



OECS-CIDA
Judicial and Legal
Reform Project

National Consultation on Justice Issues

Dominica

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1.0 OVERVIEW

The consultation was held in Dominica at the Fort Young Hotel on January 29th and 30th.

The Project Advisory Committee (PAC) commenced preparations for the consultation in December 2001. It was decided to alter the format of the proceedings for the consultation (Appendix I) and to invite participants to pre register indicating their preferences for discussion groups. These decisions enhanced participation and facilitated group formation.

A total of forty-nine (49) participants attended the consultation, representing a broad range of stakeholder groups. Thirty-five (35%) percent were male and sixty-five (65%) were female (Appendix II). Among the participants were eight (8) attorneys at law, including the chief magistrate, state employed and privately employed attorneys. Additionally participants were drawn from private sector organizations, including trade unions, non-governmental organizations, the public sector, social and judicial services and community representatives.

2.0 OPENING CEREMONY

The Prime Minister, Honorable Pierre Charles attended the opening ceremony and delivered an address in which he identified access to justice as an essential requirement in the pursuit of social and economic development and highlighted the emerging needs of the deprived and vulnerable groups including women and children (Appendix III).

The keynote speaker, the Attorney General, Honorable Henry Dyer in his address to the opening ceremony mentioned some development occurring in the legal and judicial system in the OECS and the Caribbean as well as advances and challenges of a more global nature. He emphasized the need for the present legal and judicial system to respond appropriately and efficiently to these new challenges, and reiterated the commitment of the Government of Dominica to reform in the Judicial and Legal System (Appendix IV).

3.0 LEGAL AID

Lead presentations:

Irmin Stephen -	State Attorney, Government of Dominica
Anne Peters -	Barrister at Law, Legal Unit, Grenada Legal Aid & Counseling Clinic

The presentations are appended and constitute a component of this report.

Plenary discussion following the presentations focused on these areas:

- The sequence of events leading to the establishment of the Legal Aid and Counseling Clinic in Grenada.

- Evaluation of the quality of service provided by the Legal Aid, and Counseling Clinic.
- Sustainability of a Legal Aid Clinic.
- Managing demands and needs for legal aid with limitations of resources.
- The definition of “likelihood for success” in screening cases.
- Means testing and verification of client information regarding eligibility.

Group Discussion Reports

1. Types of cases requiring legal aid assistance in Dominica.

All cases. Priority should be given to:

- Serious criminal cases
- Family cases
- Property disputes

2. Persons to receive services.

Eligibility criteria

- Persons earning less than EC\$10,000
- Juveniles
- Social situation
 - Financial
 - Number of children
 - Living conditions
- Means test to be applied
- Should not be based on moral judgment

3. Legal Aid Service Delivery Models.

Mixed Model

- Clinic (non state)
- Judiciary
- Pro bono – non mandatory generally, but government scholars should be required to give specific number of hours

4. Funding for Legal Aid Services.

- | | | |
|-------------------------------|---|-----|
| • External funding (project) | - | 55% |
| • Local funding | - | 25% |
| • Government subvention | - | 10% |
| • Bar association (Pro Bono) | } | 10% |
| • User fees | | |
| • Specific tax | | |
| • Percentage of cost in court | | |

5. Barriers to implementing Legal Aid Services in Dominica.

- Limited financial resources
- Organizational weakness
 - Requires system design and implementation mechanism
- Institutional weakness
 - Lack of continuity
 - Non implementation of decisions
- Non commitment of lawyers
- Negative perception of quality of service
- Lack of trust
- Need for education on legal aid

6. Priorities for Legal Aid Service.

- Juvenile matters
- Family matters
- Criminal cases

Plenary Discussion

Issues raised:

- Utilize the experiences of Grenada and other established models in the design of a service that is tailored to our needs.
- Need for community education.
- Duty council programme to be included
- Danger of promoting legal aid as a “free” service.
- At what point should legal aid be discontinued?

4.0 ALTERNATIVE DISPUTE RESOLUTION

Lead presentation:

Donna Parchment - Executive Director, Dispute Resolution Foundation, Jamaica

The presentation addressed the basic principles of operating a mediation service, utilizing the experiences of the Dispute Resolution Foundation of Jamaica. The full text of the presentation is appended.

These issues were raised in the plenary discussion that followed the presentation:

- Is ADR included in the curriculum for legal education?

ADR is offered as an elective course at UWI. Lecturers are trained in ADR, and have attended the mediators training course. The recommendation was made for workshops for senior lawyers

- The disposition of the police in Jamaica to ADR?
Police are certified mediators, who utilize techniques to mediate disputes, where no crime has been committed and also refer to the center.
- Mechanisms for monitoring and supervision of community mediation services
- Legal framework for ADR services.
- Requirements when minors are at risk. Protection of children identified as the only exception to confidentiality rule.
- Refusal of one party to attend mediation. Attendance at mediation is mandatory only when court ordered.
- The success rate of the mediation service. This was assessed to be 64%.

Group Discussion Report

1. Types of ADR services needed in Dominica

Mediation/Conciliation

This type of service would be particularly beneficial to the private sector and NGO's.

Arbitration

Arbitration, which is already functional in the Commonwealth of Dominica, would serve the commercial sector, trade unions and credit unions.

Restorative Justice

This service would be beneficial to all sectors.

2. Organization for best delivery of Service

Arbitration would be best delivered through contracts with the private sector and government-staffed agencies.

Conciliation should be best delivered through contracts with the private sector, NGO's or civil society organizations. (The recent situation in Trafalgar was noted and it was generally felt that the private sector involvement under those circumstances would be beneficial to both parties involved in the dispute).

Mediation could be delivered through a community-based agency affiliated to the government in order to gain the respect and recognition of the community at large.

Restorative Justice delivered through diversion by the police and prosecutors affiliated with the courts. (This would reduce the number of persons kept in prison, until matters are heard through the normal legal system).

3. Barriers to implementing ADR services

The barriers perceived by group members included the following:

Funding – lack of funds may limit the implementation and sustainability of the services.

Training – lack of appropriate training of human resources.

Threat to bias – persons may feel that the persons delivering the ADR services may tend to be bias, given our small society.

Confidentiality – persons may be concerned about the confidentiality of their matters. (However, it was noted that going through the normal legal system does not afford persons confidentiality).

Outcomes – persons may be concerned about their interests and needs versus their rights. In addition, persons may perceive that going through the normal legal channels is preferable to ADR services when seeking legal recourse.

Lack of commitment and political wall

Poor country support – this can be enhanced by sensitization and public education programmes.

Cultural barriers – the cultural norm is to solve issues at home, without the involvement of non-family members.

4. Public perception of ADR Services

The public may be concerned about *Efficiency* (costs) and *Effectiveness* (success) of the ADR services.

The services may be viewed with skepticism or perceived as interference or intrusion. The public may be resistant to change.

5. Funding of ADR Services

The possible areas for funding ADR services include:

Government: a subvention could be sought from the Government

User fees: individuals could be asked to pay a fee for services

Donor agency: this includes funding from agencies such as CIDA, USAID, IDB, CARICOM who has special measures for Arbitration under Protocol 8, and international donors with special focus on women, youth, and environmental issues.

6. Priority ADR Services

It was generally felt that *Mediation*, *Conciliation* and *Arbitration*, respectfully, were three areas of priority for the citizen of the Commonwealth of Dominica.

Plenary Discussion

- Government involvement in the organization and delivery of ADR services should be limited to policy formulation.
- Mechanisms for accountability to government must be instituted when a government subvention is received.
- Arbitration was perceived as a lengthy process and plenary arrived at consensus on the prioritization for ADR services in Dominica, viz:
 - Mediation
 - Conciliation
 - Restorative justice

5.0 PUBLIC LEGAL EDUCATION

Lead presentation:

Dr. William Riviere

Summary

Ignorance of the law is non excusable. This was cited as a sacred tenet of English Law and vital for the regulation of society. Some laws, which were frequently ignored by civilians, were highlighted. The inadequate public knowledge of legal issues/laws was underscored.

It was Dr. Riviere's view that the scope of the Public Legal Education programme should define the breadth of the content of the syllabus, and the possible recipients – general public or restricted to selected groups.

He submitted that responsibility for organization and delivery of public legal education could be within the private sector, civil society or state and identified the private sector, including the Dominica Bar Association and identified as the preferred sector for establishing such a programme. The wisdom of utilizing already established infrastructure for delivery of public legal education was stressed. These include – national organization of workers, polling divisions, and the media.

He advised that the actual delivery of the sessions, it would be necessary to be aware of the various philosophies of teaching.

It was recommended that the technique utilized should be liberating rather than dominating, with the learners at the center of the learning process, and that the full range of mass communication

methodologies should be employed – public meetings, graphic art, performing arts, posters, print, electronic media.

Plenary Discussion

- Role of the Bar Association
The Bar Association consists of young lawyers who need to gain experience – the interaction with the public was one mode of enhancing experience.
 - Host a legal radio programme
 - Participate in television programme
 - Prepare educational leaflets/pamphlets
- Formation of an advisory group
This group would consist of representatives from advocacy groups, youth organizations, women’s groups, etc, who would make suggestions to the Bar Association
- Some broad areas to be included in programme content
 - Laws that affect people on a daily basis
 - Wills and estate laws
 - Laws governing land ownership, etc
 - Police in execution of duty
- Legal education for police officers
 - Only basic laws can be taught within the six (6) months training programme for police officers. Plenary suggested continuing education in this regard.
- Legal education for all persons directly involved in the court system.

Group Work

No group sessions were scheduled.

6.0 SENTENCING ALTERNATIVES

Lead presentation:

Shirley Stuart – Director, National Children Home
Martin Anthony – Assistant Chief Welfare Officer

The presentations reviewed the provisions in the law of the United Kingdom and Dominica. The principles for sentencing were outlined and the range of alternative forms of sentencing was discussed. The full text is appended.

Plenary Discussion

The following issues were discussed following the presentations:

- Role of parents in probation.

The involvement of parents in sentencing alternatives for juveniles was seen as essential for the successful implementation of any reform programme.

- Community service as a sentencing alternative.
Increased use of this alternative rather than custodial sentencing.
- Prison after care.
This should be a component of the preventive programme. In Dominica, there has been non implementation of recommendations, which have been submitted to the Attorney General's office.
- Human resource constraints
The need for increasing the staff at the welfare department and the establishment of a Probations Unit within the department.

Group Discussion Report

1. Types of sentencing alternatives needed.

- Community service.
This would be coordinated by the probation officers in collaboration with schools, churches, police, NGO and other community based organizations.
- Combination order (community service/probation)
- Training school order.
Corrective and rehabilitative
- Probation order
- Boot camp order
- Action plan order
- Curfew order
- Parenting order (to include counseling to parents)
- Counseling
- Education and treatment orders

2. Public perception of new sentencing alternatives.

Consensus is that it would be acceptable to most people and resistance could be minimized with public education.

3. Role of community in reforming offenders.

- Mentoring and other appropriate services
- Public education

4. Primary responsibility for implementing sentencing policy.

- Government and other agencies

5. Mechanisms for implementation of sentencing alternatives.

- Policy enunciation and legislation
- Political will necessary
- Utilize existing programmes like CALLS, Operation Youth Quake, Youth Skills Training Programme. These programmes can be adjusted and adequately staffed, with appropriate training conducted for all staff members.
- Establish an adequately staffed Probation Unit within the Welfare Department.

6. Barriers to implementation.

- Financial resources
- Human resources
- Victim's resistance
- Community's non-acceptance

7. Funding for sentencing alternatives.

- Budgetary allocations
- Fines and confiscated properties
- Private sector
- Donor agencies
- Fund raising through activities by offenders

8. Priority sentencing alternative services.

Group I

Community services
Training school order
Curfew order

Group II

Training school order
Boot camp
Community Service

Plenary Discussion

- Need for public legal education.
- Need for increased staffing and the establishment of a Probation Unit.
- Stiffer penalties for gun crimes to act as deterrent and thus contain the problem.
- Consensus on priority types of sentencing alternatives
 - Community service
 - Training school order.

7.0 COUNSELLING

Lead presentation:

Alice Theophile – Clinical Psychologist, Psychiatric Unit

The presentation defined counseling according to Cavanagh (1990), which denotes a relationship between a skilled worker and a person needing help, which leads to growth. Seven (7) key elements, essential for counseling were highlighted. The status of counseling services in Dominica was discussed. This referred to the government and non-governmental agencies offering counseling services, the clientele, utilization data and constraints. The major constraint was inadequate professional training. The full text of the presentation is appended.

Plenary Discussion

The following issues were discussed in the open discussion that ensued.

- Availability of counseling services in schools.
There is only one secondary school with a trained guidance counselor on staff. Health and Family Life Education programme implemented in all primary schools.
- No national mechanism for the coordination of counseling services.
- No requirement for licensing of counselors.
- Status or paraprofessional training
- Code of ethics regarding confidentiality issue to be stressed.
- Need for advocacy and proactive measures to ensure inclusion of counseling as a sentencing alternative in new laws.

Report of Group Discussion

1. Existing counselling resources.

Nine (9) professionally trained counselors
Four (4) psychiatrists
Many para professionals at varying levels of competence.
These operate from:

- Ministry of Health
- Ministry of Education (schools)
- Welfare Dept., Ministry of Community Development & Gender Affairs
- Women's Bureau, Ministry of Community Development & Gender Affairs
- Youth Division
- Dominica National Council of Women
- Churches
- National Children's Home
- Other NGO's

2. Types of counseling services needed within justice system.

Therapy for individuals, groups and family to cover the following areas:

- Sexual offences
- Domestic violence issues

- Substance abuse
- Dysfunctional social behaviour
- Pre divorce counselling
- Crisis intervention

3. Mechanism for delivery counselling services.

Utilizing a model which is a combination of:

- Community based organizations
- Governmental agencies
- Contractual

Primarily through:

- Established institutions – hospitals, half way houses, operation youth quake
- Education system (in schools)
- Community outreach (health centres, community and youth centers, homes).

4. Barriers to implementing counselling services.

- Lack of adequate training
- Insufficient professionally trained resources
- Finance
- Lack of coordination and supervision of services
- Non-knowledge of availability of services
- Public perception of the user of the service
- Issues of confidentiality
- Need for public information and education

5. Financing of counselling service.

- Government
- Private
- NGO's
- International funding agencies
- Local fund raising
- User fees (utilize means/merit testing)

6. Counselling on voluntary basis.

Both voluntary and mandatory.

- In the event of mandatory sentencing, the client is required also to claim the problem

7. Certification of counsellors.

Standardized requirements should be mandatory.

- Grading and supervision requirements for various levels should be defined

- Accreditation to be provided through state tertiary institutions (college)
- Code of ethics should be specified

8. Priority counselling services for Dominica.

- Family therapy
 - Domestic violence, youth, adolescents and parents, particularly single parents
- Rehabilitation therapy for prison to minimize recidivism to include the integration into society
- Counseling for substance abuse, including alcohol

Plenary Discussion

Confined priorities as submitted in group reports.