

# ***JAMAICA: JUDICIAL DISPUTE RESOLUTION NETWORK (JDRN) COUNTRY REPORT***

## ***INTRODUCTION***

Jamaica is a Caribbean independent, tropical, small island developing state located in the Americas. A distinctly colourful, descriptive and lyrical dialectic - Jamaican Patois - is often spoken but English is the official language. With a multicultural and multiethnic population of nearly three million, the nation and its people have a powerful sense of identity which is expressed through music, sports, food and a rich cultural heritage.

## ***GOVERNANCE AND LEGAL SYSTEMS***

A constitutional parliamentary democracy, the governance system in Jamaica is based on the British Westminster Model, with the Judiciary as one of three co-equal branches of government, the others being the Executive and the Legislative. The Head of State of the United Kingdom remains the Head of State of Jamaica. This arrangement follows Jamaica's independence from the United Kingdom on 6<sup>th</sup> August 1962. The British Common Law was similarly inherited and remains the bedrock of the Jamaican legal system.

## ***COURT STRUCTURE***

There is a hierarchical court structure in Jamaica, which retains the London based Judicial Committee of the Privy Council (JCPC) as its final appellate "court" and consequently it is our highest court

LSitting below the JCPC and sited in Kingston, Jamaica, the Court of Appeal is the highest court on the island and effectively determines most appeals.

The Supreme Court of Judicature of Jamaica, the Revenue Court and the Gun Court hear and determine matters at the national level. These courts sit below the Court of Appeal and are superior courts of record. The Supreme Court is a trial court of unlimited civil and criminal jurisdiction. The Revenue Courts, as the name suggests, hears and determines

revenue related matters. The Gun Court is a specialised court that addresses firearm offences.

Parish Courts, together with specialized Family Courts, Children Courts, Traffic Court, Drug Courts and the Office of the Special Coroner operate at the municipal level. A majority of criminal and civil matters are heard and determined in these courts.

Below the Parish Courts and specialized courts, Lay Magistrates Courts also operate at the municipal level.

Jamaica also subscribes to the original jurisdiction of the Caribbean Court of Justice (CCJ), an international court with original, compulsory and exclusive jurisdiction to settle disputes in relation to the interpretation and application of the regional *Revised Treaty of Chaguaramas*.

### ***Judicial Committee of His Majesty's Privy Council (JCPC)***

Pursuant to section 110 of the *Jamaica (Constitution) Order in Council, 1962* appeals lie from decisions of the Court of Appeal to His Majesty in Council as of right and with leave of the Court of Appeal in prescribed cases, and with special leave of His Majesty. Broadly, appeals are restricted to cases of a certain monetary value or of exceptional public importance. The JCPC hears the appeals and makes recommendations to his Majesty as to their resolution.

### ***Caribbean Court of Justice (CCJ)***

As a member of the Caribbean Community (CARICOM), Jamaica has accepted the original, compulsory and exclusive jurisdiction of the CCJ to settle disputes in relation to the interpretation and application of the *Revised Treaty of Chaguaramas*, which establishes the CARICOM and includes the CARICOM Single Market and Economy (CSME). In these regards, requests for interpretive assistance are made by national courts and tribunals by way of referrals to the CCJ. Referrals are not appeals of decisions of national courts or tribunals. While the CCJ is headquartered, in the Republic of Trinidad and Tobago, another Caribbean Island, it is an itinerant Court, which is authorized to travel to and operate in any contracting state, including Jamaica.

### ***Court of Appeal***

The Court of Appeal derives its authority from the *Jamaica (Constitution) Order in Council* which establishes it. It is regulated in jurisdiction by the *Judicature (Appellate Jurisdiction) Act*, the *Judicature (Parish Courts) Act* and the *Justices of the Peace (Appeals) Act*.

The court hears and determines appeals from all divisions of the Supreme Court of Judicature of Jamaica, the Revenue Court, the Gun Court, Parish Courts (formerly Resident Magistrates Courts), Family and Children's Courts, Traffic Court, Coroner's Court, Office of the Special Coroner, Courts-martial and tribunals, as prescribed by statute.

The Court also determines references by the Governor General on consideration of petitions for the exercise of His Majesty's mercy or representations by other persons in respect of the conviction of others in prescribed circumstances; and determines questions of law reserved or case stated, as prescribed by statute.

### ***Supreme Court of Judicature of Jamaica***

The Supreme Court for Jamaica is established by the *Jamaica (Constitution) Order in Council* and is generally regulated in its authority and jurisdiction by the *Judicature (Supreme Court) Act* and the *Judicature (Rules of Court) Act*. The Supreme Court is a superior Court of Record with inherent and unlimited jurisdiction.

The Court has and exercises all jurisdiction, power and authority which was vested in the Supreme Court of Judicature; the High Court of Chancery; the Incumbered Estates Court; the Court of Ordinary; the Court of Divorce and Matrimonial Causes; the Chief Court of Bankruptcy; the Circuit Courts; Judges of the preceding Courts; the Governor as Chancellor or Ordinary acting in any judicial capacity; and ministerial powers, duties, and authorities incident to such jurisdiction, power and authority, at the commencement of the *Judicature (Supreme Court) Act*.

Broadly, the more serious criminal are heard and determined in the Supreme Court in the High Court Criminal (Home and Circuit) Divisions, and the more complex civil cases are heard in the High Court Civil Division, Commercial Division, Family Division, and Probate Division as appropriate. The Supreme Court also hears constitutional and administrative law cases.

It hears appeals from inferior courts and tribunals, as prescribed by statute.

## ***Revenue Court***

Established by the *Judicature (Revenue Court) Act*, the Revenue Court is a specialist superior court of record which has jurisdiction to hear and determine appeals, causes or matters brought pursuant to enactments referenced in the enabling statute, or by any other law. Appeals to the court proceed by way of rehearing. Subject to the *Judicature (Revenue Court) Act*, the provisions of the *Judicature (Supreme Court) Act* and the *Judicature (Rules of Court) Act* also apply to the Revenue Court.

## ***Gun Court***

*The Gun Court*, a superior court of record, is established by the *Gun Court Act* and its divisions are spread across the High, Circuit and Parish Courts.

Where a Puisne Judge (Judge of the Supreme Court) sits without a jury, the judge does so as a High Court Division of the Gun Court. This division of the court has jurisdiction to hear and determine any firearm offences other than murder or treason, and other offences specified in the Schedule to the statute, wherever those offences are committed in Jamaica.

When a Judge of the Supreme Court is exercising the jurisdiction of a Circuit Court, the court is referred to as the Circuit Court Division of the Gun Court. This division sits with a jury and has the jurisdiction of a Circuit Court established under the *Judicature (Supreme Court) Act*. The geographical extent of the Court's jurisdiction is deemed to extend to all parishes of Jamaica, and a jury required by the Court may be selected from the jury list in force for such parish or parishes as the Chief Justice directs.

Any sitting of the Court at which a Judge of the Supreme Court presides is a superior court of record.

The Parish Court Division of the Gun Court has special statutory summary jurisdiction to conduct committal proceedings relating to firearm offences of murder or treason where committed in the parishes of Kingston and St. Andrew, or any other parish for which a regional Gun Court has not been established or designated, and to commit the accused to a Circuit Court Division of the Gun Court. This division of the court also hears and determines offences for the publication of information in contravention of a direction not to publish particulars of in camera proceedings; has the jurisdiction to grant bail, fix trial dates and determine all matters appearing to a Judge of the Parish Court to be ancillary to a trial in any Division of the Gun Court.

A *Regional Gun Court (Western)* is also established by the *Gun Court Act*, with High, Circuit and Parish Court Divisions which have like jurisdiction to the corresponding Divisions of the *Gun Court* save that their geographical jurisdiction extends only to the parishes of St. James, Hanover, Trelawny and Westmoreland.

### **Parish Courts**

The Parish Courts (formerly Resident Magistrates Courts) are established pursuant to the *Judicature (Parish Courts) Act*. There is a Parish Court for each of the fourteen parishes of Jamaica with jurisdiction limited within parish boundaries, except for the court for the parishes of Kingston and St. Andrew, which has jurisdiction over both parishes. The work of the Parish Courts is supported by outstations, which are court houses located in other parts of the parish as the main court. The outstations have and exercise the jurisdiction assigned to the related parish court.

Every parish court is an inferior court of record, and Judges of the Court exercise only such civil, criminal, revenue and other subject matter jurisdiction conferred on them by the *Judicature (Parish Courts) Act* and other enactments.

In addition to geographical, residential and establishment limitations, the jurisdiction of parish courts is also limited by reference to prescribed monetary values in common law, interpleader, replevin, land, equity, probate and administration matters.

Judges of the Parish Court are vested with both indictable jurisdiction and special statutory Summary Jurisdiction in criminal cases.

While indictable offences (more serious criminal offences) are generally tried in the Supreme Court, Judges of the Parish Court are permitted to try indictable offences by statutory prescription. Those matters are initiated on Information, but an order of indictment is made and signed by a Judge of the Parish Court ahead of the arraignment of an accused to allow the matter to proceed on indictment.

Judges of the Parish Court may also exercise Special Statutory Summary Jurisdiction in respect of offences which do not fall within the Indictable or Summary Jurisdiction of the Court. As the name suggests, the summary jurisdiction is conferred by statute. These matters begin and proceed on Information.

In most Parish Courts throughout the island, work is distributed across various divisions to include the civil, criminal, family, children, tax, and traffic divisions.

In addition to the above divisions, special sittings of the Parish Courts styled “*Small Claims Courts*” are established pursuant to the Parish Court Rules. Civil claims which do

not exceed JMD \$50,000.00 in which the parties are unrepresented are heard and determined at these sittings.

Coronial jurisdiction is exercised by Judges of the Parish Court who are *ex officio* Coroners of their respective parishes, pursuant to the *Coroners Act*. Under the said Act, the parishes of Kingston and St. Andrew are deemed to form a single parish and a Judge of the Parish Court for either parish exercises jurisdiction as a Coroner over both parishes.

## **Family Courts**

The *Judicature (Family Court) Act* establishes the Family Court, which is a court of record.

Each Judge of the Family Court must be a Judge of the Parish Court and save for the provisions of the *Judicature (Family Court) Act*, such a Judge has the authority, powers, privileges and immunities which relate to the office of a Judge of the Parish Court.

Family Courts are currently established for the Corporate Area Region (Kingston and St. Andrew); the St. James, Hanover and Westmoreland Region; Trelawny, Clarendon, Manchester and St. Ann.

The courts exercise jurisdiction in statutes listed in the Schedule to the enabling legislation. For example, jurisdiction is exercised in respect of guardianship, custody and adoption of children; affiliation; maintenance; and domestic violence matters. Family Courts also conduct trials and committal proceedings for children/ young offenders when they are not charged with adults.

Where no Family Court is established in a parish, the Judge of the Parish Court exercises the jurisdiction of a Judge of the Family Court.

## **Children's Courts**

The Children's Court is a creature of statute established pursuant to section 71(1) of the *Child Care and Protection Act*.

A Children's Court is comprised of a Judge of the Parish Court as chairman, and two Justices of the Peace, one of whom must be a woman, and both members of the special panel of Justices of the Peace appointed by the Minister of Justice on the basis of being specially qualified to deal with juvenile cases. The Court is nevertheless fully constituted where the chairperson and only one specially qualified Justice of the Peace sits.

In the absence of a prepared panel, the Children's Court constitutes a Judge of the Parish Court alone.

In parishes where there is a Family Court, that Court is deemed to be duly constituted as a Children's Court notwithstanding that it is constituted as a single Judge of the Family Court.

### **Traffic Court**

*The Traffic Court Act* establishes the Traffic Court for the Corporate Area. The provisions of the *Judicature (Parish Court) Act* and the *Justices of the Peace Jurisdiction Act* also apply to the Court, its processes, procedures and practices. It is a court of record which hears and determines the traffic offences prescribed in the Schedule, where committed in the parishes of Kingston or St. Andrew. Unless the offence is one which is triable on indictment and the offender is indicated, the court exercises the special statutory summary Jurisdiction of a Parish Court. Judges of the Parish Court sit in the Traffic Court.

### **The Office of the Special Coroner**

The *Coroner's Court Act* establishes the Office of the Special Coroner which constitutes the Special Coroner, and such number of Assistant Special Coroners as may be necessary, each of whom must be a Judge of the Parish Court and possess qualifications for appointment as Senior Judge of the Parish Court. The Office exercises the jurisdictions and functions of the coroner in respect of deaths occurring anywhere in the Island, where there is reasonable cause to suspect that the death occurred because of the act or omission of an agent of the State.

### **Drug Courts**

Drug Courts derive their authority from the *Drug Court (Treatment and Rehabilitation of Offenders) Act*. It is the responsibility of the Judge of the Parish Court presiding in each parish to declare a sitting of the Parish Court to be a Drug Court.

Where a person is arrested and charged with a "relevant offence" within the meaning of the Act and is dependent on any drug, which includes alcohol, the person may be referred

to the Drug Court. A person may also be brought directly before the Drug Court if charged with a “relevant offence”.

Where the person is eligible, his participation in a prescribed treatment programme is considered appropriate, and he accepts the conditions to be imposed by a Drug Court in relation to his participation in a treatment programme, he is brought before the court to be dealt with in accordance with the Act.

Where the offender fails to complete the prescribed treatment programme, the Drug Court may proceed to determine the matter in the ordinary way or make an order requiring the offender to undergo a new prescribed treatment programme if it considers that the circumstances of the case so warrant. Where the offender successfully completes the prescribed treatment programme, the Drug Court is authorized to discharge him in relation to the relevant offence, either absolutely or on condition as the court thinks fit.

A Drug Court is constituted by a Judge of the Parish Court as chairman, and two Justices of the Peace, one of whom must be a woman, and both of whom must be members of the special panel of Justices of the Peace appointed by the Minister of Justice on the basis of being specially qualified to deal with cases before the Drug Court. The Court is nevertheless fully constituted where there is a chairperson and only one specially qualified Justice of the Peace.

Where the Court conducts a trial to determine guilt or innocence it is constituted of a Judge of the Parish Court alone.

### **Courts of Petty Sessions/ Lay Magistrates Courts**

Lay Magistrates Courts are established and generally regulated by the *Justice of the Peace Jurisdiction Act*. These courts are presided over by two or more Justices of the Peace, although a single Justice may hear and determine a matter with the permission of the accused.

These courts hear and determine summary criminal (minor) offences which are punishable by statute. For example, common assaults, threats, resisting arrest, assaulting a constable, disorderly conduct, using indecent or calumnious language.

Judges of the Parish Court are also empowered to sit as Justices of the Peace in the Lay Magistrates Courts as provided by statute, and when they do so, they have all the powers and authorities committed to and exercisable by two or more justices associated and sitting together. For example, under the *Committal Proceedings Act*, a Judge of the Parish Court sits as an examining Justice in the Lay Magistrates Court in committal



proceedings which have replaced preliminary enquiries for examination into indictable offences triable in a criminal division of the Supreme Court.

## ***JUDICIAL DISPUTE RESOLUTION MODALITIES AND TOOLS***

There are several dispute resolution modalities and tools engaged by the Judiciary of Jamaica in criminal and civil proceedings which have among their objectives the early, amicable, cost effective and fair resolution of court disputes without the need for a trial. The modalities and tools are:

- (a) Proactive Judge -led Case Management;
- (b) Mediation by Approved Mediators;
- (c) Restorative Justice; and
- (d) Child Diversion.

### **Proactive Judge-led Case Management**

#### **Civil Matters**

The *Civil Procedure Rules, 2002 (CPR)* which applies to all civil proceedings in the Supreme Court, including judicial review and applications under the *constitution*, specifically requires the court to further the overriding objective of dealing with cases justly, by actively managing cases. This includes encouraging parties to co-operate with each other in the conduct of proceedings, identifying the issues at an early stage, promptly deciding which issues need full investigation at trial, and summarily disposing of the other issues, actively encouraging parties to use appropriate forms of dispute resolution, actively encourage and assist parties to settle cases in whole or part in terms fair to each of them; and making appropriate use of technology.

The *Civil Procedure Rules* do not apply to insolvency, prize court, or other proceedings in a court instituted under an enactment as far as rules made under the enactment regulate proceedings of the court.

*Practice Direction No. 20 of 2021* also goes in aid of proactive judge-led case management through the institutionalization of *Front Loaded Case Management* which is “a Judicial Officer driven process for ensuring the earlier, more effective preparation of cases to which the CPR apply. It is aimed at capitalising on the opportunities which are available throughout the litigation process for the timely resolution of cases and ensuring that only those matters which are necessary to be tried are assigned trial dates.”

## **Criminal Matters**

*Judicature (Case Management in Criminal Cases) Rules, 2011* applies to the management of cases in a Circuit Court. The court has a duty to actively manage cases, which includes the early identification of the real issues, setting of a timetable for the progression of cases, monitoring the progress of the case and compliance with directions, discouraging delay, encouraging participants to co-operate in the progression of the case, making use of technology, and giving directions appropriate to the needs of the case as soon as possible.

*Practice Direction (No 6) (Criminal) of 2020* also governs case management in criminal proceedings in the Supreme Court (Circuit Courts) and Circuit Court Division of the Gun Court, and the High Court Division of the Gun Court. It also provides guidance to Judges and parties of the Parish Courts, Family Courts and Children's Courts in the conduct of criminal proceedings, where appropriate. It mandates courts to deal with cases in a just, timely and efficient manner, including the early resolution of cases without a trial where appropriate.

## **Generally**

Outside of any statutory or rule-based authority, proactive judge-led case management is an imperative for the Judiciary of Jamaica and is critical to attainment of our strategic objective to improve stakeholder satisfaction through the provision of efficient services, which sits at the apex of successive strategic business plans. Proactive judge-led case management is required to be exercised by all judicial officers at all levels of the Judiciary, in all cases, and on every interaction with a case from the point of filing to disposition. This is especially critical considering high case volume in the various courts, historically high levels of case backlog and resource constraints, including infrastructural and human, which make it impossible to conduct trials for all cases which come before the courts in a timely and efficient manner.

Proactive judge-led management of cases generally involves each judicial officer engaging actively in:

- (a) the early identification of issues;
- (b) identifying opportunities for the resolution of issues identified and encouraging and facilitating resolutions other than by trial, where appropriate;
- (c) discouraging adjournments which are to be granted only for good cause and are to be few in any event);
- (d) effectively using available technology to manage workflow;

- (e) managing and monitoring the progress of cases through intermediate timelines;
- (f) implementing rational and effective trial setting policies for matters which require disposition by trial.

In assisting judicial officers in these regards, among other things, the Judiciary of Jamaica:

- (a) periodically exposes all judicial officers to case management training;
- (b) exposes Judicial Officers to mediation training and certification;
- (c) measures the performance of our courts to inform decision making;
- (d) introduced differentiated case management in several courts with the intention of its introduction in all courts in the medium term;
- (e) introduced subject area specialization where they did not previously exist to promote greater consistency and accountability in the management of cases by judicial officers;
- (f) reviews and recommends revision of systems and processes to better enable proactive judge-led case management;
- (g) increased investment in technology; and
- (h) and continuously advocates for the introduction and use of appropriate court technology.

While there is currently no policy or programme within the Jamaica Judiciary which embeds *Early Neutral Evaluation* and *Judge-Facilitated Negotiations*, judicial officers are not prevented from providing parties with non-binding assessments of the strengths and weakness of their cases and state a considered view on likely trial outcome in proactively managing cases. Where appropriate, judicial officers are also not prevented from facilitating and encouraging parties to negotiate, monitoring the progress of negotiations and providing constructive advice as to how they may be furthered. They are also not prevented from proposing creative solutions for overcoming limitations and hurdles to the progress and conclusion of negotiations and arriving at a resolution of disputes without the need for trial where that is appropriate.

Interventions of this kind are done with the concurrence of or at the request of the parties to the litigation (usually in simple civil cases).

Proactive judge-led case management is done by judicial officers in exercise of the general duty to effectively and justly manage cases and does not come at additional cost to litigants. When engaged and as appropriate, the process may enable matters to be determined without trial through court facilitated comprehensive settlements, discontinuances and withdrawals.

### **Mediation by Approved Mediators**

## Civil Matters

### *Supreme Court*

Formal mediation proceedings in the civil jurisdiction of the Supreme Court are enabled by the *Civil Procedure Rules, 2002* (CPR) for the express purpose of promoting the early and fair resolution of disputes; reducing the costs of litigation to the parties and the court system; improving the pace of litigation, access to justice and user satisfaction with dispute resolution in the justice system; and maintaining the quality of litigation outcomes.

The process is generally applicable to all proceedings in the civil jurisdiction of the Supreme Court but does not apply to fixed date claim forms, administrative law proceedings, writs of Habeas Corpus, bail applications, non-contentious probate proceedings and admiralty proceedings under the CPR.

Mandatory at the time of introduction of the CPR, mediation is now optional consequent on an August 2023 amendment. While a judge or master may refer a matter to mediation at any stage of the proceedings, the suitability of mediation is required to be considered and discussed with the parties to the litigation at the first case management conference following the joinder of issue between the parties, on the filing of a defence to a claim. A referral to mediation is now only made with the consent of the parties.

Mediations are to be completed within ninety (90) days of the date of referral, but the parties may agree an extension for completion for a further thirty (30) days. The court may permit additional time for the conclusion of mediation.

A mediator assists the parties (including their attorneys-at-law where represented) by meeting with them together or separately to encourage and facilitate discussions in an attempt to reach a mutually acceptable resolution of the dispute in whole or part; or adopt any procedure that is just to the parties, and which facilitates and encourages an early settlement of disputed issues.

Any agreement reached by the parties at mediation is required to be recorded in writing and signed by the parties, and their attorneys-at-law if any. Where the dispute is unresolved by mediation, the court proceeds to determine a matter in the ordinary way.

The process is confidential and to that end, discussions during the mediation and documents prepared solely for mediation proceedings may not be disclosed in any other proceedings or context; and parties and their attorneys-at-law are prohibited from referring to any matters disclosed in mediation at any subsequent hearing or trial of the claim. Unless the report of a mediator discloses that an agreement has been reached,

for which the court must make an order in the terms of the report, the report is absolutely privileged.

### *Parish Courts*

At the level of the Parish Courts, where a judge is of the opinion that mediation may be of assistance to the parties in an action, the *Parish Court Rules* vests a Judge with the discretion to advise the parties to attend upon an approved mediator and adjourn proceedings to enable attendance.

Where parties attend upon an approved mediator and declare on return to the court that they have arrived at a settlement, the terms of the settlement are endorsed on the records and binds the parties.

The judge is required to hear and determine the matter where there is failure to arrive at a settlement, and in the course of doing so, no party is permitted to adduce evidence of anything done or said by any party during the course of mediation.

### **Criminal Matters**

Under the *Criminal Justice (Reform) Act*, where a person is charged with an offence listed in the Second Schedule to the Act (the offences are generally considered minor offences, the most serious of which are unlawful wounding, assault, and assault occasioning actual bodily harm under the *Offences Against the Person Act*), before the court commences with trial of the offence, it is required to consider, with the consent of all the parties and having regard to all the circumstances, whether the matter can be dealt with by mediation.

Where it is determined that the matter is suitable to be dealt with by mediation, the matter is referred to an “approved mediator” pursuant to a “mediation order”, which suspends the trial of the offence to a date fixed by the court for an appearance by the parties involved.

Where the matter is resolved by mediation the court is required to make an order dismissing the charge and incorporating any terms of the mediation agreement arrived at by the parties, which may include an agreement for non-molestation, restitution, compensation or other agreement approved by the court. Where the matter is not resolved by mediation, the court is required to proceed to try the offence.

Under the Act, information disclosed, and admissions made as a result of mediation proceedings (“protected information”) are confidential, inadmissible in proceedings before a court, tribunal or committee, and their disclosure or the production of documents which contain them is not compellable. For the purposes of conducting mediation proceedings in accordance with the Act, a party to mediation proceedings is taken to have authorized the provision of protected information to the mediator and his staff.

Under the *Criminal Justice (Reform) Act*, the *CPR* and the *Parish Court Rules* the Chief Justice is authorized to appoint approved mediators, and mediation is conducted at the Dispute Resolution Foundation (DRF). The foundation is a civil society public organization created to facilitate and encourage the practice and application of alternative dispute resolution methods. It has been and remains the only mediation referral agency under the CPR. Participation of parties in mediation is accommodated in person and remotely, where appropriate.

Approved mediators are neutral third parties who facilitate and coordinate the negotiations of the parties to a dispute in both criminal and civil matters and aids them in arriving at a resolution of their dispute.

Mediator’s fees, which are prescribed by the Rules Committee of the Supreme Court, are paid to the DRF or the mediator before the scheduled mediation in respect of matters within the civil jurisdiction of the Supreme Court. That notwithstanding, costs of mediation are costs in the claim, unless otherwise agreed by the parties.

A mediation programme is currently undertaken by the Ministry of Justice and the Dispute Resolution Foundation in the Parish Courts. In addition to promoting the peaceful resolution of disputes, the initiative aims to improve access to justice for members of the public, promote early and fair resolutions of disputes, and reduce the costs of litigation to the parties and the court system. Under the initiative, parties are not required to pay for mediation.

### **Restorative Justice**

This is used in criminal proceedings where there is an effort to resolve matters without a trial. The intention to have the defendant and the victim meet in a controlled environment where an appropriate solution can be worked out. The purpose of restorative justice proceedings is to hold offenders accountable in a more meaningful way to the victim and to the community where an offender accepts responsibility for the offence. It provides an

opportunity for healing and the lasting reconciliation of relationships not just between the victim and an offender, but also between their families.

The objective of each restorative justice programme is to address the harm suffered by the victim, identify the obligations of the offender to the victim which arise out of the relevant offence, attend to the need of victims by enabling them to participate in identifying reparative measures to be taken by an offender, and reintegrating the offender into the community through the rebuilding of broken relationships. Participation in restorative justice proceedings also enables the resolution of disputes before the court without the need for trial.

### *Pre-Trial and Pre-Sentencing applications*

The *Criminal Justice (Reform) Act* makes provision for the referral of criminal matters to a restorative justice programme before commencing with the trial of a person for arguably minor offences prescribed in Part I of the Third Schedule to the Act. Part II of the Third Schedule to the Act prescribes offences which are exempt from referral to a restorative justice programme. These offences are appropriately described as serious criminal offences. When engaged at the pre-trial stage, restorative justice proceedings are capable of disposing of criminal charges without the need for trial.

The person charged must consent to participating in a restorative justice programme by signing a completed prescribed form, and where there are one or more victims of the offence, each victim must consent in writing to participating in the programme by signing the prescribed form.

A court may also make a referral to a restorative justice programme where the trial of an offence other than one which is listed in Part II of the Third Schedule to the Act has commenced and has resulted in a conviction, before sentence is passed. Like a pre-trial referral, the person charged must consent to participating in a restorative justice programme by signing a completed prescribed form. However, where there are one or more victims of the offence, each victim must also consent to participating in the programme by signing the completed prescribed form.

In determining the appropriateness of a pre-trial restorative justice order, the court is expressly required to have regard to all the circumstances; and in both pre-trial and pre-sentencing referrals, the court is required to give particular consideration to the possible benefits to be derived by the offender or alleged offender and the victim from the process; whether a restorative justice programme exists at which participation by the parties can

be accommodated; the best interests of a victim who is a minor (below the age of eighteen (18) years) or a person who is unable to give consent to participate in a restorative justice programme; and any matter which in the opinion of the court would make referral to a restorative justice programme inappropriate.

Referral by the court to a restorative justice programme is by way of a “restorative justice order”. The order may be made by a court on its own motion or on the recommendation of the Clerk of a Court or a constable. A pre-trial restorative justice order defers commencement of the trial of the offence, and a post-conviction referral operates as an adjournment of the trial of the offence.

Restorative justice proceedings are conducted by an approved facilitator, who is required to submit a report to the court within the period specified in the restorative justice order, of the outcome of the proceedings. Such a report includes any restorative agreement reached and a copy of the agreement, steps taken in performance of commitments made under such agreement, and any commitments left to be performed.

On return of the parties to court on a pre-trial referral, if the matter is resolved by restorative justice proceedings and commitments under the restorative justice agreement have been satisfactorily performed, the court must make an order dismissing the charge against the person charged. Where the matter is not so resolved, and there is no reasonable prospect of resolution, the court is to proceed to trial. Where a restorative justice agreement has been reached on a post-conviction referral, the terms of the agreement and the extent to which commitments made in it have been satisfactorily performed are to be considered by the court in determining how to proceed in relation to sentence. Where no agreement is reached by the parties, sentencing of the offender is to proceed as if restorative justice proceedings had not occurred.

Subject to the disclosures referenced in the preceding paragraph, information disclosed, and admissions made for the purposes of restorative justice proceedings are confidential, inadmissible in proceedings before a court or tribunal, and their disclosure or the production of documents which contain them is not compellable. Further, an alleged offender’s consent to participate in a restorative justice programme, entry into or performance of any commitments made under a restorative justice agreement do not amount to and are not to be treated as a confession or admission of guilt for the purpose of criminal proceedings.



Restorative Justice Centers have been established by the Ministry of Justice in various communities across all the parishes of Jamaica. The Ministry, in accordance with the *Criminal Justice (Reform) Act* maintains a list of Approved Facilitators who are engaged in these centers.

While Judicial Officers have been sensitized on the restorative justice initiatives of the Ministry of Justice, they are not trained in conducting Restorative Justice Proceedings.

### **Child Diversion**

The *Child Diversion Act* provides the legal framework for Child Diversion in Jamaica, and establishes the authority of the court to divert children brought before it without continued resort to formal judicial proceedings. Among the goals of Child Diversion is the reduction of the number of children who are charged with offences and exposed to the formal criminal justice system as a result, and increasing the use of diversionary programmes for the rehabilitation of children as a response to crime or wrongdoing. Child diversion may be done by a constable before a child is charged. After charge, and when engaged by the courts, prescribed criminal offences may be determined against a child without a trial.<sup>1</sup>

Where a child was referred by a constable for participation in a child diversion programme, but the child has failed to comply with or complete the programme and is charged for a diversion offence, the constable having charge of the case is required to advise the court of the referral. On receipt of this advice, the court is mandated to take into account the extent, if any, of the child's participation in the programme.

The First Schedules to the *Child Diversion Act* specifies a number of diversion offences which range from minor to serious. Notwithstanding the specified diversion offences in the Schedule, the court may also make a “*child diversion referral order*” in respect of any other offence in the interest of Justice.

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<sup>1</sup> <https://moj.gov.jm/national-child-diversion-programme> accessed on July 25, 2025.

Where a child is charged and brought before the court for a diversion offence, the court is authorized by the *Child Diversion Act* to hear the case; issue a warning to the child and suspend the prosecution of the case; refer the child to the Child Diversion Committee established by the statute for the parish in which the child resides or in which the offence was committed for participation in a child diversion programme; or adjourn the case *sine die*.

### *Warnings and Orders*

On consideration of matters prescribed in the statute, a court is empowered to issue warnings to a child charged and brought before it for a diversion offence if the court is satisfied that what has been charged is a diversion offence, the child has entered a plea of guilty, and has not previously been charged or convicted of a criminal offence.

Where a child is brought before the court as one in need of care and protection under the *Child Care and Protection Act*, or as a child offender, or otherwise, if satisfied that it is expedient to do so the court may make a “*reparation order*” within prescribed requiring the child to make amends for loss or injury caused to a person by the child including the rendering of services by the child directly where the victim consents to receiving the service. The court may also make “*an order to make amends*” as permitted by the statute, requiring the child to render services for the benefit of the community if there is no identified victim to whom reparation may be made.

The court may also require restitution subject to terms and conditions specified in the order of the court; and make a “*child diversion referral order*” referring the child to a Child Diversion Committee for participation in a child diversion programme; and suspend the sentence of a child who has completed a child diversion programme to prevent the sentence taking effect.

Additionally, the court has the discretion to make a suspended sentence order in respect of a child who has been convicted and sentenced for a diversion offence if satisfied that the child has completed the child diversion programme in respect of the diversion offence. This is in circumstances where a “*child diversion referral order*” was made on the child being brought before the court as one in need of care and protection under the *Child Care and Protection Act*, or as a child offender, or otherwise.

### *Referral to a child diversion programme*

Child Diversion Committees are established in each parish throughout the island with the exception of the parishes of Kingston and St. Andrew which have a single Child Diversion Committee. Each committee is under the direction of the Permanent Secretary of the Ministry with responsibility for justice.

A child may be considered for participation in a child diversion programme if the child accepts responsibility for the diversion offence without the undue influence of any other person to accept responsibility; there is a *prima facie* case against the child; the victim of the offence if identified and located, consents to the offender participating in a child diversion programme; and with the consent of the child given in the manner prescribed by the statute. Where satisfied of these matters, a prosecutor may also recommend to the court that a child charged with a diversion offence be referred to a child diversion programme.

Where a child is referred to a Child Diversion Committee for participation in a child diversion programme under the Act, criminal proceedings are not to be continued during the period of child's participation in the programme.

On referral, a risk assessment is conducted by a Parish Child Diversion Officer, and a treatment plan designed to divert or keep the child away from the criminal justice system is developed, approved and implemented. The Child Diversion Committee is required to report in writing to the court quarterly or otherwise on matters relating to the child.

Where a child fails to comply with or complete a child diversion programme, the Child Diversion Committee is required to advise the referring court of the child's failure to comply with or complete the programme within five days of receiving notice of non-compliance or non-completion.

On appearance before the court, inquiry is to be made into the reason for the child's failure to comply or complete and a determination made as to whether the failure is attributable to the child. Where it is not attributable, the court may make an order modifying the child diversion programme.

Where attributable and the matter was referred by the court, the court may proceed with the trial; and where the matter was referred on the recommendation of the prosecutor, the prosecutor may proceed with the prosecution with the approval of the court. If the discretion is exercised in either case not to proceed with the trial, the court is empowered to consider the child diversion programme and direct the Child Diversion Committee as to the manner in which the child diversion programme is to be modified in light of the child's non-compliance. Where a child fails to complete a modified programme, the court is permitted to continue the criminal proceedings in respect of the diversion offence.

Admissions, acceptance of responsibility or information given for the purposes of child diversion are to be treated as confidential and are inadmissible in any proceedings before a court or tribunal. No person is compellable in any proceedings before a court or tribunal to disclose any such admissions, acceptance of responsibility or information, or to produce documents in those regards. A child's consent to participate in a child diversion programme does not amount to, nor is it to be treated as a confession or an admission of guilt for the purposes of any criminal proceedings for a diversion offence.

On completion of a child diversion programme or modified child diversion programme, the court is mandated to make an order dismissing the charge for the diversion offence. In the case of a child who has been convicted but not sentenced, the court is required to discontinue the trial of the diversion offence, and the trial is not to be resumed. In the case of a child who has been sentenced, the court is required to make a suspended sentence order, and the child is not to be detained in a lock-up, remand center, or correctional institution.

A child becomes ineligible to continue or to participate in a child diversion programme if the child commits or attempts to commit another offence within three (3) years after the date of commencement of a programme. Additionally, a child is not eligible for participation in a diversion programme after three (3) previous referrals.

There are no costs or fees payable by the parties for participation in a child diversion programme. While judicial officers have been sensitized on the National Child Diversion Policy and the *Child Diversion Act*, they are not trained to conduct child diversion programmes.

## EFFECTIVENESS OF DISPUTE RESOLUTION PROCESSES ENGAGED

At the level of the Parish Courts where a majority of cases are initiated and determined, in 2024 approximately 40% of criminal cases were resolved without trial, with over 10% being resolved by external referrals. A like percentage of civil cases are disposed without trial, with 1% being resolved via external referrals. Attribution is made to the embedding of fair and efficient dispute resolution in judicial processes.<sup>2</sup>

In the Civil Division of the Supreme Court there is an ongoing docket pilot project of 1,519 negligence cases in which end-to-end Pro-active Judge- led Case Management and optional formal mediation are engaged. An average of 60% of the cases have been disposed of without trial as to liability and/or quantum within fourteen (14) months of the pilot. While a significant number was disposed administratively by judicial officers, an equally sizable number of the dispositions are attributable to the active judicial management of contested cases. Judicial officers take an active role in the early identification of issues, and accommodate, encourage and facilitate settlement via formal mediation and inter-party discussions where appropriate and with the consent of the parties to the litigation.

Data on the effectiveness of dispute resolution processes in other divisions of the courts which exercise jurisdiction at the national level were not available at the time of reporting.

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<sup>2</sup> *Alternative Dispute Resolution within Jamaica's, Justice System*, CSDD\_ADR\_2024-PC\_18/7/2025,