



CARIBBEAN JUSTICE:
a needs assessment
of the judicial system
in nine countries



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CARIBBEAN JUSTICE: a needs assessment of the judicial system in nine countries

**Antigua and Barbuda, Barbados, Belize, Dominica, Guyana, Grenada, Saint
Kitts and Nevis, Saint Lucia, Trinidad and Tobago**



2020



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Director of Forensic Science Services Fernanda Henry at the Saint Lucia Forensic Science Laboratory.
Photo credit: Juliet Solomon.

2. EXECUTIVE SUMMARY

Inequality, discrimination and exclusion remain severe obstacles to universal sustainable development. Unfortunately, COVID-19 has exacerbated this development deficit and challenged the aspiration of access to justice for all. People living in poverty and marginalized groups may not be aware of their legal rights and often lack legal protection and access to mechanisms to remedy their grievances, resulting in increased vulnerability. Sexual and gender-based violence (SGBV) has a devastating, long-term effect on the lives of victims, their families and communities, and impedes development progress. This Needs Assessment Report (NAR) has a conceptual framework based on a human rights-based approach, intersectional and UNDP's guidelines in order to move the Caribbean region from a less punitive to a more rehabilitative system.

Through this analysis and review exercise of the judicial cycle in the Caribbean, it was possible to **identify the main challenges for a people-centred approach to justice that leaves no one behind**. The report aims to highlight trends across the Caribbean region in order to determine how best the development partners can add value to current efforts and initiatives on improving access to justice and its administration in the Caribbean.

This Needs Assessment Report on the administration of justice in the Caribbean provides an up-to-date analysis of the main opportunities and challenges in the region. **A salient challenge identified is the lack of available data for the design of regional and national assessments and result oriented solutions.**

Another important conclusion of the report is that **in all jurisdictions the backlog of cases** – particularly in the criminal division – **is one of the most challenging issues. The reasons for the backlogs are multifaceted and include primarily the slow pace of investigations by police, inordinate delays in production of depositions, and lack of human and technological resources.** The main consequence of the backlogs is a failure to “provid(e) accessible, fair and efficient justice for the people and states of the Caribbean Community.”¹

In terms of **general stakeholders' feedback** (provided through questionnaires, consultations and a regional judges consultation) the consensus was that there is **over-use of pre-trial detention** because of a lack of alternative pre-trial options, causing not only a slow judiciary process but, most important, causing a due process violation, that needs to be addressed urgently.

The report reflects on a whole-of-system approach which identifies **bottlenecks at different stages of the administration of justice**. For example, while replacing Preliminary Inquiries with paper committals or sufficiency hearings, such a change, without other “fixes”, will merely shift the overload to the various offices of the Director of Public Prosecutions (DPP) in the Caribbean region.

In terms of the quality of judicial services provided to the public, **there are significant areas in which public perception may be negatively affected**. The report argues that important improvements are necessary in order for the justice system to provide timely, consistent, responsive and transparent services.

In terms of good experiences identified, Governments have undertaken numerous efforts to improve the administration of justice. Efforts at country level have included legislative reform, upgrading and strengthening of institutional capacities of the range of justice institutions, and professional development. Specialized Courts such as drug, family, juvenile, and sexual offences courts have been introduced.

¹ www.ccj.org/about-the-ccj/mission-vision/, 'Mission Statement', The Caribbean Court of Justice.

ced. Others have moved to introduce more structure and discipline to the case management process prior to and during trials and more use of technology such as automated court case management systems to increase efficiency. These improvements have been most successful in the area of civil law, where stakeholders confirmed that backlogs have been substantially reduced. However, in the case of criminal matters, a practical example would be the decriminalization of marijuana in December 2019 in Trinidad and Tobago, which had an immediate effect of reducing the case backlog by approximately 8,000 cases by January 2020.

Some **innovative experiences** can also be highlighted. In the course of this Needs Assessment, several initiatives were identified which address some of the challenges highlighted and have improved the administration of justice in the relevant jurisdiction. Even though the analysis covers nine Caribbean countries (Antigua and Barbuda; Barbados; Belize; Dominica; Grenada; Guyana; Saint Kitts and Nevis; Saint Lucia and Trinidad and Tobago), most of the identified trends, challenges and opportunities may be valid to other islands in the region, considering the similarities in context and development situations. In this sense, for a next step, it is worth assessing some of these initiatives and recommendations in order to **scale-up** the good experience to other countries.

The **COVID-19 global pandemic** has had a severe impact in the administration of justice worldwide, and the Caribbean region has been no exception. The consequences of COVID-19 highlight specific justice concerns, such as institutionalizing reforms to strengthen the effectiveness and efficiency of the justice chain in a radically shifted social context. This needs assessment report makes recommendations in light of the new challenges exposed by COVID-19. These recommendations include an emphasis on **citizen's rights to justice and a people centre-approach** to ensure no-one is left behind in the recovery process. The recommendations for the Caribbean countries in facilitating access to justice in the COVID-19 recovery encompass access to independent and impartial control mechanism; access to justice for all and addressing the backlog of cases.

The recommendations on **access to legal services and legal information** are critical as prevalent inequalities have and will continue to be highlighted by the pandemic. The justice sector will need surge capacities to be able to handle the increased backlog in an effective, fair and timely manner. Successful innovative strategies adopted during the crisis should be continued and built upon to overcome some of the systemic barriers which citizens encounter in accessing justice and to reduce the backlog of cases. Such initiatives, including the use of remote technology for legal proceedings, prison decongestion strategies, measures reducing usage of pretrial detention, online dispute resolution, and virtual access to legal aid providers, should be retained as long-term measures. Engaging informal justice mechanisms, and other traditional dispute resolution mechanisms, that may predominantly deal with family matters, may be further explored to ensure compliance with international human rights standards. The recommendations also reflect on the response and measures adopted to protect and promote access to justice in the context of COVID-19.

The NAR includes **recommendations** at two levels: **regional and national**. At the regional level, **the main recommendations include how to ensure equal access to justice for all by 2030** recognizing that gender equality is achieved when both sexes enjoy the same rights and opportunities across society, including access to justice. For this purpose, SDG16 was the lens used throughout this assessment. **At the national level**, the NAR provides more country-specific proposals to detailed local challenges.

3. INTRODUCTION

3.1 Statement of Purpose

The application of the rule of law and the protection of human rights is enshrined by all Caribbean National Constitutions. In addition, most countries in the region are party to major international instruments governing access to justice, including the International Covenant on Civil and Political Rights (ICCPR).² These legal provisions offer a framework for the promotion and protection of human rights and the consistent application of justice to all citizens. However, the region generally displays high levels of inequality, limited access to services to vulnerable populations and high levels of criminality and low levels of confidence in public institutions, which is also reflected in inequitable access to justice.³

In September 2015, Caribbean countries endorsed the Sustainable Development Goals (SDGs) which include Goal 16 on peaceful, just and inclusive societies. SDG 16 provides the guidelines for the equitable administration of justice with a specific target on ‘promoting the rule of law at the national and international levels and ensuring access to justice for all.’

In promoting equal justice for all, justice for women is one of the main accelerators for achieving the 2030 Agenda for Sustainable Development. Not only does investing in justice for women help to achieve gender equality and advance women’s empowerment, but it also creates a foundation for long-term growth and peaceful and inclusive societies.

Justice reforms are needed to redress the impact of unequal power relations between men and women. The 2030 Agenda prioritizes those who are furthest behind, and in many cases, this means women. This framework contains a set of 17 interconnected Goals, 169 Targets and 232 Indicators for eradicating poverty, promoting human rights, gender equality, good governance, effective participation and the rule of law.

The Pathfinders Roadmap for Peaceful, Just and Inclusive Societies,⁴ finds that in all, 36 Targets across the Agenda directly measure an aspect of peace, inclusion or access to justice. Of these, one-third are found in SDG 16. SDG 16 is also particularly relevant as it encompasses a range of commitments such as reforming discriminatory laws, tackling violence against women, addressing women’s property rights and ensuring women’s effective and meaningful participation in decision-making.

This Needs Assessment Report on the administration of justice in the Caribbean provides an up-to-date analysis of the main opportunities and challenges in the region. The report aims to highlight trends across the region in order to determine how best the development partners can add value to current efforts and initiatives on improving the justice system in the Caribbean.

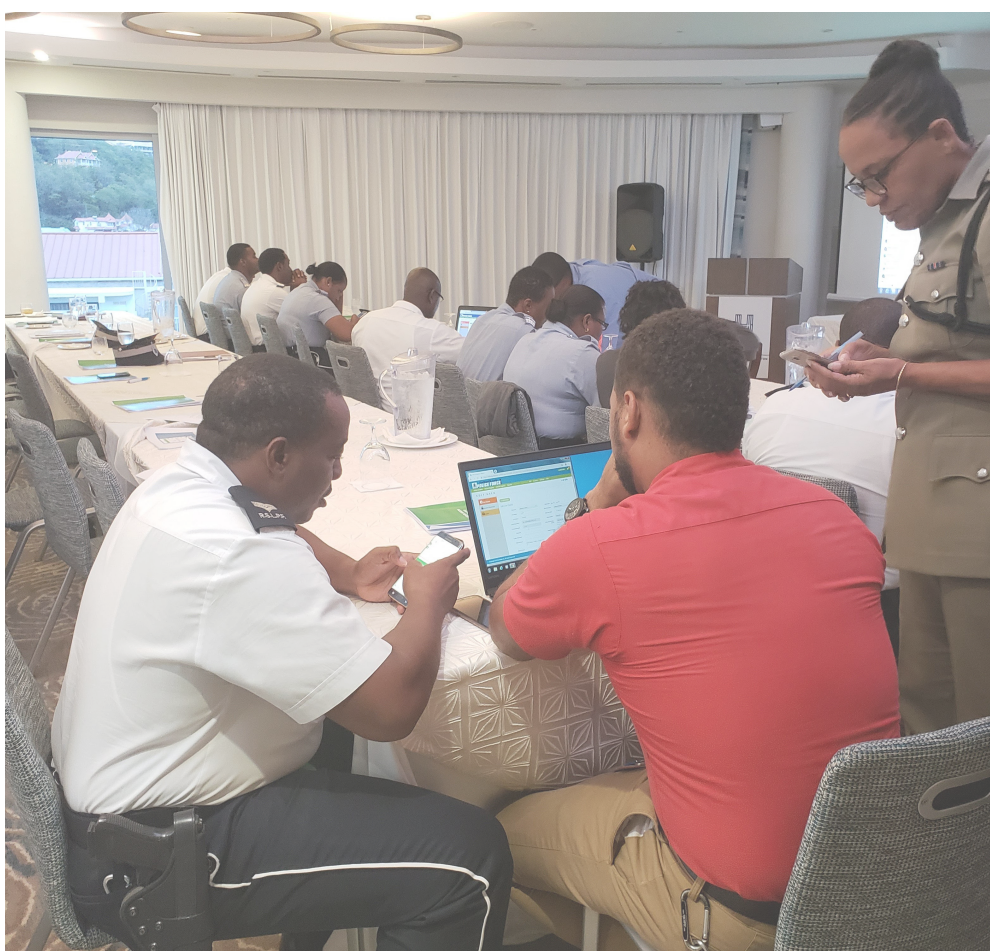
² Most Caribbean countries have also ratified CEDAW, CAT and ICESCR etc. The Convention on the Elimination of All Forms of Discrimination against Women United Nations General Assembly Resolution 34/180, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the global charter of women’s rights and therefore, the blueprint for women’s access to justice programming. Ratified by 189 countries, the CEDAW provides the basis for realizing equality between women and men by ensuring women’s equal access and equal opportunities in all spheres of economic, social, cultural, political and civil life. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms. States that have ratified the CEDAW are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations to the CEDAW’s monitoring body, the CEDAW Committee. United Nations General Assembly Resolution 54/4, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women also serves as an important access to justice recourse.

³ UNDP, ‘Caribbean Human Development Report’, 2012.

⁴ <https://cic.nyu.edu/publications/roadmap-peaceful-just-and-inclusive-societies-call-action-change-our-world>.

The report has been developed and written with the following objectives in mind:

- to provide an up-to-date view of the present state of play in the administration of justice systems in nine Caribbean countries, eight years after UNDP’s Caribbean Human Development Report (CHDR) called for its improvement and reform;
- to identify practices and areas for improvement; and
- to make recommendations for strategic interventions and support to national governments and regional and development partners.



Justice sector participants discuss integrative methodology during a workshop in Saint Lucia.
Photo credit: Juliet Solomon.

3.2 Methodology

A five-pronged approach was put in place as the methodology for the assessment and analysis, including the following stages: (i) a desk review; (ii) development and application of a needs assessment online tool; (iii) broad consultations with judicial stakeholders in each jurisdiction, (iv) a consultation with regional judges from all participating countries, held in Port of Spain, Trinidad and Tobago on 7 November 2019, and (v) production of an assessment report with recommendations from a UNDP technical team from the participating countries.

The desk review consisted of an analysis of existing reports, initiatives and international norms and standards, comprising of more than one hundred (100) documents.⁵ The review identified the most recent data-driven information available on the security and justice sector in the Caribbean back to UNDP's 2012 Caribbean Human Development Report. This groundbreaking report relied on data produced by a 2010 UNDP Citizen Security Survey.

Development of an online mapping tool. A questionnaire was developed and administered to key stakeholders in the judicial sector in the Caribbean, including regional judges, UNDP experts, justice sector analysis and civil society representatives. The tool's objective was to collect expert views and suggestions on the state of justice administration in the Caribbean region.

Broad consultations with judicial stakeholders.⁶ A technical team from the UNDP Regional Hub for Latin America and the Caribbean conducted a series of missions to facilitate in-person consultations between November and December 2019. These visits were conducted in Barbados, Belize, Guyana, Saint Lucia and Trinidad and Tobago. Experts from respective UNDP country offices also engaged judicial stakeholders in their respective jurisdictions.

Regional Judges workshop. A Regional Judges Consultation which took place in Port of Spain, Trinidad and Tobago on 7 November 2019 attended by 22 participants. The one-day consultation focused on the identification of areas of strength and weaknesses of the judiciaries in participants countries in order to inform the data collection and fieldwork for the assessment. The consultation employed a round-table format with participants asked to highlight their own challenges, needs and recommendations in specific areas related to the justice system in their jurisdictions. Judges from Barbados, the OECS, Belize, Guyana, and Trinidad and Tobago participated and key civil society organizations and regional justice experts from the region were invited to make inputs.

Production of an assessment report with recommendations. Over the course of the Needs Assessment, inputs were received from more than fifty (50) judicial stakeholders from judicial institutions including the police, magistrates, Offices of the Director of Public Prosecutions, Bar Association, Registrars and Justices of the Supreme Court, the Caribbean Court of Justice (the "CCJ"), prisons, and forensic science labs. International/regional agencies and projects were also consulted. A final co-creation workshop took place in Bridgetown, Barbados on January 27 and 28, 2020 with the core UNDP technical team from the Regional Centre and the participating UNDP country offices.

Additionally, a **strategy to ensure the gender approach of this Needs Assessment was put in** place and consisting of three phases: (i) to ensure that the consultation and the regional workshop agendas included women leaders from different sectors related to justice issues; (ii) incorporating questions in the mapping tool on the role, challenges and causes of the lack of justice services and how it specifically affects women and girls; and (iii) including recommendations for better access to justice services for women and girls, particularly to avoid revictimization processes.

In conclusion, the methodology applied was based on rigorous international standards, including a mix of observations from practitioners and experts' assessments; analysis of surveys data; primary interviews; focus groups and secondary data analysis.

⁵ See Annex 1.

⁶ See Annex 2.

3.3 Limitations of this report

Efforts to identify up-to-date studies and reviews were made all around. The report utilized what data sets were available, however, in some cases the information presented in the report is fragmented as it was not possible to obtain comparative data across the countries covered by the assessment. This, in itself, is a recommendation to address: to update comparable data and indicators of justice administration in the region. To address this limitation, and as mentioned earlier, the research applied mostly a qualitative approach to arrive to its key conclusions. These conclusions and respective recommendations were thus validated by many of the observations made by experienced practitioners, judges and justice operators from the region. Future research must also be conducted on gender implications in the justice system as this information was limited in certain instances, for example, in analyzing punitive vs rehabilitative approaches toward men and women who come into contact with the justice system.

3.4 Structure of the report

The report is structured in four parts. The first part is this introduction outlining the statement of purpose and objectives, as well as the methodology applied. It also includes a description of limitations and caveats. In addition, it presents an analysis of UNDP's role and expertise in the areas of justice in the Caribbean region.

Secondly, the report portrays an up-to-date assessment of the current state of justice administration in the Caribbean. It includes an analysis of the relevance of a prevention approach at the societal level, aimed at enhancing opportunities for peaceful coexistence and fair and equitable access to justice when in need. This overview incorporates human rights perspectives and gender mainstreaming which discusses several issues identified as key to enhance equitable administration of justice. The section includes a visualization of civil and criminal justice systems and structures as well as discussion of strengths with the judicial systems.

Thirdly, the assessment focuses on key findings of the justice administration in the Caribbean. The major findings are divided in a double categorization of access to and quality of justice. The starting point is the realization that access to justice is one of the most effective ways for citizens to close their development gaps and inequalities. In the region, several attempts have been made and some progress achieved in terms of modernization of justice structures and processes, reforms in human resources, application of legal aid and Specialized Courts in some jurisdictions. Data and information systems have also been part of ongoing reform efforts. Nevertheless, the findings indicate a need to further strengthening and room for improvements regarding the quality of justice. On this, the report discusses several reform processes, including diversionary measures (i.e. alternative dispute resolution), prosecution, adjournments, case flow management, sentencing, bail, pre-trial detention and re-habilitative approaches.

The fourth section includes a series of recommendations based on the data and analysis, and expert commentary and inputs from the different consultation and interviews held during the research process. The recommendations are geared towards the identification of key enablers to bring enhanced effectiveness and efficiency into the administration of justice in the Caribbean. The recommendations are divided in regional and national levels given their applicability. COVID-19 related recommendations are also included geared to ensure justice is not suspended during the recovery process.



Justices Charmaine Pemberton (Trinidad and Tobago) and Randall Worrell (Barbados) participate in the Regional Judges Consultation which took place in Port of Spain, Trinidad and Tobago on 7 November 2019. Photo credit: Juliet Solomon.

3.5 UNDP and Justice in the Caribbean

UNDP's approach to sustainable human development argues that effective governance is a pre-condition to the achievement of Agenda 2030. In middle-income countries like those in Latin America and the Caribbean, governance is the most relevant instrument for creating opportunities for people to forge their own destinies and collaborate with each other. The basis for this approach is the dual premise that SDG 16 on the promotion of just, peaceful and inclusive societies, is an enabler of development, and people's lives are improved when their government is efficient and responsive. That is, public trust in the government is greater when people experience support when they are included in decisions that affect their lives, and when they enjoy equal access to fair institutions, which provide services and administer justice. However, women, as well as sexual and gender minority (SGM) populations (LGBTIQ), face barriers to accessing justice, which are often the result of policy, legislative, institutional, and societal failure to remove discrimination, gender bias, stereotyping, stigma, and indifference.

UNDP's approach to justice starts from a prevention perspective with the goal of creating the social conditions that allow for development that is sustainable. Its cooperation initiatives are centred around strengthening institutional capacity, providing attention to women and vulnerable groups, promoting a culture of peace, and improving and appropriating safe and equitable access to justice. From this perspective, the main function of the State is to guarantee security and, therefore, it is essential to improve institutional performance (in this case, the judicial system) in order to enhance democratic governance. UNDP in the Caribbean region, more specifically Barbados and the Eastern Caribbean; and Guyana through the Cari-SECURE project (a partnership with USAID) supports the strengthening of capacities of national and regional institutions in 10 Eastern and Southern Caribbean states to collect, analyze, and use standardized

and disaggregated citizen security data to develop targeted evidence-based policies and programmes.

In addition, in Guyana, UNDP support on justice sector is multidisciplinary. It encompasses the promotion of social cohesion; human rights of LGBTIQ persons and formulation of policies, and infrastructure platforms for increased communications linking remote and hinterland areas to government services centrally located. Also, under the Spotlight Initiative (SI), the UNDP will support the strengthening of capacities of CSOs and government agencies to regularly collect data on gender-based access to justice, development of databases to capture gender statistics and multi-stakeholder forum on data.

UNDP in Belize provided the support and framework for the National Diversion Programme: intervening when children come into conflict with the law, launch of the Belize Crime Observatory which now serves as a national repository for the secure storage of comprehensive and multi-dimensional data relating to crime, the placement of two (2) Human Rights Observatories and a training programme servicing Family Mediators with an aim of reducing case overload.

In Trinidad and Tobago, UNDP interventions included the Juvenile Court Project which led to the establishment of the Children Court and resulted in the modification of the legal framework and development of support systems necessary to staff and operate two Courts; the Resilience and Inclusive Peace Project which includes a number of initiatives and interventions to address violence prevention: trainings to build capacities within the justice sector, training of child probation officers, drug court training and assessment training to address issues that cause youth to come into conflict with the law. UNDP also plays an important role in supporting those institutions that are referral pathways utilized by the Courts, for example, the Police Youth Clubs and the Youth Transformation and Rehabilitation Centre (Juvenile Detention Centre).

The SI is a partnership between the European Union (EU) and the United Nations (UN) to eliminate all forms of violence against women and girls (VAWG), including harmful practices. Through a comprehensive approach, the SI will focus its work on family violence through six key pillars: developing and implementing relevant legislation and policies, strengthening national and sub-national institutions, preventing violence through evidence-based programmes and campaigns, establishing and strengthening essential services for victims and survivors, ensuring the collection and use of prevalence and incidence data, and partnering directly with women's movements and civil society on prevalence and gender inequality indicators used which would support a ranking of these countries in terms of prevalence. All countries will programme on the six pillars of SI's Theory of Change. There will also be a regional programme to support and enhance a regional approach in eliminating family violence aimed at adding value, maximizing investment, and contributing to sustainability: pillars 2 (institutional strengthening) and 5 (data management).

“The framework of the culture in obtaining access of justice and fair treatment is not enabling, many women do not go to the police station as they tend not to be taken seriously.”

Rosina Wiltshire - Caribbean Women In Leadership (CIWIL) Board member



Caribbean Governments have made great strides in modernizing their justice systems to protect the most vulnerable.

UNDP officials receive a tour to determine the accessibility of judicial services offered to children at the Children's Authority Mt. Hope Assessment Centre in Trinidad and Tobago from Assessment Manager Vandana Siew Sankar-Ali.

Photo credit: Juliet Solomon.

4. OVERVIEW:

THE CURRENT STATE OF JUSTICE ADMINISTRATION IN THE CARIBBEAN

Peace and justice are inherent to development. Social cohesion and peaceful co-existence are necessary pre-requisites for the achievement of sustainable development in general and goal 16 in particular. They are also pre-conditions for the smooth functioning of a community and for the benefit of the individuals within it. However, crime and violence occur when there is a breakdown of this social contract. These are normal tensions that all societies have learned to manage via the application of norms of conduct.

When breakdowns occur, individuals come into contact with the justice system. Dependent on the nature of the offense, the application of justice is dealt with via civil or criminal justice. Ideally, such a system will be fast, reliable, transparent, and geared towards harmonious existence, peaceful resolutions and, in extreme cases, rehabilitation and reintegration of individuals back into their communities, thereby reducing recidivism and engendering public trust and confidence in the system of administration of justice.

4.1 Human rights approach⁷

Promoting respect for human rights and redress for human rights violations are crucial elements of UNDP's assistance to countries. Through a human rights-based approach, UNDP gains a better understanding of complex power dynamics and structural inequalities, which enables more strategic and sustainable development programming.

Supporting national accountability mechanisms is an important component of fostering respect for human rights. UNDP supports human rights for development to protect fundamental rights and freedoms, as an end in itself and as an integral part of rule of law programming.

As part of these efforts, UNDP has noted the need to recognise the rights of those in prison as accused individuals spend years on remand without being formally indicted. Also, there must be a cap or guideline on continuous adjournments to promote accused individuals right to fair trial within a reasonable time.⁸

“There is the situation of persons being in prison in some instances in excess of the time that they would have served if convicted of the offence with which eventually charged.”

UNDP Access to Justice Questionnaire respondent, Antigua and Barbuda

The issue of continuous adjournments and lengthy processes can also affect the right of victims to access to justice in a timely fashion. This is particularly true in the case of women and children, who risk re-traumatization when resolution of cases such as sexual offences are inordinately delayed.

Discrimination also hinders their access to justice; gender is linked with other factors that affect women, such as race, ethnicity, religion, health status, age, class, sexual orientation, etc. This is called the intersectional approach because these forms of discrimination intersect one another. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. Therefore, several personal characteristics deepen their exclusion and marginalization. The CEDAW Committee argues that women are at risk of being deprived of access to justice.

These various groups have particular needs from the justice system that are not being adequately met: women and children; Rastafarians, who have been often mistreated and incarcerated for behaviours that are increasingly being decriminalized;⁹ LGBTIQ individuals; persons with disabilities, and indigenous po-

⁷ www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/.

⁸ Equality and Human Rights Commission, 'Human Rights Act', Article 6.

⁹ <https://thecaribbeancamera.com/rastafarians-face-discrimination-in-some-caribbean-countries-us-state-department-report/>.

pulations. A lack of accessibility to Courts both in terms of infrastructure and distance disproportionately affect people with disabilities and indigenous populations. This lack of accessible justice facilities and services to persons with diverse forms of disability (e.g., visual, physical, hearing, intellectual, mental) results in exclusion from protection and remedies.

All stakeholders noted that sexual assault and family matters form the bulk of cases in all jurisdictions. In the first survey of its kind in the Caribbean, a National Survey on Gender-Based Violence was conducted in Guyana in 2018 through a partnership conducted by the Government of Guyana with support from USAID, IADB, UNWOMEN and UNDP in collaboration with the University of Guyana and the Global Women Institute of George Washington University.¹⁰ The findings revealed that, in Guyana, 38 per cent of women have experienced physical and/or sexual violence, above the global average. One (1) in every two (2) women in Guyana has or will experience Intimate Partner Violence (IPV) in their lifetime. More than half (55%) of all women experienced at least one form of violence. More than one in ten have experienced physical and/or sexual violence from a male partner in the past 12 months. The report also noted that being young (15-25) is the most significant risk factor for non-partner sexual violence (NPSV), including rape, attempted rape, unwanted sexual touching and sexual harassment. While many countries are establishing Specialized Courts, facilities and support services to deal with the scourge of gender-based violence, much still needs to be done to bring the judicial system up to international standards in dealing with both perpetrators and victims.

“Half of all women who experienced IPV in Guyana never sought help. Victims, community members and stakeholders attributed this to lack of knowledge of available help, perceptions of being blamed or stigmatized by their situation becoming known throughout the community and inadequate support structures to ensure victim safety after reporting violence to the police.”

Guyana women’s health and life experiences survey 2018 report

VULNERABLE GROUPS

TRINIDAD AND TOBAGO

Children’s Authority Mt. Hope Assessment Centre:

“One-stop” Assessment Centres, where a child who is in need of care and protection can be seen by a multidisciplinary team of childcare professionals, in one location. The Centre seeks to limit the number of interviews that a child has to do, and the number of places that a child has to visit to be medically examined, questioned and psychologically assessed, as multiple evaluations can further traumatise the child. The purpose is to assess a child to determine if he or she has been harmed, the impact of this harm and the best placement and method of providing care to the child.

- Forensic interviews and forensic medical examinations allow for evidence collection which can aid in the identification and prosecution of alleged perpetrators; and enable increased justice.
- Between 2015-2019, 206 forensic interviews conducted.

¹⁰ <https://caribbean.unwomen.org/en/materials/publications/2019/11/guyana-womens-health-and-life-experiences-survey-report#view>.

Outdated laws and lack of awareness on the part of magistrates often lead to unjust outcome for the LGBTIQ community, such as in the case of four transgender women arrested and jailed for three days in 2009 under an archaic 1893 law forbidding cross-dressing in public “for an improper purpose”. The law was finally struck down in 2018 by the CCJ.¹¹ In 2017, when another transgender woman, the victim of an assault, appeared in court in female clothing the magistrate refused to hear the matter, instructing her to appear at the next scheduled session dressed in pants, a shirt and without earrings and saying that if she refused to comply he would “deal with her accordingly”.¹² She complied for fear of being held in contempt of court.

“There is still stigmatization of varied persons and issues with the efficiency of the administration of justice. There is a shortage of trained personnel as service providers and a certain level of closed mindedness when dealing with issues and persons who do not present in a ‘normal’ way.”

UNDP Access to Justice Questionnaire respondent, Trinidad and Tobago

“The press, the journalists need gender sensitization training to revolutionize the culture and social stigmas which surround women.”

CIWiL, Young Women In Leadership 2020.

4.2 Witness and Victim Protection and Support

The issue of witness protection was raised by stakeholders in two contexts: 1) the need for a regional witness protection programme in cases of serious crimes given the small societies and land masses of most Caribbean countries. While stakeholders noted that witnesses in need of protection via relocation and anonymity represent only a small percentage of the serious cases being dealt with by the justice systems, it was seen as an important issue to address, particularly by stakeholders in Guyana. It appears that some bilateral witness protection agreements are already in existence but, by their very nature, are not suitable for discussion in a report such as this.

However, 2) the support and protection of both witnesses and victims in less extreme circumstances was raised by all stakeholders. For example, Preliminary Inquiries are often delayed because of the difficulty of producing witnesses, either because of reluctance to testify, the challenge of locating witnesses (particularly in jurisdictions such as Guyana and Belize which have geographically dispersed and often itinerant population groups), or lack of incentive to appear in court if they have to travel long distances. In the case of Guyana, the Office of the DPP commented that witnesses are reimbursed for travel only after they appear in court, leaving the immediate financial burden on the witness. Stakeholders also noted that backlogs and delays in getting to trial engenders witness tampering and frustration on the part of victims who may simply give up on the process. Another issue that was raised was that in some cases the ease of getting bail can also facilitate witness and victim intimidation.

¹¹ www.reuters.com/article/us-guyana-lgbt-crossdressing/guyana-strikes-down-law-against-improper-cross-dressing-idUSKCN1NJ2R6.

¹² <https://demerarawaves.com/2017/02/08/transgender-woman-appears-in-unisex-clothing-at-court-after-warned-by-magistrate/>.

4.3 The costs of justice

Many of the performance issues in the justice sector relate to the availability and usage efficiency of government resources and it is therefore important to consider the prevailing fiscal conditions in the countries included in the NAR. Over the past three years, most of the countries of the region have been registering gradual improvements in their fiscal performances, with financial surpluses equivalent to around 4% of GDP being registered in Saint Kitts and Nevis and Grenada and virtual balanced budget in Saint Lucia. Deficits observed in Trinidad and Tobago, Belize and Barbados remain 3%, though the situation in Dominica is less positive, where the deficit expanding to around 8% in 2018.

As a corollary, the growth in national debt in the EC has been relatively contained over the past three years, with most of the OECS countries carrying average debt levels of less than 80% of GDP, the lowest being in Saint Lucia and Grenada. Similarly, the ratio has remained sub-80% in Trinidad though it is notably higher in Belize at 94%. The outlier is Barbados, where the debt to GDP ratio was 119% at the end of 2019, though it is on a downward trend, falling from 148% in 2017.

While these trends reflect some improvements in fiscal dynamics, they show the tenuous fiscal situation facing the countries in the region, including those related to the impacts of climate change which, as was recently demonstrated in Dominica and Antigua and Barbuda, can have catastrophic social and macro-economic impacts. Added to this, the increasing costs for healthcare, education, energy and transportation means that Governments will have to prioritize interventions which can reduce costs, improve the efficiency of public services and which can support the achievement of multiple SDGs simultaneously.

For the present NAR, this latter issue is critical, particularly in the context of the costs of incarceration and the opportunity for diversion and reducing custodial costs. While pre-trial detention alternatives have been used in various territories, their use has been limited and constrained by a lack of rigorous monitoring and evaluation. In Barbados for example, the use of Drug Treatment Courts has been regarded as a critical step, but both process and impact evaluation has been weak making it difficult to determine whether the programme is reducing overall costs in the justice sector.¹³

Nonetheless, research in developed countries has demonstrated the potential of alternatives to generate significant cost savings in both the short and long run. In the US, pre-trial detention costed taxpayers 10 times more than non-custodial supervision,¹⁴ while in Australia, a comprehensive comparison of the total costs and savings of incarceration in prison and community corrections demonstrated that the latter approach resulted in savings of over 70%.

This is of particular relevance in the region, where the costs to maintain and provide support to individuals in prison have been steadily increasing. In many territories, the percentage of those in prison on remand/pre-trial detention is over 30%, with some countries such as Trinidad and Tobago (60%), BRB (56%) and Saint Lucia (55%) far exceeding this.

4.4 Structure and Composition of the Court system in the Caribbean¹⁵

There are three levels of Courts in the Caribbean region: Superior Courts of Record, Intermediate Courts and Inferior Courts. A further division may be made between Ordinary Courts and Specialized Courts and Tribunals. The authority for the Court system emerges from the Constitution, and structure, composition and jurisdiction emerge from ordinary legislation.

The Court of Appeal, the Supreme or High Court and Magistrates' Courts are Ordinary Courts. The first

¹³ Ramsay Kim, 'Alternatives to Incarceration—The Case of Barbados', Inter-American Drug Abuse Control Commission, Sixty-Third Regular Session Of OAS/CICAD, 2018.

¹⁴ www.uscourts.gov/news/2013/07/18/supervision-costs-significantly-less-incarceration-federal-system, 'Supervision Costs Significantly Less than Incarceration in Federal System', United States Courts, 2013.

¹⁵ Antoine, R-M.B, 'Law and Legal Systems in the Commonwealth Caribbean', second edition, chapters 15-18.

two are Superior Courts of Record while the latter are Inferior Courts. Serious Offences i.e. indictable offences are tried in Superior Courts while minor offences or summary matters are tried in Inferior Courts. The latter is defined by limited penalties and monetary values.

Specialized Courts, Tribunals and Jurisdictions

The term Specialized Courts, Tribunals or jurisdictions describes those jurisdictions which are specific to certain matters. In some cases, these specialised functions are not strictly judicial. In this instance, they are called 'quasi-judicial'. Examples include industrial tribunals (as opposed to industrial courts). These specialised functions may be carried out by a separate judicial or quasi-judicial entity or may be subsumed under the ordinary courts of law. For example, juvenile courts are often not separate courts of law but merely a division of Magistrates' Courts. There is no logical correlation between Specialized Courts or functions as seen in the case of Ordinary Courts which form a hierarchical structure (Magistrate-High Court-Court of Appeal). For example, Specialized Courts which perform all judicial functions are:

- Barbados: Drug Treatment Court;
- Belize: Family Court;
- Guyana: Commercial Court, Family Court, Sexual Offences Court and Drug Treatment Court;
- Trinidad and Tobago: Family Court, Children Court, Industrial Court, Tax Appeal Court, Environmental Commission and Equal Opportunities Tribunal;
- Antigua and Barbuda: Sexual Offences Court; and
- Saint Lucia: Family Court.

Final Courts of Appeal -The Privy Council and The Caribbean Court of Justice

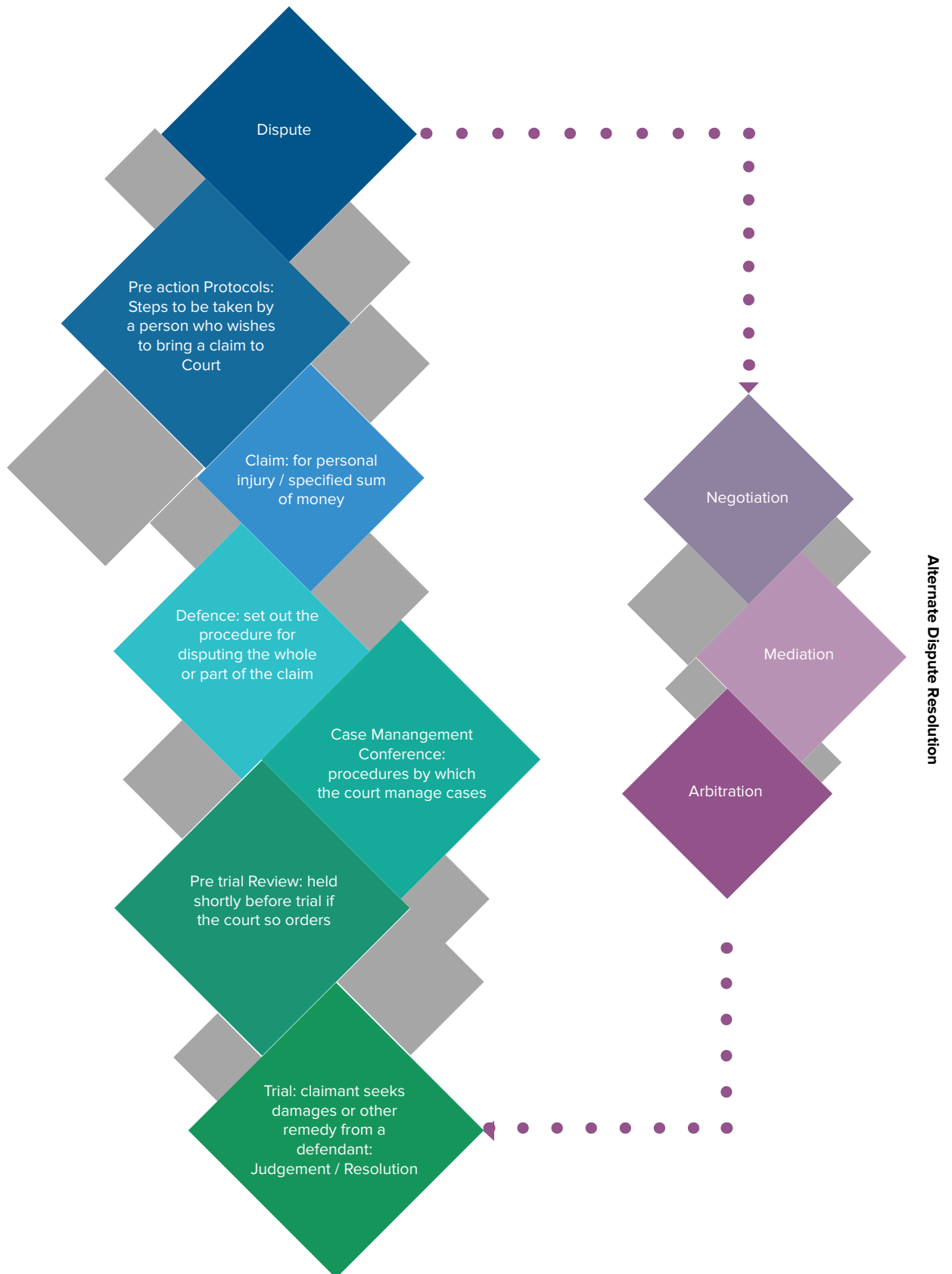
In the Caribbean, there are two final courts of appeal, the Judicial Committee of the Privy Council ("JCPC") and the CCJ. The JCPC became established as the final court for Commonwealth Caribbean countries during the colonial period. Its retention in that position has been the subject of intense debate for some years, given that it is based in Britain with mainly British judges ruling on cases from now independent Caribbean nation states. Such debate led to the creation of the Caribbean Court of Justice in 2005. However, the JCPC is still the final court of Appeal for most Commonwealth Caribbean countries, though some have stated their intention to abolish the Privy Council, a process which varies from state to state, "ranging from a relatively simple legislative procedure in the Bahamas, to complex requirements in the OECS States which often require a referendum. In the middle ground, the other countries require that there be a majority parliamentary vote before appeals to the Privy Council can be abolished. The exact majority varies from country to country.¹⁶

The CCJ has a dual jurisdiction: an appellate jurisdiction as the final court of appeal; and an original jurisdiction for hearing matters related to the Treaty of Chaguaramas¹⁷ (regional trade matters). The CCJ was inaugurated in 2005. Located in Port-of-Spain, Trinidad, it is the final Court of Appeal on civil and criminal matters for four CARICOM Members States, namely Barbados, Belize, Dominica and Guyana. The CCJ is currently presided over by seven judges, including the President of the Court. These judges are qualified legal practitioners from the Caribbean Region and the Commonwealth.

In the Eastern Caribbean, the regional court known as the Eastern Caribbean Supreme Court is a superior court of record for nine member states, namely: Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and three British Overseas Territories, namely, Anguilla, the British Virgin Islands and Montserrat.

¹⁶ Belle Antoine, Rose-Marie, 2008, Commonwealth Caribbean Law and Legal Systems, 2nd Edition, Routledge-Cavendish
¹⁷ <https://caricom.org/about-caricom/who-we-are/our-governance/the-revised-treaty/>.

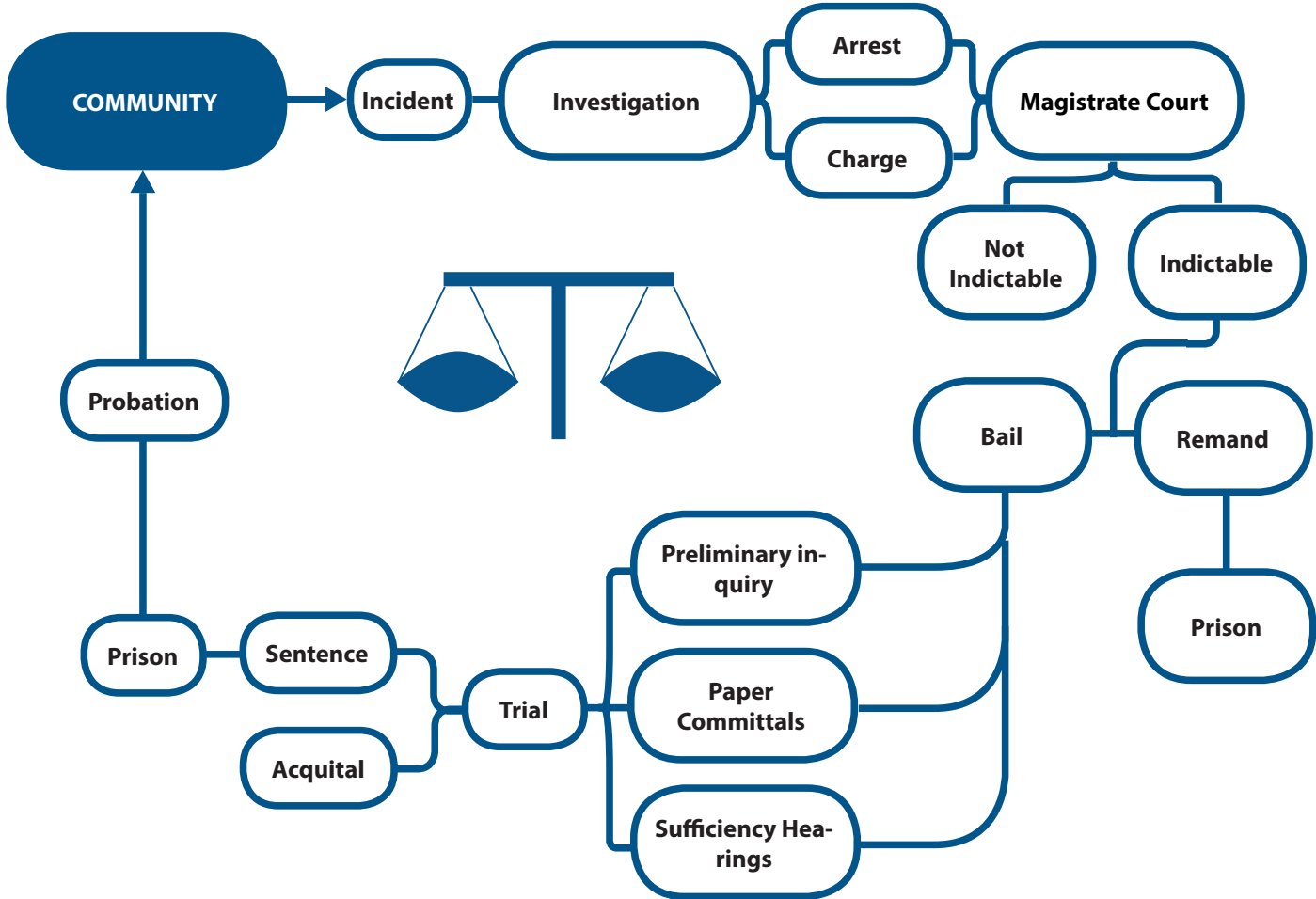
The Justice System Cycles in the Caribbean
Figure 1: The Civil Justice System Cycle



In accordance with the Civil Proceedings Rules,¹⁸ after a dispute, pre-action protocols must be followed as this establishes a basis for negotiations. Pre-action protocols ensures that prospective litigants focus their attention on resolving disputes without litigation. However, if pre-action settlement is not achievable, it lays the basis for prompt conduct of proceedings. This begins with a claim either in personal injury or for a specified sum of money. If the defendant wishes to defend a part or the whole claim, a defence must be filed. Procedures to be followed are outlined at the case management conference stage.

Case management rulings with regard to early identification of issues, full disclosure, the settling of meaningful pre-trial events and realistic timetables, fixing of firm and credible trial dates at a very early stage and referrals to Alternative Dispute Resolution (ADR) procedures are all designed to promote the prompt resolution of cases thereby reducing costs, enhancing efficiency, and creating certainty and predictability in the trial process. At the trial, the claimant will seek damages or another remedy from the defendant and a judgment or resolution will be entered upon.

Figure 2: The Criminal Justice System Cycle



¹⁸ www.ttlawcourts.org/index.php/component/attachments/download/2332, 'Civil Proceedings Rules 1998', Republic of Trinidad and Tobago Supreme Court of Judicature.

In general, when an individual is arrested, they are taken to the police station to be charged and from there to the Magistrates' Court. Depending on the nature of the charge, the matter can be disposed of by the magistrate (non-indictable offences) or referred to the High Court (indictable offences). Once a charge is deemed indictable, the defendant may be granted bail or remanded to prison to await trial.

A Preliminary Inquiry ("PI")/paper committal/sufficiency hearing will then be conducted, following which an indictment is prepared by the DPP and served on the accused. The Prosecution will disclose its case before trial. The depositions are recorded. Preliminary inquiry/ paper committals/sufficiency hearings are admitted into evidence. After the trial has been completed, the defendant will either be acquitted (not guilty) or will be sentenced (guilty) and then taken to prison. After the relevant sentence has been served, the defendant will be given a probationary period and will be released back into the community.



Caribbean justice sector officials tour the Kolbe Foundation, Belize Central Prison to assess their innovative approaches to rehabilitation.
Photo credit: CariSECURE.

4.5 Punitive vs rehabilitative approaches in the Caribbean

Across the region, public perceptions regarding justice are characterized by strong support for highly punitive measures that emphasize increasing the scope and degree of punishment for offenders. A recent survey of 11,000 individuals in seven Caribbean countries pointed out that, on average, the public strongly supports increasing the severity of punishment for criminals and also supports the use of the death penalty. There is also some, albeit less strong, support for militarization of police forces, with the highest average levels of support for this in Jamaica and Trinidad and Tobago, and the lowest in Barbados and Saint Lucia.

These findings are reinforced by the 2016 LAPOP Americas Barometer Report on Citizen Security in six countries¹⁹ in the OECS which found that more than half of respondents in Saint Vincent and the Grenadines (53%) and Saint Lucia (52%) believe that increasing punitive measures is the best way to reduce crime in their country.²⁰

“*Alternatives to incarceration and rehabilitation are not popular with the public. The culture is very big on punitive justice and the eye for an eye approach. A cultural shift is therefore necessary.*”

Judicial stakeholders, Guyana

Figure 3: Mean Responses to Likert Scale Survey by Country

Survey Questions	A&B	BAR	GUY	STL	SUR	T&T	Dimensions
Criminals should be more harshly punished	4.06	3.93	4.07	4.41	4.09	4.38	Punitive Attitude
I support the death penalty	3.67	3.73	3.59	4.16	2.84	4.02	Punitive Attitude
It is all right for the police to break the law in order to better control violent crimes	2.33	1.97	2.37	2.51	2.89	2.23	Punitive Attitude
The police should be given a free hand to kill criminal gunmen	2.52	2.1	2.71	2.92	2.97	2.65	Punitive Attitude
In order to reduce the crime rate the government should build more prisons	2.72	2.02	3.14	2.56	2.66	2.86	Punitive Attitude
In order to reduce the crime rate the government should rely more on the military	3.19	2.63	3.27	2.75	3.22	3.35	Punitive Attitude

Source: Adapted from Maguire and Johnson, ‘The structure of public opinion on crime policy: Evidence from seven Caribbean Nations’, 2015.

19 Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines.
20 www.vanderbilt.edu/lapop/antigua-and-barbuda/2016_OECS_Survey_Report_W_111716.pdf.

“ It is (therefore) important to understand that state policies are influenced by public opinion and public opinion is not always well informed...Another consequence of the high rates of violent crimes is that public opinion is becoming increasingly punitive. A recent phenomenon has been seen in reports of cases of vigilantism where citizens support and even participate in extra-legal punitiveness and human rights violations when meted out to suspected criminals.²¹”

2012 Citizen Security Report, Trinidad and Tobago



CariSECURE National Officer Miguel Trim interviews St Lucia Commissioner of Police Severin Moncherry as part of ongoing assessment of the project's impact on the reduction of crime and violence in the Caribbean. Photo credit: Juliet Solomon.

4.6 Public Perception

The 2012 CHDR found that public perceptions of the capacity of the justice system in the Caribbean to solve and manage the problems of insecurity are generally very low. This is on average 41%, however ranges from a low of 27% in Trinidad and Tobago to a high of 70% in Barbados.²² This underscores the need to strengthen the justice system and to transform the relationship between justice institutions and the people, including provision of quality services and administration of justice, and people's access, including awareness of rights.²³

“ Many members of the public do not understand the processes of the court and this often leads to a negative perception of the Justice System. There is a need for trained personnel who can assist persons who need information.”

UNDP Access to Justice Questionnaire respondent, OECS

21 UNDP, 'Report on Citizen Security, Trinidad and Tobago', 2012.

22 UNDP, 'Caribbean Human Development Report', 2012.

23 Ibid.

Since the 2010 survey, there has been some additional data generated on public perception of the judicial system in the Caribbean. The 2016 LAPOP OECS Report mentioned above found that a majority of respondents (56%) said that they have “some” or “a lot” of faith that the judicial system would punish the guilty. Roughly, a third of respondents across the six countries (29%) said they have “little” faith that the judicial system would punish someone who was responsible for a crime, and 14% said they have “none”.²⁴ In Guyana, a 2014 LAPOP report on Democratic Governance across 10 years of the Americas Barometer found that public trust in judicial institutions plummeted since 2012. Trust that courts could guarantee a fair trial dropped from more than 60 percent to below 45 percent in 2014 and confidence that the justice system would punish the guilty party also fell from more than 60 percent to close to 40 percent.²⁵

In order to augment existing data, CariSECURE has developed a Crime Victimization Survey (CVS) which includes specific questions on perceptions of the police, DPP, judges and courts, the penitentiary and gender-based violence. The survey was administered in Saint Lucia in 2019 with approximately 2000 respondents and analysis of results will be available in June 2020. The survey is set to be administered in Saint Kitts and Nevis this year, with training of survey staff beginning in January. The primary objective of the CVS is to accurately ascertain the magnitude of victimization within a country and more specifically, crime levels and trends, perceptions of public safety, the impact of crime on society and vulnerable groups, and the level of public confidence in the criminal justice system and its actors. These surveys will provide invaluable data in assessing the functioning of the judicial system in both countries which may be extrapolated to other jurisdictions, particularly in the OECS.

“The public’s perception is informed by public information available on the efficiency and timeliness of communication between the Court and its key stakeholders...Timely, better, widely available information should be communicated to the public.”

UNDP Access to Justice Questionnaire respondent, Guyana

The needs assessment noted that there are significant areas within the administration of justice in which public perception may be negatively affected. For example, in Trinidad and Tobago as in many countries of the Caribbean, the high crime rate overwhelms the justice system with caseloads that far exceed the processing capacity of the criminal justice system. An accused can be held in remand without trial for periods up to and in excess of ten years. Presently, approximately 60% (2,389 people) of the prison population are on remand.²⁶ According to Trinidad and Tobago Police Force (TTPF) statistics, there were 517 murders nationwide in 2018, after 495 in 2017, 462 in 2016, 420 in 2015, and 403 in 2014, in a population of approximately 1.4 million people. The 2018 numbers represent an increase of 4.4%. The detection rate for murder was 16.6% for 2018, a decrease from 17.9% in 2017.²⁷

As a result, public perception of the judicial system’s ability to solve insecurity problems is very low.

Other stakeholders pointed out that backlogs and delays in getting to trial engenders witness tampering; frustration of victims who may then decide to give up on the process (this frustration is generally more evident in women than in men) and, in conjunction with the ease of getting bail (in some cases), a feeling of impunity among offenders.

Uneven and inconsistent sentencing among magistrates and, in the case of “either-way” matters, between magistrates and Supreme Courts can negatively affect the public’s perception of the fairness and

24 www.vanderbilt.edu/lapop/antigua-and-barbuda/2016_OECS_Survey_Report_W_111716.pdf.

25 United States Agency of International Development, ‘The political culture of democracy in the Americas, 2014: Democratic governance across 10 years of the AmericasBarometer’, Elizabeth J. Zechmeister, 2016.

26 www.prisonstudies.org/country/trinidad-and-tobago, ‘Trinidad and Tobago | World Prison Brief’.

27 www.osac.gov/Country/TrinidadTobago/Content/Detail/Report/83007ec0-cd97-4dc2-95ac-15f4aecc2072.

impartiality of the judicial system.

One of the key challenges faced in the Caribbean in terms of public perception of the justice system is that often, the business model of journalism reinforces existing policy responses to the problems of crime and violence and other citizen security related issues based on partial information, stereotypes, quick-fixes and over-masculinized responses to crime and insecurity, both real and perceived. Any efforts to shift course in this field requires engaging the journalism industry at the levels of media ownership, editorial boards and individual journalists.

4.7 Strengths within the justice system

There are several exemplary initiatives which have addressed challenges highlighted in this Report and have improved the administration of justice in the relevant jurisdiction. It is worth highlighting some of these initiatives with a view to possible knowledge sharing and replication in other countries.

Prison System: Barbados as part of the reform of the rehabilitation system has instituted a 6-month pre-release programme aimed at preparing inmates for re-integration into their communities. Barbados also has developed remission of sentence where 25% of an inmate's time can be commuted based on "good" behaviour and active participation in rehabilitation programmes.

Sexual Offences Model Court: Antigua and Barbuda, Guyana and Trinidad and Tobago developed Sexual Offences Courts which not only address the complications with witnesses but also seek to facilitate prompt gender informed decisions to complainants and vulnerable witnesses involved in sexual offence cases. Antigua and Barbuda also produced Sexual Offences Guidelines to ensure that a rights-based approach is adopted when dealing with these sensitive matters.

Family and Children Court: Belize, Guyana, Saint Lucia and Trinidad and Tobago Family and Children Courts has made great strides. Belize, since opening the Court in 2016, has dealt with 791 family cases, including custody, domestic violence and juvenile justice. For the 2018/2019 law term, a total of 731 matters were determined out of 1050 matters.

Criminal Proceedings Rules and Prosecutors Code: Grenada, Saint Kitts and Nevis, Trinidad and Tobago. The Prosecutors Code seeks to improve efficiency, inter-agency cooperation and streamlines prosecution proceedings. These guidelines ensure consistency as Prosecutors are aware of their role and steps which must be followed. With the advent of the Criminal Proceedings Rules, indictments are issued within a reasonable period of time. Backlogged cases were immediately taken from the preliminary enquiry stage to the High Court. It also provides additional incentives for prompt actions on the part of prosecutors as costs are imposed for prolonging matters.

Civil Proceedings Rules (CPR): Guyana and Trinidad and Tobago. In Guyana, the backlog of civil cases was reduced from 6000 to 250. The majority of claims which were filed were withdrawn after the introduction of these rules as parties realised their claims did not satisfy the relevant grounds. The overriding objective of the CPR is to enable the Court to deal with cases justly and expeditiously.

Alternate Dispute Resolution: Guyana, Dominica and Trinidad and Tobago. In Dominica, the National Mediation Committee conducts mediation training and ensures certificates of appointment are received. Trinidad and Tobago also has a mediation bus which travels to remote areas and provides mediation services free of charge.

Legal Aid: Trinidad and Tobago, Barbados and Guyana. Anyone having a court matter can seek full legal representation from the Legal Aid & Advisory Authority based on certain criteria. If the accused person requiring aid is incarcerated, then the accused person is visited at the respective prison by one of the legal officers. In Barbados, there is also a Legal Aid under the Community Legal Services agency in Bar which includes "all family matters except divorce", other civil "matters involving minors" and "all offences

where the person charged is a minor”.

Caribbean Court of Justice: Courtroom Technology: APEX has created its own agency to provide technology to reduce caseload backlogs throughout the Caribbean. The APEX System can be utilised to provide agreement and conformity on technological and computerized best practices to promote and facilitate the delivery of justice.

Forensics: Belize National Forensic Science Service: ‘Justice through Science’, Saint Lucia National Forensic Science laboratory and Guyana Forensic Science Laboratory. In Belize, forty-five (45) requests for provision of expert witness testimony were received in 2018. Guidelines for Specimen Collection have been drafted for use by both the Belize Police Department and the National Forensic Science Service Department. Saint Lucia is the only lab in the Eastern Caribbean with the capability of DNA testing (there are other forensic labs in the none OECS countries in the Assessment). As of June 2019, Guyana’s forensic lab, through support from the IDB, is now equipped to test in DNA direct comparison or matching evidence to criminal suspects, paternity and family mapping. Testing samples include semen, vaginal hair with root, blood and touch DNA. The Trinidad and Tobago forensic lab also does DNA analysis of body fluids, tissue and hair.

Vulnerable Groups: Trinidad and Tobago: Children’s Authority Mt. Hope Assessment Centre. A One-stop Assessment Centre, where a child who is in need of care and protection can be seen by a multidisciplinary team of childcare professionals, in one location. Between 2015-2019, the Children’s Authority conducted 206 forensic interviews and 1243 forensic medical examinations.

Development partners have been active in support of judicial system modernization at the regional level. For example, the CariSECURE - Strengthening Evidence Based Decision Making for Citizen Security in the Caribbean²⁸ Project represents a partnership between UNDP and the United States Agency for International Development (USAID). CariSECURE works to strengthening the capacity of national and regional institutions in 10 Eastern and Southern Caribbean States, to collect, analyze, and employ standardized and disaggregated citizen security data to develop targeted, evidence-based policies and programs. These countries are Antigua and Barbuda, Barbados, the Commonwealth of Dominica, Grenada, the Republic of Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, the Republic of Suriname, and Trinidad and Tobago.

The Judicial Reform and Institutional Strengthening (JURIST) project²⁹ is a regional Caribbean judicial reform initiative funded under an arrangement with the Government of Canada and implemented on behalf of Global Affairs Canada (GAC) and the Conference of Heads of Judiciary of CARICOM, by the Caribbean Court of Justice. JURIST is working in Barbados, Belize, Grenada, Guyana, Jamaica and the OECS to support judiciaries in those countries in their own efforts to ensure a jurist system that is more responsive to the needs of women, men, youth, business and the poor in CARICOM.

The Caribbean Impact Project: Improved Access to Justice in the Caribbean³⁰ is jointly resourced by Global Affairs Canada (GAC), UWI and Caribbean Governments and institutions. The Project is implemented from within the Caribbean Law Institute Centre of the Faculty of Law at the UWI, Cave Hill Campus, Barbados. The Project works to strengthen legal frameworks, improve legal professionalism and the sharing of legal information, and facilitate increased knowledge and use of ADR mechanisms in CARICOM member states.

28 CariSECURE.

29 <http://juristproject.org>.

30 <http://caribbeanimpact.org/website/>.

5. FINDINGS

OF THE JUSTICE ADMINISTRATION IN THE CARIBBEAN



UNDP Deputy Resident Representative for Belize Ian King is shown how evidence is delivered and recorded by Ebony Lyall-Nicholas, Assistant Director of the National Forensic Laboratory.
Photo credit: Juliet Solomon.

The findings of this Needs Assessment can broadly be separated into two categories. The report first looks at the issue of access to justice: How easy is it for women and men to access justice services, how are justice services being delivered and how can that delivery be improved in order to satisfy both women's and men's differentiated demands, needs and requirements? Findings under this section cover modernization of justice administration, human resources, legal aid and Specialized Courts.

In the second section, the report examines the quality of justice dispensed by the judicial systems under review. Backlogs was the number one challenge identified by all stakeholders and the report looks more closely at some of the causes and possible solutions to this issue including: diversionary measures, the process of prosecution, adjournments, case flow management, sentencing, bail, Pre-trial detention, and rehabilitative approaches.

5.1 Data and Information

The Desk Review conducted as part of this Needs Assessment identified the most recent comprehensive data-driven information available on the security and justice sector in the Caribbean as UNDP's 2012 Caribbean Human Development Report which has provided valuable qualitative analysis. This has been augmented in part by LAPOP Survey data and reports including a 2014 report on The Political Culture of Democracy in the Americas which included data on Barbados, Belize, Guyana and Trinidad and Tobago, and a 2016 report on Citizen Security in six of the Eastern Caribbean countries covered by the Needs Assessment. In addition, some country specific analysis has been conducted including a 2012 UNDP Report on Citizen Security in Trinidad and Tobago and a 2016 IDB situational analysis for the design of the Support for Criminal Justice Project in Guyana. Many of the findings and recommendations of these reports echo those of the 2012 CHDR.

This groundbreaking report relied on data produced by a 2010 UNDP Citizen Security Survey. The report noted that "Data presented... indicates that, in the region, confidence in the courts is fairly low. This is a somewhat unexpected finding..."³¹ The report made several recommendations including, inter alia, the need to modernize case flow management systems, review sentencing policies, improve confidence in the criminal justice system, reduce costs to court users, reduce the use of pre-trial detention and to encourage mediated settlements. Most importantly, the overall conclusions of the 2012 CHDR was the need to build capacity for evidence-based policy making across the security and justice sectors.

While conducting the Needs Assessment, annual law reports and justice sector reports were not easily accessible. In those that are available, the statistics and findings depicting the various courts' (Magistrates, High Court, Court of Appeal, Specialized Courts) progress (clearance rates, backlogs) are presented in the annual reports in a readable and digestible manner. However, the majority of these reports are not available online, and even if they are, only the outdated versions dating back to five to ten years are available.

Progress in data collection has been made in several countries with the introduction of Specialized Courts and Criminal and Civil Proceedings Rules. These statistics and attempts need to be publicized, published and freely available.

5.2 Overview of findings

The overwhelming and expected conclusion of the Needs Assessment is the backlog of cases – particularly in the criminal division – which is the most challenging issue. The reasons for the backlogs are multifaceted and include the slow pace of investigations by police, inordinate delays in production of depositions, and lack of human and technological resources.

The effect of the backlogs is all too clear: Failure to "provid(e) accessible, fair and efficient justice for the people and states of the Caribbean Community".³² The backlogs lead to accused individuals spending years on remand without being formally indicted and put on trial which can constitute a denial of human rights and which can contribute to a lack of public confidence and distrust in the judicial system.

The main bottlenecks appear to be between the Magistrates' Courts, depositions and trial dates. To address this, a whole-of-system approach will be necessary. For example, while replacing preliminary enquiries with paper committals or sufficiency hearings, such a change, without other "fixes", will merely transfer the workload to the offices of the DPP.

Necessary steps must be taken to provide transparent, effective and accountable services that promote access to justice and quality of justice for all. The findings of the present report are divided into two sections: access to justice and quality of justice. Barriers which prevents individuals from understanding

³¹ UNDP, 'Caribbean Human Development Report', 2012, p. 139.

³² www.ccj.org/about-the-ccj/mission-vision/, 'Mission Statement', The Caribbean Court of Justice.

and obtaining justice must be eliminated whilst simultaneously developing existing systems.

Access and quality are the key components for an effective justice system, as a fundamental right of citizens:

“*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.***”**

European Convention on Human Rights (ECHR), Article 6.

5.3 Access to justice

Access to justice is a basic principle of the rule of law. In the absence of access to justice, individuals are unable to have their voice heard and exercise their rights to obtain justice.

Necessary steps must be taken to provide transparent, effective, and accountable services that promote access to justice for all. Special attention should be given to women and vulnerable groups who have traditionally been denied access to justice. Impartial justice institutions signal that women’s rights are human rights and, in this context, discrimination against women must be eliminated and laws and standards must be upheld and enforced to guarantee women and minority groups their access to justice. Also, addressing the obstacles to women’s access to justice is essential to eliminating gender-based violence because access to justice provides legal recourse against sexual harassment and physical harm, unfair labour practices and exploitation. The justice system should efficiently deliver outcomes that are fair and accessible to all.

“*The system does provide access to justice but there are many institutional hurdles that prevents the system from being an efficient one. One of those is the manual system of data collection, storing of records which many times resulted in unfair justice to the people.***”**

UNDP Access to Justice Questionnaire respondent, Guyana

5.3.1 Modernization

In many places, the transmission of case documents is still largely paper-based: to one degree or another there exists a difficulty in case management. A number of electronic systems have been or are being developed for various branches of the judicial sector (e.g.: CIMS for the police, JEMS for some courts; LIMS for the Forensic Services), there does not yet seem to be a seamless system which would facilitate the smooth flow of information and data, and provide access to all services. The CCJ has developed an electronic case management system which has possibilities for adoption in other jurisdictions.

CariSECURE has developed the Caribbean Citizen Security Toolkit, composed of: the Caribbean Composite Citizen Security Indicator Framework (CCSIF) which contains core citizen security indicators for national monitoring of citizen security trends; the Citizen Security Data Collection Form and Coding Structure to be digitized and used by the Police as a standardized Incidence Report; and the Data Sharing Agreement which can function as a multi-sectoral memorandum of understanding establishing data sharing accountabilities across all rule of law entities. The project is in the process of rolling out of a



From paper-based to modernization through digital solutions.
Photo credits: Juliet Solomon and Caribbean Court of Justice.

web-based Police Records Management Information System (PRMIS) in selected Caribbean countries. Similar systems for the DPP, courts and prisons would contribute to an Integrated Crime and Justice Information Management System.

In some jurisdictions, infrastructure is a problem. For example, in Saint Lucia, there is no dedicated Halls of Justice, so courts are scattered around the city in inconvenient locations (one is in the middle of a mall serving as a cruise ship passengers' terminal). Among other problems, this presents logistical problems for lawyers juggling cases in civil and criminal courts with a knock-on effect on the quality and timeliness of service they provide to their clients.

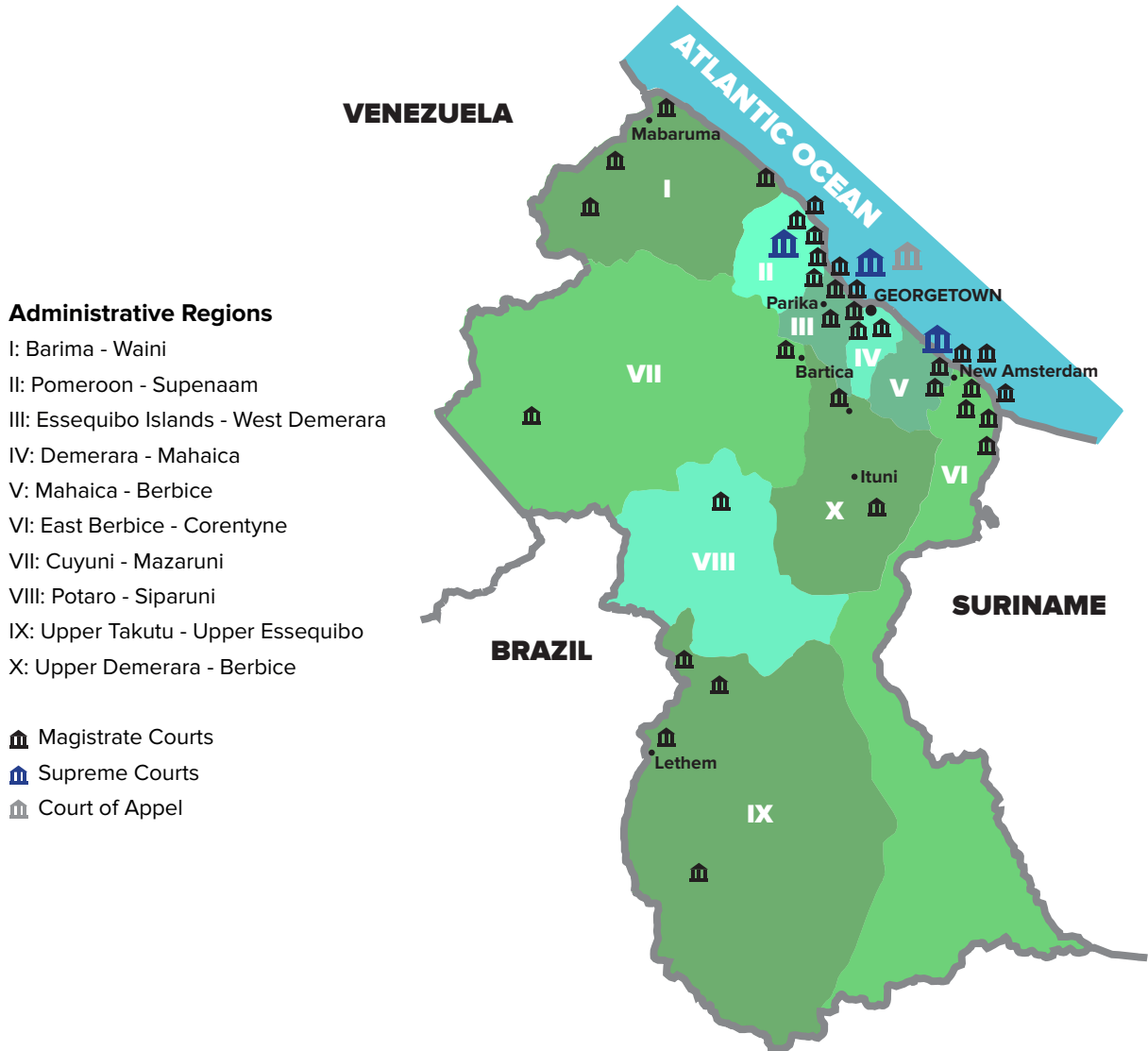
Also, in Dominica, the Criminal Court was destroyed by the 2017 hurricanes and was renovated in 2019. The Civil Court was a historic building (one of the few buildings that served as a slave market during the transatlantic slave trade that is still standing). As a result, criminal and civil cases are presently heard in the same Court, generating bottlenecks in the system.

In terms of technology, there is a need for better broadband and internet speeds to facilitate getting witness testimony and evidence from abroad, or from districts and other national locations that experience difficulty in making court appearance in person.

The geographical distribution of Courts, particularly in Guyana and Belize can disadvantage individuals/groups, more specifically: indigenous populations accessing justice as these populations would often have to travel far distances as there are little to no courts in remote areas.

UNDP Guyana is working on addressing the problem of geographical distance and connectivity through their project on ICT Access and E-Services for Hinterland Poor and Remote Communities. This involves policies, service provision and working with local groups. Hinterland, poor and remote communities which are largely underserved by private communication providers are expected to receive ICT infrastructure over the next few years. The infrastructure will provide a platform for increased communication linking remote and hinterland areas to government services that are centrally located. Moreover, this infrastructure will also assist with access to and delivery of e-services. In addition, a crowdsourcing platform will be developed for the collection of data on crime, including gender-based violence.

Figure 4: Distribution of courts in the Republic of Guyana illustrate how access to justice is made more difficult for indigenous populations, among others.



5.3.2 Human Resources

In addition to the above, too few criminal defence attorneys and prosecutors (in most countries), stakeholders pointed to the need for trained case managers, judicial research assistants and other support personnel. In Belize, it was also mentioned that there exists a lack of sufficient magistrates. It was noted that recent advertisements for magistrates had failed to attract qualified candidates who met the experience requirements, as applicants tended to be new law school graduates.

“ A well-staffed public defender’s office is needed at this time. There is a wealth of young graduates in the legal field and they can be encouraged to devote time and energy in this sector. As well, there is need for para legal staff and trained social service providers to be part of this team of professionals.”

UNDP Access to Justice Questionnaire respondent, Trinidad and Tobago

“There must be adequate and continuous training for court staff at all levels and for the key stakeholders at all levels on the processes of the Justice system. Establishment of Public Relations Department within the Justice System to communicate efficiently with the public and address complaints by members of the public.”

UNDP Access to Justice Questionnaire respondent, OECS

In particular, training is needed in areas which affect vulnerable groups, their emerging social issues and rights. This is particularly relevant in the area of family law and sexual offences which form the bulk of matters dealt with in Caribbean justice systems. Training is also required in developing areas of crime such as cybercrimes. Implementing legislation, with a gender perspective, on cybercrimes is a top priority because women (adults and adolescents) are the primary victims of international trafficking for sexual and labour exploitation, child prostitution, paedophilia networks and child pornography. Therefore, training on the mainstreaming of a gender perspective into the cybercrime area is paramount. Also, priority should be assigned to public awareness on the need to prevent and eradicate cybercrime of a sexual nature, with an emphasis on users of the educational components of the legal and justice systems.

Co-ordinated training development programmes for all magistrates and judicial officers addressing all aspects of judicial development are needed. Presenters and facilitators who are experts in their fields must be canvassed and sourced.

Given recent developments within the Caribbean, that is, the refugees obtaining stay and work permits in the region, programs should be hosted advising judicial officers on the rights of these refugees to ensure that they are treated fairly or justly as there have been many occurrences where these refugees are deported despite obtaining the relevant permits.

Training is also advisable in the area of forensics where there is a lack of confidence in and in understanding of the role, forensic evidence can play in the building of prosecution cases and even in the use by defence attorneys to challenge cases in court. There is a need for more training and contact between the DPP prosecutors, Police case managers, defence lawyers and forensic departments. Specialized training for magistrates, particularly in family matters, is necessary.

“In family matters nobody wins, so at least I would wish the magistrates to be better equipped to deal with them.”

Magistrate, Belize

5.3.3 Legal Aid

It is well recognized that legal aid is essential in order to ensure access and fair representation for both men and women within the justice system. In the Caribbean, most jurisdictions have legal aid only for the most serious offences and the system is overwhelmed.

Caribbean national constitutions enshrine the right to representation or to not be deprived of seeking it. The extent to which the State provides defence counsel for indigent suspects varies. In Saint Lucia, the right is provided only for those charged with serious criminal offences. In Guyana, the right to counsel is only provided in capital murder cases that reach the High Court. For other offences, the Georgetown Legal Aid Clinic supplies legal advice³³ and refer persons who need non-legal help to agencies that can assist them.

³³ UNDP, 'Caribbean Human Development Report', 2012, p. 119.

Access to legal aid is, thus, woefully inadequate, and further disenfranchisement from the legal system are aggravated by remoteness and the limited reach of legal services coverage outside of national capitals. In Belize, for example legal services coverage are available in Belize City and Belmopan. However, there is a need to extend access to other districts. Grenada serves as a strong example of the supportive role civil society can play in providing legal aid services. The Legal Aid and Counselling Clinic (LACC), which is a subsidiary of the Grenada Community Development Agency (GRENCODA) has provided legal aid, mediation and counselling services to the Grenadian public since 1987.

“ (Legal Aid) is accessible to all groups, however, specific emphasis is not placed on women and other vulnerable group. This is critical to reduce some of the other social ills such as domestic violence, suicide, divorce, etc.”

UNDP Access to Justice Questionnaire respondent, Guyana

“ Revamp the image of the legal aid clinics in Guyana and open offices within villages and not solely in the town. This will allow for easy access and more utilization of these services. Many of the times people do not use these services because they do not know of the service and because is centrally located. Most of the vulnerable groups live in villages and in the countryside.”

UNDP Access to Justice Questionnaire respondent, Guyana

LEGAL AID

TRINIDAD AND TOBAGO

The Legal Aid and Advisory Authority of Trinidad and Tobago was created by the Legal Aid and Advice Act 1976. Legal aid is the provision of legal representation in the Magistrates' Court, High Court and Court of Appeal of Trinidad and Tobago by a lawyer assigned by the Legal Aid and Advisory Authority. The Authority offers legal aid and legal advice on matters governed by the laws of Trinidad and Tobago.

Any person involved in a court matter can seek legal representation from the Legal Aid and Advisory Authority. However, the Legal Aid and Advice Act provides certain restrictions on:

- the types of matters for which legal aid can be granted by the Legal Aid & Advisory Authority;
- the criteria for persons seeking to accessing the service.

All persons seeking legal aid are subjected to the requisite assessments and approvals to determine whether they qualify for legal aid.

The Legal Aid and Advice Act also requires a small contribution of the Applicant in High Court matters and probate applications. In all matters, disbursement fees (photocopies, Commissioner's fee etc.) and non-legal professional fees are borne by the Applicant.

In the case of criminal offences, persons (nationals or non-nationals) charged with criminal offences before a Criminal District Court or the Assizes or Court of Appeal may apply for Legal Aid. Once a request for Legal Aid is made, the respective Judge/Master/Magistrate will decide whether to approve the request. Once approved the said approval is forwarded to the closest Office of the Authority for assignment of an attorney.

5.3.4 Specialized Courts

Family and sexual assault matters are the bulk of cases in all jurisdictions. There is a need for Specialized Courts to deal with these matters. Technological solutions are also needed to facilitate timely payments of child support, alimony and other fees (e.g. court filing fees). Virtual methods are also required to protect and take testimony from victims to prevent re-victimization.

Most of the targeted judiciaries encounter a number of challenges including but not limited to:

- increasing backlogs;
- inability to reduce delays;
- addressing specialized needs of court users;
- absence of specialized resources to deal with increasing social problems such as juvenile delinquency and drug users;
- procedures and legislation which inhibit their ability to manage cases appropriately in certain case types for example, the absence of legislative framework to empower criminal case flow management and to empower specialized handling and management of juvenile cases;
- limited knowledge sharing among judicial officers and court administrators; and
- the absence of specialized court professionals.³⁴

Specialized Courts can assist and improve the judicial functions, that is, the decision-making process as it facilitates experts dealing with these specific cases. Judicial officers who adjudicate in these Courts are specialists in the relevant field of law. As the judicial officers hear specialised cases, they are focusing on this similar type law repeatedly with the resultant effect of decreasing the number of judge hours to decide each case, thereby allowing for greater efficiencies and thus, reducing the backlog.

However, Specialized Courts should not be seen as a replacement for addressing systemic issues in the regular courts, as this may merely transfer backlogs and bottlenecks rather than resolving them.

“ I am not convinced about the effectiveness of the specialized courts. It would be impossible to create dedicated courts for everything. Specialized courts are not the solution but rather a plaster on a sore.”

Judicial stakeholder, Barbados

“ The determination of whether these courts reduce the backlog should be as a result of examination of data, before and after these courts are in place.”

UNDP Access to Justice Questionnaire respondent, Guyana

³⁴ <http://juristproject.org/what-we-do/specialized-courts-divisions>.

SPECIALIZED COURTS

Antigua and Barbuda

Sexual Offences Model Court 2019: The Model Court is intended to provide a timely, gender responsive and coordinated response to complainants and vulnerable witnesses involved in sexual offence cases. The law in Antigua and Barbuda, now places strict limits on the ability of defence attorneys to use the sexual history of the complainant to attack the survivors' credibility and that judges are no longer required to warn the jury about relying on the uncorroborated evidence of the complainant.

The Sexual Offences Model Court will test the effectiveness of the prescriptions outlined in the Model Guidelines for Sexual Offence Cases in the Caribbean Region. The Guidelines, which provide internationally accepted best practices for the management of sexual offence cases and offer a rights-based approach to the treatment of complainants and vulnerable witnesses, including children, involved in sexual assault cases.

Belize

Child-friendly court: Opened in January 2016, Punta Gorda's Family Court in Toledo District is the country's first child-friendly Family Court.

Since opening, the court has dealt with 791 family cases, including custody, domestic violence and juvenile justice. In 100 per cent of cases that involved a young person who came in conflict with the law, the child received support from a specialized social worker, which helped ensure the child's rights were protected.

During hearings, children can sit in a small observation room with a two-way mirror that looks out onto the courtroom. A social worker from Human Development Services accompanies the child during the courtroom proceedings.

Guyana

Specialised Family, Sexual Offences and Drug Courts

The Sexual Offences Court has removed the difficulties with virtual complainants' disinterest in pursuing matters after a lengthy period of time as these cases are dealt with efficiently.

Trinidad and Tobago

The Children Court of Trinidad and Tobago was established in 2017 through the proclamation of the Family and Children Division Act. This specialized Court adopts a restorative and rehabilitative approach to addressing matters concerning children in conflict with the law and Children in Need of Services (CHINS), formerly "beyond control".

For the 2018/2019 law term, the first full year of operation for the Court, a total of 1050 matters were filed. 51 percent of these were criminal matters, 36 percent were in relation to Children in Need of Supervision, and eight percent and five per cent respectively, were brought by the Children's Authority and by private application. During this period, a total of 731 matters were determined, which means that the matter was either closed, dismissed, transferred to another court or the child received a custodial or non-custodial sentence and is in post-sentence monitoring.

5.4 Quality of justice

Independence and efficiency are the essential elements of an effective justice system. When the courts are attuned to the needs of their users, trust and confidence in the entire justice system grows.³⁵ Quality of justice comprises the components: efficiency and effectiveness to ensure that the needs and rights of the public are met in an expeditious, fair and reasonable manner.

5.4.1 Diversionary measures

Diversion is an alternative to prosecution which diverts persons away from the criminal justice system. There are two types of diversion, including Pre-Charge diversion and Pre-Trial diversion.

Pre-Charge diversion allows the police to divert usually low-risk or first-time offenders away from the traditional criminal justice system by placing them in programmes as an alternative to arrest. This method allows persons to completely avoid the justice system and enter into rehabilitation programmes that address the issue which landed them in conflict with the law. This type of diversionary program is especially useful when dealing with youth criminality as families and the community are usually involved. This system is also effective as it holds offenders accountable for their behaviours.

Pre-trial diversion is used for offenders who are already before the Court. In such cases, both the prosecution and defence agree that a diversionary programme be entered into, in lieu of prosecution. In most cases, charges are dropped when the participant successfully completes the programme.

Diversion is a global best practice that has been successful in the following areas:

- prevention of future criminal activity by diverting offenders away from the criminal justice system while monitoring their rehabilitation;
- promotion of better use of judicial resources which allow for a more dedicated focus on serious offences; and
- reduction in the number of arrests and processing of youth in the justice system due to delinquency-related behavioural incidents.

While many countries in this Needs Assessment Report have undergone significant judicial reform; in some cases, the system of diversion does not feature, especially at the Pre-Charge stage, as the legislation does not give the police the discretionary powers to determine who may be good candidates for diversion. Further, in some jurisdictions, a person must plead guilty in order to access diversionary programmes.

In order for diversion to work, a number of critical components needs to be in place as follows:

- supporting legislative architecture and frameworks - legislation must be in place which allows the various components to work together in a seamless manner. This includes the architecture, powers, and policy direction needed to actualize this system;
- political will - political buy-in at the highest level is often necessary to motivate and propel legislative reform; and
- national readiness - it is widely recognized that the citizenry in many Caribbean countries have a more punitive as opposed to rehabilitative approach to justice. National Readiness and buy -in may be important for such systems to work.

The (CEDAW), established in 2015, especially the General Recommendation 33, has addressed women's access to justice.

In that General Recommendation, the CEDAW Committee questioned the validity of ADR processes:

35 <https://blogs.worldbank.org/europeandcentralasia/enhancing-quality-justice-role-user-feedback>.

“While such processes may provide greater flexibility and reduce costs and delays for women seeking justice, they may also lead to further violations of their rights and impunity for perpetrators because they often operate on the basis of patriarchal values, thereby having a negative impact on women’s access to judicial review and remedies.”

Therefore, while diversionary measures, such as, ADR can be utilized in reducing the case backlog, it must be ensured that:

“Cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedure.”

MEDIATION AND ADR

Barbados: Court-annexed Mediation: cases include issues related to unfair dismissal, personal injury and other cases involving disputes contractual disputes.

Dominica: Mediation Programme: The National Mediation Committee will be responsible for the oversight of the mediation programme in the Commonwealth of Dominica. Additionally, fourteen trained mediators have been added to the court’s mediation roster and also received their certificates of appointment.

Guyana: ADR: Court-annexed Mediation Centre at Georgetown. Construction of a Mediation Centre building in Berbice/New Amsterdam adjacent to the High Court in anticipation of civil case referrals to mediation upon implementation of the new Civil Procedure Rules.

Trinidad and Tobago: Family Court: Mediation is an important alternative dispute resolution strategy and there were 291 matters referred 74 per cent from judicial officers and the remainder directly from intake officers.

COMMUNITY MEDIATION

TRINIDAD AND TOBAGO

Community mediation has proven to be successful in Trinidad and Tobago through the following:

- the parties to a dispute control the outcome of their dispute, instead of going before the formal justice system via a judge or jury;
- it is cost effective and less expensive than litigation. The full cost of the process is met by the Government of Trinidad and Tobago, except where the parties choose to engage the services of an attorney, expert or some other party;
- It is quicker and more efficient than the trial process as it allows parties to resolve their issues within their communities relatively quickly, in an environment that is familiar and non-threatening;
- by agreeing to mediate, parties do not give up their rights to pursue more formal avenues to resolve the conflict if mediation does not result in a solution;
- settlement agreements secured during mediation do not constitute an admission of guilt by any party or a relinquishing of the right to settle the matter using alternative legitimate means; and
- mediation avoids lengthy and unnecessary litigation.



The capacity for ballistics testing and tracing is crucial for crime reduction. Belize National Forensic Service.
Photo credit: Juliet Solomon.

5.4.2 Prosecution

In the criminal justice system, when a crime is committed there should be an investigation by police, hopefully leading to the arrest and charge of individuals. Several stakeholders pointed out that, in the Caribbean, the police tend to react to public outcry against serious crimes by “arresting first and investigating later”. In the case of these offences, many of which are non-bailable or where bail is usually refused such as murder, rape, and other serious sexual assaults, the accused is remanded to prison to await indictment. In some cases, even if they wish to plead guilty, there are delays in getting before a magistrate. In addition, stakeholders felt that the Police Force delays the court process as case files on offences are not completed for dispatch to the court process.

Once an accused appears in the Magistrates’ Court and is either remanded or bailed, the Crown Prosecution Service/DPP must rely on the police to produce evidence in order to draw up indictments. Delays in production of evidence lead to delays in getting a case to trial. In some cases, the evidence is weak and will lead to the case eventually being dismissed after an accused has spent an inordinate amount of time in prison.

Stakeholders in the forensic science labs in Belize and Saint Lucia noted that police under-utilize their services and overly rely on eyewitness testimony. They also noted that defence lawyers also do not take advantage of their services with only one occasion of a request from defence counsel in the history of the lab in Saint Lucia. They also indicated that there is a misconception of the role of forensic science in investigations and say that the police tends to think that forensics will provide “the answer” to solve a crime rather than being a tool in the entire investigative toolbox and is, therefore not used effectively.

Judges also opined that prosecutors tend to “overcharge”, bringing indictments which list all possible offences (often in cases where there is insufficient evidence) presumably in the hope that some will stick. This lengthens the process unnecessarily.

FORENSICS

BELIZE, GUYANA AND SAINT LUCIA

Belize National Forensic Science Service: 'Justice through Science'

Key achievements:

- Standardization of the way exhibits are submitted to the laboratory to uphold proper exhibit management principle and procedures.
- Guidelines for Specimen Collection for Toxicology Purposes, Firearms Test-Firing Protocols along with Bulk Seizures and Drug Destruction Protocols have been drafted for use by both the Belize Police Department and the National Forensic Science Service Department.
- Provides analyses both for intelligence/investigative leads as well as for evidence/prosecution purposes.

Saint Lucia National Forensic Science laboratory

Opened in 2009, the forensic lab meant that Saint Lucia became the first island in the OECS with state-of-the-art forensic analytic capabilities.

The facility is managed by the Ministry of Justice. The state-of-the-art laboratory was constructed and equipped at a cost of \$EC6.6M.

The only lab in the Eastern Caribbean with the capability of DNA testing; however, equipment needs to be updated in order to speed up the process and potentially provide DNA testing services to other jurisdictions in the region.

Guyana Forensic Science Laboratory (GFSL)

Equipped to conduct human identification using DNA analysis: tests in DNA direct comparison or matching evidence to criminal suspects, paternity and family mapping.

The equipment can run eight samples at once in less than two hours, allowing for a fast turnaround and improved investigation rate and closure in matters requiring DNA analysis.

The Scanning Electron Microscope will be used for gunshot residue testing. The equipment can also do testing on glass, paint and other elements, through comparative analysis on evidence collected from crime scenes that are non-DNA in nature. The equipment can identify and confirm the presence of GSR particles and can compare structure in evidential specimens.

5.4.3 Adjournments

Both magistrates and Supreme/High Court judges raised the frequency of request for adjournments by both prosecution and defence which adds significantly to the delay in the court and trial process.

Table 1: Trinidad and Tobago – Criminal Indictments - Reasons given for Adjournment by Type 2018-2019

Reason for Adjournment	Sexual Offences	Murder	Offense against a Person	Manslaughter
PROSECUTION				
State not ready	38	42	22	0
Both sides not ready	26	97	22	1
Other reasons	3	4	1	0
DEFENSE				
Attorney not available	65	92	25	0
Attorney not ready	45	73	14	0
Non-appearance of attorney	24	36	13	0
Other	2	5	2	0
ACCUSED				
Accused not brought to Court	5	19	1	0
Disclosure request outstanding	7	12	2	0
Accused awaiting L.A.	11	16	4	0
Non-appearance of accused	5	12	2	0
Other	1	2	0	0
CASE/COURT PROCESS				
For mention	33	67	41	0
Adjourned for sentencing	12	38	8	0
Adjourn	48	121	30	0
REASONS				
Judge not available	36	34	18	0
Other reasons relating to Case/ Court Process	29	82	20	0
Other	115	210	77	1

Source: Trinidad and Tobago Annual Law Report 2018/2019: www.ttlawcourts.org/images/annualreports/

Table 1: Trinidad and Tobago – Criminal Indictments - Reasons given for Adjournment by Type 2018-2019

Reason for Adjournment	Attempted Murder	Firearm Offense	Dangerous Drugs	Forgery	Kidnapping
PROSECUTION					
State not ready	0	1	7	0	3
Both sides not ready	0	16	15	1	1
Other reasons	0	1	1	0	0
DEFENSE					
Attorney not available	0	8	13	0	5
Attorney not ready	0	3	11	0	2
Non-appearance of attorney	0	1	6	0	2
Other	0	0	0	0	0
ACCUSED					
Accused not brought to Court	0	0	1	0	0
Disclosure request outstanding	0	2	2	0	0
Accused awaiting L.A.	0	0	0	0	1
Non-appearance of accused	0	0	1	0	0
Other	0	0	0	0	0
CASE/COURT PROCESS					
For mention	0	5	25	4	1
Adjourned for sentencing	0	8	2	1	0
Adjourn	0	12	12	3	1
REASONS					
Judge not available	0	4	8	1	0
Other reasons relating to Case Court Process	0	5	7	3	1
Other	0	9	23	4	1

Source: Trinidad and Tobago Annual Law Report 2018/2019: www.ttlawcourts.org/images/annualreports/

In the majority of cases, adjournments are requested because either the State or the defence, or both are not ready, which can be linked to the difficulty of obtaining evidence from the police, but also speaks to the lack of human resources in the system as a whole. In almost all jurisdictions, except Guyana, stakeholders pointed to the lack of criminal defence lawyers as a serious cause of delays in judicial processes. In the case of Trinidad and Tobago, some stakeholders observed that, while there is a sufficient number of criminal lawyers, there is a small cadre of “high-profile” individuals who tend to have all the cases. In contrast, Saint Lucia stakeholders observed that there are so few criminal lawyers practising that they are informally known amongst the justices as “The Five Guys”. In other jurisdictions, the point was made that “all the money is in civil law”.

The assessment identified a limited number of prosecutors in the eyes of DPP, for example, in Guyana, stakeholders noted that low pay for prosecutors leads to high turnover and skills loss. In Saint Lucia, the Deputy DPP stated, “while the pay is not bad for a recent law graduate, prosecutors tend to move on quickly to better opportunities, such as to become magistrates”. This was also commented on in Barbados.

Too few prosecutors and defence lawyers mean that they are stretched thin and must often juggle cases between courts. In Belize, the Chief Magistrate observed that, not only is the pool of criminal lawyers too small, they tend to prioritize Supreme and Appeal Court matters, so there are many appeals for adjournments at the Magistrates’ Court level which further aggravates the backlog.

In some jurisdictions (e.g. Saint Lucia, Trinidad and Tobago and Belize), Criminal Procedure Rules have been introduced which give judges the power to institute deadlines for production of evidence, witnesses and other elements related to cases and the ability to dismiss cases if rules and deadlines are not met. Justices in Saint Lucia reported that this has led to a decrease in requests for adjournment in civil and commercial cases but may not be as effective in criminal matters because, in the words of the Chief Justice of Belize, “Nobody wants to be the person to dismiss a case against a murderer.”

5.4.4 Case flow management

The Needs Assessment revealed that there are currently three methods by which criminal matters are dealt with once the accused appears in the Magistrates’ Court: PI’s (used in Trinidad and Tobago, Guyana, Saint Kitts and Nevis); paper committals (used in Antigua and Barbuda, Barbados, Belize, and Dominica); and sufficiency hearings (used in Saint Lucia and Grenada).

Guidance on Committal Proceedings in Barbados by the DPP was introduced on April 21, 2017. “**Committal Proceedings**” as defined by the **Magistrates’ Courts Act, Cap. 116A** means “proceedings held before an examining magistrate to consider whether a prima facie case has been established for the committal of a person accused of an indictable offence for the trial of that offence by the High Court.”

A **PI** is a hearing before a magistrate to decide whether there is sufficient evidence for the accused to go to trial at the High Court. It is, in effect, a mini trial where State and defence attorneys present their cases, and witnesses can be called and cross-examined. Should the magistrate decide that the evidence is strong enough to warrant an indictment, the case is then referred to the High/Supreme Court. The proceedings of the PI are recorded (either by hand or via digital recording equipment) and become a deposition of the case. The deposition must be given to both prosecution and defence before a trial at the higher court level. And herein lies another significant bottleneck in the smooth flow of justice.

“*We must shorten the time between arrest and trial, but getting rid of the Preliminary Inquiry process will merely kick the backlog to the DPP.*”

Hon. Adrian Saunders, President of the CCJ

For example, an analysis of a report on **Jail Delivery by the Guyana Prison Service for October 2019**

CASE FLOW MANAGEMENT

CARIBBEAN COURT OF JUSTICE

The CCJ has created its own agency to provide technology to reduce caseload backlogs throughout the Caribbean. Advanced Performance Exponents Inc. (APEX), is a special-purpose, non-profit agency, committed to delivering technology-based solutions and services to support court systems.

APEX's mandate is to deliver technology-based solutions for Caribbean Courts, law offices and justice sector bodies. Since its establishment in 2016, the agency has developed a suite of software tools to address some of the most critical needs of the region's justice sector. The solutions developed, known as the Curia suite, were designed by Caribbean jurists and technology experts and developed by Caribbean software engineers.

revealed that at least 78 people have been on remand having been committed for trial but have not yet received their depositions a year later; 39 have been waiting for more than two years; 19 for more than three years; one person for more than four years; and six people for more than six years.³⁶ It is worth noting that these figures deal only with date of committal to stand trial, not with the length of time between admission to prison on remand and dates of committal for trial, which can also be lengthy, as seen below from the same Guyana Prisons report:

Figure 5: Georgetown Prison Assizes Awaiting Trial as at October 2019

DEPOSITIONS			NO		
Time	Date of	Date committed	Time	Date of	Date
Less than a year	17	1	Less than a	88	40
1 year	34	14	1 year	59	78
2 years	15	30	2 years	26	39
3 years	3	9	3 years	9	19
4 years	1	8	4 years	2	1
5-9 years	0	9	5-9 years	1	6

Source: Jail Delivery Report for Guyana Prison Service for October 2019 (unpublished).

The main problem with the delivery of depositions seems to lie in the lengthy process of transcribing the PI proceedings. Even where audio recording is used during the PI, it can take a transcribing stenographer several hours to transcribe half an hour of recorded proceedings. This significantly adds to the backlog of cases coming to the High Court, and to lengthier pre-trial incarceration rates. Preliminary Inquiries are also often delayed because of the difficulty in producing witnesses, either because of reluctance to testify, challenge of locating witnesses, or lack of incentive to appear in court if they have to travel long distances. This last is particularly acute in Guyana and Belize where witnesses may have to travel long distances to get to court.

In the case of **paper committals**, the magistrate reads the witness statements produced by the police and decides on that reading whether there is enough evidence to send the case to trial. It is then incumbent upon the DPP to prepare indictments before a trial can proceed. In theory, this system eases the bottleneck at the Magistrates' Court level but may have the effect of increasing the backlog at the High Court level if prosecutors are tardy in producing the indictments (in some cases, because of difficulty in obtaining evidence from the police). In addition, some stakeholders commented that, although the DPP should act as a filter by examining the paper committals to ensure that there is enough evidence to successfully prosecute and weeding out those cases in which the evidence is too weak. This often does not happen and cases are still sent forward which will ultimately fail, thereby wasting court's time and unnecessarily prolonging pre-trial detention and case disposal.

The "sufficiency hearing" has replaced the "preliminary inquiry" under the new Criminal Procedure Ru-

³⁶ Jail Delivery Report for Guyana Prison Service for October 2019 (unpublished).

les, which incidentally, is only in effect in Saint Lucia under a pilot project. It is a hearing before a Judge who assess witness statements from the prosecution on an indictable matter, to determine whether a prima facie case has been established and thus makes a committal for the trial, in a sense it is a committal hearing. The “initial hearing” is heard before a magistrate and involves very basic procedures in the management of an indictable or summary matter, these include; taking note of appearances, reading the charge to the defendant, verifying the defendant’s identity, considering bail, preparing a scheduling order which would detail all the matters that should be attended to in preparation for the next stage of the trial. It’s the first case management stage.



Her Ladyship the Hon. Dame Janice M. Pereira DBE LLD Chief Justice of the Eastern Caribbean Supreme Court.

Photo credit: Eastern Caribbean Supreme Court.

5.4.5 Sentencing

Uneven and inconsistent sentencing among magistrates and, in the case of “either-way” matters, between magistrates and Supreme Courts can negatively affect the public’s perception of the fairness and impartiality of the judicial system, for example, in Belize, punishment for the new offence of belonging to a gang can range from a fine to 10 years in prison. In these cases, the DPP tends to refer such matters to the Magistrates’ Court because they stand a better chance of securing convictions, thereby increasing magistrates’ caseloads.

Sentencing guidelines can encourage magistrates and judges to take specific legally relevant elements into account in a fair and consistent way when deciding whether a convicted offender should be imprisoned, and if so, for what length of time.

Magistrates/judges should have judicial discretion in following a particular sentencing recommendation/guideline but should provide a reason when the recommendation is not followed. This can assist in achieving regional consistency (predictability and proportionality) and fairness (non-discrimination) in sentencing. It will limit undesirable sentencing disparity and promote transparency.

Some jurisdictions have introduced sentencing guidelines (e.g. Trinidad: Sentencing Handbook 2016, Eastern Caribbean Supreme Court Sentencing Guidelines) and the CCJ is launching a bench book for magistrates.

5.4.6 Bail

CRIMINAL AND CIVIL PROCEDURES CODES

Barbados:

Barbados has The Code for Public Prosecutors which was introduced on April 01, 2014. The Code provides a set of general principles to be applied when making decisions about prosecutions to help ensure fair and consistent decisions. It contains information that is important to police officers and can serve as a guide when they are deciding whether to charge a person with an offence.

Grenada: Prosecutors Code

A new Code for Prosecutors was introduced in 2013 which officially standardizes how both public and police prosecutors must conduct themselves when pursuing an investigation. It outlines when to, and when not to, charge someone. Prior to the introduction of the Code, there was no formal set of guidelines.

Guyana: Civil Proceedings Rules: Reduction in Civil Backlog

With the advent of the Civil Proceedings Rules, the backlog of cases has been reduced from 6000 to 250. The majority of claims which were filed were subsequently withdrawn after the introduction of these rules as parties realised their claims did not satisfy the relevant grounds. The original backlog was something of a one-off exercise which depended on the goodwill of judges who took on extra caseloads.

Saint Kitts and Nevis National Prosecution Service: Prosecution Code

The National Prosecution Service was launched in 2012 and ensures that police prosecutors are now overseen and directed by the DPP. Prior to the establishment of the National Prosecution Service, the majority of the prosecution proceedings within the Magistrates' Courts were carried out by police prosecutors without the supervision of the DPP. Bringing police prosecutors under the DPP works to consolidate prosecution efforts and ensure that police who carry out the investigation do not subsequently handle the prosecution as well. The creation of the National Prosecution Service goes some way toward improving efficiency, improving inter-agency cooperation and streamlining prosecution proceedings.

A new Prosecution Code was established having been developed with the help of the British High Commission and the Eastern Caribbean Judicial Advisor. This standardises the guidelines prosecutors must follow when pursuing a prosecution.

Saint Lucia: Criminal Procedure Rules

With the Criminal Procedure Rules, indictments are issued within a reasonable period of time. Backlog cases were immediately taken from the preliminary enquiry stage to the High Court. The Criminal Code also provides additional incentive for compliance as costs are imposed for prolonging matters.

The issue of bail is a contentious one in the Caribbean. While access to bail needs to be simplified (Belize has recently introduced a simplified one-page bail application form which is distributed by the Prison and eliminates the need for defendants to pay expensive lawyers), there are some stakeholders who argue that bail is given too easily, for example, in cases of repeat firearms offences, which poses a danger to the community (magistrates also argue “we know the people who come before us”).

Magistrates have also stated that backlogs and delays in getting to trial engenders witness tampering, frustration of victims (who may then decide to give up on the process), and, in conjunction with the ease of getting bail, a feeling of impunity among offenders since they can consistently re-offend with the assurance that their cases will take years to come to court.

In Guyana, after the Camp Street Prison fire, there was an agreement to grant bail for all but for the most serious offence, however, some judges and magistrates insist on prosecutors opposing bail. Some stakeholders noted that the Commission of Inquiry regarding the prison fire of 2016 conducted a study and did not uncover a single instance where the prisoner had been released on a recognizance (no cash bail) bond anytime during the pendency of her/his case.

“The extant bail system is based upon common law principles and de facto creates a presumption of detention, which is the precise opposite of what it should create—there should be a presumption of release.”

Regional Judges Consultation participant

Bail guidelines/legislation must be developed/adhered to ensure consistency and to prohibit re-offenders.

5.4.7 Pre-trial detention

In general, stakeholders felt that there is an over-use of pre-trial detention because of a lack of alternative pre-trial options. Bail is not always easy to obtain, and in some instances, applications for bail can be delayed. Essentially, the time between arrest and trial must be shortened.

**“Q. Can you suggest any initiatives that has the possibility to reduce the length of stay of Pre-trial Detainees in the Remand Yard?
A. An entire overhaul of the offences regime especially possession of small quantities of cannabis.”**

UNDP Access to Justice Questionnaire respondent, Trinidad and Tobago

According to an earlier UNDP analysis (unpublished), Caribbean countries preference for ‘tough on crime’ approaches rather than preventive and restorative responses (as seen by the prison overcrowding, especially in Remand Yard) as well as little use of ADR mechanisms and the existence of little or no alternatives to sentencing contribute to the overload of the court and prosecution systems and inordinate backlogs.

A range of non-custodial measures are and should be available, including bail, confiscation of travel documents, reporting to police or other authorities and submitting to electronic monitoring or curfews. Alternatives are less expensive, and savings made could be better invested in creating a just and ef-

fective criminal justice system, with more thorough investigations, more judges, quicker procedures and improved prison conditions.

However, in many regional countries, pre-trial detention continues to be imposed systematically on those suspected of a criminal offence without considering whether it is necessary or proportionate, or if less intrusive measures could be applied.³⁷

The table below demonstrates the over-utilization and reliance on pre-trial detention as there exists limited or no use of alternatives to sentencing in most of the Caribbean territories.

In the Caribbean, there exists a tendency based on the above statistics of over-utilization and reliance

³⁷ www.penalreform.org/issues/pre-trial-justice/issue/.

Table 2. Caribbean Prison Information

	Antigua and Barbuda	Barbados	Belize	Dominica
Prison population total (including pre-trial detainees / remand prisoners)	305	874	1297	211
	at 17.6.2018 (national prison administration)	at March 2018 (national prison administration)	at 30.6.2017 (national prison administration)	at July 2016 (national prison administration)
Prison population rate (per 100,000 of national population)	321	300	356	289
	based on an estimated national population of 95,000 at June 2018 (UN)	based on an estimated national population of 291,500 at March 2018 (UN)	based on an estimated national population of 364,000 at mid-2017 (UN)	based on an estimated national population of 73,000 at July 2016 (UN)
Pre-trial detainees / remand prisoners (percentage of prison population)	37.00%	56.20%	30.10%	23.70%
	(24.2.2016)	(31.12.2016)	(31.12.2015)	(March 2016)
Female prisoners (percentage of prison population)	4.80%	2.60%	3.50%	1.40%
	(September 2017)	(March 2018)	(30.6.2017)	(July 2016)
Juveniles / minors / young prisoners incl. definition (percentage of prison population)	0.90%	5.90%	3.10%	0.90%
	(September 2017 - under 18)	31.12.2016 - under 20)	(9.1.2015 - under 18)	(July 2016 - under 18)
Foreign prisoners (percentage of prison population)	30.60%	13.80%	11.10%	1.90%
	(20.9.2007)	(31.12.2016)	(9.1.2015)	(July 2016)
Number of establishments / institutions	1	1	1	1
	(2018)	(2016 - H.M.Prisons Dodds)	(2018 - Belize Central Prison, Hattieville)	(2018 - Stock Farm Prison)
Official capacity of prison system	150	1250	1750	300
	(Sep 2017)	(Oct 2014)	(Sep 2014)	(July 2015)
Occupancy level (based on official capacity)	234.00%	70.70%	87.30%	73.00%
	(Sep 2017)	(Oct 2014)	(Sep 2014)	(July 2015)
Prison population trend				
2000	170	1411	765	215
2003		992		
2005		997		
2007	193	1010		301
2008	229	1046	1365	235
2010	295	910	1420	295
2012	361	1045	1562	275
2014	331	853	1527	
2016	371	913		

Source: Institute for Crime & Justice Policy Research (ICPR),

www.prisonstudies.org/world-prison-brief-data, World Prison Brief, Birkbeck, University of London.

Table 2. Caribbean Prison Information

	Grenada	Guyana	St. Kitts and Nevis	St. Lucia	Trinidad and Tobago
Prison population total (including pre-trial detainees / remand prisoners)	460	2216	220	527	3999
	at August 2018 (via U.S. State Department)	at October 2018 (national prison administration)	at June 2017 (national prison administration)	at August 2017 (via U.S. State Department)	at 18.9.2018 (national prison administration)
Prison population rate (per 100,000 of national population)	426	284	393	280	292
	based on an estimated national population of 108,000 at August 2018 (UN)	based on an estimated national population of 779,000 at October 2018 (UN)	based on an estimated national population of 56,000 at June 2017 (UN)	based on an estimated national population of 188,000 at August 2017 (UN)	based on an estimated national population of 1.37 million at September 2018 (UN)
Pre-trial detainees / remand prisoners (percentage of prison population)	15.20%	35.60%	30.50%	53.50%	59.70%
	(31.12.2014)	(31.12.2013)	(June 2017)	(June 2017)	(18.9.2018)
Female prisoners (percentage of prison population)	1.50%	3.50%	3.60%	2.50%	2.90%
	(September 2016)	(31.12.2013)	(June 2017)	(June 2017)	(18.9.2018)
Juveniles / minors / young prisoners incl. definition (percentage of prison population)	0.90%	0.70%	7.30%	0.90%	1.90%
	(September 2016 - under 18)	(31.12.2010)	(26.8.2013 - under 18)	(31.12.2011 - under 18)	(18.9.2018 - under 18)
Foreign prisoners (percentage of prison population)	3.10%	1.50%	2.10%	3.00%	0.80%
	(31.12.2014)	(31.12.2013)	(26.8.2013)	(31.12.2011)	(March 2018)
Number of establishments / institutions	1	8	2	1	9
	(2018 - Richmond Hill)	(2018)	(2014 - main prison at Basseterre and prison farm on Nevis)	(2017 - Bordelais)	(2018)
Official capacity of prison system	198	1505	232	500	4886
	(Aug 2018)	(Oct 2018)	(2014)	(Aug 2017)	(Sep 2018)
Occupancy level (based on official capacity)	232.30%	147.20%	144.00%	105.40%	81.80%
	(Aug 2018)	(Oct 2018)	(2014)	(Aug 2017)	(18.9.2018)
Prison population trend					
2000		1507			4633
2003	297		195	460	
2005	182		237	503	
2007	334				3514
2008	386	2117	271	518	3732
2010	432	2160	256	526	3766
2012	441	2032	366	568	3800
2014	484	1967	334	634	3481
2016	465	2113		559	

Source: Institute for Crime & Justice Policy Research (ICPR),

www.prisonstudies.org/world-prison-brief-data, World Prison Brief, Birkbeck, University of London.

on pre-trial detention as there exists limited or no use of alternatives to sentencing in most of these Caribbean territories.

“ *Anyone arrested or detained on a criminal charge is supposed to be brought promptly before a judge or another officer authorized by law to exercise judicial power and is supposed to be entitled to trial within a reasonable time or be released. The general rule is that persons awaiting trial should not be detained in custody.*³⁸ ”

The International Covenant on Civil and Political Rights, Article 9.

However, the poor functioning of the judicial system results in an overincarceration of offenders and overuse of remand for lengthy periods. For example, in Trinidad and Tobago, prison recidivism rate was up 51% last year (2018), meaning more people are ending up back in jail and the monthly upkeep for an inmate at the Remand Yard stood at TTD \$15,736.³⁹

Women offenders in detention

In prisons, women suffer discrimination and inequality in contrast to men experiencing the same detention conditions. Even though women prisoners share with men many of the problems of the penitentiary system, women experience detention very differently from men and suffer different consequences that do not apply to men, such as separation from their spouses or children, the double burden of maintaining their families, sexual abuse, etc. Discrimination that exists outside of prison is reproduced in female penal institutions where women are discriminated against for their gender.

Discrimination continues to be practised by those who administer justice, who perhaps without being aware of it and as consequence of their own socialization, contribute to women’s discrimination. Sometimes, women, who are in the majority heads of households, commit crimes as a consequence of social circumstances and to make ends meet. In the Caribbean, this trend is deepened due to the male marginalization tendency.

5.4.8 Rehabilitative approaches

The Barbados prison system has implemented a targeted intervention programme designed to improve rehabilitation outcomes. The segregation of the prison population facilitates more tailored psycho-social programmes that better reflect the needs of different groups. In addition to supporting livelihood skills, the initiative includes a six-month transition programme for inmates pending release, intended to equip them with basic skills for successful reintegration.

Belize Central Prison has been run by the Kolbe Foundation, a non-profit, non-governmental organization, since 2002. The Ministry of National Security supervises the Foundation’s work via the Controller of Prison and pays the foundation a per-inmate fee to run the prison.

³⁸ The International Covenant on Civil and Political Rights, Article 9.

³⁹ <http://tparliament.org/reports/p11-s4-J-20190416-SSPA-R9.pdf>, Parliament’s Social Services and Public Administration Committee, ‘ninth report of the Joint Select Committee on social services and public administration’.

REHABILITATIVE APPROACHES

BARBADOS, BELIZE AND TRINIDAD & TOBAGO

Dodds Prison: Barbados

776 prisoners (female prison (28 currently/100), remand to hold 500 (holding 300/500), maximum security (70/200).

An assessment was started in 2001 with the intention of improving the effectiveness and efficiency of the organizational structure (primarily through improved training, better human resource management) and to enhance the prison's role in preserving citizen safety (including greater emphasis on reform/rehabilitation and reintegration). This included enhancements to the staff recruitment processes, internal (done through "strong officers" training weaker ones) of the approximated 392 staff (civilian and officers – 230 security), CBSI training as well (including senior personnel training tours (UK, US). The training and enhanced work environment led to improved staff morale as there are more opportunities for career advancement.

As part of the reform of the rehabilitation system, there has been a number of interventions: Separation of prisoner groups based on their status (maximum security, gender, remand etc.). This has allowed more targeted interventions for specific groups as they are now able to test more tailored reform programmes.

Central Prison (Kolbe Foundation): Belize

Belize Central Prison has been run by a non-profit organization, the Kolbe Foundation, since 2002. It is the only correctional facility in the country. The foundation focuses on individualized rehabilitation and caters to men, women and youth with separation of prison populations including the separation of remand prisoners from the general population and offenders by categories – including among the youth population. Rehabilitative initiatives include animal rearing, workshops producing goods for commercial sale, a radio station, and targeted youth education facilities. Inmates also take an active role in managing rehabilitative efforts. Meticulous data is collected on indicators of admittance, release, and rates of recidivism, among other things. Funding is provided by government subventions on a per-prisoner basis and donations from civil society and the business sector.

Youth Peace Ambassadors Programme: Trinidad and Tobago

UNDP, with support from UNICEF, launched the Youth Peace Ambassadors Programme in October 2019 at the Youth Transformation and Rehabilitation Centre (youth detention centre). The objectives of the Programme are to reduce the rates of recidivism, place youth on pathways to help them successfully reintegrate into society, as well as transform them into peace ambassadors and agents of change.

In the first instance, residents underwent psychosocial assessments which were conducted by a team of trained social workers and therapists. Based on the results of the assessments, a programme of psychosocial interventions was developed including workshops on Strengths and Life Goals, Conflict Resolution, Dealing with Trauma, Anger Management, Positive Coping, Substance Abuse and much more. Music therapy, art therapy and yoga are also integral aspects of the programme.

In order to respond to the new challenges that the COVID-19 pandemic presented, the programme, which began as a Pilot, was scaled up to the entire population of over 100 residents. Further, the programme was brought online and expanded to include psychosocial education on Covid-19. Classes take place virtually with facilitators streaming live, interactive sessions from remote locations.

The Youth Peace Ambassadors Programme has been well-received by the youth and prison leadership alike, and plans are underway to expand the scope and reach of the interventions.

FIGHTING CRIME BEGINS WITH ME!



OUR POLICE STATIONS ARE GOING DIGITAL!

By cooperating, you are joining the war against crime and violence! Please be patient with the new digital process as it will involve many detailed questions and may be time consuming. Your answers will be used by police to better understand and tackle the crime and perpetrator(s).



Transitioning from traditional written reporting to digital will:



Improve efficiency by eliminating the need to recount an incident more than once,



Allow citizens the opportunity to provide more detailed and exact information for a more thorough investigation into an incident,



Make citizens part of the crime fighting brigade. By answering specific questions, citizens will assist police in the fight against crime and violence,



Help police gain vital intelligence on crime hot spots, as well as on 'persons of interest', including the crimes they have committed and their common traits.



Permit all stakeholders within the justice system to share data among themselves, thus opening up communication channels.

6. RECOMMENDATIONS

6.1 Regional level recommendations

Agenda 2030 and SDG 16.3

As noted in the 2019 Task Force for Justice report on Justice for All,⁴⁰ justice is a thread that runs through all 17 Sustainable Development Goals (SDGs) but SDG 16.3 in particular promises to ensure equal access to justice for all by 2030. SDG16 is the lens through which this assessment was conducted and the framework for the report and recommendation.

1. Implement or utilize existing regional platforms of Ministers of Justice, Attorneys General, and other justice leaders to share good experiences and strengthen cooperation on justice innovation and implementation of agenda 2030.

2. Adapt the “Task Force for Justice”⁴¹ recommendation for a new SDG16.3 indicator to measure progress on civil justice (intended to supplement existing criminal justice indicators) and encourage voluntary national piloting ahead of its integration into the global indicator framework.

3. Coordinate an alliance of international and regional partners, including the University of the West Indies, University of Guyana (and other regional universities) and draw upon the experiences and expertise of the Global Policy Network to:

- determine the economic cost of injustice in the Caribbean;
- conduct cost-benefit analysis of investing in a people-centred approach to justice in the Caribbean;
- examine current resource allocation in national budgets in order to identify ways in which current resources could be redirected towards lower-cost approaches with potential to deliver justice as part of the national development agenda;
- develop a roadmap “template” which national governments can adapt to create a supportive regulatory environment and funding mechanisms for achieving a people-centred approach to justice;
- elaborate a baseline study of caseloads and backlogs in Magistrates’ Courts, police, DPP, prisons, Supreme Court and Appeal Courts. This will allow future measurement of impact of reduction initiatives; and
- facilitate independent quality assessment studies of current initiatives highlighted in this report with a view to creating regional good practice models/blueprints which can be adopted at the national level. E.g. Independent quality assessment of the Barbados and Belize prison management models.

Human resources and capacity building

4. Coordinate with regional partners the establishment of a Regional Judicial Training Institute. More specifically, gender-training programmes should be institutionalized within the justice system. It is essential to strengthen this process by mainstreaming a gender perspective on both a regional and national level in the Caribbean, with the support of international and regional organizations and of civil society. Mainstreaming a gender perspective⁴² into the programmes and policies is necessary in order to design and apply policies that take into account the experiences and needs of women in general in the administration of justice, whether as victims, offenders, users, or administrators or personnel in the justice system. The Spotlight Initiative, both at the national and regional level, is allocating resources on this issue: Caribbean region has not had the benefit of a comprehensive region wide programme

40 <https://cic.nyu.edu/publications/justice-for-all>: the Task Force on Justice – an initiative of the Pathfinders for Peaceful, Just and Inclusive Societies – draws on research by the world’s leading justice organizations and experts; this new report provides a first estimate of the global justice gap. It makes the case for shifting from a model that provides justice only for the few, to one that delivers measurable improvements in justice for all.

41 https://reliefweb.int/sites/reliefweb.int/files/resources/task_force_on_justice_report_conf_version_29apr19_1_1_1_compressed.pdf: the Task Force on Justice is an initiative of the Pathfinders for Peaceful, Just and Inclusive Societies, a multi-stakeholder partnership that brings together UN member states, international organizations, civil society, and the private sector to accelerate delivery of the SDG targets for peace, justice and inclusion.

42 www.oas.org/en/cim/docs/gender-oasneedsassessment-2010.doc.

on EVAW but instead programming experiences have been built on country or sub regional initiatives, lessons learned and good practices from these programming experiences will be built on and scaled up by Spotlight.

Budgeting and planning

5. In order to provide Governments with the critical data needed to inform budgeting and planning, a comprehensive business case for the mainstreaming of non-custodial pre-trial measures as well as community correction, where appropriate, is indicated. The analysis would identify the percentages of cases that could be diverted, the costs of diversion and the savings that would be generated. Such an analysis would rely primarily on available data regarding the numbers of prisoners, types of offences, maintenance and reform costs as well as identify culturally-relevant alternatives, and would make recommendations on the development of pilot/upscaling interventions to explore the opportunities for reduced costs, improved efficiency and better community outcomes. The work would also provide a costed Monitoring and Evaluation (M&E) framework to ensure that the results are captured systematically and can be used to inform policy recommendations. A budget analysis of the justice systems will need to be conducted; with a minimum expenditure outlined (for example, 0.1% - 0.3% of GDP can be utilized as an international benchmark).

Gendered approach to judicial reform

6. An analysis of the differential experiences of women and men who rely on the justice system should be undertaken, focusing on their access to justice (both as victims and perpetrators of crimes), rehabilitation and re-integration. The work could build on other work, including the CVS work being done by CariSECURE, to focus not just on the direct impacts of crime, but also on the knock-on effects for people seeking justice (witness intimidation, access to counselling for victims of sexual crimes, etc.).

Policies should consider the diverse conditions of the prison population with regard to gender, age, ethnic group, and disabilities to ensure that prisoners are afforded the human rights they are entitled to. Training should be provided to prison staff on the human rights of women deprived of liberty. Priority must be given to the family ties of women deprived of liberty through contacts with their minor children and a gender perspective should be incorporated into programmes allowing prisoners to serve their sentences in their countries of origin.

Education

7. The Council of Legal Education is a regional organization which operates law schools in Trinidad and Tobago (the Hugh Wooding Law School), Jamaica (the Norman Manley Law School) and The Bahamas (the Eugene Dupuch Law School). The more senior stakeholders interviewed for this Needs Assessment Report stated that in years past, cross-learning was promoted, facilitated and encouraged by the Council as law students were mandated to conduct a component of their studies in another island. However, this is no longer the case, as law students spend their entire time at one campus. It is recommended that cross-country learning be reinvigorated where students are supported to spend time in different jurisdictions. This would allow for the meeting of minds and shared experiences which would lead to more well-rounded persons entering the legal profession.

Sensitization on the Caribbean Court of Justice

8. Stakeholders shared that some matters that should be heard by the CCJ are still taken on board by local Courts, thereby causing some level of confusion and unnecessary backlogs. It is therefore recommended that regional training be conducted for Judicial Officers on the mandate of the CCJ. Further, local Judiciaries also need to be continuously sensitized on the role and function of the CCJ.

CARICOM Model Legislation

9. CARICOM expends significant resources to develop model legislation which seeks to create more robust legal frameworks to guide jurisdictions with respect to compliance with various international treaties. The intention is that the model legislation will be utilized by member states to draft country specific laws.

While stakeholders acknowledged that the model legislation is usually of sound quality, there was general agreement that there is often hesitancy by member states to use these models when formulating

national laws.

It is recommended that regional sensitization and training for Attorneys General and senior law makers across the region be conducted to engender a sense of confidence in the CARICOM Model Legislation. This will encourage uptake by more member states.

Model Legislation developed to date include the following:

- Model Legislation on Citizenship;
- Model Legislation on Domestic Violence;
- Model Legislation on Equality for Women in Employment;
- Model Legislation on Equal Pay;
- Model Legislation on Inheritance;
- Model Legislation on Maintenance & Maintenance Orders;
- Model Legislation on Sexual Harassment;
- Model Legislation on Sexual Offences;
- Model Legislation on Arbitration;
- Model Companies Act; and
- Model legislation to strengthen the ability of CARICOM member states to ratify, and implement obligations under the Arms Trade Treaty (ATT) and UN Plan of Action.

IN RESPONSE TO AND POST COVID-19⁴³

The COVID-19 crisis highlights specific justice concerns, such as institutionalizing reforms to strengthen the effectiveness and efficiency of the justice chain in a radically shifted social context. Access to legal services and legal information is critical as prevalent inequalities have and will continue to be highlighted by the pandemic.

Emphasis must be placed on citizens' right to justice, a people-centred approach to justice must be adopted to ensure that no one is left behind. Access and quality of justice are the key components for an effective justice system and a fundamental right of citizens. Recommendations for the Caribbean in facilitating access to justice through reform and modernization of their justice systems, particularly in the post-COVID 19 context must address:

- Access to independent and impartial control mechanisms
- Access to justice for all
- The backlog of cases

Access to independent and impartial control mechanisms

All measures restricting fundamental rights and liberties, including access to justice, must be lifted. No restrictions to access to justice should be maintained as a result of the crisis. Legal aid providers should be supported and increased to ensure individual claims against violations of fundamental rights during the crisis can be addressed.

Access to justice for all

Certain groups, including women and children at risk of violence, or undocumented migrants, refugees and asylum seekers and those in migrant detention centres may be at particular risk. Reduced court operations may have resulted in prolonged detention of pretrial detainees or of prisoners eligible for early release if bail or parole hearings are postponed. To ensure no one is left behind: the prosecution

43 United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC): Ensuring Access to Justice in the Context of COVID-19. April 2020.

and the judiciary, legal aid providers, including legal aid authorities, bar associations, pro bono lawyers, National Human Rights Institutions and Ombudsman Offices, have a critical role to play in this regard.⁴⁴

The UN Secretary-General's Policy Brief on the Impact of COVID-19 on Women shows a dramatic increase in domestic violence and child abuse and lack of protection for women and children due to measures requiring people to remain confined in their homes.

It is vital that women and children have access to justice and other necessary social services.

With COVID-19 resulting in high mortality rates, access to legal services to deal with inheritance and property rights will be necessary especially for women, children and marginalized populations to avoid risks of exploitation and abuse.

Engaging informal justice mechanisms, and other traditional dispute resolution mechanisms, that may predominantly deal with family matters, may be further explored to ensure compliance with international human rights standards.

Legal assistance and representation must be provided to immigration detainees, migrants and refugees.

In the wake of COVID-19, detention of migrants and refugees is even more worrying as persons in detention are at heightened risk for contracting the virus due to their inability to social distance in confined spaces, unsanitary conditions and limited or even no access to healthcare.

For example, the Caribbean Centre for Human Rights has highlighted the issue of detention of migrants and asylum seekers in Trinidad and Tobago, saying that "there is no independent body engaged in legal advocacy on the issue of immigration detention, monitoring of conditions in the Immigration Detention Centre or strategic litigation to highlight abuses related to immigration detention. There is also no institution that is dedicated to supporting migrants and refugees with their legal questions and concerns. No independent body has been allowed access by the government to monitor conditions in immigration detention and there has also been limited legal action against the state for ongoing violations of human rights in the Immigration Detention Centre"⁴⁵.

Addressing the backlog of cases

The justice sector will need surge capacities to be able to handle the increased backlog in an effective, fair and timely manner. This can also include building on some of the ICT gains that may have been achieved and continuing with remote court hearings and other judicial proceedings as a strategy to support the progressive resumption of judicial activities.

Retaining successful good practices:

Reflection on the response and measures adopted to protect and promote access to justice in the context of the COVID-19 is vital. The process of reflection must identify and share good practices amongst the various justice sector actors throughout the Caribbean region.

Successful innovative strategies adopted during the crisis should be continued and built upon to overcome some of the systemic barriers which citizens encounter in accessing justice and to reduce the backlog of cases.

The use of remote technology for legal proceedings, prison decongestion strategies, measures reducing usage of pretrial detention, online dispute resolution, virtual access to legal aid providers should be retained as long-term measures.

⁴⁴ United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC): Ensuring Access to Justice in the Context of COVID-19. April 2020.

⁴⁵ Caribbean Centre for Human Rights.

Measures instituted during COVID-19 to keep their wheels of justice turning:

Belize

- Introduction of Practice Direction. The COVID-19 Directions (May 2020)⁴⁶ to ensure the maintenance of justice.
- Bail hearings are to be facilitated by way of video link conferencing.
- Sentencing may be proceeded with by way of video link conferencing in the case of persons on remand, and with only the essential personnel being present in court in the case of persons on bail.
- Bail applications, adjournments and further remand for prisoners may be dealt with by way of video link conferencing.

Guyana

The introduction of Practice Directions: 3rd June, 2020:

- Hearings to be conducted where possible by electronic means. Emails, telephone conference calls and videoconferencing platforms will be utilised to minimise 'in-person' attendance at Court.
- Remands, further remands, trials of persons in custody and preliminary inquiries for prisoners on remand and other matters deemed urgent and fit for hearing, will be conducted via telephone conferencing or electronic means utilizing videoconferencing platforms.

The Eastern Caribbean Supreme Court⁴⁷

- The introduction of a Guide for the migration of Court of Appeal, Civil, and Commercial Matters manually filed prior to the implementation of the Electronic Litigation Portal. This was done through Practice Guide No. 1 of 2020 and the rationale was to allow for the continuity of accepting filings for matters and the facilitation of remote hearings.
- To provide guidance to Court stakeholders on remote hearings, a Video Conferencing Policy was developed and circulated to all legal practitioners and other stakeholders of the ECSC.
- To facilitate hearings remotely, The Honourable Dame Janice M. Pereira, DBE, LL.D, Chief Justice, has directed and declared that the location from which a Judge, Master, or Registrar conducts a remote hearing be declared a Court for the purpose of the conduct of Court proceedings.
- To facilitate bail applications, Practice Direction No. 4 of 2020 – Bail Applications for Indigent or Unrepresented Persons.

The Honourable Chief Justice also recommended that legal practitioners and members of the public should utilize mediation as a tool for the resolution of disputes outside of Court and as a first step towards resolving disputes arising in commercial transactions, in the community or in the workplace during the COVID-19 pandemic. The ECSC is in the consultation stages of a revised Mediation Practice Direction which aims, where necessary, to improve the current practices and procedures governing mediation in each Member State and Territory.

Trinidad and Tobago

- 12 Virtual Courts were introduced in tandem with electronic facilities on the part of the Trinidad and Tobago Police Service which is also conducting virtual hearings. This initiative eliminates the need for physical transportation of prisoners and remandees to the courts. Their depositions and other related matters will be conducted via video conferencing, speeding up the court's processes whilst eliminating the costly need for transportation and simultaneously reducing the backlog of cases within the judicial system.

⁴⁶ <https://www.belizejudiciary.org/wp-content/uploads/2020/05/Practice-Directions-Supreme-Court-of-Belize.pdf>.

⁴⁷ <https://www.eccourts.org/statement-by-the-chief-justice-on-the-ecscs-response-to-covid-19/>.

- These hearings by electronic means are governed by the Practice Directions on Electronic Hearings⁴⁸ which provides 8 High Level Principles based on established concepts of effective advocacy and fairness: advance liaison, knowledge about the technology, conduct of the hearings, use of documents, written arguments, preparation and remote advocacy, interruptions and interjections and confidentiality.
- Historic completion of a Judge Alone Trial for Murder by Electronic Means:⁴⁹ the trial took place within 3 days and the Judge found the accused non guilty after 12 years on remand.
- The Judiciary has conducted over 5,800 virtual hearings between 16 March 2020 - 26 May 2020. Video conferencing centres were established at various prison facilities allowing for collaborations between the justice sectors.

Virtual Courts, video conferencing centres, online dispute resolution, etc. which has been successful throughout the Caribbean should be further developed post COVID-19. These innovative implementations facilitates and promotes access and quality of justice to all its citizens as these online mechanisms have allowed collaborations within the various justice sectors which will speed up the time spent by accused persons awaiting hearings/trials, thereby reducing the backlog of cases.

“For some, the view has been that the use of electronic means in the Criminal Division should be limited to case management, remand adjournments, and bail, steering quite clear of the main event of the criminal trial. That thinking has slowly been replaced with by an appreciation that the use of electronic means has great potential to mitigate several hinderances to the trial process.”⁵⁰

Honourable Mme. Justice Lisa Ramsumair-Hinds

6.2 National level recommendations

Throughout the Needs Assessment and the regional recommendations highlighted above, the importance to tailor specific recommendation that consider the specificities of each country and jurisdiction has been highlighted. That is, the report recognizes there is not a one-size fits all solution, and as such, national level recommendations are made.

The list of recommendations at the national level is numerous, hence in an effort to ease clustering, these are clustered around 10 different categories as follows:

- Towards a continued modernization of the administration of justice;
- Fostering development of key partnerships and alliances;
- Improved and targeted training;
- Specialized Courts;
- Infrastructure and facilities;
- Public perception and communication of justice;
- Improvements of legal framework as necessary;
- Foster alternative mediation mechanisms;
- Strengthen legal aid; and
- Other national specific recommendations, including for instance, alternative sentencing, witness support services and human resources.

Towards a continued modernization of the administration of justice

48 Issued 16 March 2020 <http://www.ttlawcourts.org/index.php/rules-a-practice-directions/supreme-court/9533-covid-19-emergency-directions> <https://www.ttlawcourts.org/index.php/rules-a-practice-directions/supreme-court>: Issued 21 April 2020.

49 Judiciary Trinidad and Tobago: Historic completion of a Judge Alone Trial for Murder by Electronic Means: Media Release.

50 Media release from Trinidad and Tobago judiciary, 26 May 2020.

Citizens' trust and confidence in state institutions, including the Judiciary, improve when they experience fair, efficient and effective provision of services. These principles of justice management can be strengthened with the introduction of modernization approaches aimed at improving both citizens interactions with justice at different levels and the continued reduction of backlogs that lead to slow implementation of justice. While it is true that in the past several modernization projects have been announced and implemented; it is also a fact, that institutional transformation is a continuous process.

For instance, electronic case management systems have been introduced in all jurisdictions and at different levels. The CCJ in particular has developed a comprehensive case management system aimed at strengthening the justice systems in the region and improving the standards of efficiency of court related services. The system, called APEX, can be further utilized to provide consensus on technology solutions to deliver better justice services, including electronic filing and case flow management, by replacing the slow, unreliable manual processes currently existing in most Courts.

Fostering development of key partnerships and alliances

The needs of the Judiciary are many and multidisciplinary. An effective way to find solutions to improve the capacities of the Judiciaries to deliver justice can be achieved via collaboration with specialized stakeholders in the academia, civil society and even retired judges. This can include for instance, partnerships between Courts (Magistrates and High) with academic institutions to provide assistance, including research clinics, secondments and internships with law students/graduates from the University of West Indies (UWI), University of Guyana (UG), or the Hugh Wooding Law School and its various specialist clinics. Another partnership can be with retired Judges to be brought in on a temporary basis to assist in cases especially in criminal proceedings. This initiative would have a tremendous impact in reducing the backlog of cases in the Courts.

Improved and targeted training

Professional development and skills development are necessary requirements for an improved provision of justice services. Public education and training programmes for judicial officers can be organized especially on procedural fairness and efficiency. The training can also include specialized programmes for police investigators in preparation of files and properly securing evidence. This has the potential to save time in the management of cases as it eases understanding on the roles and expectations from stakeholders regarding their duties and role in the justice sector.

Specialized Courts

Although with some caveats, the establishment and/or development of Specialized Courts can support the reductions of backlogs of civil and criminal offences which most of the time are pending in High Courts or blocked at the Magistrates' Courts level. For instance, the establishment of a Family Court specifically designed to cater to the needs and demands of family matters can be developed in countries which have not yet implemented it. Such a court could assist with matters currently dealt with by the Magistrates' Courts (i.e. divorce, custody, ancillary relief, juvenile justice). Also, the creation of Sexual Offences Courts could be developed together with training to staff and key stakeholders along with the implementation of Sexual Offences Guidelines. This Court would assist in reducing backlogs pending sexual offences cases (for example, in Trinidad and Tobago's Annual Law Report 2018/19, it was mentioned there were 374 of these cases pending).

“Specialised Courts have had immense success in a number of contexts by being able to fast-track certain issues taking pressure off the Courts and by creating an environment of specialised judicial capacity.

The Industrial Court was one of the first Specialised Courts and remains key. Its intent has always been to take pressure off the Civil Courts and to contribute to economic stabilisation and reducing unrest. In fact, the Industrial Court was established out of the Industrial Stabilisation Act (which has since been repealed and replaced by the Industrial Relations Act that establishes the Court).

“ *It is important that specialised courts, such as the Industrial Court, are*

not only empowered by Statute but are supported by the appropriate budgetary allocations. Furthermore, attempts should be made for on-going interface between the judicial officers of Specialised Courts and the wider Judiciary such as joint learning and a regular joint judicial symposium.”

Her Honour Elizabeth Solomon, Industrial Court Judge, Trinidad and Tobago

Infrastructure and facilities

A recurrent challenge to fair and efficient administration of justice is the actual physical condition where the services are made available. The lack of accessible justice facilities and services to persons with diverse forms of disability (e.g. visual, physical, hearing, intellectual, mental), results in exclusion from protection and remedies. In some jurisdictions, it is indispensable to build facilities (i.e. those affected by hurricanes in Dominica); in others, it is indispensable to facilitate access to vulnerable and rural population (i.e. remote locations in Guyana), in others the adequacy and resilience of existing facilities (i.e. at district levels in Belize). But it is also about technological infrastructure aimed at facilitating institutional transformation. For instance, the model established by the CCJ regarding courtroom technology can be adopted in Regional Courts to promote efficiency and effectiveness. These technological advances can help remove the need for Magistrates/Judges and Clerks taking verbatim notes that severely affect the time spent on each case.

Public perception and communication of justice

The current low levels of trust and confidence by citizens on judicial institutions are a serious challenge that needs to be addressed at various levels across all the Caribbean region. The starting point is about the actual improvement and facilitation of access to justice services, so citizens encounter fair, fast and equitable services. But also, there is a need to improve the way the judicial system communicates and interacts with citizens. Various public information and awareness raising campaigns can be launched so citizens better understand the roles, functions, responsibilities and capacities of justice. Such campaigns can positively promote changes in cultural attitudes and perceptions regarding Courts' efforts. Courts could establish communications departments to inform, disseminate and address any changes to the Bar, public prosecutors, law enforcement, other government agencies and the public at large.

Improvements of legal framework are necessary

Considering many of the backlogs are due to old and inefficient regulations, it seems a revision of the legal framework for the administration of justice is in order. Outdated regulations and proceedings, old codes and obsolete technologies and processes seem to abound in the administration of justice in the Caribbean region. This calls for improvements in the legal frameworks tailored to each specific jurisdiction. In fact, many Caribbean countries still have to sign, ratify, and implement the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and to adapt and adopt national laws to ensure the full mainstreaming of a gender perspective into their public policies, particularly in the administration of justice, in order to correct inequalities and guarantee the full enjoyment of women's human rights.

Foster alternative mediation mechanisms

An efficient way to reduce the main problem in the administration of justice is by preventing cases which could be solved through alternative means, in particular mediation, from being brought to the formal justice system. The introduction of pre-trial mediation for civil and criminal cases can go a long way to impact a reduction in the number of cases brought to Magistrates' Courts. Mediation is an effective and practical means of resolving many disputes. As an appropriate and ADR mechanism, it is an important pillar in the achievement of justice reforms in several countries in the Caribbean. Initiatives like "Mediation on Wheels" piloted in Trinidad and Tobago comes to mind. It consists of a mediation bus provided particularly in remote areas as certain populations would often find it difficult to travel far distances to reach the Courts. Additionally, this was a consensus reached at the regional judges' consultations that mediation and ADR need to be further utilized in all the Courts to reduce the backlog of civil and criminal cases.

Strengthen Legal Aid

Legal aid advisory services could be established and developed along with relevant guidelines and legislation in the interest of justice administration. These services can appeal to attorneys in private practice to represent applications via the legal aid system and law school graduates. Legal and administrative internships and clerkships can be offered to gain the required knowledge whilst assisting in research, filing cases, contacting clients and performing other administrative functions. Additionally, pro-bono clinics can be run by private legal services and civil society organizations dedicated to supporting and advocating for the resolution of disputes and the administration of cases. For instance, in prisons, and supervised by attorneys, law graduates can provide prisoners with legal information on criminal matters. The legal aid system must therefore be developed for persons who do not have the economic capacity to afford an attorney, both in criminal cases and also in civil courts in family cases, which would be a 99% pro-gender equality and pro-youth, pro-poor measure.

BARBADOS AND THE EASTERN CARIBBEAN

The lack of fully integrated communications and technology systems is a major contributor to the backlog of cases in Barbados and the EC. This manifests in persistent reliance on paper documents throughout the system, from the police and the DPP to Judges and Magistrates, which creates compounding challenges related to tracking cases, completing transcripts and depositions and other documents in a timely manner. These challenges, identified by both the Barbados and EC Supreme Court and Magistrates' Courts, indicate the need for in-court technology for Judges and Magistrates to access and manage case data electronically. To do this, these systems will have to be linked to secure, electronic case registry and case management systems.

The digitization of case management is also a key element of building national resilience. The case of the destruction of Courts and other state administration offices in Dominica following the passage of Hurricane Maria was accompanied by the loss of many of the paper-based court records, leading to major challenges with pursuing the related cases. This underscores the fact that the full transition to electronic records with redundant storage will not only improve efficiency but will build resilience in the Judiciary and reduce the extent to which access to justice is compromised in post-disaster conditions.

Additionally, these electronic systems should be accompanied by a robust coordination mechanism for all of the agencies responsible for law enforcement, custodial care and rehabilitation of inmates. To achieve this, major improvements in data and information-sharing among key agencies (police, probation, prison, social services etc.) are necessary. A framework to address this would build on the data management work being done through ongoing interventions such as the USAID funded CariSECURE project, by expanding the systems to ensure engagement of actors at each stage of the process, from arrest to conviction, sentencing, incarceration, rehabilitation and re-integration. As noted by stakeholders, an integrated system for all relevant agencies would help to ensure that data gathered at each stage is made available, in a reasonable time, to those within the system who require it as inputs into their respective decision-making processes.

Fostering development of key partnerships and alliances

Given the limited fiscal space of governments in the region, solutions to the challenges in the justice sector will need to rely on innovative solutions that improve the efficiency of existing expenditures and engage non-state actors as to catalyze change. Based on the inputs of many stakeholders, including the Barbados Chief Justice, Registrar and EC Justices, a strategic approach is required to more systematically leverage the expertise and knowledge of NGOs, civil society and academia into the justice system to provide effective legal support at low cost.

Using a systems approach, a structured framework of support services from various institutions and individuals is proposed at various stages of the justice system. An initial capacity baseline assessment is required to identify the skills, capabilities and services that exist across civil society, the degree of accessibility and their successes and levels of satisfaction among stakeholders and beneficiaries. Based on this information, support can be mainstreamed in the areas identified in the Needs Assessment, in particular:

- human resource support to the Court systems through the recruitment of law students and recent law graduates as interns. Using a structured system, such as a judicial research clinic, Magistrates and Judges will benefit from the additional research support necessary to expedite judgements and improve efficiencies, while minimizing costs. Students and recent graduates will also benefit from the experience and exposure of working hands-on with both criminal and civil matters;
- to augment the work of the legal aid system, support should be given to NGOs which have the capacity to fill gaps and reach the most vulnerable who are in need of, but are unable to afford, various forms of legal support. For example, the proposal by the Barbados Bar Association to expand the legal support clinic system could be supported through the necessary financial and demand analysis to determine an effective and sustainable model;
- while the prisoner rehabilitation programme in Barbados has the potential to improve the outcomes of those who have completed their sentences, stakeholders have noted that its success may

be undermined by the aforementioned punitive perceptions of those in the communities in which the individuals are attempting to reintegrate. For example, the prison administration noted that there remained an unwillingness in communities to accept former inmates, leading to difficulty with reintegration and ultimately contributing to isolation and increased likelihood of repeat offenses. Additionally, those with drug addiction illnesses may not receive the necessary psycho-social care after returning to their communities, also increasing the probability of recidivism. Notably, anecdotal evidence suggests that the problem is experienced differently by women and men; and a strong, culturally oriented public awareness intervention that promotes greater community-level support for reintegration is indicated. The programme will need to include engagement between the prison, Probation Department, civil society and the private sector to promote changes in attitudes and behaviours, and build on and expand existing systems of support.

Infrastructure and facilities

In a number of EC jurisdictions, the physical infrastructure for justice administration is limited, often inadequate, and where it exists, may not be resilient to climate change. In Saint Lucia and Grenada, security, size and other concerns surrounding re-purposed court buildings led to protracted suspensions of cases as recently as 2018, with the shut-down in Saint Lucia contributing to an over 50% reduction in the number of cases heard by the court.

The issue of legal infrastructure vulnerability was highlighted in Dominica after Hurricane Maria destroyed the court offices and important judicial processes and decisions had to be suspended. There is therefore strong indication for an inventory of the current stock of justice administration infrastructure and the design and construction of dedicated, purpose-built judicial centers that are resilient to climate change and other disasters. The use of resilient building techniques and the deployment of resilient technologies such as renewable energy with battery storage, will not only enhance the efficiency of the day-to-day administration of justice, but will support access even in post-disaster situations. Given the limited fiscal space available, non-debt financing alternatives such as public private partnerships and energy performance contracting for these infrastructure interventions is strongly indicated.

Public perception and communication of justice

While NAR stakeholder analysis pointed to general support in the judiciaries of Barbados and the EC for a greater role for people-centered solutions, including expanding the use of non-custodial pre-trial measures and diversion; public perception of justice in Barbados and the EC remains characterized by a strong preference for highly punitive interventions. Stakeholders across the EC expressed support for the expanded use of non-custodial measures, including reduced prevalence of pre-trial detention and ADR, to reduce the numbers of people on remand for extended periods. This is of particular concern in countries such as Barbados which has the highest proportion of pre-trial detainees (those on remand represent around 56% of the total prison population) and where, on average, those on remand remain there for several years. At all levels in the Judiciary, the views were consistent that many of those on remand for non-violent crimes could be diverted using systems such as curfews, electronic monitoring, detention centres, weekly reporting to officers, etc.

However, a comprehensive 2015 survey of public perceptions demonstrated that in the EC, respondents on average maintained highly punitive perspectives toward crime, including that the justice sector would benefit from greater levels of militarism and incarceration. Even more, respondents in ANB, BRB and TNT were, on average, in support of more harsh punishments, including the death penalty.

The introduction of people-centered approaches will therefore require a cultural shift toward solutions that recognize the needs of victims, perpetrators and the community. A pilot to assess the potential for expanding diversionary measures is indicated. Such a pilot could rely on the growing body of data on restorative justice as well as a rigorous analysis of perceptions, attitudes and behaviours toward crime and perpetrators in the region. Based on this analysis, pilot programme should be designed to assess the socio-cultural relevance of the most relevant approaches with a view to developing an effective, culturally-sensitive framework that will reduce the burden on the current structures in the judiciary and increase overall satisfaction with the administration of justice.

Improvements of legal framework are necessary

The lack of criminal procedure rules has been highlighted by several key stakeholders Barbados, including the office of the DPP and the Bar Association, as a major contributor to the delays in justice administration and is a main factor in the high rate of extended remand periods for accused. This is supported by the improvements registered in other countries following the introduction of Criminal Procedure Rules, including through the Saint Lucia Criminal Procedure Rules and Trinidad Criminal Procedure Act (CHAP. 12:02) Rules. As such, support for the development of criminal procedure rules, informed by the experiences of regional counterparts, is strongly indicated. In addition to building on lessons from these and other jurisdictions where similar rules have been introduced, rules should be developed using an inclusive, participatory approach that empowers the police, courts, DPP, forensics and other stakeholders to collectively define the rules in an effort to ensure greater ownership and compliance.

Additionally, stakeholders indicated that weaknesses in planning and monitoring undermines justice reform efforts. While some countries include published sector-level targets in their annual planning (e.g. Belize embeds performance indicators and targets for legal assistance and law enforcement in their annual fiscal estimates); in Barbados and the EC, this type of information is not widely available. The absence of these frameworks makes it difficult to objectively assess the performance of justice reform measures, thereby limiting the scope for increased accountability and undermining the sustainability of interventions.

As such, a planning, monitoring and evaluation framework is strongly indicated for the justice sector. This would include the development of annual work plans for the court systems, accompanied by a series of indicators, targets and a monitoring framework that would track progress and provide feedback to decision-makers to inform course correction. These frameworks should include key institutions responsible for the administration of justice and should be human rights focused, emphasizing measures that assess equality and access to justice.

Foster alternative mediation mechanisms

In Barbados and the EC, stakeholders indicated that a key contributor to the backlog was the limited use of ADR to provide redress to those seeking justice, particularly for family and other civil cases. Across the EC region, the use of arbitration and mediation is varied, but in general it has shown some signs of success to-date. Of the 505 cases referred to mediation in the 2017-2018 period, 497 mediations were held, 32% were settled, with a further 3% partially settled and another 25% scheduled for further mediation. During this period, 120 (24%) of the mediation cases were not settled. In most of these countries, of those court-connected mediations settled, 100% occurred within 60 days. These cases reduced the burden on the court system and arguably improved the speed of the delivery of justice to the parties.

As such, there is a strong indication to upscale the use of ADR as a diversionary measure and, further, to mainstream mediation as a first option for dispute settlement. This expansion will need to leverage the training programmes available through the Eastern Caribbean Court of Justice as well as through private institutions in Barbados and the EC to continue to build capacity for mediation.

In Barbados, the passage of the Mediation Act is indicated, which would help formalize the requirements to be complied with by approved mediators; and monitor accredited mediation training programmes.

Systems across the EC that encourage the use of mediation, either through mandatory legal requirements, financial penalties or other means are also indicated. This will need to be accompanied by a robust public awareness campaign to promote the use of mediation and arbitration as viable alternatives to the traditional legal system. Rigorous monitoring, data collection and analysis should be used to guide iterative development of this sector.

Modernization of the administration of justice

In May 2019, Belize Introduced a Prison Video Link System between the Central Prison, Kolbe Foun-

BELIZE

dation at Hattieville in the Belize District and Magistrate and Supreme Courts of Belize and enable bail applications, adjournments and other hearings (except trials) to be heard remotely by a link to the courtroom in Belize City. It is the recommendation to expand the use of video linking technology to other courtrooms throughout Belize as well as investigate the further evolution into a system of High Technology Courtrooms which support remote witness testimony and video conferences. (This measure supports witness protection as well as reduces costs associated with the staging of trials. This measure is enabled by the 2017 amendment of the Evidence Act: Chapter 95 of the Substantive Laws of Belize). Introduce electronic workflow solutions within Belize's Courts, including measures for electronic filings and the automation of digital transcripts. Current available solutions increase court efficiency, allowing for the management of high-volume caseloads with as much as 20% fewer staff. Moving from the largely paper-based systems will also contribute to the alleviation of communication difficulties between agencies.

Fostering development of key partnerships and alliances

In 2002, a Legal Aid Center was opened in Belize City to serve the legal needs of the poor. The Center administers legal aid and provides legal advice, assistance, referral across a full range of case types and services including family, land, civil and estate matters. In 2019, the Belize Legal Aid and Services Centre facilitated over two hundred consultations and approximately one hundred and fifty civil and criminal cases in the Magistrates' Court, Supreme Court and Family Court. Legal aid services are dispensed primarily from intake centers situated within population centers. This leaves rural populations underserved. Belize law only requires pro bono legal aid offered by the State only for capital offences, and in the case of other offences, as well as in civil, family, and administrative cases, legal aid is provided at a reduced rate. It is notable that court estimates indicate as much as 50% of court dockets consist of domestic violence or family violence cases and in spite of the reduced rate, legal aid remains unaffordable for most women.

In an effort to expand access and affordability of legal aid services in Belize, the following recommendations are made:

- implement past recommendations of the justice reform consultations including the provision more human and financial resources to strengthen the legal aid office to allow for greater access and more effective performance; as well as the creation of specialized legal aid service streams targeting juveniles and women; and
- explore strategic partnerships with the Bar Association for the provision of complimentary legal advice; as well as engage civil society organizations including academia as a means of involving non-lawyers (inclusive of law students, paralegals, and legal assistants) in complementary roles in legal aid service provision.

Pretrial Detention, alternative sentencing and diversionary programmes

As of 30 September 2019, there were 1,164 inmates incarcerated at the Belize Central Prison, (98% of them being males). This represented a decline of 3.4% when compared with 30 September 2018, when 1,205 inmates were incarcerated. The September 2019 population was comprised of 711 convicted inmates (689 males and 22 females) and 453 remanded inmates (447 males and 6 females). To improve administrative/legal practices and to precipitate fair and timely adjudication of criminal cases, it is recommended within the Chief Justice's work programme that Belize:

- o develop case management practices for Judges, Magistrates, and Court Officers to reduce the backlog and expedite the disposition of serious crimes;
- o implement a Court Administration Improvement plan for Judiciary which includes:
 - backlog reduction strategy/plan,
 - the Streamlining of case management practices,
 - the use of ADR,
- o develop and Implement Magistrates Professional Development Program which includes:
 - basic case flow management techniques: (calendar settings, adjournments/continuance policies),
 - establishing/enforcing time limits,
 - maintaining trial momentum,

- case expediting techniques-case disposals,
- use of statistical data for court performance,
- trial management,
- ADR/video-link,
- victim/witness sensitive practices,
- gender sensitivity,
- leadership and organizational management skills,
- judicial ethics-transparency & accountability.

In August 2017, a National Diversion Programme was presented and endorsed by the Government of Belize. The Programme was designed to meet Belize's international commitments to the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Riyadh Guidelines on Preventing Juvenile Delinquency and in particular the Tokyo Rules on the UN Minimum Standards for Non-custodial Measures. The Programme targets children between the ages of 12 years and 17 years old who have come in conflict with the law for non-violent minor or misdemeanour offences. According to data reported by police services, the crime rate among young people aged 12 to 17 is steadily climbing. It is recommended that:

- policies, processes and protocols for systemic implementation of the diversion program are set in place; and
- the diversion programme is socialized to police, Diversion Service Provider, Community Rehabilitation Department and Courts facilitating uptake.

Modernization of the administration of justice

Modernization of administration of justice in Guyana is ongoing. Skype and video recording equipment

GUYANA

and the training of staff was provided for the Sexual Offences Court and the Children's Court. In January 2020, the Vigilance Magistrates' Court on the East Coast of Demerara received an audio-visual recording system to facilitate remote court participation at Diamond Hospital on the East Bank of Demerara and one designated police station or prison. Such technology is important to Guyana given its comparable vastness and remote locations making it difficult for witnesses, law enforcement officers and investigators to physically attend a specified court.

It is recommended that the expansion of such technology continues given Guyana's geographical challenges. Video-link hearings particularly for prisoners on remand, overseas or in far flung districts are useful. Further provisions that can be made include the creation of an electronic platform for digitalisation and data sharing to enhance the timeliness of communication between the Court and key stakeholders including the DPP, police and probation services. An electronic services platform would also be advantageous for the payment of fines and orders.

To aid in reducing discrepancies which might exist when sexual offences cases are being heard years later and to prevent the victims from having to relive these ordeals, the introduction of pre-recorded evidence for such matters not only for the victims but also for the accused is recommended. Whilst some recording systems exist, such devices should be secured for all Courts. The expansion of the use of audio recording equipment as well as provision of computers to Judges and Magistrates for note taking would alleviate lengthy periods for production of transcripts.

It is also recommended that the Criminal Justice Act be modernised with attendant effective and efficient digitisation along with an e-filing system. Technology that can integrate court systems across the 10 regions would further assist in data sharing.

Fostering development of key partnerships and alliances

Guyana has no shortage of criminal attorneys. However, there is a backlog of cases due to the fact that there are only two Criminal Courts and a shortage of Judges (5 Judges who rotate) and prosecutors. There is one Judge dealing with sexual offences. Currently, there are only 14 of the expected 20 High Court Judges; and 3 of the expected 5 Appeal Court Judges. Despite advertisements, there are only 2 judicial research assistants on staff. Whilst the assignment of temporary judges has been used in the past in the Court of Appeal, this is not seen as a permanent solution. Stakeholders noted that while the backlog in civil matters has been reduced, the increase in both civil and criminal cases will slowly increase the backlog since the original backlog was more of a one-off exercise which depended on the goodwill of judges who took on extra caseloads. If the present cadre of Judges is not increased, then the issue of backlogs will not be addressed. It is recommended that further options for increasing the human resource capacity including for judicial legal research assistants, Judges, prosecutors and trained mediators be explored.

With regard to an integrated approach to crime prevention in general, as noted in the 2018 Assessment of National and Regional Crime Observation Analysis for Evidence-based Youth Crime and Violence, there is reportedly a willingness for institutional collaboration. Such willingness can be built upon for a multiagency approach; however, there is still need for strong coordination mechanisms to support inter-ministerial coordination especially at the operational level.

Improved and targeted training

In December 2016, a Judicial Education Institute was launched in Guyana. The Institute was established to provide ongoing training of Judges and officers of the judiciary. It is recommended that requisite professional development training of judicial officers and support staff including stenographers and those from the Registry and Information Technology sections be continually provided along with training in investigation of cybercrimes. Additionally, it should be noted that a Law Reform Commission was established to review the Country's laws of which many are in need of modernization and reform.

Specialized Courts

In Guyana, there are Specialised Family, Sexual Offences, Drug, Land and Commercial Courts. The

Sexual Offences Court has removed the difficulties with virtual complainants' disinterest in pursuing matters after a lengthy period of time as these cases are dealt with efficiently. The Drug Treatment Court provides an opportunity for rehabilitation as well as reduction of overcrowding. One further court that has been suggested is that of a gun court to expedite relevant cases.

Infrastructure and facilities

Currently, there are five prison facilities in Guyana – Georgetown, New Amsterdam, Timehri, Lusignan and Bartica prisons. At least 2086 inmates were housed across these facilities at the end of 2019. An over reliance on custodial sentencing and pre-trial detention have been suggested as contributing to this high number. Rebuilding has commenced at the main prison at Camp Street, Georgetown which was raised by a fire in 2017. Expansion of the Mazaruni prison at Bartica is expected to be completed by end 2020 whilst the designing of the reconstruction of the New Amsterdam prison should have commenced in 2019 in an effort to address overcrowding, according to the Ministry of Finance Mid-Year (2019) report. The Judiciary has moved Court Offices and Magistrates' Courts to remote and Indigenous communities. This venture has amassed positive feedback given the large landmass size of Guyana. There is still need for more physical spaces for Courts and prison facilities as well as to invest in new and modern infrastructure to address accommodation challenges.

Public perception and communication of justice

Foster increased cultural acceptance on use of alternative methods such as mediation. Promote public awareness on the law and transcribe into user friendly formats where possible.

The view has been expressed that public perception impedes the functions of the Judiciary due to lack of efficiency and timeliness of communication between the Court and key stakeholders including the DPP, police and probation services. The creation of an electronic platform for digitalization and data sharing should contribute to enhancing the timeliness of communication.

The length of time in completing civil and criminal cases also affects public perception whilst a lack of trust and confidence stems from inconsistent approaches to bail and sentencing as there are no sentencing and bail guidelines or legislation. It is therefore recommended and further elaborated below to provide sentencing guidelines and bench books for both Magistrates and High Court Judges.

Improvements of legal framework are necessary

It is recommended to provide sentencing guidelines and bench books for both magistrates and High Court Judges. This is possible to achieve through a practice direction from the Chancellor and would not necessarily require legislative amendments. This would be particularly useful for High Court Judges who are rotated every 3 months and therefore may not be as versed in the criminal practice as a dedicated Criminal Court Judge would be.

Criminal Procedure Rules and SOPs/Manuals/Protocols for Judicial Officials should also be developed along with setting time limits for trials. The introduction of Criminal Procedure Rules and sentencing guidelines will be useful so that persons who are before the court would be aware of these guidelines and would readily plead. A lack of trust and confidence stems from inconsistent approaches to bail and sentencing as there are no sentencing and bail guidelines or legislation. The Bail Act can also assist in criminal justice as this Act would be able to streamline approaches in terms of those who are qualified for bail. The rules must also involve the DPP actively managing cases from committal proceedings for a more efficient process.

Foster alternative mediation mechanisms

As mentioned earlier, an over reliance on custodial sentencing particularly for persons charged with non-violent and petty offences as well as on pre-trial detention has been suggested as contributing to the high number of the prison population. Additionally, ADR are rarely used. There is a mediation centre to help address backlogs and serve as an alternative to settle disputes and as a less costly option. However, Magistrates cannot mandate or institute mediation. Cases must still come to court and be reviewed by a Judge before mediation is recommended. Furthermore, there is a public preference

for mediators who are also lawyers which leaves a pool of competent mediators uncalled upon. It is recommended to consider the benefits of instituting mandatory use of mediation in applicable cases with attendant enlargement of the pool of mediators. In so doing public awareness and education programmes on its operations and benefits to be derived from its usage should be conducted along with greater support from the Magistracy and members of the legal profession.

Strengthen Legal Aid

Guyana has a legal aid clinic that receives an annual subvention from Government which covers most of their expenditure. Other sources of financing are from donations including the Rights of the Child Commission to assist with representation of children and from clients who are assessed as being able to contribute toward the cost of their legal representation. Their services are available free of charge to all children and adults who are assessed as being eligible for legal aid in that they cannot afford to pay more than 75% of the amount they would have to pay to a member of the private Bar. As noted in Guyana's Voluntary National Report, "the legal aid programme in particular, provides assistance to persons accused of minor, non-violent offences currently in pre-trial detention." The legal aid programme comprises a team of lawyers and paralegals who seek the dismissal of charges, arranging diversion where appropriate or arguing for bail, and generally avoiding procedural delays. In addition to Georgetown, legal aid services can be accessed at offices at Anna Regina, Essequibo Coast, Vryman's Erven, New Amsterdam, Berbice and Fort Wellington, West Coast Berbice. The view has been expressed that the number of prisoners on remand is affected by lack of access to legal counsel. It is recommended to make legal aid universally accessible to all geographic locations including to hinterland communities.

Witness Support

Under the current system, witnesses have to travel first before being provided with reimbursement of the travel expenses. Given the challenging geographical context with attendant high costs of travel, this makes it difficult for witnesses to attend court. Additionally, whilst there is a Witness Protection Act 2018, it is not yet in force. A witness protection and support programme to address challenges faced by witnesses in attending court is therefore recommended.

Rehabilitative programmes

Expand the use of rehabilitation programmes to promote reintegration into communities and reduce recidivism. In 2017, the number of recidivist males was 254 and females 11; in 2018 – 306 males and 19 females, in 2019 - 197 males and 4 females based on data from the Guyana Prisons. According to an Assessment of National and Regional Crime Observation Analysis for Evidence-based Youth Crime and Violence commissioned by UNDP and USAID in 2018, rehabilitation of offenders is focused on by the prisons. Programmes include vocational workshops, soft skills training and employment. Over the previous 5 years, a parole programme was developed consisting of a 1-year follow-up of ex-inmates by a Parole officer, providing support and accompaniment in their reintegration process. Though not extended to all released prisoners, promising results were shown at the time with no recidivism among participants.

It is recommended that such programmes be evaluated for expansion and further support, and to follow through with the prison service on plans to develop 'a follow-up mechanism for monitoring, as well as a plan to develop halfway reintegration programmes through day-time work, which is complemented by the development of a MoU with private sector for reintegration through employment.' Additionally, the involvement of communities in rehabilitation and re-insertion should similarly be promoted.

Pretrial Detention, alternative sentencing and diversionary programmes

At end of 2019 there were 1015 males and 45 females on remand, in 2018 - 2273 males and 98 females, in 2017 - 2263 males and 103 females on remand according to figures from the Guyana Prisons. An earlier IDB support for the Criminal Justice System Project document notes that custodial sentences for persons charged with non-violent and petty offences increase the prison population. The overuse of pre-trial detention is attributable to among other factors, the lack of legal counsel, the lack of training and resources for prosecutors and case overload at Magistrates' Courts.

Stakeholders expressed the view that alternatives to incarceration and rehabilitation are not popular with the Guyanese public. The culture is big on punitive justice and the society has been seen as a litigious one. Probation services are overwhelmed which makes obtaining timely probation reports before sentencing challenging. Alternative sentencing can be used especially for young and first-time offenders and women who are caregivers. However, this would require sufficient social workers and probation officers to supervise as noted in the IDB document.

It is also recommended that alternative methods such as non-custodial sentencing, delayed imprisonment and monitoring, probation, and community service be considered as well as diversionary measures at the police and Magistrates' Court level. Restorative justice could be promoted as well. Decriminalisation of certain offences such as possession of small amounts of narcotics has also been raised for consideration.

It should be noted that in February 2020, the Ministry of Public Security signed a MoU with 12 NGOs for diversionary measures for children in contact with the law. The programme will include re-education, re-integration and rehabilitation of affected youths into society.

Modernization of the administration of justice

In 2019, the Judiciary of the Republic of Trinidad and Tobago introduced an Electronic Case Mana-

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gement Suite called the Trinidad and Tobago Judiciary Information Management System (TT.jim). The system was developed by the staff of the Judiciary of Trinidad and Tobago in collaboration with the National Centre for State Courts (NCSC).

The system comprises the following:

- E-Probate - an initiative towards further modernizing the new E-Probate registry;
- CourtPay - an online system for making and receiving court-ordered payments into and out of the Court. This includes maintenance fees, filing fees, fines, lawyers' practicing fees, trust funds and bail;
- CourtMail - a secure medium for electronic creation, certification, signing and transmission of orders, judgments and notices between courts and attorneys, police and prisons;
- Various e-services for making the record of court proceedings which includes a new method of transcription - Digital Voice Transcription, an Audio Digital Recording System and synchronized annotation software;
- An e-services portal which will facilitate e-filing and e-payments; and
- Work is in progress to develop a service called 'Bail Net', which will capture all bail orders, particularly those where a surety is involved. This will greatly improve the time taken to process an application for bail as well as the appropriateness of the surety.

TT.jim was introduced at the Children Court of Trinidad and Tobago in 2019. The system will be rolled out on a phased basis across the entire Court system in the shortest possible timeframe.

The introduction of this state-of-the-art system of case management should be complemented by technology upgrades in order to ensure that its full benefits are realized. Stakeholders identified the need for modern wireless printers, upgraded laptops, For the Record (FTR), digital court recording solutions, ability to conduct webinars, and transcription in real time, are some of the technological upgrades that could help to enhance the modernization of the judicial system.

The Magistrates' Courts however continue to be burdened with a paper reliant system. This contributes to case backlogs and stymies the administration of effective and optimal services to the Court's clients. TT.jim or a similar interoperable system should be rolled out across the magistracy to ensure seamless service delivery and communication across the Judiciary.

Disaster Recovery is also critical. While TT.jim ensures full digitization of the court records, systems of redundancy also need to be enhanced to ensure retrieval of records and files in the case of a natural or manmade disaster. Further, enhanced security systems are needed for both judicial infrastructure and officers. Numerous stakeholders identified the need to develop a training series in Disaster Sensitivity across the justice system which would focus on protocols in place for events such as bomb scares, earthquakes and so on.

Interpretation System

Due to an influx of migrants into the country, there is an increasing number of interactions of foreign nationals with the judicial system. Interpretation systems are needed to deal with cases especially involving Chinese, Romanians and Venezuelans nationals. Non-English speakers, or those with limited proficiency, are at a clear disadvantage most notably in courtroom and judicial settings. Qualified interpreters and/or interpretation systems are therefore necessary to protect the constitutional rights of these individuals.

Legal Education

Legal Education was cited as an important starting point for the modernization of the judicial administration system. In this regard, the following are recommended:

- review of the legal education system including curriculum and methods of teaching;
- capacity should be built at the Hugh Wooding Law School to conduct cutting edge research including the publication of legal articles and papers. Stakeholders agreed that the law school should be positioned as a thought leader in the region. This will necessitate training and the re-

cruitment of staff dedicated to legal research;

- education should be engineered toward practical aspects of the profession (for example, how to deal with clients, engaging with difficult persons, managing challenging situations and so on); and
- systems should be reengineered to allow for evidence to be moved to the faculty of law.

Judicial Education College

It is strongly recommended that a Judicial Education College (JEC) be established. This entity will focus solely on Judicial Officers and will aim to ensure that all Judges have both the hard and soft skills that will empower them to effectively accomplish their mandates. The purpose of the JEC will be to advance the rule of law and enhance the delivery of justice through the provision of education and skills building to both long-serving and new judicial officers.

Specifically, the following are recommended:

- any person wishing to become a Judicial Officer must attend the college and pass a requisite series of programmes before being considered for the Bench;
- specifically, leadership should be a component of study that potential Judicial Officers must pass before being considered for the Bench; and
- the curriculum should be developed based on widespread consultation with present and past judicial officers, and other stakeholders impacted by the justice sector.

It is recognized that the establishment of a JEC may take some time. As an interim measure, it is recommended that the Judicial Education Institute of Trinidad and Tobago (JEITT) hold courses in collaboration with the Law Association of Trinidad and Tobago for those persons considering becoming Judicial Officers. In this regard, a formal partnership between the JEITT and the Law Association may need to be established.

Case Backlogs

Modernized systems of justice are able to determine creative and localized solutions to address backlogs in their respective jurisdictions. In Trinidad and Tobago, a number of measures are being established to address case backlogs including legislative and systems reform.

The decriminalization of marijuana in December 2019 had an immediate effect of reducing the case backlog by approximately 8000 cases by January 2020.

It is also expected that new initiatives such as the formalization of plea bargaining will put a further dent in the backlogs by providing alternatives to sentencing where the Registrar will be responsible for sentence monitoring.

Justice Sector Reform: Court of Appeal Judges

Stakeholders from the Court of Appeal identified the need for modernization within that institution. There was acknowledgment that the role of the Court of Appeal Judge need to be reinvigorated for the modern context. Each Court of Appeal Judge should be a leader, with the ability to sensitize, train, be a pioneer in the judicial field, and act as a mentor to upcoming Judicial Officers. In this regard, Court of Appeal Judges should be not only versed in law but also softer skills. It is therefore, recommended that a programme of continuous training and capacity building be developed for Court of Appeal Judges, to ensure that a cadre of modern and forward-looking leaders are developed to head the justice sector.

Fostering development of key partnerships and alliances Indigenous Persons

In Trinidad and Tobago, indigenous persons are an underrepresented group on the judicial apparatus. Their access to justice is also impaired by their location away from judicial centres. A partnership should be developed with the indigenous community, specifically the Carib community as the largest of such groups, to encourage and enhance their integration into the justice sector. Such a partnership also needs to acknowledge the reality of uniqueness of indigenous communities. In this regard, there needs to

be an understanding that the indigenous groups have their own systems of justice which will play a key role in terms of how they interact with the formal justice system.

It is recommended that an Indigenous Community Integration Plan should be developed based on the following:

- baseline studies - Research is needed to understand the indigenous systems of justice, including strengths and gaps. This will be an integral starting point in the development of effective systems to integrate this community into the formalized justice sector;
- sensitization for indigenous communities - Indigenous communities should be sensitized about the formal justice administration system. This can aid in the development of trust including the uptake of services;
- Judicial officers - There is an absence of Judicial Officers from within the indigenous community. Concerted efforts should be made to encourage and support persons from these communities to enter the law profession and to ensure better representation;
- support to become ADR leaders - Persons within communities should be trained to become ADR leaders. This will be an excellent starting point for integration into the formal system of justice administration; and
- Justice on Wheels - The Justice on Wheels project should include frequent visits to indigenous communities to encourage the uptake of services and to build trust in the justice system.

Improved and targeted training

The Judicial Education Institute of Trinidad and Tobago (JEITT) was established in 1995 to ensure the provision of continuous judicial training to the Judiciary with an aim to enhance the delivery of effective and efficient administration of justice. The JEITT is a distinct but integral part of the Judiciary of Trinidad and Tobago and over the years, this entity has been instrumental in delivering cutting edge training to thousands of stakeholders in the justice sector.

In an aim to constantly improve and refine the services offered by the JEITT, stakeholders indicated that M&E should be built into the institute. M&E should be based on a set of understandable and comprehensive standards which will be used to examine the quality and effectiveness of various programmes. This will lead to a more streamlined and enhanced delivery of services. It is key that sustainability be built into programmes as well.

It is also recommended that a specialized platform be developed for Judicial Officers and their teams to access training on judicial matters across all arms of the system. This should lead to Judicial Officers themselves becoming trainers on various judicial matters.

Research and Development

In order to build upon and enhance the extensive research and development already done by the JEITT as covered in the Desk Review Report at Annex 1, it is recommended that additional research staff is recruited, and publications including journal articles and papers should be prioritized. This will serve to position the JEITT as the premiere judicial training institution in the region, and as a thought-leader and knowledge-broker as well.

Judicial Settlement Conference

A Judicial Settlement Conference refers to a service whereby Judicial Officers and senior members of the Bar give opinions as to the strengths and weaknesses of a case. This is different from mediation where both sides must agree to the mediation intervention, and whereby the agreement made is binding. For judicial settlement, one side can request an opinion and can choose whether to be guided by the said opinion or not. It is therefore recommended that all Judicial Officers be trained to deliver this important service.

Medico-Legal Training and Sensitization

As mentioned, the decriminalization of marijuana has led to a reduction of the case backlog by ap-

proximately 8000 cases. However, Judicial Officers have indicated that there is now a critical need for training in the area of medico-legal issues related to marijuana use, across the justice sector. There is a strong sentiment that the decriminalization of marijuana may change the dynamic of the types of cases coming before the Court with respect to family issues including gender-based violence, workplace issues and community issues.

Judicial Officers also indicated that in the past, there was no evident need to understand the effects and impact of marijuana and its use, as it was an illegal substance. However, decriminalization has led to a growing need for awareness and education around marijuana, for example, the various forms that the substance can take (CBD, sativa, hemp etc.), its medical uses, and its recreational use (edibles, smoking, oils, etc).

In this regard, a recommendation is made for a partnership between the Medical Association of Trinidad and Tobago and the Judiciary to conduct Medico-Legal training, specifically in areas related to marijuana use, its health benefits and health challenges, and the mental impact of continuous sustained use. This will assist Judicial Officers to adjudicate from an informed perspective when marijuana related cases come before them.

Specialized Courts

In Trinidad and Tobago, Specialized Courts have played an important role in reducing bottlenecks in the justice sector. The establishment of additional Specialized Courts is recommended in areas such as Cyber Crime and Money Laundering. These should be established under the criminal division.

It is also important to note that 357 new positions have been approved by Cabinet for the Criminal Division. It is recommended that filling of these positions be prioritized by the Chief Personnel Officer to ensure that new Courts are adequately staffed and resourced.

Infrastructure and facilities

Trinidad and Tobago is in need of additional court facilities. Presently, the Hall of Justice only holds eight criminal Courts and 10 chambers. In the upcoming year, infrastructural works are planned for approximately 100 new rooms as follows:

- 40 Courtrooms;
- 24 Hearing Rooms;
- Five Mediation Rooms; and
- 32 Chambers for judges and Masters (at the Waterfront Centre).

Drug Testing Lab

A Court-annexed drug-testing lab and drug testing kits are greatly needed to support the work of the judiciary. Drug Treatment Courts for both adults and youth are being piloted by the Judiciary with very good results and success. However, persons are sent to external labs for drug tests. This leads to delays in obtaining results which are necessary to make determinations in cases, and causes increased backlogs in the Court system.

Public perception and communication of justice

In 2019, the Judiciary of Trinidad and Tobago, through the Judicial Education Institute, launched a Pilot programme called, "Access to Justice: A Felt Sense". This Pilot was rolled out across select communities in Trinidad and Tobago and entailed a series of town hall meetings which sought to bring citizens, especially those in rural communities, closer to the Judiciary. In essence, it aimed to create a platform to promote mutual understanding, authentic communication and transparency between the Judiciary and communities, and to connect Judicial Officers to the people on the ground. The Pilot was successful as hundreds of citizens were able to engage will Judicial Officers in a spirit of openness, learning and trust.

It is strongly recommended that this Pilot be scaled up across both Trinidad and Tobago. The project should also be expanded to include not only Town Hall meetings, but sensitization sessions, workshops,

meet and greets, dissemination of materials (newsletters, brochures, etc.) and a social media blitz to reach a wider cross-section of citizens. The recommended outcomes are as follows:

- an understanding of what to expect at various types of Courts, alongside personal rights;
- a de-mystification of the perception of judges, Judicial Officers and the justice system;
- a general understanding of procedural fairness which informs legitimate expectations from Judicial Officers and court systems in Trinidad and Tobago;
- greater knowledge of court processes and procedures that are relevant to individuals' legitimate needs;
- an awareness of the upgrades and improvements within the Judiciary that will seek to improve access to the court-related services (e.g. WI Pay);
- an expanded knowledge base of the services and information available to each community; and
- a general understanding of prevalent social justice issues in each community.

Foster alternative mediation mechanisms

It is strongly recommended that the Justice on Wheels project be scaled up to reach additional communities, on a more frequent basis. In this way, lawyers, Judicial Officers and judicial stakeholders will be able to reach a wider cross-section of citizens, and assist in the resolution of disputes and other matters before they reach the formal court system.

The Community Mediation Programme under the Ministry of Community Development, Culture and the Arts, needs to be enhanced and resourced to provide more widespread services to communities across Trinidad and Tobago. In this regard, additional mediators should be hired and all mediators should receive continuous training to be able to provide optimal services to clients. Youth mediators are especially needed to address issues impacting young people at the community and school levels, especially in rural and underserved areas.

Further, Dialogue Solutions, a dispute resolution firm is attempting to shift the paradigm from an adversarial nature to building relations via their online dispute resolution platform. The Dialogue Solutions team recognized the necessity in designing efficient mechanisms for e-dispute resolutions, e-seminars and e-workshops. This initiative can be incorporated in the courts and regional countries to reduce backlogs.

Strengthen Legal Aid

Stakeholders identified legal aid as more than just the provision of lawyers and other legal support to litigants. Legal aid was seen as more encompassing to include witness support services, alternative sentencing options and the provision of effective and efficient services to clients. It is recommended that the system of legal aid be revamped to ensure that users of the justice system have access to services that meet their needs, despite financial and other impediments. This will entail a review of the present system of legal aid with a view to garnering good practices and lessons learned which will inform an updated version of the system.

A Public Defenders system is presently under consideration in Trinidad and Tobago to replace the Legal Aid and Advisory Authority. It is further recommended that this system be developed with the infrastructure, human resources and other supports that will support a fully functional, operationalized omnibus of services that will be an excellent support to its clients and the Court.

Judicial Health and Wellness

The issue of judicial health and wellness is not one that is often spoken about in Trinidad and Tobago. However, heavy court caseloads, incessant backlogs and an expectant public make the stress on Judicial Officers quite acute. This is exacerbated by the heavy criminal caseload, including homicides, drug related offenders, and increasing cases related to gender-based violence.

A 2017 article published by the National Centre for State Courts, states the following:

“Trial judges to some degree are isolated and must make their rulings and decisions individually without the ability to discuss ongoing cases. Legal and judicial training do not typically focus on how one feels. Lawyers as a group are known to be at high risk for depression or substance abuse. It is clear that law-trained individuals are more susceptible to the effects of daily stressors.”

It is strongly recommended that a programme be established to focus on the emotional well-being and mental health of Judicial Officers. A body of judges in the form of a Judicial Council appointed by the Chief Magistrate can be responsible for development, oversight and implementation of the programme.

ACRONYMS

CEDAW: The Convention on the Elimination of all Forms of Discrimination Against Women

CHDR: Caribbean Human Development Report

CIWIL: Caribbean Women In Leadership

CPDC: Caribbean Policy Development Centre

CPR: Civil Proceedings Rules

EC: Eastern Caribbean

EU: European Union

EVAW: End Violence Against Women

GBV: Gender-Based Violence

ICCPR: International Covenant on Civil and Political Rights

JURIST: Judicial Reform and Institutional Strengthening Project

LGBTIQ: Lesbian, gay, Bisexual, Transgender/transsexual, Intersex and Queer/questioning

MSDF: Multi-Country Sustainable Development Framework

NAR: Needs Assessment Report

OECS: Organisation of Eastern Caribbean States

PI: Preliminary Inquiry

SDG: Sustainable Development Goals

SGM: Sexual and Gender Minority

SI: Spotlight Initiative

UN: United Nations

UNDP: United Nations Development Programme

USAID: United States Agency for International Development

VAWG: Violence against Women and Girls

Acquittal: a judgment or verdict that a person is not guilty of the crime with which he has been charged.

DEFINITIONS

Adjournment: the temporary postponement of a trial, or the period of time during which it is temporarily postponed.

Defence: the case presented by or on behalf of the party accused of a crime.

Deposition: the giving of sworn evidence.

Forensic: relating to or denoting the application of scientific methods and techniques to the investigation of crime.

Indictable: rendering the person who commits it liable to be charged with a serious crime that warrants a trial by jury.

Judiciary: means the Supreme Court of Judicature, the Magistrates' Court and the Department of Court Administration.

Mediation: means a process in which a mediator facilitates and encourages communication and negotiation between the mediating parties and seeks to assist the mediating parties in arriving at a voluntary agreement.

Paper committal: is when the magistrate reads the brief and decides on that reading that there is enough evidence to send the case to trial.

Plea: a formal response by the defendant to the assertions of the plaintiff or to the charges of the prosecutor in a criminal case.

Preliminary inquiry: a hearing before a magistrate to decide whether there is sufficient evidence for the accused to go to trial at the High Court.

Probation: a period of supervision over an offender, ordered by the court instead of serving time in prison.

Prosecution: the lawyers in a court case who represent the side that accuses someone of committing a crime.

Recidivism: the tendency of a convicted criminal to reoffend.

Remand: the process of detaining a person who has been arrested and charged with an offence until their trial.

Specialized Court: narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed.

Sufficiency hearing: to determine if the prosecution has disclosed sufficient evidence.





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