

## **CHALLENGES FACING CRIMINAL PROSECUTION REFORM IN CARICOM COUNTRIES**

The English-speaking Caribbean is proud of its long history of adherence to democratic norms and respect for the rule of law. However, traditionally, regional decision makers have failed to provide adequate resources to the court systems resulting in legal systems failing to keep pace with developments in the wider world. Many countries in the Caribbean Community (CARICOM)<sup>1</sup> do not utilise the most modern management concepts, fail to bring fees and fines up to levels which reflect modern-day realities, limit the use of automated and efficient procedures, and fail to ensure that laws, as well as physical infrastructure, are reflective of modern times and the changing expectations of the citizenry. The result has been a gradual decline in the efficiency and effectiveness of the legal systems in some of the English-speaking Caribbean countries.

Coupled with this difficulty, CARICOM countries have in recent years had to face the additional challenges of prosecuting criminal matters in this era of escalating transnational organised crime. Because of its geographical location, the Region has been plagued with various aspects of transnational organised crime, principally stemming from and fuelled by the drug trade and illicit trade in firearms and ammunition.

CARICOM has demonstrated its commitment to combating transnational organised crime by establishing a Regional Task Force on Crime and Security and pledging to implement multilateral treaties like the UN Convention against Transnational Organized Crime, the UN and OAS Conventions against Corruption, a Regional Mutual Legal Assistance Treaty, UN Resolution 1373 and relevant initiatives to combat money laundering, among others.

The efforts of Member States to implement the bilateral agreements and related hemispheric instruments has led to the strengthening of legislation, in some instances, and, in others, the enactment of new domestic legislation to punish criminal activities by organised groups and to combat areas of criminality which are commonly used to support transnational organised criminal activities. Legislation enacted in some Member States includes the following relevant Acts:

- ! The Corruption (Prevention) Act.
- ! The Dangerous Drugs Act.
- ! The Drug Offences (Forfeiture of Proceeds) Act.
- ! The Extradition Act.
- ! The Firearms Act.
- ! The Interception of Communications Act.
- ! The Maritime Areas Act.
- ! The Maritime Drug Trafficking (Suppression) Act.
- ! The Money Laundering Act.

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<sup>1</sup> CARICOM consists of the following countries: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St Kitts and Nevis, St Vincent and the Grenadines, Suriname and Trinidad and Tobago.

- ! The Mutual Assistance (Criminal Matters) Act.
- ! The Sharing of Forfeited Property Act.

### **Regional Task Force on Crime and Security**

In July 2001, the Conference of Heads of Government of the Caribbean Community established a Regional Task Force on Crime and Security to examine the major causes of crime and to recommend approaches to deal with the inter-related problems of crime, illicit drugs, firearms and terrorism. In the aftermath of September 11, the mandate of that body was modified by the Special Emergency Meeting of the Conference to more fully address the issue of terrorism. The Task Force, *inter alia*, agreed to address the following as priorities:

- (i) Rule of Law issues, for example, law revision and delays in the Administration of Justice;
- (ii) Training;
- (iii) Implementation of legislation; and
- (iv) Regional and International Co-operation.

### **Challenges**

Some of the challenges facing the Region were defined by the Task Force as:

- (i) Addressing the escalation in domestic crime through substantial strengthening of the legal framework, given the human and financial constraints.
- (ii) Fulfilling the commitment of the Region to take all necessary measures to combat terrorist activities, given the constitutional, human and financial constraints.
- (iii) Participating in international meetings to address collaboration in drafting and implementing legislation to support UN Resolution 1373 and other relevant resolutions to address the issue of international terrorism.
- (iv) Finalising the Regional Mutual Legal Assistance Treaty.
- (v) Finalising the Regional Maritime Agreement.
- (vi) Establishing the Regional Justice Protection Programme.
- (vii) Addressing delays in the Administration of Justice.
- (viii) Ensuring adequate training of Government officials.
- (ix) Implementing relevant legislation.

### **Recommendations**

In order to address the above challenges, the Task Force encouraged Member States to consider the following:

#### **Delays in the Administration of Justice**

- (i) Further training of court officials.
- (ii) Sharing of information on best practices in the Region.
- (iii) Use of drug courts and night courts to expedite hearing of drug matters.
- (iv) Amending the criteria for bail.

- (v) Expanding the scope of existing regional Administration of Justice programmes to all courts.
- (vi) Uniform application of penalties (sentencing guidelines).

### **Training**

- (i) Taking advantage of opportunities in anti-money laundering training, provided by CALP, CFATF and bilateral programmes.
- (ii) Training of public officials and the private sector in the implementation of Conventions.

### **Implementation of Legislation**

- (i) Mobilising resources to create institutional capacity for the implementation of legislation.
- (ii) Sourcing technical assistance.
- (iii) Ensuring constitutional validity of legislation in respect of freezing and confiscation of assets.
- (iv) Considering legislation to permit the admissibility of criminal records from other jurisdictions.
- (v) Drafting legislation on precursors.
- (vi) Enacting laws and mechanisms for sentencing alternatives.

### **Regional and International Cooperation**

- (i) Becoming parties to, and implementing relevant international instruments.
- (ii) Focusing on multi-agency collaboration and capacity-building in the area of asset forfeiture.
- (iii) Signing and ratifying the Regional Maritime Cooperation Agreement.
- (iv) Meeting minimum international requirements regarding anti-money laundering cooperation.
- (v) Operationalising the Regional Justice Protection Programme and focusing on deepening cooperation with major stakeholders, particularly at the international level.
- (vi) Considering the transfer of proceedings for criminal prosecution of offences in cases where such transfer is considered to be in the interest of proper administration of justice.
- (vii) Adopting, urgently, the Regional Mutual Legal Assistance Treaty.
- (viii) Considering the implementation of a Regional Prison Transfer Agreement.
- (ix) Establishing an intra-regional extradition regime.
- (x) Considering becoming parties to the OAS Mutual Legal Assistance Treaty.
- (xi) Drafting appropriate protocols to improve risk-profiling and detention of suspicious persons at sea ports and airports within the Region.
- (xii) Initiating discussions with firearm manufacturing and exporting countries, with a view to developing an MOU in respect to the exportation of illegal firearms.
- (xiii) Ratifying the Inter-American Firearms Convention and the UN Protocol on Firearms.
- (xiv) Reviewing legislation and regulations in the issuance of firearms.
- (xv) Signing and ratifying the OAS Convention against Terrorism.

### **Current State of Affairs in CARICOM countries**

- ! Several jurisdictions lack the manpower or skills necessary to conduct the most effective prosecution of transnational criminal activity.
- ! Inability to gather and present cogent, admissible evidence during the criminal trial process.
- ! Need to implement legislation to ensure that the punishment for guilty parties is consistent with justice and rehabilitation of the offender, where possible.
- ! Lack of trained and informed personnel in all levels of the criminal justice system.
- ! Lack of legislation to facilitate thorough criminal investigations (Lack of appropriate forensic capabilities in several jurisdictions).
- ! Need to enhance mutual legal assistance capabilities.
- ! Use of police prosecutions in many jurisdictions, many of whom are not legally trained.
- ! Some Member States do not seem to recognise an appearance of impropriety or conflict of interest in using police prosecutors who are part of the same force which made the arrest.
- ! At the preliminary stages, the alleged drug lords are able to hire the best trained private attorney while the State is represented by untrained police prosecutors. Justice does not appear to be done in such cases.
- ! In most jurisdictions, there is a lack of information sharing between the Offices of the Director of Public Prosecutions and the Police. There is a lack of exchange of relevant information which may bolster the government's case.
- ! Lack of personnel in the Offices of the Director of Public Prosecutions resulting in lack of collaboration between the Police and the DPP in gathering evidence at crime scenes. This failure to collaborate often results in loss of critical evidence which undermines the State's case.
- ! Lack of personnel and adequate facilities for evidence storage in some jurisdictions.
- ! Lack of training to keep up to date with emerging laws, new international and hemispheric conventions and trends.
- ! Inadequate use of paper committal in some jurisdictions.
- ! Lack of implementation of Regional Justice Protection Programme. Some jurisdictions have national programmes, most do not to date.

To address some of these issues, requests made to USAID have resulted in the following:

- ! Introduction of technology in the judicial process.
- ! Alternative dispute resolution through the establishment of a pilot mediation centre in Saint Lucia which is now being replicated in Grenada and Antigua and Barbuda.
- ! Court reporter training.
- ! Judicial training courses being implemented through the Justice Education Institute of the OECS Supreme Court.
- ! Data-entry of manually produced case data in the High Court Offices.

- ! Establishment of the Regional Case Reporting Facility with a automated searchable database of approximately 12,000 unreported cases for all eighteen CARICOM countries.
- ! Establishment of the Regional Legislative Drafting Facility to draft laws relating to the establishment of a Caribbean Single Market and Economy, Justice and Security issues and HIV/AIDS.

## **RESULTS OF USAID PROGRAMME**

### **Introduction of Technology in the Judicial Process**

The use of the technological applications in the judicial process has been increased. In the Supreme Court, this has resulted in the computerisation of the Court. Each of the main courtrooms in the six independent OECS countries has been provided with a computer and a printer. Each courtroom has been linked to their six court offices to form information networks, which provide judges and staff with access to the Judicial Enforcement Management Systems (JEMS) software that facilitates filing and the retrieval of information on cases. Every judge and registrar has been provided with computers and in most cases with laptop computers with the capacity for linkage to the court office network.

### **Alternative Dispute Resolution**

As part of the regional case backlog reduction process, a pilot mediation centre was established in Saint Lucia and it has provided an important source of lessons-learned for the recent establishment of mediation centres in Grenada and Antigua and Barbuda. By the end of 2003, one hundred disputes had been satisfactorily resolved in Saint Lucia. The cases heard on mediation are referred to the centre by a judge in court who determines that a particular case is amenable for resolution by a third party who is selected by the parties to the dispute. The parties to the dispute pay all the mediation fees.

### **Court Reporter Training**

The absence of adequate numbers of professionally trained court reporters in all the OECS High Courts has led to the judges having to transcribe all proceedings in longhand. As a result, the pace of proceedings goes as fast as an individual judge can write. To address this constraint, the programme has embarked on the training of court reporters in a two-year training programme at the British Virgin Islands Academy of Court Reporting. The training course ends in April 2004.

### **Judicial Training**

A systematic three-year judicial training programme has been embarked upon by the Justice Education Institute (JEI) located in the Supreme Court Building in Saint Lucia to enable judges and Masters to stay abreast of recent developments in the law. Over the past year, training courses were conducted in: Headnote-Writing, the writing of Judgments, Audio and Court Recording and judicial procedures.

### **Data Entry**

The introduction of computerised systems into the Court Office of each OECS country has necessitated the entry of data into computers, which were previously manually generated. Over the past year, 30,179 case information items have been entered out of a total of 37,836 in the various countries.

### **Regional Case Reporting Facility**

The Facility was established to automate the estimated twelve thousand unreported regional cases, which have been decided in courts of various levels and have value as precedents in present cases before the courts based on similar facts. Since its establishment at the law faculty of the University of the West Indies in Barbados over the past two years, the facility has been active in automating unreported cases and placing them in a searchable, electronic, database. At this time, 4,550 cases have been placed on the database, which was opened to public access for a fee on October 1, 2003. Seven thousand and three (7,003) remaining cases will be edited and placed on the database by the end of January 2004.

### **Regional Legislative Drafting Facility**

Based in Georgetown, Guyana, the Facility has a formation mandate to draft laws relating to the establishment of a Caribbean Single Market and Economy, Justice and Security and HIV/AIDS issues. It began its activities in January 2003 and has a Director and staff of five legislative draftspersons. One of those draftspersons has been assigned to the OECS Secretariat to provide a link between the drafting needs of the OECS countries and the wider countries of CARICOM.

### **Recent Challenges Communicated to the Secretariat**

#### **! Trinidad and Tobago**

- (i) DNA - Legislation has been enacted but to date no DNA testing facility or equipment exists to bring the legislation into effect.
- (ii) Mutual Legal Assistance Treaty - Amendment to the legislation is required to permit testimony taken abroad to be accepted in Trinidad and Tobago and testimony taken in Trinidad and Tobago to be accepted overseas.
- (iii) Paper Committals - In some jurisdictions paper committals are used successfully but in Trinidad and Tobago the legislation needs to be amended to prevent the number of successful no-case submissions which are resulting in reversion to the original system.
- (iv) Computer Fraud - Legislation needs amendment to cater for credit card fraud, skimming and other new areas.

## **Recent Legislation**

Several Member States have enacted legislation in the following areas:

- ! Computer fraud.
- ! Use of electronic evidence.
- ! Integrity in public life.

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# **PAPER** *on the* **CHALLENGES FACING CRIMINAL PROSECUTION REFORM IN CARICOM COUNTRIES**

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*Inter-American Seminar on the Challenges  
Associated with Public Criminal  
Prosecution*

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