



OECS-CIDA  
Judicial and Legal  
Reform Project

National Consultation  
on Justice Issues

St. Kitts and Nevis

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on Justice Issues

St. Kitts and Nevis

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## **TABLE OF CONTENTS**

	<i>Page</i>
<b>1.0 OVERVIEW</b>	<b>1</b>
<b>2.0 LEGAL AID</b>	<b>1</b>
<b>3.0 COUNSELLING</b>	<b>3</b>
<b>4.0 ALTERNATIVE DISPUTE RESOLUTION</b>	<b>6</b>
<b>5.0 SENTENCING ALTERNATIVES</b>	<b>8</b>
<b>6.0 SUMMARY OF PRIORITIES</b>	<b>11</b>
<b>7.0 SUMMARY OF NEXT STEPS</b>	<b>11</b>
<b>8.0 CONCLUSION</b>	<b>12</b>

## **1.0 OVERVIEW**

The first in a series of consultations on Complementary Measures for the OECS Judicial and Legal Reform Project was held in St. Kitts from 27 - 28 November, 2001. Participants were drawn from the judiciary, the Police, social service agencies, religious organisations, the Bar Association, government departments and non-government organisations. The consultation was aimed at providing a forum for stakeholders to discuss the measures and identify priorities and the next steps in the implementation process.

The consultation began with an Opening Ceremony chaired by Mrs. Roslyn Hazelle, the Permanent Secretary of Social Development and Gender Affairs. She outlined the goals of the two day consultation and urged participants to use the opportunity to share their views and come up with creative ways of improving the justice system.

Participants included The Police Commissioner, the President and Secretary of the Bar Association, The Chief Magistrate, private legal practitioners, the U.W.I. Resident Tutor, probation officers, child care officers, counsellors, the Evangelical Association and the Disabled People's Association were also represented.

In his remarks Hon. Rupert Herbert, Minister of Social Development noted that as society changes so too must the legal system. HE observed that the two day consultation should help participants to identify useful support mechanisms to support the court system. According to Mr. Herbert, the JLR Project would enhance the quality of justice in the OECS.

Minister of Justice, Hon. Delano Bart in his address outlined the three phases of the project - (i) The Detailed Design Phase. (ii) The Implementation Phase (iii) The Closing Phase. He pointed out that the project was aimed at capacity building and that the complementary measures would help to endure the quality of justice.

## **2.0 LEGAL AID**

In her presentation on Legal Aid, Ms Ann Peters, Head of the Legal Aid and Counselling Clinic in Grenada indicated that her organisation (unit) provided the following programmes. (i) legal aid to persons earning less than \$10,000.00 per year (ii) A wide range of counselling services. (iii) community outreach - work with schools, churches and community organisations. (iv) advocacy. (v) Public Education and Research. Miss Peters noted that in the year 2000, 790 persons received legal aid resulting in 54 court hearings. Interestingly there was a 0% recidivism following their intervention with juveniles. A major challenge is finding the financial resources to sustain the programmes. The challenge is reflected in the disparity between the \$400,000 it takes to run the unit and the \$30,000 annual subvention from government.

Nancy Anderson in her presentation on Legal Aid noted (i) equal access is critical to a fair trial (ii) the trappings of the Court represent a barrier to equal justice (iii) the rule of law must be preserved. She pointed to two models of legal aid (i) The Judicare Model and (ii) The Community Response Model.

In the ensuing discussions there were differing views on who should receive legal aid. The service is not now available in St. Kitts but President of the Bar - Tapley Seaton Q C noted that it was offered a few years ago but had to be discontinued due to lack of interest from the public. Legal aid proponents must be prepared to swim against the tide of public opinion to ensure equality of justice. Participants were of the view that public education was vital to the success of a legal aid programme.

The discussion on legal aid was amplified in the small group sessions with a noticeably high level of participation. The participants suggested that legal aid services are needed in St. Kitts and Nevis for summary and indictable offences where persons were subject to incarceration for a year or more. Other services needing legal aid are civil matters, employment issues, family matters relating to divorce, maintenance, custody, the division of property and adoption. The service is also needed for advocacy and advisory matters.

Although the group agreed that legal aid services should be delivered to low income persons it endorsed a means test to ensure that the more deserving people are assisted. It favoured a judicare model with a full time attorney to provide legal aid. The development of a cadre of trained para legal persons to support legal aid was regarded as vital to the effective functioning of the system. Additionally, the registration of lawyers with their stipulated areas of interest would facilitate ease of reference and prevent backlogs. As the service develops there should be common forms to register land and establish wills.

The group also favoured the introduction of a Police Powers Act to delineate clearly the power of the Police and safeguard the fundamental rights of citizens. Funding could be obtained from state and private entities and international agencies. The view was also expressed that the legal aid service must have inbuilt mechanisms to raise funds to sustain the programme. In order to ensure that recipients value the service the group supported fee payment.

The barriers to implementing legal aid were identified as low levels of legal education, a perception of competition by the local bar, the unavailability of funds to provide the assistance and the view that it may give licence to persons to commit crime because they know that they would receive legal aid.

According to the group, the priority areas for legal aid are:

- Domestic violence
- Criminal matters which attract a custodial sentence

- Family matters
- Juvenile delinquency
- Employment issues
- Consumer Affairs
- Tenant and Landlord issues
- Probate and administrative matters

The discussion on legal aid was informed by the presentations of Ann Peters and Nancy Anderson. The discussion at the group level was very lively as participants examined the pros and cons of the service. The participants agreed on the need for legal aid but were concerned

about the society=s readiness for such a service. The quality and extent of public education and a proactive approach by the local bar are germane to the success of the service.

It appears that the participants themselves need more education and sensitisation before they begin to support legal aid. This is a good starting point. Many persons, including some participants have already resigned themselves to paying for legal services or face the consequences of being unrepresented. It is not unusual to find persons coming before the Court unrepresented.

Legal services are associated with huge costs, thus represents a major challenge to the proponents of legal aid providing legal services at a cost that is affordable.

### **3.0 COUNSELLING**

The issue of counselling was dealt with by Mrs. Michele De la coudray Blake, Head of the Outreach Centre of the Ministry of Social Development in St. Kitts and Nevis. She indicated that the global economic situation is impacting negatively on the society hence the need for more counselling services. She pointed to the increasing societal dysfunction marked by domestic violence, child abuse, mental disorder, family instability and poor interpersonal relations.

She noted that two kinds of counselling services are provided in St. Kitts and Nevis (A) Clinical Services involving therapeutic intervention to address emotional issues. (B) Support services to strengthen people=s coping mechanisms. More efforts need to be directed at assessing the needs of clients to determine which type of service they should receive. The system of intake and referral has to be strengthened. Training is central if these services are going to meet the needs of clients.

Counselling services in St. Kitts and Nevis reflect (i)privacy (ii) confidentiality (iii) clients= right to make discussion (iv) goal setting (v)rapport building. However, due to a low level of sensitivity to counselling as a discipline the delivery of the service has been compromised.

According to Mrs Blake mental health clients require extensive counselling. Mental health professionals are in increasing demand. This is borne out by the over 100% increase in persons referred to the Outreach Centre between January 1996 and October 2001. The following table illustrates.

<b>Year</b>	<b>No. of Cases</b>
1996	31
1997	48
1998	53
1999	62
2000	83
2001	110

The period 2000-2001 registered the sharpest increase thereby giving credence to the view expressed by Mrs Blake that as the global situation is impacting negatively on the society hence the need for increased counselling services.

In the discussion following Mrs. Blakes presentation participants suggested that given the large number of participants whose jobs involve counselling on a daily basis there is the need for greater collaboration among child care officers, probation officers and counselors. There is too much concern and fight over turf. Further, greater collaboration is needed between the Court and Counselling Agencies and between the Ministry of Education and the Ministry of Social Development. Based on discussions the lack of collaboration between the social service limits the effectiveness of the counselling service.

The discussions also focused on providing counselling services to persons with physical disabilities to strengthen their self esteem and build confidence. Also, participants argued that counselling services should be provided to persons of all ages. They also supported the introduction of counselling services in the prison as part of a Pre-Release Training Programme.

Participants noted that the case load for counselors is too heavy and this reduces efficiency and effectiveness. Herein lies the need for increased training in counselling. The Magistrates pointed to the need for assessment reports by professionally trained counselors to enable them to make informed decisions.

The working group discussion on counselling was marked by a high degree of involvement by all participants, all of whom are involved in counselling on a daily basis. Participants shared their experiences and seemed quite upbeat about using counselling to complement the judicial system.

In the opinion of group members the types of people using the justice system who require counselling services include:

- Children in trouble with the law
- Families in crisis
- Drug Abusers
- Abusive and neglectful parents
- Juvenile delinquents
- Parents seeking custody and access

Their need for counselling differs because they are either victims or perpetrators of crime and they often require training in life skills, anger management, drug counselling, parenting, stress management. There is frequent need for family therapy and the establishment of support groups.

The existing counselling resources in St. Kitt and Nevis include support staff with differing levels of training, Social case workers, Psychiatric nurses and Pastoral counselling.

The counselling services needed in St. Kitts and Nevis are:

- (1) Clinical and Therapeutic Services
- (2) Psychiatric services
- (3) Adolescent Therapy
- (4) Group Therapy
- (5) Art and play therapy for children
- (6) Crisis counselling with twenty-four hour access and availability
- (7) Career Guidance
- (8) Training in psychological Assessment

The group held the view that these services can be delivered through outreach programmes at Health Centres and government departments which already offer counselling services. It supported the decentralisation of services and the targeting of Parent Teachers Association and Sports Associations. The services could also be delivered through the establishment of telephone contact with the use of a Hot Line.

Counselling services should be delivered by the relevant government agencies with trained staff. In addition, community organisations, churches, Health Centres and Counselling Clinics should deliver counselling services. If the agencies have the appropriate therapeutic environment which allows for privacy and confidentiality the services can be delivered in the respective locality. Barring this, it will be necessary to provide the service in a more suitable location.

The barriers to implementing counselling services relate to a lack of sensitivity to counselling as a profession and lack of funding to develop proactive programmes. Additionally, there is a limited number of trained persons and the environment in many agencies is not conducive

to counselling. Also, many persons are not aware of the services and this results in under-utilisation and reduced access. There are too many roles for counselors.

Counselling services can be funded on a sliding scale basis. If persons pay for the service they are likely to attach greater value. It is a widely held view that people do not value free services. People are likely to pay for the service after they have been sufficiently sensitised as to its value. Public education is therefore critical. Counseling agencies also need to raise funds to run training programmes. They can tap the resources of the corporate sector in their localities to generate funds for counselling programmes.

All person, regardless of age, sex, religion, class, race, or status should be entitled to access counselling services in St. Kitts and Nevis. Counselling services should not necessarily be voluntary. Counselling should be mandatory for persons convicted of serious crimes. The Court should have the option of mandating counselling.

Training should be a prerequisite for counselors. There should be standardised requirements to certify counselors. The onus should be on government to set standards and carry out training. This is important so that they may become aware of the attendant ethical and professional issues.

The priority areas for counselling services in St. Kitts and Nevis are:

- (1) Therapeutic and clinical services
- (2) Drug Abuse Counselling
- (3) Crisis counselling
- (4) Establishment of a Directory of Counselling Services
- (5) Career Guidance Counselling
- (6) Strengthening the elements of confidentiality
- (7) Enhancing the supportive role of Counselors.

The discussion on counselling at the group level was pointed reflecting a strong desire for improvement in the quality of services delivered. The participants were passionate about the need to help troubled people. They all were prepared to avail themselves of any training initiatives geared toward improvement in the quality of service. The participants were interested in forming a professional organisation of counsellors to help to standardize the services and improve effectiveness. I sensed a desire on the part of group members to make counselling a career as long as the training and support are forthcoming.

#### **4.0 ALTERNATIVE DISPUTE RESOLUTION**

Miss Donna Parchment of the Dispute Resolution Foundation in Jamaica in an enlightening presentation on Alternative Dispute Resolution argued that ADR recognises that people have answers to their problems that people have answers to their problems. The disputing

parties decide. It is organised negotiation with a Chairman. It represents a movement from adversarial practice to mediation and promotes co-operative problem solving.

ADR recognises that the justice system does not always engender equality, fairness, participation and responsibility. It is centered on mediation. The role of the mediator is to facilitate and co-ordinate, not decide. Mediation must be sustained by integrity and honesty, impartiality and neutrality and the avoidance of conflict of interest. The cornerstones of mediation are preparation, confidentiality, mutual respect and flexibility.

The benefits include:

- Help in the speedy resolution of disputes
- Accessible and affordable services
- Improved communication
- The availability of a private and informal forum for the resolution of disputes as opposed to the Court which is public and formal.
- Problem - solving in orientation.
- Disputants must have the authority to decide

The discussion from the floor centred around the need for extensive public education on the benefits of ADR. Other issues raised included: (i) Compensation (ii) Greater collaboration between social service agencies and the Dispute Resolution Foundation. (iii) ADR training should be provided for teachers, lawyers, police and community leaders. (iv) The church is a vital network in the ADR process. The church can help in the process of public education. (vi) Settlements must be enforced in much the same way as court settlements.

The small group discussion on ADR focused initially on clarifying some of the key concepts in ADR. The group pointed out the need for a formal structure to facilitate mediation and for a leading role to be played by the church in any meaningful ADR programme. According to the group the ADR services needed in St. Kitts & Nevis are arbitration, conciliation, small claims court matters and restorative justice to reduce the backlog of cases. Mediation, restorative justice and conciliation would have the greatest impact on the country. Mediation will have the greatest impact on family matters.

The group suggested that ADR services could best be delivered by Court affiliated agencies, contracts with private sector agencies, government departments and community organisations. The school can play a vital role by establishing a Peace and Love in Schools (PALS) programme to institutionalise the process among the young. The police can also mediate cases. The Court should supervise the process. ADR would work best if referred by the Court. The accreditation of ADR personnel is critical to the success of any programme.

The barriers to implementing ADR services reflect a lack of public education. The public

needs to be assured of the quality of representation and the legitimacy of outcomes. Advocates are needed to lead the public education process. The distrust of change by the public represents a challenge to ADR.

People have become accustomed to using the Court to resolve disputes. The use of ADR may be perceived as a reduction of the powers and the abdication of the responsibility of the Court. ADR programmes will therefore have to ensure that there is equality of outcomes similar to the Court. It will be necessary to develop policy, organise training programmes and set standards in order to win public approval.

ADR services could be funded by pro-bono work by mediators and other professionals. The State can also provide financial resources to facilitate the work of ADR.

The priority ADR services for St. Kitts and Nevis are mediation arising from civil disputes, family disputes, traffic offences, maintenance cases, juvenile matters and sports disputes. Conciliation for labour disputes is also a priority.

ADR training for teachers, police, lawyers and social work practitioners is urgently needed to ensure the efficient delivery of the service.

The ADR discussion group was lively as participants expressed support for and reservations about the provision of the service. The group agreed that it is necessary but public education is vital to its success. Efforts were made by the group leader to get all members to share ideas. The input from Miss Parchment from the Dispute Resolution Foundation helped to clarify issues for those participants who missed her presentation on DAY I of the Consultation. The discussions were of a high level and focused in detail on the critical issues involved in ADR.

## **5.0 SENTENCING ALTERNATIVES**

In a detailed presentation on Sentencing Alternatives, Maurice Williams, Head of the Probation and Child Protection Services in St. Kitts outlined a number of alternatives which could reduce the incidence of crime and reduce recidivism.

Williams suggested that the response to crime should be swift, sensible, impartial and effective. He noted however that custodial sentences were ineffective because individual sentencing were not a proper reflection of the offence and prison officers lacked the requisite training to help offenders not to offend again. Putting it succinctly he observed A our prison makes people good criminals. Prison rehabilitates.@ He argued for a greater focus on prevention since it is far less expensive than rehabilitation.

He listed the following alternatives and suggested that care be taken to assess the

effectiveness of the particular measure:

- (1) Suspended sentences
- (2) Restitution and restoration
- (3) Parole - allowed after a prisoner has served one third of his time. There is no parole service in St. Kitts and Nevis.
- (4) Attendance Centres - provide training in social skills. Can be used in conjunction with restitution and restoration.
- (5) Electronic monitoring - the offender helps to meet the cost of the electronic devices.
- (6) Boot camps - aimed at deterrence and physical punishment
- (7) Community Service Orders - offenders undertake unpaid work in the community, usually over a period of one year.
- (8) Probation
- (9) Fines
- (10) Bond

There was much reaction to Mr. Williams presentation as participants stressed the need for public education to get support for some of the sentencing options. As Elizabeth Kelsick - the Secretary of St. Kitts & Nevis Bar Association put it Ait is important to develop meaningful alternatives to imprisonment and set proper performance standard with respect to community service sentencing.@

Participants agreed with giving offenders a second chance. Nonetheless, they argued for a broad based approach to sentencing and wanted community groups to be involved in community service orders. More collaboration and co-operation are needed among the various social service agencies to improve the effectiveness of community service orders.

There was widespread support for restorative justice and for the debunking of the shame theory.

However, more Research was needed to inform and guide the sentencing process.

It was observed that most juvenile offenders come from the lower socio-economic strata of society hence the need to introduce alternatives such as Job Placement Programmes, Open Custody Homes, Closed Custody Homes, Drug Treatment Programmes and Skills Training Programmes to reduce recidivism.

The small group discussion on Sentencing Alternatives was enriched with the contribution of Magistrate Jenkins who willingly shared her experience with the members. Sentencing was intended to achieve the goals of security rehabilitation, deterrence and a reduction in recidivism. The alternatives which are likely to achieve these goals are community service, probation orders, suspended sentences and cautions.

Group members held the view that the community has role to play in assisting the offender to avoid further involvement in criminal behaviour. The community's role could be the provision of opportunities for service, the development of mentor programmes, public legal education and the establishment of community councils.

With respect to the responsibility for implementing sentencing policy the group posited a joint need for leadership from government and the community. In order for the community to be able to assist offenders to turn away from crime there must be clear policy goals and sentencing options. The courts need to be creative within the limits of the law and the community must provide opportunities for service orders. Further, public legal education is the key to getting the society to understand why and how alternatives contribute to deterrence and rehabilitation.

There is a wide range of sentencing alternatives now available in St. Kitts and Nevis. However, there is need for restorative justice, and greater use of police cautions. Additionally, case management is required to head off the criminal process. The development of human resource capability is central to meeting these needs. The lack of trained personnel limits the effective use of some sentencing alternatives.

In relation to public perception of sentencing alternatives the group stated that the public wants punishment in many cases. The alternatives may be perceived as being soft on crime and offenders. The society may accept restitution as part of A settlement@ but may also want a sentence such as probation. Moving forward would require extensive public legal education.

On the issue of supervision of sentencing alternatives the group emphasized the need for a professional underpinning of the supervision process. Although community organisations can help training is critical. There should be consistency in approach. There is also the risk of breaking confidentiality. Expansion of the use of alternative sentencing would require additional human and financial resources.

The realigning of justice resources to support non-custodial sentencing alternatives was regarded by the group as difficult because all the services are stretched. Government must recognise that custodial sentences do not achieve the goals of deterrence and rehabilitation. Group members argued that justice resources may be more wisely used if steps are taken to reduce the numbers in custody through alternative sentencing and effective rehabilitation programmes.

The groups noted that sentencing alternatives could be funded by international agencies to give effect to agreements and conventions. Funding could also be provided in kind by community organisations to support community service orders.

The alternative sentencing priorities for St. Kitts and Nevis were listed as:

- (1) Probation - bonds, curfew
- (2) Community Service
- (3) Restorative Justice
- (4) Alternative Dispute Resolution (case management)

The group discussion on sentencing alternatives was enriched by the contribution of Magistrate Jenkins, Probation Officer Larry Short and the Director of Probation and Child Protection Services Mr. Maurice Williams. Their collective experience helped to inform the discussion and facilitated the participation of other members. There was an urgency on the part of participants to identify and implement alternative sentencing measures.

## **6.0 SUMMARY OF PRIORITIES**

In analysing the discussion in plenary and small groups it becomes clear that central to the success of the Complementary Measures are public education, training of practitioners and funding. These issues were of great concern to all the groups. Other priority areas identified by the groups are domestic violence, juvenile delinquency and criminal matters which attract custodial sentences.

High on the agenda of participants were therapeutic and clinical counselling services and drug abuse counselling. They also wanted to see the speedy introduction of Alternative Dispute Resolution with a focus on Mediation and Conciliation.

In order to facilitate the move away from punishment to restitution participants listed the introduction of restorative justice and community service as priorities.

## **7.0 SUMMARY OF NEXT STEPS**

Having attended the two day consultation participants are now better equipped to serve as partners in the implementation of the measures. There is a sense of renewed interest in social development among them and this has to be exploited as quickly as possible. The country has the basic social infrastructure to implement the priorities for Counselling and Sentencing Alternatives as immediate next steps. Legal aid and ADR will require more public education before they are introduced.

It is incumbent on participants and the members of the Project Advisory Committee to familiarise themselves with the JLR Project Design so that they can begin to assist social service agencies in identifying and preparing pilot projects for funding.

## **8.0 CONCLUSION**

Given that the complementary measures are aimed at ensuring the equality of justice by developing institutional and community capacity it behooves the stakeholders to move with the dispatch to implement them. Women, Youth and Children stand to benefit immensely from the introduction of these measures.

When introduced, the measures will go a long way in maintaining family stability, and help in the shaping of a more just society. They will also reduce recidivism and promote a kinder, gentler society in which mediation, conciliation and community service take root. The JLR Project has a great opportunity to contribute to meaningful social change in St. Kitts and Nevis. By implementing the project the Federation will be demonstrating that it is prepared to break with a culture of punishment that has exerted considerable influence on the judicial system.

**Participants at St. Kitts & Nevis**

**OECS Judicial and Legal Reform Project (JLR) Consultation**

**November 27<sup>th</sup> - 28<sup>th</sup> 2001**

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Eartha Williams	Probation Officer
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Jovil Martin	Counsellor
Janelle Lewis	Community Development Officer
Josephene Mallalieu	Chief Magistrate
Raymond Cotton	Police Officer
Evelyn Wigley	Social Assistant Officer
Claudette Jenkins	Magistrate
Anjel Hodge	Social Welfare Assistance
Tapley Seaton, Q. C	President, St. Kitts & Nevis Bar Association
Ann Wigley	Supervisor - Ministry of Social Development
Kevin Lloyd	Probation Officer
Elizabeth Kelsick	Secretary/Treasury St. Kitts & Nevis Bar Asso.
James Calvin Fahie	Commissioner of Police
Olivia Edgecombe - Howell	Resident Tutor/University of the West Indies
Vincia Merritt	Senior Child Care Officer
Maurice Williams	Director - Probation & Child Protection Service
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