PRELIMINARY STUDY ON CRIMINAL JUSTICE IN SANTA LUCIA, JAMAICA AND TRINIDAD & TOBAGO

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Introduction

In the present text, the Justice Studies Center of the Americas, JSCA, seeks to provide an introduction to the criminal justice system of the Eastern Caribbean (EC) in order to identify areas for sharing the experience gained from the reforms that are taking place throughout Latin America. The document focuses on identifying practices rather than describing legal systems or engaging in juridical discourse.

The primary focus of this report is the adversarial nature of EC justice systems in theory and practice, the organization of work in the different institutions involved, and the ways in which this work is managed.

Importantly, some judicial systems included in the study have virtually no statistical data available. Where such data is available, it is normally quite general and scattered and, according to operators working in these systems, cannot always be trusted, either because of the collection methods used (hand-carried books) or because of the significant inconsistencies among different sources that provide the same data. In these cases the descriptions contained herein are admittedly limited and should be considered in the context for which they were intended.

The methodology employed for this report consisted of interviews with justice sector operators, observations of judicial procedures, and evaluations of statistical data reported for each system.

I. SAINT LUCIA

1. Methodology

A three-day visit was made to Saint Lucia from December 8-10, 2003. Ten justice-sector operators were interviewed, including three judges, two court administrators, two high-ranking police officers, a Justice Ministry official, and two prosecutors. A number of hearings were also observed in the Magistrates Court.

2. Description of the Jurisdiction

Saint Lucia is an island nation with approximately 152,000 inhabitants. It is 45 kilometers (27miles) long and measures 23 kilometers (14 miles) at its widest point. The island's capital, Castries, with approximately 61,000 inhabitants, accounts for between 60 and 70% of criminal cases according to local justice sector sources.

There is no law school on the island.

3. General Description of Criminal Procedure System

The Saint Lucia criminal justice system was inherited from and is still linked to the British justice system, and as a result is adversarial in nature.

In general the system is structured around oral, public, and contradictory hearings.

Criminal prosecution is handled both by the police and the Director of Public Prosecution (hereafter the DPP), depending upon the seriousness of the case. Summary offences are heard in a court with one judge and no jury, and indictable offences are heard in the High Court with a jury present. The law establishes which offenses are considered summary and which indictable, though generally speaking summary offences are those that carry a maximum sentence of six months imprisonment. Exceptions to this are drug offences or breaking and entering, where summary offences are those carrying a maximum sentence of up to three years.

The presence of a defense attorney is not legally required in criminal procedures in Saint Lucia with the exception of cases of homicide.

Cases are normally initiated by an accusation made to the police, who then carry out an independent investigation with virtually no intervention by the DPP, except for legal advice.

Cases for summary offences are litigated by police officers acting as prosecutors before the Magistrates' Court. Case preparation includes legal motions, exclusion of evidence, and

arguments on preventive custody before a Magistrate. As a summary offense, the trial is also conducted before the Magistrates Court, usually before the same judge. Summary offences are tried in oral proceedings. In both the preparatory and adjudication stages, Magistrates are only empowered to consider accusations.

In certain minor criminal offences brought before the Magistrates Court, Saint Lucia's legal system allows for private criminal action by the victim, who is represented by an attorney.

For indictable offences, investigations are conducted by the police, who hand cases over to the DPP. These offences must be heard before the High Court in an oral trial and usually with a jury present.

However, as with summary offences, the preparatory stage for indictable offences is held before the Magistrates Court, and includes additional procedures such as a preliminary inquiry to determine if sufficient grounds exist based on prima facie evidence presented by the prosecution. Only when cause is found is the case sent on to the High Court for oral trail. The corresponding High Court judge is given a complete transcription of the preliminary inquiry.

Saint Lucia legislation grants the accused all due process rights, and justice operators interviewed stressed this point. In practice, the system appears to be particularly strong in relation to orality and the right to trial: orality in its most significant forms has a long tradition here, and in practice most important decisions are taken during oral, public, adversarial hearings. In addition, all major cases are decided in a trial by jury and examination, cross-examination and presentation of evidence are equally practiced. Judges make authoritative declarations on individual rights, act as protectors of such rights and make notable use of comparative jurisprudence. (During our observation period we observed references to both English and Canadian jurisprudence). A translator is present at hearings where the defendant does not speak English, and most of those working in the system appeared to be concerned about case time limits.

On the negative side, the system exhibits problems in its adversarial approach to justice and in aspects of due process. Although the adversarial nature of trials is generally installed, we observed some indications that the system may become bogged down in customs and official procedures that work against truly adversarial procedure and due process, at times revealing a lack of true understanding of the finer points and up-to-date aspects of this type of system. At times this is apparent in the legal design of procedures; at others in their implementation. Perhaps the clearest example can be found in the fact that, although a defendant's right to an attorney is assured, this is not interpreted to mean that the presence of defense council should be a general requirement of the system. Thus –as shall be described below- an important number of cases are conducted without the defendant having legal counsel. Even though different members of the judiciary expressed concern on this point, they did not seem to think that it effectively undermined the judicial system. Indeed, in the cases observed the right to cross-examination was exercised by the defendant him or herself, and the often obvious incompetence exhibited in this respect did not seem to offend the adversarial sensibilities of those present or seem to them to be an obvious contradiction of the prevailing discourse of due process rights.

Another area worth examining is the treatment of evidence (its standards and assessment), which is often characterized by customs and formalities that impede its independent evaluation. Various examples of such practices were observed during our observations: the first of these, which will be examined below, is the fact that preliminary evaluation of more serious cases by Magistrates requires virtually a full trial in itself. An additional concern, and one which is related both to the legal design and logic of the system, is the issue of delays. This problem was evidenced in the first preliminary inquiry we observed, where a trial was postponed because police could not locate a marihuana plant (i.e. the plant itself) in their evidence storeroom. Those with whom we discussed the case, which was at this stage only a preliminary inquiry, did not seem to entertain the possibility of using photographs, accepting the narcotics report or simply relying on witnesses. A police officer-prosecutor suggested that photographs were only acceptable if taken by an expert. In another case, the preliminary inquiry was postponed for two months because the narcotics analyst –who is in Saint Lucia once a month-, was not able to attend the hearing. Once again, the people with whom we discussed the case felt that the presence of "an expert" was indispensable, even for a preliminary inquiry. From the above it can also be seen that hearings are not necessarily continuous and concentrated; in fact, a hearing may be drawn out over a number of sessions that are interrupted by other cases. (This was the case with the first hearing that we attended as observers, which had begun three weeks earlier.) We were told about a case in which the accused was carrying drugs in a bag. A policeman placed the bag in a sealed evidence bag, signed the seal, had the accused sign it, and wrote out a description of the evidence. Nevertheless, the Magistrate excluded the evidence from the case because, apart from all other elements of the description written by the police in the investigation report, the brand name of the bag was not correct.

In the area of due process, some crimes in Saint Lucia (i.e. all those involving firearms or homicide) carry a mandatory prison sentence with no limit set on the length of preventive custody. (During our observations we were informed of cases where preventive custody had lasted longer than four years). Moreover, the death sentence is obligatory for all cases of homicide.

In relation to preventive custody, a statistical study published in 2002 which included 5,150 criminal cases brought before the Magistrates Courts reported that in 2000 almost one in three inmates was being held without yet having been convicted.[1]

4. The Courts

4.1. Structure

As outlined above, there are two types of courts in Saint Lucia: the Magistrates Court and the High Court.

[1] Organization of Eastern Caribbean States (OECS) and the Canadian International Development Agency (CIDA), *OECS Case Profile Review 2000 – An Analysis of Criminal and Civil Cases in the Magistrate Courts of the OECS*, August 2002 (quoted by JSCA, *Report on the State of Justice in the Americas 2002-2003*, p. 329).

The island is divided into two judicial circuits or districts, and has a total of eight Magistrates sitting in thirteen courts; in effect, certain Magistrates must travel each week to hear cases in courts based in remote areas.

There are two High Court judges, both located in Castries, the capital. The High Court hears criminal cases in three annual sessions, each of which lasts for two or three months. High Court trials always include a jury of twelve members (in capital cases) or nine (all other cases).

However, neither type of court is exclusively criminal. Between August 1999 and July 2000, a total of 10,998 cases were filed in the Magistrates Courts, of which 4,939 (45%) corresponded to summary offences, 476 (9.6%) were preliminary inquiries and 97 (2%) were for minors. Magistrates' jurisdiction also covers civil, family, traffic, domestic violence and affiliation cases.[2] The following table outlines this information:

Cases Filed
Saint Lucia Magistrates Court
August 1999 – July 2000

Summary offenses	Civil	Traffic	Domestic Violence	Juvenile	Affiliation	Inquest	Preliminary inquiries	Total
4939	339	4048	446	97	632	21	476	10,998

During the same period 1,493 cases were brought before the High Court, of which 117 (7.8%) were criminal cases. Apart from criminal jurisdiction, this court also deals with civil, matrimonial, inheritance and admiralty cases.[3]

Cases Filed
Saint Lucia High Court
August 1999 – July 2000

Criminal	Civil	Matrimonial	Inheritance	Admiralty	Total
110	522	135	1	3	771

Appeals in Saint Lucia are heard by the Eastern Caribbean Court of Appeal, a jurisdiction shared by the nine members of the Eastern Caribbean Supreme Court.

4.2. Infrastructure and Equipment

Although court infrastructure was probably adequate in the past, it appears to have deteriorated significantly. There is a lack of proper public waiting areas, as well as infiltration of noise from the street, which makes it very difficult to hear what is being said in the courtroom, especially as most of these lack amplification systems.

[2] Figures provided by the Eastern Caribbean Court of Appeal.
[3] Ibid.

Even where these sound systems do exist, they are not used on a regular basis; the same may be said for the recording equipment contained in most courtrooms. Computers are a recent addition to court management and their use is still fairly limited. However, the Judicial Empowerment System (JEMS), a software program for case management and follow up, has recently been implemented, though only in the High Court and Court of Appeal.

4.3. Administration, Efficiency and Productivity

Available secondary information sources from around the year 2000 affirmed that Saint Lucia's judicial system was suffering from problems caused by delays, adjournments and interruptions. An Inter-American Development Bank (IDB) report from that year cited figures of approximately 2000 delayed cases.[4] The report stated that system users reported waits of up to a year for a Magistrates hearing, and two years from charges being laid to the beginning of the trial in the High Court.[5] A previous IDB report (1999) indicated that preliminary inquiries could take up to three years, while bringing a homicide case to trial took five years.[6] Opinion surveys reported in the IDB 2000 report revealed that the public "was fed up" with the court practice of "adjournment after adjournment,"[7] that members of the business community believed that the justice system is "slow, inefficient and lacking in effectiveness," and that employers preferred to discharge employees caught robbing rather than bring charges against them.[8]

Our own observers were not able to corroborate these reports or determine the exact magnitude of the problem; however, information obtained indicates that backlogs and interruptions are still a problem. The following table presents figures for case filings and disposals for Magistrates Courts for the period August 1999 - July 2000 (these being the most recent figures available):[9]

Filed and Disposed
Saint Lucia Magistrates Court
August 1999 - July 2000

	Summary offenses	Civil	Traffic	Domestic violence	Juvenile	Affiliation	Inquest	Preliminary inquiries	Total
Filed	4939	339	4048	446	97	632	21	476	10998
Disposed	3372	351	1846	215	58	426	9	188	6465
Clearance Rate (% of disposed over filed)	68.3	103.5	45.6	48.2	59.8	67.4	42.9	39.5	58.8

4 IDB, *Challenges of Capacity Developments, Towards Sustainable Reforms of Caribbean Justice Sector*, Volume II, May 2000, p. 52.
5 IDB, *Challenges of Capacity Developments, Towards Sustainable Reforms of Caribbean Justice Sector*, Volume II, May 2000, p. 52.
6 IDB, Judicial Reform in the Caribbean, 1999, p. 5.
7 IDB, *Challenges of Capacity Developments, Towards Sustainable Reforms of Caribbean Justice Sector*, Volume II, May 2000, p. 52.
8 IDB, *Challenges of Capacity Developments, Towards Sustainable Reforms of Caribbean Justice Sector*, Volume II, May 2000, p. 52.
9 Figures provided by the Court of Appeal.

The Table shows that of the 4939 summary cases filed for the period in question, 3372[10] were disposed (a 68.3% clearance rate). If all categories for the Magistrates Court are taken into account, a total of 10998 cases were filed during the period in question, of which 6465 (58.8%) were disposed.

However, if we take into account the 6000 cases that were backlogged from the previous period (figure cited by the Magistrates Court[11]), the overall disposal rate for this Court drops to only 39.1% of cases, as shown in the following table.

Cases Filed and Disposed, including backlog
Saint Lucia Magistrates Court
August 1999 - July 2000

	Total	Including backlog
Filed	10998	16998
Disposed	6465	6645
Disposal Rate (% disposed over all cases)	58.8	39.1

In the High Court, figures for cases filed and disposed are as follows:

Cases Filed and Disposed[12]
High Court, Saint Lucia
August 1999 - July 2000

	Criminal	Civil	Inheritance	Admiralty	Total
Filed	117	1199	101	3	1420
Disposed	66	30	70	3	169
Clearance Rate (% of disposed over filed)	56.4	2.5	69.3	100.0	11.9

The above table shows that 66 (56.4%) of the 117 cases filed for indictable criminal offences during the period in question were disposed.

In general, the table shows an average clearance rate of 11.9% for the High Court. The very low rate for civil cases (2.5%) obviously skews the overall figure, as this category has by far the highest number of cases in this jurisdiction.

[10] Ibid.
[11] This figure was provided in an interview with the Senior Magistrate, based on an inventory that had been recently compiled.
[12] We have removed from these figures all matrimonial cases, due to a lack of relevant information. There were 76 such entries, with no data regarding the number of disposals.

The following table shows criminal cases filed and disposed for both (Magistrates and High) courts.

Criminal Cases Filed and Disposed
Saint Lucia Magistrates and High Courts
August 1999 - July 2000

	Summary offenses	Criminal	Total
Filed	4,939	117	5,056
Disposed	3,372	66	3,438
Clearance Rate (%)	**68.3**	**56.4**	**68.0**

The above table indicates that for the period in question the system disposed of 68% of all criminal cases filed.

The following table shows overall figures for cases filed in the Saint Lucia judicial system in all categories:

Total Cases Filed and Disposed, all categories
Saint Lucia Magistrates and High Courts
August 1999 - July 2000

	Magistrates	High Court	Total
Filed	10,998	1,496	12,494
Disposed	6,465	169	6,634
Clearance Rate (%)	**58.8**	**11.3**	**53.1**

The above figures indicate that the system disposes 53.1% of all cases filed; or rather, this would be the figure if there were no backlogged cases. However, if we factor in the most conservative estimate for delayed cases (2000 cases throughout the system), the disposal rate falls to 44.8% of all cases in the system at that time. Furthermore, if we take into account the number of backlogged cases estimated by the Magistrates Court (6000 cases, not including those of the High Court), the disposal rate drops to 35.9% of all cases.

The following table presents these figures:

Total cases filed and disposed, all categories, including backlogs
Saint Lucia Magistrates and High Courts
August 1999 - July 2000

	Total	Including 2000 cases pending	Including 6000 cases pending
Filed	12,494	14,494	18,494
Disposed	6,634	6,634	6,634
Disposal rate (%)	**53.1**	**45.8**	**35.9**

Over and above the figures, all justice sector operators we spoke with acknowledged that the backlogs, adjournments and interruptions are a major problem. According to estimates by the Supreme Court, procedures can last from six months to five years, with the average wait for initiation of a preliminary inquiry being nine to twelve months.

Based on our observations of the day-to-day operation of the justice system, there is good reason to believe that case management is one of the major problem areas, particularly in the Magistrates Courts. Indeed, one police-prosecutor indicated that 90% of his time was spent in court waiting for hearings that were either delayed or postponed. Prosecutors from the DPP estimated that they lost two hours per day waiting for hearings that were eventually delayed. In practice, preliminary inquires take the form of a complete trial in which all available evidence is extensively presented, and courts are commonly overscheduled far beyond their capacity to hear cases, often resulting in many not being heard. Additional delays arise because record-keeping systems require extensive notes and files to be written out by judges; and the list goes on.

Our visit to the High Court produced less information on litigation practices, as no trials took place during the time period assigned for trial observation in the three days we attended. However, one judge informed us that there were no delays in the High Court except in those cases where the accused had run away. In her estimation, each judge dealt with 30 trials annually, not including those passed on with a guilt plea from the Magistrates Court only for sentencing. The judge estimated that a trial for robbery would last an average of two to three days, while a trial for homicide could last between four days and two weeks.

In fact, however, figures cited above offer very low termination rates for the High Court, which can only be due to the accumulation of backlogged cases.

The main issues associated with judicial system administration are examined below.

a. Administrative Apparatus

Both Magistrates and High Courts have a set of operators clearly dedicated to performing administrative functions through mechanisms that are completely separate for each Court.

Saint Lucia's thirteen Magistrates Courts are administered by a *Registrar* –an administration official- who is supervised by the *Senior Magistrate*. In the second judicial district –further away from Castries- there is an *executive officer* who directs the administration of the district's five courts. Additionally, each courthouse has a *Court Manager* who manages the building and its personnel. Although building management is the responsibility of the Executive Branch, this arm of government does not seem to be involved in court administration. However, outside of Castries the daily operation of courts (which are unipersonal) is overseen by the corresponding Magistrate and his or her administrative officials.

The *Senior Magistrate* is formally selected, and dedicates approximately half of his or her working time to court administrative duties. The responsibilities of this post also include

formulating general management policy, caseflow management policy, contact with other Magistrates, and protocol duties.

All other officials –approximately twenty for Castries' four courts and another thirty throughout the rest of the country- basically carry out secretarial duties, which include maintaining records of case filings and rulings, transcribing police reports and judges' notes, drafting summonses, and so on. Computers have only recently been introduced, and work is still generally reproduced manually, including organizational charts and administrative forms. A case tracking system has only recently been introduced, and systematic, detailed, reliable statistics are still not available. Information is not shared with other agencies or tribunals. Many administrative tasks are carried out using comparatively obsolete methods (especially at the level of record keeping and information management). Additionally, administrative work is permeated by a certain degree of legal inflexibility, which does not foster a well functioning system. A case in point is the fact that administrative officials must transcribe Magistrates' hand-written court hearing records, including witness statements during preliminary inquiries, as well as all police reports of accusations, effectively duplicating the effort required for these tasks. All cases must also be hand-registered in record books, a practice that has been automated in most courts nowadays. There are many other examples of this type, as such practices occupy an important part of the court administration's human resources.

Moreover, not one of the officials involved in such work –including the *Registrar*- has formal administrative training, though some have taken courses in this area.

There are no management indicators or regular, systematic performance evaluations in the court. This is as much due to the lack of means –particularly in regard to information technology- as it is to a strong tradition of judicial independence. Thus, it is not possible to evaluate the quantity of work produced by a judge, estimate delays, or even determine the punctuality or attendance of such officials in the court.

Nonetheless, some efforts are being made in this direction. The *Senior Magistrate* and Magistrates Court Registrar have been attempting to collect data on case filings, disposals and judge's workload. However, these initiatives are still based more on individual effort and do not constitute a systematic, institutional approach.

Each magistrate conducts his or her hearings with the assistance of a court clerk and a guard. The role of the clerk is basically to ensure the availability of all records- including detailed case information, statements from preliminary investigations, and so on- that are required for the hearings scheduled.

In the High Court all strictly administrative tasks are carried out by the Court Officer and his or her team, while case management tasks (e.g. summons) are undertaken by the Court Registrar. One of the judges we interviewed told us that judges normally take no part in such work, but concentrate on studying case records coming from the Magistrates Court, investigating points of law and drafting sentences.

b. Work Distribution

As a rule, the Senior Magistrate assigns cases in the Magistrates Court. The flow of hearings is not managed to any significant degree, and neither is there any specialization as regards subject matter or type of hearing. The system operates strictly by case folders (each magistrate establishes his or her hearings for all corresponding cases).

c. Adjournments

In the island's Magistrates Court, case adjournment seems to be quite common, usually for one of the following reasons:

- Overlapping of hearings[13] by prosecutors and defense attorneys. Such overlapping is clearly caused by the way hearings are scheduled, including the lack of a computerized scheduling system and the imposition of hearing dates on the parties, without consultation. In addition, forensic activities for High Court hearings are given preference over those of the Magistrates Court, which actually have a much greater caseload, with the result that the latter is relegated to last place. There also appears to be a strongly held belief that attorneys "should take on many cases so as to survive in the market." Except for the initial one, the court itself schedules all hearings on an individual basis.

- Overbooking of hearings.[14] Given the high percentage of hearing failure from one cause or another, Magistrates Courts have gotten into the habit of overloading their schedules. Thus, in order to process five or six hearings per day, approximately thirty are scheduled, with the corresponding result that many do not take place in the end, though all relevant parties have been summoned to the court. A number of justice system officials reported to us that defendants, victims and witnesses have the discouraging task of having to appear in court on a number of occasions before the case is actually heard. This practice is also detrimental to the quality of work of police-prosecutors, who must prepare -at no additional cost - the thirty-odd hearings scheduled for the same day. Such officials complain that they are unable to carry out their duties properly, knowing that under the best of circumstances only a few of those hearings scheduled will actually be heard.

- Non-appearance of witnesses or defendants. It is important to point out that court summonses are organized by the courts themselves and carried out by the police, a practice that creates problems related to workload. Among other reasons, police have determined that if someone does not want to be located, it is impossible to locate him. As far as we know, the police have no access to databases or online information on defiant witnesses or defendants, and see it as practically impossible to stop people escaping from the island by sea.

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[13] "Overlapping hearings" indicate that the same prosecutor or defense attorney is summoned to more than one hearing in different courts at the same time on the same day.

[14] "Overbooking" means that more hearings than may be held are scheduled on the court timetable, under the assumption that a significant number will actually not take place.

- Lack of preparation of some parties. Unavailability of evidence due to its misplacement by the prosecution or the non-appearance of the investigator is a frequent occurrence.[15] On the defense side, delays are frequently caused by problems associated with discovery (disclosure) of evidence by the prosecution.

During our observations we came across cases that had been postponed up to twenty times during a period of eight months. Postponements witnessed ranged from two days to two months.

According to the DPP, procedural backlogs have a significant effect on the efficiency of the system: the quality of evidence deteriorates, witnesses go astray and even when they are available their memory has suffered.

According to a female judge we interviewed, in the High Court there were no serious problems in holding hearings, and these did not normally fail due to non-appearance, and thus no significant delays were produced in proceedings. However, as a local initiative described below aims to establish a list of cases precisely to avoid adjournments, it is therefore reasonable to conclude that, in one way or another, these do represent a problem.

d. Delays and Backlogs

Hearings that do manage to take place still seem to last much longer than necessary, mainly due to inflexible procedural rules or other judicial practices. Perhaps the best example of this is the requirement of judges to manually record, word for word, the questions and answers of witnesses and special investigators during the preliminary inquiry. Another example in these hearings is the amount of evidence required to prove prima facie cause, which often requires the complete examination and cross-examination of most witnesses and special investigators.

Another cause of delays is that hearings generally do not begin on time. During our observations, hearings which should have started at 9a.m. began instead at 11a.m., a delay which was considered quite common by many judicial system operators. As a result, all those concerned incorporate the delay-factor when attending a hearing, which further adds to this phenomenon. One often-cited cause for these delays is the fact that defendants held in preventive custody are not brought to court punctually.

e. Preliminary Inquiries

Although this report does not address legal design, the preliminary inquiry system can not be ignored here because of its effect on procedural efficiency. As previously mentioned, preliminary inquiries are hearings held before a Magistrate to determine the seriousness of a case. Although according to the underlying principles of the adversarial model this process should be elementary, practices adopted in Saint Lucia have turned it into something resembling a full trial: virtually all evidence is presented, there is examination and cross-

[15] Special investigations for Saint Lucia are carried out in Barbados; the special investigator for drugs, for example, only visits the island once a month.

examination of witnesses and experts, arguments are heard (which at times include extensive legal analysis), and there are demands of proof that could be considered excessive even in a full blown trial. Due to constant adjournments, the preliminary inquiry in fact becomes a series of hearings, separated by periods that range from a few days to various months (on the day of our observation, a hearing was adjourned for two months so as to wait for the narcotics report). Magistrates have a legal obligation to record the hearing manually (in notes that must then be transcribed for High Court officials) as described above, which makes the whole process even slower still. Moreover, defendants frequently lack a defense attorney, and thus exercise the right to cross-examination themselves, which is inefficient and weakens their defense. And all of the above would seem to be carried out for no particular purpose: when the DPP was asked how many cases were dismissed by Magistrates for not reaching the required legal standard, the answer was practically none: "perhaps one or two of the 300 cases dealt with last year."

Nevertheless, for this problem at least, reforms are being made to replace the preliminary inquiry with a hearing to establish probable cause, which will be carried out on the basis of prosecution records. The new legislation governing this reform should be ready for enactment in 2004.

4.4. Service and Attention to the Public

Attention to the public seems precarious at best. Apart from a table at the court entrance, which would seem to be more concerned with controlling public access, no court official is charged with this duty. Those who wish to enter the hearings themselves must first get past a gendarme blocking the doorway, who asks people what reason they have to be in the court, and by all indications a convincing explanation is required. There is no information posted on hearings and schedules, and the count does not seem to be concerned with informing the public of what is happening. In fact, due to the absence of a sound amplification system, much of what is said is simply not heard. On the day of our observation, a person who had recently been stabbed entered the court house; although he had received medical attention, the pain was still making him groan and brought tears to his eyes. The duty gendarme ordered the man to sit down, and when the person in question, who was in visible discomfort, explained that the pain did not allow him to sit, the gendarme simply raised his voice and repeated the order: according to the rules no member of the public may stand up in court.

As there are no special areas set aside for parties, defendants, prosecution staff and witnesses must wait in the same area, which is often the street itself.

4.5. Training

Training of judges in Saint Lucia is the responsibility of the Judicial Education Institute (JEI), a body established in 1997 and which serves all Eastern Caribbean countries. Its headquarters is within the building that houses the Court of Appeal in Saint Lucia.

The Institute offers various types of courses, in both legal subjects and court administration. Programs generally last a few days, although new judges are given an orientation program that lasts a number of weeks.

Courses focused on criminal justice are few; the following courses have been identified since 2001: money laundering (two days); sentencing workshop (one day); training in audio recording (three days); and an orientation course for judicial duties. No training is given in litigation.

5. Prosecution system

5.1. Structure

Summary offences are prosecuted by the police, while the Department of Public Prosecution (DPP) carries out actions for indictable offences. Additionally, in some cases the police may also carry out preliminary inquiries of specific summary offences.

Although they have no formal legal training, police officials act as prosecutors for summary offences. In general, these police-prosecutors have no contact with the arresting officer or any other official involved in the case until the day of the hearing. In Saint Lucia there are six police officials working full-time as prosecutors, along with station managers who can also exercise such duties, bringing the total number to fifteen.

Indictable offences are brought to trial by prosecutors from the DPP. Although these prosecutors oversee the body of police officers who investigate actual cases, their direct involvement is generally limited to offering legal advice. As such, police investigations are usually quite autonomous, and cases are sent back to the DPP when all lines of investigation have been exhausted. Prosecutors generally have a negative opinion of the investigative work undertaken by the police, especially in terms of the quality of evidence collected. This opinion coincides with that held by the island's High Court judges. Justice sector officials also attribute weaknesses in investigations to the lack of evidence offered by expert witnesses; for example, the justice authority narcotics expert visits the island once a month (from Barbados), during which time he must collect samples for new cases in addition to giving evidence at trials.

The DPP has four qualified attorneys working as prosecutors, who must cover the whole country. The current Director of Public Prosecutions is a woman.

5.2. Organization of Work

The Magistrates Court distributes summary cases among police-prosecutors on a geographical basis, with each police-prosecutor always litigating in the same court. Many magistrates interviewed were of the opinion that the work of police-prosecutors was hindered by excessive bureaucracy, manifested in the numerous revisions that had to be carried out for each within the police before passing it on to the courts.

In the case of the DPP, the institution's director distributes cases equally by geographical territory. The work is strictly organized under the case portfolio model: cases are not distributed according to type, and no teamwork exists to deal with the constant flow of

hearings. Rather, each prosecutor must carry out all procedures related to each and every one of his cases.

In general, prosecutors believe they need more training and have serious problems with special witness evidence.

5.3. Workload

Secondary sources indicated that in 1997, the police received 13,639 complaints.[16] The DPP estimated that police presented approximately 3000 summary cases before the courts, which does not coincide with the 4,439 summary cases reported by the Magistrates Court from August 1999 to July 2001.

The DPP does not seem to maintain precise figures on its workload (at least, none were available at the time of our visit, indicating that their compilation is not normal management practice). The Department estimated that on any given day there were approximately 300 indictable cases open, and that between 600 and 1000 cases were followed by each prosecutor annually. We were told that each prosecutor attended between 2 to 4 hearings per day on average, dealt with between 20 and 35 preliminary inquiries per year, and between 8 and 10 High Court trials in each judicial session (or approximately 30 per year).

5.4. Early terminations and Selectivity

Saint Lucia's Constitution grants wide-ranging powers to the Director of Public Prosecution to initiate and terminate criminal prosecutions, where deemed necessary by him or herself, or via a delegate, independent of the control of any other person or authority.[17] Nevertheless, we gathered from our interviews that the dominant rhetoric powerfully limits such faculties. In general, the Department does not envision establishing a systematic criminal justice policy for methodically selecting which cases to pursue, and there is a prevailing belief that every case should conclude with a sentence being imposed, whether custodial or involving a fine. There are very few alternative dispute resolution methods or types of sentences.

On the other hand, there are certain practices that attenuate the effects of this belief:

- In the first place, the police play an important role in selecting cases. They are the first to investigate cases, and only bring these before the courts or the DPP when sufficient evidence is deemed to exist. If this does not occur, the case will be provisionally filed until more significant proof has been gathered. At the same time, the police may decide not to proceed with an investigation in which the victim is not interested in pressing charges, when they believe an accusation is false, or when they do not consider the action to be criminal. Between 1998 and 2002, the police received an annual average of 13,639 complaints, though for the period 1999-2000 only 5056 cases were filed before

[16] IDB, *Challenges of Capacity Developments, Towards Sustainable Reforms of Caribbean Justice Sector*, Volume II, May 2000, p. 52.
[17] Political Constitution of Saint Lucia, Section 73 (2).

the courts, which suggests that approximately 60% of complaints are filtered out by the police.

- Where the DPP concludes that the matter is not criminal it may decide not to proceed with prosecution, in which case the victim may decide to initiate private prosecution (for victim-actionable crimes).

- Where the defendant pleads guilty and reaches an agreement with the prosecution, trial is avoided and the case is sent directly for sentencing to the appropriate court. According to one female magistrate, defendants plead guilty in approximately 25% of indictable offences and around 50% of summary offences. The police estimate that between 30 and 40% of defendants plead guilty overall.

- The DPP may also decide to abandon prosecution where the victim no longer has interest in following up or declines to present evidence.

Therefore, although the principle of procedural legality is respected in theory, in practice –and in different legal bodies- there are a number of mechanisms practiced that limit the number of cases reaching trial. Evidence of this may be found in a statistical study published in 2002, which covered 5,150 criminal cases in the Magistrates Courts. The study established that almost 40% of cases had concluded prematurely due to a decision taken by the DPP or by withdrawal of charges.[18]

5.5. Sentences

Different types of sentences are available, as follows:

- Custodial (imprisonment)
- Fine
- Community work.
- *Dismissal* or *Struck Out*: These are technically distinct; the one applied depends on what stage the case has reached and other factors related to the cause. However, for the purposes of this report they can be said to share an underlying logic, where the court removes the case from the system as a penalty for the negligence, slowness or lack of evidence emanating from the prosecution. The decision releases the defendant from prosecution, although depending on the reason and stage of the procedure, it does not necessarily bring the case to a definitive conclusion.
- Warning, reprimand and discharge: this is a judicial resolution through which the accused is reprimanded and warned not to continue his or her attitude or conduct, and leads eventually to the withdrawal of charges.
- Probation: this is the classic sentence that releases the accused on oath.
- "Warned to maintain the peace:" in this type of sentence the defendant is warned by the court to maintain the peace. Breaking the peace is considered an independent crime similar

[18] OECS/CIDA, *OECS case profile review 2000 – An Analysis of Criminal and Civil Cases in the Magistrate Courts of the OECS*, August 2002.

to contempt, whereby if the defendant commits another crime, he may be charged with both (i.e. the new crime and disobedience to the court).

5.6. Administrative and Technological Backup

Prosecutors or administrators within the DPP do not enjoy the support of assistants. The administrative mechanism is made up of four officials: an administrative secretary, a professional public servant, an office assistant and an on-duty police officer. Prosecutors estimate that almost half of their workday is spent on duties that could be carried out by staff without formal legal training (i.e. drafting summonses, filing information, making photocopies, etc.).
There is no computer system available to assist the processes of case follow-up, case oversight or data generation.

5.7. Training

There is no structure for ongoing, institutionalized training for prosecutors. Some prosecutors have taken courses in the Regional Police School in Barbados, though they do not have access to courses in litigation or for improving their legal knowledge.

Police-prosecutors do not have formal legal training, but gain their experience through direct practice. The DPP used to organize workshops for such officials, but due to a lack of available resources these efforts have ceased. Both police as well as judges recognize that the police-prosecutors are unable to formulate sophisticated legal arguments, which typically involve points of evidence. In such cases, the police-prosecutor requests a recess, which may or may not be granted, to request assistance from a DPP prosecutor.

6. Criminal Defense

In Saint Lucia, the provision of public defense is only required in hearings and trials for capital cases. As there is no Public Criminal Defense body, an important number of cases are processed without defense counsel; one judge estimated that approximately 50% of all trials for indictable offences are carried out without a defense attorney present. A Magistrate, in turn, offered that 25% of indictable offences and 50% of summary offences are tried without legal representation. However, for capital cases, if the defendant cannot afford an attorney, one will be paid for by the State (the Crown).

7. Initiatives and Reforms

Over the last few years important efforts have been made in Saint Lucia to increase the efficiency of its justice system, and there is still much going on. Various initiatives have been implemented in recent years, most notably:

- Introduction of court administrators. This process is still in the initial stages as court administration is not very professional and many operational procedures are quite antiquated.
- Review of court management systems and efficiency policies. Just a few weeks before our visit a Case Management Committee was formed in the Magistrates Court, which included the establishment of maximum time limits for cases and the installation a policy designed to terminate cases when they exceed such limits. This policy contemplates a maximum length of six months for summary offences, though it was not possible to obtain figures to confirm whether these limits were respected. One Magistrate estimated that on average, summary offence cases in which the defendant did not plead guilty lasted around six months. The same judge also estimated that the minimum time for processing preliminary inquiries was four months, and the maximum four years. Members of the police force we interviewed, however, estimated that it took between one and three years to process a case in the Magistrates Court, not including the case process for indictable offences in the High Court. Additionally, the police told us that numerous cases were discharged due to prosecution inefficiency. Lastly, as part of the efficiency policy, procedures have been implemented in the Magistrates Court to proceed with a hearing in the absence of defense counsel when he or she does not attend the respective hearing.
- Efforts to modernize court management. Progress is also being made in this area: computers have only recently been introduced in a general sense within the courts, and many procedures are still manually processed. The most systematic effort so far has been the introduction of JEMS, a case follow-up software system. Even so, it has not yet been adopted in the Magistrates Court, where the greater part of cases is concentrated.
- Increase in police force and infrastructure.
- Establishing community work as an alternative to custodial sentences.

In addition to the above, other efforts to improve justice sector management are at different stages of advancement. These include:

- Replacement of the (hand written) court report by audio recordings, along with the introduction of a stenographer (CAT) for certain cases.
- Legal reform to replace preliminary inquiry hearings with a control hearing to establish probable cause based on a review of the prosecution's case file.
- Elimination of over-scheduling of hearings. An attempt is being made to design a system that will allow organized scheduling of cases where hearings will effectively take place when planned, although the method to be used has not been determined.
- Institutionalizing a cause list: instituting a hearing, to be carried out one or two months before a trial, to establish whether the case is ready, evidence is available and authenticated, and no matters have been left outstanding, so the trial may take place at the accorded date and time.

II. TRINIDAD AND TOBAGO

Description of methodological approach

The visit to Trinidad and Tobago took place on 11-12 December 2003. A total of nine justice system operators were interviewed, including three judges, Justice Ministry officials, the head of the forensic laboratory, the Director of Public Prosecutions, the (female) head of court administration, and the director of the judicial institute. Numerous hearings were also observed in the Magistrates Court.

1. General Description

As the name implies, Trinidad and Tobago consists of two islands, as well as a number of secondary islets. Trinidad is the main island and home to the capital city of Port of Spain. It is 60kms long and 80kms at its widest point. Tobago is 32kms away by sea. The combined population of the two islands approaches 1.3 million inhabitants, who are spread throughout the territory. Around 50,000 people live on Tobago, while Trinidad has only three cities with more than 200 thousand inhabitants. The largest city is Saint George, with half a million residents.

The Hugh Wooding Law School is the country's only such faculty and is located on Trinidad island.

2. The Procedural System

Both procedures and the organizational design of the judicial system in Trinidad and Tobago are in all fundamental aspects identical to the model described above for Saint Lucia. Magistrates and High Courts have all faculties outlined above, actions for summary offences are conducted by police-prosecutors, and indictable offences are pursued by DPP prosecutors. Some crimes receive mandatory prison sentences, there is an active death penalty, and the use of preventive custody appears to be extensive. In this regard, the Trinidad and Tobago Prison Service reported a total of 9,902 inmates in the year 2000, of which 63.3% were still awaiting sentence.[19]

The system allows cases to proceed in the absence of a defense attorney for non-capital matters, although the islands do have a Criminal Public Defense system.

In Trinidad and Tobago the oral tradition is also a full part of proceedings, with important decisions being taken in oral, public and adversarial hearings. Such hearings do not adhere to strict formalism: Magistrates may ask defendants questions directly, and these may respond

[19] JSCA, *Report on Judicial Systems in the Americas 2002-2003, pp. 340 and 344.*

without any major judicial ritual. The Magistrate may also at times interact with the attending public, for example, to ask a relative if they will receive the defendant in their home if a custodial sentence is not passed. However, such orality is affected by a number of factors. In the hearings we observed the role of police-prosecutor varies widely, from a fairly passive one in hearings for preventive custody, to an active one in the examination of victims and witnesses during preliminary inquiries. In addition, the lack of a mandatory defense counsel means that the adversarial nature of proceedings may be affected to varying degrees. Thus, in hearings we observed on preventive custody, proper, legal debate is practically non-existent; rather, the hearings consisted mainly of unilateral, proactive actions by the judge. In other hearings observed where a defense attorney was absent and the defendant himself exercised his right to challenge the prosecution's case, the ensuing litigation was marked by low-quality information and inefficiency. We observed an example of this in a preliminary inquiry for statutory rape, in which the accused cross-examined the victim, turning the whole process into an exercise of "I said, you said" complete with comments, arguments and irrelevant questions. During this process the defendant did not provide any information or ground his defense and dealt inadequately with important matters. Notably, he did continually receive instructions from the Magistrate in litigation techniques and rules of evidence (i.e. "You should ask questions; you should avoid opinions," etc.), as well as warnings about the legal consequences of certain lines of cross-examination.[20] The end result was very poor litigation conducted at an important stage of the proceedings.

The above becomes even more relevant, in the opinion of a well-known private attorney, in light of the fact that it is common practice for police to edit statements, fabricate evidence, and re-write their notes, and because the level of corruption is considerable. In such an environment, the absence of a strong, comprehensive defense damages the adversarial mechanism, causing it to fall short of its objectives, and frequently resulting in a process that is more formal than substantive. One Magistrate admitted during one of our interviews that if police were employing such tactics it would be almost impossible for judges to detect.

Orality is also observably affected in those hearings where a record is required, due to the need to take complete manual notes of statements made by those taking part in the hearing. IN practice, this causes such statements to turn into dictations to the official writing down the notes, word for word, slowly and without interruption.

The judicial culture in Trinidad and Tobago has been nurtured on the comparative jurisprudence of countries with a common law legal system. Relevant sources of comparative jurisprudence mentioned include Great Britain, Australia and India.

Even for indictable offences, it is the prosecution itself that recommends whether or not a case should proceed to trial by jury in the High Court or be tried in a Magistrates Court without a jury.

[20] The defendant insinuated that the family of the victim had requested money in exchange for not pursuing the charge. The Magistrate warned that such a line of cross-examination could have legal consequences that would "not be in his interest." After a second similar warning, the defendant, who was not able to really understand the significance of this point, or of evaluating the risk, or of implementing said line of cross-examination more effectively, became frightened and apologized to the court, so abandoning a point of law that could have been relevant.

We also observed in Trinidad and Tobago the same type of defects and rigidity in relation to how evidence is obtained and assessed as we found in Saint Lucia. As an example, staff at the investigations laboratory told us that the practices associated with the chain of custody of evidence were extremely complex, requiring that the police officer who collected the evidence hand it over personally to the investigator, who also had to personally receive it (ruling out the possibility that any other official could either transport or receive the evidence). In this same sense, only information presented by the specified laboratory was valued as evidence. In another example, a Magistrate related that a stolen vehicle that was recovered could be impounded for up to three years by the police in order to ensure that it was available as evidence at the moment of trial.

3. The Courts

3.1. Structure

The structure of the courts in Trinidad and Tobago is identical to that of described for Saint Lucia, with the Magistrates Court and High Court functions and jurisdiction identical to those outlined above.

There are 41 magistrates in Trinidad and Tobago, distributed over 13 territorial districts. The Magistrates Court has jurisdiction over criminal, civil, family law, domestic violence, and traffic violation cases. There are 10 Magistrates Courts in Port of Spain, organized by subject matter (indictable matters, summary offenses, homicide, drugs, and weapons-related crimes). Criminal cases filed in the Magistrates Court account for 49% of the total number of cases.

The High Court has 20 criminal jurisdiction judges distributed over 3 territorial districts, including 8 in the Port of Spain district, 5 of whom hear exclusively criminal matters, while the remaining three hear both criminal and civil cases.

3.2 Infrastructure and Equipment

Trinidad and Tobago has quite an acceptable level of court infrastructure, particularly in the High Court, which has large courtrooms and public spaces in which users may circulate. The judges also have spacious offices and meeting rooms.

The infrastructure for the Magistrates Court is older and more deteriorated, although a new wing has just been added to the old building. There are special rooms for witness-attorney conferences and also witness waiting rooms.

The courtrooms have sound systems, though these are generally only used for receiving testimony. Moreover, the poor quality of the amplification sometimes makes it difficult for the public to follow the hearing, depending on the size of the room.

Both the administrative offices and judges' chambers have computers, in the latter case the result of a veritable technological offensive over the past two years, which has led to such additions as laptop computers in all chambers.

3.3. Efficiency, Productivity, and Workload

Secondary sources estimate that there were nearly 10,000 cases pending in the High Court and 60,000 in the Magistrates Court at the end of the 1990s.[21] The delay for criminal cases in the Magistrates Court could be up to four years, followed by eight more years in the High Court.[22] The Chamber of Commerce reported that the business community was "fed up" with the courts and with attorneys, whom they saw as the "masters of delay."[23]

In view of this situation, and as will be discussed in more detail later in this report, Trinidad and Tobago has been immersed in various reform efforts over the past few years, which would seem to be improving the situation.

The problem does, however, continue to merit attention. The interviews that we carried out with all actors in the system identified main management problems, postponements and delays as the main issues of concern in the system. In its Annual Report for 2002-2003, the judicial branch states that the largest problem confronted by the Magistrates Court is the complete absence of a case management system. As a result, the agenda has been immeasurably overrun with issues that are not ready for trial or even for a preliminary enquiry. Requests for continuances have become commonplace. Along the same lines, a magistrate told us that "we have been dealing with the backlog, but many judges fail to refuse cases that should be dismissed, the evidence process takes time, and the victim has no interest in the process or loses the interest they might have had. There are cases in which the victims or the accused haven't been seen in years...." The public prosecutor's office reported that prosecutors practicing in the Magistrates Court spend approximately an hour and a half waiting for hearings every day, while the delays in the High Court were fairly insignificant.

The Department of Court Administration seems to be thoroughly aware of this issue and has promoted a series of actions to improve case management, work procedures, and administrative design, modify record systems, introduce information technologies, modify procedural rules, and enhance collection of statistical data. In fact, this department was the only agency that identified the goal of requiring courts to meet public service standards. Beginning in March, the Department staff intends to carry out quarterly user polls to generate performance standards. Apart from these, the department produces other important statistics (e.g. individual caseload for all courts, duration of procedures, etc.) and surveys judges to gather information. The data collected is also used to make recommendations on the distribution of judicial branch resources. A substantial amount of this information is published in the agency's annual report.

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[21] IDB, *Challenges of Capacity Developments, Towards Sustainable Reforms of Caribbean Justice Sector*, Volume II, May 2000, p. 62.
[22] IDB, *Judicial Reform in the Caribbean*, 1999, p. 5.
[23] IDB, *Challenges of Capacity Developments, Towards Sustainable Reforms of Caribbean Justice Sector*, Volume II, May 2000, p. 65.

Data produced for the Judicial Branch Annual Report indicates that a total of 36,180 criminal cases[24] were filed in the Magistrates Court for the 2002-2003 period,[25] and 29,886 criminal cases closed, or 82.6% of cases filed, as shown in the following table:

Cases Filed and Disposed
Trinidad and Tobago Magistrates Court
August 2002 - July 2003

	Criminal	Family Law	Domestic Violence	Traffic	Civil Suits	Landlord-Tenant Disputes	Inquest	Total
Filed	36,180	13,920	9,043	10,143	3,275	921	545	74,027
Disposed	29,886	12,940	8,808	25,128	1,465	741	99	79,067
Clearance Rate (%)	**82.6**	**93.0**	**97.4**	**247.7**	**44.7**	**80.5**	**18.2**	**106.8**

As the table demonstrates, clearance rates of over 100% indicate that the system as a whole is closing more cases than it admits each year, which should gradually reduce the backlog. This trend is caused to a great extent by the resolution of traffic cases, along with fairly reasonable backlogs in the other categories. However, it is difficult to estimate the real workload and number of cases pending without statistics on the historic backlog.

The average number of cases heard by magistrates on a daily basis can vary by up to 100% even within the same court. The following table offers some illustrative examples of the average number of cases slated for Magistrates courts, criminal jurisdiction in Port of Spain:[26]

Average Number of Hearings Scheduled
Criminal Jurisdiction, Magistrates Courts
Trinidad and Tobago
2002 - 2003

Courtroom	**Average**
Indictable matters	35-70
Summary matters	35 - 50
Drug-related offenses	50 - 100
Weapons-related offenses	65 - 90
Murders and serious offenses	5 - 15

However, as these numbers show only the number of hearings scheduled, many of which fail to be held (as will be discussed below), they do not reveal the real workload

For the High Court, the Judicial Branch Annual Report states that a total of 233 new criminal cases were filed in 2002-2003, and 204 were closed during that period, which represents a

24 This number includes summary offenses and indictable matters to be heard in the High Court or to be tried before a Magistrate at the defendant's request, as well as private summary offenses.
25 1 August 2002 to 31 July 2003.
26 Judiciary of the Republic of Trinidad and Tobago, Annual Report 2002-2003, p. 111.

clearance rate of 91.5%. In this case, however, we do have information on the number of backlogged cases, which number 330 from the 2001-2002 period. If we add this number to new cases filed for 2002-2003, in fact the court only closed 36.9% of all cases in the system. The following table presents this data:

Cases Filed and Disposed
High Court of Trinidad and Tobago
August 2002- July 2003

	2002-2003	Total cases, including backlog
Filed	223	553
Disposed	204	204
% Disposed	**91.5**	**36.9**

Overall, the High Court closed 125% of the total number of cases filed during the previous period (2001-2002). According to the Annual Report, the rate of disposal in the High Court dropped by 35% in both periods.

The following table outlines the cases disposed in the High Court:

Outcome
High Court of Trinidad and Tobago
August 2002- July 2003

Outcome	**Quantity**	**%**
Guilty pleas	57	18.2
Verdicts of guilty	80	25.5
Verdicts of not guilty	141	44.9
Dismissals	36	11.5
Total	314	100.0

Case processing times are only available from the judicial branch for indictable offenses. The following table contains some illustrative averages offered in the 2002-2003 Annual Report:

Case Duration
High Court of Trinidad and Tobago
August 2002- July 2003

Crime	**Average duration (months)**
Sex crimes	18
Murders	11
Theft	21
Weapons-related crimes	41
Fraud	30
Drug-related crimes	14

The averages above consider the time between indictment and resolution of the case, which means that they do not include the time the case is in the Magistrates Court in preliminary inquiry. Although no data is available on this part of the process, we do know that some preliminary inquiries have been carried out approximately one year after the commission of the crime. Furthermore, some of those interviewed stated that it could take another year to get the case to the High Court once the initial hearing is held, apparently mainly due to the need to hand-transcribe declarations in the court records.

The following section discusses the main aspects related to the management and productivity of the system.

a. Administrative Apparatus

Court administration is overseen by the Court Administration Department and distributed by building and district.

Each court has a multi-level administration: At the building level, there is an administrator who reports to the Court Administration Department rather than to the Senior Magistrate. This person usually is not professionally trained in this area but may have taken related courses, though our sources report that there is a growing demand for a more professional administrative staff. The Court Administration Department defines the administrator as a "facilitating manager" rather than a "commanding manager," and heads a group of administrative employees who receive instructions from the administrator himself and judges. Each building also has a registrar in charge of case files, and each judge has a clerk to take notes.

Records are fundamentally hand-written, with the schedule being noted in gigantic ledgers in which judges register their decisions, hearing dates, and adjournments.

This structure is the same for the Magistrates Court and the High Court.

The Court Administration Department reports to the Chief Justice and administers all judicial branch resources, as well as generating statistics. This department seems to have a clear idea of its role. We observed a deep concern for management-related issues among those working at this level, as well as a fairly good idea of what the main problems were and many actions for reforming the system to address those concerns.

The judicial branch currently has a Website that publishes court hearing schedules along with other related information.[27]

b. Distribution of the Workload

As stated above, the Magistrates Courts are specialized jurisdictions, with the workload being distributed by subject matter. With the exception of the initial hearing, which is scheduled by

[27] www.ttlawcourts.org

the court administration, all hearings are scheduled in public by the judge. All cases must appear before a magistrate every 7 days if the defendant is being held in protective custody and every 10 days if he or she is at liberty.

In regard to the High Court, one of the reforms being promoted involves establishing a docket management system with judges being responsible for creating a hearing schedule for cases. The Court Administration Department feels that this will allow judge oversee cases more closely and control postponements and delays.

c. Postponements

As mentioned above, other serious problems in Trinidad and Tobago include the failure of many hearings, postponements, and the prolongation of processes. During our observation period, many hearings scheduled in the Magistrates Court were not held, in most cases because the defendant failed to appear. A High Court judge estimated that 35% of trial hearings in that court fail. The following are some of the causes of these failures:

- Excessively rigid or inefficient procedural norms. Various examples could be used to illustrate this point. The first is the preliminary inquiry, which operates exactly as described in the Saint Lucia section including all of the dysfunctional aspects mentioned. Added to this is the fact that during High Court trials, only evidence presented at the preliminary hearing may be used, thus necessitating a complete and exhaustive preliminary presentation. A second impediment is the requirement that pending cases must be presented every 10 days regardless of the fact that there may be absolutely nothing new to discuss. According to various sources, this erodes the willingness of victims and witnesses to appear in court, with the subsequent result that a significant number of hearings which prosecutors, judges, and defense attorneys are obliged to attend only consist in making a date for the next hearing.

- Unavailability of defendants, witnesses or experts. One magistrate estimated the delay for expert testimony at 9 to 18 months. A forensic laboratory staff member reported the following timeframes for presenting reports: one year for ballistics reports, 18 months for document reports, and 6 to 8 months for narcotic reports, though there were no delays for forensic medicine. Delays were said to be due to staff shortages, which in turn was attributed to the low salaries paid to laboratory employees. The employee interviewed stated that lack of personnel has led to a great deal of backlog in the lab.

- Attorneys that fail to appear at hearings. The courts have now implemented a policy that allows the procedure to continue in the attorneys' absence unless their presence is mandatory due to the type of case in question.

- Overbooking of hearings. As discussed earlier, most courts have a daily caseload ranging from 50 to 100 cases per magistrate. However, this large number can be attributed to the common practice of overbooking to ensure that courtrooms are

occupied throughout the day in spite of the many failed hearings. One magistrate interviewed estimated that 25 hearings per day were not held because of overbooking.

d. Hearings

As mentioned, the most important decisions of cases are made during oral and public trials. Theoretically, these are adversarial hearings, though the frequent absence of defense attorneys reduces this aspect considerably. All hearings are completely public in Trinidad and Tobago, and courtrooms frequently have large audiences, though persons not involved in the procedure are not allowed to enter during certain parts of the process (typically in trials involving sex crimes). Announcements of the hearing schedule are fairly disorganized, with cases being called out in the hall, often with no response. We found no published information on the daily schedule.

3.4. Training

Trinidad and Tobago recently created a judicial training institute directed by a board made up of judges, magistrates, and high-ranking administrators. The body trains judges and administrative staff by offering a set of courses and seminars held throughout the year. In general, both legal and administrative courses last a few days, as do other types of courses offered (for example, stress management). The Institute is closely linked with academic institutions in the United Kingdom, the United States and Canada, and is currently exploring e-learning and distance training approaches.

Although courses are not mandatory for judges, Institute staff state that they rarely fail to participate, and average four of these activities per year.

Upcoming courses include “The Criminal Trial,” scheduled for next year, and courses on new legislation and sentencing. There will also be a management course for judges.
Two judges are sent to Canada each year for a three-week training course, which prepares them to serve as trainers for other judges.

4. Prosecution System

4.1. Structure

The criminal prosecution system in Trinidad and Tobago follows the model described for Saint Lucia, and is divided among police-prosecutors and attorney-prosecutors working for the Office of the Director of Public Prosecution (DPP). The DPP functions in all three judicial levels: the Magistrates Court, High Court, and Court of Appeal. In the Magistrates’ Court (typically the territory of police-prosecutors), prosecutors handle complex cases, public interest matters, and preliminary inquiries for serious cases.

Police-prosecutors receive six weeks of legal training in Trinidad and Tobago, although it appeared that judges and DPP prosecutors seriously questioned their abilities in prosecuting cases, though not their general competence. One magistrate reported that police-prosecutors lose a lot of cases, that they are unable to carry on legal discussions, and that they requested recesses to seek out the assistance of prosecutors when they felt out of their depth. This opinion is generally shared by the DPP.

Prosecutors working in the Magistrates Court report to the Assistant Director of Public Prosecutions, while those in the High Court or Court of Appeal respond directly to the Director. These administrators distribute work by level of experience, and in general do not specialize in certain areas, with the exception of money laundering.
The DPP has 35 prosecutors, 2 assistants, and 25 administrative staff. However, the department is currently looking to assume responsibility for all criminal prosecutions, including those that are now handled by the police, and for this purpose has proposed that the number of prosecutors be doubled.

4.2. Workload

We were unable to obtain data on prosecutors' workloads.

4.3. Selection of cases, terminations and discretionary measures.

In practice, the police have wide discretion in deciding whether or not to bring a case to trial or to hand it over to the DPP.

In addition, Trinidad and Tobago's Constitution grants the director of criminal prosecution wide faculties for initiating and/or discontinuing this process as he or she deems appropriate.

However, when interviewed, the DPP specifically stated that this discretion was only used to terminate procedures with no legal merit and not for political reasons or to rationalize of the use of resources. The only such discretionary practice was the interruption of processes on "matters of public interest," a sort of principle of opportunity.

Prosecutors have had the faculty to plea-bargain since 1999, but the DPP stated that this had only been used a few times (in negotiations without prejudice for spontaneous declarations of guilt by defendants).

We were not able to obtain specific data on the use of discretionary faculties in cases received by the police or DPP.

4.4. Automation

The public prosecutor's office has computers but does not currently have a case tracking system, nor does the system allow users to conduct searches by judicial area. There is currently an effort to improve information technology through the installation of *Lexis Nexus* for prosecutors.

One particularly important aspect of this is that it will provide judges and prosecutors with an information system for the first time. As none such system currently exists, no data is available on defendants' criminal record, or on how long he or she has been in protective custody. At present, the defendant or defense attorney is asked for this information personally, and there is no mechanism for confirming that they are telling the truth.

4.5. Training

Until recently, training for prosecutors came in the form of non-systematic courses; however, the DPP is currently creating a standing committee for training prosecutors. The training typically offered to prosecutors includes some litigation courses.

5. Criminal Defense

Trinidad and Tobago's legal aid system consists of a fund for hiring private attorneys who offer their services through a list.

Although public criminal defense was usually reserved for indictable offenses it has been extended to include summary offenses.

6. Projects and Reforms

Both the judicial branch and the government expressed the opinion that there were many current actions for improving and modernizing justice in Trinidad and Tobago. The following are some of current initiatives, which are at various stages of development:

- CAT (Computer Aided Transcription). The judicial branch introduced a program for implementing court stenographers around 1990. This program involved bringing foreign stenographers to Trinidad and Tobago to train new personnel. The Court Administration Department estimated that the efficiency of hearings increased 102% under this system (in other words, hearings lasted about half as long). However, the program has been drastically reduced for a number of reasons, and is currently only used occasionally,[28] with judges having to return to manual recording. The current approach involves the use of CAT, though only for those hearings that would benefit from immediate transcription. Parliament has also recently approved the budget for a new program, already in its pilot phase in the nation's capital, which includes several million dollars for installing a digital recording system in courtrooms.
- Changes to the case management system. One of the examples highlighted is the introduction of a cause list at the High Court level. Thus, rather than the over-scheduling of trial hearings, with this type of list a previous hearing is scheduled one to two months

[28] We were told that one of the main problems is the long training process for staff members (2 to 3 years) and the subsequent difficulty in keeping them from migrating to the private sector or other jurisdictions with better working conditions.

before the trial in order to determine the probability of the case going to trial as scheduled. (This hearing includes considering legal motions pending, evidence admissibility and availability, and the likely presence of attorneys, among other potential delays). One of the judges interviewed reported that this new system had effectively reduced but not eliminated over-scheduling, and that, in her estimation, approximately 30% of scheduled items are actually overbooked. Another change in case management has been the modification of the High Court administrative structure, including the creation of administrative teams assigned to each judge. The Magistrates Court is moving in the same direction.

- JEMS. This program is identical to the case tracking system explained in the Saint Lucia section.
- The Trinidad and Tobago Attorney General's Office told us of a pending legislative bill aimed at introducing mediation mechanisms, although only to a limited degree for criminal matters. However, some judges claimed that with the exception of family law issues, the government has recently closed all community centers in which mediation was practiced.
- A government team has been created to reform the penitentiary system from a restorative justice approach.
- A project has recently been proposed in an internal judicial branch committee to differentiate magistrates' work from the resolution of hearings and holding of trials.
- Preliminary inquiries will be modified, though the nature of this modification has not been announced. Suggestions range from eliminating them altogether to replacing them with probable cause hearings based on an examination of the prosecution file. However, no concrete projects have materialized as of yet.

III. JAMAICA

1. Methodology

JSCA observers visited Jamaica during April 5-9 of 2004, conducting a four day exploration of the functions of its criminal justice system. A total of seven justice system operators were interviewed: three judges; two court administrators; two prosecutors (including an important official from the Public Prosecutor's Office), and an important official from the Ministry of Justice. Numerous hearings were also observed in the Magistrates Tribunal and the High Court.

2. Description of the Jurisdiction

The island of Jamaica is 234 kilometers (146 miles) long, and its width varies between 35 and 88 kilometers (22 and 51 miles respectively). It has a population of ***2,612,500*** of which ***594,500*** reside in the capital, Kingston. Jamaica has a per capita income of US$2.720 annually.

3. General Description of the Procedure System

As is the case in most English-speaking Caribbean countries, Jamaica inherited its justice system from the British Empire, including cultural elements such as the adoption of the wig and gown by judges and attorneys. Judges often fall back on the comparative jurisprudence of the Anglo-Saxon system, especially that of countries such as Britain, Canada and, to a lesser extent, the United States. As a result, the Jamaican system is fundamentally adversarial: the police are responsible for criminal investigations, and prosecution is carried out by the Public Prosecutor's Office, which has wide powers to suspend proceedings.

Minor offences are dealt with by a body of Justices of the Peace and not by lawyers. These less serious legal infractions as well as some more serious crimes are tried in oral bench trials before a professional magistrate.

Serious criminal charges are brought before a High Court judge and a jury, which varies in number according to the type of case (twelve jurors for murder trials, and seven jurors for all other offences), in an adversarial and public hearing. Weather to have a jury or bench trial is not a decision for the defendant to make; rather, the law establishes which cases must be heard before a jury. When a jury is present, the judge receives transcripts of all of the statements taken during the Preliminary Inquiry; in bench trials the judge does not receive transcripts.

Special treatment is given to cases involving firearms. These are adjudicated without a jury and in chambers (i.e. they are not public), and the judge may use written statements previously taken from witnesses who are either sick, have since died, or are afraid of attending the hearing

in person. The presence of a firearm during any crime transfers the jurisdiction to special courts (Gun Courts) irrespective of the nature of the original offense (robbery, rape, kidnapping, etc.). The only exceptions are murder cases, which are always brought before a jury.

In general, many of the comments made in relation to Santa Lucia and Trinidad and Tobago are also relevant for Jamaica. However, the right to a lawyer paid for by the State is guaranteed in all cases brought before the High Court in Jamaica, and it seems that this practice is maintained in a relevant part of cases brought before the Magistrates Court as well. Nevertheless, there is no public defense service available for defendants in drug-related cases.

4. Figures and Statistics

In general the system has little access to specific or disaggregated statistics. The institutions that produce such material do so in a general sense, and there is little room for assessing their function in each area of administration.

The dearth of statistical information on Jamaica's criminal justice system is a problem which likely arises from the difficult task of gathering such information without the aid of modern data-processing devices. Compounding the problem, justice system operators appear to discount the value of statistical data as a fundamental instrument for assessing the administration of individual justice sector institutions and the overall condition of the system as a whole.

In this sense publication of the judicial branch's first annual activities report in 2003, which includes general figures for the system's operation, constitutes an important step forward.

5. Courts

5.1. Structure

Jamaica has two types of courts of first instance that deal with criminal justice: a Resident Magistrates Court and a High Court. As is the case in the other jurisdictions reviewed, none of these courts is exclusively criminal, and they hear all types of cases from all jurisdictions. Nevertheless, some Magistrates Courts have specialized forums, including criminal courts.

The Jamaican Magistrates Courts have wider criminal jurisdiction than those of Santa Lucia and Trinidad and Tobago. They hear not only summary offenses, but also misdemeanors with expected sentences of up to five years. The island nation's 50 magistrates are distributed throughout its fourteen parishes. Minimum requirements for being a Magistrate are five years professional work experience, and candidates are appointed by the Governor General based on a recommendation from the Judicial Services Commission. Magistrates Courts have original juridication in criminal cases, gun and narcotics possession or distribution charges, family and

juvenile proceedings, traffic infractions, small claims and night court. Kingston has two Magistrates Court complexes one of which exclusively houses the city's eight criminal courts.

It is interesting to note that the Magistrates Court has created specialized criminal courts in some jurisdictional circuits. Some areas have night courts (which operate between 17:30 and 22:00 hours) to deal with cases involving people who cannot attend the courts during normal working hours, while other sectors house drug courts, which adjudicate cases involving defendants who are young, addict, non-violent offenders. A magistrate and two justices of the peace preside over these specialized drug courts, and may choose to issue sentences that include mandatory rehabilitation programs for those offenders found guilty.

The High Court has criminal jurisdiction over more serious crimes, following a Preliminary Inquiry hearing before magistrates. Requirements for being a High Court judge include ten years professional service, and candidates are appointed by the Governor General on recommendation from the Judicial Services Commission. Such judges have jurisdiction over an assorted array of cases. The country's 24 High Court judges are distributed throughout the 14 parishes.

The High Court is divided into the following tribunals: criminal, gun, tax, bankruptcy, civil, commercial, family and probate courts.

In addition to the above, Jamaica also has Justices of the Peace, who are based in the Magistrates Courts. These judges generally deal with minor offences and have some faculties in the criminal arena, such as hearing less serious cases; those that involve threats, stone throwing, fights, resisting arrest, use of indecent language or assault against a police officer.

5.2. Infrastructure and Equipment

Kingston's High Court is located in a spacious and apparently functional office, although the building itself is fairly old and somewhat deteriorated.

The trial courts themselves are similar to those in Britain (various rows of benches for the attorneys, witnesses standing up in the witness stand, the accused in a compartment behind the attorney benches), and they also function in the same way, although there is little space for the general public. In total there are twelve trial courts in the building, three of which are set aside for criminal cases. There is no sound amplification or recording system. High Court judges each have their own personal and quite spacious offices in the building.

In addition, the building houses the island's biggest legal library.

The infrastructure of the Magistrates Court is somewhat antiquated and ungainly. The buildings tend to be older and more deteriorated, and many are too small to meet their needs (the administrative offices and some of the courts themselves have hardly any space for the public). These courts do not have systems for amplifying or recording hearings.

Information Technology

Computers have only recently been integrated into the Jamaican court system and are generally concentrated in areas that deal with civil procedure.

All of the administrative units that we contacted were equipped with the latest generation of computers, although their use would still seem to be fairly restricted. In the administrative arena, Jamaica has the same case follow-up program that is used in the rest of the jurisdictions observed (JEMS), but in the criminal area this has only been implemented in the High Court and, according to information gathered from our interviews, still does not represent a daily working instrument. Computers have not replaced conventional tools such as books and handwritten data.

In the case of the High Court, each judge has a personal computer with internet access. However, one of the judges that we interviewed stated that only half of the judges had received computer training.

5.3. Administration, Efficiency and Productivity

As we saw in the other jurisdictions that have been observed, judicial operators in Jamaica have identified delay as one of the system's major problems. However, for the vast majority of the operators interviewed, the issue of productivity seems to be understand as a sole matter of founding.

Although operators associate improved administration with shortening procedures, the idea of letting judges to focus on jurisdictional matters, and the reduction of delays, their proposals are relatively vague (e.g. "computers have to be introduced," "administrators have to be hired,"), frequently associated exclusively with legal changes (e.g. "procedures need to be modified,") and often dominated by the notion of improving the same current work methods (e.g. the case file, preliminary inquiries, etc.). Thus, while administration enhancement is perceived as a way to better aid judges in their duties, structurally oriented changes tend not to get as much positive attention. For example, one interviewee stated that the Chief Justice had tried to change the first appointment for hearings from 10:00 to 9:30 a.m., and that the combined reaction of judges and lawyers undermined the initiative. Similarly, a project to abandon the preliminary inquiry stage was undermined by the reaction of the Bar Association, whose members (according to some judges) interpreted the initiative as a threat to their system of charging professional fees. The judges interviewed, attributed the problem of delays merely to an increase in criminal activity. And, the general absence of statistics itself (along with what seems to be an equally general absence of need for them as an instrument of court administration) constitutes another manifestation of the same scenario.

The opinions solicited from Ministry of Justice sources differed somewhat, as officials suggested that the major justice system obstruction was excessive bureaucracy in the processing of cases.

a) System Flow

The court system generates an annual report, which is drafted in each judicial period or assize in each judicial circuit. The report basically contains the number of cases filed and the number of cases disposed. It is difficult to draw a lot of conclusions from the information due to the way it is presented, its general nature and the way in which it is structured. For example, the statistics are not disaggregated by type of crime, do not include conviction and acquittal rates, and include categories that do not necessarily reflect the correct terminology (e.g. bench warrants), etc. The judicial branch used these statistics to draft its first annual activities report for 2002-2003.

The following table shows the total number of cases filed and disposed in the Magistrates Court, for the whole island and covering all crimes.

Cases Filed and Disposed
Magistrates Courts
2002

Filed	Disposed	Clearance rate %
241,499	215,285	89.1

The table shows that the disposal rate for Magistrates Courts is fairly high. We do not, however, have any information related to past delays in these courts.

Official statistics also fail to separate data into categories to show statistics specifically for cases filed and disposed in the purely criminal jurisdiction (as opposed to, for example, family court), which makes it impossible to know how the Magistrates Courts perform in this particular area.

Our observation of the First Instance Magistrates Court allowed us to note important signs of efficiency: we verified flows of between 20 and 50 hearings for new cases, with conviction rates of up to 75%. Almost all of the convictions were related to marijuana use and were dealt with by the imposition of fines. Nevertheless, we an state that the justice system suffers from many of the same problems that cause delay and postponements in other jurisdictions; therefore, a more detailed study is merited in order to study these high termination rates more carefully. Conversely, the reaction of court administrators was highly skeptical, and they informed us that the figures hid the true level of delay in the system. In fact, one judge who worked in both the Magistrates Courts and the High Court identified delay as the system's main problem.

In this sense, it is difficult to draw any conclusions without more specific figures that reflect delay, the flow composition of cases, termination rates by type of crime and the duration of cases according to crime and trial stage.

Lastly, it is important to recognize that Jamaican magistrates' jurisdiction covers crimes carrying sentences of up to five years, which has a significant impact on lowering the number of preliminary inquiries and trials before the High Court. Even so, delays in the High Courts are enormous, which makes the situation of the Magistrates Courts even more difficult.

The following table shows cases filed and disposed for the High Court:

Cases Filed and Disposed
High Court
2002

Filed	Disposed	Clearance rate %
1,698	678	39.9

No data was available on general delays in this Court, nor were there more specific figures related to the work of the High Court. However, the Guns Division of the High Court does have such figures and, although no general overview is presented and statistics in the area of gun offences may not necessarily reflect the condition of the rest of the system, the data below emphasizes the necessity for in-depth study of case flow in all High Court crime divisions. The following table shows these figures:

Cases Filed and Disposed
High Court Guns Division
2002

Filed	Disposed	Clearance rate %
551	484	87,8

Figures show a disposal rate of 87.8% for this court. However, the Gun Court closed the 2002 judicial year with 3,293 cases pending. If said delay is incorporated into the calculations, we obtain the following results:

Disposal Rate Considering Delays
High Court Guns Division
2002

Cases filed plus delays	Cases disposed	Clearance rate %
3,844	484	12.6

The following statistics show the types of disposals shown by these gun court figures:

Disposals
High Court Gun Division
2002

	Cases filed	Dismissal/lack of evidence/charges withdrawn/case dropped	Acquittal	Death of defendant	No order	Convicted	Sent on to other courts
No.	484	262	73	10	3	115	21
%	100	54.1	15.1	2.1	0.6	23.8	4.3

In more than half of the cases, the charges were dropped by the Public Prosecutor's office (54.1%). Overall, only 23.8% of defendants who were taken to trial in this court were actually convicted.

b) Administrative Mechanism

The general administration of the court system depends on the Ministry of Justice, although said body does not get involved in the daily administration of each court. The responsibilities of the Ministry of Justice are mainly focused on the provision of material resources and certain training activities for court administrators.

Daily administration tasks, directed by one or more court registrar, occur within the administrative body located in each court building. Court registrars report directly to the court's Senior Judge. Overall, these administrative operators are part of the civil service and can be transferred to any other area of State administration. The practice of incorporation of judicial administrators dates back to the end of the 1990s in most of the island's courts.

The Registrar supervises the court administrators and maintains the court's accounts; this post is held by a attorney who normally has other specific judicial functions (one of which is to hear cases of bankruptcy as well as cases dealing with taxes). Additionally, registrars authorize documents (normally copies), or sign orders and authorizations instead of the judge (judicial orders and authorizations are compiled by the parties and brought to court to be signed, in such a way that the registrar must ensure via the case file that such documents reflect the decision of the judge).

Thus, for example, the High Court in Kingston – the country's capital – has two Registrars who supervise four vice-registrars, two court administrators, one chief court assistant, three court assistants, more than twenty-five secretaries and other administrative personnel. In the Kingston Magistrates Court the administrative apparatus (which is different and independent from that of the High Court) includes a court administrator and around 25 staff members.

In general staff members administer case files and inform the judge about when he or she will have time available, but they do not really control the court schedule. Most of the justice

system operators interviewed stated that conferring control of the docket on the administrative staff was not feasible.

c) Hearings

Hearings before the Magistrates Court are in general quite informal and dynamic; defendants enter the courtroom as they arrive at the courthouse, and the judge speaks directly to them (the judge may point to someone in the room and ask the person who he or she is, what they are accused of, etc.). Court officials and attorneys move around and intervene freely. Each hearing lasts a few minutes and rulings are recorded by the judge in concise, summarized form, all of which makes the process run quite efficiently.

As records are basically kept in handwritten form, some types of information cannot be accessed easily. Therefore, for example (and as we observed), a judge may ask a defendant to state the last time that he or she appeared before the court, and if the defendant recalls the date the court then reviews the records until they find the corroborating entries.

We did not have an opportunity to observe a preliminary inquiry, though the judicial operators we interviewed told us that this stage of criminal procedure is similar to that which was observed in other jurisdictions: in practice, the inquiry is virtually a complete trial in itself before the actual trial, and includes exhaustive presentations of evidence, discontinuous hearings that can drag on for weeks, and the recording of all declarations and other aspects manually and in detail by the judge. Furthermore, these records must then be transcribed for the High Court. In fact, as explained by one Court administrator, the only element of the trial itself that the preliminary inquiry does not reproduce is the cross-examination by the prosecutor of the defense witnesses. The Public Prosecutor's Office indicated that these intermittent proceedings can drag on for up to six months.

The above-mentioned factor of the hand-recording of testimony increases the sluggish inefficiency of the preliminary hearing stage. In the High Court this practice is linked to the belief that the judge needs to have the complete judicial record in front of his or her eyes as the case unfolds, instead of operating with functional notes that focus on the decisions taken during the previous stages of the trial. All of this hinders the litigation process before this court.

We also were not able to attend trials in the Magistrates' Court, where trial hearings are not concentrated, and may be interspersed with other hearings of the Court.

d) Distribution of Work

Criminal cases in the High Court are heard in three sessions (called "*assizes*"), which are held over a total of 9 months of the year. In Kingston, however, there are 6 permanent judges that exclusively hear criminal cases (2 in the Gun Courts for cases involving firearms, and 4 for general criminal matters). The High Court operates in 14 circuits throughout the island. Judges visit their jurisdiction when Court is in session, relieving those parties involved of the burden of having to travel to the capital. Cases are scheduled by the courts' adminstrative offices.

In the case of the Kingston Magistrates Court, the court office automatically sends all cases to the courtroom assigned for initial hearings, where sentences are passed down immediately when the defendant pleads guilty. In cases in which defendants do not admit culpability, a new hearing date is set in one of the criminal courts. The scheduling of the criminal court hearing is the reponsibility of a judicial staff member, who notes the agenda in a book containing a master compendium of the schedules of all courtrooms. Judges from the initial hearing also make entries into this book. Second hearings are filled in as the judge moves through the docket of initial hearings. One Magistrate estimated that approximately half of all defendants plead guilty at initial hearings.

Court administration revolves around keeping case files and manual records (books). According to one High Court official, the files mainly contain documents presented by the parties and not those records made by the Court. The administrative staff of this Court stated that they do not dedicate much time to maintaining case files. At least two other aspects seem to take up quite a lot of time: notifications and hearing records.

e) Summons and Notifications

The courts are responsible for serving a significant proportion of official summons and notifications (especially in the case of unwilling witnesses and summons and notification of parties). A staff member from the High Court administrative office in Kingston reported that the two court managers and three additional administrative staff dedicated virtually their whole workday to producing these documents, which were then delivered upon the respective party by a sixth staff member, whose time was also consumed by this task. We heard of one attempt to automate this system by giving attorneys' access to rulings online, but the project was unsuccessful. One judge felt that this outcome was generally due to the fact that many attorneys were computer illiterateand did not have access to the Internet.

f) Hearing Records

As was observed in the other jurisdictions, records of hearings in Jamaica are maintained in the form of handwritten notes and other records generated personally by the judge. The result of this is that witnesses basically dictate their testimony to the judge, which slows the pace of procedures.

The High Court has gradually introduced the use of CAT (computer-aided technology), although the system has not produced the desired results. Indeed, in one trial we observed, the judge and both parties took detailed, handwritten notes of the testimony that was offered despite the fact that a stenographer was recording the hearing using CAT. A number of operators explained that this situation was due to the fact that real-time transcription systems that allow the judge on-screen access to the testimony on the dais were not yet available. There exists a general perception that a judge must have the complete transcript of the testimony in front of him or her as it is being produced in order to rule effectively.

g) Postponements

The issue of ongoing postponements of cases is also a concern for judicial operators in Jamaica, although some feel that it has diminished significantly recently. The most important reform implemented in the civil jurisdiction (in 2003) looked to resolve this problem by introducing the concept of "case management," which operators understand to include increased attributions for judges to move cases along, even beyond the case advancement impelled by the actions of litigants. No such judicial faculties exist as yet in the criminal jurisdiction.

Virtually all operators identify the main cause of postponements to be difficulties in notifying witnesses and their resulting failure to appear at hearings. In contrast to the other jurisdictions observed, however, failure to appear at hearings is not considered a significant problem, and operators are of the opinion that hearings are not overscheduled.

In contrast, judges felt that attorneys used postponements strategically to manipulate the system.

Although some overscheduling was observed in Jamaica, none of the operators interviewed thought this was a matter for concern.

h) Overscheduling

Overbooking of hearings seems to be common practice, at least in the High Court. One judge commented that the failure of many witnesses to appear means that the courts may schedule as many as 10 trial hearings per day in order to ensure that the court is occupied.

5.4. Training

Jamaica has had a Judicial Training Institute that organizes seminars throughout the year since 1997. However, these courses tend to be short and broad-based, are not mandatory for judges and, although some offer practical skills such as redaction of sentences, there is no overall training program for litigation.

6. The Prosecutorial System

6.1. Structure

The Office of the Director of Public Prosecution (DPP) is officially in charge of all criminal prosecution, though in practice prosecutors bring actions for major crimes before the High Court, while minor criminal actions are brought before the Magistrates' Court by officials called Clerks of the Court.

Apart from the Director, the DPP has 37 prosecutors and approximately 30 administrative staffers.
The Clerks are attorneys who work under the Ministry of Justice but who are officially supervised by the DPP, and whose offices are located in the Magistrates' Court building. It is important to note, however, this DPP oversight is an institutional formality and is neither operative nor daily. Indeed, in the DPP operational plan there are no figures or data referring to the work of the Clerks, nor are there any associated strategies.

6.2. Distribution of Work

The Clerks are organized around the structure of the Magistrates' Court, with one Clerk assigned to each courtroom. Assignment is not strictly formal, in that different Magistrates may sit in different courtrooms if necessary, or a Clerk may fill in for another in a different courtroom. However, in general each Clerk works with one judge. Thus, the subject matter specialization that applies to judges, at least in large cities, also tends to appertain to the Clerks.

Prosecutors and their support teams are assigned to a specific Court (Gun Court, High Court, Court of Appeal), by the Director for each of the three annual circuits (*assizes*). They work in pairs, with a more experienced senior prosecutor working with a less experienced junior prosecutor. Case assignments within the individual courts are made by the Director of Public Prosecution.

Criminal investigation is carried out by the police in a completely autonomous manner, with the most significant intervention by the DPP at this stage being provision of legal advice. In general the same police officer carries the investigation from beginning to end.

There are indications that the interaction between prosecutors and police officers is quite procedurally formal. For example, once the investigation is completed the police send the file to the DPP in three copies, each one manually typed by the officer. The prosecutors review the file, and if they are not satisfied they retain one copy and return the other two with the respective instruction. Any new procedures resulting from this must also be typed out in triplicate, one for each version of the original investigation file. When we asked why the officers did not use photocopies in place of typing three separate documents, the DPP staff replied that they did not see the benefit. Our suggestion that the typing of documents and copies most likely consumed enormous quantities of staff-hours met with the response that paper for photocopies also had cost money. Furthermore, those we spoke to indicated that the telephone was only to be used for truly minor matters, as set out by police force protocol itself: each step in the investigation must be reviewed by a chain of command within the police force, making efficient and effective supervision by the prosecutor illusory in nature.

Nevertheless, DPP officials felt that police work had improved: while prosecutors had to return around half of the investigation files a few years ago, today only a few are returned for additional action. However, no figures are available that would allow for the assessment of the performance of police investigators or their interactions with the DPP. There is a lack of detailed information, such as the duration of police investigations for each type of crime or the number and nature of investigative actions that are usually not satisfactory. Although we did

not have the opportunity to interview police officers, the review of some files and the observation of various hearings suggests that investigative methods employed by the police could benefit from standardization, automation and less formality. For example, we encountered such problems as relatively unformatted declarations by police officers written in longhand in narrative form and; somewhat precarious custody protocols for regular types of evidence (bullets, for example); and trials in which no photographs or diagrams were presented in order to show the scene of the crime in contexts where this aspect in the case was ad rem in the proceedings.

6.3. Workload, Productivity and Performance

As explained at the beginning of this report, the lack of statistical information placed the issue of performance a secondary concern. The Director of Public Prosecutions thought that the few prosecutors in the Department were overworked. When asked about the cause for delays and postponements in the system, this official cited shortages of prosecutors and judges, the slowness of the latter (demonstrated in actions such as the prolonging of procedures to pursue irrelevant details or taking a week to determine whether a confession was voluntary or not), and the excessive cross-examination by the defense. Although all of the above is consistent with our observations, the comments show that the Director of Public Prosecution has difficulty identifying problems of inefficiency within his own organization.

However, there is no statistical data with which to assess in detail the workload and productivity of the prosecutors and Clerks. The DPP only maintains statistics on cases entering and leaving the system, which are collected manually.

The table below shows these figures (Clearance rate refers to filed/disposed):

Cases Filed and Disposed
Public Prosecution
2003

Filed	Disposed	Clearance rate %
1,905	827	43.4

Based on these figures, the following table offers the average workload per prosecutor, estimated per case filed and disposed:[29]

Average Workload of Prosecutors
(No. of cases)
2003

	Filed	Disposed
	1,905	827

[29] We divided the number of cases by 37 prosecutors and used a period of nine months, which is equivalent to the court's three annual sessions.

Yearly	51.5	22.4
Monthly	5.7	2.5

The figures show that each prosecutor receives an average of 51.5 cases per year, of which 22.4 are disposed. This translated into an average of 5.7 cases filed per month, of which around 2.5 are disposed.

These figures may be considered in relation to those presented above for the Gun Court division of the High Court, where 54.1% of cases did not result in a sentence. We do not know if this figure is representative of High Court criminal cases in general, but in light of the prosecutorial workload shown above, it would be interesting to find out if the datum is indeed typical .

Other statistical information we obtained indicated that each prosecutor has an average of 12 to 15 cases open at any one time, and attends an average of 2 hearings per day.[30]

6.4. Case Terminations and Selection

The Director of Public Prosecution is constitutionally empowered with wide discretionary capabilities for discontinuing prosecution.

In practice, such faculties are exercised in a fair number of cases and include a wide range of measures: plea bargaining, bypassing of preliminary inquiry in order to avoid double victimization, temporarily staying proceedings while a witness is not available, avoiding a trial where evidence is weak, or downgrading charges in light of the circumstances (for example, where a homicide involves provocation). Some of these faculties require that the prosecutor obtain the consent of all parties, including the judge.

In the case of plea bargaining, the DPP recognized that this was not an official procedure and, as such, was not employed regularly.

In general, the DPP's discretionary powers for early termination of cases are not employed as inserted in a deliberate and predeterminated criminal policy. Deliberately seeking aternative sentences, such as ordering community service or suspending a defendant's sentence is considered an inappropriate use of power by the DPP and an a intercession into the realm of a judge's sentencing function.

6.5. Automation and Statistics

The DPP Office has computers, though their use to carry out tasks, organize work and generate statistical information still seems limited. Indeed, general statistics for cases filed and disposed are compiled using word processors rather than more appropriate formats such as databases or, better still, Excel spreadsheets.

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[30] Gregory Girard, Preliminary Report, April 2004.

7. The Public Defender's Office

Jamaica has a public criminal defense system based on direct, fixed-rate hiring of private attorneys who are assigned as public defenders in certain cases by the courts.

The system applies to all criminal cases before the High Court. Having legal counsel is not a requirement in the Magistrates Court, although both Magistrates and Clerks interviewed agreed that in almost all cases ("approximately 90 %") defendants are professionally represented. Drug offenses are not covered under the public defense system.

8. Initiatives and Reforms

Jamaica is currently carrying out various initiatives, which are at different stages of development, to correct some of the problems discussed herein:

- **Civil procedure and case management reform**. Most efforts for judicial modernization in Jamaica have been focused on civil procedure. The civil procedure reform was implemented in 2002, "in response to complaints that litigation was too complex, slow, uncertain and costly."[31] Among other aspects, "the new rules limit parties from digressing widely and without consideration. Furthermore, the rules are designed for reducing the cost associated with litigation through encouraging conciliation and shortening procedures."[32] This last aspect has been addressed by putting judges in charge of the rhythm of the litigation, granting them faculties for speeding up cases, setting deadlines and requiring parties to fulfill them. A number of the operators we interviewed considered this reform a guideline that should be extended to criminal procedures in the future.

- **Automation and information systems**. There has been a concerted effort in Jamaica to provide the courts with computers. Additionally, the High Court now has the case follow-up system described above for other jurisdictions (JEMS), and this will be extended to the Magistrates Court.

- **Alternative Dispute Resolution**. There is a strong push to encourage alternative dispute resolution methods based on mediation and restorative justice. This initiative will assign important roles to mediators and justices of the peace in both alternative and complementary measures to litigation.

- **Preliminary Inquiry**: as in other jurisdictions, the idea has been raised to transform the preliminary inquiry into a probable cause hearing based on the prosecutor's case file, although this has not been put into place as of yet, and has generated some opposition within the bar association.

[31] Chief Justice, Annual Court Report, 2002-2003, p. 23.
[32] Ibid.