

Government of Jamaica

MINISTRY OF JUSTICE

THE NATIONAL RESTORATIVE JUSTICE POLICY

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TABLE OF CONTENTS

	<u>Page</u>
Contents	
Acknowledgments.....	3
Message from the Minister of Justice Senator The Hon. Mark Golding, Q.C.	4
Acronyms.....	6
Preface.....	7
Executive Summary.....	8
1. INTRODUCTION.....	10
Need for this Policy	
Definitions of Restorative Justice	
Origin and Roots of Restorative Justice	
2. OVERALL SITUATIONAL ANALYSIS.....	24
International Context	
Success of RJ Internationally	
National Context	
3. POLICY FRAMEWORK AND PRINCIPLES.....	42
Vision Statement	
Policy Goals	
Principles of Restorative Justice in Jamaica	
Policy Achievement Strategies	
4. POLICY ACHIEVEMENT STRATEGIES.....	44
5. THE RESTORATIVE JUSTICE GENERAL APPROACH.....	48
Pre Charge Non-Criminal Disputes	
Pre Charge Minor Offences	
Post Charge/Pre Conviction Minor Offences	
Post Conviction/Pre Sentence for Major or Minor Offences	
Post Sentence for Minor and Major Offences	
6. THE RESTORATIVE JUSTICE PROGRAMME PROTOCOL.....	58
Section One: Restorative Justice Eligibility Criteria Checklist	
Section Two: Procedures for Restorative Justice Process and Restoratively Oriented Options	
Section Three: Restorative Justice Agreements	
Section Four: Supervision of Agreements	
Section Five: Administrative Requirements	
Section Six: Restorative Justice Centre Standards	
Section Seven: Sanctions for Restorative Justice Facilitators	
7. RESTORATIVE JUSTICE Governing Structure	62
Roles And Responsibilities Within RJ Governing Structure	
8. OWNERSHIP AND IMPLEMENTATION.....	67
Key Stakeholders And Their Roles	
9. LEGISLATIVE FRAMEWORK.....	76
10. STRATEGIC LINKAGES.....	78
11. MONITORING AND EVALUATION.....	79

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MESSAGE:
MINISTER OF JUSTICE SENATOR HONOURABLE MARK GOLDING

The Ministry of Justice is pleased to present this National Restorative Justice Policy, which has been developed after extensive consultation with Jamaicans from all walks of life. Jamaica has confirmed its desire for fair, transparent and effective responses to crime and conflict in order to realize the vision of a safe and harmonious society.

The development of this National Policy is in keeping with the wider reform of the justice system which is currently underway. We affirm that this new thrust in delivering justice in Jamaica will require a focus towards reconciliation and empowerment and equipping citizens and communities with peaceful means of resolving conflict and experiencing justice.

The Government of Jamaica (GoJ) has given its commitment to promoting Restorative Justice Principles and Practices because of the inherent humane and holistic approach to conflict resolution and the multiple positive benefits which our communities and the justice system can achieve.

Restorative Justice is known to reduce costs in the criminal justice system; it helps victims to recover more quickly from the effects of crime, leaving them and offenders more satisfied that justice was done. By being victim- centred it will open up new and more useful roles for victims in the formal justice system. It also holds offenders accountable for their crimes and offers them a way to take responsibility for their actions and make reparation. It will also ease the burden on our courts and reduce overcrowding in our penal institutions as victims and offenders utilize alternative measures.

The effectiveness of structured Restorative Justice (RJ) Practices has been proven in many countries and in varied cultures. The values and principles inherent in modern-day RJ practices were the same ideals used by past generations of Jamaicans settling disputes; we should therefore make every effort to embrace those same principles to create a more caring and unified nation.

This National Restorative Justice Policy is critical at this time as it pulls together the initiatives already being implemented by the Government and its partners, and puts in place other mechanisms to further ensure multi-sectoral approaches to peace building, healing and restoration of relationships in Jamaica.

We are grateful to the Inter-American Development Bank (IDB), Department for International Development (DFID), Canadian International Development Agency (CIDA) and the United Nations Development Programme (UNDP) for their financial and technical support in advancing the Restorative Justice initiatives.

I recognize the work of all my predecessors who were committed to the implementation of this very critical programme.

This Administration remains committed to supporting any initiative, which can influence positive social change, and so we call on all Jamaicans to embrace this Policy as well as a culture of peace and justice, which will enable us to restore harmony in our country.

Mark Golding
Minister of Justice

ACRONYMS

ADR	-Alternative Dispute Resolution
CBO	-Community Based Organisation
CCF	-Canadian Caribbean Cooperation Fund
CCRC	-Community Conflict Resolution Council
CDA	- Child Development Agency
CIDA	- Canadian International Development Agency
CISOCA	-Center for the Investigation of Sexual Offences and Carnal Abuse
CJT	-Community Justice Tribunal
CSJP	- Citizen Security and Justice Project
DCSJ	-Department of Correctional Services
DPP	- Director of Public Prosecutions
DRF	-Dispute Resolution Foundation
EEC	-Early Childhood Commission
GDP	-Gross Domestic Product
GoJ	-Government of Jamaica
IDB	-Inter-American Development Bank
JCDC	- Jamaica Cultural Development Commission
JCF	- Jamaica Constabulary Force
JIS	-Jamaica Information Service
JJSR	-Jamaica Justice System Reform
JJSRTF	-Jamaica Justice System Reform Task Force
JP	-Justice of the Peace
JSPD	- Jamaica Sustainable Peace and Development Programme
JTI	-Justice Training Institute
JVPSD	-Jamaica Violence, Peace, Sustainable Development Programme
KMR	-Kingston Metropolitan Region
MOE	-Ministry of Education
MOJ	-Ministry of Justice
NGO	-Non-Government Organisation
PACT	-People's Action for Community Transformation
PALS	-Peace and Love in Society
PIOJ	- Planning Institute of Jamaica
PMI	-Peace Management Initiative
PTA	-Parent Teacher Association
RJFT	-Restorative Justice Formulation Team
RJU	- Restorative Justice Unit
RJ	-Restorative Justice
SCLRP	-Social Conflict and Legal Reform Project
SDC	-Social Development Commission
TRC	-Truth and Reconciliation Commission
UNDP	- United Nations Development Programme
UNICEF	- United Nations Children's Fund
VOM	- Victim/ Offender Mediation
VORP	- Victim / Offender Reconciliation Processes
VRI	- Violence Related Injury
VSU	- Victims Support Unit

PREFACE

The development of a National Restorative Justice Policy comes at a time when conflict, leading to crime and violence, remains the single most serious issue affecting social order and public safety in Jamaica. Research indicates that a contributing factor to the high level of violent crimes in Jamaica is the phenomenon of reprisals. The power of criminal networks in some communities and the lack of understanding of and trust in the justice process along with delays have resulted in numerous acts of vigilante justice.

The Government of Jamaica, through the Ministry of Justice, has taken a leadership role in fostering Alternative Dispute Resolution (ADR) procedures within the Jamaican society at large and within the Jamaican justice system in particular, building on the pioneering work and knowledge of the Dispute Resolution Foundation (DRF) and its partnering with other organizations.

However, as part of the larger and more far-reaching justice reform effort in this thrust towards Restorative Justice practices, we have to go beyond the ADR focus on dispute resolution to restoring balance and equilibrium to tarnished or harmed relationships. One of the challenges of a policy on Restorative Justice (RJ) is to move victims from the periphery to the centre of the process. This will require the establishment of facilities and services that victims and offenders can readily access in order to participate in Restorative Justice processes.

The Policy provides for increased use of Restorative Justices processes including, restorative conferences; accountability conferencing; victim offender conferences, healing and or sentencing circles, which are to be effectively integrated into the justice system. These processes can result in a reduction in the number of cases presented to the Court and at the same time provide for more satisfactory outcomes for all parties. The community has a major role to play in facilitating these Restorative Justices approaches.

As a theory of justice, Restorative Justice practices will have broad applications to many settings in Jamaica and will be practised in the reformed justice system at every stage, from initial intervention to post-sentence integration.

EXECUTIVE SUMMARY

The Jamaican people deeply desire fair, transparent and effective responses to conflict, crime and violence in order to realize the vision of a safe and harmonious society. Current responses to these social ills fail to deal with underlying inter-related issues of dysfunctional values, family breakdown, unemployment, illiteracy, violence, revenge, gangs, and drug addiction.

The cost of crime and violence to Jamaica is far greater than the significant economic implications. The greatest consequence is the loss of faith in the people and institutions that sew the fabric of society and hold it together. It is the loss of young people serving time in Jamaican prisons and the social erosion that comes from a trouncing of core values that once knitted our wholesome social relationships and public order.

The development of a fresh vision of justice must reflect the values and principles as recommended in the Report of the Jamaican Justice System Reform Task Force to “embrace a culture of peace and justice.” Delivering justice in Jamaica requires a culture and systematic shift towards local level, person-to-person, group-on-group and community reconciliation, empowering and equipping citizens and communities with peaceful means and structures for resolving conflict and experiencing justice.

The call for a more just society can be found in urban underserved communities, rural villages, churches and schools, on radio and television, and in newspapers and speeches all across the country. It is expressed through the persistent call “We Want Justice”. In this cry, disillusioned Jamaicans are calling for a more effective justice system – one that respects the dignity and equality of each person - victim, offender and other community members; one that builds understanding and promotes social harmony; one that repairs harm and improves public safety. These values are often difficult to find in the adversarial, retributive model of justice that prevails in the current system. They can, however, be found in reparative or restorative justice approaches to conflict that are emerging in Jamaica and flourishing in countries around the world.

A precise definition and description of Restorative Justice can be elusive because it is an approach to justice, rather than a distinct model or system of law. A central feature of any definition is the notion of repairing the harm caused and restoring the parties and their relationships to a state of wellness or wholeness. Restorative Justice is a theory of justice that understands wrongdoing as harm to people and their relationships and not primarily as harm against the State.

Restorative Justice holds the wrongdoer responsible for his or her actions. It further provides an opportunity for the parties affected by the wrong - victim(s), offender, community members - to identify and address their needs in the aftermath of a wrong. The process seeks an outcome that affords reparation, reintegration, and restoration of relationships with a view to preventing future harm. It is principally committed to being relationship-centred, harm-focused, inclusive, participatory, democratic and contextually and culturally grounded.

As a theory of justice, Restorative Justice practices have potentially broad based applications/resolutions to many settings in Jamaica, including school based conflict, community conflict, national reconciliations, communal and family conflicts. As a problem solving mechanism, it can also be pre-emptive in containing escalation of conflicts and their disruptive consequences.

Existing Restorative Justice practices reflect a continuum from partly restorative to fully restorative. Fully Restorative Justice models bring together all those affected including victims, offenders and community members. These mechanisms include family group decision making; restorative conferencing and healing circles.

Research into Restorative Justice has shown that it:

- (markedly) increases the satisfaction of those affected by conflict;
- is more effective than retributive justice in addressing post-traumatic stress among victims;
- reduces feeling of revenge or reprisal compared to traditional/formal justice; and
- reduces recidivism for a variety of offences in different settings.

The Government of Jamaica seeks to orient and focus efforts at the development of Restorative Justice that lays the foundation for its growth throughout Jamaica in a variety of sectors. Policies and programmes will be expanded or developed through partnerships among Government, non-profit organizations, and communities, keeping in mind that successful intervention for enhancing public safety requires a multi-disciplinary and multi-partnered approaches.

The Jamaican Government is dedicated to the creation and maintenance of a peaceful and just society and therefore:

- is committed to developing and supporting Restorative Justice philosophy, programmes, processes and practices;
- believes that the values and principles of Restorative Justice reflect Jamaican's ideals of justice;
- recognizes the importance of addressing the harms to the relationships between individuals, groups and communities affected by wrongdoing with a view to creating healthy relationships that can sustain and support a peaceful and just society;
- is committed to attending to the needs of victims, providing meaningful accountability for offenders, facilitating their rehabilitation and reintegration, and empowering communities;
- is committed to supporting the development of Restorative Justice in a variety of sectors where justice issues are present including, but not limited to, criminal justice, community safety, security, and education; and
- acknowledges the importance of leading and partnering in the areas of Restorative Justice education, public dialogue, training, and supporting strategic projects that enhance the possibilities of Restorative Justice throughout the Jamaican society¹.

¹ Llewellyn, Jennifer and Graham, Danny, 'Towards a Strategic Framework for Restorative Justice in Jamaica' 2008

CHAPTER ONE: INTRODUCTION

As part of its wider Vision 2030 for Jamaica, the Government of Jamaica (GoJ) is committed to achieving a safe and harmonious society in which there is respect for the citizen's right to live without fear and injustice. Delivering justice in Jamaica will however require a culture shift away from violence and crime as the means of dealing with conflict, towards community reconciliation and empowerment. The development of a new vision of justice must, as recommended in the Report of the Jamaican Justice System Reform (JJSR) Task Force, "embrace a culture of peace and justice." This is possible through equipping citizens and communities with new peaceful and more effective means of responding to wrongdoing, resolving conflict, and doing justice. Restorative Justice provides these means to respond to wrongs and resolve conflict, and holds the promise for much more – a vision for putting things right.

1.1 Need for this Policy

High Rate of Crime

The JJSR in its review conducted in 2007, identified numerous deficiencies affecting public trust in the current relationship with the formal justice system and citizens. It reported that current responses to crime and conflict have failed to deal with underlying issues of family breakdown, absent parents, official neglect and marginalization of underserved communities, unemployment, illiteracy, violence, revenge, gangs, and apparent indifference of state actors, drug addictions and the presence of a "donmanship culture". Jamaican communities, particularly those in urban "garrisons", where many of the country's domestic problems exist, are under extreme social, economic and cultural stress.

Indeed, some scholars have also pointed to underlying root causes of violence and conflict in the Jamaican society and have argued that unless such root causes are addressed, the level of violence and conflict in Jamaica will not be effectively reduced. Professor Anthony Harriott, who has done extensive research on crime, pointed to a "sub-culture of violence" which is "*characterized by the use of violence as socially approved behaviour to achieve socially approved ends such as to preserve respect, defend self-image, socialize the young, and for revenge-as-justice.*"² This sub-culture is evidenced by a high rate of homicidal violence, an affinity with guns (as the weapon of choice in approximately 70% of recorded homicides in

² Bending the Trend Line: The Challenge of Controlling Violence in Jamaica and the High Violence Societies of the Caribbean, Anthony Harriott, 2008

2007), the character of the violence which also includes “conflict violence” which is the outcome of interpersonal and intergroup disputes of all sorts, and a hypersensitivity to insults³.

Cost of Crime

The World Bank Country Study estimates that the direct cost of crime and violence in Jamaica is at least 3.7 percent of the country’s GDP⁴ - counting lost production, health expenses, and public and private spending on security. It has been estimated that violence cost Jamaica approximately J\$12 billion per annum⁵.

A review of data gathered using the Jamaica Injury Surveillance System in 2004 revealed that in respect of Violence Related Injuries (VRIs) treated in nine hospitals 50% of the victims were acquainted with the perpetrator and eighty-one percent (81%) of the injuries sustained were as a result of a fight or argument. The inescapable conclusion from the data is that the overwhelming majority of the injuries attended to in major hospitals in Jamaica may be prevented by resorting to non-violent means of dispute resolution.

According to the ‘Road to Sustained Growth in Jamaica, World Bank Country Study:

The high rate of violent crime can have many adverse repercussions:

- it has a negative impact on the investment climate and can deter or delay both domestic and foreign investment, and hence growth;
- it leads to higher cost of doing business, because of the need to employ different form of security, and diverts investment away from business expansion and productivity improvement, and may lead to a less than optimal operating strategy; and
- it leads to business losses, arising from looting, arson, theft, extortion and fraud.⁶

Criminal Case Backlog

Despite significant increases in spending on the maintenance of public order and safety in recent years, figures indicate that the significant burden in the Courts caused by the upsurge in crime and conflict in the Jamaican society has resulted in case ‘backlog’. For the purpose of this Policy, all cases carried forward and traversed contain ‘backlog’. A total of 751,276 cases were carried forward and traversed in the Resident Magistrates' Courts, the Supreme Court, Court of Appeal, Traffic Courts, Night Court and Coroners Court as at December 2011. As at December, 2011, 68.8% of criminal matters was carried forward in the Resident Magistrates' Courts. In the Supreme Court, the percentage of criminal matters traversed was 90% percent.

³ Ibid.

⁴ A World Bank Country Study, The Road to Sustained Growth in Jamaica, 2004

⁵ Vision 2030 Jamaica, National Development Bank.

⁶ A World Bank Country Study, The Road to Sustained Growth in Jamaica, 2004

Re-offending

Data provided from the Department of Correctional Services (DCS) reveal that in recent times the number of persons incarcerated for repeat offending has increased when compared with the number of repeat offenders in the past. A total of 515 persons were incarcerated for re-offending in 2008, compared to 382 in 2007, 496 in 2006 and 445 in 2005⁸. It was also noted that for 2008, the age cohort 21-45 accounted for 332 or 64% of re-offenders. This brings to the fore the issue of the corroboration between youth and crime, which is a dominant social issue facing Jamaica at this time.

Social Erosion

Social erosion is a problem that is affecting many countries in the western world including Jamaica, with a lack of trust for fellow citizens, our security fences becoming higher and our daily interactions with each other becoming less and less.

Unfortunately, many communities in Jamaica, where crime is at its worst (more urban than rural) are controlled at the grassroots level by dons, enthusiastically referred to as "area leaders" their control is said to be pervasive, iron-fisted and anti-social. Dons set the tone for community values and are said to have a hand in all dispute resolutions of significance.

Many see the presence of dons as a blight on the social fabric of the Jamaican society, still, others (particularly the disempowered segments of society) see dons in a more benevolent light. This ambivalence is deeply rooted in the society to a large part, because dons are seen to do what Governments cannot - provide opportunities and informal support to many families that otherwise would not receive it because of under-resourced social services⁹.

It is clear that this complex area of the Jamaican social structure and the substantial cultural erosion of core social values such as: trust, support, and equality which exist within communities has led to the disenchantment with the formal justice system. This has further led to a reduction in the use of fair, respectful and constructive conflict resolution processes by individuals, families, schools and communities.

It is to be recognized that there are various types of alternative dispute resolution (ADR) practices. These include: arbitration, negotiation, mediation and restorative justice.

⁸ Department of Correctional Services Annual Report 2008

⁹ Llewelyn, Jennifer and Graham, Danny, 'Towards a Strategic Framework for Restorative Justice in Jamaica' 2008, page 8

1.2 Definition of Alternative Dispute Resolution Practices (ADR)

There are four elements of Alternative Dispute Resolution. These are described as follows:

- **Arbitration** allows individuals to make the initial decision that they want their dispute decided and resolved by a third party, who then takes control of the process and renders a decision or solution.
- **Negotiation** does not require a third party but brings the different sides together to strategically discuss and debate how best to achieve their goals and satisfy their interests.
- **Restorative Justice** is different from other ADR techniques in that for it to function properly a specific harm or injury to a relationship must be identified, in addition one party must as a prerequisite take responsibility for the wrong doing in question. Once these pre requisites are met the parties, along with the larger community, come together in dialogue with a third party who guides or facilitates the process, but who allows the parties themselves to determine the best way to mend the relationship that was harmed or broken. Restorative justice is motivated primarily by the need to address the harm done; it does not take place unless and until the person who has caused the harm has fully and freely admitted to their actions and is willing to take responsibility for them. It is this that makes the purpose of a restorative intervention entirely distinct from mediation¹⁰.
- **"Mediation** is the use of a mediator to help [opposing] parties in conflict to talk and listen with a view to designing a solution to meet their needs" (Dispute Resolution Foundation of Jamaica Website). 'Mediation is a way of resolving disputes which assist the people involved to reach an agreement with the help of an impartial mediator. The parties rather than the mediator, decide the terms of the settlement. Mediation is primarily motivated by the need to resolve a dispute or conflict. It does not proceed on the assumption that addressing harm or repairing a relationship is the –or even an –objective'.¹¹

Restorative Justice vs. Mediation

It is important to note that Mediation differs from Restorative Justice in some significant ways, for example:

1. RJ requires that the wrongdoer take responsibility prior to the process commencing in terms of wrong doing, mediation does not.
2. Mediation is more of a strategic dialogue in which the parties' main concern is to achieve the best outcome for themselves (self-interest) versus the best solution for restoring the relationships of all involved.
3. Mediation only involves two parties while restorative justice guarantees the inclusion of other parties affected by the conflict (most commonly the community).

¹⁰ The Differences between Mediation and Restorative Justice/Practice, Derek Brookes, Scottish Restorative Justice Consultancy and Training Service

¹¹ *Ibid*

4. a mediator is actively involved in the consensus building while a facilitator in restorative justice practice remains more in the background allowing the parties themselves to find a mutually beneficial conclusion or resolution.
5. RJ differs in practice from mediation; the mediator will normally begin by asking who would like to speak first. That is because it should not matter who speaks first. Since, they are to be treated as moral equals there should be no sense that one person is entitled to speak before the other. By contrast, it matters very much who speaks first in restorative process. The person who caused the harm needs to set the tone of the meeting by taking responsibility from the outset. Hence, the facilitator should begin by asking the person responsible to start the dialogue by explaining what happened and why.

1.2 Origin and Roots of Restorative Justice

Restorative Justice is not a new phenomenon despite its recent perceived birth in justice systems around the world. Instead, the practices and principles found to underpin Restorative Justice have been present in various cultures for millenniums, and claim their roots in both Western and non-Western traditions. Adopting restorative models of justice thus can be understood as a return to the roots of justice, rather than the adoption of a “new” way of doing justice.

The practices and principles of Restorative Justice that existed in traditional cultures, from New Zealand, across Asia and Africa to North America, can still be found in some cultures today. One example of this is captured in the traditional conception of justice of the African tribes of the Xhosa. According to the local proverb, “*umuntu ngumuntu ngabantu*”, a person is a person through persons. Articulated in slightly different words, this concept – called *Ubuntu* for short - can be described through the saying “I am because you are” or “my humanity is tied up with your humanity”. The effect that such a conception of humans must have on one’s understanding of justice is clear. If one’s humanity is tied up with the humanity of all others what makes others worse off also brings harm to oneself. Thus, responses to wrongdoing must aim to repair the damage, to make the wrongdoing better off for it is only in doing so that one can address the harm the victim(s) suffered. In other words, restoration requires attention to each part that suffers, for restoration is impossible if a part of the whole is harmed.¹²

This statement was captured in the 1997 South African Government’s White Paper for Social Welfare which officially recognized *Ubuntu* as:

The principle of caring for each other’s well-being ... and a spirit of mutual support ... Each individual’s humanity is ideally expressed through his or her relationship with others and theirs in

¹² Jennifer Llewellyn and Robert Howse, *Restorative justice: A Conceptual Framework*, Law Commission of Canada, Ottawa, 1999.

turn through a recognition of the individual's humanity. *Ubuntu* means that people are people through other people. It also acknowledges both the rights and the responsibilities of every citizen in promoting individual and societal well-being.

While colonialization replaced much of African customary law with Western retributively oriented system, there has of late been a move to return to the restorative approaches embodied in traditional practices.¹³

In addition to being found in certain cultural traditions, the concepts of restorative justice can also be seen in many religious faiths. For example, the central concept of shalom in Judaism centres around the need to be in a right relationship with God and one's fellow man.

The principles of Restorative Justice also feature very strongly in the teachings of Jesus Christ, from the doctrines of accountability, repentance and forgiveness, to those of loving one's neighbor, compassion and reconciliation. By sacrificing his son, Jesus Christ, God Himself was willing to reconcile man to Him; an ultimate act that embodied all of these principles.¹⁴

Growing out of these traditional roots, Restorative Justice gained significant prominence in the western or "modern" world again in the 1970's and '80's. The Restorative Justice practices of this period took different forms depending on the cultural and social context which it grew. The Maori people of New Zealand for example gave birth to what is known as Family Group Conferencing. The North American Aboriginal culture gave rise to the practice of Circles, and the Mennonite communities in Canada developed the practice of Victim-Offender Reconciliation Programs or Victim-Offender Mediation.

New Zealand Family Group Conferencing (FGC) – FGC was the name given to the process that the Maori people of New Zealand developed in an effort to address issues they were facing regarding the State apprehension of Maori children. When Maori children were apprehended by the State and placed in state care, they were often cut off completely from their traditions and extended family. The Maori people had no input into how their children were being taken out of their communities or how they were being raised by the State. As a response, the Maori, with the assistance of the New Zealand Government, put in place a conference-type process that brought not only the child, but the child's extended family and State agents together to determine the best solution/plan of action for the child's care and upbringing. This allowed the Maori to have an input into the process so as to not only do what was best for the child, but at the same time

¹³ *Ibid.*

¹⁴ What allows Restorative Justice practices to take these different shapes and manifestations is its core value of responding to specific contexts. As long as certain prerequisites or key requirements have been met and the underlying essential elements are present, the actual form restorative process (who is involved, what name we give the process, etc.) is flexible and should be specific to the traditional practices of the culture or people who use them.

maintain the essential connections between the child and his or her extended family and thus his or her Maori traditions, identity and way of life.

North American Aboriginal Culture

Circles – The Circle is central to traditional aboriginal cultures and social processes. Circle processes for handling crime and wrongdoing originated from traditional concepts of freedom and individuality, i.e the idea that one person cannot impose a decision upon another. Examples of these Circle processes can be found in both the traditions of the Navajo Indians of the southwestern United States, and the Hollow Water Aboriginals of the province of Manitoba, Canada. The traditional Navajos embrace the conflict resolution concept of *Hozhooji* – living in ‘right relationship’. If a person feels wronged by another he/she first demands the perpetrator to put things right. The term for the demand is *nalyeeh*, a demand for compensation. *Nalyeeh* is also a demand to readjust the relationship so that the proper thing is done. If this fails, the wronged person may turn to a respected community leader to organize and facilitate a peacemaking process. In this non-confrontational process, family and clan members of victims and perpetrators talk through matters and arrive at a solution. Although, slightly different in terms of language and culture, the same underlying concepts the circle is found in the communities of the Hollow Water People of Manitoba. Their circle processes began as a response to incest and sexual assault, seeking not only to heal intimate connections and human dignity but also address the social arrangements that enabled violence to flourish in their community. Like many aboriginal communities, Hollow Water had fallen into deep patterns of alcoholism and a culture of violence and was in danger of losing its culture entirely. By using healing circles the people of Hollow Water have worked to transform social dysfunction in their community since 1986.

Finally, a third type of Circle that developed in Aboriginal communities in Canada and the United States is the Sentencing Circle. A Sentencing Circle was a community-directed process that partnered with the criminal justice system to find consensus on a sentencing plan. Sentencing Circles used traditional Circle ritual and structure to create a respectful space. There, interested community members, victim, victim supporters, offender, offender supporters, judge, prosecutor, defense counsel, police and court workers were able to speak from the heart in a shared search for understanding of the event. They identified steps for healing affected parties and to prevent future occurrences. Sentencing Circles involved the players found in traditional court – and were often held in courtrooms. This type of Circle was begun in large part by Judge Barry Stuart of the Yukon, Canada. In many ways this practice developed out of a real concern of the response to the over-representation of Aboriginal men in Canadian prisons and the recognition of the cultural alienation of Canada’s Aboriginal people. Such a process, for the first time in Canadian jurisprudence, allowed for the Aboriginal people of Canada to have a voice in the process and have their own traditions and customs acknowledged and respected by the traditional justice system.

Kitchener, Ontario

Victim Offender Reconciliation Programs (VORP)/Victim Offender Mediation (VOM) – The victim offender reconciliation movement began in Kitchener, Ontario, in 1974. In the ‘Kitchener experiment’, two teenagers met directly with their victims following a vandalism spree in Elmira, Ontario, and agreed to restitution. The resulting restitution agreements became the impetus for the Kitchener Victim Offender Reconciliation Program (VORP). The Community Justice Initiatives Association began the first VORP in 1975 with support from the Mennonite Central Committee and collaboration with the local probation department. From 1978 to 1982 four additional VORPs started throughout Canada and the United States of America. Out of these experiences, Mennonites in the USA and Canada articulated the principles of Restorative Justice, culminating in Howard Zehr’s seminal book, *Changing Lenses: A New Focus on Crime and Justice*. In VORP, reconciliation – the healing of injuries and restoring a right relationship – is the purpose. Direction mediation between victim and offender is the process wherever relationships have been broken by the criminal act.¹⁵

Since the early 1970s and 1980s when these practices first began to emerge in their respective cultural contexts, much growth has occurred in the understanding of Restorative Justice practices. Today, these three initial practices have evolved and to a great degree have merged in accordance with best practice standards – taking the lessons learned from each practice and making a better Restorative Justice process for everyone. In addition, these best practices have been replicated around the world in a manner that, while adhering to certain core principles, allows for variation according to the cultural and social needs and realities of the contexts in which they are implemented. The United Nations Economic and Social Council, for example published a guiding document entitled *Principles of the Use of Restorative Justice Programmes in Criminal Matters* in 2000.

1.4 Definition of Restorative Justice

To capture a definition of Restorative Justice can be elusive because it is both a contextual framework and a way of thinking about crime and conflict, rather than a distinct system of law. It goes beyond how we think about crime and conflict specifically, to how we think about ourselves collectively as a society, how we respond to crime and conflict, and how we restore the balance after a wrong has been committed.

Although difficult to define, the following definitions give expression to some of the many important aspects and elements of Restorative Justice practice and theory:

¹⁵ Paul McCold, “The Recent History of Restorative Justice: Mediation, Circles and Conferencing” in Dennis Sullivan and Larry Tift (eds.), *Handbook of Restorative Justice: A Global Perspective* (New York: Routledge, 2006).

Tony Marshall

“Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”¹⁶.

Howard Zehr

“In short, Restorative Justice is a process through which remorseful offenders accept responsibility for their misconduct to those injured and to the community that, in response, allows the reintegration of the offender into the community. The emphasis is on restoration: restoration of the offender in terms of his or her self-respect, restoration of the relationship between offender and victims, as well as restoration of both offenders and victims within the community”¹⁷.

Mark Umbreit

“Restorative Justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the State. Those most directly affected by crime -- victims, community members and offenders -- are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important”¹⁸.

In general, all restorative models focus on holding the offender or wrongdoer accountable in a more meaningful way, repairing the harm caused by the offence or wrongdoing, reintegrating the offender into the community, and achieving a sense of healing for both the victim and the community.

Restorative Justice comes in many different forms depending on the traditions and preferences of the communities that adopt restorative alternatives. Components of Restorative Justice that may exist in one community may not exist in others. There are however, broad parameters or principles within which all Restorative Justice initiatives fit. The best way of highlighting these principles is by contrasting them with the existing court-driven adversarial system.

¹⁶ Tony Marshall, *Restorative Justice: An Overview*. London: Home Office Research Development and Statistics Directorate, 1999. p 5.

¹⁷ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Waterloo: Herald Press, 1990).

¹⁸ Mark Umbreit, “Avoiding the Marginalization and 'McDonaldization' of Victim-Offender Mediation: A Case Study in Moving Toward the Mainstream” in *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, edited by Gordon Bazemore and Lode Walgrave. Monsey, NY: Criminal Justice Press. 1999. p 213.

Adversarial System

- Crime is defined as a violation of rules, and a harm to the State
- Victim is inhibited from speaking about his/her losses and needs
- Offender, victim and community remain passive and have little responsibility for resolution
- Community's role is limited
- Restitution is rare
- Controlled and operated by the State and professionals who seem remote
- Offender is blamed, stigmatized and punished

Restorative Justice

- Crime is seen as a harm to the victim and communities
- Victim is central to the process of defining the harm and how it might be repaired
- Offender, victim and community are active and participate in the resolution resulting from the restorative forum
- Community is actively involved in holding the offender accountable, supporting the victims and ensuring the opportunities for offenders to make amends
- Restitution is normal
- Overseen by the state, but usually driven by communities
- The long term protection of the public mandates a focus on the methods of problem solving that include the reintegration of the offender into the community and preservation of his dignity

- Repentance and forgiveness are rarely considered
- Repentance and forgiveness are encouraged
- Assumes win-loss outcome
- Makes possible win-win outcome

In the current criminal justice system, victims frequently feel frustrated and left out of their own cases, except perhaps for being witnesses. Restorative Justice recognizes that victims have many needs. They need an opportunity to speak about their feelings and to have the power restored to them that has been taken away by the experience of the offence; they need recognition of the pain and suffering they have endured; and they also need to understand the offender's motivation for committing a crime. Restorative Justice recognizes these needs, and allows for victim involvement in determining how those needs can best be met.

Restorative Justice also provides community members with an opportunity to voice their feelings and concerns, show disapproval of the offender's behaviour without branding him/her an outcast and to be actively involved in a process which holds offenders accountable and repairs the harm caused to the victim and the community.

In the conventional criminal justice system, offenders usually focus on avoiding punishment. The general fixation on punishment as the principal tool for correcting behaviour drives offender responsibility underground. If the only option available for offenders is a potentially harmful period of incarceration, non-acceptance of responsibility will be the standard response. It is socially more valuable to have offenders acknowledge the harm their actions have caused and right their wrong. Restorative Justice requires offenders to take responsibility for their offensive conduct, and then take action to repair the harm the offence has caused to the victim and the community.

Restorative programs place a high value on a face-to-face meeting between the victim, offender and community. During the course of that meeting, each party is given an opportunity to tell the story of the crime from his/her own perspective, and talk about his/her concerns and feelings. The meeting helps the parties develop an understanding of the crime, of the other parties, and of the steps needed to make amends. The meeting concludes with an agreement outlining how the offender will make reparation. Reparation can include monetary payment, service to the victim, community service or any other outcome agreed upon in the process. The terms of the agreement can be personalized to take into consideration the individual circumstances of the offender.

In the application of Restorative Justice, it will be necessary to assess each case based on its merits and the circumstances of the victim and the offender. Restorative Justice is only available when offenders are

prepared to accept responsibility for their actions. Furthermore, for the more serious offences, an offender may still be required to serve time in prison after participating in a Restorative Justice forum.¹⁹

In summary then, Restorative Justice:

- is a different way of thinking about crime and our response to crime;
- focuses on the harm caused by crime: repairing the harm done to victims and reducing future harm by preventing crime;
- requires offenders to take responsibility for their actions and for the harm they have caused;
- seeks redress for victims, recompense by offenders and reintegration of both within the community; and
- is achieved through a co-operative effort by communities and the Government.

There are five (5) key principles or actions to the Restorative Justice “lens”:

1. Focus on the harms and consequent needs of the victims, as well as the communities’ and the offenders;
2. Address the obligation that results from those harms (the obligations of the offenders, as well as the communities’ and society’s);
3. Use inclusive, collaborative processes;
4. Involve those with a legitimate stake in the situations, including victims, offenders, community members, and society; and
5. Seek to put right the wrongs; with a focus on repairing relationships.

Restorative Justice involves processes that deal with harm. It is defined and discussed most often within the context of crime and the criminal justice systems. Restorative Justice, however, is a theory of justice in the broadest sense, and thus can be utilized in relation to all types of harm (as long as the basic prerequisites and conditions are met). It is not limited to the criminal justice context alone, and can be employed in other contexts such as schools, churches, and in communities. This Policy addresses Restorative Justice in criminal contexts.

Finally, Restorative Justice is not a replacement for the current system. A restorative approach will, however, help meet needs that are not often met by the current system. Reducing recidivism, increasing victim satisfaction and public confidence in the system take enormous effort over many years. It will afford and more effective ways of making our communities safer.

¹⁹ Adapted from *Restorative Justice: A Program for Nova Scotia Department of Justice*, Halifax, 1998.

1.5 Benefits of Restorative Justice

1. Through Restorative Justice practices the victim's need for answers, healing and safety are more directly addressed, giving them a voice, encouraging them to express their needs, enabling them to participate in the resolution process and offenders held more directly accountable for the harm caused by their actions;
2. Restorative Justice processes when applied to the criminal justice system have been effective in, reducing re-offending (recidivism), increasing victim satisfaction rates and preventing the re-occurrence of crime²⁰;
3. Restorative Justice reintegrates and restores the offender to become a productive member of the community;
4. communities are also encouraged to reflect on their values and norms and are supported in the role of active participants in the delivery of justice;
5. Restorative Justice has an important role among the strategies to reduce case backlog in the Jamaican Courts. It is recognized that many cases that burden the Court can be diverted and addressed at the community level between the victim, offender and community avoiding the escalation of these disputes to the formal legal justice system and thereby avoiding the associated cost and delays
6. It has also assumed a critical role toward the achievement of public safety and crime reduction.
7. Restorative Justice (RJ) facilitates a space for reflection and interaction among the offender, the victim, the community and the State in a manner which increases the opportunities for the transformation of both inter-personal relationships and systemic conditions leading conflict resolution and problem-solving processes.
8. RJ seeks to involve, to the extent possible, those who have a stake in a specific offence and to identify and address harms, needs, and obligations, in order to heal and put things as right as possible²¹.
9. RJ builds the conditions for genuine and open expressions of remorse and contrition that would be difficult in other criminal justice applications when some offenders are deeply immersed in, and committed to, a fundamentally anti-social culture²³.
10. This is highly relevant for the purpose of advancing Restorative Justice practices, because many of the values which don't reinforce in communities – mainly revenge, intimidation and force - run counter to the principles of Restorative Justice and the formal justice system. RJ offers a potential

²⁰ Lawrence Sherman & Heather Strang, "Restorative Justice: the Evidence" (The Smith Institute, 2007) Cited in Llewelyn, Jennifer and Graham, Danny, 'Towards a Strategic Framework for Restorative Justice in Jamaica' 2008

²¹ Zehr 2002, cited Dundas, 2007.

²³ Llewelyn, Jennifer and Graham, Danny, 'Towards a Strategic Framework for Restorative Justice in Jamaica' 2008, page 8

opportunity to address a profound disconnect between the formal and informal systems of conflict resolution which is perhaps the most challenging phenomenon for advancing crime reduction strategies. Restorative Justice is a mechanism, which has the potential to begin to rebuild among the people, the trust and connection with each other so that Jamaica can flourish as a society.

11. Restorative Justice processes help build the social capital which :-

- a. empowers citizens to collectively resolve problems more easily;
- b. allows communities to advance smoothly in harmony, fostering increased confidence in everyday business and social transactions; and
- c. improves citizens' circumstances by sharpening awareness of the many ways in which our fate is linked and instilling more tolerance, less cynicism and more empathy towards the circumstances of others.

The effectiveness of structured Restorative Justice practices has been proven in many countries, these include: England, Canada, Australia and New Zealand and in varied cultures. The values and attitudes inherent in Restorative Justice principles (equal respect, dignity, care and concern for others) were the same ideals used by past generations of Jamaicans.

CHAPTER TWO: OVERALL SITUATIONAL ANALYSIS

2.1 International Context

International Context

It is probably impossible to say with certainty how many Restorative Justice schemes, programmes or other forms of intervention are in operation. Viewed globally, informed observers estimated that, in the year 2000, there were some 1,300 programmes across 20 countries directed at young offenders alone. Needless to say, Restorative Justice is growing and spreading at an amazing rate across the globe. Below is a brief outline of initiatives by region²⁴.

Africa

During the 1960s and 1970s there was a rediscovery of African traditional justice by Western Restorative Justice practitioners, with linkages being made between the modern development of Restorative Justice and the African models of conflict resolution. With the development of the theory of Restorative Justice the connection continues to be made.

Traditional courts still operate in many parts of Africa today, mostly in rural areas. With the emphasis on ‘problems’ rather than offences, these structures hear the stories of the parties involved and then make decisions regarding outcomes. These outcomes aim to heal relationships, and they ensure restitution or compensation to victims. Symbolic gestures, such as the sacrifice of animals and the sharing of a meal, indicate that the crime has been expiated and the offender can now be reintegrated.

The link between traditional justice and Restorative Justice processes is not only relevant in relation to crimes or disputes between individuals though there are two prominent examples in which African traditional approaches have formed the basis of processes to resolve the harms arising from conflicts at a national level. The first of these is the Truth and Reconciliation Commission (TRC) in South Africa. An interim Constitution was drafted by the negotiating parties in 1993, which sets out the rationale for the TRC. The post-amble to the interim Constitution claimed that the Constitution provided a foundation for South Africans to transcend the divisions of the past, which had generated violations of human rights and had led to a legacy of hatred, fear, guilt and revenge. The post-amble goes on to say: “These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization.” The second example is the use of *gacaca* in Rwanda. *Gacaca* means grass and refers to a traditional meeting of neighbours seated on the grass for the

²⁴ Adopted from “Region Reviews: in Gerry Johnstone and Daniele W VanNess, Handbook of Restorative Justice, Portland William Publishing, 2007.

purpose of settling litigation between the inhabitants of the neighbourhood'. *Gacaca* in post-conflict Rwanda is based on that old practice, but has been resurrected to address a number of genocide-related crimes. Having realized that it would take many decades to bring all the accused to trial in Western-style courts, the Government set up new restoratively-oriented processes.

Although none of these processes is fully restorative, they all indicate an inclination on the part of African countries to find their own solutions to conflict, based loosely on traditional approaches, in order to promote healing in their countries.

In terms of fully restorative processes, Uganda, Namibia, Ghana, the Gambia, South Africa and Lesotho are examples of countries that have, or are in the process, of implementing programmes at this time.

Asia

The term Restorative Justice is new in Asia, but the concept is deeply embedded and rooted in Asian heritage. In the past, village people preferred peaceful, informal ways of resolving disputes, and resorted to the court only as a last alternative.

Customary law, for example, is still used in many communities in Indonesia, although not in all. While it is principally applied in civil matters, it is also used in instances of malicious mischief, theft of religious facilities, defamation, incest and adultery. Its use is also permitted for purposes of maintaining peace and order in a country that has hundreds of different ethnic groups. The mayor (or another public figure) facilitates the informal dispute settlement process between offenders, victim and community.

Customary law in the Peoples Republic of China is also still in use. Customary law in this jurisdiction (in criminal matters) pertains to murder, manslaughter, assault causing bodily harm, theft, rape, adultery, property damage, breach of public interest, robbery, kidnapping, etc. Here restoratively-oriented processes and outcomes can take different forms and differ from tribe to tribe, with examples including mediating tea, wine and feasting; poultry restitution; gifts, removal of genealogical name; labour service; re-education; letter of repentance; and spiritual practices.

Generally, there is a strong connection between Confucianism and Restorative Justice that gives restorative processes a foundation in this region. Confucius was a Chinese thinker and social philosopher. His philosophy emphasized personal and governmental morality, correctness of social relationships, justice and sincerity. These values gained prominence in China over other doctrines, such as Legalism or Taoism during the Han Dynasty (206 BC – 220 AD). Confucius' thoughts have been developed into a system of philosophy

known as *Confucianism* It was introduced to Europe by the Italian Jesuit Matteo Ricci, who was the first to Latinise the name as "Confucius".

Overall, it can be said that there is a continuum of restoratively-oriented practices in use in Asia, ranging from the restitution/compensation order, community service, mock tribunals and repatriation, letter mediation, victim-offender reconciliation and family group conferencing. Japan, Nepal, Pakistan, the Philippines, the People's Republic of China, Bangladesh, Singapore, and Thailand are all included somewhere on this continuum in the countries in Asia where a Restorative Justice programme, can be found.

Europe

In describing the Restorative Justice landscape in Europe, one could characterize it as a diversified landscape of complementary visions. In some countries (for example, Finland, France and Norway), volunteers play an important role in Restorative Justice practice, whereas in other countries (for example, Austria, Germany and Belgium) the intervention is highly professionalized. There is similar diversity concerning the relationship of Restorative Justice services to the criminal justice system: it varies from being exclusively system based (for example in Belgium, functioning under the authority of the Public Prosecutor) to being primarily community based (certain initiatives in, for example, France and Germany). There has also been diversity in the role played by criminal justice institutions in the adoption of Restorative Justice programmes. In Norway and Finland, for example, initiatives arose quite autonomously alongside the neighbouring fields of probation and victim support. In other countries, such as Austria, Germany, The United Kingdom, France and the Czech Republic, probation or victim support have played a central role.

With regard to Central and Eastern Europe, although a number of countries already have well established Restorative Justice practices (for example, Poland, the Czech Republic and Slovenia), others are still struggling to take the first steps.

Council of Europe

In 1999, the Committee of Ministers, the decision-making body of the Council of Europe, adopted Recommendation No. R (99)19 concerning Restorative Justice in penal matters. This sets out the principles of Restorative Justice as guidelines for Member States. Among other things, the recommendation encourages member states to provide Restorative Justice as a voluntarily accepted and confidential service at all stages of the criminal justice process. It also provides that legislation should be adopted, as well as appropriate working principles, for the operation of the criminal justice system and the mediation services themselves.

In 2002, a follow-up study showed that this recommendation had been remarkably influential. In a number of countries it had contributed to the introduction of Restorative Justice and, in others, it had helped to shape

legislation or national Restorative Justice policies. The recommendation was also used in drafting a declaration of the use of Restorative Justice adopted by the United Nations in 2002.

In 2004, the Council of Europe, as part of its integrated project 'Responses to violence in everyday life in a democratic society', commissioned the European Forum for Restorative Justice to write a guide to further support policy development on, and the implementation of, Restorative Justice. The Council of Europe has also regularly supported the training of facilitators in Central and East Europe.

European Union

In 1999 the European Commission made a plea for additional research and experiments in Restorative Justice in the *Communication on Crime Victims in the European Union: Reflections on Standards and Actions*. Two years later, it issued a framework decision on the standing of victims in criminal proceedings. This framework decision obliges the Member States of the European Union to adapt their national laws so as to afford victims of crime a minimum level of protection. It also provides that Member States must promote Restorative Justice in criminal cases for appropriate offences. Furthermore, the European Union has supported financially a number of (research) projects in the field of Restorative Justice. On 19 September 2002, the Belgian Government officially introduced a proposal for a European council decision setting up a European network of national contact points for Restorative Justice. The idea behind this initiative is to create a network of higher civil servants responsible for Restorative Justice. This network would support the effective implementation of Restorative Justice through national policies and by criminal justice agencies. During the April 2003 plenary session of the European Parliament, the initiative was discussed, slightly amended and approved.

Latin America

Five countries, Argentina, Chile, Costa Rica, Brazil, and Mexico, demonstrate a range of practices and ideas that fall along a continuum of Restorative Justice in Latin America. In the early 1990s, several countries in Latin America began experimenting with legal reforms and modernization. The initiative for these changes came from Governments and from civil society. The major influences on Governments were international development agencies, the Alternative Dispute Resolution (ADR) Movement, and growing recognition of the rights of victims.

Argentina

Early proposals for justice reform in Argentina concentrated on the civil and commercial law systems, attacking the causes of corruption and trying to increase efficiency. In 1992, the ADR movement began to influence pilot projects in which mediation was introduced in civil cases. In 1995, law 24.573 expanded mediation and conciliation in this area. Criminal cases were not included in the pilot projects or early laws. However, this groundwork, combined with growing awareness of the victims' needs and of the detrimental effects of imprisonment, led to pilot projects in penal Restorative Justice in the province of Buenos Aires.

Brazil

Several Brazilian organizations are exploring Restorative Justice philosophy and processes in diverse settings such as schools, the justice system, prison and community. In the schools, *Projeto Jundial* was designed by an international group of researchers in Jundiai for use in the state of Sao Paulo. It created a new system of discipline and organization of Brazilian schools. In 1995, Brazilian Federal law also formalized penal mediation and conciliation. The law of Special Criminal and Civil courts created special courts for conciliation in crimes with a maximum penalty of one year in prison (this was expanded to two years in 2001). The process allows for more access to the justice system, the oral nature provides transparency and inclusion, and the alternative of conciliation allows the victim and the offender to settle their own conflict.

Another Brazilian innovation is a unique prison management system developed by the Association for Protection and Assistance to the Convicted (APAC), the Prison Fellowship affiliate in Brazil known as the APAC methodology. This system transforms the typical government/community relationship by including community members in the administration of the prison and working with offenders. This inclusion breaks down the barriers between offenders and the community generally created by incarceration and provides the groundwork for the reintegration of the offender into the society. This reality helps to create a strong community environment among prisoners and volunteers that fosters spiritual, behavioural and lifestyle changes. The restorativeness of APAC is limited by this centralized focus on offenders. Work is beginning to address the needs of crime victims. At the moment, this is being done through offenders providing services to crime victims. There is also interest in starting to work with victim-offender awareness panels.

Chile

For alternatives to incarceration, Chile mainly uses conditional remission of sentence, night confinement, and parole. Yet the new penal codes include a more restorative model that is being tested by two provinces. This new alternative is the 'reparative agreement,' and it centers on the needs of both the victim and the offender. The process accepts the role of the victim in the justice process and allows the reparative agreement to terminate the penal process. Community organization and empowerment is another area reflecting restorative elements. Through identifying respected community leaders and providing them with training to understand the system and dispute resolution processes, the reform effort seeks to transfer some aspects of the justice process into the hands of the community. These *Consultorios Jurdicos Vecinales* (neighbourhood judicial forums) provide a first option for parties in conflict. Operating along the lines of community mediation, they address a wide array of disputes from disagreements between neighbours to those between organizations or institutions. The objective is to prevent conflict from becoming violent and to give citizens power to resolve their own problems.

Costa Rica

In the Costa Rican context, governmental efforts to reform and modernize the justice system have been instrumental in developing restorative practice. In 1996 the *Ley de Justicia Penal Juvenile* (Law of Juvenile Criminal Justice) was passed. In it, Article 61 promoted the use of conciliation in cases. Participation is voluntary on the part of the victim (or designated representative) and the offender in the case. Both sides must agree to the terms for settling the case and equality between the parties must exist during the negotiations. In 1998, Costa Rica implemented a new Criminal Justice Code. Under this Code, conciliation became an option for adults in the criminal justice system. Its provisions concerning which crimes can be resolved through this alternative are similar in both the juvenile and the adult systems. Conciliation may be used in cases of minor crimes with a maximum penalty of three years imprisonment and where it is a first offense. The courts must approve agreements, but once this is done, the criminal action against the offender is dropped.

Mexico

Mexico is the most recent to consider the use of restorative practices. In 2001, the Mexican delegation to the 10th session of the Commission on Crime Prevention and Criminal Justice announced that Mexico had passed a law instituting Restorative Justice with additions made to Article 20 of the Constitution. While the Mexican Government promotes Restorative Justice values and processes, NGOs are also working to introduce the practices. The *Fundacion Centro de Atencion para Victimas del delito* (CENAVID) (Foundation Centre for the Attention of Victims of Crime) seeks to introduce a cult of mediation to Mexico through the *Centro de Resolucion de Conflictos* (Center for Conflict Resolution). CENAVID was founded in 1993 to provide resources to crime victims-especially women and children. In 1995, CENAVID began a

August 13, 2012

project to introduce ADR practices as nonviolent means of resolving community, family, and civil conflicts in one of the most violent neighbourhoods in Guadalajara²⁵.

North America

North America has some of the finest fully Restorative Justice programmes in the world. Some have arisen out of the Mennonite community, others from Aboriginal traditions, while still others from the victims' rights movement.

In Canada, there is a diverse array of practices and programmes across the different provincial jurisdictions. The Royal Canadian Mounted Police (RCMP), who work across Canada, have programmes, for example, where RCMP officers and community representatives in each detachment area across the provinces have been trained to facilitate a Restorative Justice model known as a community justice forum. The investigating officer has the option of referring a matter at the pre-charge stage to one of the trained facilitators in a given detachment area. The facilitator will contact all the parties involved in the case, prepare them for their participation in the community justice forum, and facilitate the forum. The officer or a community representative from the forum will follow-up with the offender and the victim. The officer may refer the offender back to the conventional system, if he does not comply with the agreement arising out of the community justice forum.

Other programmes exist across Canada through the diverse Aboriginal communities. The traditional practices of the Aboriginal Peoples have slowly been given respect and recognition especially within the criminal justice system recently. The case of *R v. Moses*²⁶ is a prime example of this recognition. Here instead of simply imposing a sentence on Mr. Moses, who had been found guilty of numerous serious offences, Justice Barry Stuart departed from the traditional courtroom procedures and instead held a Sentencing Circle. An excerpt from the case heading explains what took place:

"Sentencing was adjourned to permit the community to become involved in an effort to break the vicious cycle that had engulfed the accused. The probation officer enlisted the help of the chief and other members of the First Nation. At the hearing, the physical arrangement of the courtroom was changed into a circle without desks or tables. Thirty members were seated in the inner ring including the accused, defence counsel, officials and members of the First Nation, the Crown, the R.C.M.P. officer, the probation officer and the judge. Latecomers sat in an outer circle. Everyone remained

²⁵ Lynette Parker, "The Use of Restorative Practices in Latin America", Paper prepared for the third international Conference on Conferencing Circles and other Restorative Practices, "Dreaming of a New Reality", August 8-10, 2002. Minneapolis, Minnesota.

²⁶ (1992) 11 CR (3d) 357.

seated when speaking. The formal process dissolved into an informal, but intense, discussion of what might best protect the community and extricate the accused from the grip of alcohol and crime. It was the first time that the accused had heard offers of support from his community and the police. As a result, he contributed to the process of constructing a sentence”.

The criminal justice system is not the only place where Restorative Justice processes are honouring the traditional ways of Aboriginal Peoples. In 2009, the Truth and Reconciliation Commission in Canada was struck to address the issue of abuse against aboriginal students who were housed in residential schools in Canada in the first half of the 1900s.

Finally, the various Provincial Governments have also implemented different practices and programmes across Canada, the best example being the Nova Scotia Restorative Justice Program (NSRJ). Seen as one of the strongest models worldwide, the NSRJ program was approved by the Attorney General for Nova Scotia as a program of alternative measures pursuant to s. 717 of the Criminal Code and as a program of extrajudicial sanctions pursuant to s. 10 of the Youth Criminal Justice Act (Canada) and s. 10 of the Youth Justice Act (Nova Scotia) and is administered by the Nova Scotia Department of Justice. The NSRJ was initiated in 1999 after two years of pre-implementation planning. Referrals to NSRJ are eligible from any level in the Criminal Justice system whether police at the pre-charge stage, or stage or the prosecution, judicial or corrections levels. Different offences and different Restorative Justice tactics were envisaged at the different levels. Restorative Justice programming is carried out by regional non-profit agencies each with its own local board of directors and having significant experience in alternative measures and in administering community service orders. The agencies, each having a mix of paid staff and volunteers, have been funded by the office of the NSRJ Coordinator which has also provided training, protocol development and administrative oversight.

Today, various Governments have been sending their officials to observe and educate themselves on the NSRJ model before implementing in their own jurisdictions.

Pacific

The Pacific region is of particular interest to students of Restorative Justice for two important reasons. It is in many senses, the cradle of modern Restorative Justice processes within the Western justice systems: the developments of the last 15 years in New Zealand and Australia demonstrate a variety of ways in which restorative theory can be effectively translated into formal processes and general practice within the structure of legislative frameworks and modern urban societies. At the same time, in the islands of Polynesia and Melanesia, several of older indigenous forms of restorative practice are still operating.

Most Polynesian and Melanesian cultures report the widespread use of extended family and village processes of meeting to resolve disputes and heal conflict.

The New Zealand society is influenced importantly by the Polynesian cultures of a large number of its people and particularly of Maori, the indigenous people. Within the Maori society, conflicts and problems were traditionally dealt with in family and community meetings. Calls to return to these processes, together with Maori concerns about the institutionalization of their children exerted a strong influence on the values and processes set out in the current child welfare and youth justice legislation. The Children, Young Persons and their Families Act 1989 emphasizes the responsibility of families and family groups for decisions about children, in partnership with and with the support of the State, through the process of the family group conference (FGC). In addition, concerns over victims led to their recognition and inclusion in decision-making. Since then, the Sentencing Act 2002 and the Victims Rights Act 2002 were adopted to allow judges in the adult criminal courts to refer matters to a Restorative Justice conference; the judges are required to take into account any outcomes of such a conference in all cases in which one has been held.

In the youth justice system, the family group conference is the key decision-making procedure for the top 25 per cent of offenders, including all serious offending except for the few cases of murder and manslaughter dealt with in the adult courts. Most Restorative Justice conferences are arranged by one of the 19 community programmes on contract to accept judicial referrals. In addition, programmes accept self-referrals from offenders, victims or other members of the community. Only about a quarter of young offending cases are considered serious enough for referral to an FGC or youth court. The rest are dealt with by police youth-aid officers through the use of warnings or diversionary plans. After investigating officers make their reports about the circumstances and impact of the offences, youth-aid officers meet with the young offenders and their parents to decide on a plan that is consistent with the restorative values set out in the legislation. Victims and schools may also be consulted. The resulting plans are similar in type to those for more serious offenders but usually contain fewer elements, smaller financial contributions (usually less than \$50) and fewer hours of work in the community (usually less than 30 hours).

Like New Zealand, Australia is a world leader in Restorative Justice conferencing, and legislatively based conferencing schemes are in place in all but one jurisdiction (Victoria). The rise of Restorative Justice in Australia was largely influenced by developments in New Zealand. South Australia, for example, is the jurisdiction with the most experience in conferencing and it was the first to implement a statutory conferencing scheme. South Australia conducts conferences for approximately 1,650 young offenders each year for offences against the person ranging from minor offences to serious offences, including serious assault and sexual assault. South Australia, like several other jurisdictions in the country, has adopted the

“New Zealand model” of family conferencing. This means that conferences are managed and run by professionals other than the police.

2.1.1 Success of Restorative Justice Internationally

A review of research on Restorative Justice (RJ) undertaken by the Jerry Lee Centre of Criminology at the University of Pennsylvania for the Smith Institute in London to examine the evidence on RJ from Britain and around the world showed that across thirty six (36) direct comparisons to conventional criminal justice, RJ has in at least two of the models each:

- substantially reduced repeat offending for some offenders, but not all;
- doubled (or more) the offences brought to justice as diversion from Criminal Justice;
- reduced crime victims’ post –traumatic stress symptoms and related cost;
- provided both victims and offenders with more satisfaction with justice than Criminal Justice;
- reduced crime victims’ desire for violent revenge against their offenders;
- reduced the cost of criminal justice, when used as diversion from Criminal Justice;
- reduced recidivism more than prison (adults) or as well as prison (youths)²⁷.

Under the research, an evaluation of five Restorative Justice Programmes in New York and Canberra showed diversion to RJ yields offences brought to justice rates 100% to 400 % higher than conventional criminal justice, including for robbery and assault, when offenders take responsibility but need not sign full admission to crime.

The conclusions of the research were based largely on two forms of RJ: face to face meetings among all parties connected to a crime, including victims, offenders, their families and friends and a dialogue process that results in court ordered financial restitutions.

“RJ: The Evidence” also gives some preliminary indications that RJ, which in its initial development tended to be used more for youths than adults, may actually be more effective in dealing with adult crime. It suggests, too, that RJ may be better for crimes with victims than for impersonal crimes like shoplifting or drunk driving “RJ: The Evidence” says, “The evidence on RJ is far more extensive, and positive, than it has been for many other policies that have been rolled out nationally” (p. 4, Abstract). It also says, “There is far

²⁷ Restorative Justice the Evidence, The Smith Institute; Stevenson, Will

more evidence on RJ, with more positive results, than there has been for most innovations in criminal justice that have ever been rolled out across the country. The evidence now seems more than adequate to support such a roll-out for RJ” (p. 8, Executive Summary). RJ researcher Dr. Paul McCold, a founding faculty member of the IIRP graduate school, in Bethlehem, Pennsylvania, USA, said, “This report moves the debate beyond the question of whether or not restorative justice works. It also closes the door on whether it works better than criminal justice.

2.2 National Context

The aim of the current policy is, using the best practice standards that have been developed throughout the world, to develop a Restorative Justice model and practice that responds to the needs and culture of the Jamaican people.

Following on recommendations from the West Kingston Commission of Enquiry Report (7th July, 2003), the Cabinet of Jamaica mandated the Ministry of Justice to provide leadership in the development of a Restorative Justice strategy. In 2002, the Report of the National Committee on Crime and Violence recommended the use of Restorative Justice at the community level to empower communities to deal with crime; with special reference to first time offenders. It is acknowledged that RJ principles can help the work of the Jamaican criminal justice system in reducing crime, the pervasive fear of crime and the related concerns about access of citizens to the protection of laws.

Restorative Justice Partners

Funding from the Inter-American Development Bank (IDB) given to the Government of Jamaica led to the formation of the Citizen Security and Justice Programme (CSJP), Phase I of which commenced in 2003. Phase II began in 2010 and will run until 2014 with the aim of increasing community security, reducing crime and violence, strengthening crime management and improving the delivery of judicial services. In its capacity as a partner with the Ministry under the terms of the CSJP, the Ministry of Justice has received funding within Phase II for its Restorative Justice Programme through both Department for International Development (DFID) and Inter-American Development Bank (IDB), specifically for training, public awareness implementation and establishing a suitable legal framework.

Over the course of the last six years, a variety of institutions have implemented Restorative Justice-related initiatives in Jamaica, notably: Office of the Prime Minister (Values and Attitudes and the National Fresh

Start Programmes), Northern Caribbean University and the People's Action for Community Transformation (PACT). Several organisations are in the process of establishing Restorative Justice-related programmes on the island including the faith-based organisation, Cornerstone Ministries. The work of the Dispute Resolution Foundation is worthy of particular mention as this organisation has pioneered a number of advanced Alternative Dispute Resolution initiatives at the community level. The Ministry of Justice is advancing a national understanding of Restorative Justice through establishing a Restorative Justice Unit.

The UNDP facilitated a National Restorative Justice process in Jamaica through its Jamaica Violence, Peace and Sustainable Development Programme (JVPPSD). The JVPPSD was created to support the implementation of the National Security Policy and to directly address the issue of peace-building and development. The JVPPSD was a three-year intervention programme which became effective in 2008 and will ended in 2010 with a particular focus on reducing armed violence, institutional capacity-building and community safety. The UNDP supported the Ministry of Justice in establishing a Restorative Justice Formulation Team with the aim of designing a National Restorative Justice Policy Framework.

The JVPPSD is particularly concerned with the provision of economic opportunities for young males at risk of entering gangs and being drawn into violence. To this end, the Ministry of Justice has engaged in a meaningful and continued collaboration with key government entities, civil society and target communities for the effective implementation of the JVPPSD. For the Ministry of Justice specifically, the key outcome will be the enhanced capacity to prevent armed violence and increase community safety through the development and implementation of a Restorative Justice programme.

International Conferences

There has been very good progress in sensitising stakeholders and communities island wide on the principles and practices of Restorative Justice through three (3) international conferences on the topic held in February 2007, February 2008 and May 2009. Several sensitisation initiatives and training workshops were also conducted by the Justice Training Institute (JTI) for members of the judiciary, prosecutors, civil society and community members to better understand the practice of Restorative Justice processes. Moreover, in 2007, the Governor General declared the first week of February as 'Restorative Justice Week' and it has since served as a key vehicle to increase public awareness and understanding of the Restorative Justice Philosophy.

Public Consultations and Education

Between 12th August and 25th November 2008, 23 consultations were held across Jamaica and were attended by approximately 2100 representatives from schools, civil society, faith-based and law enforcement agencies. In preparation for the piloting of the Restorative Justice programme in the community of Tower Hill, three public consultations were held there on three consecutive Sundays in September 2009 to educate and sensitize the residents about Restorative Justice.

Restorative Justice Pilot Communities

The Government of Jamaica, having recognized its responsibility to provide a safe and secure environment to every citizen, secured loan financing from the Inter-American Development Bank (IDB) and grant-funding from the Department for International Development (DFID) UK to continue the implementation of a crime and violence prevention programme. The Citizen Security and Justice Programme (CSJP) commenced in 2001, the Restorative Justice programme is one of the components under CSJP as part of its efforts to address issues of strengthening crime management capabilities and the improvement of delivery of judicial services. Four (4) CSJP communities were selected as pilot communities. The Pilot communities include: Granville, St. James; Effortsvillle, Clarendon; Homestead, St. Catherine and Tower Hill, St. Andrew, which will run for two years. In April, 2012, three (3) additional communities were added to the Restorative Justice Programme, these include: Canaan Heights, May Pen; March Pen and Ellerslie Pen, St. Catherine.

Four (4) Restorative Justice Centres were opened in February, 2012 in the pilot communities, which will serve seven (7) pilot communities.

The Restorative Justice Programme is to be expanded in 2013 to three additional communities: Russia, Westmoreland; Trench Town, Kingston, and August Town, St. Andrew.

Training

The Tower Hill three (3) consultations were swiftly followed by the first phase of training, on 6th - 9th October 2009, of Restorative Justice Facilitators who will operate in all four communities targeted for piloting: Granville, May Pen, Spanish Town and Tower Hill. The 57 facilitators were predominately Justices of the Peace and Mediators from across Jamaica, although emphasis was placed on training individuals drawn from the four target communities.

The Ministry of Justice engaged the International Institute of Restorative Practices (IIRP) to deliver this over a four-day period between October 2009 and August 2010 to 160 facilitators from across Jamaica.

Initial Restorative Justice (RJ) training was delivered by the International Institute of Restorative Practices (IIRP) However, emphasis was placed on training a greater number of facilitators from the four pilot

communities - May Pen, Clarendon; Granville, St. James; Spanish Town, St. Catherine and Tower Hill, Kingston & St. Andrew. Facilitators from the four pilot communities completed further Restorative Justice ('Advanced') training covering seven topics that expounded on the initial training given (by the IIRP). The advanced training was delivered on a monthly basis, by the National Technical Adviser on Restorative Justice. This training resulted in 160 trained facilitators island-wide to date.

The Restorative Justice Unit has developed a Restorative Justice Training Course consisting of ten (10) modules geared specifically to build the capacity of facilitators so that they can competently, confidently and safely conduct Restorative Justice processes in Jamaica. This training will be delivered through the Justice Training Institute (MoJ) and will be accredited by the University Council of Jamaica and will provide national certification for RJ Facilitators.

The Ten (10) modules in the course are as follows:

Module 1 – What is Restorative Justice

- Concepts of Restorative Justice
- Brief History
- Core Principles & Values
- Restorative and Adversarial Approaches Compared
- A Systemic View of Crime
- Restorative Justice as Practice within ADR (i.e. RJ compared to Mediation and Arbitration)
- Restorative Justice vs. Restorative Practices
- Types/Models of Restorative Processes

Module 2 – The National Restorative Justice Programme in Jamaica

- Brief History of Restorative Justice in Jamaica
- Overview of Restorative Justice Policy
- Governance Framework
- Legislative Background
- Organizational Structure
- Goals & Objectives
- Entry Points & Referral Agents; required forms
- Minimum Requirements & Discretionary Factors for Referral
- Profile of Offences
- Restorative Justice Protocols/Referral Process

Module 3 – Introduction to the Criminal Justice System in Jamaica

- Court Structure

- Introduction to Relevant Criminal Statutes including:
 - Jurisdiction of the Justice of the Peace Act
 - Judicature Resident Magistrate Court Act
 - Offences Against the Person Act
 - Sexual Offences Act
 - Evidence Act
- Basic Principles of Criminal law
 - Burden of Proof
 - Elements of an Offence
 - Presumption of Innocence
- Introduction to Due Process & Civil Rights
- Introduction to Basic Criminal Procedure (from arrest to sentencing to release)

Module 4 – Facilitating the Restorative Justice Process

- Restorative Justice Process Framework
- Goals of a Restorative Justice Session
- Facilitator Selection Criteria – to function as facilitator & suitability for a particular case
- Role of the Facilitator - maintaining neutrality, consideration of the rights and needs of others, volunteering as a Facilitator
- Confidentiality & Ethical Standards
- Case analysis - selecting the appropriate process for the case
- Preparing Participants
- Engagement & Use of Support Agencies
- Community Engagement – selecting community participants for the restorative justice process; protocol, criteria

Module 5 – Case Management

- Record Keeping Standards
 - Overview of Record Keeping (incl. What is records management? What are records? Why is records management important)
 - Record Keeping Principles
 - Generally Accepted Record Keeping Standards
- Working with Referral Agents & Relevant Stakeholders - protocols for each group
- Timeframes
- Intake
- Analysis of Appropriateness of Case for Restorative Justice
- Preparing to Facilitate a Restorative Justice Process
 - Contacting & Engaging Parties

- Getting the Stories
- Engaging Community & other Relevant Participants
- Determining Readiness of Case
- Setting the Date
- Preparing the Logistics
- Holding the Restorative Justice Process
 - Conferencing Model
 - Preparing the Venue
 - An Effective Agreement
 - Closing the Conference
- Post-Process Activities (Follow Up)
 - Compliance with Agreement
 - Reporting to Referral Agents
 - Reporting to Process Participants
 - Reflection & Evaluation
 - Closing a Case File

Module 6 – Working with Victims of Harm

- What is Victimization
- Types of Victims – primary, secondary, special victims
- Victims and the Justice System
- Stress & Post Traumatic Stress
- A Victim's Needs (the victim cycle/stages)
- Support and Resources for Victims
- Honouring the Role of the Victim in a Restorative Justice Process

Module 7 – Working with Offenders

- Offenders and the Justice System
- Violent Offenders
- Values & Attitudes towards Offenders
- Offenders' Needs
- Accountability & Support
- Steps in Supervision of a Restorative Justice Agreement

Module 8 – Clientele Diversity - Victims/Offenders

- Gender-Based violence

- Youth – including children
- Persons with Disabilities – physical, mental
- Cultural Diversity – differences with social groups
- Homophobia/homophobic-based violence
- Religion

Module 9 – Techniques for ensuring Safety and Security

- The importance of preparation, venue & facilitator selection/location
- Identifying warning signals to diffuse escalation
- De-escalation
- Basic security precautionary measures

Module 10 – Communication and Conflict Management

- Understanding Interpersonal Communication
- Practicing Effective Communication
- Active Communication Skills
- Communicating to facilitate restoration
- Critical Thinking
- Understanding the causal relationship between communication and conflict
- Conflict Management
- Analyzing conflicts
- Assessing & Managing Power Dynamics
- Behavioural Analysis
- Personal Conflict Styles

Public Sensitization and Education

The Ministry of Justice recognised that, whilst much progress has been made to increase public awareness about Restorative Justice, greater public sensitization is required and to this end, the MoJ has employed the services of the Jamaica Information Service (JIS) to increase public understanding and awareness of Restorative Justice philosophy and processes through a variety of means.

JIS was engaged and the use of billboards in the 4 target communities was installed. Additionally JIS has been contracted and has developed a 45 second RJ Jingle, 5-minute radio segment and will create four 30-second television PSA/Adv for each referral point to the RJ programme; posters and banners and several RJ advertisements for the print media.

Several Large community sensitizations were held using the RJ trained facilitators in the pilot communities and the Field Officers of the Ministry of Justice. Sixteen (16) Community Sensitizations and nine (9) National Sensitizations were held island wide between October 1, - December 31, 2011. Thirty seven (37) Community sensitizations were organized in the four pilot communities and ten (10) national workshops between January 1 – March 31, 2012.

Staffing in Pilot Communities

The Ministry of Justice established a Restorative Justice Unit that is headed by a Director who is funded by the Government of Jamaica. The Ministry was seeking approval from IDB to employ 4 Field Officers, a Training Coordinator and an Administrative Assistant to assist with RJ implementation. Two Field Officers were approved and hired for the Tower Hill and May Pen Pilot Communities in June, 2011. An Administrative Assistant to assist with RJ implementation through the Restorative Justice unit was contracted in March, 2012.

The Ministry of Justice has received approval from IDB and has completed interviews to employ 2 additional Field Officers for Spanish Town and Granville.

CHAPTER THREE: POLICY FRAMEWORK AND PRINCIPLES

3.1 Vision Statement

The National Restorative Justice Policy is a pathway for transformation to a more secure, just, cohesive and peaceful Jamaican society.

3.2 Policy Goals

The Government of Jamaica seeks to orient and focus efforts on integrating and implementing Restorative Justice practices in communities throughout Jamaica, with the aim of initiating a fundamental social transformation of the society.

In pursuit of this vision of a secure, just, cohesive and peaceful society, which will also contribute to an improvement in the quality of life for Jamaicans, the broad goals of this Policy are to:

- I. Create a culture of peace through effective processes that emphasize the values of mutual respect, dignity and concern between one another in an environment of healing, reconciliation, and restoration;
- II. empower individuals, groups and communities to respond in a positive manner to crime and wrongdoing and the harm offenders cause, thus creating satisfactory outcomes which enable productive relationships;
- III. reduce criminal case backlog by diverting cases from the formal justice system and also resolving conflicts at the community level;
- IV. increase public confidence and trust in the justice system by fostering greater participation in and ownership of Restorative Justice processes by communities and victims;
- V. reduce recidivism by addressing the underlying causes of criminal behaviour and supporting the constructive reintegration of the offender into the community; and
- VI. eliminate the reprisal culture by enabling individuals to have access to a dispute resolution process at the early stage of conflict and avoid escalation to violent reactions.

3.3 PRINCIPLES OF RESTORATIVE JUSTICE IN JAMAICA

The fundamental principles of the National Restorative Justice Policy are:

- To address harm to relationships between individuals, groups and communities affected by crime and other wrongdoing with a view to creating healthy relationships that can sustain and support a secure, cohesive and just society;
- To hold the offender accountable in a more meaningful way by identifying and addressing the damage and obligations that arise out of wrongdoing;
- To reintegrate the offender into the community by supporting the rebuilding of broken relationships;
- To attend to the needs of victims by empowering them to participate in identifying reparative measures to be taken by the offender and the community in the justice process, resulting in greater satisfaction, rehabilitation and community harmony;
- To develop and support Restorative Justice processes in communities, churches and schools.

3.4 POLICY OBJECTIVES

In furtherance of the goals identified for the National Restorative Justice Policy, the Government of Jamaica through the Ministry of Justice intends to achieve the following objectives:

Objective 1: To develop and support Restorative Justice principles, processes, practices and programmes;

Objective 2: To develop and support infrastructure and processes to address harms to relationships between individuals, groups and communities affected by crime and other wrongdoing with a view to creating healthy relationships that can sustain and support a secure, cohesive and just society;

Objective 3: To support capacity building and the development and use of best practices in Restorative Justice;

Objective 4: To attend to the needs of victims; provide meaningful accountability for offenders that facilitate reintegration; and to engage and empower communities; and

Objective 5: To lead and partner public dialogue and education on Restorative Justice principles, processes and practices throughout the Jamaican society.

CHAPTER FOUR: POLICY STRATEGIES

The National Restorative Justice Policy is envisaged as a comprehensive yet flexible policy, which is to be applied to all categories of wrongdoing. It will support the peaceful settling of disputes. The victim, their families and friends, the offenders and the broader community will repair the harm done by direct contact rather than simply a resolution conducted by the State.

The objectives of this Policy and the strategies needed over the long term to sustain Restorative Justice are outlined below.

Objective 1: To develop and support Restorative Justice processes, practices and programmes;

Strategies

- a) Strengthen the capacity of the Ministry of Justice to develop and implement the Restorative Justice programme. This will include the establishment and full staffing of a Restorative Justice Unit (RJU) within the Ministry to coordinate Restorative Justice initiatives; as well as the strengthening of the Justice Training Institute (JTI) to deliver training programmes in Restorative Justice;
- b) facilitate the reform of the Justice system to include measures to introduce Restorative Justice practices as part of the criminal justice process;
- c) improve the capacity of the Ministry of Justice, Court professionals, the Courts, Clerks of Courts, Police and Corrections and other related entities including non-governmental organizations and community based organizations to support the implementation of Restorative Justice Centres and programmes processes and practices in Jamaica;
- d) advocate for Restorative Justice practices to be introduced in schools. In addition develop and deliver Restorative Justice education and training modules which will be included within the curriculum of relevant professional faculties including: law schools, police colleges and teacher training colleges, seminaries, and schools of Social Work; and
- e) develop and support comprehensive frameworks for a structured national RJ programme, including, protocols, case management and broaden the provisions in the law for the Courts to utilize Restorative Justice.

Objective 2: To develop and support infrastructure and processes to address harms to relationships between individuals, groups and communities affected by crime and other wrongdoing with a view to creating healthy relationships that can sustain and support a secure, cohesive and just society;

Strategies

1. Establish Restorative Justice Centres in communities/ parishes across Jamaica;
2. advance Restorative Justice initiatives in communities and schools that focus on the restoration of relationships in collaboration with the Ministry of Justice;
3. develop protocols, procedures and frameworks to guide the development of RJ processes which include: restorative justice agreements and reparation plans which will respond to the harm done which may include compensation;
4. support civil society, communities, the private sector and other partner institutions in the development and implementation of Restorative Justice initiatives in cooperation with the Ministry of Justice;
5. ensure communities have the tools, the connections and the insight to drive innovation in communities; and
6. invest in public education towards acceptance and use of Restorative Justice practices in addressing harms caused by crime and other wrongdoing.

Objective 3: To support capacity building and the development and use of best practices in Restorative Justice.

Strategies

1. Identify and secure funding for research, education and training to improve knowledge and application of Restorative Justice in criminal justice matters;
2. Implement pilot projects to build a broad base of knowledge of best practices for Restorative Justice practitioners/processes;
3. facilitate partnerships with international donor agencies and international restorative justice agencies to provide technical expertise in developing education and training modules and programmes;
4. maintain a registry of practitioners, programmes and organizations involved in Restorative Justice to ensure adherence to best practices;
5. establish the Restorative Justice Programme Protocols in line with international standards and the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters;
6. ensure that the Schedule of Offences and the Restorative Justice Programme Protocols to be applied to Restorative Justice processes are promulgated legislatively;
7. strengthen the linkages of an array of complementary national and local initiatives creating culture shifts away from violent crime and the revenge mentality towards a more peaceful society; and

8. protect due process concerns through legislative amendments regarding such things as how to handle information that could become evidence in a trial if the restorative process collapses and ensure that accused persons are not coerced into participating through continued sensitization and training.

Objective 4: To attend to the needs of victims; provide meaningful accountability of offenders that facilitate reintegration and to engage and empower communities.

Strategies

1. Strengthen the capacity of the Courts, the Victim Support Unit (VSU), the Department of Correctional Service (DCS), the Jamaica Constabulary Force (JCF), the Restorative Justice Centre and its facilitators and other related institutions to make referrals for the provision of Restorative Justice service to clients;
2. introduce the Victims Charter that seeks to address the needs of victims who must interact in the justice system;
3. expand and support the introduction of Youth Diversion Strategies and mechanisms in accordance with the agreed action programme for the National Plan of Action for Child Justice 2010-2014 in Jamaica;
4. encourage and support voluntary initiatives by civil society, communities, the private sector, and other stakeholders in Restorative Justice, conflict resolution and other interventions that attend to the needs of victims, offenders, communities and institutions affected by the harms that wrongdoing creates;
5. ensure the victim and community members are actively involved early in the justice process.
6. ensure the victim is provided with the support and assistance needed in order to participate in Restorative Justice processes;
7. ensure the victim and community members actively participate in a process which identifies how the offender may begin to repair the harm;
8. ensure significant cross-sectoral co-operation involving non-governmental, church and government leadership. Examples of current initiatives that could provide support in this regard are the Peace and Justice Centres, Peace and Love in Society (PALS), the Dispute Resolution Foundation (DRF), Peace Management Initiative and the People's Action for Community Transformation (PACT) Peace Management Institute (PMI) and the Violence Prevention Alliance (VPA).
9. facilitate the enhanced capacity of community-based institutions to participate in the use of restorative justice mechanisms for effective conflict resolution and the restoration of healthy relationships among citizens.
10. Partner with and enhance the capacity of a network of social services that victims, offenders and communities can access while completing and complying with agreements that arise from restorative justice processes.

Objective 5: To lead and partner public dialogue and education on Restorative Justice principles, processes and practices throughout the Jamaican society









Strategies

1. Develop and establish theoretically and practically sound training and educational programmes on RJ.
2. Facilitate research and development to ensure efficacy in the use of Restorative Justice principles and approaches in criminal matters;
3. Promote public dialogue through sensitization and consultations with a wide range of stakeholders, including the following:
 - Government officials
 - Civil society
 - Elected officials
 - Justice stakeholders (police, judges, Justices Of The Peace, lawyers, corrections officials, victims' advocates etc.)
 - Other sector stakeholders (teachers, principals, social workers, health service workers etc.)
 - Faith-based organisations
 - The media, and
 - Schools
4. Educate and encourage NGOs and CBOs to introduce Restorative Justice practices to unattached youth who are also susceptible to involvement in crime and wrongdoing.
5. Employ processes that educate and sensitize potential detractors in the design and planning of Restorative Justice initiatives.
6. Embark on a national media campaign to disseminate knowledge on the function and benefits of restorative justice processes.

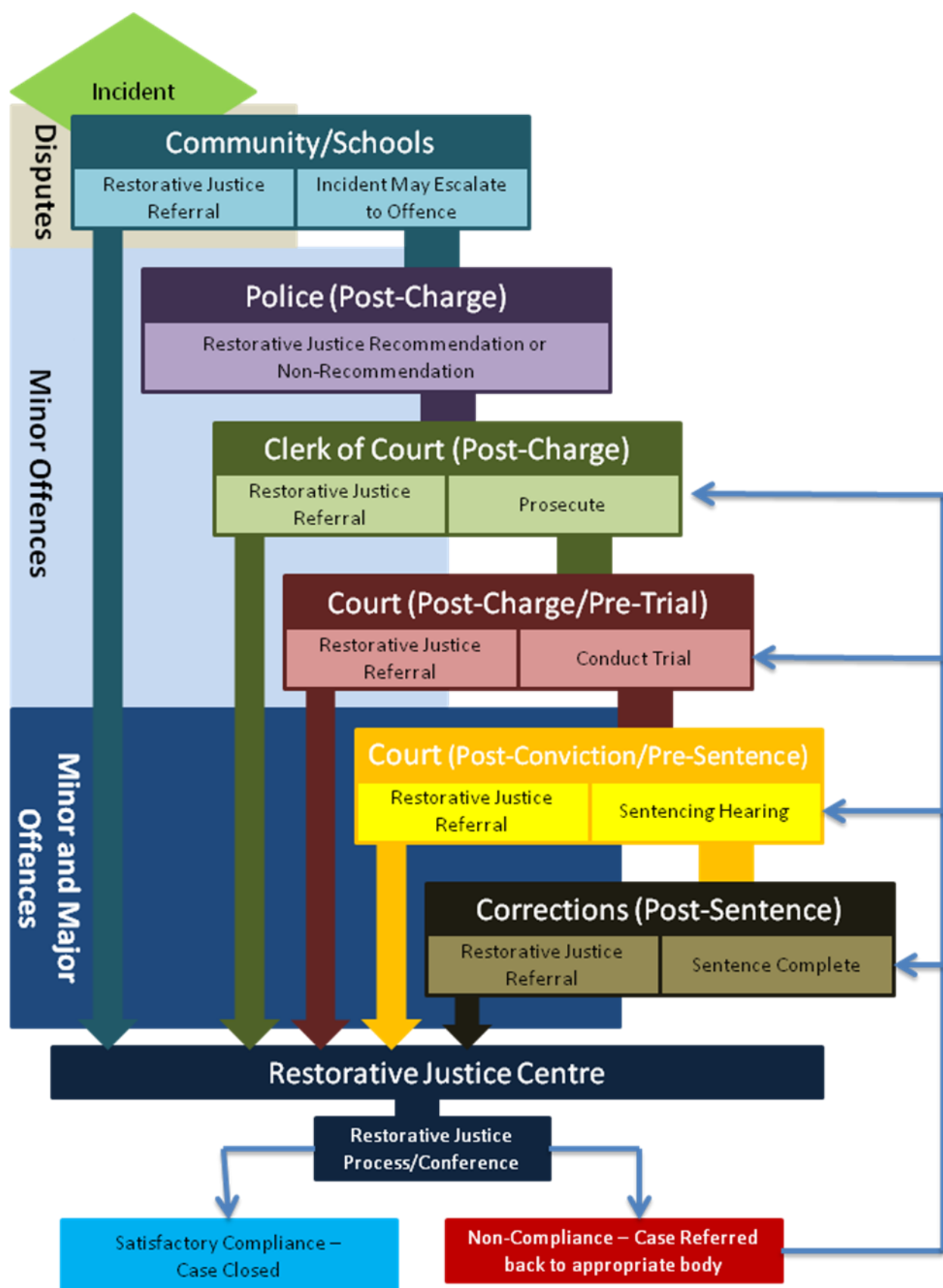
The implementation of Restorative Justice processes in the criminal Justice system will provide a fair and adequate reaction to crime, by reaffirming society's values, instilling respect for the law and for each other, realizing just resolutions and focusing on problem solving for the future, rather than establishing blame for past

CHAPTER FIVE: THE RESTORATIVE JUSTICE GENERAL APPROACH

Table 1: The Restorative Justice Model- Restorative Justice Entry Points

Disputes Informal Referrals	 Referral Agents: <ul style="list-style-type: none"> • Police (Community Police Station) • Minister of Religion (Church) • Teachers, Principles (Schools) • Community Members • Hospital staff Referral to: <ul style="list-style-type: none"> • RJ Centre (Community) • Dean of Discipline(School) 				
		Post-Charge	Pre-Trial/Post-Charge	Post-Conviction/Pre-Sentence	Post-Sentence
Minor Offences		 Recommendation to Restorative Justice: Police Referral to: -Clerk of Court -Resident Magistrate	 X Referral Agents: -Clerk of Court -Resident Magistrate Referral to: <ul style="list-style-type: none"> • RJ Centre (Community) 	 Referral Agents: -Resident Magistrate -Judge of the Supreme Court Referral to: RJ Centre (Community)	 Referral Agents: <ul style="list-style-type: none"> • Commissioner of Corrections • Correctional Officers • Victim Services Referral to: RJ Centre (Community)
Major Offences					 X Referral Agents: -Resident Magistrate -Judge of the Supreme Court Referral to: RJ Centre (Community)
				 X Referral Agents: <ul style="list-style-type: none"> • Commissioner of Corrections • Correctional Officers • Victims Services Referral to: RJ Centre (Community)	

Restorative Justice Referral Process



5.1 Disputes (Police, Minister of Religion, Community Members)

In cases in which a dispute occurs within the community, the Police, a Minister of Religion, or community members can refer the individuals in conflict to the Restorative Justice Centre.

In special cases, if this dispute is occurring in the school between students, the Dean of Discipline or Guidance Counsellor will contact the Restorative Justice Centre.

These referrals must be in accordance with the Restorative Justice Eligibility Criteria and Protocols (see Chapter 5).

5.2 Post-Charge Recommendation Process for Minor Offences (Police)

Prior to a person being charged for a minor offence, as set out in the Schedule of Offences, **Appendix 7**, the Police must after a person has been charged for any such minor offence complete the Restorative Justice Eligibility Criteria Checklist and submit the RJ Eligibility Criteria Checklist along with any other documents to the Clerk of Court or Prosecutor.

1. The Police Officer shall:

- a) ensure that the offender is aware of the offender's right to Counsel;
- b) ensure the right of minors to the assistance of a parent or guardian;
- c) ensure the right to be fully informed before agreeing to participate in restorative processes;
- d) ensure that the offender and victim are not coerced or induced to participate in restorative processes;
- e) Complete the Restorative Justice Checklist and put a copy on the police file;
- f) send the completed copy of the Restorative Justice Eligibility Criteria Checklist to the Clerk of Court/Prosecutor; and
- g) ensure the offender and victim has consented to the process and has signed the 'Consent To Participate Form'(Appendix 9 and 10)

These recommendations must be in accordance with the Restorative Justice Eligibility Criteria and Protocols (see Chapter 6).

5.3 Post-Charge Referral Process for Minor Offences (Clerk of Court/Resident Magistrate)

The Clerk of Court/Resident Magistrate will receive the Eligibility Criteria Checklist Form with the case file of the accused from the Police and thereafter has the discretion to determine whether he/she will pursue this charge or refer the case to the Restorative Justice Centre based on all the documentation that he/she has received and based on whether the criteria on the RJ Eligibility Criteria Form are satisfied.

1. If the Clerk of Courts/ Resident Magistrate considers a referral to the Restorative Justice Programme appropriate, the Clerk of Court/ Resident Magistrate shall:
 - a) review the Restorative Justice Eligibility Checklist, as completed by the Police Officer;
 - b) Complete the relevant section of the Restorative Justice Checklist (under Clerk of Court Referral);
 - c) send the Restorative Justice Checklist to the RJC; and
 - d) ensure the offender and victim has consented to the process and has signed the 'Consent To Participate Form'(Appendix 9 and 10).
2. The Clerk of Court/ Resident Magistrate shall make all referrals to the Restorative Justice Programme within seven (7) days of the first mention date or before.
3. In cases where the RJC, based on new information regarding the minimum requirements or discretionary factors, deems a referral inconsistent with the pre charge/post charge eligibility criteria as noted in Chapter Six, or is problematic for the Restorative Justice Programme, it may issue a "Notice of Reconsideration" (Appendix 8) to the Clerk of Court/Resident Magistrate. Unless otherwise resolved between the RJC and the referring Clerk of Court/ Resident Magistrate, the file associated with the referral may be closed by the RJC 30 days after the release of the "Notice of Reconsideration" (Appendix 8).
4. Once a referral has been accepted, the RJC shall provide a progress report regarding the status of the case. The time frame for this report shall be guided by the Clerk of Court/ Resident Magistrate assigned review dates for the referral and should be within the timeframe of approximately no later than four (4) months from the date of the recommendation.

The Clerk of Court/ Resident Magistrate will retain the authority to pursue the case for the specific offence at a later date if necessary. This is in cases when the individual who committed the minor

offence does not complete the Restorative Justice process and/or comply with the restorative agreement.

If the Clerk of Court decides to pursue the case, the Resident Magistrate, at this stage, also has the discretion whether to hear the case before him, or to refer it to the Restorative Justice Centre based on the documentation that he has received from Counsel.

These referrals must be in accordance with the Restorative Justice Eligibility Criteria and Protocols (see Chapter 6).

5.4 Post Conviction/Pre-Sentencing for Major or Minor Offences by Resident Magistrates and by Judge of Supreme Court

After a person has been convicted of an offence, the Resident Magistrate or Supreme Court Judge has the discretion if the Restorative Justice Eligibility Criteria Checklist has been satisfied, to allow for a Restorative Justice Process prior to sentencing.

1. The Court may provide direction to the Restorative Justice Centre with respect to the purpose which the Court seeks to achieve in making the referral. Options can include one of the following:
 - (a) convening of a Restorative Justice Process to develop an agreement (see Appendix 11) which the offender may complete under the supervision of the Restorative Justice Centre. The result of the Restorative Justice process and the terms of the agreement reached shall be reported to the Court by the Restorative Justice Centre prior to the date of the sentencing hearing; or
 - (b) convening of a Sentencing Circle, which may be facilitated by a RJ Practitioner with guidance by a judge, and which will also include appropriate officers of the Court.
2. Preliminary work to develop the Restorative Justice Process will include contact with the appropriate Correctional Officer who may be involved with the offender.
3. The RJC will ensure that the Court and the appropriate Corrections Officer receive notice of the scheduled Restorative Justice session in a timely manner.
4. In cases where the RJC, based on new information regarding the minimum requirements or discretionary factors, deems a referral inconsistent with post finding of guilt eligibility criteria as noted in Chapter Six, or problematic for the Restorative Justice Programme, it may advise the

Court through a “Notice of Reconsideration” (Appendix 8) and seek direction whether to continue or terminate the Restorative Justice casework. A copy of this Notice of Reconsideration (Appendix 8) will be forwarded to the Clerk of Courts, the Corrections Officer and the offenders legal Counsel.

These referrals must be in accordance with the Restorative Justice Eligibility Criteria and Protocols (see Chapter 6).

5.5 Post- Sentence for Minor and Major Offences Referral by Correctional Services

After a person has been convicted of an offence and sentenced, the Correctional Officer has the discretion to refer the offender to a Restorative Justice process during incarceration if the Restorative Justice Eligibility Criteria Checklist has been satisfied.

This is to aid in the reintegration of the offender into the community upon release, which will decrease the likelihood of reprisals.

1. If, after reviewing the Protocols as noted in Chapter 6, the Probation Officer/After Care Services Worker considers a referral to the Restorative Justice Program appropriate, he/she shall:

- (a) complete the Restorative Justice Eligibility Checklist;
- (b) send the Restorative Justice Checklist to the RJC; and
- (c) ensure the offender has consented to the process and has signed the ‘Consent To Participate Form’(Appendix 9).

2. The appropriate Probation Officer/ After Care Services shall make all referrals to the Restorative Justice Programme in a timely manner.

3. In cases where the RJC, based on new information regarding the minimum requirements or discretionary factors, deems a referral inconsistent with the post sentence eligibility criteria as noted in Chapter 5, or is problematic for the Restorative Justice Programme, it may issue a “Notice of Reconsideration” (Appendix 8) to the appropriate Probation Officer / After Care Services. Unless otherwise resolved between the RJC and the referring the appropriate Probation Officer or After Care Services, the file associated with the referral may be closed by the agency 30 days after the release of the “Notice of Reconsideration” (Appendix 8).

Once a referral has been accepted, the RJ Centre shall provide a progress report regarding the status of the referral to the Probations Officer/ After Care Services no later than four (4) months from the date of the referral.

These referrals must be in accordance with the Restorative Justice Eligibility Criteria and Protocols (see Chapter 6).

Restorative Justice Eligibility Form

**GOVERNMENT OF JAMAICA
MINISTRY OF JUSTICE**

Program:	RESTORATIVE JUSTICE PRORAMME
Subject:	RESTORATIVE JUSTICE PROGRAMME PROTOCOL

RESTORATIVE JUSTICE ELIGIBILITY FORM

SURNAME (Print Caps)	GIVEN NAMES (Print Caps)	DOB (Y/M/D)	MALE <input type="checkbox"/> FEMALE <input type="checkbox"/>
ALIAS (1):		ALIAS (2):	ALIAS (3):
PERMANENT ADDRESS		TELEPHONE NOS.	EDUCATION LEVEL ATTAINED
OFFENDER'S COMMUNITY OF RESIDENCE			
EMPLOYMENT			
POLICE STATION	INVESTIGATING OFFICER NAME		INVESTIGATING OFFICER BADGE NO.
POLICE STATION ADDRESS	POLICE STATION PHONE NO.		POLICE CASE NO.
CRIMINAL HISTORY:	PRIOR REFERRAL(s) TO RESTORATIVE JUSTICE YES <input type="checkbox"/> NO <input type="checkbox"/>		
DETAILS:	PRIOR CONVICTION(s) YES <input type="checkbox"/> NO <input type="checkbox"/>		

OFFENCE INFORMATION

OFFENCE(s)	DATE(s)
DETAILS	

VICTIM INFORMATION

Number of Victims:

(If more than 2 victims attach separate sheet)

NAME	ADDRESS	TELEPHONE NO.
CORPORATE <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/>	VALUE OF LOST PROPERTY	INSURANCE CLAIM YES <input type="checkbox"/> NO <input type="checkbox"/>
NAME	ADDRESS	TELEPHONE NO.
CORPORATE <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/>	VALUE OF LOST PROPERTY	INSURANCE CLAIM YES <input type="checkbox"/> NO <input type="checkbox"/>

MINIMUM REQUIREMENTS:

All 5 must be met for a referral to the Restorative Justice Programme

1. The offender accepts responsibility for his/her actions
2. The offender has been informed of, and consents freely and fully, to participation in the program

**UNKNOWN/
NOT
APPLICABLE**

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 3. The offender has been advised of his/her right to Attorney at Law without delay and is given a reasonable opportunity to retain and instruct Attorney at Law | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. The victim has agreed to participate in a Restorative Justice process | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. A government or prosecutorial policy does not conflict with this referral | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

DISCRETIONARY FACTORS:

To be considered only if all minimum requirements are met

UNKNOWN/ NOT APPLICABLE	YES	NO
--	------------	-----------

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 1. There is a community need for a restorative result in this case | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. The following been considered: | | | |
| The seriousness of the offence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The level of participation of the offender | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The level of deliberation prior to the offence committed | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The relationship between the victim and the offender prior to the offence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. The possibility of a continued ongoing relationship between the victim and the offender | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. It is reasonably believed that the offender will benefit from the RJ process and an agreement may be arrived between the parties | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. There is potential for an agreement that would be meaningful to the victim | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. The harm done to the victim has been considered | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Are there any exceptional circumstances in this case (the offence, the offender, victim and the community) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments:

POLICE RECOMMENDATION – POST CHARGE (check 1 only):

- ☐ RECOMMEND TO RESTORATIVE JUSTICE PROGRAMME
☐ DO NOT RECOMMEND

Name: _____

Rank/Position: _____

Signature: _____

Date: _____

If not recommending to the Restorative Justice Programme, please state reasons:

POST CHARGE/PRE-TRIAL REFERRAL:

REFERRED BY: ☐ CLERK OF COURT
☐ RESIDENT MAGISTRATE

REFERRAL DECISION (check 1 only):

- ☐ REFER TO RESTORATIVE JUSTICE PROGRAMME
☐ PROCEED WITH PROSECUTION

Name: _____

Position: _____

Signature: _____

Date: _____

If not referring to the Restorative Justice, please state reasons:

CONTACT INFORMATION:

CLERK RESPONSIBLE FOR CASE: _____
Name _____ Phone No. _____

RM RESPONSIBLE FOR CASE: _____
Name _____

COURT CASE HEARD IN: _____
Name _____
Address _____

FACILITY OFFENDER HELD IN: _____ ☐ OFFENDER NOT HELD
Name _____
Address _____

RESIDENT MAGISTRATES/JUDGE REFERRAL – POST CONVICTION/PRE-SENTENCE REFERRAL (check 1 only):

- ☐ REFER TO RESTORATIVE JUSTICE PROGRAMME PRIOR TO SENTENCING
☐ PROCEED WITH SENTENCING WITHOUT REFERRAL TO RESTORATIVE JUSTICE PROGRAMME

RM/Judge Name: _____

Signature: _____ Date: _____

If NOT referring to the Restorative Justice, please state reasons:

If referring, please advise provide instructions if necessary regarding purpose of Restorative Justice Conference:

- ☐ Refer to the RJ Centre to develop an agreement that the offender may complete under the supervision of RJ Centre.
☐ Refer to RJ Process to provide court with sentencing information prior to sentencing.

CONTACT INFORMATION:

CLERK/PROSECUTOR RESPONSIBLE FOR CASE: _____
Name _____ Phone No. _____

COURT CASE HEARD IN: _____
Name _____
Address _____

PROBATION OFFICER RESPONSIBLE FOR CASE: _____
Name _____ Phone No. _____

FACILITY OFFENDER HELD IN: _____
Name _____
Address _____

☐ OFFENDER NOT BEING HELD

POST CONVICITON-POST REFERRAL (check 1 only):

- ☐ REFER TO RESTORATIVE JUSTICE PROGRAMME
☐ CONTINUE TO SERVE SENTENCE WITHOUT REFERRAL TO RESTORATIVE JUSTICE PROGRAMME

Name: _____ Position: _____
Signature: _____ Date: _____

If not referring to the Restorative Justice, please state reasons:

OFFICE OF COMMISSION OF CORRECTIONS APPROVAL:

☐ APPROVAL GRANTED

☐ APPROVAL DENIED

Name: _____

Position: _____

Signature: _____

Date: _____

CONTACT INFORMATION:

PROBATION OFFICER RESPONSIBLE FOR CASE:

Name Phone No.

FACILITY OFFENDER HELD IN: _____
Name

Address

☐ OFFENDER NOT BEING HELD

(Copies to: Ministry of Justice, Director of Public Prosecutions, Commissioner of Corrections, Jamaica Constabulary Force, Courts of Jamaica)

CHAPTER SIX: THE RESTORATIVE JUSTICE PROGRAMME PROTOCOLS

These guidelines and standards which will govern the use of Restorative Justice will be established with legislative authority.

SECTION 1: Restorative Justice Programme

Eligibility Criteria for Post Charge/Pre Trial (Clerk of Court/Resident Magistrate), Post Trial, and Post Sentence Referrals (Referrals by Resident Magistrate, Judge of the Supreme Court, and by Correctional Services)

1. The Police Officer shall complete a “Restorative Justice Eligibility Checklist” in all cases of offences being recommended as outlined in the Post Charge/Pre Trial section of the Schedule of Offences (Appendix 7).
2. Prior to an offender being referred to the Restorative Justice Programme, the referring body (Clerk of Court, Resident Magistrate, Judge of the Supreme Court, Correctional/Probations Officer) must ensure that the following minimum requirements are met:
 - a) The offender accepts responsibility for his/her actions
 - b) The offender has been informed of, and consents freely and fully, to
 - c) participation in the program
 - d) The offender has been advised of his/her right to Attorney at Law without delay
 - e) and is given a reasonable opportunity to retain and instruct Attorney at Law
 - f) There is sufficient evidence to proceed with the prosecution of the offence
 - g) Prosecution of the offence is not barred by law
 - h) A government or prosecutorial policy conflicts with this referral
8. In addition, prior to the offender being referred to the Restorative Justice Programme, the referring body (Clerk of Court, Resident Magistrate, Judge of the Supreme Court Correctional/Probations Officer) must ensure that the following discretionary factors have been considered:
 - a) The victim has agreed to participate in a Restorative Justice process
 - b) There is a community need for a restorative result in this case
 - c) The following been considered:
 - i. The seriousness of the offence
 - ii. The level of participation of the offender

- iii. The level of deliberation prior to the offence committed
- iv. The relationship between the victim and the offender prior to the offence
- d) The possibility of a continued ongoing relationship between the victim and the offender
- e) It is reasonably believed that the offender will benefit from the RJ process and an agreement may be arrived between the parties
- f) There is potential for an agreement that would be meaningful to the victim
- g) The harm done to the victim has been considered
- h) Are there any exceptional circumstances in this case (the offence, the offender, victim and the community)

<p style="text-align: center;"><i>SECTION TWO: PROCEDURES FOR RESTORATIVE JUSTICE PROCESS AND RESTORATIVELY ORIENTED OPTIONS</i></p>

1. The RJC shall, upon receiving a completed Restorative Justice Eligibility Checklist from a referring body, notify the offender, the parent/guardian of the child offender (diversion) and the victim in a timely manner, formally advising them of the opportunity to participate in a Restorative Justice Process.
2. Where the offender agrees to participate in the Programme, the RJC shall arrange the appropriate Restorative Justice Process, to be conducted at the earliest possible opportunity, not later than 90 days following the RJC's receipt of the referral. Where the case circumstances warrant a different time line than noted above, it will be the RJC's responsibility to notify the referring body and develop a mutually agreed time line for the specific case.
3. While the total number of individuals participating in a Restorative Justice Process may vary, the RJC shall not conduct a Restorative Justice Process with fewer than three (3) individuals present as follows: a facilitator; the offender and the parent/guardian (if a child offender-Diversion) or a responsible support person for the offender; and the victim or a representative from the community of harm.
4. The facilitator shall emphasize to those in attendance at a Restorative Justice process that the privacy of information shared must be respected but that there is no guarantee that it can be kept within the circle of those in attendance and, in some cases, may be shared with people who are affected by it but not in attendance.
5. Notwithstanding the above requirements, there is also a duty to report any information indicating that the child offender is in need of protection.
6. Where the Restorative Justice process is unable to reach a consensus, or where otherwise deemed necessary, the RJC may:
 - (a) hold an additional Restorative Justice process with or without the same participants;

(b) follow a reasonable compromise solution agreed upon by the participants of the original Restorative Justice process; or

(c) refer the case back to the referring body.

7. Where, during a Restorative Justice process, it is determined that a Restorative Justice agreement (see Appendix 11) is appropriate for the offender, and acceptable terms of such an agreement are agreed upon by the participants in the Restorative Justice process, the offender shall be offered the opportunity to enter into a Restorative Justice agreement.

SECTION THREE: RESTORATIVE JUSTICE AGREEMENTS

A. Restorative Justice Agreements for Post Charge and Pre-Trial Referrals for Minor Offences

1. Following the acceptance of appropriate terms of a Restorative Justice agreement by the participants of the Restorative Justice process, a formal Restorative Justice agreement shall be prepared and signed, at a minimum, by the offender, the parent/guardian of the child (if child offender) and the facilitator; and, when present, by the victim and/or where appropriate by the community representative.
2. Where the offender participates in a RJ process, the RJ agreement is the outcome of the group RJ process, and is signed by the offender and the RJ process facilitator.
3. The agreement shall specify the terms to be completed by the offender, including a date for completion.
4. The agreement, when signed, shall be distributed to the offender, the parent/guardian of the young person (if child offender), the referring body, the supervising volunteer, and the victim and where appropriate the community representative.
5. Where, during the course of the agreement, reasonable circumstances exist which require that the agreement either be extended or modified, the RJC shall consult with the original participants of the Restorative Justice Process to determine the specific requirements, and may approve the necessary extension or modification.
 - a) Where an extension is granted, the RJC shall formally amend their file copy of the agreement to reflect the new completion date and shall make a notation on the offender's file indicating the reason(s) for the extension.
 - b) When an agreement term is modified or amended, formal written notice to that effect shall be completed by the RJC and distributed to all those in attendance at the original Restorative Justice process, and the RJ Centre shall make a notation on the offender's file indicating the reason(s) for the modification or amendment.

6. Under no circumstance should an offender be required to perform or participate in any aspect or condition of the agreement beyond the completion date as specified on the agreement or as formally amended as per procedure 5(a) or (b) above.

B. Restorative Justice Agreements for Post Conviction and Post Sentence Referrals (Referrals by Resident Magistrate, Judge of the Supreme Court, and by Correctional Services) for Major Offences

1. Where a Resident Magistrate's Court/Judge of the Supreme Court has requested that a Restorative Justice process be convened to provide input into sentencing as described in Chapter Five, the Restorative Justice Centre will prepare a report to the Resident Magistrate's Court/Judge of the Supreme Court describing the outcome of the Restorative Justice process and the input offered by the participants, with copies distributed to the Clerk of Courts/Prosecutor, the Senior Probations Officer/After-Care Probations Officer for the Parish/Commissioner of Corrections, the offender and if child offender, his/her parent and the offender's legal Counsel.
2. Where the Court has requested that the Restorative Justice process proceed to the formation of an agreement (see Appendix 11), the RJC will:
 - (a) ensure that following the acceptance of appropriate terms of a Restorative Justice Agreement by the participants of the Restorative Justice process, a formal Restorative Justice agreement shall be prepared. The agreement will be signed, at a minimum, by the offender, if a child offender the parent/guardian of the child and the facilitator; and, when present, by the victim and/or where appropriate by the community representative; and
 - (b) the Restorative Justice Centre will prepare a progress report to the Court to report on the outcome of the Restorative Justice process, the length of time the RJ Centre will be monitoring the offenders's completion of the agreement terms. Copies of the Progress Report will be distributed to the Clerk of Courts, the Senior Probations Officer/After-Care Probations Officer for the Parish/Commissioner of Corrections, the offender, and if a child offender his/her parent, and the offender's legal Counsel.
3. The Court may proceed with sentencing, or may adjourn to allow the offender to complete the terms of any agreement in the time specified in the report to the Court.
4. Where the Court makes a sentence, it may incorporate all or part of the terms of the Restorative Justice agreement;

5. The RJC will monitor the Restorative Justice agreement and submit a report to the Senior Probations Officer and the Resident Magistrate/Judge . If a Restorative Justice Centre cannot access the offender to determine completion of an agreement the Senior Probation Officer will provide the status of the agreement.

SECTION FOUR: SUPERVISION OF AGREEMENTS

A. Supervision of the Restorative Justice Agreement

1. The RJC shall ensure that all agreements are monitored on an ongoing basis by contacting the offender, the victim and collateral contacts as required in order to support successful completion of the terms contained in the agreement.
2. If, at any time during the term of the agreement, there is a violation of any term by the offender, or where dissatisfaction is expressed by any of the parties involved, the RJC shall ensure that the matter is promptly and thoroughly reviewed and that, where necessary, appropriate action is taken, up to and including termination of the agreement.

B. Completion of the Restorative Justice Agreement

- 1) Upon satisfactory completion of the agreement, the RJC shall ensure formal notice to that effect is distributed to the referring body, the offender, if child offender, the parent/guardian of the child offender, the victim and/or community representative, and the offender's legal Counsel, if requested.
- 2) Where the offender fails to satisfactorily comply with the terms of the agreement, the RJC shall ensure that formal notice to that effect is distributed to the referring body, the offender, if child offender the parent/guardian of the child offender, the victim and/or community representative; and the Resident Magistrate/Supreme Court.

Where the offender under the minor offences section as laid out in the Schedule of Offences has satisfied the terms of the RJ agreement, the RJC shall ensure that formal notice be sent to the referring Clerk of Court/Resident Magistrate and Jamaica Constabulary Force/Prosecutor at which time the case will be closed and the charge dismissed and the offence will be removed from the offenders criminal history/records.

SECTION FIVE: ADMINISTRATIVE REQUIREMENTS

A. Non Disclosure Requirements

1. The RJC will not disclose any information except when preparing a progress or final report on the RJ agreement, this does not include the content of the conference.
2. With respect to post conviction and post sentence referrals, the RJC will disclose elements when preparing report on the RJ agreement to the Resident Magistrate/Supreme Court Judge.

B Retention and Transfer of Records to the Court and the Jamaica Constabulary Force Records Office

1. All Restorative Justice records held by the RJC shall be held locally by the RJC for two years from the date of the closure of an offender's case file. The RJC shall provide secure separate storage of files at the Ministry of Justice after the case has been closed.
2. The Retention period for post conviction and post sentence referrals will be guided by the terms of the offender's sentence.
3. At the end of the period of local retention, the RJC shall contact the Ministry of Justice to arrange for transfer of the files to the Restorative Justice Unit for storage and destruction.

C. Statistical Information

1. The RJC shall ensure that monthly statistical information of a summary nature as required by the Restorative Justice Unit, of the Ministry of Justice is provided in a complete and timely manner in the specific format required.

SECTION SIX: RESTORATIVE JUSTICE CENTRE STANDARDS

A. Practice Standards

The RJC shall adhere to Standards.

B. Volunteer Screening, Training and Supervision

1. No RJC, Agency, Non –Governmental Organization, Community Based Organization, institution or the like shall conduct RJ programmes or processes under this policy without prior written consent of the Ministry of Justice.

2. If any RJC, Agency, Non –Governmental Organization, Community Based Organization, institution or the like is given written consent to conduct RJ programmes or processes under this policy, they must provide written reports on activities quarterly to the Ministry of Justice and abide by and adhere to all Practice Standards set out by the Ministry of Justice.
3. No RJC, Agency, Non –Governmental Organization, Community Based Organization, institution or the like can charge for providing RJ processes or services under this Policy.
4. Prior to a volunteer being accepted as a Facilitator by the RJC the following qualifications shall be met:
 - a. The volunteer meets the minimum age requirement of 18 years;
 - b. The volunteer expresses an interest in restorative processes;
 - c. Successful completion of the screening procedures as per 5 below;
 - d. Successful completion of the training process.
 - e. Successfully meet the criteria as laid out in the RJ Facilitator Assessment Form

2. Prior to a volunteer being accepted as a RJ Facilitator by the RJC the following screening procedures shall be completed:

- (a) Child Abuse Registry Check;
- (b) Criminal Record Check;
- (c) Minimum of two character references; and
- (d) Initial screening interview with RJC staff.

3. Training of RJ Facilitators is the responsibility of the Restorative Justice Unit. The Restorative Justice Unit shall design a volunteer training program which shall include the following topics:

- a. Orientation to the criminal justice system
- b. What is Restorative Justice
- c. Facilitating the Restorative Justice Process
- d. Communication skills
- e. Conflict resolution skills
- f. Facilitation of Restorative Justice processes
- g. Working with Offenders
- h. Case Management Processes
- i. Clientele Diversity – Victims and Offenders
- j. Orientation to the National Restorative Justice Programme in Jamaica
- k. Working with victims of crime
- l. Techniques for ensuring safety and security

4. The supervision of volunteers is the responsibility of the Restorative Justice Centre. The Restorative Justice Centre shall establish a volunteer monitoring process which shall include:

- (a) clear expectations of the volunteer as outlined in a “volunteer job description” and “volunteer code of ethics”;
- (b) ongoing training and support from RJC staff;
- (c) accountability via reports and regular updates on cases being supervised;
- (d) periodic refresher training; and
- (e) periodic re-screening, to take place at a minimum every 3 years.

5. Consideration must be given to the following in the selection of volunteers

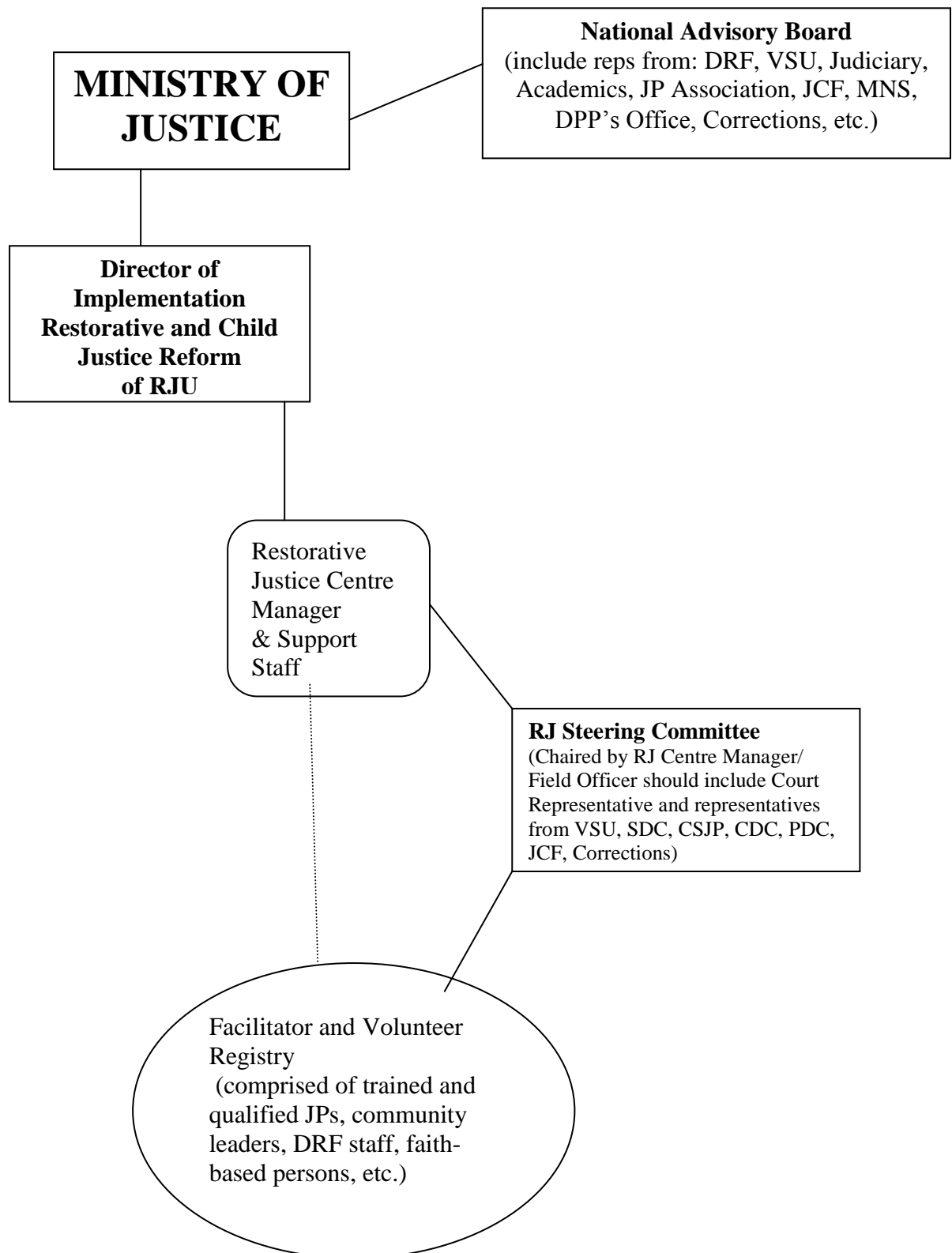
- a) Volunteers will be recruited from all segments of the society with appropriate gender balance, possessing good understanding of local communities. ;
- b) they should be able to demonstrate sound judgement and interpersonal skills necessary in conducting the restorative process;
- c) they must perform their duties in an balanced manner, based on the facts of the case and on the needs and wishes of the parties. They should always respect the dignity of the parties and ensure that the parties act with respect towards each other;
- d) they should be responsible for providing a safe and appropriate environment for the restorative process. They should be sensitive to any vulnerability of the parties;
- e) they must receive initial training before taking up duties as facilitators and should also receive in-service training. The training should aim at providing skills in conflict resolution, taking into account the particular needs of victims and offenders, at providing basic knowledge of the criminal justice system and at providing a thorough knowledge of the operation of the Restorative Justice programme in which they will do their work.

SECTION SEVEN: SANCTIONS OF RESTORATIVE JUSTICE FACILITATORS

- 1. Failure to act within the mandate of the Restorative Justice Processes and Protocols in Jamaica will result in termination of duties.

CHAPTER SEVEN: RESTORATIVE JUSTICE GOVERNANCE STRUCTURE

Diagram 2-Restorative Justice Governance Structure



7.1 Roles and Responsibilities within RJ Governance Structure

Ministry of Justice

The Ministry of Justice will coordinate the administration of Justice. Through this mandate, Restorative Justice will be another stream in the administration of justice, and as such will be the responsibility of the Ministry of Justice.

Although partnering closely with community organizations and agencies, the Ministry of Justice will remain the oversight body tasked with ensuring that Restorative Justice, as part of the administration of Justice, is administered properly for the citizens of Jamaica. The Ministry of Justice is thus positioned at the head of the Restorative Justice governance structure.

Director of Implementation Restorative and Child Justice Reform of Restorative Justice Unit at the Ministry of Justice

The Director of the Restorative Justice Unit who will be within the Ministry of Justice will be tasked with the responsibility of overseeing the management, operations and funding of Restorative Justice on behalf of the Ministry of Justice. The Director will maintain overall responsibility for the programme with advice from the National Advisory Board and will liaise with the Restorative Justice Steering Panel for oversight and accountability purposes.

National Advisory Board

The National Advisory Board is an important part of the RJ governance structure. It is the body that provides the relevant voices from various important government and community stakeholders that all have an important role in the delivery of the RJ programme.

Getting their perspective and expertise will be important for the Ministry in order to deliver RJ successfully and efficiently. In addition to providing relevant voices to advise the Ministry of Justice, the National Advisory Board also provides a forum for relevant stakeholders to partner with the Government of Jamaica and feel some ownership in the RJ programme. Building a sense of ownership outside government walls is important for the sustainability and productivity of the RJ programme.

Restorative Justice Committee (Parish Level)

The Restorative Justice Committee works at the parish level. This Committee will be chaired by the Centre Manager/Field Officer of the Community, and should include on it a representative from the Resident Magistrate Court and a Justice of the Peace. It may also include a representative from the Dispute Resolution Foundation, Victim Support Unit, Social Development Commission (SDC) as well as members from that specific community.

The role of the RJ Committee is to be the accountable oversight body in each parish. The RJ parish will be tasked with ensuring that the RJ programme is running as it should be within each respective community, and that the Centre Manager and facilitators are fulfilling their respective roles and responsibilities. Furthermore, the RJ Steering Committee will act as the body that coordinates the work of the various stakeholders for the specific community, including both referral agencies (police, courts, Department of Corrections, Victim Services Officers, Ministers of Religion and schools, etc.) and supporting agencies (NGOs offering support in activities such as parenting classes, government departments that offer health services, including counseling, etc.)

Centre Manager

The Centre Manager will be responsible for the following:

- Ensuring the efficient day-to-day running of the Centre;
- Ensuring proper documentation and record-keeping is kept and reporting done to appropriate bodies (i.e. MOJ, courts, etc.);
- Organizing and distributing cases amongst qualified facilitators;
- Overseeing facilitators and ensuring there is proper preparation, Restorative Justice process/session and follow up;
- Coordinating cases with the Court, police, schools, and ensuring that all cases that do not complete or comply with drafted agreement are sent back to the proper authorities;
- Overseeing and managing the finances and administration of the Centre.

Facilitators

Restorative Justice Facilitators will be drawn from a roster and will include individuals from various sectors, i.e. JPs, community activist, faith-based persons, etc.

CHAPTER EIGHT: OWNERSHIP AND IMPLEMENTATION

The Ministry of Justice will be the key institution that will bear responsibility for the implementation, management and operations of the National Restorative Justice programme as guided by the National Restorative Justice Policy.

This implementation will be carried out through a Restorative Justice Unit established in the Ministry with funding support from the United Nations Development Programme (UNDP), Inter American Development Bank (IDB), Department for International Development (DFID), the Government of Jamaica, and support from the Canadian Caribbean Cooperation Fund through CIDA until December, 2013.

As such, the Ministry of Justice plans to establish this Restorative Justice Unit as a department under the Ministry of Justice with an established budget to continue the operations of the Restorative Justice programme after an assessment is completed of the Pilot programme.

8.1 KEY STAKEHOLDERS AND THEIR ROLES

a. Government

The Government of Jamaica through the Ministry of Justice will lead in advancing Restorative Justice. This level of engagement will be maintained and expanded to other areas of government by a National Restorative Justice policy to reach its full potential.

MINISTRY OF JUSTICE

1. Establish a Restorative Justice Unit, which will be charged with:
 - Co-ordinating and overseeing the Restorative Justice implementation process, as determined within the National Restorative Justice Policy.
 - Implementation, managing and Monitoring of the National Restorative Justice Policy
 - Evaluating outcomes and impacts of the National Restorative Justice process in collaboration with all stakeholders.
2. Secure and manage necessary funding for the implementation and administration of the National Restorative Justice Policy.
3. Establish and maintain the necessary partnerships for the successful implementation of the National Restorative Justice Policy.
4. Establish Restorative Justice Centres and Steering Committees, which will:
 - Ensure the efficient day-to-day running of the Centre;

- Ensure proper documentation and record-keeping is kept and reporting done to appropriate bodies (i.e. RJC, courts, etc.);
 - Organize and distribute cases amongst qualified facilitators;
 - Oversee facilitators and ensure there is proper preparation, encounter/circle and follow up;
 - Coordinate cases with the Court, police, Corrections and schools, and ensure that all cases that do not complete or comply with the drafted agreement are sent back to the proper authorities;
 - Oversee and manage the finances of the Centre.
5. Establish the Restorative Justice National Advisory Board, which will be charged with:
 - Ensure collaboration with Ministries, Agencies and other governmental organizations in the delivery of RJ programmes;
 - Share perspective and expertise with the MoJ in order to deliver RJ successfully; and
 - Provide a forum for relevant stakeholders to partner with the Government of Jamaica and gain ownership in the RJ programme.
 6. Offer training to and selecting Restorative Justice facilitators in accordance with the RJ Programmes Protocols.
 7. Develop public sensitization throughout the island.
 8. Provide sensitization on Restorative Justice to select stakeholders in Child Care and Correctional facilities to provide support to the Child Diversion Parish Committees.

VICTIM SUPPORT UNIT

This unit will:

1. Build referral and support capability to enable clients to effectively use restorative processes.
2. Provide intervention and support services to victims for the Restorative Justice process to include, preparation, participation and re-integration.
3. Strengthen Parish Victim Support Offices to develop a formal network of Victim Support Services based on Restorative Justice processes in each parish.

JUSTICE TRAINING INSTITUTE

This Institute will:

1. Develop Restorative Justice processes curriculum based on Best Practices that respond to the cultural contexts/realities of Jamaica.
2. Deliver training in Restorative Justice processes to members of the Judiciary, Justices of the Peace (Lay Magistrates), Court Personnel, Victim Support Unit and other Justice related practitioners.
3. Deliver training to the Restorative Justice facilitators, including members of the Restorative Justice Committee and the Child Diversion Parish Committees.

DISPUTE RESOLUTION FOUNDATION

This Organization will:

1. work in close partnership with the MoJ to cooperatively develop best practices standards for Restorative Justice Practices throughout Jamaica; and
- appoint representatives to sit on the Restorative Justice National Advisory Board.

MINISTRY OF NATIONAL SECURITY

Jamaica Constabulary Force

This agency will:

1. Support the RJ programme by providing referrals to the Restorative Justice Centres according to the Protocols set out this Policy.
2. Integrate Restorative Justice processes along with community policing activities;
3. Support and facilitate the practice of RJ in Child Diversion as described in the National Child Diversion Policy and the National Restorative Justice Policy by administering eligibility criteria checklist to offences.
4. Incorporate Restorative Justice processes in the curriculum at JCF Police Academy.
5. Introduce **ALL** Police Officers to basic Restorative Justice Processes.
6. Establish the necessary partnerships for the successful implementation of the National Restorative Justice Policy.

Department of Correctional Services

The Department of Correctional Services is suited to play a significant role along with NGOs and CBOs in the delivery of RJ. Its role in the implementation of this Policy should include:

1. Support for the RJ programme by providing referrals to the Restorative Justice Centres according to the Protocols set out in this Policy;
2. Implementation of youth programmes to include the intentional use of restorative interventions as a condition of application to pre-release or temporary release programs.
3. Improvement of a structured programming for offenders beyond existing skills and education programs to include Victim Awareness Programs.
4. Promote Restorative Justice themes in the Correctional Centres/institutions.
5. Introduction of a Victim Awareness course as part of offender education programs.
6. Provision of support by Probation Aftercare Officers to offenders for the RJ process to include, preparation, participation and re-integration.

Ministry of Education

The Ministry of Education, educational institutions will be key partners and beneficiaries in the application of Restorative Justice principles and practices in Jamaica. Its role in the implementation of this Policy should include:

1. Support the Restorative Justice programme by facilitating Restorative practices in public schools;
2. Support the RJ programme by providing referrals to the RJC according to the Protocols set out in this policy.
3. Develop Restorative practices curriculum in schools;
4. Deliver training in Restorative practices to teacher, Principals, and Guidance Councillors and other education providers;
5. Sensitize students to the Restorative Justice processes and restorative practices; and
6. Deliver sensitization of Restorative Justice and restorative practices to parents as part of the National Parenting Policy.

a. Communities and Civil Society

For Restorative Justice to be successful in Jamaica, communities and civil society will need to be supporters, partners and in some cases the principal drivers of Restorative Justice processes and programmes. Many organizations working in civil society have a strong sense of the day to day challenges of advancing social initiatives and they have also earned significant credibility with community leaders and other service delivery agencies. They have the tools, the connections and the insight to drive innovation in communities.

Through RJ processes, communities can be empowered to respond to wrongdoing and conflict. Communities might also be strengthened through restorative processes as they bring together members for a common cause and provide a forum in which to consider, reflect upon, and address injustices within communities. The Jamaican Government's commitment to the development of Restorative Justice Centres, recognizes the importance and significance of communities in conflict resolution. These institutional processes could be shaped to reflect Restorative Justice principles and thereby significantly contribute to community reconciliation and safety.

b. Churches and faith-based Organisations

It is expected that churches and other faith-based organisations such as the Northern Caribbean University's Community Counselling and Restorative Justice Centre will take up the challenge of advancing Restorative Justice. This would give the Restorative Justice movement a pervasive grassroots presence with a very credible advocate. Moreover churches would be able to speak strongly of Restorative Justice from a principled place that is aligned with the churches' larger message of peace, redemption, love, mercy and forgiveness.

d. Sports & Entertainment Sectors

Jamaica has a viable and prominent sports and entertainment sub-sector, which reaches deeply into the social and economic life of its people. As such, it provides an opportunity and an avenue for the authorities and Restorative Justice stakeholders to embrace and encourage the practice in the varied endeavours of the sector. The Restorative Justice Unit of the Ministry of Justice will strengthen dialogue with organizations and private institutions involved in varied sporting, music and general entertainment activities to gain support in providing training and sensitization on Restorative Justice through – messages, win-win methods, dialogue, and respect especially to large groups of mainly young, male opinion shapers and participants.

CHAPTER NINE: LEGISLATIVE FRAMEWORK

The Policy recognises the constitutional protection of the fundamental rights and freedoms of persons, including the right to be presumed innocent, to fair trial and to legal representation. It also recognises the constitutional functions and powers of the Judiciary and the Office of the Director of Public Prosecutions.

Some referral or diversion programmes are already employed in the Jamaican justice system including referrals to mediation at the discretion of Resident Magistrates under the Resident Magistrate Court (Amendment) Rules 1999 and the Criminal Justice (Reform) Amendment Act of 2001, and the procedures utilised by the Drug Court under the Drug Court (Treatment and Rehabilitation of Offenders) Act 2001.

Key institutions such as the JCF and the Department of Correctional Services may need an authorised framework for authority to make referrals to Restorative Justice processes, Restorative Justice Centres and Child Diversion Parish Committee.

Effectiveness of the National Restorative Justice Policy will be enhanced by legislative reform to reflect the principles of Restorative Justice in relevant pieces of legislation. Particular attention will need to be paid to

- The Criminal Justice (Reform) Act,
- The Child Care and Protection Act;
- Probation of Offenders Act
- Corrections Act
- Parole Act
- The Criminal Justice (Administration) Act,
- The Criminal Justice (Plea Negotiating Agreements) Act 2005,
- The Drug Court (Treatment and Rehabilitation of Offenders) Act 2001, for possible amendment.

Several of these Acts already provide processes that incorporate restorative principles.

With regard to the Regulatory Framework for this Policy, clear guidelines will be established to determine which offences and offenders may be referred to the restorative processes, and the particular processes to which they may be referred.

The exercise of the discretion to refer wrongdoing to restorative processes must be transparent, based on sound principles which prioritise the best for society, and subject to the guidelines as outlined above. These standards must be adopted by all facilitators.

It is recognised that Facilitators will need to be properly trained to determine the most appropriate process in a given case; they must also be held accountable. Proper reporting, recording, review and supervision will be necessary to ensure that the RJ processes are used appropriately, consistently and fairly especially at this expansion stage.

Where offenders are to be referred to restorative processes at the post-conviction / pre-sentencing stage, the determination as to the appropriate sentence will remain exclusively in the judge's domain. While the views of the victim, community and offender may be considered in the process, the judge will retain the power to impose the sentence that is most appropriate in his / her discretion, and within the law.

CHAPTER TEN: STRATEGIC LINKAGES

The National Restorative Justice Policy furthers the commitments of the National Security Policy relating to public safety, the Jamaica Justice System Reform Policy Agenda Framework.

The goals of this National Restorative Justice Policy are aligned with the goals of the National Security Policy. One of the goals of the National Security Policy is to strengthen the justice system and promote respect for the Rule of Law. Under the National Security Policy one of the capacities, Capacity 4, speaks to “Sentencing guidelines and corresponding structures to support the practice of Restorative Justice, including the use of non-custodial sentences.” An objective therefore is to review and update sentencing guidelines and supporting structures to facilitate greater use of non-custodial sentences and Restorative Justice practices where appropriate.²⁸

Coherence with the National Plan of Action Child Justice and the Victim’s Charter is achieved particularly as it relates to the facilitation of diversion programmes through the National Child Diversion Policy among first-time youth offenders from the formal justice system to participation in structured community-based programmes, and the compensation of victims. It also builds on the alternative sentencing regime currently exercised in the Supreme Court and the RM Courts which implementation is supervised by the Department of Correctional Services. Such alternative sentences include Community Service Orders and Supervision Orders.

The National Restorative Justice Policy also has critical linkages with other policies relating to governance, security, justice and social order. Social intervention policies to address crime stand to benefit from the implementation of this National Restorative Justice Policy as it will build community capacity to positively intervene for the restoration of social order and good relations among citizens in general and residents in communities.

²⁸ Page 48, National Security Policy for Jamaica, March 2007.

CHAPTER ELEVEN: MONITORING AND EVALUATION

Continuous monitoring and evaluation of the effectiveness of these initial processes will be undertaken and adjustments made as necessary after which expansion to other more serious categories of offenders and offences may be considered.

Evaluation methods will be selected carefully in order to ensure that scarce resources are dedicated to funding programmes and not to costly external evaluation mechanisms. It will also be important to ensure that the evaluations of these restorative justice interventions do not assume the standards and objectives of the current justice system and its practices. The “success” of this policy will be assessed in terms of the principles and goals of restorative justice (including community empowerment and development, reintegration of victims and wrongdoers, satisfaction of the parties, etc). It is also important that the work and experience of pilot projects will inform dialogue about justice and education and training efforts as well as the expansion into categories of offenders and offences to which RJ can be applied.

A detailed monitoring and evaluation framework for this policy is to be developed with technical assistance to be provided by the IDB.

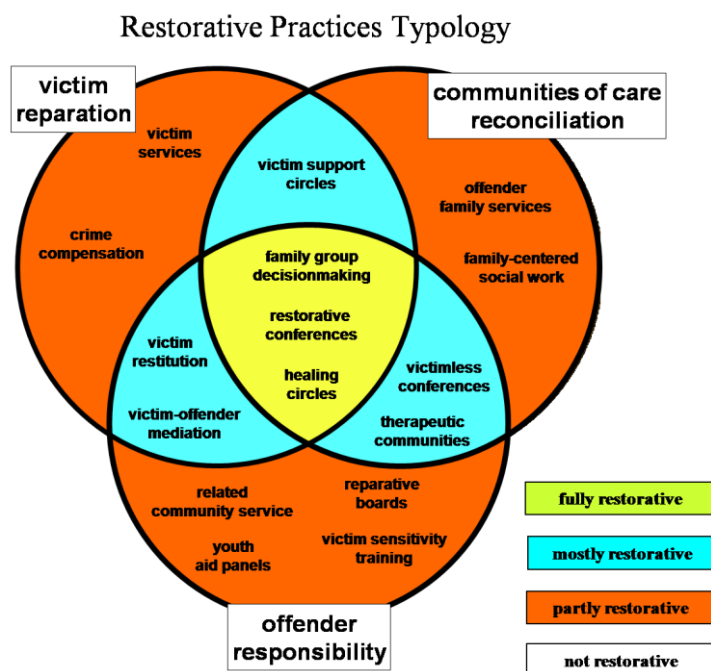
APPENDICES

Appendix 1 Restorative Justice Mechanisms and their Application²⁹

(Extracted from Prof. Jennifer Llewellyn and Danny Graham, Q.C. , 2008 *Toward a Strategic Framework for Restorative Justice Policy in Jamaica*)

Existing restorative practice models reflect a continuum from partly restorative to fully restorative. Fully restorative models bring together all those affected including victims, offenders and community members. These mechanisms include: restorative conferencing, family group conferencing, community justice forums, sentencing circles and peacemaking circles. At the other end of the practice continuum there are restorative oriented activities such as victim-offender mediations or accountability panels that do not include all parties, but still often contribute to the restoration of relationships and thus bring about positive and satisfactory results for the parties.

Paul McCold has developed a helpful typology which plots the spectrum of restorative justice practices according to their inclusiveness of the central parties: victims, offenders and community.³⁰ It classifies the most common restorative justice practices as partly, mostly or fully restorative. One might also understand restorative practices as either restorative, restoratively oriented, or non-restorative.



While exact details of these practices and processes differ depending upon the context, it is helpful to offer a general sense of the most common existing processes that are counted as restorative justice.

²⁹ The following section is extracted from Prof. Jennifer Llewellyn and Danny Graham, Q.C., 2008 *Toward a Strategic Framework for Restorative Justice Policy in Jamaica* . Extract ends on page 59.

³⁰ Paul McCold, "Toward a holistic view of restorative juvenile justice: A reply to the Maximalist model" *Contemporary Justice Review*, 3(4), 357-414, 2000.
August 13, 2012

Restorative Community Service Orders – The fact that a sentence is to be carried out in the community does not render it restorative in nature. Community service orders can be extremely punitive and non-restorative. They can also be aimed at assisting the offender to appreciate the nature of the harm caused and can provide a means for the offender to work towards the restoration of relationships. Such orders typically engage the offender in meaningful work that is related to the nature of the wrong and the harm caused. Examples may include working for the victim or an organization that assists victims of similar crimes.

Victim Support Programs – These programs also are not always restorative in nature but they can be. To be restorative such programs recognize the needs of the victim for reintegration into the community following a wrong. They must seek to understand and respond to the harms suffered by victims as a result of wrongdoing with a recognition that these needs will often require more than monetary compensation.

Offender Accountability Panels – These panels generally involve the offender coming before members of the community to discuss the offence and the resulting harms with a view to coming to an agreement about how to make amends for the offence. Sometimes these panels will include members from the community who are able to represent the views of victims of similar crimes.

Circles of Support and Accountability – These circles are usually a mechanism put in place post release from incarceration in cases where it is thought that the offender may require assistance with reintegration or support to refrain from re-offending. These circles have been used most frequently with serious violent or sexual offenders.³¹ They typically involve members of the community who commit to coming together with the ex-offender at regular intervals to assist him with reintegration and act as an ongoing support network. Generally members volunteer to participate and the groups are sponsored by departments of corrections or non-profit community organizations or chaplains groups.

Victim/Offender Mediation or Reconciliation Processes – These processes are often referred to as VOM or VORP. They were first developed in Ontario, Canada. These processes have been the most familiar form of restorative justice programs particularly in Europe and North American. However, the general trend in recent developments of restorative justice is a move toward more comprehensive and inclusive processes akin to the circle and conferencing processes discussed below.³² These processes often take place alongside the criminal justice process and do not typically divert cases from that process. Generally, VOM or VORP processes take place following conviction and sentencing. They can be conducted in a prison setting or following the offender's release. They generally involve a meeting between the victim and offender mediated by a neutral third party. They can involve others affected but generally focus upon the direct parties to the offence. These processes are generally undertaken at the initiation of the victim.³³

Family Group Conferencing – This model of restorative justice practice was first developed in New Zealand.³⁴ They typically involve the offender and his/her family coming together in a meeting

³¹ Circles of Support and Accountability have been developed by Correctional Service of Canada. A 2005 evaluation of the programs operation in one Canadian region offer a helpful overview of the practice and its operation. See: Robin Wilson, Janice Picheca and Michelle Prinzo, "Circles of Support & Accountability: An Evaluation of the Pilot Project in South-Central Ontario" (Ottawa: Correctional Service of Canada, 2005) available online at: www.csc-scc.gc.ca/text/reports/r168/r168_e.pdf

³² John Braithwaite, "Restorative Justice and De-Professionalization" 13 (1) *The Good Society* (2004) 28-31.

³³ For a general introduction and overview of victim offender mediation see: Mark S. Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* (San Francisco: Josey-Bass, 2001) and Mark S. Umbreit, Robert Coates, Betty Vos, "Victim-offender mediation: Three decades of practice and research" (2004) *Conflict Resolution Quarterly* 22:1-2 pp. 279-303.

³⁴ Shannon Pakura, "The Family Group Conference 14-Year Journey: Celebrating the Successes, Learning from Lessons, Embracing the Challenges" Proceedings American Humane Association's Family Group Decision Making Conference and Skills-Building Institute June 6-9, 2004. Available online at: http://fp.enter.net/restorativepractices/au05_pakura.pdf

with the victim(s) and his/her family. These processes were developed in the context of dealing with young offenders and child and family services where it was seen as essential to engage the parents and family in dealing with the situation. These processes are more inclusive than typical victim/offender mediation owing to the inclusion of the families. Additional support professions are also sometimes included within these processes depending upon whether they are used within the criminal justice system, in schools or in conjunction with child protective services.³⁵

Sentencing Circles – These processes originated in the Yukon Territory of Canada in the context of criminal proceedings involving Aboriginal offenders.³⁶ However, they have been adapted and used outside this context. Sentencing circles take place after conviction either in advance of judicial sentencing (in order to provide recommendations to the judge for sentencing) or in conjunction with sentencing (either facilitated by the sentencing judge or in his/her presence). These processes typically involve the offender with his/her communities of care and support, the victim with his/her communities of care and support, and members from the broader community affected or involved in the situation. Circles might also include resource people (professional or from the community) who can offer assistance with regard to what options exist to address the harms and needs of those involved.

Restorative Conferencing – This category refers to a range of processes that use the conferencing approach and are committed to being inclusive of all the parties with a stake in the outcome of a situation. Such processes are sometimes referred to as community justice forums or peacemaking circles. Restorative conferencing involves the wrongdoer, victim(s), their communities of care and support and the broader community(ies) affected. These processes can also include resource people who bring particular knowledge to the process. Restorative conferencing can take place in a variety of context and is not connected to one stage or part of the justice process.

- **Community or Support Circles/Healing Circles**

Circles are facilitated community meetings attended by offenders, victims, their friends and families, interested members of the community, and (usually) representatives of the justice system. The facilitator is a community member (called a “keeper”) whose role is primarily to keep the process orderly and periodically to summarize for the benefit of the circle. Participants speak one at a time, and may address a wide range of issues regarding the crime, including community conditions or other concerns. The focus is on finding an approach that leads to a constructive outcome, in which the needs of the victim and community are understood and addressed along with the needs and obligations of the offender. In the context of the group, the process moves toward consensus on a plan to be followed and how it will be monitored. Circles do not focus exclusively on sentencing, and the process itself often leads participants to discover and address issues beyond the immediate issue of a particular crime. When sentencing is involved, the circle plan outlines the commitments required of the offender and may also include commitments by others such as family and community members. Noncompliance with the circle plan results in the case being returned to the circle or to the formal court process. Because they do not have to focus solely on the crime, the victim, or the offender, participation in circles is not restricted to the immediate parties to the crime and those closest to them. Circles can include any community members who choose to participate. Every participant is heard—both in expressing their perspectives and feelings about the crime or other issues, and in proposing and committing to solutions. The circle process allows for expression of its members’ norms and expectations, leading to a shared affirmation by the circle—not just for

³⁵ See: Joan Pennell, “Mainstreaming Family Group Conferencing: Building and Sustaining Partnerships” available online at: www.iirp.org/library/vt/vt_pennell.html

³⁶ Justice Barry Stuart first introduced the process at the urging of the local Aboriginal community. For a discussion of these processes see: Barry Stuart, “Guiding Principles for Peacemaking Circles” in Gordon Bazemore, ed., *Restorative Community Justice: Repairing Harm and Transforming Communities* (Cincinnati: Anderson Publishing, 2001). Also on sentencing circles in Aboriginal communities see: Rupert Ross, *Return to the Teachings: Exploring Aboriginal Justice* (Toronto: Penguin Books, 1996).

the offender, but for the community at large. **This context offers renewed community identity and strengthens community life for its members through their participation.**

- **Restorative Conferencing**

Conferencing brings the victim and offender to a face-to-face meeting to discuss the crime and its impact. This process includes support people for both the victim and offender in the discussions. Representatives from the criminal justice system may also be present in the conference process. A trained facilitator, who does not have a role in the substantive discussions, guides the participants in a dialogue about the crime and its impact. The facilitator ensures that each participant has a voice in the proceedings. The conferencing process can be divided into three parts: pre-conference preparation, the actual conference, and post-conference follow-up. In preparing for the conference, the conference facilitator will meet with each of the participants to discuss the process, answer questions, and ensure that they have realistic expectations for the conference. Afterwards, the facilitator may monitor the completion of any agreement arising from the process. In the conference, the victim and offender each tell their story. They talk about the events of the crime and its subsequent impact on their lives. They can each ask questions of the other and in the process build a common understanding of the events that occurred. The victim supporters are able to talk about the crime, its impact on their loved one, and their own lives. The offender supporters show that the offender is not an isolated being, express how the offending behavior has impacted them, and provide extra insight into who the offender is and how he/she came to commit the offence.

A key element of the conferencing process is re-integrative shaming. This means conveying disapproval of the behaviour while showing respect for the offender and working to reintegrate him/her back into the community of care. At the same time, the victim needs to have his/her experiences validated through the recognition of the harms he/she received. When each of the participants feels safe and fully included in the process, restorative conferencing can build an environment conducive to open, positive communication leading to this type of experience. This is reflected in the values underlying restorative processes:

- mutual respect – recognizing the humanity of the other
- collaboration – working together to find solutions
- voluntary – allowing parties to decide whether or not to participate
- empowerment of participants – giving the participants the tools and space to develop solutions to their own problems.

Conferencing can be used at any stage of the criminal justice process, but is typically used relatively early.

- **Victim Offender Mediation (VOM)**

VOM brings victims and offenders together with a trained facilitator to discuss the crime and develop an agreement for how to make things right. This process focuses on creating a safe, comfortable environment in which restorative dialogue can take place. At the outset, victims are invited to tell the story about the crime from their perspective, to express how it has impacted their lives, and to ask the offenders any questions they may have. Offenders are then given the opportunity to talk about what they did, to explain why they did it, and to answer any questions that the victim has asked. The session focuses on the victim and offender. A facilitator is present to help make that possible, but normally remains in the background. The idea is to assist the victim and offender to exchange information, ideas and emotions and to build a mutual understanding of the events and of each other as human beings. Once the parties are satisfied that they have had their say, the facilitator helps the parties think through options for making things right. Participation in VOM is voluntary for both victims and offenders, it is important that neither the victim nor offender be coerced into participating. This is not only because voluntariness is one of the values of restorative justice, but also because meetings between

people who are forced to be present are not as successful. Suitability is determined not only by the kind of offence, but also by an assessment of whether the parties would benefit. This means ensuring that each party understands that participation is voluntary, is psychologically ready for mediation, and has realistic expectations of what may come from the meeting. The goal is for the VOM process to be a constructive experience for both victim and offender, and that the neither will be harmed by the process. The second phase is the meeting itself (or, sometimes, series of meetings). The third is follow-up. This includes not only helping the victim and offender process what they experienced, but also monitoring completion of the agreement.

VOM can take place at any time during the criminal justice process, but only after guilt is no longer an issue. Either the offender has admitted guilt or been found guilty. It can take place before or after sentencing. Depending on the relevant laws, it may or may not affect the offender's sentence.

Application of Restorative Justice

Restorative justice and its practices hold significant promise for responding to injustice and conflict as they emerge in a number of different sectors and areas in Jamaica.

a) Criminal Justice

By far, the most common area of practice for restorative justice internationally is in the criminal justice system. This is reflected, in part by the United Nations' Economic and Social Council adopting the "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters."³⁷ The United Nations Office on Drugs and Crime also recently produced a *Handbook on Restorative Justice Programmes* to guide Member States in the establishment and development of Restorative Justice programmes involving criminal matters.³⁸

The JJSR Task Force Report highlighted reorienting the potential of existing systems and programs to enhance Restorative Justice in Jamaica. It recommended integration with the formal criminal justice system of "a dual track system in which RJ programs are provided independent of the criminal justice system as well as a component of the system."³⁹

a) Civil Justice

i) Torts

Restorative justice programmes exist most commonly in domestic criminal justice systems. The shortcomings and weakness of mainstream traditional court processes in civil justice systems (most notably in the areas of tort and family law) have not however escaped significant attention. Much of the attention paid to reform of these processes by scholars and practitioners has come under the banner of "alternative dispute resolution" (ADR). ADR is a broad based movement that

³⁷ United Nations Economic and Social Council, E/CN.15/2002/5/Add.1 These basic principles resulted from sustained consideration of, and reflection upon, Restorative Justice by the United Nations. Since 1997 Restorative Justice has received attention from the Commission on Crime Prevention and Criminal Justice and it was on the agenda at the Tenth and Eleventh Crime Congresses in 2000 and 2005 respectively. In 2002, the Economic and Social Council endorsed the Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters as a guide to countries seeking to implement these programmes. The 2005 UN Crime Congress held in Bangkok concluded with a Declaration recognizing the benefits of restorative justice and again urging Member States to further develop restorative justice programmes. See: Restorative Justice online <http://www.pfijr.org/programs/un/need> (29 January 2007).

³⁸ United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes* (Vienna: United Nations, 2006). In December 2006, the United Nations Office on Drugs and Crime (ODC) published a *Handbook on Restorative Justice Programmes* to guide member states in the establishment and development of restorative justice programmes involving criminal matters.

³⁹ Part 7, "Criminal Justice Reform: Transforming Practices and Legal Culture" in *Jamaican Justice System Reform Task Force Final report* (June 2007) p. 263.

encompasses a variety of different processes and approaches to resolving conflict outside of the traditional court processes. This movement includes but is not limited to mechanisms such as mediation, negotiation, arbitration and can include processes more closely aligned to court processes including mini-trials.⁴⁰ The ADR movement is generally premised on a commitment to empower parties to choose the means and mechanisms that will enable them to settle their legal conflicts.

The civil justice system is generally understood to deal with private matters. It is generally concerned only with the interactions and relationships between named parties (typically these parties are assumed to align on one side or other of the conflict). This picture of private law – of torts and of family law matters in particular – does not, however, match the reality of these conflicts and the complexities of doing justice in response to them. A restorative approach reveals the extent to which complex social relationships exist in these situations and that these wrongs and conflicts have far reaching effects. Doing justice in these situations then requires more than simply settling the claim between the immediate parties. It requires identifying all those affected and the scope of the resulting harms that need response. The weakness of many ADR mechanisms is that they often replicate the weakness of traditional court processes by ignoring the relational dimension of conflicts.

Restorative Justice holds significant promise and possibilities for the civil justice system. It is able to capitalize on the insights of the ADR movement (that court processes are often inefficient and ineffective means of resolving disputes) and build upon some of the existing ADR practices (for example mediation). Restorative justice offers more than ADR however, in that it is better able to understand the nature of civil disputes, what is at stake and what is needed to resolve them justly.

Viewing tort claims through the lens of Restorative Justice is also significant because it reveals they are not substantively different from criminal law matters. The difference, if it exists, is often only in the scope or reach of the harm. Criminal justice matters are often made criminal out of a concern with public safety and order. Tortious conduct is often understood as undesirable and harmful to other individuals but does not extensively engage broader public interests. Experience with the tort law system, however, reveals that while this might be true in some cases it is certainly not always so. Class action negligence claims are one example of where this distinction between public and private often breaks down. Restorative Justice is more accurately able to identify the scope of the harms and interests at stake in a given situation and adjust the process accordingly without needing to resort to arbitrary labels for the act at issue. Given that the processes for criminal and tort cases within a restorative system are not fundamentally different, the systems and agencies set up to provide Restorative Justice services in the criminal law system could also be mandated to deal with referrals from the civil law system.

ii) Family Law and Child Welfare and Protection

The other area of civil justice in which Restorative Justice would have important applications is family law. Here a broad view of family law include the traditional domain of matters related to the dissolution of marriage and also matters of custody and child welfare and protection more generally. Given their focus on the complex relational dynamics and implications of conflict and wrongdoing, Restorative Justice processes are particularly adept at dealing with family law cases. This is true where the outcome sought is the maintenance of existing relationships and, importantly, where the appropriate resolution requires a change in the terms of the connections and interactions of the parties (perhaps requiring termination of certain formal relationships) to ensure equality of respect, concern and dignity for all concerned.

⁴⁰ For a general introduction to alternative dispute resolution see: Michael Moffit and Robert Bordone, eds., *The Handbook of Dispute Resolution* (San Francisco: Jossey-Bass, 2005).
August 13, 2012

Restorative processes can bring together the parties directly affected including immediate family members, extended family members, their communities of care and support as well as representatives from agencies and institutions charged with care and concern for those involved. It is important to note that one of the significant issues requiring careful attention in the application of Restorative Justice to family law and related issues is that of physical and psychological safety for the parties involved. This is, of course, an important concern in all Restorative Justice processes. However, the issue of power imbalances and of oppression and violence in relationships is perhaps nowhere as significant as in the case of domestic relations. Some advocates suggest for these reasons Restorative Justice is inappropriate for such circumstances. There has, however, been insufficient research to date about these issues. Given the significant weaknesses and failings of the traditional legal systems in these cases though there is reason to pay close attention to the possibility that Restorative Justice may do a better job of identifying and dealing with these issues.

A 2006 study of the potential of restorative justice based family group conferencing processes to deal with care and protection cases of child welfare was very positive in its conclusions.⁴¹ This research concludes that restorative justice best practices are likely to enhance wellbeing, empower children and families, and ensure cultural responsiveness. The report also contains helpful consideration of the practices that are most associated with positive life outcomes for children, young people and their families. The authors of this study conclude that Restorative Justice, in the form of family group conferencing processes aimed at care and protection of young people, have the potential to make a real contribution to empowering participants, harnessing the support of family and increasing the safety net for children.

b) Community Safety & Reconciliation

Restorative Justice also holds promise for making a significant contribution in the areas of community safety and reconciliation given the essential link between both. Communities that are able to deal with conflict and promote the peaceful coexistence of its members are better able to assure safety. The principles and practices of Restorative Justice offer some guidance with respect to the meaning and the means of reconciliation within communities. Reconciliation understood as the existence of social relationships marked by equal respect, concern and dignity are the bedrock of reconciled and peaceful communities. The goal is to ensure appropriate means of dealing with conflict that create the conditions and set the terms for peaceful coexistence and reconciliation that will contribute to lasting peace and security.

Restorative Justice processes could make a substantial contribution to this work. Through these processes community conflicts might be understood and dealt with in a way that engages members, builds healthy social relationships, and makes a plan for the establishment of safe and strong communities in the future.

Restorative Justice might also play a role in community safety and reconciliation as a result of the inclusion of community(ies) as relevant parties in Restorative Justice processes. Restorative justice is committed to viewing community as an integral part of both the causes and solutions of social conflict as well as being harmed by it.

⁴¹ See Gabrielle Maxwell and Shannon Pakura, "*The Family Group Conference: Does it work for child protection?*" Presentation for the Study tour: A Restorative Justice System for Juveniles: Information for Mexico from New Zealand" provide a helpful review of the research literature on conferences from New Zealand and elsewhere. It also reviews the key findings that have emerged through evaluation research and practitioner experience in the area of care and protection. The study notes important aspects of practice that were of concern in New Zealand in 2005. It also provides a report on a major study of later life outcomes for young people who have been involved in youth justice family group conferences. This report is available at <http://ips.ac.nz/events/completed-activities/RJ%20Mexico/CareProtFGC.pdf>. Also on the use of restorative justice in the area of child protection see the video resource "Pathways to Permanence: Introduction to Mediation, Family Group Conferencing, and Concurrent Planning" by Lynette Parker available online at <http://www.restorativejustice.org/editions/2006/november2006/videoreviewpermanence>
August 13, 2012

c) Education

Restorative practices hold significant potential to deal with discipline and conflict issues within the education system in Jamaica. Additionally, the education system is an important site for education and training that will contribute to the success of Restorative Justice in Jamaica.

Restorative Justice and restorative practices are relevant for the education system in at least three ways: a) as a mechanism for dealing with school disciplinary matters; b) processes for resolving conflicts; and c) as relevant and important substantive knowledge about the meaning and means of justice.

The experience of those using restorative justice processes in school discipline has shown significant reduction in suspensions and expulsions.⁴²

d) Health

The possible applications for Restorative Justice in the areas of child protection and child welfare and in the context of child / youth justice raise important connections between restorative justice and health care. Restorative Justice has significant applications in the area of health care that are beginning to be recognized.

Perhaps the most researched and noted application of restorative justice in the area of health is in the area of mental health. Research has thus far noted the potential of Restorative Justice processes in cases where the mental health of a defendant is of concern⁴³ or with respect to protecting the mental health of children in care and protection cases.⁴⁴

e) Corporate Governance & Regulation

Restorative Justice and restorative practices also have potential applications or implications with respect to corporate governance and regulation. This is an area that is just beginning to develop although there were some early experiments with the use of restorative practices in the regulation

⁴² See for example: *National Evaluation of the Restorative Justice in Schools Programme* (Youth Justice Board for England and Wales, 2004) available online at www.yjb.gov.uk/Publications/Resources/Downloads/nat%20ev%20of%20rj%20in%20schoolsfullfv.pdf. Another example worthy of attention is the recent pilot projects in Glasgow, Scotland. For more information see: Gwynedd Lloyd, Gillean McCluskey, Sheila Riddell, Joan Stead and Elisabet Weedon, *Restorative Practices in Three Scottish Councils: Evaluation of pilot projects 2004-2006* (Edinburgh: Scottish Executive, 2007) available online at: www.scotland.gsi.gov.uk. Also see the example of the Kawartha Pine Ridge District School Board in Ontario, Canada. This school board has instituted restorative justice in all of its schools and has reported a substantial reduction in exclusion rates. For information see online at: www.kpr.edu.on.ca/programs/restorative_practices.php or contact Bruce Schenk, Restorative Justice Advisor at Bruce_Schenk@kprdsb.ca. Also for an evaluation of the use of restorative justice in schools see Lawrence Sherman and Heather Strang, *Restorative justice: the evidence* (London: Smith Institute, 2007).

⁴³ Michael Pullmann, Jodi Kerbs, Nancy Koroloff, Ernie Veach-White, Rita Gaylor and Dede Sieler, (2007). "Juvenile Offenders With Mental Health Needs: Reducing Recidivism Using Wraparound" *Crime & Delinquency*. 52(3): 375-397. This article reviews the success of an integrated restorative justice process that includes mental health providers as a means of dealing with juvenile offenders with mental health needs. It might also be of interest to note the integration of restorative justice into the recent proposal for the development of a mental health court in Nova Scotia, Canada. This work is currently underway.

⁴⁴ Jeanette Schmid, (2006). *Using Family Group Conferencing in the Children's Mental Health Context* American Humane FGDM Issues in Brief. Available online at: http://www.americanhumane.org/site/DocServer/FGDM_Brief_10_F.pdf?docID=3541. The article reviews the use of family group conferencing in Toronto the context of children's mental health.

of health and safety that have met with some considerable success in ensuring compliance.⁴⁵ More broadly, the development of restorative justice processes as mechanisms for responsive regulation is receiving significant attention.⁴⁶ Given the importance of regulation in the modern state restorative models are worthy of close attention in Jamaica. The expertise of industry and business leaders from different sectors in the economy will be essential to the development and success of Restorative Justice in this area.

⁴⁵ See generally, John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002). Also see Michael Wright, Ali Antonelli, John Norton Doyle, Mark Bendig and Richard Genna, (2005). *An evidence based evaluation of how best to secure compliance with health and safety law*. Research Report 334. Health and Safety Executive (England). Available online at: www.hse.gov.uk/research/rrpdf/rr334.pdf and; John Braithwaite, Judith Healy and Kathryn Dawn (2005) *The Governance of Health Safety and Quality: A Discussion Paper*. Australian Council for Safety and Quality in Health Care, Commonwealth of Australia. Available online at: www.safetyandquality.org/governance0705.pdf

⁴⁶ See generally the work of the Regulatory Institutions Network (RegNet) at the Australian National University online at: www.regnet.anu.edu.au.

Appendix 2: Persons and Institutions Consulted

Ministry of Justice

- Senator Hon. Mark Golding (Minister of Justice)
- Hon. Delroy Chuck M.P. (*Former-Minister of Justice*)
- Senator Hon. Dorothy C. Lightbourne, QC, C.D. (*Former-Minister of Justice & Attorney General*)
- Mrs. Carol Palmer, Permanent Secretary
- Mr. Robert Rainford, J.P. (Former Permanent Secretary)
- Hon. Chief Justice Mrs. Zaila McCalla, O.J. (Chief Justice)
- Mr. Ransford Braham, Q.C, (Former Attorney General)
- Mr. Douglas Leys, (Solicitor General)
- Ms. Paula Llewellyn, QC, C.D. (Director of Public Prosecutions)
- Hon. Justice Seymour Panton, O.J., C.D. (President – Court of Appeal)
- Mr. Maurice Bailey, Director of Legal Reform
- Dr. Eileen Boxill, (Former Director of Legal Reform)
- Mr. Osbourne Bailey, Coordinator(VSU)
- Mrs. Nesta Haye, (VSU)

Ministry of National Security

- The Hon. Peter Bunting, M.P., Minister of National Security
- Senator The Hon. Dwight Nelson, M.P. (Former Minister of National Security)
- Dr. Ann-Marie Barnes, Permanent Secretary
- Ms. Dianne McIntosh, Former Permanent Secretary (actg.)
- Mr. Owen Ellington, Commissioner of Police – (JCF)
- Mr. Delworth Heath, Deputy Commissioner
- Mr. Linval Bailey, Deputy Commissioner
- Mr. Simeon Robinson, Programme Manager – (CSJP)

Ministry of Education

- Rev. Hon. Ronald Thwaites M.P Minister of Education
- Hon. Andrew Holness, M.P. (Former Minister of Education)
- Mrs. Grace Mc Lean (Acting), Permanent Secretary
- Mrs. Audrey Sewell, (Former Permanent Secretary)

Department of Correctional Services

- Lt. Col. G.S. Sean Prendergast, Commissioner
- Mr. Gile Campbell, Deputy Commissioner (actg.) – Custodial Service

Ministry of Youth & Sports and Culture

- Hon. Lisa Hanna, MP Minister of Youth & Culture
- Hon. Olivia Grange, M.P. (Former Minister of Youth & Sports)
- Mr. Robert Martin (Permanent Secretary)

Ministry of Labour & Social Security

- Hon Derrick Kellier, Minister Labour and Social Security
- Hon. Parnell Charles, M.P., (Former Minister of Labour)
- Mr. Alvin McIntosh, C.D., JP (Permanent Secretary)
- Carla-Anne Harris-Roper, (Director, Legal Services)

Minister of Local Government and Community Development

- Hon. Noel Arcsott, MP, Minister of Local Government and Community Development

Dispute Resolution Foundation

August 13, 2012

- Mrs. Donna Parchment-Brown, (Chief Executive Officer)
- Mr. Paul Hines, (Parish Network Manager)

People's Action for Community Transformation (PACT)

- Ms. Sheila Nicholson, (Programmes Director)
- Ms. Lorna Peddie, (Special Project Officer)

Other Stakeholders

- Dr. Gladstone Hutchinson, Director General – (PIOJ)
- Mrs. Jacqueline Samuel-Brown, QC., President (Jamaican Bar Association)
- Mrs. Janet Cupidon-Quallo – Child Protection Specialist – (UNICEF)
- Mrs. Sonia Gill, Assistant Resident Representative, UNDP

Jamaicans for Justice

- Dr. Carolyn Gomes, (Executive Director)

APPENDIX 3- PUBLIC CONSULTATIONS ON RJ, AUGUST 12 – NOVEMBER 25, 2008

Parish	Locations	No. of persons in attendance
Kingston & St. Andrew		
Half Way Tree 12/08/2008	Girl Guides Association of Jamaica 2 Waterloo Road Kingston 10	250
Stony Hill 18/11/2008	HEART/NTA Stony Hill Academy	139
St. Thomas Morant Bay 24/11/2008	Morant Bay Anglican Church Hall	141
St. Ann		
Ocho Rios 07/10/2008	St. John's Church Hall, 4 Milford Rd., Ocho Rios	130
Browns Town 08/10/2008	St. Mark's Anglican Church, Brown's Town	63
St. Catherine		
Portmore 16/9/2008	HEART/NTA Portmore Academy	151
Linstead 23/9/2008	Anglican Church Hall, Linstead	110
Spanish Town 24/9/2008	Phillippo Baptist Church, 9 Williams Street, Spanish Town	172
Hanover Lucea 28/10/2008	Ruseas High School	31
Trelawny Falmouth 29/10/2008	William Knibb Memorial Baptist Church Hall	43
Clarendon May Pen 11/11/2008	St. Gabriel's Anglican Church Hall	43
Frankfield 12/11/2008	Edwin Allen Comprehensive High School	57
Westmoreland		
Negril 22/10/2008	Traveller's, Norman Manley Bld.	51
Savanna-la mar 23/10/2008	Sean Lavery Roman Catholic Church, Lewis St.	58
St. James		

Parish	Locations	No. of persons in attendance
Granville 19/08/2008	Sam Sharpe Teachers' College	65
Montego Bay 20/8/2008	St. John's Methodist Community Action Centre	79
St. Elizabeth		
Santa Cruz 14/10/2008	St. Matthew's Church Hall, Main Street,	23
Black River 15/10/2008	Black River High School, 80 High Street	50
Manchester		
Mandeville 4/11/2008	Anglican Church Hall	21
Christiana 5/11/2008	Christiana Comprehensive High School	63
Cobbla Youth 6/11/2008	Cobbla Youth Camp	103
St. Mary		
Port Maria 11/10/2008	Emmanuel Baptist Church, Port Maria	120
Portland		
Port Antonio 25/11/08	Port Antonio High School	123
TOTAL	23 Consultations	2086

APPENDIX 4: REPORT ON THE PUBLIC CONSULTATION ON RESTORATIVE JUSTICE 2008

Pursuant to the mandate from Cabinet and the instructions of the Hon. Minister of Justice Senator Dorothy Lightbourne, the MOJ undertook a series of consultations to ascertain attitudes and views related to the concepts, implementation modalities and timing of a roll out of a programme of Restorative practices in Jamaica.

During the period August 12 to November 25, 2008, DRF facilitated discussions at twenty-three (23) consultations with two thousand and eighty six (2,086) Jamaicans to solicit their views on a draft Restorative Justice Policy.

The consultative mechanism included a short Video Presentation on Restorative Justice, Talking Circles, a Power Point Presentation on Restorative Justice and a Question and Answer session.

Members of the public attending each consultation were first presented with a short video presentation on Restorative Justice. This was designed to provide the audience with educational material on some aspect of Restorative Justice, such as victim, offender, the role of the state agencies such as the police, post sentencing restorative processes, the role and purpose of forgiveness, the mechanism necessary to enable forgiveness. Video presentations lasted no longer than 10 minutes.

Talking Circles were at the heart of the consultations. They lasted for one hour and depending on the number of persons attending, and facilitators availability, up to six circles were done per location sometimes with up to fifty participants in each group.

Four questions were framed and presented in a different order to the members of each circle, to ensure full discussion of each question. They are as follows:

- 1 “What does justice mean to you?”
- 2 When someone is killed, raped, burglarized:
 - What should be done?
 - Who should be involved?
- 3 When a child is in serious problems at school, who should be involved in the actions taken?
- 4 How can you be involved in Restorative Justice in Jamaica- focus on your community?

What does Justice mean to you?: Persons in the various “Talking Circles” articulated justice as being closely connected to respect for the rights of others, equity, impartiality and fair play, and providing a chance for their voices to be heard. The victim’s satisfaction with justice outcomes was also a recurring theme in the responses given. Other expressions of justice included “forgiveness”, “unity”, “healing of harms done”, “respect from the police”, and “accountability”.

Definitions of justice also made strong reference to the role of the police, the rule of law and the Constitution. Not all responses were however “restorative” as some opinions expressed include retributive options such as “revenge”, “capital punishment for the offender”, “Punishment fitting the crime”, and “harsh penalty” for wrong doing.

When someone is killed, raped, burglarized, what should be done and who should be involved?: This question elicited strong reactions in the Talking Circles which varied from the restorative option “(t)here should be dialogue between victim and offender to assist victims in bringing closure to the crime (Savanna-la-mar) to the retributive “Rape – Cut off

hand. Second Offence, cut other hand! /Rapist punished. Death!/ capital punishment should be done correctly and quickly” (Portmore).

On the restorative end of the spectrum many of the responses reflected victim / offender dialogue to bring closure to the wrong done, counselling for victims and their families, and community involvement in sentencing.

On the retributive end of the spectrum, responses were clearly in favour of the application of the death penalty for murder and castration for rape. Matters of policing also came to the fore as responses presented options for the police to be more thorough in their investigations, efficient (speedy) in the apprehension of offenders, and that justice must be quick and effective.

There was almost universal similarity in responses in terms of who should be involved. Common responses were:

- Police / Justice system (including Judge and prosecutors)
- Community members (stakeholders)
- Family (including spouses / partners)
- Friends / peers
- Victim
- Offender
- Church, Religious leaders
- Trained Mediators
- Neighborhood watch group
- Victim support unit
- CISOCA Unit of the JCF
- Justice of the Peace
- Political Representative (Council, Members of Parliament)

Other less common responses included cultural/pop icon, and role models.

When a child is in serious problem at school who should be involved?: Similarly to the responses above, a range of stakeholders were indicated as persons to be involved when a child is in serious problems at school. A consistently expressed caution however was that intervention of some stakeholders is dependent on the severity of the problem. Most of the stakeholders who were identified were school-based persons such as Principals, Teachers (form / class), Guidance Counsellors, Deans of Discipline, the Parent Teacher Association (PTA), the School Board, and the Student Council (Prefects and other student leaders). The Ministry of Education and the Child Development Agency (CDA) were also cited as agencies that should be involved in this situation. The involvement of the police is reserved for the most serious of offences (weapons, drugs, stabbings, sexual offences in school.)

While the parent / guardian/ care giver were often cited as critical persons to be involved, there were mixed views on when and how they should be involved. Many believe that the parent must be the first to be called in this case, others shared the view that in some cases parental involvement may bring more harm than good and that the teacher or other school officials would be a more appropriate first contact.

The Child (victim and offender) was also cited as a critical person to be involved. There were however mixed views on the level of involvement of the child. In many cases the

child should be involved to benefit from the range of counselling and other services available to him/her. Some persons however think that the child should be excluded.

How can you be involved in Restorative Justice in Jamaica?: A wide range of options were presented in response to this question. These ranged from personal commitments such as “to be a role model / good citizen”, to tangible actions such as forming community / youth groups in their communities and to learn and impart Restorative Justice Principles to others.

The Talking Circles were a resounding success as a mechanism to consult the Jamaican public. It may have been the first time that Circles were used to enable dialogue between persons of different age, gender, social class, occupation and status about issues that were in some instances divisive. Over two thousand persons sat in Circles and they openly expressed their views and displayed respect for views they disagreed with without being disagreeable.

Following a Power Point presentation participants were invited to answer the question “**Is Jamaica ready for a more restorative approach to justice?**” This section was also used to answer questions, clarify issues raised, and provide information regarding the next steps following the public consultation and the possible future roll out of training and public education on Restorative Justice. Vigorous discussions and suggestions flowed from participants at some locations regarding varied issues such as the need for a proactive/preventative approach such as a Parent Patrol Group in St. Thomas in response to school children staying late at bus parks and being vulnerable to crime.

In many of the consultations participants expressed agreement that Jamaica is ready for a more restorative approach to justice but there is a need to “fix” the existing justice system first. Of special note was the public’s focus on the role and function of the Police. In many Circles, issues relating to the response of the Police to 119 calls and their trustworthiness were raised by members of the public, which supported both desire for and scepticism about these “new ideas of RJ.”

Questionnaires were also administered by the MOJ to capture feedback from participants.

ANALYSIS OF RESPONSES FROM QUESTIONNAIRES ADMINISTERED

Socio-Demographic Profile

The total number of respondents from the Restorative Justice consultation who completed questionnaires was nine hundred and twenty-three (923). The largest proportion of the respondents was from the parish of St. Ann (16%). Eight per cent (8%) of the respondents were from parishes considered urban, i.e. Kingston & St. Andrew, St. James and St. Catherine. It is to be noted however that the administration of the questionnaires did not take place in all consultation sessions hence the low level of responses in some parishes.

Approximately fifty-nine per cent (59%) of the respondents were female. Thirty-five per cent (35%) were aged twenty-five or under while almost thirty-two per cent (31.7%) were between the ages of 26 and 35. Ten per cent (10%) of the respondents were over the age of 60.

Religious, community or youth leaders accounted for just over sixty-eight per cent (68.3%) of the respondents while approximately forty-four per cent (44%) were students. Sixty-two per cent (62%) of the respondents were parents. A little over half the total respondents (51.2%) were employed.

Fifty-eight per cent (58%) of the respondents were in a relationship (i.e. married or unmarried with partner) while the remaining (42%) were not in any form of relationship. Approximately fifty-one per cent (51.4%) had attained at least a secondary level of education, thirty-four per cent (34.0%) reported having tertiary education and almost thirteen per cent (12.8%) had some form of vocational training.

History of Criminal Offence and Victimization

Respondents were asked if they have ever been found guilty of a criminal offence and the overwhelming majority (96.9%) responded in the negative. Similarly, almost seventy-one per cent (70.7%) of the respondents also reported that they did not have a relative or friend who had been found guilty of a criminal offence. Approximately 29% of the respondents however reported having a relative or friend who had been found guilty of a criminal offence (47% were males and 53% were females).

Of the total respondents, twenty-one per cent (21%) reported being victims of a criminal offence while nearly half (49.2%) of the respondents knew a relative or friend who had been a victim of a criminal offence, of which 47.2% were males and 52.8% were females. Of the respondents who have been victims of a criminal offence, 47% were males and 53% were females.

The foregoing is an indication of the high likelihood of association with someone who has been touched adversely by crime. The observation that about one in five respondents had themselves been victims of crime also points to the significant spread of the adverse effects of crime in the Jamaican society.

Descriptive Analysis of Opinions of Issues surrounding Restorative Justice

Nine statements were given for the respondents to answer using a five-point Likert Scale ranging from strongly agree to strongly disagree. Cross tabulations were also done with respect to some of the statements to test the consistency in responses by respondents that may illustrate their overall attitude to certain issues / themes. Respondents were given three statements that suggest likely responses to someone who had been caught stealing an animal, money or a valuable good (such as a car).

The results indicated that while the majority (61.3%) of respondents disagreed with the statement that, *if a thief is caught stealing goats he/she should be beaten by everyone*, just over sixty-five per cent (65.4%) agreed with the statement, *if my best friend is caught stealing my money I would give him/her a chance to explain and apologize*. On the contrary, fifty-two per cent (52%) of the respondents agreed with the statement, *I believe a person who steals cars should be given a harsher penalty than a person who steals food*.

Of those respondents who were in agreement that if their best friend was caught stealing their money, they would give him/her a chance to explain and apologize, 61.4% also oppose the position that *if a thief is caught stealing goats he/she should be beaten by everyone*.

There was no doubt for the respondents who were in agreement that a person who steals cars should be given a harsher punishment than a person who steals food. Notwithstanding the foregoing, the majority of respondents (77.9%) were also in agreement that people should always be given a chance to explain their actions.

Most respondents who supported the position that people should always be given the chance to explain their actions (55.6%) would nevertheless subscribe to a harsher punishment for the theft of a more valuable good (eg. cars as opposed to food). Clearly, for these respondents, punishment is still an outcome for wrong doing, notwithstanding the extension of the opportunity to explain and

apologise. What is of significance is the degree of severity for punishment regarding wrong doing that involve something of greater intrinsic value.

Respondents were also given three scenarios concerning the following, *if my child is caught cheating in an exam; if a man grabbed my cell phone and is caught by passersby and if I am caught doing something wrong at work that warrants my termination.* In the first scenario, the majority of the respondents (59.3%) stated that they would punish and talk to the child while thirty-four per cent (34%) stated that they would talk to the child about the incident.

In the second scenario, approximately twenty-six per cent (26%) of the respondents stated they would request the perpetrator be punished, twenty-nine per cent (29%) stated that they would talk to the cell phone thief while almost thirty-nine per cent (38.8%) reported that they would talk about it with him and request that he be punished. The result from the final scenario indicated that approximately forty-three (43.2%) per cent of the respondents would confess and ask for mercy while nearly forty two percent (41.7%) stated they would ask for mercy and accept that they can be fired. Only ten per cent (10%) of the sample stated that they would remain silent and accept that they will be fired.

It is to be noted from the responses offered in relation to the second scenario that ***the majority of respondents (63%) would most likely request punishment for the person who grabbed their cell phone.*** Of significance also is the observation that the majority of the respondents who indicated that they are community / religious or youth leaders (61.6%) would most likely have requested punishment for the cell phone grabber.

The majority (57.2%) of respondents did not agree that the village/community is better able to deal with crime than the Government. Almost fifty-three per cent (52.9%) of the respondents however agreed that, *a religious/community leader would be better able to settle a family dispute than the police.* The majority of the respondents (49.2%) also disagreed with the statement, “*there is no justice in Jamaica*”, while 27.9% were uncertain that there is “no justice”. Approximately twenty-three per cent (22.9%) however agreed with the statement. The overwhelming majority of the respondents (78.2%) agreed with the statement that, *people should always be given a chance to explain their actions.*

It is noteworthy that the majority (51.3%) of respondents who were in agreement that religious / community leaders were better equipped to settle family disputes than the police were opposed (72% strongly disagreed) to the view that the village / community is better able to deal with crime than the Government. A smaller proportion of respondents who supported the position that the village / community is better able to deal with crime than the Government (14.7%) did not support the position that religious / community leaders would be better able to settle a family dispute than the police.

Clearly, respondents have made a real distinction between the appropriateness of the community / religious leadership role in dealing with family disputes and the Government’s responsibility / role in addressing crime on a whole. It appears from the above observation that ***citizens still expect the Government to play its role in addressing crime and its effects while reserving the resolution of family related disputes for community and religious leadership.***

It is also noteworthy that 34.7% of respondents who support the position that the village/community is better able to deal with crime than the government were also in agreement with the statement that *if a thief is caught stealing goats he/she should be beaten by everyone.* Although this position is not held by the majority of respondents, it is significant as it points to retributive tendencies among citizens that are not in keeping with the principles of Restorative Justice.

Approximately 47.5% of respondents were in agreement that if they themselves were caught speeding they would like to be given a “chance” by the police. Close to 29% of respondents

however were not in agreement with their being offered a “chance” by the police if they were caught speeding. Interestingly, 25.3% of respondents who would like to be offered leniency by the police if caught speeding, were in favour of mob beating of a “thief caught stealing”. In contrast, the majority of respondents who did not expect leniency from the police if caught speeding (68.8%) were also opposed to the idea of a mob beating of the goat thief.

The above observation demonstrates the consistency in the positions held by the respondents regarding the two statements being compared. Approximately 57.9% of respondents who would like to be given a “chance” by the police if caught speeding, were not in support of the mob beating of a person caught stealing. Notwithstanding their own expectations regarding leniency from the police if caught speeding, ***the majority of respondents are not in support of the mob beating of a person caught stealing.***

The majority of the respondents are also most likely to “*confess and ask for mercy / ask for mercy and accept that they can be fired*”. It is also instructive to note that the majority of those who would request punishment for the cell phone grabber (81.3%) expect mercy themselves. Similarly, 86.3% of the respondents who would “talk about it (cell phone theft) with him (the cell phone grabber) and request that he be punished” would also expect mercy to be extended if they themselves were caught doing something bad on the job.

While a significant majority of the respondents would have extended the opportunity for their best friend to explain his/ her actions if caught stealing, some (21.2%) would however not spare the time to “talk with criminals”⁴⁷. Approximately 57.3% of the respondents did not however support the position that they would not have time to dialogue with “criminals”.

The majority of respondents (57.4%) regarded as false the statement that “*Restorative Justice means you always have to forgive and forget*”. Approximately 16.3% of respondents were however not sure that this statement is true. Among the respondents who did not believe that RJ means to always “forgive and forget”, 48.6% also believe that “*a person who steals cars should be given a harsher penalty than a person who steals food*”. Also of significance is the 34.5% of the respondents who did not believe that RJ means to always “forgive and forget”, who were also not in support of a harsher penalty for a person who steals a more valuable good.

Notwithstanding their actual position on the concept of Restorative Justice, the majority of respondents are more inclined to make time to dialogue with “criminals”.

A noticeable shift in position was observed with relation to the statement “Restorative Justice will make criminals get away”. A clear majority (69.6%) of the respondents do not regard this statement as true, while 19.5% were not sure. ***Respondents clearly do not regard Restorative Justice as something that will allow criminals to escape the consequences of their actions.*** This is in keeping with one of the principles of Restorative Justice which calls for the offender to take responsibility for his or her own actions.

Respondents’ Assessment of the Restorative Justice Consultation

The majority of respondents (52.9%) reported that they were hearing about Restorative Justice for the first time. However, 90.7% of the respondents agreed that they had learnt something new following the consultation session, as the group facilitators (in Circles) seemed knowledgeable about Restorative Justice (91.4% of the respondents gave this assessment.). For 93.4% of the respondents, there was no regret for their attendance at the public consultation on Restorative Justice.

⁴⁷ Admittedly the statement used “I do not have time to talk with criminals: they should go to prison” is flawed as it presents another option “they should go to prison” to which many persons would normally agree.

Appendix 5: Stakeholders and Initiatives in Restorative Justice in Jamaica.

Name	Established	Services
Family Courts	1976	<ul style="list-style-type: none"> ▪ Social services arm provides a pre-trial process aimed at diverting family disputes from court.
The Courts	1994	<ul style="list-style-type: none"> ▪ Refers cases to Mediation Centres. Agreements adopted as Judge's Order. ▪ Community Service Orders ▪ Drug Courts ▪ Juvenile Diversion Orders ▪ Commissions of Enquiry and Coroners Inquests have provided a space for truth telling by persons harmed by The Security Forces. The West Kingston Commission has recommended increased use of RJ in the Justice System.
Peace and Love in Society (PALS)	1994	<ul style="list-style-type: none"> ▪ School based conflict resolution curriculum with peer mediation trained and supported. Peer mediation and development of group norms for student is encouraged. ▪ Sponsors annual Peace Day in March.
Dispute Resolution Foundation (DRF)	1994	<ul style="list-style-type: none"> ▪ Provides expert mediation services, consultancy in project design, and mediation training focused on community groups and businesses.
Police Force <ul style="list-style-type: none"> ▪ Mediation Unit ▪ Community Policing Policy ▪ Chaplaincy Unit ▪ Medical Unit 	1998	<ul style="list-style-type: none"> ▪ Conflict Resolution Sensitisation Training at recruitment. ▪ Police officers as mediators at community level who operate in both preventative and reactive modes. ▪ Use of Administrative Review Process following critical incidents.
Department of Correctional Services (DCSJ)	2000	<ul style="list-style-type: none"> ▪ Staff and inmate training in Conflict Resolution including RJ sensitisation. ▪ Chaplains facilitating victim offender dialogues ▪ Victim Impact Statements – in parole process ▪ Batterers Program ▪ Community Service Program ▪ Temporary release programs for inmates and wards.
Citizen Security and Justice Project (CSJP)	2001	<ul style="list-style-type: none"> ▪ Established Community Conflict Resolution Centres in selected communities.
Ministry of Health	2002	<ul style="list-style-type: none"> ▪ Injury surveillance system able to support the targeting of preventative interventions. ▪ Violence Prevention Alliance – Sponsors Peace Month Annually in February. ▪ Bustamante Children's Hospital (Camp Bustamante)
Community Conflict Resolution Councils (CCRCs)	2002	<ul style="list-style-type: none"> ▪ Designed by the Jamaica Chamber of Commerce, this program brought together community members and police officers for joint training (including training in mediation and conflict resolution) and the development of a Code of Conduct.
Peace Management Initiative (PMI)	2002	<ul style="list-style-type: none"> ▪ Rapid response approach to emerging inter and intra community violence.

		<ul style="list-style-type: none"> ▪ Citizens from warring communities are brought together around music and food in “peace dances, community walks by leaders, etc.
Victim Support Unit (VSU)	2002	<ul style="list-style-type: none"> ▪ Provides advocacy and trauma support to victims of crime. Many staff members are trained mediators.
Social Conflict and Legal Reform Project	2003	<ul style="list-style-type: none"> ▪ Community Mediation Centres established in two communities. ▪ Piloting of mediation of civil cases in the Supreme Court.
Tertiary Academic Institutions		<ul style="list-style-type: none"> ▪ University of the West Indies, Jamaica Theological College, Northern Caribbean University and Mandeville College of Legal Studies have all included mediation training or sensitisation in its curriculum for law students and guidance counsellors and psychologists in training. ▪ The Northern Caribbean University operates a Centre for Restorative Justice and Community Counselling. ▪ Eastern Mennonite University (USA) has been a focal point for training of community members in Restorative Justice.
Restorative Justice Initiative (MOJ)	2003	<ul style="list-style-type: none"> ▪ Proposed broad based strategy to reorient the underpinning philosophy of the justice system. This has included Restorative Justice Opportunity Fairs, a Study Tour to Canada, International Conferences on Restorative Justice, and with support from the UNDP and the CCF the provision of technical support for the establishment of a Restorative Justice Unit.

Source: extracted from the Jamaican Justice System Reform (JJSR) Research Paper by Leon Dundas, 2007.

Appendix 6:

National Restorative Justice Development Committee

Mrs. Carol Palmer, Permanent Secretary of Ministry of Justice

Mr. Robert Rainford, Former Permanent Secretary, Ministry of Justice

National Restorative Justice Policy Working Committee

- **Ms. Ruth Carey, Director Restorative and Child Justice Reform- Chairman**
- Mr. Teddy Charles, Director Justice Reform Implementation Unit
- Ms. Kathlene Arnold, Policy Analyst, Snr. Director Criminal and Civil Justice Administration
- Professor Bernard Headley, Professor of Sociology, Psychology & Social Work, UWI
- Dr. Jermaine McCalpin, Lecturer in Government, UWI
- Mr. Michael Gordon, Assistant Lecturer in Sociology, UWI
- Dr. Grace Kelly, Chairman Northern Caribbean University
- Mrs. Donna Parchment- Brown, CEO, Dispute Resolution Foundation
- Mr. Paul Hines, Dispute Resolution Foundation
- Mr. Peter Parchment, Senior Director Strategic Planning Policy Research and Evaluation, MOJ
- Rev. Osbourne Bailey, Coordinator, Victim Support Unit
- Ms. Jamila Simms, Legal Officer, MoJ
- Ms. Nardia Andrews, Legal Officer, MoJ

Former Restorative Justice Implementation Committee

- **Ms. Beverly Little., Coordinator Justice Reform, Chairman**
- Ms. Joan McDonald, JP
- Mrs. Cheryl Davis Ivey, Chief Technical Director, MOJ
- Mr. Vaughn Graham, MOJ
- Mr. Michael Cohen, MOJ
- Miss Julian Lynch, MOJ
- Miss Brenda Smith, MOJ
- Mr. Rohan Powell, MOJ
- Mrs. Sharon Palmer, DRF
- Ms. Petrina Francis, MOJ
- Miss Annette Richards, Parish Coordinator, Victim Support Unit
- Pastor Derrick Coward, Trench Town Mediation Association
- Mr. Bryan Jacas, DRF/JP
- Rev. Donald MacFarlane, VSU
- Mr. Hugh Morris, JP
- Miss Doniella Denton, MOJ
- Miss Tameka Hill, MOJ
- Mrs. Donna Parchment- Brown, CEO, Dispute Resolution Foundation
- Mr. Paul Hines, Dispute Resolution Foundation

Technical Consultants and Advisors

Professor. Jennifer Lewellyn

Mr. Danny Grahams, Q.C

Ms. Audrey Barrett, Technical Advisor on Restorative Justice

Ms. Helen Schneiderman, CUSO/VSO volunteer to Restorative Justice Unit

APPENDIX 7: SCHEDULE OF OFFENCES

Post Charge/Pre Trial –Inclusionary List of Offences

1. Unlawful Wounding (Section 22 of Offence Against the Person Act)
2. Assaults (Section 34 – 40 of Offence Against the Person Act)
3. Assault Occasioning Actual Bodily harm (Section 43 of Offence Against the Person Act)
4. **Theft of property (Larceny Act)**
 - s. 5 simple larceny,
 - s. 18 Larceny in a dwelling house,
 - s.19 larceny from the person,
 - s.21 larceny by tenants or lodgers,
 - s.22 larceny or embezzlement by clerks or servants,
 - s.24 conversion,
5. Noise Abatement Act (sections 3 and 4, dealing with noise from private premises and public spaces and the liability of owner of premises and equipment.)
6. Town and Communities Act (section 5-9 and s.11 - wide variety of petty offences, mainly public nuisance or disturbing the peace)
7. Malicious injuries to property under 50,000 in value (excluding s. 3 of the Malicious Injuries to Property Act, arson of a dwelling house)- justification for the \$50,000 threshold is that this is the limit of the jurisdiction of the Small Claims Court and is therefore convenient.
8. Any other minor offences given the circumstances that a Resident Magistrate or Judge of the Supreme Court may deem appropriate for Restorative Justice.

Post Conviction - Excluded Offences

1. Murder (some cases of murder, that is, those not involving the use of an illegal firearm or illegal weapon, could be considered for RJ).
2. Any offence under section 2, 3, or 4 of the Treason Felony Act
3. Any offence under section 3 of the Malicious Injuries to Property Act (arson of a dwelling house)
4. Any offence under section 42A of the Larceny Act (extortion)
5. Any offence under the following provisions of the Firearm Act, namely-
 - a. section 4 (importation, exportation and transshipment of firearms or ammunition)
 - b. section 9 (manufacture or dealing in firearms or ammunition or prohibited weapons)

- c. section 10 (acquisition of disposal or firearm or ammunition or prohibited weapons)
 - d. section 20 (possession of firearm or ammunition restricted or prohibited weapons)
 - e. section 24 (position of firearm or ammunition with intent to injure); or
 - f. section 25 (use or possession of firearm or imitation firearm in certain circumstance).
6. Any offences under the following provisions of the Offence Against the Person Act, namely:
- a. section 8 (conspiring or soliciting to commit murder);
 - b. section 13 (Administering poison or wounding with intent to murder);
 - c. section 14 (destroying or damaging building with intent to murder);
 - d. Section 15 (setting fire to ship, etc. with intent to murder);
 - e. section 16 (attempting to administer poison, etc. with intent to murder);
 - f. section 17 (buy other means attempting to commit murder);
 - g. section 18 (letters threatening to murder);
 - h. section 20 (Shooting or attempting to shoot or wound with intent to do grievous bodily harm or with intent to resist or prevent the lawful apprehension or detainer of any person; or wounding with intent using a firearm);
7. Any offence under the following provisions of the Dangerous Drugs Act, namely:
- a. section 3 (import and export of raw opium or coca leaves);
 - b. section 5 (cultivate of opium or coca leaves);
 - c. section 6 (import or export of prepared opium);
 - d. section 7 (manufacturing, selling, using, etc. prepare opium);
 - e. section 7A (import or export of ganja);
 - f. section 7B (Cultivate, selling or dealing in or transporting ganja);
 - g. section 8 (import or export of cocaine, or other applicable drug);
 - h. section 8A (cultivating, selling or dealing in or transporting cocaine, or other applicable drug);
 - i. section 9 (manufacture or sale of cocaine, or other applicable drug);
 - j. section 11 (trade in manufacture of new drugs); or
 - k. section 21A (Using the postal services for drugs).

8. Any offence under section 4 of the Trafficking in Persons (Preventing, Suppression and Punishment) Act;
9. Any offence under section 10 Child Care and Protection Act (trafficking of children);
10. Any offence under the following provisions of the Offences Against the person Act, namely:
 - a. Section 69 (Child Stealing); or
 - b. section 70 (Kidnapping); or
 - c. section 10 (trafficking of children);
11. Perverting the course of justice;
12. Any offence under the Terrorism Prevention Act;
13. Any offence under the Sexual Offences Act;
14. Any offence set out in the First Schedule of the Praedial Larceny (Prevention) Act;

Appendix 8- Notice of Reconsideration

GOVERNMENT OF JAMAICA - MINISTRY OF JUSTICE

NATIONAL RESTORATIVE JUSTICE PROGRAMME

NOTICE OF RECONSIDERATION FORM

TO

Name

Address

DATE:

(m/d/y)

Re:

Name

Agency

Referral Date (m/d/y)

Proposed Completion Date (m/d/y)

Please be advised that the above noted referral was received on _____

Date (m/d/y)

The Restorative Justice Centre does not deem this Case suitable for the Restorative Justice Programme, for the following reasons:

Based on the above information we DO NOT ACCEPT this referral.

Restorative Justice Field Officer/Centre Manager _____

Signature

Date: _____

Restorative Justice Centre Name _____

Address _____

Telephone No: _____

Fax No: _____

GOVERNMENT OF JAMAICA - MINISTRY OF JUSTICE

NATIONAL RESTORATIVE JUSTICE PROGRAMME

CONSENT TO PARTICIPATE FORM

Consent of Wrongdoer/Person Arrested and Charged with a Relevant Offence to be

Referred to the Restorative Justice Centre

(PROPOSED LEGISLATION)

I.....

of.....

having been arrested and charged with the offence of

.....being a relevant offence,

do hereby signify my consent to being referred to the Restorative Justice Centre to be dealt with in
accordance with (Relevant Legislation).

.....
Signature of wrongdoer/person arrested and
Charged with relevant offence

.....
Date

.....
Signature of Referral Source

.....
Date

GOVERNMENT OF JAMAICA - MINISTRY OF JUSTICE

NATIONAL RESTORATIVE JUSTICE PROGRAMME

CONSENT TO PARTICIPATE FORM

Consent of Victim to participate in a process at
the Restorative Justice Centre
(PROPOSED LEGISLATION)

I.....

of.....

having been impacted by an offence of

.....being a relevant offence,

do hereby signify my consent to participate and work with the Restorative Justice Centre and have the offence be dealt with in accordance with (Relevant Legislation).

.....
Signature of victim impacted by
relevant offence

.....
Date

.....
Signature of Referral Source

.....
Date

GOVERNMENT OF JAMAICA - MINISTRY OF JUSTICE

NATIONAL RESTORATIVE JUSTICE PROGRAMME

RESTORATIVE JUSTICE AGREEMENT FORM

Restorative Justice Centre: _____ Case No: _____

Restorative Justice Centre Address/Telephone: _____

Referral Source: _____ File Number: _____

August 13, 2012 | 107

I understand that failure to complete the terms indicated above may result in my case being directed back to _____ for further action.

Signature of Offender

Date

Signature of Victim

Date

Signature of Victim

Date

Signature of Victim /Victim Representative/Support Person

Date

Signature of Facilitator

Date

Other (Please specify)

Date

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