays as subpoenas are issued and returned without being served due to the inability to correctly identify and locate the intended recipient.
- Potential witnesses do not feel that they are participants in the process but consider the duty as an unwanted imposition. The mere-factual witness, without a personal stake in the outcome, generally considers it a burden to be brought within the purview of the court and often hide from service or even change addresses.
- The subpoena is unfriendly and formal, threatening imprisonment or fine for failure to obey. The language is archaic and the form is complicated and generally not easy to understand by lay persons.
- Service of subpoenas in criminal matters depends heavily on the cooperation/timeliness and diligence of the police.
- Issuance of criminal subpoenas in the Resident Magistrates Court and Courts of Summary jurisdiction is usually done by the Resident Magistrate or the Justice of the Peace in open court. This causes delay in the process as a trial date cannot usually be set on the date of first calling of matters, where witnesses have to be subpoenaed and where on the second date the subpoenas return without being served.

451. A public awareness campaign is required to educate the general population on the requirements to initiate court proceedings. Emphasis should be placed on the fact that the locating and procuring of witnesses is a shared responsibility. In addition, Witness Liaison

Officers will play an important role in making the process more “witness-friendly” thereby securing attendance and participation.

452. A specialized unit with clearly established lines of accountability should ensure that subpoenas are served on time. In the Resident Magistrates Court or the Courts of Summary Jurisdiction, Witness Liaison Officers should be allowed as a matter of administrative procedure to request the issuance of subpoenas in chambers or alternatively from the Clerks of Courts. This allow for the possibility to have all persons in attendance at court on the first mention date and consequently the early setting of a trial date. The form of the subpoena should be simplified and the use of easy to read and understand language should be considered.

RECOMMENDATION 6.22

The Task Force recommends that the following steps be taken to address barriers in securing the participation of witnesses:

- implementation of a public awareness campaign concerning the requirements of initiating court proceedings and emphasising the shared responsibility for locating and procuring witnesses;
- reform of process serving practices to ensure that subpoenas are served on time;
- the streamlining of procedures for the issuance of subpoenas; and
- the simplification of the form of the subpoena and the use of plain language.

453. **Attendance at Court:** Subject to certain legal exceptions a Court can subpoena the attendance and testimony of any person once he/she is identified as having evidence material to a case of which that court is seized. Upon the attendance of a witness the Court will “bind over” that witness to return on the next date that the case will be called before the Court and then

on each successive day thereafter failure to appear when subpoenaed in a criminal matter can result in the issue of a warrant and imprisonment of the witness and in a civil matter, a fine, which if not paid can also result in imprisonment.

454. The examination of witnesses is usually conducted in an adversarial atmosphere, with the witness facing the accused in criminal matters and being subject to the derision of the Attorneys and occasionally the Judges.

455. The following barriers have been identified to witness attendance at court:

- Witnesses are asked to return on mention dates and often wait all day, outside of the courtroom for the matter to be called (particularly in the Resident Magistrates Court).
- Court facilities are not accommodating for witnesses, often there are no accessible sanitary conveniences at the court building for the public. Seating arrangements inside and outside of the court room are poor and inadequate. Facilities for disabled or other vulnerable witnesses are virtually non-existent.
- Witnesses are often not aware, until the day of Court, of what is appropriate court attire and are often refused entry to the courtroom after waiting all day.
- Witnesses are often unable to ascertain the status of their case on the day of Court or unaware of how to access information about their matter before attending Court.
- The entire Court process is unfamiliar, unfriendly and shrouded in mystery.
- The return date for witnesses is often announced openly in court or scribbled down on a piece of paper and handed to him/her by the police officer. There is no formal system for witnesses to access information about the case. The Witnesses are usually dependent on the investigating officer for all information.
- Absence of police witnesses are often the cause of delays and results in multiple dates for the return of witnesses to court.
- Attendance at court can be costly since expenditure must be laid out for transportation and lunch.
- Witnesses often have to seek permission from their employers to attend Court. Many have lost their job due to constant court attendance.
- Witnesses are not aware that they can access witness fees and do not know the procedures for accessing these fees.
- Witnesses are often treated like criminals by court officials including judges. Anecdotal stories abound of witnesses who end up incarcerated rather than the accused.
- Adversarial examination by Counsel does not lend itself to witness participation.

456. Some of the problems experienced by witnesses will be alleviated through the general reforms proposed in this Final Report including the upgrading of facilities, the full implementation of civil and criminal case management and the improved training of justice system personnel.

457. In addition, Witness Liaison Officers, as part of a Police Court-Liaison Unit, should add structure to the witness aspect of the justice system. This should theoretically lessen delays occasioned by the issuing and returning of process and allow for more precision in the setting of trial dates. Witnesses should be allowed as a matter of legal procedure to return only on the trial dates. Such coordination should be enhanced by the presence of a central coordinating unit. Witnesses should also be able, independently of the police, to access court information related to their case, for example the date of trial.

458. Specific measures should be taken to facilitate witness attendance and participation in court, including through assistance with transportation. The *Witness's Expenses Act, 1924* should be reviewed bearing in mind the present costs of witnesses, widening the categories of witnesses who can benefit under the Act, lessening the restrictions surrounding the access to funds, establishing a clear supervisory body for the disbursement of funds and a practical procedure for application by witnesses to access such funds. In civil trials the award of costs at the end of a trial could perhaps accommodate witness costs in some circumstances.

459. Witnesses should not be subjected to the possibility of losing employment because of attendance at court. Legislation should be enacted to penalize any such occurrence. Such a move would signify the importance that the legislature places on the role of witnesses in the process and may positively assist the decision of persons when considering whether or not to come forward as witnesses.

460. The adversarial process for the examination of witnesses, while respecting its merits, does not encourage a desire on the part of witnesses to participate in the process and should be examined with a view to reducing the trauma level for witnesses, particularly the mere-factual witness, who may not have a stake in the outcome. More use could be made of witness statements as evidence in chief, given that the appropriate safeguards are put in place. Policy guidelines for the treatment of witnesses by court officials and police personnel should be

developed. The practice of routinely requiring victims and witnesses to enter the courtroom and to stand beside the accused when cases are being addressed should be discontinued.

RECOMMENDATION 6.23

The Task Force recommends the following steps to address the barriers to witness attendance at court:

- Witnesses who require transportation to court should be compensated for reasonable costs and where possible assisted in making arrangements by the Witness Liaison Officers;
- Witnesses should be able, independently of the police, to access court information related to their case, for example the date of trial through the information desk at the court house;
- The *Witness's Expenses Act, 1924* should be reviewed and updated;
- Witnesses should be protected by legislation from losing employment because of attendance at court;
- Greater use should be made of witness statements as evidence in chief in civil cases and through admissions in criminal cases, as long the appropriate safeguards are put in place and respected;
- Policy guidelines for the treatment of witnesses by court officials and police personnel should be developed; and
- The practice of routinely requiring victims and witnesses to enter the courtrooms and to stand beside the accused when cases are being addressed should be discontinued.

b. Vulnerable Witnesses

461. In addition to the general recommendations for reform described above, special consideration and attention has to be paid to the participation of vulnerable witnesses and in particular children. The proposed steps will both facilitate the participation of vulnerable witnesses and ensure that they are protected and their special needs are taken into account. Steps should also be taken to implement the recording or videotaping of interviews with vulnerable witnesses. This measure serves to protect both the witness and the rights of the accused.

RECOMMENDATION 6.24

The Task Force recommends that the following steps be taken to facilitate the participation of vulnerable witnesses and to ensure that they are protected and that their needs are met:

- police and prosecutors need to be better trained so that they have the skills and aptitude to interview children;
- the Office of the Children’s Advocate should work in conjunction with the Witness Liaison Unit to provide assistance and support to child witnesses;
- the Jamaica Council for the Disabled should work in conjunction with the Witness Liaison Unit to provide advice and information on how best to assist disabled witnesses;
- cases involving children should be “fast-tracked” and priority should be given to scheduling trials involving children (so that children don’t miss too much school and so on); and
- all interviews with vulnerable witnesses should be recorded or videotaped.

462. Better treatment and support through the implementation of the recommendations in this section will go some way in getting witnesses to co-operate and to testify in court. However, given the very legitimate fear that witnesses experience due to the current violent crime situation in Jamaica, special legislative provisions are also required to obtain the evidence of certain vulnerable witnesses who will not attend court or who will recant their original statements if they do attend.

463. *The Evidence (Amendment) Bill*, which has recently been introduced in Parliament by the Ministry of Justice, seeks to amend the *Evidence Act* to make provision for the admissibility of evidence, in both civil and criminal proceedings, by means of a live link (whether by television or otherwise). In all cases, admissibility of live link evidence would be subject to the discretion of the court and there will be provision for Rules of Court to be made to ensure practical implementation of this modern facility.

464. The Bill provides that live link technology may be employed in cases where -

- (a) It is not practical to secure the attendance of the witness (whether or not the witness is in Jamaica) at the proceedings; or
- (b) The witness is under fourteen years of age or may be otherwise regarded as being vulnerable due to the trauma or fear associated with the prospect of testifying in proceedings in open court having regard to certain factors.

465. In order to make this proposed legislation meaningful, appropriate technology will need to be acquired for use in courtrooms and linked to the remote locations from which witnesses will give evidence. Portable technology may be suitable.

466. In certain circumstances, where live link technology is unnecessary or unavailable and the witnesses are able to attend court, their fear may be reduced if they are permitted to testify in the courtroom behind a screen. This is particularly the case of young children. Many countries now have specific legislation allowing an application for this to be made to the court. Some concerns have been expressed about the use of screens and the potential infringement of the accused's right to a fair trial, particularly given the potentially prejudicial effect of the screens. Screens would only be used in special circumstances after a *voir dire*. Steps should be taken to minimize any negative impact of the defendant's ability to present his or her defence. For example, any special arrangements for child witnesses' evidence must be accompanied by an

explanation to the jury that this is not a reflection against the accused. Such an explanation should precede the evidence and form a part of the summation.

RECOMMENDATION 6.25

The Task Force supports the swift passage into law of *The Evidence (Amendment) Bill* and further recommends that:

- Rules of Court should be established, following appropriate consultation, on the practical application of the live link method of providing evidence;
- Appropriate live link technology and training on its application be provided by the Ministry of Justice in order that this legislation may be fully implemented; and
- Further consideration be given to amending The Evidence Act to allow certain vulnerable witnesses, particularly young children, to testify behind a screen if the court is satisfied that is necessary to obtain the full and candid evidence of the witness.

467. Under the *Evidence Act*, recognition has already been given to the admissibility in criminal and civil proceedings of prior statements, where the maker of the statement is unavailable to testify, and certain conditions are satisfied. Section 31D provides that:

“Subject to section 31G, a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if it is proved to the satisfaction of the court that such person -

- (a) Is dead,
- (b) Is unfit, by reason of his bodily or mental condition, to attend as a witness;
- (c) Is outside of Jamaica and it is not reasonably practicable to secure his attendance;

- (d) Cannot be found after all reasonable steps have been taken to find him; or
- (e) Is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person.”

468. These provisions of the *Evidence Act* could be expanded to include the statements of young children who because of their age and vulnerability would be unable to testify with completeness, coherence and accuracy. Furthermore, courts would be better able to estimate the weight to attach to the out-of-court statements of witnesses if the taking of the statements was videotaped. In some jurisdictions the statements are given under oath and this can be another factor in determining their weight.

469. Situations arise where witnesses, who originally gave statements to the police, change or recant those statements in court. This may be the result of intimidation or other reasons. The issue then becomes what use, if any, can be made by the court of the witnesses' original statements. Jurisprudence in some common law countries, including Canada, now provides that in such circumstances, if certain conditions of reliability and necessity are met, the original statement may be admissible in evidence to prove the facts stated therein and the court may attach whatever weight it wishes to that statement. The threshold test of reliability will normally be met where the original statement was sworn and videotaped.⁷

⁷ See the Supreme Court of Canada decision in *Regina vs. B. (K.G.)*, [1993] 1 SCR 740

RECOMMENDATION 6.26

The Task Force recommends that consideration be given to:

- amending Section 31D of the Evidence Act to include a statement made by a child who because of his/her age and vulnerability would be unable to attend as a witness;
- amending Section 31D to provide that the fact that the statement was given under oath is a circumstance that may be considered by the court in determining its weight;
- amending the Evidence Act to allow the admissibility of original statements of recanting witnesses where the court is satisfied as to the reliability and necessity of those statements; and
- implementing the police practice of videotaping the statements of vulnerable (and potentially vulnerable) witnesses and having the statements given under oath when appropriate.

c. Witness Intimidation and Protection

470. In the criminal sphere, one of the major issues pertaining to witnesses is witness intimidation. The involvement of the witnesses begins with the identification of suspects. This identification may be behind a one-way mirror but sooner or later the witness must face the accused. In matters where a preliminary enquiry is held the witness must face the accused both there and in the Circuit Court.

471. The legal framework for witness protection in Jamaica is governed by the *Justice Protection Act 2001* and the *Witness (Public Enquiries) Protection Act 1964*. The regime under the *Justice Protection Act* for the establishment and management of a witness protection

programme is commendable, in that it not only is a separate authority (Witness Protection Administration and Victim Support Unit in the Ministry of National Security and Justice) tasked with the responsibility of administering the programme, but relatively strict penalties (fines of up to five million dollars and /or five years imprisonment) are imposed on persons who disclose confidential information relating to the programme. Such measures are essential if the integrity of the programme is to be protected.

472. Due to a combination of factors, public confidence in the witness protection program is low. The programme depends on the confidence of the people for its success. The system is also affected by the perception of widespread corruption in the police force. In response to this, the Ministry of Justice has assigned an officer of the rank of Superintendent to the Witness Protection Unit. However, it is clear that the reputation of the police force for corruption is inimical to the success of the programme.

473. While a properly administered witness protection programme is vital to building public confidence in the justice system and encouraging individuals to come forward and give vital testimony, the way witnesses are perceived and treated throughout all stages of the process will ultimately determine their willingness to participate in and/ or their ability to effectively access the programme.

474. Very often the first persons to have contact with witnesses in need of protection are public prosecutors and other lawyers, or law enforcement agents or medical personnel. Currently, there is no obligation on such personnel to be alert to witnesses who may expressly demonstrate a need for protection and such persons may even be unaware of the available resources that the witness may access.

475. There should be special efforts to inform legal, medical and law enforcement personnel of witness protection, and incorporate them into relevant procedures. For example, lawyers should be able to explain to a client about witness protection and advise whether or not the client should request it. Judges are often able to identify cases of possible intimidation and should therefore be encouraged / given explicit powers to make appropriate recommendations to Crown Counsel or other appropriate authority so that additional steps may be taken to ensure that the witness is informed of the programme.

476. Witness protection often focuses on a witness protection programme, stereotypically characterized by relocation and the conferring of a new identity on the witness. However, there are other immediate measures that may be undertaken to protect the identity of a witness facing a high risk of reprisal, without physically relocating the witness.

477. In a 2004 criminal trial in the United Kingdom, the term "pseudonymous" witness was coined to reflect the manner in which a key, high risk witness was allowed to give evidence. The case concerned the trial of four men for the 2003 murder of two young girls in Aston, Birmingham, due to gang violence. One of the witnesses was given the false name of Mark Brown, the defendants were not allowed to see his face and a distorted voice was fed into the sound proof defendants dock, though the judge and jurors were allowed to hear his real voice. Only the judge and the prosecution knew the witnesses real name. This was the first ever such trial in the United Kingdom. In 2006, the defendants appealed against their conviction on the basis that the trial was unfair as the defence had been denied an opportunity to confront the witness. The English Court of Appeal upheld the convictions, as the defence had been allowed to challenge the testimony of the witness in all respects: *R v Marcus Ellis, Michael Gregory, Nathan Martin & Rodrigo Sims* [2006] EWCA Crim 1155.

478. Consideration could be given to the implementing measures to protect the identity of witnesses in a similar manner in Jamaica. This will entail measures to ensure that the witness is shielded from the eyes of the public and the defendants when he enters and leaves the courtroom as well as during the delivery of his testimony. In *R v Davis et al*, the witness was allowed to give evidence from behind a screen. Consideration may be given to what would be an appropriate shielding device in our local circumstances.

479. Of course, any justice reform measure must take due account of the rights of the accused. Consequently, the defence should be allowed to retain all rights of cross-examination.

480. The advantage of this approach in volatile cases is that the witness is able to testify in open court and may, having regard to all the circumstances, be able to return to his home and community thereafter. This avoids the possibility of the witness or his family members being branded as "informers" with the consequent risk to life and the social pressure

that may be exerted on the witness not to testify. This approach may also serve to alleviate the financial burden on the witness protection programme.

481. Clearly, this proposed approach can only be utilised in rare cases where regular protections are insufficient. The primary emphasis should be on the recommendations for reform to facilitate witness participation described in this section as well as those in Part 7 dealing with the increased investigative capacity of the police.

RECOMMENDATION 6.27

The Task Force recommends that the following steps be taken to address witness intimidation and witness protection:

- legal and medical professionals should be trained on witness protection;
- additional measures should be taken to keep the identity of a witness in protection secret; and
- measures should be taken to facilitate the testimony of high risk witnesses.

4. Jurors

482. Jurors are important participants in the justice system and the principle of being tried by a jury of one's peers is recognised as an important aspect of the Jamaican justice system. However, it is important to note that the majority of cases are dealt with in the absence of a jury. With respect to criminal matters, in Jamaica, the Resident Magistrate has very wide jurisdiction in criminal matters and so the majority of offences are not dealt with by trial by jury according to current practice. The use of jury trials is further whittled away by the jurisdiction of the Gun Courts. In relation to civil matters the use of jury trials is almost unheard of, and is limited for the most part to libel cases. As a result, trial by jury is the exception rather than the rule.

483. The Task Force has received many recommendations concerning the role and function of juries in criminal matters which are discussed in Part 7 and the Coroner's Court which was discussed in Part 5. In this section we address the issues of jury selection and the treatment of jurors as public participants in the justice system. The recommendations set out here should be implemented regardless of whether or not amendments are made to the availability of juries in particular proceedings.

484. The Jamaican justice system is hampered by serious difficulties in securing persons to sit on a jury. These difficulties arise because:

- the jury selection pool is small;
- it is difficult to serve summonses on jurors because they may have moved and when summonses are served they are given little notice;
- jurors don't show up to court for various reasons, including that some are afraid to sit on juries for fear of retaliation by the persons on trial; and
- the process can be quite time consuming and expensive for the juror.

485. Concerns are also raised about the quality of jury verdicts because they sometimes run counter to the evidence and cannot be challenged. This latter concern is raised primarily in relation to trials where policemen, "area dons" or popular personalities are on trial and reflects the perception that there is juror intimidation. Some senior justice officials and members of the public have expressed the view that bribery of jurors is a problem.

486. The largest criticisms have been aimed at the Coroner's Court where the perception is that the unavailability of jurors has led to "professional jurors" because of the frequency with which some individuals are selected. Quite often, tails men are required to seek out additional jurors in the local vicinity when there are an insufficient number of jurors to allow a matter to be heard and some individuals are said to make a habit of being available to serve on a regular basis.

487. Persons are selected for jury services by randomly selecting persons from the Elections Register (voter's list). The voter's list contains registered voters only and registering is a voluntary act. Furthermore the *Jury Act* exempts a number of categories of persons from sitting on a jury, for example, teachers and civil servants. Steps should be taken to increase the

selection pool for jury service by using the list generated by the Taxpayer Registration Number (TRN) in addition to the Voter's list and by reducing the categories of persons excluded from jury service, tightening the criteria for discretionary excusal by the judge, and increasing the age limit for jury service to 70. While it is admitted that a reluctant juror can pose problems during a trial, this is seldom the case. More often than not, an initially reluctant juror resigns himself to the fact of having to serve and continues his duty as well as any other juror. Steps should be taken to work together with associations of medical professionals to ensure that doctors understand the importance of jury duty and limit the provision of medical certificates to excuse individuals from jury service.

488. One alternative to relying on the TRN and voter's lists is to cross check those lists with other government generated lists including those generated by the Driver and Vehicle Licensing Authority, the Department for Work and Pensions, the Inland Revenue and even telephone directories. This would require a merging and constant updating of records from the various sources, but, with modern computer technology, it can be done. One complication of widening the net in that way is that it would include non-citizens who, are not entitled to vote or, therefore, to entry on the electoral roll. However, this could be dealt with, as it is in the United States, by resolving the issue of qualification at the summons stage.

489. In addition, an organisation other than the police should be responsible for serving jury summons, perhaps the new court marshal/sheriff service recommended in Part 4.

RECOMMENDATION 6.28

The Task Force recommends that persons should be selected for jury service using the Taxpayer Registration Number (TRN) together with the voter's list and that the pool of jurors be increased by reducing the categories of persons excluded from jury service, tightening the criteria for discretionary excusal by the judge, and increasing the age limit for jury service to 70. Jury summons should be served by an agency independent of the police. Steps should be taken to work together with associations of medical professionals to ensure that doctors understand the importance of jury duty and limit the provision of medical certificates to excuse individuals from jury service.

490. The right of jury challenge, and in particular peremptory challenges, should be limited. The right of peremptory challenge erodes the principle of random selection and its general use can bring the whole jury system into public disrepute. The prosecutor's right to 'stand by' a juror should be tightly restricted by guidelines. Peremptory challenges have been abolished in the United Kingdom. Abolition of these challenges is not considered practical in Jamaica at this time because there the list of potential jurors is not provided to attorneys on a timely basis. Once an effective jury management system is in place, then the issue of abolishing peremptory challenges should be revisited. Challenge for cause should remain as long as it is clear that the burden of proof is on the person who seeks to make it and before it can be explored by examination of a potential juror there must be some factual foundation for it.

RECOMMENDATION 6.29

The Task Force recommends that the right to peremptory challenge of a juror be further restricted and that guidelines be developed to restrict the prosecutor's right to 'stand by' a juror.

491. Consideration should also be given to the introduction of a system enabling judges in long cases, where they consider it appropriate, to swear alternate or reserve jurors to meet the contingency of a jury otherwise being reduced in number by discharge for illness or any other reason of necessity.

492. The full participation of Jamaican citizens as jurors is hampered by the general lack of knowledge of the justice system. It has been reported that there is a general fear among persons in Jamaica to attend Court. In many cases, the first contact that a juror may have with the system is by service of a summons. Thereafter their next point of contact is a courtroom. The information available to them is sparse. This contributes to the sense of intimidation that many jurors report experiencing. These problems will be addressed in part by the general public legal education strategy proposed above. It would also be helpful to distribute a pamphlet written in easily understandable language explaining the jury selection process and jury service to accompany the jury summons.

RECOMMENDATION 6.30

The Task Force recommends that a pamphlet written in an informal and friendly tone explaining the jury selection process and jury service should be distributed with the jury summons.

493. It is vital for the criminal justice system and public confidence in it that everyone qualified for jury service does it with a good will and regards it as time well spent. A programme of reforms should be embarked upon to achieve this objective.

RECOMMENDATION 6.31

The Task Force recommends that a programme of reforms to improve the conditions of jury service be implemented including by:

- presenting an introductory briefing to jurors on their first day in court by a bailiff and shown a video about the trial process, and their role and responsibilities;
- examination and piloting of options for shortening the length of jury service;
- lengthening the cycle over which it is possible to claim excusal by reason of previous jury service;
- improving court facilities for jurors and jurors in waiting, including those who are disabled;
- providing at all courts of adequate working facilities and other means to enable jurors in waiting to conduct their own affairs;
- reviewing the amounts of allowances payable to jurors for their attendance at court;
- considering an additional allowance to cover the cost to potential jurors who, but for it, could justifiably claim excusal because of caring responsibilities; and
- expressing the courts' appreciation to jurors by providing them with certificates of their service and letters of thanks signed by a court official.

494. Further steps should be taken to encourage the attendance of jurors. There is no real incentive for attending a trial, as the paltry sum paid to jurors who have served, neither compensates nor motivates. Jurors are required to be absent from work in order to perform their civic duty. This affects persons who receive performance-based pay, such as entrepreneurs, contract workers and sales persons. There is a \$2,000 dollar fine for non-attendance of jurors. The problem of non-attendance of jurors will be addressed for the most part through reform measures that increase public confidence in the justice system and educate Jamaicans about its importance. In addition, there should be a rigorous and well-publicised enforcement of the obligation to undertake jury service when required and the fine for non-attendance should be increased, subject to a right of appeal to a Justice of the Peace.

495. The Ministry of Justice should work with the Ministry of Health and medical associations to raise awareness concerning the importance of jury duty and the limited circumstances under which medical certificates to excuse potential jurors from jury duty.

RECOMMENDATION 6.32

The Task Force recommends that the penalties for non-attendance should be increased, subject to a right of appeal to a Justice of the Peace.

496. The concerns about verdicts that run counter to evidence are more difficult to deal with in the reform process. In a number of high profile cases involving policemen there has been a great deal of public dialogue to the effect that the verdict was based on factors that the law considers irrelevant. These developments have affected people's trust in the impartiality of the justice system.

497. The impact of this is far reaching because if the person is found guilty the purview of the jury is exclusively findings of facts – one of the hardest things to challenge on

appeal. In fact the jury's reasoning is unimpeachable unless it is shown that the verdict is unreasonable having regard to the evidence. At present, if the person has been found not guilty there is no right of appeal. The Task Force has proposed that the law should be amended to give the prosecution the right of appeal in certain circumstances in Part 7.

498. The reasons for the disparity between the verdicts and the evidence have been attributed to: (1) jurors are too easily swayed by sympathy; (2) problems with the representativeness of the jury can lead to discrimination on the grounds of race, class and gender, and (3) jurors' inability to understand complicated directions. Some of these problems should be alleviated by the other recommendations made in this section. Another important reform measure is to provide judicial training on how to give effective and comprehensible jury directions. In particular, the tendency of some judges to read out the evidence verbatim should be discouraged.

499. The practice in Jamaica is for the public prosecutor, in their opening statements, to explain to the jurors their role in the trial, the role of counsel, the burden of proof, and the presumption of innocence. While this practice may be based on tradition, in other countries it is generally felt more appropriate that the initial instructions on these important matters be given by the trial judge rather than by the prosecutor.

500. Because of the lack or shortage of jury waiting rooms, prospective jurors sometimes remain in the courtroom when matters they should not be a party to, are discussed in open court by the trial judge, counsel and police relating to the trials on the list. Jurors are also in a position to observe an accused brought into the courtroom or removed from the courtroom in handcuffs. These factors may well influence their perception and have an adverse effect on their neutrality.

RECOMMENDATION 6.33

The Task Force recommends that judicial education should be provided on how to give effective and comprehensible directions to the jury.

RECOMMENDATION 6.34

The Task Force recommends that the initial instructions to juries at the opening of a trial be given by the judge rather than the prosecutor as is the current practice.

RECOMMENDATION 6.35

The Task Force recommends that steps be taken to ensure that prospective jurors are not in the courtroom when matters that they are not a party to, are discussed in open court nor should they observe an accused brought into the courtroom or removed from the courtroom in handcuffs.

D. PUBLIC PARTICIPATION IN THE JUSTICE SYSTEM

501. At the outset of Part 6, we highlighted the importance of public legal education as serving two functions. First, it provides direct benefits to individuals by increasing their ability to deal with disputes. Second, it creates a more informed public with an increased interest in and ability to contribute actively to the running of the civil justice system.

502. The participatory approach was highlighted as being of primary importance in the JJSR civic dialogue:

No justice system, however advanced, can guarantee the enjoyment of justice unless citizen's take up their responsibility to participate. Given the expenses involved, justice reform is always likely to be a gradual undertaking. Citizens must therefore become informed and skilled users of the systems that are in existence at any given time.

503. Members of the public can participate in the operation of the justice system: directly and in an advisory capacity. Direct participation occurs through functions as such as providing evidence as witnesses or as decision-makers in the capacity of jurors. More and more, Jamaicans are also participating as service-providers in the justice system on a voluntary basis as victim support workers, as dispute resolvers and in other capacities such as supporting diversion initiatives and in community supervision. This important public contribution should be recognised and encouraged for it is an extremely valuable contribution, especially in today's under-resourced justice system.

504. Furthermore, civic participation increases public understanding and sense of ownership in the justice system a practical way. There is a clear connection between trust and knowledge and participation. Facilitating these forms of direct participation is an important confidence-building measure in the justice system.

RECOMMENDATION 6.36

The Task Force recommends that steps be taken to recognise and further encourage civic participation in the justice system.

505. Members of the public can also participate directly in the management of the justice system through their participation in advisory committees. One of the primary objectives of justice reform should be to increase responsiveness to the needs and expectations of people who come into contact with the courts. Members of the public are the best placed to provide input to achieve this objective. Public consultation of this kind must take place on an ongoing basis as well as when specific reform measures are being considered. In particular, public members on such advisory committees could provide input on how to address access barriers, including issues such as customer service, signage in the courthouses, the hours of operation, access for persons with disabilities and so on. These Advisory Committees would work in conjunction with Users Committees to be established for each court and serve as a network between these Users Committees.

506. The Task Force strongly supports increased public participation in the justice system while at the same time recognising that a great deal of effort and collaboration is required to make advisory committees of this type effective and ensure that the participation of members of the public is meaningful. Models of effective committees of this type should be reviewed with a view to ensuring effectiveness. The Alberta Justice Policy Advisory Committee has established some best practices that could provide assistance. Given these difficulties, the Task Force recommends that the advisory committees be established on a pilot project basis so that the experience can be reviewed after a trial period.

RECOMMENDATION 6.37

The Task Force recommends that every level of court establish an advisory committee composed of members of the public and others involved in the justice system for the purpose of obtaining advice on (a) ways to improve the administration of civil justice, (b) reducing or removing barriers to access, and (c) implementing, evaluating and monitoring reform measures on a pilot basis across the system.

PART 7 - CRIMINAL JUSTICE REFORM: TRANSFORMING PRACTICES AND LEGAL CULTURE

507. Part 7 sets out recommendations for the reform of criminal justice practices, processes, procedures and legal culture with a focus on reducing delay and increasing effectiveness. The huge increase in the criminal caseload in the Jamaican courts over the last three decades, and the public's reluctance to cooperate with the justice system due to fear, has created an untenable situation that demands substantial reform measures be taken on an urgent basis.

508. There are many causes of delay. The JJSR research and consultations have provided a long list of causes of delay, ranging from the lack of proper police investigations to the absence of witnesses, from ineffective pre-trial procedures, to weak scheduling and listing practices, to overworked prosecutors and overbooked defence counsel. All participants in the criminal justice process contribute in some way to delay including witnesses, jurors, police, prosecutors, accused persons, defence counsel, court administration staff, and judges. Lack of human and material resources relative to today's demands and an outdated approach to management that plague all branches of the justice system are two fundamental causes of delay.

509. It is sometimes tempting to focus on one aspect of the criminal justice system as the root cause of delay. Adjournment practices and the reasons for adjournments is one such focus. Fingers are pointed alternatively at prosecutors, defence counsel, police, or judges who allow too many adjournments. The JJSR is reviewing available statistics on the causes of adjournment – not with a view to attributing blame to one group but in order to gain a better understanding of this symptom of an ineffectively managed criminal justice system. The main point here, however, is that the causes of delay are multifaceted and so must be the reforms to reduce delay.

510. There must be a two-pronged approach to this problem: (1) targeted backlog reduction strategies to deal with older cases and (2) a focused forward-looking delay-reduction strategy.

511. In making recommendations for this two-pronged approach, the Task Force is mindful of the interaction between rules, practices, procedures, management systems and resources. We are also aware of the impact of long-established legal culture. All justice systems rooted in the common law with a traditional emphasis on the litigation parties' control of steps within the litigation process struggle with a "culture of delay" that results from an unmanaged justice system. Our recommendations for reform attempt to tackle all the levels of change required for the achievement of significantly more effective criminal proceedings.

512. While the focus in this Part is on efficiency, the Task Force is also concerned about the quality of criminal justice practices. Fairness and the fundamental rights of accused persons cannot be sacrificed in the quest to improve court efficiency.

513. Our vision of a modernised justice system is one that integrates alternative forms of dispute resolution and in particular restorative justice approaches. We also make a number of recommendations aimed at achieving this objective.

A. THE CHARACTERISTICS OF AN EFFECTIVE AND EFFICIENT CRIMINAL JUSTICE SYSTEM

514. Experience in other jurisdictions can be the basis for criminal justice reform in Jamaica. A review of this experience provides us with a clear perspective on the characteristics of an effective and efficient criminal court as the centre of the criminal justice system.⁸ These characteristics have guided the development of the Task Force's recommendations in the sections that follow.

515. An effective and efficient criminal court must operate under the model of case flow management, a time and event managing system which facilitates early resolution of cases, reduces delay and backlogs, and lowers the cost of litigation. Case flow management shifts the overall management of cases through the time parameters from the Bar -- where it has traditionally been -- to the judiciary. Case flow management streamlines the process, permits the introduction of Alternative Dispute Resolution (ADR) techniques, and creates an environment

⁸ This section is adapted from the "Cases Going to Trial" subcommittee of the Justice Efficiencies and Access to Justice (Canada, 2001).

where judges, administrators and quasi-judicial officials can work together to integrate the various elements of the system into a co-ordinated whole.

516. The criminal justice system must be managed on the basis of **cooperation and shared expectations**:

- The sectors or “players” in the justice system are autonomous within their sphere. Each depends, however, on the others. This combination of autonomy and interdependence means they must cooperate appropriately to be effective. It follows that decisions affecting process should be made with consideration for the impact they have on the rest of the system. The needs of each element of the formal system as well as the accused, witnesses and victims must be considered in developing effective case management practices. A successful case management system meets broadly accepted expectations and respects the interests of participants. Cooperation is informed by stated, mutual expectations that enable accurate prediction of events and requirements, including resource requirements and performance standards.

517. An effective criminal justice system requires **strong judicial leadership**:

- Leadership among autonomous players requires the application of influence and in the justice system this requires moral authority. Without a leader, cooperation is less likely to happen and is unlikely to become the norm. Some judges are uncomfortable with an active role in case management. A judge must, above all else, be above all else. The judge is the impartial apex of the adversarial system’s triangle, deciding guilt or innocence in each case without regard to external considerations.
- In an adversarial justice system, judges have the independence and authority to lead the other players. In short, their impartiality gives judges a unique opportunity to lead effective case management. Impartiality is required for effective judicial decision making but it also give judges a unique opportunity to lead effective case management. Moreover, good judicial leadership does not detract from impartiality. Judicial case management is less about “managing” the cases than it is about ensuring the parties are prepared for an effective hearing. While some of the skills and activities required by case management are fundamentally different than the traditional role of judges, case management is not inconsistent with it. Judges have always controlled procedures to ensure hearings are fair and effective. Extending this role “upstream” is only sensible since the effectiveness of a hearing is largely dependent on the preparedness of the parties. Judges and court administration can oversee cases to ensure they are managed in accordance with commonly accepted norms while retaining the flexibility to respond to the unique needs of individual cases.

518. The third major guiding principle for case management is the cultivation of a **legal culture that does not tolerate delay**. This case management culture can only be built where the expectations and standards called are consistently followed and enforced.

519. Effective case management systems are the product of **local control and local commitment to good practice**:

- Legislation can enable and support case management but the local bench and Bar will manage well or badly according to their needs and views. Local control is crucial to effectiveness because only local control can respond to local pressures, issues and personalities. Implemented cooperatively, it brings sectors together, increases communication, understanding and respect for their various roles and their interdependence, and provides a sense of ownership in new initiatives. If local control is to be effective it is vital there is a capacity to gather local and external “best practices” and provide the data and analysis needed to assess the effectiveness of local practice and alleged best practices.

520. An effective criminal justice system requires a strong **management information system**. The justice system is, in some respects, an information system and so the business maxim that “you cannot manage what you cannot measure” applies in force here.

B. FOCUSED BACKLOG REDUCTION STRATEGY

521. There are a large number of pending criminal cases in Jamaica, particularly in the Supreme Court. The term “backlog” is a loaded word – since it connotes cases that have been in the system for an unacceptably long time. However, in the Jamaican justice system there are no time standards and hence no distinctions between which cases are part of the “backlog” from those that are disposed of within an acceptable timeframe. The Court Administration Project is collecting data on the age of this pending caseload, which will help to identify the actual backlog.

522. As overall court delays lessen, a gradual reduction of the backlog of older cases in the system can be expected. However, there is merit in having a limited timeframe strategy to address these older cases specifically in order to ensure both that (1) they are disposed of in a swift, efficient and fair manner and (2) they do not impede the reform process. This will, by necessity, involve the mobilisation of judicial and prosecutorial resources. In many jurisdictions, members of the Bar and retired judges have been called upon to assist on a short- term fee paid basis. This temporary concentration of human resources, in the court jurisdictions with the greatest backlogs, is an effective and cost-efficient approach that should also be employed here.

523. A focused backlog reduction strategy will serve the dual purpose of disposing of the older cases and also building the momentum toward more comprehensive and permanent reforms. This type of “case management blitz” will help to signal a strong commitment, quickly raise case management standards, help to develop experience with new approaches, and demonstrate the value of case management. Separate backlog reduction strategies will have to be developed for each court that is identified as being burdened with a backlog (i.e. the Supreme Court, specific RM Courts, the Gun Court). One specific suggestion is that a mobile group of judges and prosecutors could deal with the backlog in the RM Courts in various parishes.

RECOMMENDATION 7.1

The Task Force recommends the implementation of focused backlog reduction strategies within a limited time frame for each court that is identified as burdened with a backlog. These initiatives would have to:

- be appropriately resourced;
- mobilise sufficient judicial and prosecutorial resources including through the engagement of retired judges and qualified lawyers on a part-time fee paid basis; and
- employ case management techniques.

C. CRIMINAL LAW REFORM

524. The criminal law of Jamaica is contained in a large number of statutes. The fragmented state of the law causes confusion to Jamaicans and contributes to inefficiencies in the criminal justice system. The problematic effect of this state of affairs was described by the Law Reform Commission in England in these terms:

“...if the law is not perceived by triers of fact to be clear and fair, there is a risk they will return incorrect or perverse verdicts through misunderstanding or as

deliberate disregard of what they are advised the law is... the criminal law is a particularly public and visible part of the law. It is important that its authority and legitimacy should not be undermined by perceptions that it is intelligible only to experts.”

525. The criminal law should be modernised in concert with the modernisation of the criminal justice process. This task involves the integration, codification, updating and restatement of the criminal statutes, case law and practice into a Jamaican Criminal Code. Such a Code would be more understandable and easier to apply. The Code can then be amended on a regular basis to keep it up to date.

526. A Jamaican Criminal Code should include a general statement on the overall purposes of the criminal law and contain four parts:

- A Criminal Offences Code;
- A Code of Procedure;
- A Code of Criminal Evidence;
- A Sentencing Code.

527. Codification of the criminal law is a laborious, complex and therefore time-consuming process. It will require the assistance of expert staff working under the supervision of an advisory committee composed of representatives from all levels of court, the public and private bars.

RECOMMENDATION 7.2

The Task Force recommends that a Jamaican Criminal Code Project be initiated with the mandate of developing an updated and unified restatement of the criminal law, procedure, evidence and sentencing provisions.

528. One integral aspect of this codification of the criminal law will be to develop a statement on the overall purpose of the criminal law.

529. The Task Force has heard many complaints from the public about the application of the criminal law. They include complaints that criminal charges are sometimes laid by the police for trivial matters as a form of harassment and that the law is applied inequitably depending on who the individual is. Most Jamaicans are familiar with the true or anecdotal story of the man who was sent to jail for stealing a few mangoes to feed his family while the rich man who did something far more serious went free.

530. Over-use of the criminal law, particularly for minor matters, can also contribute substantially to delays in the justice system and diminish its significance. While not providing an instant solution to this problem, an official statement, contained in a Criminal Code or other document, about the overall goal or purpose of a country's criminal justice system, can help bring greater uniformity in the application of the criminal law and coherence to reform initiatives.

531. The following are some examples of the types of principles that could be included in such a document:

- *The criminal law should be employed to deal only with that conduct for which other means of social control are inadequate or inappropriate, and in a manner which interferes with individual rights and freedoms only to the extent necessary for the attainment of its purpose. (The Criminal Law in Canadian Society. Department of Justice Canada 1982)*
- *“Criminal law is not the only means of bolstering social values. Nor is it necessarily always the best means. The criminal law is a blunt and costly instrument – blunt because it cannot have the human sensitivity of institutions like the family, the school, the church or the community, and costly since it imposes suffering, loss of liberty and great expense. So criminal law must be an instrument of last resort. It must be used as little as possible. The message must not be diluted by overkill - too many laws and offences and charges and trials and prison sentences. Society’s ultimate weapon must stay sheathed as long as possible. The watchword is restraint - restraint applying to the scope of criminal law, to the meaning of criminal guilt, to the use of the criminal trial and to the criminal sentence.” (The Law Reform Commission of Canada, 1976 report “Our Criminal Law”)*
- *Whenever possible and appropriate, the criminal law and the criminal justice system should also promote and provide for:*
 - (i) *opportunities for the reconciliation of the victim, community, and offender;*

- (ii) *redress or recompense for the harm done to the victim of the offence;*
- (iii) *opportunities aimed at the personal reformation of the offender and his reintegration into the community;*
- *Persons found guilty of similar offences should receive similar sentences where the relevant circumstances are similar;*
- *In awarding sentences, preference should be given to the least restrictive alternative adequate and appropriate in the circumstances;*
- *Wherever possible and appropriate, opportunities should be provided for lay participation in the criminal justice process and the determination of community interests. (The Criminal Law in Canadian Society)*

RECOMMENDATION 7.3

The Task Force recommends that the new Jamaican Criminal Code include a general statement of the overall goals and purpose of the criminal law.

532. Some of the criminal offences still officially in the laws are outdated and could be abolished as they are no longer relevant to current Jamaican society. One example is the offence of “Placing wood on railways with intent to endanger the safety of passengers” in section 31 of the *Offences Against the Persons Act*. In drafting a new Jamaican Criminal Code, consideration should also be given to whether certain types of less serious conduct may be decriminalized, and, if necessary regulatory enforcement used instead of the criminal courts. Any initiatives in this field should be part of an overall and principled reform aimed at removing from the courts matters for which they are not appropriate or necessary, while leaving them, in the main, to deal with matters for which they are well suited, in particular, marking society's disapproval and safeguarding public and private safety.

533. The review of existing offences could be governed by the type of principles recommended by Lord Auld in his report on the criminal law in England and Wales as adapted to the Jamaican context:

- Criminal courts should not be concerned with infractions that are administrative or civil in nature, save only and to the extent that efficient public administration cannot be secured in any other way;
- There is value in providing for resolution outside the courtroom so far as is consistent with justice, the public interest and efficient public administration;
- Potential savings within the criminal justice system arising from decriminalisation or the modification of criminal proceedings should be measured against the likely cost and disturbance to the public, to enforcing bodies and to those against whom they are proceeding, of any alternative means of enforcement. (Lord Auld)

RECOMMENDATION 7.4

The Task Force recommends that a review be conducted of the existing offences set out in Jamaica's laws with a view to abolishing any that are no longer relevant for Jamaican society and where appropriate, to provide for alternatives to the criminal law in dealing with certain conduct.

D. BAIL REFORM

534. An increase in the elapsed time it takes to complete criminal cases results in an increase in the time spent in custody by those detained pending trial. Delays in the criminal justice process have resulted in intense pressure on correctional facilities. Under these circumstances, ensuring that the system for granting of bail to those accused of offences is functioning effectively is very important. A new *Bail Act* was recently adopted to address some

of the concerns in this regard. The new statutory framework is an important development but it is not yet being followed on a consistent basis.

535. Some of the problems identified with practices and procedures relating to the granting of bail include:

- The police are not complying with bail legislation, for example by holding persons longer than permitted before a bail hearing.
- There is no consistency in how Judges deal with bail applications.
- An accused who is denied bail by a Magistrate may appeal to a Supreme Court Justice. It needs to be clarified whether this is a *de novo* hearing or a review based on error of law. The Court of Appeal has not decided this issue and there is inconsistent practice among the Justices.
- The Bail Act permits continuous applications for bail. This leads to Magistrate and/or Judge “shopping”.
- It is unclear what side bears the onus at a bail hearing.
- There is no separate criminal offence of breach of bail.
- In practice, the police are not adequately monitoring compliance with bail conditions, including reporting at the police station.
- Most accused persons charged with murder are initially denied bail but eventually a large percentage (estimated to be 20-45%) of them are released on bail as trials are delayed due to the non-attendance of witnesses.

536. Consistency in practices, and greater clarity of the law respecting bail can make this system more effective and fair. Guidelines could be developed for the granting of bail in order to further increase consistency in process and outcome. The JCF should take all necessary steps to ensure that the police comply with the requirements of the law in relation to detention and bail, particularly through training and performance reviews.

537. A “best practices” protocol to reduce delays and promote the timely disposition of bail matters should be developed by and for all those involved in the bail system. Once developed the protocol should be provided to the police and prosecutors with a direction to implement the protocol in cooperation with other justice participants. Results achieved through the implementation of the protocol should be analysed. This can be done through the distribution of a survey to obtain feedback on the protocol.

538. Compliance with bail provisions can be assisted through Bail Supervision Programmes. These Programmes are community-based services that assist individuals who, because of their financial circumstances or lack of social ties, are at risk of being denied bail on the primary ground - risk of non-appearance. In exchange for the accused person's pre-trial release, bail programme staff undertake to supervise the accused and to promote his or her compliance with bail conditions and attendance at subsequent court dates. Bail supervision and verification programmes have been operating in Ontario since 1979 and are highly regarded by the police, the judiciary, and counsel. This is a relatively inexpensive programme with a very high success rate in ensuring court appearances thereby increasing court efficiency by avoiding failures to appear.

RECOMMENDATION 7.5

The Task Force recommends that the JCF take all necessary steps to ensure that that the police comply with the requirements of the law in relation to detention and bail, particularly through training and performance reviews.

RECOMMENDATION 7.6

The Task Force recommends that guidelines be developed for the granting of bail in order to further increase consistency in process and outcome.

RECOMMENDATION 7.7

The Task Force recommends that a “best practices” protocol be developed to promote timely disposition of bail matters. The Police and prosecutors should be given the primary responsibility for implementing the protocol.

Elements of a “best practices” protocol could include:

- the provision of timely legal aid assistance, perhaps through the use of paralegal bail application officers to assist duty counsel and reduce delays in commencing bail hearings;
- Weekend bail courts;
- The use of audio and video remand systems where possible;
- Increased use of police release authority;
- More efficient scheduling of bail hearings;
- Simplified surety approval procedures; and
- Greater use of Crown discretion at bail hearings.

RECOMMENDATION 7.8

The Task Force recommends that Bail Supervision Programmes be set up to assist individuals who are at risk of being denied bail on the ground of risk of non-appearance and promote his or her compliance with bail conditions and attendance at subsequent court dates.

E. CRIMINAL CASE MANAGEMENT

539. Experience in Canada and elsewhere strongly suggests that effective delay reduction can only be achieved by supervision or management of the time and events involved in the movement of a case through the court system from the point of initiation to disposition. Case flow management refers to the process whereby the movement of cases through the criminal justice system is monitored and controlled to ensure maximum efficiency. The life of a criminal charge is a series of events separated by times during which there is no court activity. The goal of case flow management is to make the sequence and timing of these events more predictable and more timely. While case flow management programmes are constructed around the events themselves, thoughtful management of the intervals between events will also improve overall charge resolution times. The flow of cases is expedited through the application of case management techniques by judges and court officials such as pre-trial conferences and status check conferences where the court plays an active role in attempting to resolve the case and/or ensure that it is ready for trial.

540. There is a strong consensus on the need to introduce a criminal case flow management system and to employ case management techniques in order to reduce delays. The Task Force has identified the following 7 key elements of a criminal case flow management system for Jamaica:

- Early Screening of Files by Prosecutors;
- Disclosure to the Defence;
- Disposition Discussions Between Counsel;
- Judicial Pre-Trial Conferences;
- Efficient Trial Scheduling Practices;
- Adjournment Policy;
- Status-check Conferences.

541. The Task Force recommendations with respect to the elements of a Jamaican case flow management system are set out below. They address: (1) the purpose of the case flow management element; (2) the timing of each step; and (3) the specific requirements for implementation of each element.

542. The Task Force recognizes that in order to implement case flow management in Jamaica a substantial increase in human resources will be required. This applies to prosecutors, judges, and legal aid counsel, all of whom will have new responsibilities.

1. Early Screening of Files by Prosecutors

Purpose:

- To check that the correct charges have been laid by the police;
- To check that the file has been properly prepared by the police;
- To assess the adequacy of the investigation and if necessary, to provide instructions to the police on further investigation;
- To determine whether, on the evidence, there is a reasonable prospect of conviction;
- To determine whether it is in the public interest to proceed with the prosecution;
- To consider whether diversion would be appropriate;
- To decide whether the case should be assigned to a specific prosecutor;
- To decide whether the case should be subject to special procedures such as “voluntary indictment”;
- To consider whether any victims should be referred to the Victim Support Unit;
- To provide instructions about disclosure.

Timing:

As soon as possible after the charges are laid and no later than about two weeks following the laying of the charges.

Required for Implementation:

- The DPP to draft a Prosecutor’s Policy on Screening;
- Negotiate an Agreement between the Prosecution and the Police on Screening;
- Develop a Form(s) to be used;
- Train prosecutors and police;
- Identify functions that could be performed by para-legal personnel.

2. Disclosure to the Defence

Purpose:

- To allow the accused to know the evidence against him and to prepare his defence.
- To allow the accused to make an informed decision whether to plead guilty.

Timing:

- As soon as possible after the file has been screened by a prosecutor.

- Disclosure is a continuing obligation and it may not always be possible to complete it at one stage. As additional materials, such as forensic reports come available, they must be disclosed.
- Disclosure should be provided before Disposition Discussions between counsel and Judicial Pre-trial Conferences are held if those processes are to be meaningful.
- Subject to specifically identified items, disclosure should be completed before trial dates are set.

Required for Implementation:

- The DPP to draft a Prosecutor’s Policy on Disclosure with input from the bar, bench, and police.

3. Disposition Discussions Between Counsel (Counsel Pre-trials)

Purpose:

- To provide the opportunity for counsel to discuss the possible disposition of the case without a trial.
- To address outstanding investigation and disclosure issues.
- To discuss ways to shorten or streamline the trial.

Timing:

As soon as possible after disclosure has been completed and before the Judicial Pre-trial. Further disposition discussions can be conducted at any stage.

Required for Implementation:

- DPP to draft a Prosecutor’s Policy on Disposition Discussions with input from the bar and bench.
- A new provision in the criminal law permitting prosecutors to make submissions to the court at the sentencing stage in the proceedings.
- A new provision in the criminal law permitting any fact to be proved at trial or preliminary inquiry by way of joint admission by the prosecution and defence.
- Training of the public and private bar on negotiation, ethical issues and procedures agreed.

4. Judicial Pre-trial Conferences (Case Management Conferences)

Purpose:

- To involve a judge in the facilitation of discussions between counsel that could possibly lead to the resolution of the case without trial.
 - The Judge may express an opinion on the strength or weakness of the evidence.
 - The Judge may indicate the sentence, or range of sentence, the accused would receive upon a plea of guilty.

- Provides an opportunity for a judge to determine whether counsel are in a position to proceed to trial and to streamline the trial in order that it be focused on the relevant and important issues.
 - The Judge should check with counsel about any outstanding disclosure issues and obtain an agreement about how they are to be resolved.
 - The Judge should assist counsel to identify the main contentious issues in the case.
 - The Judge should canvass the possibility of counsel making admissions to shorten and focus the trial.
 - The Judge should discuss any special applications or motions to be made before or during the trial by either side.
 - The Judge should seek to obtain from counsel an estimate of the length of the trial that is as accurate as possible.

Timing:

The Conference should be held before the trial is scheduled. If there are outstanding matters remaining after the first conference a further conference(s) should be held rather than the trial date set.

Required for Implementation:

- Criminal Case Management Rules to be drafted with input by members of the Bar including prosecutors.

5. Efficient Trial Scheduling Practices

Purpose:

- To ensure that court time is used efficiently.
- To minimize adjournments.

Timing:

A Trial date should be scheduled only after a judge has ascertained, at a pre-trial conference, that the case is ready to proceed to trial.

Required for Implementation:

- The Court should implement a trial scheduling policy following consultation with members of the Bar and court administrators.
- The Policy should have the following elements:
 - The court, rather than counsel, should be responsible for selecting the trial date.
 - When setting the trial date the court must take into consideration other trials already scheduled. Cases should be scheduled for trial on dates where there is a certainty that they can proceed. Trial lists should not be so lengthy that it is

impossible for all cases to proceed. (The tradition of the sittings of the Supreme Court being organized in “terms” may no longer be efficient.)

- To the extent that it is reasonable to do so, the availability of defence counsel, assigned prosecutors, and witnesses including the police should be taken into account when fixing the trial date.
- Priority in scheduling should be given to cases involving vulnerable witnesses and accused in custody.
- Trial Co-coordinators may be used by the Courts in assisting with scheduling.

6. Adjournment Policy

Purpose:

It will never be possible to eliminate all adjournments. However, policies can be put into place that will minimize the frequency of adjournments and lessen the impact on the courts when they do occur.

Elements of the Policy:

- As soon as either counsel come into possession of information that they believe will make it impossible to proceed with the trial on the date scheduled they must apply to the court for an adjournment.
- The application must be made at the earliest opportunity, in writing, supported by affidavit evidence, with notice to the other side.
- Only in the most exceptional circumstances will the court grant an adjournment application made on the trial date.

Required for Implementation:

- A practice direction on adjournments issued by the court after consultation with the Bar.
- Strict enforcement of the practice direction.

7. Status-check Conferences (Readiness Conferences)

Purpose:

To provide an opportunity for the court to check if anything has changed, since the trial date was scheduled, and if the case is still ready to proceed.

Timing:

This brief Conference should be held at a stage where the court time reserved for the specific case may still be reallocated to another case(s) if it appears from the conference that it will not proceed. It may therefore be appropriate to schedule this conference about one month before the trial date. It may also be appropriate to require counsel to file a “Certificate of Readiness” at this point.

Required for Implementation:

- Criminal Case Management Rules

RECOMMENDATION 7.9

The Task Force recommends the establishment of a criminal case management system containing the following elements:

- Early Screening of files by prosecutors;
- Disclosure to the Defence;
- Disposition Discussions Between Counsel;
- Judicial Pre-Trial Conferences;
- Efficient Trial Scheduling Practices;
- Adjournment Policy;
- Status-check Conferences.

543. The Task Force accepts that the practice commonly known as “Plea Bargaining” or Disposition Discussions between Counsel should become part of the criminal justice system of Jamaica and makes the following observations:

- An apt definition of “Disposition Discussions” is the following:
“A proceeding whereby competent and informed counsel openly discuss the evidence in a criminal prosecution with a view to achieving a disposition which will result in the reasonable advancement of the administration of justice.” (The Attorney General’s Advisory Committee on Charge Screening, Disclosure and Resolution Discussion (Ontario, 1993))
- In jurisdictions where this practice is prevalent, such as Canada and the United States, it has become an indispensable tool to rapidly moving large volumes of criminal cases through the court system without the necessity of trials.
- Disposition Discussions, when properly conducted, can benefit the accused, victims, witnesses, counsel, and the administration of justice generally. Early and meaningful consultation between prosecution and defence counsel can play an important role in

ensuring that the parties determine what can be agreed upon and what can be settled as early in the process as possible. At these conferences, counsel are able to determine if the case can be resolved, the issues narrowed or defined or the need for a judicial pre-trial hearing or preliminary inquiry eliminated.

- Disposition discussions may lead to an agreement between counsel concerning a plea of guilty by the accused. The agreement may deal with one or both of the following:
 - What charge(s) the accused will plead guilty to.
 - What sentence the prosecutor and defence counsel will recommend to the judge. They may agree to make the same recommendation (joint submission) or take different positions on sentence.
- Disposition discussions regarding sentencing are only meaningful in jurisdictions where there is a tradition of prosecutors making submissions on sentence to the court. Without this prosecutors have no ability to have any impact on the sentence to be imposed.
- It is essential that prosecutors have clear guidelines and directives on the exercise of their discretion in this area and that the process be as transparent as possible.
- An Act dealing with “plea bargaining” has recently been passed by the Parliament of Jamaica. However it is apparent that this act is intended to address special circumstances where an accused person agrees to provide information to the authorities or to testify as a prosecution witness. It is not meant to apply to the large number of ordinary cases that could be resolved through discussions between counsel.
- The Director of Public Prosecutions, following appropriate consultation, should issue a Policy on Disposition Discussions that provides clear directives and guidelines to govern the exercise of prosecutorial discretion in this area. The public should have access to this policy.
- Legislation should be passed that provides that in determining the appropriate sentence, a court shall consider any relevant information placed before it, including any representations or submissions made by or on behalf of the prosecutor or the offender.
- The legislation should also provide that sentencing remains the ultimate responsibility of the courts and that the courts are not bound by any agreement on sentence made between counsel.
- The Courts should give appropriate recognition to the sentencing principle that an early plea of guilty by an accused is a mitigating factor to consider when determining the sentence to be imposed.

544. One of the key changes with the introduction of criminal case management – and the one with the greatest potential for reducing delay is the focus on early *disposition* through charge screening, disclosure and early and continuing Disposition Discussions. These elements are interrelated. Effective charge screening weeds out unnecessary charges and thereby streamlines disclosure to the defence. Full and early prosecution disclosure in turn permits more

wide-ranging and informed Disposition Discussions. Early and regular Disposition Discussions also assist in streamlining disclosure requirements.

545. Implementing this shift in focus to early resolution rather than on the trial requires a willingness on the part of government to commit resources to the criminal justice process at the early stages. This investment should pay financial dividends. An increase in early resolution of cases means that the police can save considerable amounts in police witness costs, thereby putting more officers back into the community. Early resolution will free Crown counsel to perform other duties. These potentially significant benefits more than offset the costs of putting these recommendations into practice.

546. Legal aid duty counsel can play an integral role in ensuring the efficient functioning of the criminal courts at the pre-trial stage. Early appointment of defence counsel for eligible accused is an essential aspect of a criminal case flow management system and there must be an adequate number of duty counsel available in each court location. Furthermore, the structure of public funding of defence fees in the criminal courts should properly reward and encourage pre-trial activities.

547. If cases are to be resolved early, the Correctional Service must facilitate access of detainees to their counsel. There are some solutions to this access problem which may involve large or relatively small initial expense to the Correctional Service and other agencies, but which would almost certainly achieve long-term savings for it and for the criminal justice system as a whole. For example, the arranging of legal visits could be expedited and eased by the basic means of installing dedicated telephone lines in prisons, and/or by the provision of a secure internet facility for on-line booking of visits. Another and more significant improvement in its potential for savings in time and expense, would be the introduction of widespread video-conferencing arrangements between defence lawyers, operating from their own offices or a shared facility, and prisons. Most importantly, there should be standards or rules governing the access of unsentenced prisoners to their legal advisers.

548. Other parts of this Final Report have dealt with issues such as improved court administration and technology which are needed to support criminal case flow management and they are not repeated here.

549. There are several ways case management and case flow management systems can be initiated. They have generally been described as:

1. Moral suasion – this is the judge who actively manages his or her courtroom. There are not formal rules. For example, a judge decides that in his or her courtroom counsel will provide a written outline of their argument.
2. Local practice – this is moral suasion applied to a set of cases. It is usually geographically circumscribed but can be based on case type. For example, in all commercial crime cases counsel will provide a draft exhibit list.
3. Practice preference – this is more formal and indicates an official preference but is not mandatory. For example, counsel should attempt to pre-mark exhibits on commercial crime cases. It may be applied to a local or general area. Unlike local practices, they are usually published. They are frequently issued by the Chief Judge or Justice but can also be issued by Administrative Judges.
4. Practice directives or notices– these are formal directions that have binding force. For example, counsel will use and file a specific form when mutually agreeing to limit the scope of a preliminary inquiry. The Chief Judge normally issues practice directives and they are published.
5. Statutory enactments – these are case management and case flow management decisions that are imposed uniformly through a statute.
6. Rules of Court – these are broad based rules that can include case management and case flow aspects.⁹

550. The Task Force encourages the informal adoption of the proposed criminal case management reforms pending the development and adoption of criminal case management rules. Some or all of these recommendations should be implemented to the greatest extent possible on a pilot project basis while the rules are being developed. Experience at the pilot project site would provide useful insights for full implementation of criminal case management across Jamaica.

551. In order for criminal case flow management to be successful, all participants in the criminal justice system must closely examine and, if necessary, modify the way they go about their work. Police and prosecutors must adopt more realistic charging and prosecution practices. Prosecution and defence counsel must: 1) reject a culture of last-minute decisions that sees cases warehoused between hearings; 2) actively prepare for trial without unnecessary recourse to the court; 3) be more receptive to reasonable pre-trial resolutions; and 4) be more

⁹ From “*Improving Your Jurisdiction’s Felony Caseflow Process: A Primer on Conducting an Assessment and Developing an Action Plan*” prepared by the Justice Management Institute for the Bureau of Justice Assistance, Criminal Courts Technical Assistance Project, American University (April 2000).

open to finding ways to focus and narrow the issues at trial. Finally, judges must be willing to play a greater leadership role by becoming engaged earlier in the life of a file and assuming more “ownership” of its progress through the system.

552. Specialised training/education is indispensable to the implementation of criminal case flow management and will assist all participants to make these needed shifts in the way that they work. Professional development programmes for the Bench and Bar should be coordinated to concentrate on case management for a period of one or two years in order to validate the concept, support its implementation, equip each player with the necessary knowledge, explain the rules, and keep lawyers current on substantive issues affecting decision-making at each stage of a case.

RECOMMENDATION 7.10

The Task Force makes the following recommendations regarding overall implementation of criminal case flow management and case management:

- steps should be taken to ensure that legal aid is available to eligible accused as early as possible;
- standards should be adopted regarding access of unsentenced accused to their counsel;
- a Criminal Case and Case Flow Management Pilot Project should be established in one location to implement elements of criminal case flow management to the greatest extent possible pending the development and adoption of criminal case management rules; and
- a comprehensive 2 year professional development program on criminal case flow management for the Bench and Bar should be provided.

553. The burden of disclosure lies more heavily on the prosecution than on the defence, rightly so, for the prosecution brings the charge and must prove it. The defence need not admit or prove anything, but where it intends to put matters in issue, it should, ideally, indicate them at an early stage so that both sides can concentrate on those issues in their preparation for court and trials may be streamlined.

554. After careful study, the Criminal Procedure and Investigations Act was recently introduced in England and Wales and it addresses the issue of defence disclosure. The Act provides for two stages and, respectively, two different levels of prosecution disclosure and one level of defence disclosure. Following disclosure by the prosecution, the defence must give to the court and the prosecutor a written statement setting out in general terms the nature of the defence. This should set out the matters on which issue is taken with the prosecution and in the case of each issue, why, and, if one of the issues is an alibi, particulars of it. The statement must include any positive defences, for example, provocation, or self-defence upon which the accused recommends to rely, but does not require him to reveal his proposed evidence at trial nor how he recommends to controvert the prosecution's case. The Task Force is of the view that the issue of disclosure by the defence should be considered and potential reform measures explored in this regard with a view to further reducing delays in the criminal justice process.

RECOMMENDATION 7.11

The Task Force recommends that the experience with the defence disclosure provisions in the Criminal Procedure and Investigations Act of England and Wales be examined with a view to determining whether similar provisions could help streamline criminal trials in Jamaica without infringing on the fundamental rights of the accused.

F. THE ROLE OF THE POLICE IN DELAY REDUCTION

555. The police have an important role to play in reducing delays and increasing the efficiency of the criminal justice system. The Task Force accepts the view that the police force is part of the problem and not yet part of the solution. The modernisation of the Jamaican Constabulary Force is underway under the National Security Strategy and other initiatives. In this section, the Task Force reviews three issues: (1) enhancing the investigative capacity of the police; (2) fostering police/prosecution linkages; (3) establishing or enhancing the mandate of police court-liaison units; and (4) transport of detainees. Justice system reform must encompass and proceed hand in hand with reforms of policing and corrections.

1. Enhancing Investigative Capacity

556. Some delays in the criminal justice system can be attributed to the underdeveloped investigative capacity of the police force in Jamaica. It is quite clear that more investigators are needed to cope with the volume of serious cases. Similarly forensic capacities are under-resourced. Furthermore, policing is hampered by a history of police abuse of the rights of Jamaicans who come into conflict with the law. This history continues to influence the current state of affairs and must be taken into account in the reform process.

557. Legal reforms are being undertaken to increase the investigative powers of the police to meet the requirements of the complexity of today's society and to take advantage of scientific and technological developments. For example, proposed legislation is currently being developed to deal with the gathering of DNA samples. Statutory reform will have to be met with practice directions as to the admissibility and reliance on this form of evidence. It is critical that these legal developments provide effective protection for the rights of individuals who are under suspicion and detained or accused persons. These protections must be safeguarded in the legislation itself.

558. The capacity and independence of the forensic facilities must also be strengthened. Steps should be taken to end the culture and/or perception that it is an extension of the police force under the direction of the Director of Public Prosecutions and to ensure that the defence has full access to all experts at the laboratory. Protocols should be established and

publicised of the way in which samples are treated. Consideration should be given to establishing the forensic laboratory be made into an independent agency.

559. At a more basic level, the Task Force is aware of continuing concerns about inconsistent and sometimes unfair police practices with respect to ID parades. A protocol for ID parades should be developed and implemented to address these problems.

560. Delays in obtaining forensic reports could be overcome in part by establishing joint police/prosecution/court protocols that would enable the forensic facility to prioritise cases rather than treating them all as routine. Similarly, protocols could be established with local hospitals to enable doctor's to provide medical certificates on an expedited basis, through for example simple amendments to the standard charts in order to simplify and streamline the process. Furthermore, there is a perception that the forensic facilities are not fully independent because they are organisationally affiliated with the Ministry of National Security. Consideration should be given to transferring the oversight responsibility for this facility to another Ministry.

561. Jamaican law is tolerant of illegally obtained evidence, which is generally admissible in court. Safeguards against the admissibility of illegally obtained evidence have been developed in some common law jurisdictions either through jurisprudence or through constitutional reform. The exclusion of illegally obtained evidence in some circumstances could serve as an important check on police powers and buttress the move toward more rigorous police investigation that respects individual rights:

The moral foundation of criminal justice requires that if the prosecution has employed foul means, the defendant must go free even though he is plainly guilty for where the integrity of the process is fatally flawed, the conviction should be quashed as an expression of the systems' repugnance at the methods used by those acting for the prosecution.

RECOMMENDATION 7.12

The Task Force recommends that steps be taken to increase the investigative capacity of the police in line with modern scientific and technological developments while at the same time increasing the safeguards for the protection of the human rights of individuals.

RECOMMENDATION 7.13

The Task Force recommends that consideration be given to establishing a forensic laboratory that is independent of the Ministry of National Security and that protocols for the collection, analysis and preservation of samples be developed.

RECOMMENDATION 7.14

The Task Force recommends that the police establish joint protocols with relevant agencies to address the issues of improved ID parades; expediting forensic reports; and, expediting and streamlining the process for the provision of medical certificates.

RECOMMENDATION 7.15

The Task Force recommends that consideration be given to introducing measures to exclude illegally obtained evidence in some circumstances.

2. Police/Prosecution Linkages

562. Linkages between the police and prosecution should be enhanced. Such linkages would permit the rapid preparation and transmission to the prosecutor of necessary police and forensic documentation and the rapid retrieval of prior criminal record information – both essential elements of the early phases of criminal case flow management.

563. Police/Prosecution linkages would also maximize effectiveness and efficiency of police investigations by ensuring that police have timely access to competent and practical prosecutorial advice. The early involvement of public prosecutors is essential in complex investigations.

RECOMMENDATION 7.16

The Task Force recommends that the linkages between the police and the prosecution be enhanced, including by:

- the ability of police to access public prosecutors outside of business hours or from remote locations through a toll free number;
- the development of a standardised checklist for Crown briefs (the files prepared by the police outlining the case and evidence against the accused) and disclosure packages; and
- the gradual move to electronic Crown briefs.

3. Police Court-Liaison Units

564. One of the major problems identified during the course of this review has been the common failure of prosecution witnesses to attend court to give evidence when cases are scheduled to proceed. This has resulted in cases being repeatedly adjourned and often charges eventually being stayed for want of prosecution. In an attempt to avoid this problem, judges in

some cases order witnesses to attend court on every appearance date, even when the cases are only listed for mention. This is very inconvenient for the witnesses.

565. Police investigating officers are required to attend court on each day their cases are listed. This reduces the time they have to devote to their regular police duties. Each investigating police officer is personally responsible for keeping in touch with all of the witnesses in his cases and ensuring that they all attend court when required. This is very difficult due to the large number of cases each investigator is responsible for.

566. Judging from experience in other countries, these problems could be reduced by the creation of an effective Police Court-Liaison Unit. Each police unit would have one or more officers specially designated to work full time as court-liaison officers. The Police Court-Liaison Officers would be assisted, where necessary, by civilian members of the police staff.

567. Court-liaison officers have already been designated to deal with some “Operation Kingfish” (major crime) cases and that experiment has proven to be successful. There is a need to expand this to all courts across the country. Apparently, the JCF does not currently have the capacity to train additional court-liaison officers. It will be essential to have court-liaison officers designated if criminal case management is to work.

568. Some of the functions of the Police Court-Liaison Unit were addressed under Part 6 with respect to their witness-liaison functions. The functions of the Court-liaison officers could include:

- Generally acting as the liaison between the investigating officers with the courts, prosecutors, and defence counsel.
- Reviewing each file to ensure that the correct charges have been laid and the investigation is complete.
- Attending at bail hearings to provide information to the courts about the circumstances of offences and about the accused persons.
- Following up on instructions given by prosecutors after early screening of files.
- Arranging the delivery of disclosure to defence counsel.
- Attending courts on all mention dates with the police files. This would alleviate the necessity of each investigating officer having to appear on every court date.
- Ensuring that proceeding dates are scheduled taking into account considerations such as

police officers' annual leave, witnesses' availability etc.

- Following up on requests for forensic reports witness statements, criminal records etc.
- Ensuring that prosecution witnesses have been subpoenaed and have been contacted before court. Assisting with the scheduling of witnesses and with their travel and other arrangements.
- Assisting in the scheduling of interviews by the prosecutors with investigating officers and witnesses.
- Ensuring that prisoners are transported to court in a timely manner.
- Liaison with Probation Officers and Victim Support Unit workers.

RECOMMENDATION 7.17

The Task Force recommends the establishment of effective Police Court-Liaison Units across Jamaica.

4. Transport of Detainees

569. Difficulties with transport of detainees for attendance in court is a serious problem that contributes to delays and the inefficient use of court time. The causes of these difficulties include: the fact that the police only have one vehicle for prisoner transport in the Corporate Area; that the vehicle frequently breaks down, and; the absence of detention centres in the regions.

RECOMMENDATION 7.18

The Task Force recommends that steps be taken to improve the timely transport of detainees for court appearances including by:

- increasing the number of vehicles available for this purpose and ensuring that they are properly maintained;
- reducing the number of detainees required for court by establishing video remand rules and facilities; and
- establishing regional detention centres.

G. PROCEDURAL REFORMS

570. Modernisation of the criminal justice process should also be accomplished through procedural reform. The reforms considered here address: (1) the threshold for commencing or continuing prosecution; (2) preliminary inquiries; (3) jury reform; (4) effective and efficient trials; (5) criminal appeals, and; (6) extradition.

1. The Threshold Test For Commencing or Continuing Prosecution

571. As noted above, criminal case flow management focuses on the early stages of the criminal justice process and the prosecutor has an important role to play as “gate keeper” to the formal justice system. One aspect of this process is the decision to commence prosecution. The threshold test upon which this decision is based is therefore very important.

572. The threshold test is not stipulated in legislation or policy and results in a fairly broad discretionary power on the part of the prosecutorial arm of the justice system. The absence of policy guidelines can also lead to, at least the perception of, inconsistent decision making in commencing or continuing prosecution.

573. The first criterion for this threshold test should involve a consideration of the evidence in the case and the second, a consideration of the public interest. While there is no uniformity on this issue, in many jurisdictions the first criterion involves a consideration of whether there is a “reasonable prospect of conviction”. The prosecution test utilized in some Commonwealth jurisdictions with respect to the first criteria is the so-called “51 per cent rule”. It provides that for a prosecution to proceed there must be at least a 51 per cent chance that it will result in a conviction. The Prosecution Policy of the Commonwealth of Australia states that: “a prosecution should not proceed if there is no reasonable prospect of conviction being secured”. This is the same standard adopted in Ontario. In the Province of British Columbia, where all charges have to be approved by a prosecutor, an administrative directive provides that no charge is to be laid unless there is a “substantial likelihood” of conviction.

574. The prosecutor’s review to determine whether the threshold test has been met includes an assessment of the probative value of the evidence, including some assessment of the credibility of witnesses and consideration of the admissibility of evidence. The threshold test will not be met where evidence necessary to the prosecution is obviously inadmissible. The review to determine whether the threshold test has been met also includes a consideration of any defences, for example alibi, that should reasonably be known, or that have come to the attention of the prosecution.

575. Once the threshold test for the sufficiency of the evidence has been met, it is necessary to ascertain whether prosecution is in the “public interest”. Currently, no policy guidance is providing on this strand of the test. The Task Force is of the view that this should be remedied as part of the reform process in order to improve transparency and consistency in the decision-making process.

RECOMMENDATION 7.19

The Task Force recommends that relevant agencies be consulted to develop a policy to guide the exercise of prosecutorial discretion to commence or continue prosecutions including the enunciation of the threshold test and the factors to be considered in reaching a decision.

2. Preliminary Inquiries

576. Preliminary inquiries contribute substantially to overall court delay. They are very time-consuming as the Resident Magistrate must record a “deposition” from each witness at the preliminary inquiry, read it back to the witness, and have the witness sign it. Witnesses are inconvenienced by having to attend court on several occasions. A consensus is emerging that something must be done to reduce the time taken up by preliminary inquiries. At the same time, it is important to acknowledge resistance to change and in particular to abolition of preliminary inquiries. Legislation to reform the preliminary inquiry has been initiated several times in the past (and is currently before Parliament) but has met resistance leading to abandoning of reform efforts.

577. The larger question is whether the preliminary inquiry continues to serve a useful purpose relative to the impact that it has on the criminal justice process. While preliminary inquiries do provide a “sifting process” they also place a large burden on witnesses (who must testify at the inquiry and then the trial if one takes place) and the Resident Magistrates Court. In the majority of cases, an effective charge screening policy could fulfil the functions of preliminary inquiries – and in a more cost-effective way.

578. Abolition or a drastic limitation of the situations in which a preliminary inquiry is available is a potential option in the longer term, particularly once the benefits of criminal case management and modernisation of the prosecutorial arm begin to be experienced.

579. A number of other reform measures could be undertaken to make preliminary inquiries more effective and reduce the drain that they pose on the criminal justice process. For example, the preliminary inquiry could be improved through reforms such as the introduction of a court reporting system since the transcript of the witnesses' evidence would replace the deposition. Other options include:

- Permitting the preliminary inquiry to be “waived” with the consent of both accused and prosecutor.
- A “paper” preliminary inquiry where the Magistrate only reviews the statements and reports without hearing any evidence.
- A preliminary inquiry that combines “paper” and viva-voce evidence.
- Permitting out-of-court “Examinations for Discovery” of certain witnesses to replace the preliminary inquiry.

RECOMMENDATION 7.20

The Task Force recommends that abolition of preliminary inquiries be phased in as criminal case flow management is implemented and once the ODPP has been modernised. As interim measures, the Task Force recommends that provision be made for (1) the waiving of the preliminary inquiry with the consent of both accused and prosecutor and (2) a short form preliminary inquiry that combines “paper” and viva-voce evidence.

3. Jury Reform

580. In Part 6, the Task Force made a number of recommendations concerning the selection of jurors, the management of the jury system and the treatment of jurors as public participants in the justice system. These jury reforms are a first priority. The Task Force has also received a number of submissions regarding the need to reduce the number of jury trials. However, views are sharply divided concerning the desirability to reduce the number of jury trials in order to make the justice system more effective and the desirability of maintaining jury trials as an important safeguard on the fairness of the justice system. Given the lack of consensus on this topic, the Task Force does not make any specific recommendations at this time. Instead, this Report contains a discussion of some of the options available for reform of jury trials.

581. The general experience is that jury trials normally take considerably longer to complete than trials by judge alone. However, at present the statistics to support this view are not available. Aside from concerns over the length of jury trials, there are strains on the community because of the large numbers of jury trials. The reluctance of members of the public to serve as jurors due to fear is a reality. It is increasingly difficult and time-consuming to empanel juries because of lack of jurors. The increase in the length and complexity of some criminal matters – especially those involving multiple accused – places further stress on the jury pool.

582. Given these difficulties, it has been suggested that steps should be taken to reduce the number of trials by jury. The number of jury trials could be reduced by increasing the jurisdiction of the inferior court (currently the RM Court) where trials are by judge alone as recommended in Part 5.

583. The Task Force has considered a number of potential options for jury reform. These are:

- The right to trial by jury could be limited to only a few of the most serious offences, in particular capital and non-capital murder and treason.
- The accused could be given the right to choose a trial by judge alone in the superior court as in the United States, Australia, New Zealand and Canada. Trial by judge alone, if defendants wish it, has the potential for providing a simpler, more efficient,

fairer and more open form of procedure than is now available in many jury trials, with the added advantage of a fully reasoned judgment. In Canada, an accused can make that choice in all cases except murder, for which the consent of the prosecutor is required for the trial to be by judge alone. In New Zealand, the judge is entitled to override the defendant's wish for trial by judge alone if he (the judge) considers that the public interest requires a jury, and all offences carrying a maximum of 14 years imprisonment or a mandatory life term must be tried by a jury.

- Replacing the jury trial for some or all Supreme Court cases with trial by judge sitting together with two lay members. There could be a tier of cases that do not warrant the cumbersome and expensive fact-finding exercise of trial by judge and jury, but which are sufficiently serious or difficult, or their outcome is of such consequence to the public or defendant, to merit a combination of professional and lay judges, but working together in a simpler way.

584. In his report on criminal justice reform in England and Wales, Lord Auld made the following recommendations concerning the option of a judge sitting with two “lay” members, that is representatives of the community:

- there should be a panel of experts, established and maintained by the Lord Chancellor in consultation with professional and other bodies, from which lay members may be selected for trials (In Jamaica, the lay members could possibly be the current Justices of the Peace);
- the nominated trial judge should select the lay members after affording the parties an opportunity to make written representations as to their suitability;
- lay members should be paid appropriately for their service;
- in a court consisting of a judge and lay members, the judge should be the sole judge of law, procedure, admissibility of evidence and as to sentence; as to conviction, all three should be the judges of fact;
- the decision of a court so constituted should wherever possible be unanimous, but a majority of any two could suffice for a conviction; and
- the judge should give the court's decision by a public and fully reasoned judgment.

585. It should be noted that, to date, Lord Auld's recommendations concerning the use of lay members have not been implemented in England and Wales.

586. A workshop on jury reform was held during the National Justice Summit and participants generally agreed that there should be some reduction in jury trials. As a group they agreed that some offences should be removed from list of those whose attract jury trials: infanticide and concealment of birth, certain offences under the Forgery Act, arson and bigamy.

With respect to other offences, the accused should be permitted to choose if he/she wants to be tried by judge alone. They also agreed that consideration should be given to making some offences “either-way” offences by giving prosecutor the choice of where to try the case.

4. Effective and Efficient Trials

587. The objectives of criminal case flow management are to reduce the number of trials, to enable the effective scheduling of trials, and to shorten trials. Procedural reforms can assist in attaining this last objective by contributing to effective and efficient trials. The following issues are considered in this section: (a) admissions; (b) unsworn statements from the dock, and; (c) effective management of trial time.

a. Admissions

588. In order to “streamline” trials and preliminary inquiries so that the focus is on the real issues in the case and valuable court time is not wasted, it is essential that the defence and the prosecution have the right to jointly admit non-contentious facts and thereby dispense with the formal proof of those facts.

RECOMMENDATION 7.21

The Task Force recommends that the rules of admissibility of evidence be amended to allow for the joint admission of non-contentious facts by agreement between the defence lawyer and prosecutor.

b. Unsworn Statements from the Dock

589. Jamaica is one of the few commonwealth jurisdictions that continue to permit unsworn statements from the dock by the accused, that is the accused is able to make a statement to the Court after the prosecution has presented its case but is not subject to cross-examination.

This practice has been maintained in part because of the concern that some accused are unable to articulate their evidence in any other way. However, the practice is disruptive to the trial because of the lack of disclosure to the prosecution. There is a general consensus that this archaic practice should be abolished. The underlying concern regarding the ability of the accused to testify should be addressed in other ways.

RECOMMENDATION 7.22

The Task Force recommends that unsworn statements from the dock be abolished.

5. Criminal Appeals

590. Very long delays are experienced in the criminal appeals process. In some cases, sentences have been completed before the appeal is heard. The greatest cause of delay in having matters heard by the Court of Appeal is the length of time it takes to receive the court record from the trial courts, particularly from the Resident Magistrates' Court. This issue should be addressed by the improvements recommended for court administration and the use of technology.

591. The process for commencing an appeal has a number of variations. Most apparent is the difference between commencing appeals from decisions of the RM courts. Commencing a RM appeal typically occurs by way of an oral request at the RM court. The actions required to perfect the appeal then falls on the RM and Clerk of the court. The RM starts the process and begins transcript production from the detailed notes made by the RM in court. A typist drafts the transcript, in no prescribed format, from the notes for edit by the RM before it is forwarded to the Court of Appeal. This can be a very lengthy process consuming a great deal of the RM's time. The Court of Appeal may not find out about the appeal until material shows up from the RM court or interim applications are brought to the Court. The Clerk prepares a "bundle" of material to be sent to the Court of Appeal.

592. Appeals from Supreme Court decisions are commenced with the filing of a Notice of Appeal within prescribed timeframes. The Court of Appeal is required to request a transcript. Multiple copies of transcripts, judgments and a copy of the judge's endorsement are sent to the Court of Appeal. Transcripts in criminal cases are prepared in a prescribed format.

593. Lawyers, with the Court's permission and on agreement of parties, may hire individuals to take the evidence in court. Occasionally, this record is transcribed and with the trial courts permission may be used as the transcript in the Court of Appeal. Close to 850 appeals are awaiting transcripts and materials from other courts to perfect them for hearing. Measures should be taken to address this backlog in transcript production on an urgent basis.

594. At present there is an anomaly in the law in that the prosecution does not have a right to appeal an acquittal based on error in law. This should be corrected.

595. Case management should be used in the criminal appeals process. In particular, a pre-hearing conference should be used to investigate the possibility of limiting issues, establishing time lines and placing time limits on oral submissions. Mediation should be integrated into the case management process.

RECOMMENDATION 7.23

The Task Force recommends that measures be taken to address the backlog in transcript production on an urgent basis in order to address delay in the appeal process.

RECOMMENDATION 7.24

The Task Force recommends that the Court of Appeal implement case management in criminal appeals including by:

- holding pre-hearing conferences to investigate the possibility of limiting issues and establish time lines for the appeal;
- offering mediation to resolve some or all of the issues on appeal; and
- placing time limits on oral submissions at the hearing of the appeal.

RECOMMENDATION 7.25

The Task Force recommends that the prosecution have the right to appeal an acquittal based on an error in law.

6. Extradition

596. The Task Force has heard that extradition requests by foreign states of Jamaican nationals take a long time to process through the courts. The *Extradition Act* provides that the application must be started in the Resident Magistrates' Court. Appeals to the Supreme Court and ultimately to the Court of Appeal are common. The Task Force believes that the process could be streamlined, without infringing the fundamental rights of accused persons, if extradition proceedings were commenced in the Supreme Court rather than the Resident Magistrates' courts. The Resident Magistrates' Courts are essentially constituted to deal with local justice matters and the Supreme Court is the forum more suitable to deal with requests by foreign states.

597. While there is a consensus that extradition proceedings should be commenced in the Supreme Court, a concern has been expressed about removing one level of appeal. Consideration should therefore be given to providing for a further appeal to the Judicial Committee of the Privy Council, at least on questions of law. The need for a second level of review should be considered within the context of the need to reduce delay in achieving a final result.

RECOMMENDATION 7.26

The Task Force recommends that the *Extradition Act* be amended to provide for extradition requests to originate in the Supreme Court. Consideration should be given to providing for a right of appeal to the Judicial Committee of the Privy Council on questions of law.

H. SENTENCING

598. One of the most common complaints heard by the Task Force, particularly from the public, had to do with inconsistency in sentencing. The perception is that there is “one law for the rich and another law for the poor.” It is important to acknowledge that there will always be some degree of disparity in sentencing. This is because no two fact-situations are alike and judges, being human, will have different views on matters. It should also be kept in mind that media reports that highlight disparities are not always complete in setting out the full circumstances of each case. This has a tendency to exacerbate the perception of inconsistency in sentencing.

599. With these important factors in mind, the achievement of greater consistency in sentencing remains an important objective of justice system reform as it serves to meet the

principles of equal treatment and enhanced certainty. The Task Force has identified a number of strategies and options that could assist in this regard:

- Organizing educational programmes on sentencing for judges. These are usually conducted by judges for themselves and can provide an opportunity for them to discuss common approaches to sentencing and building consensus.
- Changing the law to allow the prosecution to appeal sentencing decisions. Currently, in Jamaica, only the accused has this right. An appeal court can not only correct an inappropriate sentence but also provide direction and guidance to judges for future sentencing decisions.
- Narrowing the range of discretion that judges have in imposing the sentence in certain cases. In some countries this is done through amendments to the law that provide for mandatory minimum prison sentences for certain serious offences, for example, those involving the use of firearms.
- Setting out fundamental sentencing principles that all judges must follow in legislation. This has been done relatively recently in Canada by an amendment to the Criminal Code.
- Issuing sentencing guidelines for judges on an ongoing basis by an independent Sentencing Commission. This is the practice in the UK.
- Legislating sentencing formulas or “grids”. Through such a system a formula or calculation process is applied to the circumstances of the offence and the offender and the appropriate sentence is indicated. The Judge must impose that sentence unless he/she is able to provide a rationale for departing from it. This is commonly used in the US.

600. Steps should be taken to generate statistics concerning sentences imposed by Jamaican courts. This information will serve as an important basis for reform on this issue. A Working Group should be established to further develop options for sentencing reform. In workshop discussions, there was a strong consensus that guidelines were much preferred for minimum sentences.

601. One specific suggestion is to encourage the Court of Appeal to write more judgments on sentencing. The major restraint is that the appellate judges are overworked given that their complement has been expanded 1967 despite the virtual doubling of the population and doubling of Judges of the Supreme Court. One way of dealing with this is to have a dictaphone which the Court could use when delivering extempore judgments in criminal matters. The secretaries could then type the notes and submit to the judge for approval.

602. Like assessment of damages, when sentencing judgments begin to be produced then circulation will increase. Greater consistency, with appropriate recognition of cases which

need to fall outside of the norm, would be one result. In addition, a project could be undertaken by the Norman Manley Law School in which students are asked to scour the reported decisions of the Court of Appeal and write a case brief with the specific focus on sentencing.

603. The absence of a prosecution appeal against sentence means that there may be little motivation for some judges to provide explanatory reasons for their sentences where the dispositions are unlikely to be appealed by the defence. Hence, the public may remain largely uninformed about why these decisions were made, and this can contribute to public mistrust of the process.

604. In addition, there is clearly a need for more public information and media education about sentencing. Canadian studies have shown that public dissatisfaction with sentencing decisions was high until the decisions were explained to the dissatisfied members of the public, in which event public satisfaction skyrocketed.

RECOMMENDATION 7.27

The Task Force recommends that a Working Group be established to review and analyse sentencing statistics and jurisprudence and to further develop options for sentencing reform.

RECOMMENDATION 7.28

The Task Force recommends that steps be taken to achieve greater consistency in sentencing, including by:

- setting out fundamental sentencing principles that all judges must follow in legislation;
- organising educational programs on sentencing for judges; and
- amending the law to allow the prosecution to appeal sentencing decisions based on an error in the application of a fundamental principle of sentencing. The decision whether to launch an appeal should be made by the Director of Public Prosecutions or his designate personally.

RECOMMENDATION 7.29

The Task Force recommends that steps be taken to educate the public and the media about sentencing practices and outcomes.

605. Another important priority for justice system reform is the greater use of “alternative sentencing” for less serious offences, particularly for children. Alternative sentencing means sentences that do not involve a period of incarceration. There are adequate provisions for non-custodial sentences provided in existing criminal legislation. The problems relate to their imposition and enforcement and in particular to the lack of programmes to supervise community service and other types of alternative sentences.

RECOMMENDATION 7.30

The Task Force recommends that steps be taken to improve the manner in which alternative sentencing options, particularly for child offenders, can be utilized and to ensure that the courts are made aware of these options.

I. PROBATION

606. Probation plays an important role in the justice system and probation officers are an integral part of the criminal justice process. Like other justice system personnel, probation officers face a number of difficulties in carrying out their responsibilities because of lack of resources and infrastructure.

607. One of the major problems facing probation officers is that there is no national record keeping system that maintains data on whether a person has a criminal record, has outstanding charges, is on probation or on bail. This is a problem when probation officers have to prepare Social Inquiry Reports and supervise clients.

608. A second major problem is that there are no accessible rehabilitation programmes where clients may be referred by probation officers. For example, the residential addictions recovery programmes that exist in Jamaica are way too expensive for clients. Some non-residential addictions programmes exist in the jurisdictions where there are Drug Courts, but there are no Drug Courts in most areas.

609. Many clients suffer from mental illness and there are insufficient support services for these individuals. Since many of these individuals are not represented by counsel at trial, the issues of fitness to stand trial and mental capacity for criminal responsibility are seldom raised before the courts. There are no shelters or special residential facilities for the mentally ill who are on probation. There are no beds for the mentally ill in the general hospitals and access to

drug therapy is too costly to arrange. Probation officers receive no special training to deal with the mentally ill. Mentally ill offenders who are found unfit to stand trial or not criminally responsible by the courts are confined in prisons since there is no secure forensic ward for them at the psychiatric hospital.

610. Many probationers (more than 50%) are illiterate. There are no basic literacy classes or educational courses that clients can be referred to. There are also no job or skills training programmes. There are no programmes for those who have committed crimes of domestic violence and no parenting skills classes. There are no specialized programmes for sex offenders. There is only one shelter, in Kingston, for women who are victims of domestic violence.

611. Probation officers require more specialized training in order to deal with all of these situations and the diverse needs of probationers. Probation officers currently do not have the resources to specialize in areas such as dealing with children, drug addicts, sex offenders, domestic violence, and parolees. All probation officers deal with every type of case.

612. The police do not assist probation officers in enforcing probation orders. There are no formal liaison structures between the police and probation services. The police do not know who is on probation. Probation officers believe that it would be helpful to send probation orders to the police. Furthermore, the procedure for returning an accused to court for a breach of probation is very cumbersome. Consideration should be given to creating a separate offence of “breach of probation” in order to address this problem.

613. Justice system reform should also encompass improved working conditions for probation officers. Their caseload is too large - the recommended standard of 50 clients for every officer is too heavy to do an effective job. It is estimated that to do their work effectively there would need to be twice the number of probation officers as presently. One specific issue is that probation officers are given inadequate time to prepare Social Inquiry Reports, particularly in Circuit courts where it can be only one or two days. Personal safety of probation officers is a problem and there are no provisions to address this concern. Not surprisingly given these difficulties, there is a large turnover among probation officers which is attributed to poor working conditions and low salaries.

RECOMMENDATION 7.31

The Task Force recommends that rehabilitative programs for probationers be made available to address problems such as addictions, mental illness, domestic violence, sexual behaviour, anger management, skills training and illiteracy and that probation officers receive specialized training in these areas.

RECOMMENDATION 7.32

The Task Force recommends that a secure forensic ward be established in a psychiatric hospital to house and treat those persons found by the courts to be unfit to stand trial or not criminally responsible by reason of mental illness and that the laws and procedure that govern these persons be reviewed to ensure that only those who constitute a danger to themselves or the public are confined in institutions and that this issue is reviewed on a regular basis.

RECOMMENDATION 7.33

The Task Force recommends that the complement of probation officers be reviewed to ensure that their individual caseloads are not excessive considering the attention that they must give to their clients.

RECOMMENDATION 7.34

The Task Force recommends that protocols be established between probation officers and the police to ensure that probation officers have access to law enforcement information about their clients and that they work in a cooperative way to supervise persons on probation.

RECOMMENDATION 7.35

The Task Force recommends that more shelters for women and children who are the victims of domestic abuse be established across the country.

RECOMMENDATION 7.36

The Task Force recommends that probation officers be consulted with the view to finding ways to address issues related to their personal safety.

RECOMMENDATION 7.37

The Task Force recommends that the law be amended to provide for a separate offence for breach of a probation order.

J. DIVERSION, MEDIATION AND RESTORATIVE JUSTICE

614. Alternative dispute resolution processes including diversion, mediation and other restorative justice initiatives can play an important role in improving both the efficiency and quality of the criminal justice system.

615. The Government of Jamaica, and in particular the Ministry of Justice, is taking a leadership role in fostering restorative justice approaches within Jamaican society at large and within the Jamaican justice system in particular, building on the pioneering work and knowledge of the Dispute Resolution Foundation and partnering with other organizations such as faith-based groups, police and universities. Restorative justice is clearly a priority of reform efforts. These initiatives have included: training, public education, the implementation of various programmes and policy development. The discussion on restorative justice in this Final Report is intended to be a contribution to this ongoing initiative.

616. In general terms, the Task Force is of the view that there should be increased use of diversion, mediation and other restorative justice processes and that these should be effectively integrated through statutory and policy frameworks. These processes can relieve the courts of their responsibility for dealing with certain matters and at the same time provide for more satisfactory outcomes for everyone concerned. The community has a major role to play in facilitating these alternative approaches to dispute resolution.

1. Diversion

617. “Diversion” is the exercise by the police of their discretion not to institute criminal charges, or by the prosecutors not to prosecute some individuals involved in less serious offences despite the existence of sufficient evidence. Instead, it is considered to be in the interest of the individuals, and not contrary to the “public interest” to use some form of “alternative measures” to deal with them. Diversion provides greater benefit, in most cases, to the offender, victim, and society than the formal criminal process.

618. Diversion also reduces the number of cases that proceed through the formal criminal court system and helps to concentrate scarce judicial resources on serious crime. The

exercise of the discretion to divert must be “transparent”, based on sound principles, and subject to written guidelines and standards adopted by the police and prosecutors.

619. Diversion can have the following benefits:

- Frees up the courts to deal with more serious cases.
- Avoids the stigma of a criminal record for individuals.
- Avoids the need for victims and witnesses to attend court.
- In some cases it may allow offenders to access programmes to address their behaviour.
- In some cases it may provide restitution to victims.
- Provides opportunities for the application of “restorative justice” principles.
- May promote good relations between the police and the community.

620. Examples of “alternate measures” include:

- Police Cautioning;
- Referral to programmes such as substance abuse programmes;
- Community Justice Centres;
- Victim offender mediation;
- Connecting mentally ill offenders to the health care system;

621. Some diversion practices, such as a warning administered by a police officer, may be very informal while others can be much more formal and structured. An example of a formal programme is “Caution plus” or “conditional cautioning” that is widely used in some countries. In Scotland there is the ‘fiscal fine’ where the prosecutor fiscal, with the agreement of the offender, may administer a caution and impose a fine for a narrow range of minor offences as an alternative to court proceedings. Similar and more extensive provisions exist in many European countries. In Germany, for example, the public prosecutor may, with the consent of the court, caution for lesser offences, subject to the accused agreeing to one or more of four conditions: to pay compensation; to make a payment to a charitable organisation or to the Treasury; to do charitable work; and to provide support to someone or something. Other European countries have similar systems, some extending to wider ranges of offences and including other conditions, for example, the commission of no further offences within a set period.

622. Years of experience in many jurisdictions around the world and in Jamaica have clearly demonstrated that diversion programmes reduce rates of recidivism and reprisal.

623. Diversion, at different stages of the criminal process, may incorporate a restorative justice approach. Restorative justice issues are discussed below.

624. Diversion may occur at the following stages in the criminal process:

- before charge, in cases identified by the police and/or prosecutor in accordance with general criteria or guidelines, and subject to return to the criminal justice system if the diversionary disposal fails;
- between charge and first appearance in court, in cases identified by the prosecutor and, again, subject to return to the criminal justice system if the diversionary disposal fails;
- at or after the first appearance in court and during the pre-trial process, in cases identified by the parties and/or the court.

625. Many countries use diversion and restorative justice approaches to deal with young offenders. In Canada, the *Youth Criminal Justice Act, 2002*, contains a broad range of alternative ways of dealing with youth in conflict with the law.

626. Some diversion measures are already employed in the Jamaican justice system including referrals to mediation at the discretion of Resident Magistrates under the Resident Magistrates Court (Amendment) Rules of 1999 and the Act to Amend the Criminal Justice (Reform) Act of 2001, and procedures utilised by the Drug Court. However, there is considerable room for expansion and these methods should be used on a more extensive basis and integrated into the justice system in a more systematic way. A formal diversion programme would entail the offender, the victim and family and community where relevant, being referred to a body, individual, institution and/or agency set up by the Jamaican government to provide non-judicial dispute resolution. A Diversion programme should take into account the circumstances of the offender, the nature of the offence and the circumstances of the offence.

627. The following options have been identified through the research and consultation process:

- Diversion could be successfully applied to certain summary offences, offences under the *Larceny Act, Town and Communities Act* and minor offences under the *Offences against the Person Act*.

- Both the police and prosecutors have a role in dealing with cases by way of diversion.
- Many people come into contact with the criminal justice system as a result of their use of alcohol or illicit drugs. This is an area where diversion programmes may be appropriate.
- Diversion programmes are appropriate for young offenders.
- Diversion programmes may be helpful in dealing with mentally ill offenders.
- Establish a link between the courts and the National Council on Drug Abuse in order to create a diversion programme where instead of sentencing drug offenders they are rerouted to the National Council for their prevention and treatment programmes. This would be helpful in the areas that do not have a Drug Court.
- More research needs to be conducted into the specific needs and the nature of drug offenders in order to properly assess how to engage them in diversion programmes.
- There needs to be more focus on the health needs that are responsible for some criminal behaviour.
- Develop a national approach to community service. This could be done by creating a national body which acts as a liaison between the Community Service Organisations and the Courts. The law should provide that certain specified offences be normally dealt with by community service.

628. In some countries, including Canada, community-based Youth Justice Committees play an important role in providing advice, guidance and insight to the formal justice system in developing appropriate alternative measures for youth sentencing. The delivery of diversion programmes can also be done through problem-solving courts such as the Family Courts/Children's Court, the Drug Court and the Mental Health Court discussed in Part 5.

629. The Ministry of Justice is finalising its National Plan of Action for Child Justice and it is anticipated that this will include a more fulsome diversion programme for youth. Diversion should also be utilised to a greater extent in respect of adult offenders and should be integrated into criminal case management processes.

RECOMMENDATION 7.38

The Task Force recommends that a national programme on “Diversion” be established to include the following features:

- the factors to be considered in selected offenders for diversion including the nature of the offender, and the circumstances of the offence;
- supported through informal local arrangements between police, prosecutors, and social agencies;
- supported by local justice centres;
- the point of intervention of diversion programmes in the criminal justice process should be as early as possible, either before a charge is laid, before trial, or even during trial;
- the diversion programs should be adequately resourced including through trained staff and competent providers; and
- an education campaign should be mounted to inform justice system personnel and the public about the value of diversion and to provide accurate information about the program.

2. Mediation in Criminal Matters

630. Mediation referrals by Resident Magistrates are one example of best practices that have been established by these Courts despite the incredible strains that they face. More criminal matters are referred to the Dispute Resolution Foundation by the RM Courts than civil matters.

631. The following weaknesses of the current mediation practices of the RM Courts in criminal matters have been raised during the research and consultation process:

- The procedure is under-utilised

Attorneys-at-Law and police officers do not demonstrate an awareness that a mediation order may be made in respect of the offences set out in the second schedule of the Act. In addition, a mediation order is sometimes sought in respect of offences which do not appear in the schedule.

- Time limits subject to court's discretion

The Act does not establish any guidelines to be adopted by the court in determine what time limits should be imposed for the conclusion of the mediation. This is a problem, given the limited resources and time constraints of mediators.

- No-one identified with responsibility for co-ordinating mediations

The Acts do not refer to the DRF as the body responsible for co-ordinating the mediation though this is the most frequent procedure as this is the only Jamaican institution established for providing mediation. Neither does it appoint a clerk or other responsible officer of the court to co-ordinate the mediation and advise the accused, who may be unrepresented.

- Lack of uniformity with other mediation rules

The Supreme Court Rules have the most up-to-date model. However, the ease and flexibility of the RM models should be maintained in any streamlining of procedures. The experience over the last 10 years as to key issues and concerns should be reviewed and appropriate amendments made.

632. The time has come to develop a best practices protocol to guide mediation in criminal matters in the RM Courts. The protocol could include the following elements:

- Both the victim and offender must participate voluntarily and on the basis of informed consent or on order of the judge.
- Both the victim and the offender (especially the offender) should be advised that he is entitled to obtain legal advice before agreeing to participate in mediation.
- Both the victim and offender with their attorneys where represented should be involved in making decisions about the procedure to be adopted.
- The DRF or other facilitator should ensure that the mediator is an impartial third party, who is not aligned to either the victim or the offender. This mediator should also have the appropriate levels of skill, training, knowledge and experience to handle the matter.
- Mediations between victims and offenders are dialogue-driven and not agreement-driven. For this reason, the victim and the offender should be allowed to do most of the talking and accommodated in the expression of their feelings.
- All participants should respect each other's right to terminate the session if the safety of a participant (especially the victim) is compromised, there are disputes about facts or any participant does not want to continue.
- The mediator must be trained to respond to the cultural diversity of the participants in the process.

- Mediation is a confidential process and the parties should be advised at the start that personal information (i.e. contact details) will not be disclosed without their consent and that the information and matters discussed at the mediation will be confidential. However, the mediation should be limited to the offence which was the subject of referral to mediation. Where parties have multiple issues in the court, they could be consolidated in the mediation referral. Participants should therefore be advised at the start of the mediation that the police may be informed if any other offence is disclosed.
- The outcome of the mediation must reflect the consensual position between the participants, and this must be communicated to the court by the DRF or other facilitator, where the matter was referred by the court. While this outcome may inform the decision of the court, the court is not required to follow or confirm it, and this should be known to the participants at the start of the mediation.
- The participants should be monitored by the court to ensure that agreed action is taken or restitution provided. In the absence of such monitoring, re-victimisation may result.
- Mediation outcomes should be monitored broadly by court researchers on a sample basis to allow for evaluation of this process and to assist in further refining this protocol. A similar study should be done for judgements.
- There should be an appropriate opportunity for feedback. This feedback should be encouraged, perhaps on the basis that it is anonymous. In this way, it will inform the need for improvements in the process, whether there is need for further advice and support for the victim or offender and may provide an ideal opportunity for participants to show their appreciation for the process.

633. One specific issue to be addressed is the charge for mediation in the criminal context currently between \$1,000 and \$2,500 Jamaican dollars per party for a three-hour session. Many accused and victim complainants cannot afford mediation services. Consideration should be given to increasing the amount of government funding for mediation.

RECOMMENDATION 7.39

The Task Force recommends that a best practices protocol be adopted to guide mediation in criminal matters based on local and international experience. Consideration should be given to providing more government funding for mediation services.

3. Restorative Justice Initiatives

a. Restorative Justice in Jamaica Today

634. The JJSR civil dialogue identified that a key approach to justice system reform was the need to embrace a culture of peace and justice:

Interventions that focus on the social context within which the justice system operates reduce the ‘demand side’ of court capacity. This is a reality that must be addressed in today’s Jamaica, as rates of violent crime and civil disputes are inordinately high. Too many of these demands on the court arise from disputes that could have been resolved had a culture of discussion, listening, positive values and respect prevailed.

635. This approach shares the same philosophical underpinnings as the Restorative Justice Movement. In the Restorative Justice Movement crime is viewed fundamentally as a matter of broken relationships between people rather than as actions “against the state”; the movement is therefore concerned with transforming the focuses of the traditional justice philosophy away from rules, laws and “offenders alone” towards a concern about:

1. The harm done to the victim. That is the changes in material, emotional (trauma, questions and fears to be addressed and the sense of loss of control over one’s life) and community life that occur as a result of crime and sustained exposure to high levels of conflict.
2. Offenders accepting responsibility and recognising the impacts of their actions.
3. Enhancing healing and responsibility taking by face-to-face or proxy dialogue involving those impacted by or with a stake in resolving crime issues.

636. As a consequence, the focus and definitions of justice shifts from the traditional and formal questions of what law was broken, who did it and what should be done to them, to who was harmed? Who should be held accountable and what voices should be offered an opportunity to be heard in the course of healing the harm caused?

637. Leadership of the courts will be critical to rely on legal classifications of offences and insist on involvement and control of traditional justice system players, who may otherwise militate against the impacts desired.

638. A contributing factor to the high levels of violent crime in Jamaica is the phenomena of victim-initiated offences. The power of criminal networks in some communities, lack of understanding or trust in the justice process has resulted in a propensity for vigilante acts of violence – commonly referred to as ‘jungle-justice’ – and reprisal killings. This provides scope for the strong impact of restorative practices, which may have the effect of redirecting victims and the wider community affected by a crime away from the desire for vengeance.

639. Practitioners who interface regularly with victims have noted that the question of restitution is commonly raised. Requests are also often received from victims who wish to talk to the offender to achieve a sense of closure and forgiveness. Contributing to this need is the low percentage of criminal cases that are ‘cleared-up’, which means that many victims and offenders, particularly in unsolved murder cases, will not benefit directly from the intervention of the courts.

640. It is also noted that in Jamaica criminal offenders often operate in groups or gangs, and these group crime members may need to be involved in a restorative process surrounding the criminal acts of individual members.

641. In moving forward, restorative justice must be seen as a tool that empowers the victim, rebuilds community and engages citizens directly in the administration of justice.

642. Since 1994, the work of the Dispute Resolution Foundation has integrated training, restorative justice principles and practices into its work. The Dispute Resolution Foundation provides mediation services in civil and criminal matters, as well as community-based conflict resolution and restorative justice.

643. The Department of Correctional Services has developed diversion programmes through its probation division; other restoration-oriented court-based services, such as strong social enquiry reports and services to victims, offenders and their families; and community-based services including those relating to the re-entry of offenders. Chaplains are trained to meet with

offenders, victims and community residents to determine the scope for the reintegration of the offender into the community. There have also been instances in which victims request a meeting with an offender to express forgiveness. These processes are informal, but pave the way for more formal restorative justice practices to be developed and implemented.

644. Other restorative practices currently employed within the justice system are even less formal. A prosecuting attorney may, in sympathy, engage in ongoing discussions with a victim that facilitate the ‘unanswered questions’ that are not typically raised at trial. A judge may also enable a similar process.

645. Churches and other civil society organizations carry out acts that are restorative in nature, even if not intentionally so. Some new service providers include the Northern Caribbean University and the International University of the Caribbean, have become involved in exploring the application of restorative practices in different fields.

b. Towards a Restorative Justice Policy

646. One of the challenges that a policy on Restorative Justice must address is the task of moving victims from the periphery to the centre of the process. This requires the establishment of facilities that victims can readily access in order to find out about, initiate or participate in a restorative justice process. This could be achieved through:

- an expansion of the functions of the Victim Support Unit to protect victims;
- the extensive marketing of restorative justice concepts and services;
- the expansion and support of the network of Peace & Justice Centres initiated by the DRF across Jamaica and of training;
- engaging the faith-based community and other community-based organisations (CBOs) by training their staff to provide conference circles and other services.

647. In these ways the wider benefits of a restorative process could be used to promote restorative justice as a valuable option. For example, the victim may gain greater confidence to give evidence in court and the offenders may be better able to take responsibility and be accountable for their actions.

648. The following factors will have to be considered in further detail by the Ministry of Justice in determining the scope of a tailored restorative justice policy:

- **How to handle matters that are initiated simultaneously in both civil and criminal courts:** This will require improved record-keeping, as well as the coordination of services across the civil and criminal divisions.
- **The integration of services provided directly by the government with those outsourced to key partners:** Implementation will undoubtedly involve further collaboration with capable partners who can provide training and coordination of restorative services at the national and community level. The level of funding and support provided to these partners, as well as the administrative mechanisms in place to facilitate smooth integration of services, will have to be reviewed.
- **Which government department is best positioned and equipped to initiate and/or coordinate restorative justice interventions:** Likely candidates include the courts, the Office of the Director of Public Prosecutions, the Jamaica Constabulary Force (for their key users) and the Victim Support Unit.

Note that the agency that initiates the process, or determines the suitability of restorative justice to a particular case, may not be the same agency that coordinates or implements the intervention.

- **The factors that must be considered and investigated in order to determine the appropriateness of a restorative justice intervention:** The key initial issue is whether there will be any threat or harm to the victim or any destruction of the accused's legal rights.

Procedures in the preparation and screening process could therefore include the following, particularly for severe violence mediation:

- Interview the victim's family and members of the community
 - Interview the offender's family, supporters or co-offenders
 - Review court notes (where relevant)
 - Collect and review newspaper clippings related to the offence.
- **Which parties should participate:** A list of multiple victims and offenders must be collated and, depending on the particular process being undertaken, a list of family and community members who may also wish to participate. The managers of the process, therefore, need to be knowledgeable and flexible.
 - **How to effectively monitor the system:** This may be a multi-agency effort and could involve monitoring and evaluation at the micro-level for process and outcomes of individual cases, as well as the macro-level for evolution of restorative practices and their statistical impact on crime and justice. The monitoring mechanism should provide for continuing improvements and modification of policies and practice guidelines, in response to lessons learnt.

649. Van Ness¹⁰ offers an analysis of the following structures through which Restorative Justice has been implemented:

1. A unified system in which all cases are handled in a restorative manner. Restorative Practices are embedded in the criminal justice system and the operations of state agencies.
2. A dual track system in which restorative justice programmes are provided by stand alone organizations. These programmes would stand as a co-existing alternative to criminal justice and be formally recognized, approved or accredited. This would include options to intervene in cases where communities or witnesses are uncooperative/resistant to state involvement in investigation of crime.
3. A safeguard model in which most cases are handled in a restorative manner, but certain cases not amenable to restorative interventions are handled by the familiar contemporary processes

650. Jamaica's experience of mediation referrals to community based service providers as tested under the Social Conflict and Legal Reform project, the Citizens' Security and Justice Programme and the Jamaica Social Investment Fund is strong reason to use a similar approach. We therefore propose Strategy # 2.

651. The following stages of intervention, as defined by Lord Auld in the Review of the Criminal Courts of England and Wales (2001), are being recommended by the Working Group for inclusion on Jamaica's Restorative Justice Policy:

- (1) ***Before charge***, in cases identified by the police and/or prosecutor in accordance with general criteria or guidelines, and subject to return to the criminal justice system of the diversionary disposal fails;
- (2) ***Between charge and first appearance in court***, in cases identified by the prosecutor and, again, subject to return to the criminal justice system if the diversionary disposal fails;
- (3) ***At or after first appearance in Court and during the pre-trial process***, in cases identified by the parties and/or court, and with the approval of the court;
- (4) ***After conviction***, in cases identified in the judicial process by the parties and Probation Service..., possibly including a conditional withdrawal of the conviction from the record;

¹⁰ Van Ness, 2000 quoted by Restorative Justice Online at <http://www.restorativejustice.org/intro/tutorial/systemic/modeling> (accessed 4th February 2007)

(5) *In sentencing, as a complement or alternative to traditional court disposals; and*

(6) *After sentence, in cases identified by the parties and Probation and/or Prison (Correctional) Services... through a conditional process of vacating of the conviction and/or sentence.*

652. The one stage not specifically identified by Lord Auld is the use of restorative processes at the parole and re-entry stage, to determine suitability of the offender to be reintegrated into the community. This may relate to a reluctance to have the potential of a “reward” manipulate participation and to rather rely on the analysis of the Department of Corrections in determining the scope and suitability of reintegration. This is a key phase for restoration, however, if the reward factor is excluded.

653. Another way of looking at the stages for inserting restorative justice interventions is set out in the diagram below.

Diagram 2: Inserting Restorative Justice Interventions into the Justice System

WHEN	TYPE OF INTERVENTION
Pre Court Diversion	<ul style="list-style-type: none"> ▪ Panels ▪ Family Conferencing ▪ Youth Offending Teams
Alternatives to Custodial Sentencing	<ul style="list-style-type: none"> ▪ Sentencing Circles ▪ Family and Business Mediation ▪ Community Service Orders
Post Sentencing interventions during incarceration	<ul style="list-style-type: none"> ▪ Severe Violence Mediation ▪ Victim Awareness Courses
Post release support systems	<ul style="list-style-type: none"> ▪ Reintegration Panels ▪ Ex Offender Assistance

In addition, Lord Auld opines:

“...It is, in my view, important to have a machinery for symbolic and practical involvement of the courts as the representative and ultimate protector of society for this purpose, in:

- *determining whether diversion from the traditional court process is appropriate;*
- *in protecting defendants and victims from bureaucratic oppression or insensitivity;*
- *in ensuring that defendants and, where appropriate, victims are heard and that both are treated fairly;*
- *in monitoring and, where necessary, ensuring compliance with agreed forms of disposal;*
- *where there is default, in bringing the matter back to court; and*
- *over-all, in securing fair and proportionate outcomes.”*

654. The types of offences to which Restorative Justice will apply should be carefully considered. While guidance can be had from the practices of other jurisdictions, in depth research and analysis needs to be conducted regarding the Jamaican situation and experience since 1994 when these services began to be offered in a formal way and, in particular since 2001, when the provision of these services have greatly increased. Best practices and constraints should be identified and should guide policy development. Note for example that while in Canada, mediation is not seen as appropriate for domestic disputes, the Dispute Resolution Foundation receives and resolves many such cases. The Resident Magistrates island-wide have used the legislative framework and their best judgment to give access to victim offender conferencing to thousands of users of the criminal courts over the past 10 years. This experience can assist in the direction for expanded restorative justice training and services.

655. The consideration as to the stage at which a restorative justice process is best introduced is also relevant. In rape cases, for example, a pre-trial victim-offender mediation or circle conference could be problematic; however, a similar process conducted after trial but before sentencing could help in healing the wounds of those affected. The offence of murder is also thought to be inappropriate for a restorative justice intervention at the pre-trial stage, but rather at the pre-sentencing and parole stages.

656. The development of a National Restorative Justice Policy should include special attention to implementation needs along these lines: institutional needs; public education needs; research needs; legislative needs; training needs and, resource needs.

657. As mentioned before, the establishment or expansion of publicly financed and supported victim-oriented facilities will be necessary in setting the stage for greater victim involvement in the justice process. Services provided should include victim impact assessment.

Monitoring, evaluation and coordination will also benefit from a dedicated unit with responsibility for providing oversight and multi-agency coordination, as well as ongoing research and policy development.

658. Public funding to conduct a broad-based marketing campaign for restorative justice is also essential to successful implementation. Lack of understanding within the community of restorative justice and its possible outcomes, such as

- victim satisfaction
- reduction of reprisal killings
- improved confidence in the justice system
- increased engagement of citizens in the justice system

could lead to underutilization. The UN mandate and local and international experience should be included.

659. Further information is needed on the impact of restorative practices that have been applied – formally and informally – in the wider justice system. Impact assessments conducted on the Dispute Resolution Foundation and its affiliates and centres such as those in Hanover, Trench Town, St. James and Spanish Town and the Correctional Services Department nation wide, and which include case studies, reprisal and recidivism research, would be apt. Outcomes could be publicised to help to promote restorative practices and their potential impact on Jamaican crime and justice.

660. Further research and analysis is also needed to determine the types of offences to which restorative justice will be applied.

661. Research parameters should include identifying best practice in operation in other jurisdictions, as well as an assessment of local experiences to determine the appropriateness and implementation strategy of such practices for Jamaican conditions. As a research outcome, a matrix should be created that delineates the offences to which restorative justice will be applied, the stages at which restorative justice may be introduced and the actors who will be responsible for initiating and/or coordinating each restorative justice interventions, as well as the body that will have oversight and conduct monitoring, evaluation and policy development.

662. There is need to review existing legislation to provide broad mandates, introduce protection mechanisms and ensure consistency.

663. The Ministry of Justice, in collaboration with trusted and experienced local partners and supported by international practitioners, is key to the development and implementation of a sustainable public education and training programme, based on an appropriately funded training plan.

664. The range of actors involved in the administration of justice – judicial officers, Lay Magistrates, court staff, lawyers, the Justice Training Institute, prosecutors, the Victim Support Unit, the media, Ministry of Justice officials – must be trained to understand and support restorative justice practices. The need for internal marketing and discussion of the benefits of restorative justice to these actors and their clients cannot be over-emphasised, as their buy-in will have a direct bearing on the success of implementation.

665. Stakeholder training and sensitization workshops should be conducted at the parish level in support of a national roll out to include local courts and communities. The input of the Dispute Resolution Foundation working with the courts, the Correctional Services Department, the Victim Support, the Justice Training Institute, Associations of Justices of the Peace, Crime Committees, Peace & Love in Society (PALS), the Peace Management Initiative, churches, universities, the Police Mediation Unit, political parties, schools and other key stakeholders all working together under the oversight of the Ministry of Justice, will be invaluable here. These agencies can identify the success of restorative practices that have already been introduced within the wider justice system, thus promoting the acceptance of restorative justice and its relevance to Jamaican society.

666. The range of sensitization training offered nationally and tailored to different groups and interests could include at a minimum –

- Introduction to restorative practices
- Introduction to conferencing
- Restorative Justice in the court system
- Community-based restorative practices – designing and implementing programmes
- Faith-based groups as enablers of restorative programmes

- Restorative Justice issues and approaches for courts, Office of the Director of Public Prosecutions, Police and Correctional Services
- Restorative practices for serious offences
- Introduction to the legislative and policy framework for restorative practices
- Philosophy and skills for the restorative practitioner
- Restorative prevention and responses for school conflict and violence
- Building a restorative nation – engaging the public, private and civil society sectors and citizens in healing
- Facilitation and neutral skills for restorative practices programme
- Restorative Justice in the Dispute Resolution continuum – victim-offender conferencing.

667. The Jamaican Restorative Justice Policy will also have to be adequately resourced. To once again quote from Lord Justice Auld in his Review of the Criminal Courts of England and Wales –

“Restorative Justice in the short term is expensive in the range and level of resources necessary to give it a chance of success. However, there is experience in Canada, Australia, New Zealand, parts of the USA and other countries that proper investment can secure significant long-term and wide spread savings to the community in the reduction of crime. Immediate and adequate commitment of resources by all the necessary agencies at the diversionary stage and maintenance of them thereafter is the key to successful restorative justice schemes. Lack of such immediacy and resources has blighted or impeded many initiatives already in the system.”

668. The appropriate funding through public, private and civil society resources is vital to an integrated and comprehensive array of restorative justice services and restorative practices to be available in Jamaica, with the approval and oversight of the Ministry of Justice.

669. Intersecting strands in government policy, citizens concerns about access to justice and the need for new measures to tackle violent crime, the developing capacity of Community Based Organizations to deliver alternative non-violent conflict resolution interventions and international recognition of the value of restorative and community based justice are coalescing to provide a unique opportunity for a more formal application of restorative justice in the Jamaican Justice System.

670. There is great support and enthusiasm for a full range of restorative justice practices and services to be underpinned by appropriate training and protection of the rights of all and attention to the special needs of the vulnerable.

RECOMMENDATION 7.40

The Task Force recommends that the following elements be integrated into a national restorative justice policy initiative led by the Ministry of Justice:

- a dual track system in which RJ programs are provided independent of the criminal justice system as well as a component of the system;
- various models should be employed but emphasis should be placed on adapting process facilitation models developed elsewhere to the Jamaican context;
- specific attention should be paid to:
 - how to handle matters that are initiated simultaneously in both civil and criminal courts;
 - the integration of services provided directly by the government with those outsourced to key partners;
 - which government department is best positioned and equipped to initiate restorative justice interventions;
 - which organization or department is best positioned and equipped to coordinate and provide
 - ❖ restorative justice training
 - ❖ restorative justice sensitization
 - ❖ restorative justice services
 - the factors that must be considered and investigated in order to determine the appropriateness of a restorative justice intervention;
 - which parties should participate;
 - how to effectively monitor the system; and
- a consideration of implementation requirements including: institutional needs; public education needs; research needs; legislative needs; training needs, monitoring and resource needs.

PART 8 - CIVIL JUSTICE REFORM: TRANSFORMING PRACTICES AND LEGAL CULTURE

671. Part 8 sets out recommendations for the reform of civil justice practices, processes, procedures and legal culture with a focus on reducing delay and increasing access and effectiveness.

672. Significant steps have been taken to address delay in civil matters at the Supreme Court through the adoption of revised Civil Procedure Rules (CPR) that incorporate case management and automatic referrals to mediation. The Court of Appeal has adopted complimentary reforms. While some progress has been made, much work remains to be done to ensure the realisation of the full benefits of these important reforms. In particular, it is essential that steps be taken to improve the support structure and practices and transform the legal culture to facilitate the full implementation of the new court rules in the Supreme Court and the Court of Appeal. In addition, the rules for the RM Courts should be modernised along the same principles as the new CPR.

673. The second major area for civil justice reform is to increase access in relation for civil matters in forums other than the Supreme Court. A lack of accessible mechanisms to quickly resolve disputes between individuals is unfair to persons of modest means and can sometimes lead to violence. While we do not have statistics on this point, the general consensus is that this is particularly true with respect to land disputes.

674. The third major area for reform is the issue of enforcement of civil judgments. A modern justice system must encompass effective mechanisms for the enforcement of legal remedies.

A. CAUSES OF DELAY IN THE EXISTING CIVIL JUSTICE SYSTEM

675. The following main causes of delay in the civil justice system were identified in the JJSR research and consultations:

- automatic case management for every case can contribute to delays because there are insufficient human resources to handle new responsibilities such as Case Management conferences;

- criminal matters take precedence over civil matters in the RM courts and the RM Courts are overburdened leaving relatively little hearing time for civil matters;
- the fact that judges and Resident Magistrates have to write every word of the evidence in trial matters in Jamaica and that the judge’s note is the record;
- insufficient time is allotted to the writing of judgments;
- the organisation and staffing of the civil registry cannot meet the current demands;
- there is no formal case flow management of civil matters in RM Courts;
- the increased volume of documents and movement of files necessitated by the new CPR places greater strains on the outdated file management system leading to greater opportunities for misplacement of both documents and files; and
- the mechanisms for fast-tracking urgent matters is insufficient resulting in long delays for injunctions.

676. Some of these causes of delay have been addressed in earlier parts of this report which set out recommendations dealing with court administration and organisation issues including the introduction of a court reporting system in every court, improved court filing systems, providing judges with judgements weeks on a regular basis and so on. The discussion below will focus specifically on additional recommendations in support of civil justice reform.

677. The JJSR Court Administration Project is in the process of analysing the existing caseload in Jamaican Courts to determine the age of pending cases. This process will help to identify the “backlog” in civil matters – that is the cases that have been in the justice system for an unacceptably long time. There is a strong perception that there are too many old matters clogging up the system, which should really be removed from the system.

678. The Supreme Court took some steps to identify and deal with these older cases in conjunction with the introduction of the new Civil Procedure Rules. However, a more comprehensive approach is required in order to relieve the Court of this burden and clear the path for the timely disposal of new cases. Once the court data has been analysed to identify the actual backlog, a specific backlog reduction strategy should be established and implemented in both the Supreme Court and the RM Courts. A range of approaches should be taken to reducing and eventually eliminating the backlog including: “call-over” court sessions, settlement week, aggressive case management strategies, temporary backlog courts, backlog initiative teams, targeting long-outstanding cases, and hiring lawyers or retired judges as part-time judges.

RECOMMENDATION 8.1

The Task Force recommends the implementation of a focused backlog reduction strategy for civil matters within a limited time frame in both the Supreme Court and the Resident Magistrates' courts. Consideration should be given to using a range of approaches which are to be appropriately resourced including by:

- mobilising sufficient judicial resources through the engagement of qualified individuals on a part-time fee paid basis;
- strong administration and research team to identify an review backlog and support the strategies;
- mediation blitzes to address large numbers;
- prevention of new backlog;
- appropriately funding current and new programmes to prevent backlog;
- public education; and
- mobilizing the Bar to assist by articulating the benefits of participation for their clients and for their practices.

B. MODERNISATION OF RULES FOR RESIDENT MAGISTRATES COURTS

679. The revision of the Rules for Resident Magistrates (RM) Courts is currently underway. However, the emphasis in the current revision is on updating and simplifying the language of the rules. The Task Force recommends that these Rules be further amended to integrate simplified rules of procedure for civil cases that would promote better case management. In order to promote accessibility, especially by unrepresented persons, the RM Court Rules should remain much simpler than the new CPR.

680. At present, many Resident Magistrates utilise case management in an informal way by, for example, encouraging litigants to focus on what the real issues are and to consider whether the matters could be settled, disposing of some matters quickly on return days and giving a time period for exchange of documents in others. These approaches are working well and have helped to reduce delay to some extent. However, case management should be promoted in all RM Courts through revised rules. The rules revision should be carried out in consultation with interested parties.

681. At present, the RM Courts may refer any civil matter to mediation solely at their discretion. However this facility is under-utilised especially relative to mediations in criminal matters. In 2005, nearly 4 times more criminal matters were sent to mediation than civil matters. Steps should be taken to increase the use of mediation in civil matters within the RM Court jurisdiction. These could include: providing that parties can consent to mediation; stipulating a limited time period within which mediation ought to occur; and addressing the issue of the cost of mediation, including possibly the use of pro bono mediators for those parties who cannot afford to pay.

682. One pressing issue is the limited nature of the summary disposition mechanism in the RM Court Rules. At present, the Resident Magistrate can strike a matter out if the Plaintiff does not appear and this power to should be extended to other situations in order to speed up the flow of cases.

683. The discussion and recommendations made here concerning the need for an improved support structure to facilitate the CPR will apply with equal force to the implementation of the new Rules in RM Courts despite the differences in jurisdiction. In particular, it will be important to have a court official, other than the RM, to assist parties early in the process to “sift” through the matters and assist the parties in determining which cases can be settled with resort to a trial.

RECOMMENDATION 8.2

The Task Force recommends that the Rules for Resident Magistrates Courts be substantially revised to include simplified procedures that integrate case management.

RECOMMENDATION 8.3

The Task Force recommends that steps be taken to increase the use of mediation of civil matters within jurisdiction of the Resident Magistrates Court.

RECOMMENDATION 8.4

The Task Force recommends that consideration be given to extending the Resident Magistrates' power to strike civil matters.

C. IMPROVING THE SUPPORT STRUCTURE AND PRACTICES

684. It is clear that the new CPR have already had some salutary effects on the civil justice process. For example, some cases are being settled earlier on in the process at the Case Management Conference or through mediation. In addition, some trials have been shortened through the effective use of witness statements.

685. Despite these successes, some problems have also developed, including:

- the scheduling of the conference is done by the registry and there is at least a 6 to 7 month delay in getting the date. Nothing apparently happens while the parties wait for this date because it is only then that interlocutory applications will be dealt with and directions as to discovery are given.
- The judge then goes through the entire file to ensure that the documents are in order. Note that the entire file is produced rather than the necessary “bundle” which is all that may be required to prove that the record is complete. There is a significant problem of missing files and/or documents. File management requires another report of its own. Again it is not clear why a judge needs to do this.
- At the Case Management Conference, the judge next assigns a trial date while some discussions about the prospects of settlement might be entertained that is not the primary purpose of the meeting.
- When the trial date is assigned, discoveries are not complete and there has been no opportunity for the judge to explore settlement with the parties. As a result, trial dates are being set out into 2009.
- These dates are completely artificial since there is still a good possibility that the case will settle. Meanwhile, there does not appear to be any “double-booking” involved. So if a lawyer appears and is given a trial date of February 2008, and that same lawyer appears the next day he will be given a date later in February or in March. Lawyers who litigate a lot end up being committed two years in advance without yet having any other formal opportunity to try to settle their case outside of the mediation.
- A pre-trial date is given, generally one month before the trial, but the purpose of the pre-trial conference is merely to determine if the directions given at the case conference have been complied with and to ensure that the case is ready for trial. There does not appear to be anything in place that resembles a settlement conference/pre-trial where an attempt is made by a judge or master to settle the case. Again this is just another “check-in” meeting, which is largely administrative in nature.

686. One way to best describe the current situation is that the civil justice system in Jamaica became “case flow management ready” on January 1, 2003 with the coming into effect of the CPR. However, being case flow management ready and embracing a system of case flow management, are two completely different things. A case flow management system is one that is driven by a set of timelines set out in procedural rules and is administered by the Registrar; generally assisted by software systems such as JEMS. Judicial involvement is not necessary unless the parties seek it or there has been a default with respect to procedural timelines.

687. Other jurisdictions have also found that many changes are required to make case flow management work effectively. In the report of the Ontario Civil Justice Review, the following steps were determined to be essential to the implementation of case flow management:

- the support and commitment of the Bench, the Bar and the Ministry of Justice, to make it work;
- the necessary technological systems, including computer hardware, computer software and communication networks, and including the training and staff support which are essential to make such technology effective;
- the appropriate level and complement of staff support, including case management coordinators, scheduling staff, secretarial and file management staff;
- a willingness on the part of the judiciary to take responsibility for managing the pace of litigation and to enforce the time parameters set down;
- the appointment of judicial support officers to provide case management and judicial support;
- a strategy to reduce the existing backlogs at the same time as the new system prevents future backlog;
- the completion of an independent resource-needs analysis to determine the appropriate mix and quantities of the ingredients referred to above;
- the articulation of clear goals and standards -- both on a systems-wide basis and on the basis of monitoring the rules and time standards of individual cases -- in order to provide benchmarks against which the effectiveness of the system can be measured;
- the development of a detailed operational transition plan to phase in the introduction of case management on a province-wide scale over a reasonable period of time; and, finally,
- the creation of an ongoing, periodic review mechanism in order to ensure that the case flow management model continues to work as well as possible.

688. In moving forward with further reform, it will be important to be mindful of the difference between case management and case flow management. Case flow management is administratively driven and can be done by computer. In a case flow system there is an automatic default calendar. Case management in contrast to case flow management, refers to management of the steps in individual cases by a judge or judicial support officer such as a Master. Active case management is usually employed in more complex cases. One of the leading goals of both of these systems is to contribute to the earlier resolution of cases.

689. The litigants' control of the presentation and content of their cases is a central element of procedural fairness and must be preserved. Litigants should be protected where

judicial supervision results in unwarranted intrusion on these rights. In some situations, case management is unnecessary. Rather, it is sufficient to set overall time standards for the pace of the litigation while maintaining maximum flexibility and choice for the parties to pursue their action or application within stipulated time frames. Under this approach, judicial guidance should be available at specific stages in the dispute resolution process, or at the request of the parties, but not on an ongoing basis. Nevertheless, judicial supervision remains a highly desirable aspect of a court-managed system.

690. It is illustrative to look at one example of effective implementation of case flow management. In Ontario, standards were established to try to dispose of civil cases in two years. At first, the request was made for new judges but this was refused so steps had to be taken to accomplish this goal without additional judicial resources. Ontario accomplished this goal by re-engineering their processes. The main elements of this new process are:

- deadlines for undefended claims monitored by JEMS and cases are closed automatically – default judgments are signed by a Registrar for liquidated claims and by a Judge for unliquidated claims (40% of cases are disposed of here);
- optional Case Management Conference in complex cases;
- mandatory mediation (50% of remaining cases are disposed of here);
- assisted negotiation by Judge of Master at Settlement Conference (75% of cases are disposed of here);
- optional Trial Management Conference 14 days before trial date; and
- trial (approximately 3% of cases disposed of by trial).

691. By following the processes described above, cases now take approximately 2 ½ years from filing of the claim to trial. This was a great improvement on the five years that it had been taking previously and now there is no backlog of pending cases. The increased use of Masters and support staff is an essential aspect to expediting cases without increasing the judicial complement.

692. The effective integration of case flow management in Ontario has also improved client satisfaction and public confidence in the system. In civil matters, the questions that clients always ask can now be answered effectively: Am I going to win? How long is it going to take? How much is it going to cost? Unlike in previous years where lawyers could not give firm

answers to those questions, lawyers can now say quite definitively how long it is going to take and how much it will cost and can indicate the likelihood of success. The integration and enhanced use of mediation and assisted negotiation can also contribute to greater client satisfaction. With the faster case turnover, lawyers get paid faster. Since they can move the case faster, there is better cash flow.

693. The experience in many jurisdictions is that heavy-handed case management does not work. In some jurisdictions, case management was rejected because the timelines were too rigid and it was seen as an inflexible tool, so the bar rebelled. The principles of case management are valid but have to be properly carried out by the administration.

694. The following areas have been identified as key steps to improve the support structure and practices to fully operationalise the new CPR: (1) multi-track case management; (2) new functions and organisational structures; (3) Case Management Conferences; and (4) increased use of dispute resolution processes.

1. Multi-Track Case Management

695. The current CPR establishes case management procedures for all cases. This compulsory and undifferentiated approach is seen as problematic, especially in the current context of inadequate court resources. One aspect of the Task Force's vision of modernisation is of a multi-option system of the justice system that is flexible, responsive and provides flexible, responsive and proportional dispute resolution options at a reasonable cost. One mechanism to achieve this principle is the introduction of multi-track or differentiated case management to tailor the process more closely to the dispute. For example, landlord and tenant matters could benefit from a more simplified approach and do not require a Case Management Conference.

696. Not all civil cases are alike. Tracks are a salient mean of achieving greater flexibility and proportionality in procedures. The goal is to have a continuum of tracks tailored to the requirements of the defined categories of cases. In a differentiated case management system, all cases where a defence is received are examined by a procedural judge or master and allocated to the appropriate track for example: standard case track; complex case track and fast track. Sometimes there are limitations on the procedural steps available to the parties within each track. For example, the right of discovery can be limited in simpler or fast-track cases.

697. Some of the factors that assist in the determination of what types of cases will require greater judicial supervision through case management, include:

- complex or multi-party litigation;
- where parties reasonably can be expected to require several or repeated directions from the court;
- where the involved lawyers are unable to agree on significant procedural matters;
- cases where the estimated length of the trial exceeds seven days;
- cases where multiple motions have been brought or are anticipated; and
- with leave of the court, on application of one of the parties.

698. Although parties may indicate their own views, in most systems the court, and more specifically a master, has the ultimate responsibility for the allocation of a case to the appropriate track. The allocation is not necessarily permanent and for good reason it can be subsequently changed. The essence of the tracking system is that it should provide flexible handling for cases which turn out to be more complex than they may initially appear, or which require judicial management at one stage but not at others. The new Part 74 of the Civil Procedure Rules will also impact this tracking.

699. What is important is that masters giving the directions appreciate that in performing this role they are managing the case. They need to be constructive in their approach, anticipating problems before they occur. For example, if they feel that more information from the parties is required to ensure that the case starts its journey on the right track they will get in touch with the parties. Even at this stage of initial scrutiny, masters will consider whether the parties should be advised to explore some alternative methods of resolving their dispute.

700. It is for each court to determine the circumstances in which case management will be offered and the circumstances in which it will be mandatory. In many jurisdictions, expedited tracks have been set up in superior courts for cases with smaller value claims. This creates a new tier of cases between small claims that are dealt with by lower courts and the larger claims dealt with by the superior courts. Consideration could be given, for example, to devising different tracks or channels for dealing with Fixed Date Claims and Claims.

701. For these reasons, the Task Force recommends that consideration be given to the establishment of a multi-track system offering a menu of choices among procedural tracks or routes along which individual cases, once commenced, can progress through the system. The basic concept is that the procedures, costs and time involvement of the parties should be proportionate to the needs of each individual case.

702. This approach has already been introduced to some extent through the establishment of special rules for the Commercial Court. However, a review of this Court is needed as it is unclear whether it is working as planned. It appears that one of the barriers to effective functioning of the Commercial Court is the fact that present judges are assigned to sit in other courts, such as the Gun Court, because of pressing need. As a result, the Commercial Court is not able to develop judicial expertise as originally intended. The Task Force recommends that this situation be reviewed on an urgent basis.

RECOMMENDATION 8.5

The Task Force recommends that consideration be given to integrating a differentiated or multi-track approach to case management.

RECOMMENDATION 8.6

The Task Force recommends that steps be taken to review and reorganise the Commercial Court to ensure that it can achieve the planned objectives.

2. New Functions and Organisational Structures

703. The effective implementation of the new CPR requires the establishment of new functions and organisational structures in the courts. The following issues are discussed in this section: (1) the Supreme Court Registry; (2) Masters; (3) the Case Management Conference; and (4) listing practices.

a. Supreme Court Civil Registry

704. The Supreme Court Civil Registry does not have the capacity to meet the demands placed on it by the new CPR. Many of the submissions to the Task Force listed this as the number one concern in the area of civil justice processes. One example of the problems is that files, bundles and papers filed in the Registry are regularly failing to reach the judge in time for trials or hearings in chambers. The physical plant housing the Civil Registry is grossly inadequate. Desks are overloaded with files; so too are windowsills. The Registry is the heart of the system with which the public interfaces. Consequently, when the Registry cannot function properly everybody gets a bad name; including judges who have nothing to do with the misplacement of files and documents. There is great disappointment that notwithstanding many years of governmental commitment to computerization of the Civil Registry it has yet to be fully realised. A simple process of getting a date while a Case Management Conference is taking place presents problems, in the absence of computerization which would allow the judge and or his or her clerk to ascertain, at the touch of a button, available dates.

705. A reorganisation and re-tooling of the Registry is imperative. The Registry should be reorganised structurally and administratively to take account of the differences in the nature of the matters that are filed and to support their effective handling and disposition. Consideration should be given to a team approach where staff would be organised according to the streaming of matters (for example separate streams for Fixed Date Claims and Claims).

706. The re-tooling must include a computerised system for tracking each document filed and ensuring that it is on the file in time for hearing. Increased staff is required and the staff structure and functions also need to be thought out and appropriate training provided to

meet the new demands in the Registry. The JEMS system should be made fully operational in support of case flow management.

707. It is anticipated that the JJSR Court Administration Project will make detailed recommendations concerning how to achieve the general recommendations set out in this Final Report.

RECOMMENDATION 8.7

The Task Force recommends that the Supreme Court Civil Registry be reorganised and re-tooled and provided with adequate staffing and technology.

b. Masters

708. At present, the introduction of the new CPR has placed additional burdens on judges thereby decreasing the amount of time available for trials. The potential of the positions of Master and Registrar are severely underutilized. Some of the functions now completed by a judge could be undertaken by either of these two positions.

709. There is only one Master at the Supreme Court. An increase in the number of Masters is therefore essential to the effective functioning of the Court. Although a workload analysis would need to be undertaken to determine how many Masters are required, it has been suggested that the minimum would be an additional 2 Masters at this time.

710. One clear role for Masters would be to act as Case Management Masters. There are other things that the Master could do. There is a broad jurisdiction, except for trial. A trial judge is an expensive, limited resource and should be reserved for doing trials.

711. Once a sufficient complement of Masters is in place, they could also take on additional functions such as dealing with Family Law matters and Restrictive Covenant matters. The recent legislative amendment to allow divorces through a paper-only process has the potential to reduce cost and delay, however these matters are being held up because judges are too busy to deal with them. This is a function that could be carried out by Masters. The jurisdiction of the Master with respect to interlocutory matters should also be expanded. In order to carry out these expanded functions, the status of Master should be elevated and they should be made part of the judiciary as a procedural judge with parity to Supreme Court judges.

RECOMMENDATION 8.8

The Task Force recommends that the number of Masters be increased on an urgent basis and that they be elevated to the position of procedural judge. Once a full complement of Masters is in place they should be given responsibility for an increased range of functions.

c. Undefended Claims and Default Judgment

712. One of the central features of case flow management systems is the automatic dismissal of undefended claims and simple procedures for the processing of default judgment. The automatic dismissal feature is not yet in operation in Jamaica and there is no consensus about its implementation. However, there is general support for amending the CPR to provide simplified procedures for the processing of default judgments.

RECOMMENDATION 8.9

The Task Force recommends that the CPR should provide simplified procedures for the processing of default judgment.

d. Case Management Conferences

713. The Task Force received quite a few submissions concerning whether the introduction of Case Management Conferences were serving their intended purpose and reducing delay in civil matters. It does not appear to be a judicious use of a judge to have him or her do Case Management Conferences in simple cases that may not go to trial. The reality is that only a small percentage of cases will go to trial.

714. This issue relates back to the recommendations above concerning the establishment of differentiated case management tracks. It is widely recognised that a Case Management Conference handled by a judge is not necessary for every case. Given the strain on resources and additional delays caused by the problems scheduling Case Management Conferences, a more immediate solution must be found. Once a claim is acknowledged, a defence filed, and a document such as a Listing Questionnaire is filed, a Registrar or Master could assess the matter's relative complexity, and take a decision with regard to whether the parties should be encouraged to settle, whether mediation is the appropriate alternative or whether the matter must go to trial. Only a matter which is intractable, and therefore will clearly proceed to trial, that should be sent for a Case Management Conference. Some of the functions currently served by the Case Management Conference could be served by new Rules providing for automatic directions on issues such as discovery without appearance before a judge.

715. Steps can also be taken to make the Case Management Conferences more effective in terms of narrowing the scope of issues proceeding to a trial. For example, more attention should be given to dealing with preliminary issues and handling applications for court orders that are sometimes being made outside of a Conference. Case law has established limitations of the judge's power at a Case Management Conference, but a lot more can be done that is accomplished by current practice within this legal framework. Additional training for judges and masters should assist in this regard.

RECOMMENDATION 8.10

The Task Force recommends that a Master should undertake a preliminary review of the file to decide whether a Case Management Conference is required and that Masters should be responsible for all such Conferences.

RECOMMENDATION 8.11

The Task Force recommends that some of the functions currently served by the Case Management Conference could be served by new Rules providing for automatic directions on preliminary matters such as discovery.

RECOMMENDATION 8.12

The Task Force recommends that steps be taken to make the use of Case Management Conferences more effective including through the development of guidelines and training modules.

e. Listing and Scheduling Practices

716. One of the objectives of the reorganisation and re-tooling of the Civil Registry should be to improve the listing and scheduling practices. One specific suggestion is that an

administrator should be responsible for standard orders such as setting a trial date, deciding whether it is a matter for judge alone, the number of days required, and so on. These matters do not need to be handled by a judge.

717. Particular concern has been voiced about the current long delay for setting down urgent matters, such as injunctions. Listing practices should ensure that provisions can be made to deal with urgent matters without undue delay.

RECOMMENDATION 8.13

The Task Force recommends that steps be taken to improve listing practices and in particular to ensure that urgent matters can be heard without undue delay.

f. Trial Management

718. There are two separate purposes served by pre-trial or trial management conferences that are scheduled close to the set trial date. The first is judicial assistance in achieving settlement prior to the trial. The second is ensuring that the trial itself will run smoothly including by reaching agreements concerning the amount of time required by each party. Active case management can also be effective in reducing the time taken up by trials including through agreement on the use of written submissions and shortening trials by including strict timelines. Again additional training will assist in ensuring the effective use of pre-trial/trial management conferences and encourage judges to take a leadership role in ensuring that the Court's time is used as efficiently as possible.

RECOMMENDATION 8.14

The Task Force recommends that steps be taken to ensure the effective use of pre-trial/trial management conferences, including through consideration of greater use of written submissions and stricter time limits for trials by agreement or consent.

3. Increased Use of Dispute Resolution Processes

719. The automatic referral to mediation in most civil matters is seen as a very salutary reform. There is a clear consensus that even greater use of mediation should be promoted given the enormous potential it has to reduce demands on the courts and to provide greater satisfaction to the parties to a civil claim.

720. One of the current problems is that there are an insufficient number of qualified mediators, and there is some disparity in the experience and skills of the court appointed mediators. As a result many parties seek to utilise a relatively small number of the mediators, making it difficult to get timely mediation dates. Steps should be taken to increase the number of mediators and the quality of mediation services. Further, consideration should be given to providing more government assisted mediation.

721. As noted in the previous section, steps can also be taken to improve the use of assisted negotiation in the various court-managed conferences. In many cases, settlement is achieved with the assistance of neutral evaluation on the likelihood of success of their case once discovery is complete. A Master or procedural judge can review the documentary evidence and provide his or her opinion to the attorneys. This entire process is confidential and privileged since it is subject to the settlement privilege rule. The parties to the litigation are free to accept or reject his/her opinion. However, this process helps them to decide the findings of fact the trial judge will probably make in the particular case. Experience in some jurisdictions has shown that

after this exercise, up to 75% of the cases settle. Training to develop the skills to conduct effective settlement conferences should be made available to Judges and Masters.

722. At present, most family law cases are excluded from automatic referral to mediation, since matrimonial proceedings are commenced using fixed date claim forms, and this category of matters is expressly excluded under the CPR. Family law cases should be expressly included for reference to mediation, although there may be matters for a Judge to take into account prior to the mediation, such as the need for injunctive or other court-sanctioned relief.

723. The experience with automatic referral to mediation should be monitored and evaluated. The Dispute Resolution Foundation should have the resource capability to gather data on the flow of matters referred to mediation. In this way, useful comments, recommendations and developmental data can be harvested. This should include a system for gathering feedback, including complaints, perhaps on an anonymous basis. There should be a free flow of information between the DRF and the courts to ensure that the perceived benefits of mediation continue to be met: that is the expeditious, efficient and low cost resolution of disputes.

RECOMMENDATION 8.15

The Task Force recommends that steps be taken to increase the number of mediators and the quality of mediation services available by providing more intensive training and by encouraging senior lawyers and other experienced persons to become mediators. Consideration should be given to providing sufficient levels of government funding to mediation to ensure its success in improving access, timeliness and satisfaction with the justice system.

RECOMMENDATION 8.16

The Task Force recommends that increased training to develop the skills to conduct effective settlement conferences should be made available to Masters.

RECOMMENDATION 8.17

The Task Force recommends that family law cases should be expressly included for reference to mediation.

RECOMMENDATION 8.18

The Task Force recommends that the Dispute Resolution Foundation monitor and evaluate the experience with automatic referral to mediation including through a mechanism for feedback on individual mediation sessions.

D. COURT OF APPEAL

724. The Task Force did not receive many submissions concerning the need for reform to the appellate review of civil matters with the exception of the clear need for an increased complement of judges as proposed in Part 4. The second greatest concern is for the time lag for the production of the notes of evidence from trial. As an interim measure until court reporting is available in the trial courts, consideration should be given allowing parties to agree on notes of evidence rather than waiting for the production of a certified record.

725. Case management has been introduced at the Court of Appeal and is considered to be working well. There is some scope for more of responsibility for the management of appeals to be delegated to the Registrar, although this would have to be done in the context of an analysis of the workload.

726. The Case management/pre-hearing review by a Court of Appeal judge in Chambers has proven to be very useful. Consistent with the modern approach for greater judicial control over the court process and integration of dispute resolution processes, the Court of Appeal should be more proactive in using the pre-hearing review to assist in the settlement of appeals and shortening the length of the hearing, including by setting time limits for oral argument.

727. Looking further down the road, consideration should be given to simplifying and expediting the production of the written material required on appeal. For example, in some jurisdictions electronic appeal books have been introduced, sometimes on a pilot project basis. Electronic appeal books involve the production of all materials needed for the appeal in a searchable electronic format. This involves the scanning of paper documents, conversion to PDF, bookmarking, hyperlinking and highlighting of all materials and production on a CD-ROM. Electronic appeal books are gaining in prominence in many countries and have demonstrated to significantly reduce both the time and expense involved in an appeal.

RECOMMENDATION 8.19

The Task Force recommends that consideration be given to delegating more of the management of appeals to the Registrar.

RECOMMENDATION 8.20

The Task Force recommends that the Court of Appeal become more proactive in using the pre-hearing review to assist in the settlement of appeals and shortening the length of the hearing, including setting time limits for oral argument.

RECOMMENDATION 8.21

The Task Force recommends that when the integration of technology is more advanced in the Jamaican courts consideration be given to promoting the electronic production of Record of Appeal and the core and other bundles required on appeal.

E. TRANSFORMING THE LEGAL CULTURE

728. Jamaican legal culture must adapt to the new CPR in order for these Rules to become fully effective. At the outset we noted that, like in many countries around the world, there is a “culture of delay” resulting from traditional approaches to litigation. Adopting new rules is the first step but other measures are also required to achieve cultural transformation.

729. Strong and consistent leadership and education/training are the two most important means to achieve cultural change. While lawyers retain the primary responsibility for fulfilling the requirements of the new Rules in the interests of their clients, judicial leadership also plays an important role in supporting this cultural shift. For example, judges should

undertake a strong and consistent application of the sanctions for failing to meet the timelines set out in the Rules.

730. Case flow management will only work effectively if there is a firm, consistent policy for minimizing adjournments and adherence to time parameters, and if that policy is adhered to by the Bar and enforced consistently by the Bench.

731. Part 4 contains several recommendations for a more comprehensive and mandatory plan for continuing education for judges, legal court personnel (such as Masters and Registrars) and lawyers. Priority should be given to joint education programmes on case management and alternative dispute resolution skills. Joint education seminars will also facilitate the flow of information between Bench and Bar in terms of the implementation and requirements of the CPR.

RECOMMENDATION 8.22

The Task Force recommends that without unduly restricting litigants' access to the courts, judicial leadership be taken in the strong and consistent application of the sanctions for failing to meet the timelines set out in the Rules.

RECOMMENDATION 8.23

The Task Force recommends that priority be placed on providing joint education programmes on case management, case flow management and alternative dispute resolution for judges of all levels, legal court officials (such as Masters and Registrars) and attorneys of the public and private bars.

F. ACCESS TO JUSTICE FOR SMALLER CLAIMS

732. The limited monetary jurisdiction of the RM Courts forces litigants to take their claims to the Supreme Court in Kingston, which is often too expensive an undertaking relative to the value of the claim notwithstanding its importance to the individuals involved. Four potential reforms to address this problem are discussed here: (1) increase the jurisdiction of the RM Court; (2) transfer jurisdiction over some small claims to Justices of the Peace; (3) develop other means to assist self-represented litigants; and (4) consider specialised tribunals.

1. Increase the Jurisdiction of the RM Court

733. The current monetary jurisdiction of the RM Court in civil matters has a limit of Two Hundred and Fifty Thousand Dollars (\$250,000) for damages. This limit is too low given that the vastly greater complexity and cost of proceeding in the Supreme Court results in some individuals not pursuing or abandoning their legal claims.

734. The limit should be increased to as much as Two Million Dollars (\$2,000,000) having regard to the value of money today. If this suggested reform was enacted then many more matters could be handled by the Resident Magistrate, thereby remove certain matters from the Supreme Court and increasing access to cases that are not currently being pursued. One concern raised by this recommendation is that these cases could require pleadings, which are not generally required in the RM Court. This concern could be addressed by allowing pleadings for certain matters that require it.

735. At the same time, the limit for small claims must be increased. The sum of Fifty Thousand Dollars (\$50,000) is also inadequate. It is hardly worthwhile for lawyers to do work in Small Claims Court today unless one has a volume practice.

RECOMMENDATION 8.24

The Task Force recommends that the monetary jurisdiction of the Resident Magistrates Courts be increased and that the monetary limit for Small Claims also be increased.

2. Transfer of Small Claims to Justices of the Peace

736. It is further proposed that trained Justices of the Peace should be allowed to preside over small claims, with the help of a legally trained court staff. Suitably trained Justices of the Peaces could handle simple matters such as rent or a debt owed, which contain no legal complexity. This would free the Resident Magistrate to handle the more complex matters.

737. One specific issue is whether it would be appropriate to transfer the hearing of claims concerning praedial larceny to JPs. The problem is that there is a wide range of praedial larceny matters. While many claims of this type are relatively simple, there are others that are much more serious and extensive, such as several expensive animals such as cows, or a coffee plantation which is about to be reaped. Claims of this nature could amount to serious sums of money. A review of the law of praedial larceny should be undertaken before recommendations to transfer jurisdiction are to be entertained.

RECOMMENDATION 8.25

The Task Force recommends that suitably trained Justices of the Peace be granted the jurisdiction to preside over some small claims matters.

RECOMMENDATION 8.26

The Task Force recommends that the law of praedial larceny be reviewed on an urgent basis.

3. Assistance to Self-Represented Litigants

738. In the vast majority of small claims matters, litigants are self-represented whether by choice or because they cannot afford a lawyer. In many countries, the trend is toward significant increases in the number of self-represented litigants in all levels of court. The courts, the Bar and the governments have responded by establishing self-help centres in the courts and by developing simplified forms and other steps to assist litigants who do not have legal representation.

739. In Part 6, the Task Force proposed the expansion of neighbourhood peace and justice centres to act as a hub of legal information, advice and referral. One of the objectives of this recommendation is to address the needs of self-represented litigants. However, other steps could also be taken. For example, simplified plain language forms could be developed for small claims matters. These forms could help the litigants to set out the important facts relative to their case thereby assisting them to present their cases more effectively. These forms should use very simple, friendly language and where possible use a fill-in-the-blank approach.

RECOMMENDATION 8.27

The Task Force recommends that simplified forms be developed for small claims matters.

4. Land Disputes - Considering the Establishment of Specialised Tribunals

740. In many jurisdictions, specialised tribunals are established to deal with legal issues that cannot be effectively addressed by the courts in an accessible way. They are often set up to divert a group of cases that are not being inadequately handled by the courts or where a class of cases is making up a large part of a court's caseload. Tribunals operate without complicated rules and procedures inherent in judicial proceedings. Because tribunals focus on a specific issue or a specific type of legal rights, they can develop a level of expertise that is superior to courts of general jurisdiction. They are also less expensive to operate than are the courts. For example, during the major civil justice reforms in Ontario, landlord and tenant matters were completely taken out of the court system and a Residential Tenancies Commission was created. The Civil Justice Council established following Lord Woolf's civil justice review in the United Kingdom also investigated the need for specialised proceedings for Housing and Land.

741. There is a commonly held perception that disputes over land boundaries or land ownership are a major source of conflict in Jamaican rural society. In some cases, difficulties in resolving the land dispute escalate into domestic disputes in which one or more party is harmed. The process for land registration and transfer of title is cumbersome, time consuming and often unaffordable. The Task Force has not had the time to study this issue in depth. However, it may be that a specialised tribunal utilising a simple and understandable process could assist in resolving these seemingly intractable disputes. While it is premature to make a finding in this regard, the Task Force urges that further study be taken on this issue.

RECOMMENDATION 8.28

The Task Force recommends that further study be undertaken into potential specialised approaches to the resolution of land disputes.

G. ENFORCEMENT OF JUDGMENTS

742. There are insufficient enforcement mechanisms in the Resident Magistrate’s Court and litigants are, for the most part, left to their own devices. As a result, persons are currently suffering with “empty” judgments.

743. The present rules provide that judgment be paid directly from one litigant to the other. The Rules of the RM Courts could be changed to provide for payment into Court. This would help to make the enforcement more effective, although it would have to be implemented in a manner that did not result in further delays. In addition, the Rules should be amended to allow for a penalty to be ordered by the judge should the defendant not pay within a certain period of time. Thus the court could order payment, and further, that it be paid within 28 days, for example. However, steps would have to be taken to inquire into the individual’s ability to pay, the objective is not to incarcerate someone for the inability to pay. It is important to balance the right of the debtor with the need for expediency and fairness to the party to whom judgment is due. These orders should be subject to an application for review of that order.

RECOMMENDATION 8.29

The Task Force recommends that consideration be given to enhancing the enforcement of judgments of the RM Courts by amending the rules to provide for payment into court of the judgment debt within a timeframe established by the Court at the time of judgment, subject to an application for review of that order.

744. Part 4 highlighted some of the concerns that have arisen concerning the service of civil process and other functions undertaken by Bailiffs and Assistant Bailiffs. In our view, the issues of enforcement of civil process and enforcement of civil judgments should be the subject of a comprehensive review. The objective of this proposed comprehensive review would be to

make recommendations for the establishment of a modern regulatory structure for effective enforcement of civil process and civil judgments.

RECOMMENDATION 8.30

The Task Force recommends that a thorough and comprehensive Civil Enforcement Review be undertaken with the objective of establishing a modern regulatory structure for effective enforcement of civil process and civil judgments.

PART 9 - INSTITUTIONALISING JUSTICE SYSTEM REFORM

745. The adoption of this Task Force's Final Report will not be the end of the comprehensive justice system reform and modernisation process. To the contrary this will be just one more step forward to achieving our vision of a Jamaican justice system that is available, accessible, accountable and affordable on a timely, courteous, respectful, flexible, fair and competent basis for all. The hard work must continue as we move toward full implementation of this vision by joining up the many existing reform initiatives with the new ones proposed here into a cohesive whole.

746. One of the central capacities of a modern justice system in today's world is the ability to carry out reform on an ongoing basis in order to continuously foster excellence and innovation and to adapt to new challenges. The recognition of this need for a sustainable dynamic permanent change process is a relatively recent one. Jamaica is not alone in grappling with the challenge of finding the right machinery and processes to achieve this overarching goal of encouraging innovation without compromising the essential pillars of the justice system.

747. Many of the recommendations set out in this Final Report are in effect capacity building measures that will assist the institutionalisation of justice system reform. For example, the recommendations concerning improving data collection and information sharing, the development of performance standards, and the establishing of mechanisms to monitor and evaluate reform initiatives will all contribute to this objective by providing a sound basis upon which future reform decisions can be made.

748. The Task Force would also like to reiterate an important point made throughout this Report that reforms must be properly supported through adequate staffing and resourcing, particularly through increasing staff complements, enhanced training and the effective integration of technology. For example, one of the clear priorities is to introduce criminal case management and this should be accomplished in tandem with additional prosecutorial resources and an integrated training and technology support plan to ensure an effective transition from the current system to the new one over time. In some cases, rushing to partially implement major reform measures could jeopardise the potential benefits.

749. The need to avoid the difficulties inherent in partial implementation is particularly important given the history of insufficient follow through with the numerous reports on the need for Jamaican justice system reform. Despite the fact that many specific positive measures have been implemented and many initiatives are now underway, there has been no systemic, sustained approach to reform. As a result there is a certain degree of cynicism and lack of goodwill in some segments of Jamaican society about the possibility of substantial reform.

750. Past efforts in Jamaica and in every other country in the world demonstrate that substantial justice system reform is extremely difficult to achieve. In order to succeed, justice reform must:

- encompass both short-term practical modifications and a long term commitment to change;
- overcome inertia within the system;
- motivate government commitment in an area not likely to attract immediate public interest;
- increase the capacity of the justice system to accommodate innovation;
- be accompanied by strong, consistent and long-term leadership;
- involve a coordinated and committed effort on the part of all stakeholders in, and users of, the justice system; and
- be supported by dedicated resources, both financial and human.¹¹

751. The Minister of Justice and the Ministry of Justice have played an important leadership role in reform of the Jamaican justice system as evidenced by the many initiatives undertaken to date, including the establishment of the Jamaican Justice System Reform project of which the Task Force is a part. It almost goes without saying that this vital leadership role will continue. Additionally, the Government has already announced that a Modernisation Unit will be established in the Ministry of Justice to support the implementation of the JJSR. A dedicated team of personnel will be invaluable in the implementation process by undertaking the day-to-day coordination that will drive reform. Overall the implementation of the JJSR 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 messages being delivered.

¹¹ Ontario Civil Justice Review, *Final Report* (1997).

752. The JJSR was structured as a comprehensive review with a very broad inclusive structure and consultation process in order to overcome some past shortcomings in approaches to reform. This approach must be maintained on an ongoing basis. Despite some initial negativity and resistance based on past experiences, many individuals and organizations are now fully engaged in the collaborative processes established by this reform process. The energy and commitment displayed over the last months augurs well for the success of this initiative. However, careful thought, planning, action and leadership are needed in order to ensure that the JJSR achieves meaningful and lasting change.

753. In this final section, the Task Force present its views and recommendations concerning the best way to approach implementing the comprehensive reform and modernisation of the justice system and the mechanisms to facilitate the leadership and collaboration required by this task on a sustainable basis.

754. In Recommendation 3.5, the Task Force recommended that the Ministry of Justice take appropriate steps to continue and expand the mobilisation process during the implementation phase of the Jamaican Justice System Reform. In our view, the Ministry should establish an Advisory Committee, similar to this Task Force although with a smaller membership, to serve as a sounding board during the early phase of implementation until more permanent structures such as the National Council on Justice (discussed below) are operational. In addition, workshops for all personnel should be held within all justice-related agencies to promote this Report and to strategize on the issue of effective implementation.

A. PROMOTING CULTURE CHANGE

755. Change in legal culture requires two things. First, important changes should be brought about through the introduction of new rules of procedure, guidelines, protocols and practices. This Report contains many recommendations to this effect. While such changes normally face resistance at first, they often stimulate a cultural shift. Nothing changes culture more effectively than a positive experience with the new process. Second, rule changes must be accompanied by strong, consistent and long-term leadership.

756. Studies in change management show that imposed procedural changes in large organizations are encouraged by a small but significant “change vanguard” of employees who are dissatisfied with the old system and see the imposed change as an opportunity to take action and help the reform succeed. The “change vanguard”, confident that a committed leadership is on its side, speaks out in favour of the reforms and helps to convert more sceptical employees to the cause. Support for new systems increases over time, irrespective of personal experience, as it becomes clear that the leadership is not abandoning changes.¹²

757. While these theories may be more difficult to apply in the justice system because of the multiplicity of stakeholders, the Task Force believe that reforms can be successfully introduced if dissatisfied lawyers, judges and clients join a “change vanguard” and those in leadership roles sustain their commitment to the changes over a long period of time.

758. In order for cultural change to take effect, those affected by the change must feel that they are active participants in it and their perspectives and interests must be taken into account. There is always a time lag between the introduction of reforms and the relinquishing of the comfort of the “the old way of doing things.” Leaders must be aware of the potentially threatening nature of change for those who are not in positions of authority. Both fostering a sense of empowerment and developing a system of recognition and incentives for innovation will be key to addressing these perceived threats. Assistance and new training must be provided so that people can acquire the new skills, aptitudes and attitudes required by transformation and modernisation.

759. Cultural change can also be assisted through the development and sharing of models of best practice. Best practices emerge from a process that involves innovation, documentation, evaluation, modification and re-evaluation. The process of identifying best practices has to be ongoing and what is considered ‘best’ is likely to change or be modified as additional information is learned. Mechanisms should be established for the development and sharing of best practices through vehicles such as newsletters and annual workshops.

¹² Report of the Civil Justice Working Group, *Efficient and Affordable Civil Justice* (British Columbia: 2006).

RECOMMENDATION 9.1

The Task Force recommends that steps be taken to promote the cultural change required for effective justice system reform including by:

- Identifying and clearly enunciating respect and service to citizens and to the nation as the foundations of the justice system;
- Effectively packaging and selling the product of justice system reform to participants in the system through a vigorous education based marketing effort directed at select participants in the system (both actual and prospective) such as Clerks of the Court, Registrars, and the public at large (including the business community) so that each is able to see the usefulness of the reform process within his/her/its context;
- strongly encouraging and recognising the mentoring of junior managers and staff working in the system;
- establishing measures to recognise, reward and otherwise encourage innovation both within each agency/organisation and Ministry of Justice awards for innovation in each of the justice sectors; and
- establishing mechanisms such as newsletters and annual workshops for the sharing of information regarding best practices.

B. ESTABLISHING A MECHANISM TO FACILITATE LEADERSHIP, COLLABORATION AND ONGOING REVIEW AND REFORM

760. No single strategy will be effective to achieve the vision of the Jamaican justice system set out in this Report. There must be a number of strategies woven together through mechanisms that facilitate leadership and collaboration including the establishment of users committees in every court and a national inter-ministerial and inter-agency implementation

committee. Reform efforts must be as inclusive, engaging, integrating and comprehensive as possible in order to be effective and accepted by citizens and those who work within the system itself. This Final Report has already made a number of recommendations toward this end in Part 5.

761. In addition, the Task Force recommends the establishment of a National Council on Justice. The JJSR has begun to develop the momentum required for this transformation process through shared participation and recognition of the shared responsibility for the management and operation of the justice system. Similar approaches must be fostered during the immediate implementation phase and in ongoing reform efforts. Successful reform requires a coordinated effort on the part of all stakeholders in the system and appropriate mechanisms are required to facilitate this coordination and collaboration.

762. The Task Force proposed that a National Council on Justice (NCJ) be established under the chairmanship of the Chief Justice of Jamaica. It could be composed of a number of judges from all levels of court, magistrates, criminal practitioners, representatives of the key agencies and organisations involved in the justice sector, including at least one representative of the Jamaican public. Consideration should be given to establishing separate criminal, family and civil justice committees within the NCJ. Its functions should include the following:

- to keep the criminal, family and civil justice systems under review;
- to advise the Government on the form and manner of implementation of all proposed justice reforms and to make recommendations to it for reform on its own initiative;
- to provide general oversight of the reform programme;
- to advise the Government on the framing and implementation of a communication and education strategy for the justice system; and
- for any of those purposes, to consult and/or commission programmes of research.

763. The central role for the NCJ would be as a standing advisory body on the justice system. The Government could consult it on all major legislative or other changes that it recommends for the justice system, including legal reform. The NCJ would itself also initiate recommendations for reform. The NCJ should be provided with a properly resourced secretariat and research staff.

764. At the National Justice Summit, workshop participants strongly endorsed the formation of a NCJ. The view was expressed that the NCJ should seek the support of all Jamaicans in creating appropriate mechanisms for coordinated and collaborative change. Specific recommendations were made for the composition of the NCJ which differ in some ways from the Task Force’s proposal:

The NJC should comprise a broad cross-section of persons from civic, church and other grassroots organizations, the Judiciary – including judges from all levels of court - private business, Ministries of Justice and Finance, Police, the Bar and Advocates Associations, civil society organisations and selected others. The NCJ may establish separate criminal and civil committees within the Council. Chairmanship of the NCJ should be elected.

765. The workshop participants further recommended that the NCJ should monitor and evaluate reforms in a series of regularly scheduled analyses of Jamaica’s justice system. The NCJ should work with the Legal Reform Department of the Ministry of Justice and other agencies to advise the Government on adapting to new challenges for legislative and other changes in the justice system, receiving recommendations and initiating its own proposals. An NCJ annual conference should evaluate domestic and international judicial reform.

766. It was also suggested that the NCJ should have a properly resourced, full-time, salaried secretariat and research staff with offices on private premises. The proposal was put forward that the NCJ should be financed 50% by the Office of the Prime Minister and 50% by private business or other donors.

RECOMMENDATION 9.2

The Task Force recommends the establishment of a National Council on Justice to advise the Government on all major legislative or other changes that the Government recommends for the justice system, to receive recommendations made on various legal issues, and to initiate its own recommendations for reform.

767. Consideration should be given to initiating the National Council on Justice on an ad hoc and interim basis as soon as possible in order to avoid a gap in the initial implementation phase. The interim Council could assist in developing the terms of reference and organisational structure for the permanent Council.

768. The Task Force was not mandated to address issues pertaining to reform of the substantive law. We have nevertheless made a few recommendations that involve law reform, notably the proposed codification of the criminal law, which is a massive undertaking. The Task Force received several submissions calling for an independent law reform body. The purpose of law reform is to make the law more accessible, modern, less obscure and more certain. Specific areas for reform that have been raised include: reform of constitutional law, landlord and tenant, praedial larceny, larceny act, pound act and trespass act.

769. Law reform work is currently carried out by the Legal Reform Department of the Ministry of Justice. However, this department is focused on responding to the day-to-day requirements of law reform as identified by governmental bodies. As currently constituted it does not have the capacity to undertake longer term more in-depth law reform activities nor can it establish an independent law reform agenda. For example, the Task Force has recommended that the criminal laws of Jamaica be reviewed, updated and codified. This is a huge, multi-year endeavour and it is one that is unlikely to find itself as a priority for the government of the day that has many pressing issues to address that have a law reform aspect. It is difficult to see how and by whom such an important task, and one that is critical to justice system reform, could be effectively carried out.

770. The Task Force recommends that consideration be given to developing an enhanced and independent law reform capacity. Recommendations for an independent law reform agency for Jamaica have been made time after time, notably in *Report of the National Task Force on Crime* (Chaired by Hon Mr. Justice Wolfe, 1993). One alternative is for such an institution to be hosted by one of the universities, although it is crucial that it have a law reform policy mandate rather than an academic one.

771. Another option is to expand the existing Legal Reform Department and provide it with the mandate to establish its own priorities in addition to the work it is directed to carry out

by governmental bodies. In most countries that have independent law reform agencies, the public plays an important role in helping to set law reform priorities and is actively involved in the consultative processes and this feature is worthy of consideration here. Whatever institutional arrangement is developed, one critical point is to increase Jamaican law reform capacity and to situate it so that it can benefit from the public dialogue concerning longer-term law reform priorities.

RECOMMENDATION 9.3

The Task Force recommends that consideration be given to establishing an enhanced and independent law reform capacity.

C. MONITORING AND EVALUATION OF REFORM EFFORTS

772. A formal and comprehensive evaluation process should be built into the implementation plan. Meaningful evaluation, however, cannot be reconstructed after the event. It implies that there are well-thought-out and measurable objectives and goals, comprehensive data collection before and during implementation, and an independent analysis at predefined periods. The Court Administration Project has laid the groundwork for the development of this much needed baseline data. The evaluation of the reform and modernisation of the Jamaican justice system should be carried out in consultation with all justice system stakeholders. The monitoring process should be structured to ensure that the people of Jamaica are involved in the evaluation and implementation of justice system reform. At the National Summit, strong emphasis was placed on the need for independent, non-governmental oversight of the reform implementation process.

RECOMMENDATION 9.4

The Task Force recommends that the JJSR implementation plan include plans for meaningful ongoing data collection, evaluation to ensure ongoing reforms, adjustments and improvement including independent analysis at predefined periods.

RECOMMENDATION 9.5

The Task Force recommends the JJSR implementation plan include plans for evaluation specifically by the public.

773. The implementation of this Task Force Report and the institutionalisation of ongoing justice system reform will place demands on each of us. In her closing remarks at the National Justice Summit, the Permanent Secretary pledged the Ministry of Justice’s institutional support and outlined the next steps to be taken toward achieving these objectives. She also challenged all of us to commit to our own personal next steps. She encouraged each and every one of us to be open to innovation, to relinquish the tendency to protect our turf and be adversarial in our dealings with each other, to embrace change and, perhaps most importantly, to let go of comfortable routines and the safety of the known. Collectively, we must all enlarge our sense of self-interest, to recognise that an inclusive approach is imperative and therefore achieve an “enlightened self-interest” to guide our actions toward the public good.

774. The Task Force embarked upon this reform journey with an emphasis on institutional, individual and collective engagement and it is with these same levels of

commitment that together we will achieve modernisation and transformation of the Jamaican justice system.

APPENDIX A – CANADIAN ADVISORY COMMITTEE

Master Robert Beaudoin
Civil Court Administration and Procedural Reform Specialist
Case Management Master, Supreme Court of Ontario

The Honourable Mr. Justice Robert Blair
Judge, Court of Appeal of Ontario

The Honourable Mr. Justice Peter Griffiths
Criminal Law Specialist
Judge, Ontario Court of Justice, Criminal Division

Diana J. Lowe
Civil Law Specialist
Executive Director, Canadian Forum on Civil Justice

Susan T. McGrath
Senior Civil Litigation Lawyer
Past President, Canadian Bar Association

The Honourable Madam Justice Debra Paulseth
Administration and Procedural Reform Specialist
Judge, Ontario Court of Justice, Family and Youth Court

John Pearson
Prosecution Specialist
Senior Crown Counsel, Ontario

Mark Sandler
Criminal Law Specialist
Senior Criminal Defense Lawyer

Mohan Sharma
Civil Law Specialist
Court Services Division, Ontario

APPENDIX B - LIST OF JJSR STUDIES

Major Research Papers

1. Towards a Restorative Justice Policy for Jamaica, by Rev. Leon Dundas.
2. Case Flow Management Systems (Civil): Best Practices, Policy Development and Reform Priorities, by Mrs. M. Georgia Gibson-Henlin.
3. Alternative Dispute Resolution (Criminal and Civil): Best Practices, Policy Development and Reform Priorities, by Ms. Sherry Ann McGregor.
4. The Public and the Justice System (including: issues related to public knowledge of and public confidence in the justice system, public legal education, and issues pertaining to juries, witnesses and victims) by The Independent Jamaica Council for Human Rights, Ms. Nancy Anderson, author.
5. Court Management and Court Administration: Best Practices and Reform Priorities (including: court structures, court management court administration, models for independent court agencies, use of technology), by Mrs. Audre Lindo.
6. Promoting a Civil Liberties Culture, by the Independent Jamaica Council for Human Rights (Ms. Nancy Anderson).
7. Promoting a Civil Liberties Culture, by Ms. Dorcas White.

Issue Papers

1. Witness Assistance and Protection, Ms. Marcel Bent and Ms. Hazel Edwards.
2. The Role and Mandate of Justices of the Peace, Mr. Carlton Stephen, J. P.
3. The Judicial Appointments Process, Justice Hugh Small, Q.C.
4. Codes of Conduct, Justice Hugh Small, Q.C.
5. The Role, Jurisdiction and Function of Resident Magistrates/The Parish Jurisdiction Structure, Justice Hugh Small, Q.C.
6. Bailiff Reform, Mrs. Elaine Romans.
7. Accountability Frameworks, Mrs. Elaine Romans
8. Accountability Frameworks, Ms. Monique Robinson.
9. Institutionalizing Justice System Reform, Dr. Melina Buckley.
10. Making the Business Case for Investing in Justice, Mrs. Stacey-Ann Soltau-Robinson.
11. Making the Business Case for Investing in Justice, Ms. Sandra Shirley.
12. The Coroner's Court, Mr. Canute Brown.
13. The Coroner's Court, Ms. Avrine Bernard.
14. Diversion in Criminal Matters, Ms. Ayodeji Bernard.
15. The Children's Court, Mrs. Mary Clarke.
16. Domestic Disputes and Proceedings, Ms. Tamara Dickens.
17. Jury Reform, Ms. Celia Barclay.

Discussion Papers

1. The Context of Justice System Reform, Dr. Melina Buckley.
2. Toward a Vision and Statement of Principles and Values to Guide Jamaican Justice System Reform, Dr. Melina Buckley.

Compendia of Justice Reform Options

1. Compendium of Court Reform Approaches and Options: I - General Court Reform and Civil Justice Processes, Dr. Melina Buckley
2. A Compendium of Criminal Justice System Reform Initiatives from Other Countries, Andrejs Berzins, Q.C.

APPENDIX C – ISSUE WORKING GROUPS MEMBERSHIP

1. Access to Justice Working Group

Chair: Ms. Arlene Harrison-Henry, Attorney-at-Law

Working Group Members:

Her Honour Ms. Jenne Anderson-Figueroa
Mr. Carl Estick, Justice of the Peace
Mr. Peter Keeling, Artist and Interested Member of the Public
Mr. Germaine Simms, Attorney-at-Law
The Honourable Mrs. Justice Almarie Sinclair-Haynes

Persons who shared their views:

The Honourable Mr. Justice Roy Anderson
The Honourable Mr. Justice Andrew Rattray
Mr. David Noel, Corporate Secretary, Bank of Nova Scotia
Ms. Gaile Walters, Counsel for the Observer Newspaper

2. Civil Justice Processes Working Group

Co-Chairs: Miss Hilary Phillips Q.C., Attorney-at-Law
Mr. Patrick Foster, Deputy Solicitor General

Working Group Members:

Her Honour, Mrs. Sharon Ayton-George
Mr. David Batts, Attorney-at-Law
Mrs. Michele Champagnie, Attorney-at-Law
Mrs. Audre Lindo, Master of the Supreme Court (Ag.)
Her Honour, Mrs. Marlene Malahoo-Forte, Resident Magistrate
Mrs. Susan Reid-Jones, Attorney-at-Law, JJSR Project Advisor
Mrs. Stacey-Ann Soltau-Robinson, Attorney-at-Law

3. Court Administration and Court Management Working Group

Chair: Her Honour Ms. Lorraine Smith, RM Corporate Area Criminal
Vice-Chair: Ms. Cheryl Lewis, Divisional Director, Attorney-General's Chambers

Working Group Members:

Mr. David Batts, Attorney-at-Law
Mr LeRoi Lorde, J.P., Lay Magistrate
Her Honour, Mrs. Marlene Malahoo Forte, RM Corporate Area Civil
Mrs. Elaine Romans, Court Administrator
The Honourable Mr. Justice Bryan Sykes, Supreme Court
Mr. Jeremy Taylor, Office of the Director of Public Prosecutions

4. Criminal Justice Processes Working Group

Chair: Lisa M. Palmer, Office of the Director of Public Prosecutions
Vice-Chair: Her Honour Mrs. Marlene Malahoo-Forte, Resident Magistrate

Working Group Members:

Mr. Glen Cruickshank, Q.C., Private Bar
Mr. Adley Duncan, Student, Norman Manley Law School
Ms. Carole Excell, Dispute Resolution Foundation
Mr. Leslie Green, Jamaica Constabulary Force
Ms. Grace Lindo, Student, Norman Manley Law School
Mr. Bertland O'Connor, Jamaica Constabulary Force
Ms. Deborah Rance, Court Administrator
Ms. Candice Rochester, Attorney General's Department
Mr. Carlton Stephen, J.P., Lay Magistrate
Representative of the Department of Correctional Services

5. Professionalism and Justice Reform Working Group

Chair: Mrs. Audrey V. Sewell, Director, Justice Training Institute

Working Group Members:

Miss Celia Barclay, Student, Norman Manley Law School
Dr. Lloyd Barnett, Chairman, Independent Jamaican Council on Human Rights
Mr. Peter Carson, Senior Lecturer, Norman Manley Law School
Mr. Chester Crooks, Office of the Director of Public Prosecutions
Mrs. Marigold Harding, President, St. Andrew Lay Magistrates Association
Her Honour Miss Simone Maddix, Resident Magistrate
The Honourable Miss Justice Ingrid Mangatal, Supreme Court
Miss Veronica Poyser, Court Administrator, Civil Division

6. Promoting a Civil Liberties Culture Working Group

Convener: Mr. Ronald Thwaites, Task Force Member

Working Group Members:

Ms. Nancy Anderson, Attorney-at-Law
Mr. Giles Campbell, Department of Correctional Services
Ms. Renea Ferrell - Graduate, UWI – International Relations and Gender Studies
Ms. June Jarrett, Assistant Commissioner of Corrections
Dr. David Thwaites, Justice of the Peace
Ms. Deloris Walcott - Member of the Public

7. Restorative Justice Working Group

Chair: Ms. Donna Parchment, Executive Director, Dispute Resolution Foundation

Working Group Members:

DCP Linval Bailey, Jamaican Constabulary Force
Ms. Ayodeji Bernard, Student Norman Manley Law School
Mr. Leon Dundas, Dispute Resolution Foundation
Ms. Joy Francis, Court Administrator, Supreme Court
Mr. Rion Hall, Justice of the Peace
Ms. Nesta Haye, Victim Support Unit
Mrs. Shirley Johnson, Director of Correctional Service
Mrs. Judith Keane, Member of the Public
Ms. Paula Llewellyn, Office of the Director of Public Prosecutions
Her Honour Mrs. Marlene Malahoo Forte, Resident Magistrate
Major Richard Reece, Department of Correctional Services

Appendix C – Issue Working Group Membership

APPENDIX D – REGIONAL WORKING GROUPS MEMBERSHIP

Regional Working Group #1 – Kingston and St. Andrew, St. Thomas, St. Catherine

Convener/Chair: Deborah Rance

Working Group Members:

Sylvia Collins Duncan, Court Administrator, Corporate Area Criminal Court
Susan Goffe, Member of Public
ACP Reginald Grant, JCF
Ishiwawa Hope, Social Development Commission (Ex Officio)
ACP Gilbert Kameka, JCF
Mabel Morris, Department of Correctional Services
Ralph Nolan, Department of Correctional Services, St. Catherine
Deborah Rance, Court Administration, Supreme Court
Kathryn Phipps, Jamaican Labour Party

Regional Working Group #2 – St. James, Hanover, Trelawny, Westmoreland

Convener/Chair: Keri Johnson

Working Group Members:

ACP Clifford Blake, JCF
Nathaniel Campbell, Department of Correctional Services
Keri Johnson, Cornwall Bar Association
Mark Kerr-Jarrett, St. James Parish Development Committee
Ida Leavene, Court Administrator
Delores O’Conner, Church Action Negril
Gwendolyn Peters, Church Action Negril
Pauline Reid, Montego Bay Chamber of Commerce
Joseph Williams, Justice of the Peace

Regional Working Group #3 – St. Mary, Portland, St. Ann

Convener/Chair: Richard Donalson

Ex-Officio Coordinators:

Bobby “A” Pottinger, Custos Rotulorum, St. Mary
Roy E. Thompson, Custos Rotulorum Portland
Radcliffe Walters, Custos Rotulorum St. Ann

Appendix D – Regional Working Group Membership

Working Group Members:

Colleen Clarke, Dept. Correctional Services, Portland
Richard Donaldson, Northern Bar Association
Carol Edwards, Snr. Magistrate, St. Ann
Lily Gordon, Social Worker, St. Ann
Pauline Haughton, Justice of the Peace, St. Ann
Kandre Leveridge, SDC St. Mary
Senior Superintendent Ray Palmer - JCF
Norma L. Walters, St. Ann Chamber of Commerce

Working Group #4 – Clarendon, Manchester, St. Elizabeth

Convener/Chair: Donna Scott-Mottley

Working Group Members:

Neilson Anderson, Probation Department, Clarendon
Glen Brown, Snr. Resident Magistrate, Clarendon
Jeromha Crossbourne, Southern Bar Association
Eurica Douglas, SDC, Manchester (Ex Officio)
Senior Superintendent Kingsley Robinson – JCF
Donna Scott-Mottley, Southern Bar Association
Lindel U. Smith, Southern Bar Association, Manchester
Joslyn Vernon, Court Administrator, Clarendon RM Court

APPENDIX E – PUBLIC CONSULTATION SESSIONS

March 15

Jamaica Conference Centre, Kingston

March 15

Baptist Church Hall, Ocho Rios, St. Ann

March 15

Parish Church, Morant Bay, St. Thomas

March 20

Holy Cross Church, St. Andrew

March 20

Glad Tidings Open Bible, Spanish Town, St. Catherine

March 22

St. Helen's Catholic Church, Linstead, St. Catherine

March 22

Yallah's Primary School, St. Thomas

March 22

Lucea United Church Hall, Hanover

March 27

Jonathan Grant High School, Spanish Town, St. Catherine

March 27

St. Gabriel's Anglican Church, May Pen, Clarendon

March 28

Sean Lavery Faith Hall, Savanna-La-Mar, Westmoreland

March 28

Edna Manley Health Centre, Grants Pen, St. Andrew

March 28

Anglican Church Hall, St. Ann's Bay, St. Ann

March 29

Portmore Heart Academy, St. Catherine

April 4

Montego Bay Civic Centre, St. James

Appendix E – Public Consultation Sessions

April 5

St. Mathews Church Hall, Santa Cruz, St. Elizabeth

April 10

Cavaliers All Age School, St. Andrew / St. Catherine

April 11

Anglican Church Hall, Browns Town, St. Ann

April 12

Mandeville Parish Church Hall, Manchester

April 12

Port Maria Civic Centre, St. Mary

April 17

Port Antonia Marina, Portland

APPENDIX F – YOUTH WORKING GROUP MEMBERSHIP

Chair: Kamal Powell, University Student, Youth Ambassador at Large

Working Group Members:

Melissa Simms, Clerk of the Courts
Samuel Clunis, National Youth Council of Jamaica
Luciana Ramsay, Attorney-at-Law
Leton Jackson
Jaevion Nelson
Beckeisha Gordon
Alric Campbell, National Youth Council of Jamaica
Dwayne Gutzmer