



CHAPTER

5

Criminal Justice Systems

**Security and justice are
equal priorities for Caribbean
people**

**Opportunities for all, justice
for all, respect for all,
security for all**

Introduction

This chapter examines the role of criminal justice systems in addressing crime, violence and insecurity in the Caribbean. Chapter 4 analyses the important part the police play in promoting citizen security. The primary focus of this chapter is legal systems, including prosecution, the courts and sentencing, correctional systems and the criminal justice system as a whole. The major issues of interest are as follows:

- Institutional structures and operations
- The effectiveness of institutions, including systems of accountability and the capacity to deliver the required services fairly and efficiently
- The extent to which institutions are held accountable
- The relationship of national institutions to regional institutions and NGOs

Throughout the chapter, special attention is paid to the treatment of juveniles and other vulnerable groups by the criminal justice system, including their access to justice.¹ Research has demonstrated that the behaviour of criminal justice institutions can have a vital impact on citizen security, especially with regard to vulnerable groups. This chapter also provides a critical evaluation of existing reform projects and outlines a vision for criminal justice reform in the Caribbean region.

The chapter is organized according to the issues listed above. The discussion therefore begins with a description of criminal justice systems in the region. Next, the chapter examines objective indicators of system effectiveness, including problems such as case processing delays, low conviction rates and insufficient alternatives to incarceration. The chapter then explores the subjective assessments of citizens of the effectiveness of crimi-

nal justice systems such as public confidence and the relationship of national institutions to regional structures and governance.

Criminal Justice Systems

The long shadow of colonialism has exerted an indelible influence on the cultures and institutions of the Caribbean for centuries. Forms and structures of government, including the legal codes and criminal justice systems of interest in this chapter, continue to exhibit characteristics of each nation's colonial legacy. Despite post-independence efforts to bring about change and to make national institutions more responsive to the needs of the people, understanding the criminal justice systems in the Caribbean involves understanding the history of colonialism and the ways colonialism still influences the nations in the region.

Legal Systems

The legal systems of six of the seven nations examined in this report (the Caribbean-7) are based on British common law and national statutory laws. (The seventh is Suriname, where the legal system is based on the system of the Netherlands.) Although the legal systems of the former British colonies share many similarities, they also differ in some respects. The legal systems of Guyana and Saint Lucia, for instance, are often described as hybrid or mixed. The legal code in Saint Lucia is a hybrid of British common law and French civil law owing to Saint Lucia's history as both a British and a French colony. Similarly, Guyana's legal code is a hybrid of British common law and Netherland civil law. In all six nations, British common law was the primary foundation of the legal systems at the time of independence, though there were hybrid ele-

ments. Suriname once relied on the British common law system, but this was replaced by Netherland civil law in the 1600s when the United Provinces (the Netherlands) defeated England in battle during the Second Anglo-Dutch War.²

In addition to the similarities in the foundations of their legal systems, the criminal justice systems in the Caribbean-7 also share structural similarities. Each nation has a similar hierarchy of courts that handle both civil and criminal matters, as well as appeals. With the exception of courts in Suriname, the courts in each country have a three-tier structure that includes magistrates courts, a high court and a court of appeal.³ The terminology used for these three entities is fairly consistent, though there are variations.⁴ The magistrates courts serve as the lowest level of the court system, hearing lesser judicial matters, including small claims civil actions and less severe criminal matters.⁵ Typically non-jury cases are handled in the magistrates courts, while more serious civil and criminal matters are handled through the high courts. Consistent caseload statistics are not available for each country, though it has been estimated that approximately 90 percent of the legal proceedings in the judicial system in Guyana emanate from the magistrates courts.⁶ The court structure in Suriname, the only nation in the Caribbean-7 with a legal system based on laws of the Netherlands, is somewhat different. Suriname's legal system is grounded on three cantonal or district courts, each of which is presided over by a single judge, whose decisions can be appealed to the Court of Justice. The First District Court tries civil cases in specific regions of the country. The Second District Court tries criminal cases in specific regions of the country. The Third District Court hears civil and criminal cases in those regions not covered by the two other courts. There is also a lower court, the Martial Court, which has jurisdiction over cases involving military personnel.⁷

The Eastern Caribbean Supreme Court (ECSC) has jurisdiction in the member countries of the Organization of Eastern Caribbean States, including Antigua and Barbu-

da, as well as Saint Lucia.⁸ The ECSC serves as a unified supreme court for these countries. It consists of two divisions: the High Court of Justice and the Court of Appeal.⁹ Both are based in Saint Lucia. It acts as an itinerant court, travelling to member states at fixed periods throughout the year to "hear appeals from the decisions of the High Court and Magistrates Courts in Member States in both civil and criminal matters".¹⁰ Whereas other countries may operate their own independent high court and court of appeals, the ECSC offers these functions regionally for member states. However, the ECSC does not serve as a final appellate court. For Antigua and Barbuda and for Saint Lucia, final appellate jurisdiction rests with the Judicial Committee of the Privy Council, an entity located in London and formally tied to the United Kingdom and to judicial systems in many Commonwealth countries.

The majority of the countries of the Caribbean Community (CARICOM) use the Judicial Committee of the Privy Council as a last venue for appeals.¹¹ As the only country of the Caribbean-7 that does not have a predominantly British legal foundation, Suriname uses its own High Court of Justice as a final court of appeals.¹² Only Barbados and Guyana rely on the regional Caribbean Court of Justice (CCJ) as final appellate court.¹³

The CCJ was established by a treaty that was ratified in 2003. However, "although the Agreement was signed by nearly all of the Member States of the Community, only three of those States (Barbados, Belize and Guyana) have enacted the required domestic legislation to accord access to the Court by their nationals."¹⁴ The CCJ is modelled after the British appellate system and replaces the Privy Council for those countries that choose to enact the appellate jurisdiction of the agreement. The CCJ was established to "provide for the Caribbean Community an accessible, fair, efficient, innovative and impartial justice system built on a jurisprudence reflective of Caribbean history, values and traditions, while maintaining an inspirational, independent institution worthy of emulation by the courts of the region and the trust and confidence of its

people.”¹⁵ The court, located in Port of Spain, capital of Trinidad and Tobago, is intended to have both original and appellate jurisdiction among all CARICOM member states. The original jurisdiction of the court is applicable to all CARICOM countries, including the Caribbean-7, while the appellate jurisdiction must be ratified by each country. The original jurisdiction allows the CCJ to “adjudicate disputes among Member States pertaining to [their] economic integration.”¹⁶

Prosecution and Defence

The prosecutorial system within the Caribbean varies across countries. In each country, defendants are entitled to a fair trial, are presumed innocent until proven guilty and have the right to appeal. With the exception of Suriname, which has no jury system, all countries allow jury trials. Juries are typically relied on in cases involving serious criminal offences. Trial by jury for civil cases is permissible in some areas, though rare. Guyana and Saint Lucia do not allow jury trials for civil cases.¹⁷

In each of the Caribbean-7, detained suspects are provided access to defence counsel upon request, though some countries provide this access more promptly after arrest than others. In Suriname, for example, prosecutors may choose to deny access to counsel if they feel such access would harm an ongoing investigation. The extent to which the state provides defence counsel for indigent suspects varies. In Antigua and Barbuda, legal defence is only provided to indigent persons facing capital charges. Similarly, in Saint Lucia, defence counsel is provided only to people charged with serious criminal offences. Trinidad and Tobago provides counsel to indigent persons charged with murder and other serious offences. In Barbados, the government supports “free legal aid to the indigent in family matters, child support, serious criminal cases such as rape or murder, and all cases involving minors.”¹⁸ In Guyana, the right to counsel is only provided in capital murder cases that reach the High Court. For other offences, the Georgetown Legal Aid Clinic supplies legal advice. Legal aid attorneys in Jamaica are available in cases that can result in incarceration, while Suriname

provides for court-assigned attorneys in both civil and criminal matters.¹⁹

Each of the Caribbean-7, with the exception of Suriname, has a functioning bail system. Most deny bail in cases involving more serious crimes or if the offender has been previously convicted of a violent crime. There is some speculation that judges in some countries may use high bail and distant remand dates as leverage in trying to secure guilty pleas, though the extent of this practice is unknown.²⁰ In the wake of a serious outbreak of violent crime, including a 488 percent increase in the homicide rate from 1999 to 2008, Trinidad and Tobago enacted a bail reform that is intended to keep violent offenders behind bars.²¹

Correctional Systems

With the exception of Suriname, Caribbean correctional systems are housed within government ministries that are separate from the offices responsible for public prosecutions. One indicator of transparency in correctional practices is the extent to which nations permit access to prisons and jails by outside observers, particularly NGOs that focus on human rights. Each of the Caribbean-7 allows for the possibility of access to prison facilities by independent human rights observers.²²

The number of prisons in the Caribbean-7 ranges from 1 (Antigua and Barbuda, Barbados and Saint Lucia) to 12 (Jamaica). Table 5.1 provides basic descriptive statistics about prisons in each country. The existence of separate facilities for women, men, juveniles and those awaiting trial varies across the region. In Antigua and Barbuda, there are separate youth facilities for juvenile delinquents. However, in 2010, a small number of juveniles were housed in the country’s prison alongside adult inmates. In Barbados, women are housed in a separate wing in the adult prison facility, while a separate juvenile facility houses boys and girls. In Guyana, there is a single women’s prison, and juveniles under the age of 16 years are housed in a separate detention facility, while those over the age of 16 are incarcerated in adult facilities. Jamaica’s prison facilities include four locations for juveniles, while adult men and women of-

Table 5.1. A Statistical Profile of Prison Systems, Caribbean-7

Country	Prisons, number	Prison population ^a				Official capa- city	Popula- tion density ^b
		Total	Rate	Pre-trial, remand	Juveniles		
Antigua & Barbuda	1 (2010)	295 (2010) ^c	330 (2010) ^d	34.2 (2007)	4.1 (2007)	150 (2007)	130.7 (2007)
Barbados	1 (2010)	910 (2010) ^e	354 (2010) ^f	37.2 (2009)	1.8 (2009)	1,250 (2010)	72.8 (2010)
Guyana	5 (2010)	2,122 (2010) ^e	284 (2010) ^g	41.0 (2010)	0.0 (2010)	1,580 (2010)	134.3 (2010)
Jamaica	12 (2009) ^h	4,709 (2007) ^e	174 (2007) ⁱ	15.0 (2007)	9.2 (2007)	4,247 (2007)	110.9 (2007)
Saint Lucia	1 (2011)	568 (2011) ^e	323 (2010) ^j	23.2 (2011)	0.9 (2011)	450 (2011)	126.2 (2011)
Suriname	6 (2009) ^k	915 (2009) ^l	175 (2009) ^m	55.0 (2005)	5.7 (2005)	1,233 (2002)	162.7 (1999)
Trinidad & Tobago	8 (2010)	3,591 (2010) ^e	276 (2010) ⁿ	41.9 (2008)	3.0 (2006)	4,386 (2006)	87.8 (2006)

Source: World Prison Brief (database), International Centre for Prison Studies, London, <http://www.prisonstudies.org/info/worldbrief/>.

Note: The data year is in parentheses.

a. The total includes pre-trial detainees and remand prisoners. The rate is per 100,000 national population. The population of pre-trial detainees and remand prisoners and the population of juveniles are shown in percentages of the total prison population. Juveniles = under-18-year-olds.

b. Prison population as a percentage of official prison capacity.

c. US State Department (2010c).

d. Based on an estimated national population of 89,500 in December 2010 (United Nations data).

e. Data of the national prison administration.

f. Based on an estimated national population of 257,200 in October 2010 (United Nations data).

g. Based on an estimated national population of 761,000 in October 2010 (United Nations data).

h. Eight prisons are for adults; four are for juveniles.

i. Based on an estimated national population of 2.7 million in October 2007 (United Nations data).

j. Based on an estimated national population of 176,000 in December 2010 (United Nations Data).

k. Three adult prisons, one pre-trial detention centre, one juvenile detention centre, and 19 temporary detention centres in police stations.

l. US State Department (2010e).

m. Based on an estimated national population of 522,000 at the end of 2009 (United Nations data).

n. Based on an estimated national population of 1.3 million in January 2010 (United Nations data).

fenders are housed in separate facilities. Suriname has a pre-trial detention centre for adults and juveniles, as well as a juvenile detention facility. Within the three adult prison facilities in Suriname, women and men are housed separately. Of the eight correctional facilities in Trinidad, one is specifically for women, and another is for juveniles. Even in the countries with separate facilities, juveniles may often be detained in adult prisons because of security concerns at youth facilities. Female juveniles are especially vulnerable to placement in adult prisons because of a lack of female youth facilities. The extent to which juveniles are isolated from adult populations within adult facilities varies as well.

In each country, arbitrary arrest and detention are prohibited by the constitution. However, there are varying practices regarding the length of time a person may be detained on suspicion of involvement in criminal activity. In Antigua and Barbuda, detainees must be brought before a court within 48 hours of arrest or detention. In Barbados, the constitution allows for the detention of individuals for up to five days without arrest. Once an arrest is made, the individual must appear before the court as promptly as possible. Guyana law states that, once an arrest has been made, the individual can be held no longer than 72 hours before appearing in court to be charged. Saint Lucia also allows for a 72-hour holding period for persons detained with a warrant before a court appearance is required. In Jamaica, detainees are to be charged within 24–48 hours or be released. Justices of the peace or resident magistrates may grant special waivers to this law in extenuating circumstances. In Suriname, if the sentence for a crime is longer than four years, officials are authorized to detain a suspect for up to 14 days, during which time the suspect must be brought to court to face charges. However, if additional time is needed, judges may extend this holding period for another 150 days.²³ Finally, in Trinidad and Tobago, detained suspects must appear before the court within 48 hours. For more serious offences, magistrates have the discretion of placing detainees on remand or allow them to post bail while a preliminary inquiry is conducted.

The practice of pre-trial detention is widespread within the region and often contributes to significant problems with case backlogs and prison overcrowding. Table 5.1 provides data on the share of the prison population that is incarcerated during pre-trial detention for each country. Elsewhere below, we review complications criminal justice systems face as a result of pre-trial detention practices, case processing delays and backlogs.

Probation and parole are common in criminal justice systems in the Caribbean, but the nature and extent of these practices vary widely across the region. Probation services are generally more widespread than parole services. Because probation services are more common, we discuss them briefly, paying particular attention to the services available for juvenile offenders.

Probation services are often considered part of community corrections strategies in the region. Jamaica began experimenting with probation in the 1940s as a way to alleviate “the harshness of punishment and [prevent] the contamination of the criminal novice in the unsavoury atmosphere of the prison”.²⁴ In Barbados, the Penal System Act of 1998 encourages community sentencing options such as probation and community service. As a result, since 2000, the Barbados Probation Department has supported offenders that have been given the option of community service. However, community-based correctional services in the region are limited. Other nations, including Guyana and Jamaica, have also experimented with a variety of community corrections strategies, including community service orders, community-based rehabilitation programmes and the appointment of community members to parole boards. Many such programmes have come and gone because of budget crises and shifts in the national and international political environment.

While there is no systematic data available to compare the number of persons on probation across nations, anecdotal evidence provides insights. For example, Probation Department data from Barbados indicates that, in 2000–2007, an average 75.5 adult men and 10.8 adult women were placed on proba-

tion annually (most frequently for drug- and theft-related offences). Compared with the number of persons incarcerated in Barbados (see table 5.1), this appears to be a small share of individuals being diverted away from detention facilities. Data obtained from the Guyana Police Force indicate that, in 2008 and 2009, 183 juveniles were charged with offences. Of these, 74 (approximately 40 percent) were placed on probation. Probation may be a more frequent alternative to incarceration for juvenile offenders.

Probation is also increasingly viewed as a viable alternative to incarceration because it can help alleviate the overcrowding in prisons and jails and the lengthy court backlogs (assuming that defendants mount a more vigorous defence if they are facing prison instead of probation). Probation may serve the interests of justice by giving those people who have not yet become committed to crime an opportunity to turn their lives around. Probation is likewise a framework within which the state can attempt to rehabilitate young or inexperienced inmates.

Most often, probation officers are assigned court supervision over juveniles requiring additional oversight and support. For example, in Barbados, magistrates courts can require juveniles and probation officers to return to court every three months for assessment. During this time, the judge reviews the juvenile's progress and provides recommendations for continuing or suspending support services. Juveniles on probation in Barbados may also be ordered by the court to attend non-residential drug counselling services.

Probation departments in the Caribbean often struggle with access to adequate resources, including referral sources. In many instances, probation officers are unable to refer their clients to appropriate rehabilitation or support services, limiting their effectiveness. Some countries have attempted to respond to this limitation by linking community-based services with local probation departments. The unfortunate reality is that, if resource or political constraints inhibit effective probation services, juvenile offenders are often the most affected. Without adequate probation services to steer

first-time offenders away from lives of crime, today's minor offenders will often become tomorrow's serious offenders.

Statistical Infrastructure

Only the most rudimentary official data useful for measuring and describing the operations of criminal justice systems are available for the Caribbean-7. Statistical infrastructures in the Caribbean-7 are sorely lacking, and even basic descriptive data on the flow of cases through criminal justice systems are not consistently available. If elementary descriptive data on the activities of criminal justice systems are either of generally poor quality or are simply unavailable, then the more rigorous kinds of data and research necessary to judge the effectiveness of criminal justice operations across the Caribbean are even more difficult to obtain.²⁵

Building a regional statistical infrastructure for measuring threats to human security and studying the capacity of governments to prevent and alleviate these threats are critical. The solution to these statistical and research capacity issues needs to be multifaceted, involving governments, NGOs, development banks and universities. Putting in place effective criminal justice solutions depends heavily on proper analysis of the crime problems in each nation and across the region. Accurately diagnosing the nature of crime problems and the capacity of criminal justice systems will require a serious investment in the development of statistical infrastructure for measuring crime and justice at the regional level. It will also require workforce development, including training and the education of technical experts to manage the data and make the data widely available and of policy analysts and scholars with the diverse skills necessary to interpret the data properly. Only with such an investment can Caribbean nations improve their capacity to diagnose crime and evaluate the effectiveness of criminal justice institutions.²⁶

Indicators of the Effectiveness of Criminal Justice Systems

The most common performance measure of criminal justice systems is the extent to which

cases are processed fairly and efficiently. This section reviews evidence on four issues that exert a profound influence on the fairness and effectiveness of criminal justice systems: case processing delays and backlogs, low conviction rates, prison overcrowding and insufficient alternatives to prison. Like many issues in criminal justice, none of these issues stands in isolation; they are strongly interconnected. Addressing them remains an enduring challenge for the Caribbean-7.

Case Processing Delays and Backlogs

The ability of criminal justice systems to process cases effectively and efficiently is a basic ingredient of proper system functioning in any nation. Significant delays in one part of the system often reverberate through other parts of the system, reinforcing the cliché that a chain is only as strong as its weakest link. Case processing delays and backlogs have had a debilitating effect on criminal justice systems in the Caribbean.

Many of the Caribbean-7 are struggling with caseloads that far exceed the processing capacity of the criminal justice systems. Various explanations exist for the case processing delays, including increases in crime and, thus, court caseloads and a subsequent harshening of sanctions against offenders; inadequate staffing levels; incompetent criminal justice prosecutors, courts, and correctional systems; and deliberate delays by lawyers and other criminal justice practitioners.²⁷ Furthermore, institutional weaknesses, corruption, poor management, and inadequate finances and resources are often blamed.

While there is convincing evidence that these delays and backlogs exist, there is only anecdotal evidence to explain why. Data on case processing delays and backlogs are not available in a systematic way throughout the Caribbean, but the available evidence paints a disturbing picture of challenges to the effectiveness of criminal justice. For instance, Trinidad and Tobago experienced a sharp increase in homicides from 1999 to 2008. During the last four years of this period, police detection rates in homicide cases (the proportion of cases in which an arrest was made) never reached

20 percent.²⁸ These low homicide detection rates were compounded by long case processing delays and low conviction rates among those who were arrested.

“Although more than three quarters of the 160 defendants charged with murder in the Port of Spain Magistrate’s Court from 2003 through 2006 were committed to the High Court to stand trial for murder, very few of these cases had been concluded as of July 2008. . . . Only seven of the defendants had been convicted by trial or plea and 20 had been acquitted at trial. Although most defendants suspected of murder were charged within 60 days of the homicide, the median time to disposition in Magistrates Court was 107 days and the median time to case filing in the High Court was 271 days.”²⁹

Mark (2007, 20–21) provides insight on why case processing delays are such a problem in Trinidad and Tobago, noting as follows:

“If after the initial appearance, the accused person is remanded in custody then that person’s case must be listed every ten days before the court to which the matter is adjourned. In the vast majority of these cases the parties are not ready to proceed and the case is adjourned on several occasions thereafter. In most cases, the court takes no significant steps to ensure that parties are ready for trial or ready to proceed with any aspect of the case on the date to which the matter is adjourned. The prosecutor is the functionary traditionally charged with the responsibility of ensuring that the case is ready to proceed. Almost every adjournment request from the defence or the prosecution is granted.”

Thus, in Trinidad and Tobago, inefficient court scheduling practices appear to contribute to case processing delays. However, case processing delays in Trinidad and Tobago were not limited to the courts. Delays in evidence processing in the nation’s crime laboratory were responsible for holding up thousands of cases. For instance, in 2005, researchers estimated that a backlog of unprocessed ballistics evidence in firearms cases had held up more than 2,000 cases, some for more than five years.³⁰ The problem became

so bad that some police officers stopped gathering ballistics evidence at crime scenes and stopped turning over seized firearms for processing by the crime laboratory.³¹ The researchers concluded that the backlogs at the laboratory were partially responsible for the nation's massive increase in homicides and shootings because violent repeat offenders who might have been incarcerated based on the evidence were free to continue offending. Trinidad and Tobago's solution to the problem was to hire foreign firearms examiners from the United Kingdom and the United States. Such short-term measures may be useful, but they suggest a failure to recognize the systemic nature of this problem and associated problems. No long-term solutions were put in place to prevent the backlog from returning.

The issue of evidence processing backlogs will become even more resonant as Caribbean nations grow increasingly reliant on forensic evidence to close cases. For instance, the United States is currently dealing with massive backlogs in DNA evidence.³² While DNA is a wonderful tool for identifying and convicting offenders, processing DNA evidence is expensive and resource-intensive and is likely to worsen case processing delays and backlogs. Backlogs are, however, not merely a matter of efficiency; they go directly to the question of whether defendants are being treated justly. Consider Guyana, which reports that, in 2010, nearly 41 percent of its prisoners had not yet been tried or convicted on the current charges for which they were being detained.³³ For defendants who are not guilty, backlogs might mean spending a lot of time in jail for offences they did not commit. Consider Suriname, where many prisoners awaiting appeal end up serving their full original sentence before their appeal is heard because there are not enough judges to adjudicate these cases.³⁴ The general consensus within the region is that backlogs are exacerbated by inadequate staffing. However, even attempts to address these concerns highlight the crippling extent of the problem. For example, Guyana reduced to some extent its backlog in the civil court under a special project whereby part-time

judges were appointed to adjudicate cases and help eliminate the backlog. To eliminate the backlog in criminal cases, a similar strategy was proposed in the Guyana Justice Sector Reform Strategy of 2006–2010.³⁵ However, even with this programme in place, the shortages of judges make it virtually impossible to reduce the civil litigation backlog. Estimates suggest that, even if two judges were assigned and even if each one concluded one civil matter every working day of the year (249 days), this would only lead to the completion of 498 cases out of an average of 5,600 cases filed, thus leaving a backlog of 5,102 cases.³⁶

No silver-bullet solutions have emerged in the Caribbean for case processing delays and backlogs. As more of these nations begin using sophisticated forensic evidence processing techniques (such as ballistics imaging and DNA profiling), it is likely that the delays will actually worsen. Finding a way to address this problem is crucial.

Low Conviction Rates

Although systematic data are not available, scattered evidence suggests that conviction rates in the Caribbean are alarmingly low. For instance, Guyana's Justice Sector Reform Strategy 2006–2010 reports that an estimated "90% of criminal prosecutions in the Magistrates Courts are unsuccessful."³⁷ Brathwaite (1996) reports that, in Barbados, the number of convictions fell from 1,729 in 1960 to only 775 in 1990.

Part of the challenge in studying the problem is that case processing delays make it difficult to measure conviction rates: the two issues are hopelessly intertwined. For instance, a study conducted in Trinidad and Tobago found that, of the 123 cases involving defendants committed to stand trial in the High Court in 2003–2006, only 30.1 percent had been concluded as of July 2008. Only seven (5.7 percent) of the 123 cases had produced a conviction either by trial or by plea.³⁸ Similarly, a report on human rights practices in Guyana notes that "Prisoner Justin John was taken into custody in 2003 and charged with murder; his trial was scheduled to begin in 2008, but, in May 2010, he was among 23

prisoners who requested an early trial; he was freed on June 16 after the state was unable to produce witnesses in support of its case.”³⁹ This may be an extreme case, but it highlights the general problem. In nations that process cases expeditiously, computing conviction rates is simple, but, in nations with excessive case processing delays, estimating conviction rates is challenging.

One explanation for the low conviction rates has been the increase in case dismissals. Case dismissals are common because of witness intimidation, lack of victim participation in prosecution and attorney absenteeism. While data on the reasons for case dismissals are not available across countries, anecdotal evidence illustrates the extent of this problem. In Trinidad and Tobago, the majority of homicide case dismissals in the magistrates court between 2006 and 2008 occurred as a result of complications with witness testimony.⁴⁰ Witnesses frequently failed to appear in court or, once on the stand, recanted statements they had made to the police earlier. In one example, a murder witness went into hiding, and charges against the defendant were dropped “despite the fact that the defendant was charged with shooting the victim during a proceeding in the Magistrates Court”.⁴¹ Witness intimidation is especially challenging in a region of small countries with weak witness protection programmes.

In Barbados, the National Task Force on Crime Prevention found that 48.8 percent of the adjournments in the magistrates court in 2003 were accounted for by absenteeism by attorneys, the accused, or witnesses (at 17.2, 15.0 and 16.6 percent, respectively). Absenteeism in the High Court also contributed to more than one third of the adjournments. In 2003, 22.7 percent of the adjournments occurred because the accused were not properly represented by counsel, and 15.2 percent because the attorneys were absent.⁴² In Barbados, trial scheduling is often not synchronized across cases, and attorneys are often double-booked in the magistrates courts or the High Court. Similarly, of an estimated 6,000 to 7,000 criminal records that arrive annually in Suriname’s prosecution offices,

only approximately 20 to 25 percent are prosecuted. The remaining cases are dismissed or left in limbo. The prosecution office simply lacks the human resource capacity to handle all the criminal cases that are submitted.

Many commentators blame the police for these issues. For instance, Guyana’s 2005–2007 Supreme Court Annual Reports argue that deficiencies in police investigation and evidence management practices make successful prosecutions difficult. Gaps in prosecution give defence attorneys plenty of room to secure acquittals. Police point to case backlogs in crime laboratories and case processing delays in courts. There is lots of finger-pointing in the region about which institutions are to blame for low conviction rates. The reality is that the problem is systemic. The solution lies in the comprehensive reform of entire criminal justice systems to ensure that police gain the confidence of the population and are given sufficient resources to prevent crime, arrest offenders and gather evidence; that crime laboratories are properly trained, staffed and equipped to process criminal evidence quickly and accurately; that the prosecutors offices and courts are given sufficient resources and adopt more appropriate structures and procedures to move cases along rapidly and justly; and that nations begin to institute mechanisms for criminal justice planning across these various sectors to ensure that they work in harmony.

Prison Overcrowding

Many people awaiting trial in the region are held in pre-trial detention, sometimes for years. The practice of pre-trial detention is controversial. Setting pre-trial detainees free may endanger the public and reduce citizen security in the region, but holding them for lengthy periods is an affront to justice and overwhelms the capacity of prisons. As shown in table 5.1, five of the Caribbean-7 countries report prison occupancy levels well above 100 percent of capacity, thus signalling a serious problem with prison overcrowding. Table 5.1 also shows the percentage of prison populations held on pre-trial detention. Five of the seven countries report that at least a third

of their prison populations are being held for pre-trial detention or remand.⁴³ Guyana reported that this figure was higher than 40 percent in 2010, while, in 2005, Suriname reported that more than 50 percent of the prison population was being held for pre-trial or remand.

While overcrowding is problematic on its face, it has also generated residual issues associated with the conditions of confinement. Some reports document widespread deterioration in prison conditions in the Caribbean because of overcrowding, poor sanitation and resource constraints. According to the US State Department (2010b, 2010e), among the Caribbean-7, only the prison facilities in Barbados and Saint Lucia meet international standards.

The large number of people held in pre-trial detention is a major contributor to backlogs and overcrowding, but other factors also contribute. For instance, many nations faced with increases in crime, particularly violent crime, have passed laws containing provisions for harsher sanctions and longer prison terms for certain types of offenders, particularly those convicted of gang-related crimes. Harsher prison sentences for certain types of offenders are likely to produce public safety benefits, but such sentences for other types of offenders—particularly non-violent drug offenders and older offenders who have aged out of crime—contribute to prison overcrowding. Brathwaite (1996) finds that, in Barbados, the share of offenders sentenced to prison for three or more years rose from 6.9 to 38.5 percent between 1960 and 1990. Brathwaite also notes that patterns in crime changed across this time period so that there was an increase in drug-related offences, robbery and theft. Caribbean nations can learn from the experiences of California. Decades of tough-on-crime rhetoric by politicians led to runaway spending on prisons and contributed to a financial meltdown that resulted in major cuts to public services, especially education. Moreover, the financial crisis caused California to release tens of thousands of prisoners under less than ideal circumstances.

Correctional policy must balance the requirement to protect the public and the need for ef-

iciency and fiscal prudence. The result of this balancing act in some nations is to incapacitate only violent offenders and those with a high likelihood of recidivism and to develop alternatives to incarceration for nonviolent offenders and those whose likelihood of repeat offending is minimal. This idea of a correctional triage strategy applies most directly to three types of offenders: juvenile offenders, older offenders and people convicted of drug possession. Juvenile offenders, particularly those new to crime and those who commit nonviolent offenses, will often either be victimized or will go on to commit more crime as a result of spending time in a criminogenic environment such as a prison. Imprisoning older offenders, who are often long past the peak of the age-crime curve, is not always the most efficient use of prison space. Finally, imprisoning offenders convicted of drug possession is also often not wise because many such offenders need treatment for addiction. In all three cases, offenders and society may be best served through alternative punitive sanctions, coupled with rehabilitation.

Insufficient Alternatives to Incarceration

Policy makers facing increases in crime and high levels of violence often focus so intently on being tough on crime that they forget about the importance of rehabilitation and alternative sanctions. The Caribbean region's nascent criminological infrastructure is not yet supported by a well-developed knowledge base on effective sanctions and rehabilitation strategies. This is so despite the experiences of other nations, which provide evidence on the effectiveness and promise of a range of strategies, as well as approaches that may actually increase crime. For instance, *Scared Straight!*, a popular programme that has evolved from a ground-breaking film, involves exposing juvenile offenders to the reality of life in prison. Critics assert that such programmes not only fail to deter crime, but increase offending among young participants.⁴⁴ Lacking a comprehensive local knowledge base on effective strategies, Caribbean policy makers run the risk of excessive reliance on the knowledge base of more developed countries. A regional

investment in an institute to study the effectiveness of strategies in reducing crime and recidivism would be a positive step towards building the knowledge base that is so desperately needed.⁴⁵

Rehabilitation services can be established within the prison system, or they can involve the use of alternative sanctions that allow offenders to avoid incarceration, but still pay their debt to society for the crimes they have committed. Alternative sanctions may include fines, community service, curfews, or house arrest for non-dangerous offenders. Other sentencing alternatives to prison are mediation, restitution to victims and probation. These options offer a number of potential benefits: they often cost less than a conventional prison sentence; they help avoid the labelling and stigmatization of imprisonment, thereby reducing the tremendous challenges associated with reintegrating offenders into society following their release; they eliminate the negative socialization processes that occur in prison (and that often increase recidivism); and they often bring greater satisfaction to victims. Moreover, if well-calibrated, they can encourage and reinforce the bonds with conventional society that help to prevent crime over the long term. Alternatives to imprisonment have been explored within the region, including curfews, electronic monitoring, drug courts and drug treatment, transitional housing, and community sentencing for non-violent prisoners, but we are not aware of any studies of the effectiveness of these efforts.

While many nations in the region have acknowledged the need to implement alternatives to imprisonment, the use of relevant programmes has been sporadic. The most commonly cited explanation for this is a lack of adequate resources. For instance, in Barbados and elsewhere, resource shortages are often blamed for the lack of important services aimed at offenders, such as dedicated mental health resources, a functional after-care programme, entrepreneurship training and transitional housing necessary to meet the needs of prisoners as they prepare for release.⁴⁶ Moreover, in a tough-on-crime climate, rehabilitation is often not a political priority for

policy makers.

Of course, any wise correctional strategy will account for the fact that offenders present different levels of risk. Offenders presenting the greatest risk of recidivism or causing harm to others need to be identified and incarcerated. For this reason, correctional systems should employ selective incapacitation strategies that assign prison terms only for serious offences and to persons who are most likely to recidivate (as evidenced by a culture-appropriate dangerousness assessment). Persons who are unlikely to reoffend or who have not committed serious offences should be sentenced to alternative dispositions. Selective incapacitation will reduce the strain on correctional systems, improve cost-efficiency and protect the public. Imprisonment should only be used as a last resort.

Some nations have taken initial steps towards establishing programmes to reduce case processing delays and incarceration rates. In 2003, for instance, the Guyana Bar Association and the Guyana Association of Women Lawyers launched a pilot project on alternative dispute resolution that focused on civil cases. This project involved creating a mediation centre and providing training for Guyanese lawyers, while the law programme at the University of Guyana introduced a new course option for law students on alternative dispute resolution. During this time, 98 cases were transferred from the court to the alternative dispute resolution system within one year.⁴⁷ Furthermore, in Guyana, out of the 21,366 civil matters pending for 2008, a mere 72 civil cases went to the mediation centre for 2007, and 140 mediation cases were pending from 2006, resulting in 212 cases pending for mediation in 2007. At the end of 2007, 63 cases had been successfully mediated, leaving 149 pending.⁴⁸

In Barbados, the Penal System Act of 1998 has encouraged a philosophical change in ways to deal with offenders by creating community sentencing options such as probation and community service. Since 2000, the Barbados Probation Department has supported offenders who have been given the option of community service. Some of the challenges

associated with this effort include substance abuse treatment, job placement and community support. The Prison Service of Trinidad and Tobago is experimenting with restorative justice strategies. In 2002, the Government of Trinidad and Tobago appointed a task force to review the penal reform system. One of the key recommendations advanced by the task force was the implementation of a restorative justice philosophy throughout the criminal justice system in Trinidad and Tobago. The Prison Service is facing a familiar set of challenges in its efforts to shift from retributive justice to restorative justice.

The issue of alternatives to incarceration is particularly salient for juvenile offenders. Each of the Caribbean-7 has indicated that juveniles detained for non-criminal matters such as truancy, lack of appropriate guardianship and victimization through abuse are often housed together with juveniles who have committed criminal, often violent offences.⁴⁹ Because it is a long-standing truism of criminology that one of the most potent causes of delinquency is exposure to delinquent peers, any strategy that houses minor offenders together with serious offenders is likely to increase crime. Furthermore, these approaches are also likely to expose the less serious offenders to further victimization.

Researchers find that “for the entire population of three juvenile institutions in Trinidad and Tobago, 58.5 percent of youth in an institution for young boys and 92.8 percent of youth in an institution for young girls were institutionalized for non-illegal acts.”⁵⁰ Suriname, on the other hand, has a pre-detention juvenile facility specifically for youth awaiting trial. The facility, which is called Opa Doeli, was founded in 2007 and houses young persons aged 10 to 18 years. It can accommodate 54 boys and 14 girls, and these are able to attend school normally within the centre. The purpose of the facility is to provide the youth with the skills to defend themselves against criminal influences.

The Beijing Rules, adopted by the United Nations in 1985 to define a set of principles for the proper administration of juvenile justice, speak directly to these concerns. These

rules specifically outline that “no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees” and that “the danger to juveniles of ‘criminal contamination’ while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. . . . to avoid such detention in the interest of the well-being of the juvenile.”⁵¹

The degree to which countries in the region observe the set of principles outlined in the Beijing Rules varies. In Guyana, provisions for juveniles are deficient in that there are no alternatives to detention prior to trial, nor have adequate facilities been established to support juveniles while they are kept in detention. A detention centre has been constructed, but it has not been functional, and juveniles, both males and females, have been housed with adults in detention facilities. This increases the risk of sexual abuse. Indeed, it has led to news reports of the sexual and physical abuse of juveniles by law enforcement operatives and adult inmates.⁵²

Concerns about proper supervision and staffing at some juvenile facilities or, in some instances, a complete lack of a juvenile correctional facility may result in the detention of juvenile offenders in adult facilities, as in Antigua and Barbuda and in Guyana. In Antigua and Barbuda, the Boys Training School is criticized for inadvertently preparing abandoned and abused boys for lives of crime by housing offenders and non-offenders together in the same facility. Many magistrates try to avoid remanding juvenile offenders to the facility. One magistrate revealed that she is extremely upset with the system’s failure to address adequately the problem of young boys who constantly get into trouble. This particular magistrate has joined the chorus of complaints with respect to poor management, untrained staff, ineffective rehabilitation and little oversight of the boys. Because of these inadequacies, boys who commit serious offences are committed to Her Majesty’s Prison, the country’s adult prison. Furthermore, in Antigua and Barbuda, aside from probation, there are no alternatives to sentencing and no restorative

justice options, and juveniles are tried in the same courts as adults.

There are a number of reasons to support the use of alternatives to incarceration within the region, especially in the case of juveniles. Systems should be put in place to house non-criminal juveniles in facilities that do not expose them to peers who have been charged with or convicted of criminal offenses. Additionally, the benefits of alternatives to incarceration are particularly important to juvenile offenders, who represent a more vulnerable population.

The issues of case processing delays, backlogs, low conviction rates, overcrowded prisons and a lack of alternatives to incarceration are all interconnected. As Deosaran (2009, x–xi) indicates, “there are some factors which push criminal behaviour such as family neglect and bad schooling, but there are also other factors which pull crime such as weak and ineffective prosecution, low conviction rates, lawyer absenteeism, poor police response, corrupt police and having the prisons as a criminogenic ghetto.” These issues reinforce the dire need for system-wide criminal

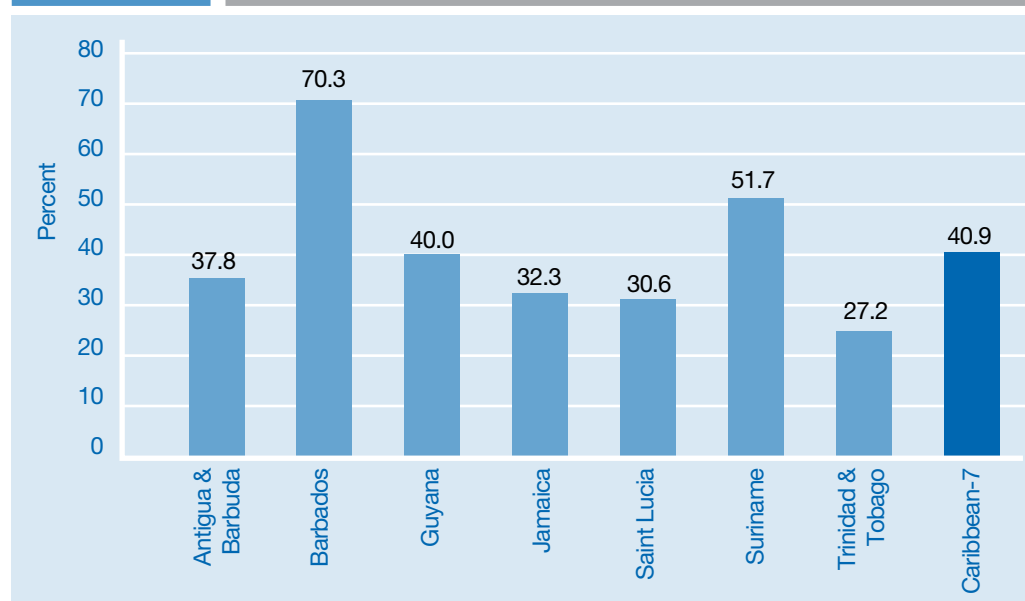
justice planning agencies in Caribbean nations. Putting in place agencies capable of this kind of systems thinking to monitor the criminal justice system will help these nations address inefficiencies, locate case processing blockages and delays, identify slack resources and put in place strategies to optimize the functioning of the entire system. Each part of the criminal justice system has a specific role to ensure the stability of the whole system. Although there is evidence of scattered reform efforts in the region to address the issues identified in this chapter, a significantly more integrative approach is necessary to reduce backlogs, improve case processing, increase conviction rates, reduce prison overcrowding and provide more alternatives to incarceration.

Opinions on the Effectiveness of Justice Systems

Even if criminal justice systems are judged effective by objective standards, public perceptions of the criminal justice system are vitally important. Thus, another way to assess the

Chart 5.1

Respondents Who Rate the Capacity of the Criminal Justice System as Sufficient, Caribbean-7, 2010



Source: UNDP Citizen Security Survey 2010.

Note: Base: all respondents (N = 11,155). Question: “What is the capacity of your country to solve and better manage the problem of insecurity?” The chart shows the percentage of respondents who answered “Sufficient” or “Very sufficient”.

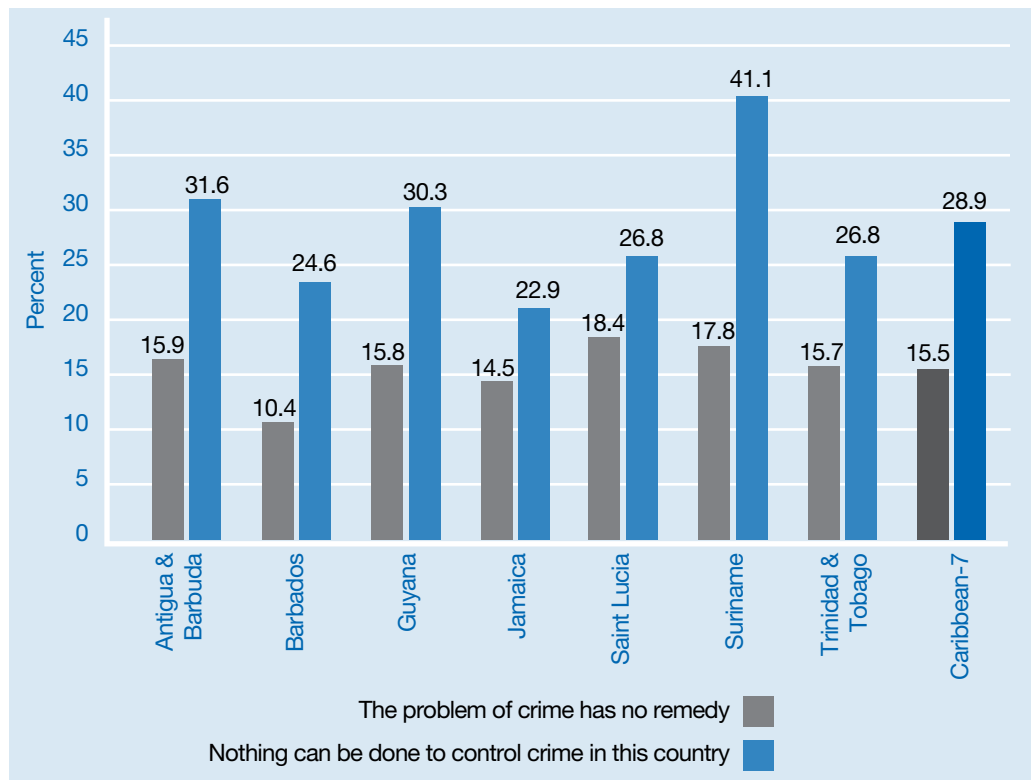
effectiveness of criminal justice systems in promoting human security is to gauge the opinions of citizens. The UNDP Citizen Security Survey 2010 asked respondents in the Caribbean-7 to assess the capacity of their countries “to solve and better manage the problem of insecurity.” The share of respondents rating the capacity of their nations as ‘sufficient’ or ‘very sufficient’ varied widely by nation, from a low of 27 percent in Trinidad and Tobago to a high of 70 percent in Barbados (with an average of 41 percent) (chart 5.1). Three patterns are striking in the findings. First, the wide variation across nations suggests that some governments have done a substantially better job in the eyes of citizens in building capacity to address security issues. Second, although perceived capacity varies by nation, it is quite low overall. Less than half of the respondents across the Caribbean-7 perceive their nations to have sufficient capacity

to manage human security threats effectively. Third, perceptions of this capacity do not appear to be linked to national poverty levels. Trinidad and Tobago is the wealthiest of these nations, yet is perceived by its citizens to have the lowest capacity to address citizen security concerns. Similarly, Suriname and Guyana are among the poorest nations in this group, yet they rank second and third, respectively, in perceived level of capacity to address citizen security.⁵³ National wealth alone is insufficient to guarantee citizen security and safety.

Confidence in the Justice System

One of the principal goals of government generally and criminal justice systems specifically is to provide for the security of the population. This security has an objective component that is reflected in official statistics on crime, violence and other threats to human security. It has a subjective component as well. For in-

Chart 5.2 Perception of the Hopelessness of Crime Control, Caribbean-7, 2010



Source: UNDP Citizen Security Survey 2010.

Note: Base: all respondents (N = 11,155). Questions: “The problem of crime has no remedy.” “Nothing can be done to control crime in this country.” The chart shows the percentage of respondents who answered “Strongly agree” or “Agree”.

stance, one way of viewing the perceived effectiveness of criminal justice systems is to gauge the extent to which citizens have grown hopeless about crime. Effective criminal justice systems inspire public confidence. Hopelessness is a sign of a system that is failing to meet one of its most important goals. Two questions in the UNDP Citizen Security Survey 2010 addressed the extent of hopelessness by asking respondents in the Caribbean-7 to indicate their level of agreement with the following statements, both of which served as proxies for hopelessness: “The problem of crime has no remedy” and “Nothing can be done to control crime in this country”.

Chart 5.2 presents the results by country. The good news is that the share of respondents agreeing with the statement that crime has no remedy is low, never exceeding 19 percent in any of the nations. On the other hand, people tend to be more sceptical regarding what can be done to control crime. The most sceptical are in Suriname, and the least in Jamaica.

The survey data reveal stark disparities across the Caribbean-7, and some of the results are curious. Respondents in Saint Lucia, which does not have the highest rates of insecurity and violence among these nations, appear to have the greatest levels of hopelessness. Among them, 18.4 percent believe “the problem of crime has no remedy”, and 26.8 percent believe “nothing can be done to control crime in this country”. At the same time, Jamaican respondents appear to have lower levels of hopelessness than their peers in several nations that have lower rates of crime and violence. These findings point to a disjuncture between the levels of crime and violence and feelings of hopelessness among citizens.

Two factors may explain this disjuncture. First, it may be that the *levels* of crime are not as important as *changes* in crime. The homicide rate in Jamaica is about twice the homicide rate in Saint Lucia (53 versus 26 per 100,000 population, respectively), but homicides are decreasing in Jamaica and increasing in Saint Lucia. Citizens may have difficulty comparing homicide rates between their own nation and others, but they may be cognizant

of trends and trend changes in violence, particularly if such phenomena are documented regularly by local media. Second, these findings are reminiscent of a body of research that suggests there is a disjuncture among people’s *actual* risk of victimization, their *perceived* risk of victimization and their fear of crime.⁵⁴ Hopelessness about crime does not appear to be a simple function of crime rates. In the same way as police departments worldwide have been implored by reformers to put in place solutions to manage people’s *fear* of crime, this finding suggests that governments may be able to take steps to address the *hopelessness* or *despair* felt by some residents over the issue of crime.

Mechanisms to Prevent and Control Crime

What is the extent of support for severe crime control policies such as the death penalty and the construction of more prisons? To what extent do these preferences vary by nation?

The results of the UNDP Citizen Security Survey 2010 indicate that public support for crime prevention policies such as increased investment in education, youth development, job creation and poverty reduction is fairly universal across the Caribbean. Analysis of these results indicates a fairly complicated picture (see chapter 6 for a fuller analysis). Citizens also expressed mixed feelings about harsher policies, and opinions varied much more strongly by nation. For this reason, it is important to examine each policy in detail.

The severity of punishments: Across the Caribbean-7, about 83.1 percent of the survey respondents agreed that criminals should be punished more harshly. Indeed, the respondents across the countries displayed only a limited degree of variability; the shares ranged from 75.2 to 89.6 percent. The two nations with the highest share of respondents agreeing that harsher punishments are necessary were Trinidad and Tobago (89.8 percent) and Jamaica (89.6 percent). Both nations face high levels of gang violence, and citizens understandably want to see offenders held accountable for their behaviour.

Capital punishment: About 62.6 percent of respondents support the death penalty.

The respondents in the six British Commonwealth countries of the Caribbean-7 (that is, less Suriname) exhibited only a narrow range of variation in their support, from 61.5 to 75.5 percent. Similarly, a 2001 study of the opinions of college students on capital punishment found that 86.7 percent of males and 78.4 percent of females in Saint Augustine, Trinidad favoured capital punishment in cases of first degree murder.⁵⁵ The study noted that “not one of the respondents in Saint Augustine checked the ‘No Opinion’ category, suggesting that capital punishment is a particularly salient topic there.”⁵⁶ Meanwhile, in Suriname, the only recent former colony of the Netherlands examined here, only 35.7 percent of respondents supported the death penalty.⁵⁷ What accounts for this puzzling disparity? It is often said that colonies, even after independence, continue to take on the characteristics of their colonizers. The Netherlands abolished capital punishment more than a century ago (in civil law, not in military law) and remains steadfast in its rejection of capital punishment. To this day, the Netherlands will not honour extradition requests in which the death penalty is a possible sanction.⁵⁸ In contrast, the United Kingdom abolished capital punishment only a little more than a decade ago. A 2009 poll on attitudes towards the death penalty in the United Kingdom found that “70 percent think the U.K. should still have the death penalty as the maximum possible penalty for at least one of the twelve different types of crime surveyed.”⁵⁹ Thus, the variations in the support for capital punishment in the Caribbean seems to be directly linked with the culture of support for the death penalty among the former colonizers.

The overwhelming level of support for capital punishment in six of the Caribbean-7 appears to be out of proportion with the likely deterrent value of the punishment. A long-standing axiom of criminology holds that deterrence has three components: certainty, severity and celerity (or swiftness).⁶⁰ This means that the sanctions with the greatest deterrent value are sufficiently severe and are administered swiftly and with a strong

level of certainty. Capital punishment is clearly severe. However, low detection rates and case processing delays in the Caribbean make it unlikely that capital punishment will be administered with sufficient swiftness or likelihood to produce a deterrent benefit. The research evidence on capital punishment is mixed, but generally tends to indicate that capital punishment is a weak deterrent.⁶¹ Indeed, there is evidence suggesting that it may even backfire by legitimating the use of deadly force.⁶² Moreover, regardless of its actual or potential instrumental benefit, the death penalty is incompatible with the values that are associated with the human development approach.

Human rights: The UNDP Citizen Security Survey 2010 asked respondents about their agreement that human rights are obstacles to more effective crime control. Across the Caribbean-7, only about 43.2 percent of the respondents agreed, ranging from a low of 34.2 percent in Guyana to a high of 62.8 percent in Saint Lucia. The nation with the second highest share of respondents who agreed was Suriname, at 48.2 percent. Thus, with the exception of Saint Lucia, the extent of variation in the responses was fairly narrow. What accounts for the relatively high proportion of respondents in Saint Lucia who view human rights as an impediment to crime control? The most likely explanation is a recent outbreak of violent crime in Saint Lucia. Another potential explanation is a Privy Council ruling prohibiting Saint Lucia from enforcing a mandatory death penalty for all capital offenses and the Privy Council’s general unwillingness to uphold death sentences during appeal phases.⁶³

Building more prisons: The survey asked respondents to rate their level of agreement that government should build more prisons to reduce crime. Across the Caribbean-7, only about 26.0 percent agreed, ranging from a low of 11.7 percent in Barbados to a high of 41.3 percent in Guyana. Excluding these two outliers, one sees that the extent of variation in support for building more prisons is minimal (from 21.7 percent in Jamaica to 33.8 percent in Trinidad and Tobago). Moreover, these findings point to a curious pattern. Across the Caribbean-7,

83.1 percent of respondents believe criminals should be punished more harshly, and 62.6 percent support the death penalty; yet, only 26 percent agree that more prisons should be built. The level of crime alone does not seem to account for any preference for an expansion in the number of prisons, given that, in Jamaica, which has the highest rate of violent crime among these nations, the support for prison expansion is at one of the lowest levels.

What accounts for the two outliers: Barbados at the lower end of the distribution and Guyana at the upper end? Reports on human rights practices in both countries help shed light on this question. Barbados has a relatively healthy prison system. A 2010 report concludes as follows:

“Prison and detention center conditions generally met international standards. Dodds Prison, built in 2007 in St. Philip, was designed to meet modern international standards with a capacity of approximately 1,250 prisoners. According to prison officials, in October it held 910 prisoners, including pre-trial detainees.”⁶⁴

Guyana, in contrast, faces a serious overcrowding problem. A 2010 report concludes as follows:

“Prison and jail conditions were poor and deteriorating, particularly in police holding cells. Capacity and resource constraints were a problem. The Prison Authority reported that at the end of October, there were 2,122 prisoners in five facilities, which had a combined design capacity of 1,580. Approximately half of the prisoners were in Georgetown’s Camp Street Prison, which was designed to hold 600 inmates but held 1,060. Overcrowding was in large part due to backlogs of pre-trial detainees, who constituted approximately 41 percent of the total prison population.”⁶⁵

Public support for prison expansion appears to be a function of both crime rates and current prison conditions.

The data of the UNDP Citizen Security Survey 2010 show that public opinion about crime and justice is complex. In nations experiencing serious outbreaks of violence, prison expansion and capital punishment are two of

the policy options that come to mind most quickly. The data here suggest that the public is looking at other options as well.

Accountability

Worldwide, the public relies on the police and on criminal justice systems to control crime and maintain a sense of security. At the same time, the public also demands that public officials, including the police and criminal justice officials, be held accountable for behaving lawfully.

Likewise, in the Caribbean, two types of accountability are particularly noticeable in the area of security. First, to what extent are the front-line agents of justice—the police—held accountable for misconduct? Second, to what extent are other government officials, both within and outside the criminal justice system, held accountable for corrupt behaviour in office? Chapter 4 examines the police in detail, but the larger criminal justice system also serves a crucial role in reducing and preventing misconduct, including within the police and elsewhere. So, the topic is relevant here as well.

Regulating Police Misconduct

In general, data on police misconduct in the Caribbean-7 tend to be incomplete. It is thus useful to rely also on data from external sources, although these sources may not always be reliable. Various national human rights groups such as Jamaicans for Justice play an important role in advocating for police accountability to the law. However, the NGO that has the biggest part in examining police misconduct on a regional scale is Amnesty International. This organization regularly tracks human rights violations throughout the Caribbean. It has raised concerns about various issues with regard to police misconduct. Its sights have focused most firmly on Jamaica and on Trinidad and Tobago.⁶⁶ National human rights groups, as well as Amnesty International, have called on the governments of both nations to put in place solutions that will hold police accountable for various forms of misconduct, especially the excessive use of force.

Amnesty International has long bemoaned the police use of deadly force in Jamaica. Between 1983 and 2009, almost 5,000 persons died as a result of the use of force by police. Of these, 1,748 died between 2000 and 2009. Many of these killings have been justified by statements that they occurred during shoot-outs with gunmen. However, the high number of killings, eye-witness testimony, and other evidence such as the virtual absence of injuries or fatalities among police have raised concerns about the possibility of summary executions by police.

In Trinidad and Tobago, excessive use of force by police is reportedly widespread, and “mechanisms to hold members of the police service accountable for alleged abuses are weak”.⁶⁷ Trinidad and Tobago’s Police Complaints Authority, which reviews allegations of police misconduct, reported that the system to investigate killings by police “continues to be unsatisfactory and unacceptable”.⁶⁸ These patterns are suggestive of a more widespread trend in developing nations with a potent combination of weak judiciaries and high crime rates. Police in these nations may hold the view that their job is to sanitize because the court systems fail to hold offenders accountable for their crimes.⁶⁹ Thus, when

police kill people suspected of being violent offenders, they may be attempting to make up for weaknesses in other parts of the criminal justice system. For instance, the Guyana Human Rights Association (GHRA 2002, 37) concluded that the relative regularity of execution type killings by the police implies that there are elements in the Guyana Police Force who attempt “to ensure that persons they believe to be guilty of crimes do not escape the consequences”. The courts are therefore implicated in the police use of excessive force in at least two ways. First, by failing to hold police officers accountable for the excessive use of force, courts may be implicitly supporting it. Second, by failing to hold offenders accountable for their crimes, they may be implicitly (and unintentionally) promoting the excessive use of force by police. Research in other countries shows that courts can play a crucial role in controlling the police use of deadly force, but only if this is matched by internal controls within police departments.⁷⁰

The Caribbean-7 countries all face concerns about police misconduct to varying degrees. However, each has undertaken efforts to curb misconduct and create a system of checks and balances to strengthen oversight. Gomes (2007) highlights some of the police

Table 5.2. Police Accountability Systems, Caribbean-7

Country	Police service commission	Internal police investigation division	Ombudsman	Civil oversight body
Antigua & Barbuda	Yes	No	No	No
Barbados	Yes	Yes	No	No
Jamaica ^a	Yes	Yes	Yes	Yes
Saint Lucia	Yes	Yes	No	Yes
Trinidad & Tobago	Yes	Yes	No	Yes

Source: Gomes (2007).

a. In Jamaica, there is a Police Public Complaints Authority (a civilian body) and a Police (Civilian Oversight) Authority.

accountability systems that exist within several countries in the Caribbean, including five of the Caribbean-7. (Guyana and Suriname are absent from her analysis.) Table 5.2, adapted from Gomes, illustrates that the majority of countries already have systems in place to provide oversight. However, questions remain about the extent to which these systems function properly, have sufficient authority and resources to carry out independent investigations, or are merely symbolic gestures. In the case of extrajudicial killings by police, symbols mean little. Effective systems are those that result in fewer shootings of civilians without endangering officers or other civilians.

Excessive force is not the only form of police misconduct in the Caribbean. Police corruption is thought to be problematic as well. For instance, Guyana's Ministry of Home Affairs recently established a five-year strategic plan for the Guyana Police Force; the plan describes corruption as a strategic risk that will "adversely affect public trust and confidence in the police."⁷¹ As a result, the plan includes a component that will "enhance the capability of the force to deal with internal corruption."⁷² Although some nations are thought to experience more police corruption than others, all of the Caribbean-7 have wrestled with corruption issues. Police corruption undermines the legitimacy of the law and legal authorities in the eyes of the public. Legitimacy problems undermine the ability of police to secure witnesses and build viable criminal cases. These same problems may lead judges and juries to second guess the police, thus influencing conviction rates.

Excessive use of force and corruption among police are widespread in several countries of the region; some police services are thought to carry out summary executions of known serious offenders. These illegal patterns of behaviour by police undermine not only the authority of the police specifically, but of law, legal authorities and the state more generally. Putting in place meaningful solutions to these issues is an important challenge for Caribbean criminal justice systems.

Table 5.3. Corruption Perceptions Index, Rankings, Caribbean-7, 2011

Country	Ranking
Antigua & Barbuda	—
Barbados	16 (2011)
Jamaica	86 (2011)
Guyana	134 (2011)
Saint Lucia	25 (2011)
Suriname	100 (2011)
Trinidad & Tobago	91 (2011)

Source: Transparency International (2011).

Note: The notation "—" indicates unavailability of data. The year of the ranking is in parentheses.

Regulating Official Corruption

Criminal justice systems need to control not only the official misconduct of police, but also of all other types of government officials, including its own officials.

Perceived corruption levels vary widely throughout the Caribbean. One of the most well known measures of corruption is Transparency International's Corruption Perceptions Index, which "ranks countries according to perception of corruption in the public sector. The CPI is an aggregate indicator that combines different sources of information about corruption, making it possible to compare countries."⁷³ Table 5.3 shows the ranking of each of the Caribbean-7.

According to the Corruption Perceptions Index, Guyana ranks 134 in 183 countries. (Larger numbers indicate greater corruption.) Citizens appear to be well aware of this problem. The Guyana country report for the 2011 Index of Economic Freedom concludes that "there is extensive corruption at every level of law enforcement and government."⁷⁴

Given some of the perceived high levels of corruption within the region, what steps are nations taking to respond to corruption, strengthen regulations and provide oversight? Some nations have chosen to increase transparency by requiring public officials to disclose financial assets. Antigua and Barbuda, Barbados and Suriname are the Caribbean-7 countries that do not have such disclosure laws. While Guyana and Jamaica have relevant laws, questions remain about the extent to which the laws are carefully and regularly enforced. In Guyana, the newly established Transparency Institute (Guyana) “hopes to raise awareness of the many faces of corruption, its causes and consequences resulting in a society diminished of resources, unable to provide its citizens with functioning institutions and a decent standard of living.”⁷⁵ The Transparency Institute hopes to use educational tools to inform the public about the negative effects of corruption and also to establish a Freedom of Information Act, creating greater governmental transparency. In 2004, Antigua and Barbuda passed an act to establish an Integrity Commission charged with “receiving declarations of the affairs of persons holding specific positions in public life, for the purpose of establishing probity, integrity and accountability in public life and for related matters.”⁷⁶ The region appears to be taking some steps to address public corruption.

Regional bodies have also played a role in attempting to regulate corruption in the Caribbean. All Caribbean-7 countries are members of the Organization of American States and the United Nations, both of which have established international anti-corruption conventions. To date, Antigua and Barbuda, Guyana, Jamaica, Saint Lucia, and Trinidad and Tobago have ratified the United Nations Convention against Corruption. Barbados has signed, but not ratified the convention, while Suriname have neither signed nor ratified. Three of the countries with the most serious corruption problems—Guyana, Jamaica, and Trinidad and Tobago—have ratified the convention. Meanwhile, the two nations with the lowest perceived corruption prob-

lems (according to the Corruption Perceptions Index) have not ratified the convention.

Regional Links

Regional initiatives to address public corruption constitute a tiny share of the many regionalization efforts in Caribbean criminal justice. Given the unique characteristics of the region, including a profusion of small islands, a shared sense of culture in many of the nations and a long history of colonial influence (and interference), it makes sense that there is a strong push for regionalization. A number of regional bodies have emerged to provide a structure for establishing multilateral support in many sectors, including criminal justice. Here, we review just a handful of these organizations.

CARICOM

The largest and most influential regional body in the Caribbean is CARICOM, which was established in 1973 by treaty between four Caribbean-7 nations: Barbados, Guyana, Jamaica, and Trinidad and Tobago.⁷⁷ Since then, 11 other nations have joined, for a total of 15 member states, including all the Caribbean-7. Additionally, five British overseas territories are associate members. CARICOM serves as one of the primary conduits for regional links in multiple sectors, including criminal justice. Within CARICOM, the Implementation Agency for Crime and Security (IMPACS) houses several entities designed to facilitate regional coordination and cooperation around crime and security issues, including the Regional Intelligence Fusion Centre and the Joint Regional Communications Centre. These entities “are specifically geared towards strategic research, programme and project implementation, evaluation, analysis and mobilization of resources to support the collective fight against serious crime and to counter other security threats in the Region.”⁷⁸ IMPACS has recently implemented the Regional Integrated Ballistics Information Network. This system will allow users quickly to access ballistics information to identify weapons used in the commission of crimes and will

facilitate tracing the movement of weapons throughout the Caribbean. This important advance may help address some of the issues involved with backlogs and case processing and should have a significant impact on the ability of prosecutors to secure convictions.

The Council of National Security and Law Enforcement (CONSLE), within CARICOM, facilitates regular meetings of the region's national security ministers. CONSLE recently commissioned an audit to review IMPACS operations and financial expenditures during 2006–2010. Justification for the audit included a desire for full disclosure and transparency in IMPACS operations to ensure “the Region's security agenda [is] not compromised.”⁷⁹ The CONSLE audit may provide an opportunity to create additional accountability mechanisms in the region.

The Caribbean Court of Justice and the Eastern Caribbean Supreme Court

Another important regional criminal justice entity is the Caribbean Court of Justice (CCJ). The CCJ facilitates uniform judicial practices within the region. The CCJ hopes to replace the Privy Council as the final court of appeals in the region, establishing an entirely self-sufficient Caribbean-based justice system. However, only Barbados and Guyana have officially recognized the CCJ as their designated final court of appeals. There are a number of reasons why countries have been averse to ratifying the CCJ's appellate jurisdiction. Most notably, the Privy Council is viewed within the region as an impartial judicial body, immune to political influences.⁸⁰ There appears to be a general lack of confidence within influential subpopulations of the region that a Caribbean-based court of appeals could perform at the same level of proficiency and integrity as the Privy Council. This lack of confidence, which is fuelled by pessimism associated with the region's struggles to process cases efficiently, serves as a roadblock to regional acceptance of the CCJ.

There is reason to believe that a regional court could act independently and effectively, as exhibited by the ECSC. Developed by another regional body (the Organization of

Eastern Caribbean States), the ECSC functions as a high court of justice and court of appeals for nine Caribbean nations (two of which are among the Caribbean-7). Described by Favaro and Peretz (2008, 15) as “a pioneering example of outsourcing by individual sovereign countries of the provision of justice to a regional court”, the ECSC has functioned within the region since 1967. While final appeals for ECSC member states still rest with the Privy Council, the ECSC, on its own accord, has “fostered responsible governments, supported its objective of guaranteeing an independent judiciary, and secured individual human rights.”⁸¹ The successes of the ECSC highlight the importance of regional links in the Caribbean. Favaro and Peretz (2008, 16) note that “as a regional court, the CCJ has the benefit of drawing on 40 years of experience from the ECSC.”

Regional Bodies Focused on Police, Prosecution and Corrections

The Caribbean is home to several professional associations that aim to link officials and raise the level of professionalism within the region. For instance, the Association of Caribbean Heads of Corrections and Prison Services has 16 member states, including the Caribbean-7. During the opening ceremony of the 2010 association's annual conference, Elliston Rahming, superintendent of Her Majesty's Prison in the Bahamas, echoed some of the themes raised throughout this chapter: “Corrections is not just about control and containment. We are equally engaged in the business of crime prevention via ongoing staff development, proper sentence planning, rehabilitation programmes and successful reintegration of offenders.”⁸²

Similarly, the Association of Caribbean Commissioners of Police includes police commissioners from all the Caribbean-7, as well as many other countries. During a meeting in Kingston, Jamaica among nine commissioners of police in 1986, a resolution was passed calling for the creation of the association. The association was formally established the following year during the meeting of commissioners in Saint Lucia. The association con-

venes annual conferences to discuss issues of regional importance to the law enforcement community. During the 2011 conference in Antigua and Barbuda, the issue of anti-corruption was identified as an important area of concern, as were issues of youth violence and the enhancement of forensic and ballistics examinations.

The Caribbean Association of Judicial Officers is a relatively new regional organization: it held its inaugural conference in 2009. Membership consists mostly of current or retired judicial officers from throughout the Caribbean. The association aims to enhance the administration of justice, promote judicial independence and standards of integrity and accountability, foster professional development among judicial officers, support research on the administration of justice and improve the public image of the judiciary, among other goals. The topics featured at its annual conferences echo many of the themes raised in this report, including trial management; expanding access to justice, especially among vulnerable populations; and protecting victims from reprisal. However, other important themes have not been taken up, especially case processing backlogs and overcrowding in prisons.

Additional Regional Efforts

The organizations outlined above represent some of the more well known and well established forums for regional cooperation and collaboration, but other ongoing efforts not described here might also play a role in improving the practice of criminal justice in the region.

Regional initiatives are a good way to enhance the level of professionalism, coordination and cooperation in dealing with issues of vital importance to Caribbean nations. Such initiatives enable nations to work together to solve common problems, providing economies of scale often not possible in some of the Caribbean microstates that lack sufficient resources to address some problems on their own. Regional professional bodies also provide an opportunity for nations to share ideas, borrow effective programmes and prac-

tices from one another and provide continuing education. The various regional bodies can serve as an effective locus for change, taking on some of the issues raised in this report.

Regional professional bodies can serve as an outstanding venue for professional development by offering an arena for contact with peers from other parts of the world who can share their ideas and help ensure a more vibrant dialogue about regional criminal justice practices. To support this goal, regional professional bodies (such as the Association of Caribbean Commissioners of Police) might seek affiliation with larger bodies (such as the International Association of Chiefs of Police).

Regional cooperation and communication are vital in any plan to improve the practice of criminal justice in the Caribbean. However, there are at least two main caveats. First, the benefits of regional cooperation are often overstated. Professional meetings can serve as a forum for spreading effective practices, but they can as easily serve as a forum for reinforcing shared assumptions and spreading bad ideas. Second, while globalization has had a fundamental impact on criminal justice systems throughout the world, including the Caribbean, not all the crime and criminal justice problems faced within Caribbean nations are regional or global. Some are local phenomena, and local solutions are needed to address these problems. While regional problems deserve regional solutions, local problems deserve local solutions. Making the distinction is vital.

Conclusion

This chapter outlines important issues facing Caribbean criminal justice systems. Research has demonstrated that the structure and behaviour of criminal justice institutions can have a critical impact on citizen security. At the same time, they can undermine public faith in the criminal justice system and government authority more generally. A long tradition of research in criminology has shown that criminal justice systems can generate unintended increases in crime and decreases in

human security if they do not adopt fair, effective, transparent and accountable practices. Although the region's criminal justice systems have made major strides in some ways, much remains to be done.

Data presented in this chapter indicate that, in the region, confidence in the courts is fairly low. This is a somewhat unexpected finding of the UNDP Citizen Security Survey 2010. Caribbean officials, judiciary and court managers, and populations should act on this red flag.

There is also a strong demand for change. The findings described in this chapter represent an argument for a comprehensive programme of change in criminal justice systems in the region. Some aspects of this change will be more challenging than others. It is possible to achieve useful short-term gains by adopting immediate administrative measures to solve problems such as case overload and processing delays in the courts. These are problems of efficiency that, however, influence system effectiveness and overall confidence in the

system. Medium-term gains can be realized by establishing a credible, secure and well-designed witness protection programme at the regional level. Other medium-term gains can be realized by establishing greater capacity for analysing crime and criminal justice issues within the region and testing the fairness and effectiveness of crime control interventions.

The deeper and more challenging changes involve how people are treated by criminal justice systems. Police abuses, sentencing disparities and substandard confinement conditions all contribute to a massive crisis of legitimacy in the region's criminal justice systems. As long as some people have greater access to justice than others, the region's inhabitants will continue to exhibit deficits in trust and confidence in the system. These issues constitute a long-term reform agenda that will take many years to put in place. At the same time, these comprehensive reforms require urgent and well-coordinated action if the region is to achieve its aims in citizen security.

