



OECS-CIDA
Judicial and Legal
Reform Project

National Consultation on Justice Issues

St. Lucia

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1.0 BACKGROUND

The OECS Judicial and Legal Reform Project (JLR) is a five year CIDA-funded project aimed at supporting improvements to the administration of law and quality of justice in the OECS. The project seeks to benefit all citizens of the OECS, but with a specific sensitivity to women and youth.

One outcome of the project's reform initiatives is to promote fairness by developing and supporting alternatives to conventional justice processes, through activities referred to as Complementary Measures. Such measures include:

- Legal Aid
- Alternative Dispute Resolution
- Counselling Services
- Sentencing Policies and Alternatives
- Public Legal Education

A key feature of the design and implementation phases of the project is a participatory approach, comprising national consultations in each of the participating countries. As a follow-up to the first round of consultations which informed the JLR of existing plans, needs, objectives and priorities with respect to the complementary measures, a second round of consultations has been set in train, with the aim of clarifying national priorities and assessing existing initiatives and the readiness of each state for various types of justice reform measures.

This Report summarises Saint Lucia's National Consultations, held at the Bay Gardens Conference Centre, from 4-5 March 2002. The Consultation was attended by 60-70 participants, drawn from the Judiciary, the Public Sector, the private sector, non-governmental organisations, Service Clubs and agencies. A List of participants is carried at Appendix ---- to this Report.

The Consultation was facilitated by Mr. Cletus Springer, Principal Consultant of Impact Consultant Services Incorporated.

1.1 Structure of the Consultation

The Consultation was structured around five Plenary Sessions, each devoted to one of the five Complementary Measures. Each session was led by a presentation by a Resource Person followed by critiques by two Discussants. This latter feature was intended to increase interaction and involvement of participants as well as to provide an intimate perspective from persons who are practitioners in the respective thematic areas. Following open discussions, participants were placed into four Work Groups comprising 12-15 persons. On the first day of the

Consultation, concurrent Work Groups sessions were held, with two groups assigned to respond to questions contained in Discussion Guidelines prepared by the JLR Project Management Secretariat. No Work Group session was held on Public Legal Education.

A copy of the amended programme is attached as Appendix- --- to this Report.

2.0 SUMMARY OF OPENING CEREMONY

The Opening Ceremony took the form of Welcome Remarks by Mrs. Lorraine Williams, President of the Saint Lucia Bar Association and Chairperson of the JLR/National Project Advisory Committee, and by Mrs. Jennifer Astaphan, Project Manager of the JLR. The Feature Address was delivered by Senator the Honourable Petrus Compton, Attorney General and Minister of Justice.

2.1 Remarks by Mrs. Lorraine Williams

Mrs. Williams extended a hearty welcome to local and foreign participants to the Consultation. She regarded the consultation as providing a unique opportunity for participants to gain a first hand appreciation of the justice and legal system. She was optimistic that the JLR Project would impact positively not only the justice and legal system, but also the socio-economic situation in Saint Lucia and the OECS. She welcomed the renewed interest of OECS governments in removing the strictures which have plagued the High Court for decades. She was also pleased with the attempts being made to improve the efficiency of Registry systems.

Mrs. Williams concluded her brief remarks by thanking participants for making the time to attend the consultation. She expressed gratitude on behalf of the Project Advisory Committee to the staff of the Attorney General's Chambers for the sterling work which had been put into organising the logistics of the Consultation.

2.2 Remarks by Mrs. Jennifer Astaphan

Mrs. Astaphan welcomed participants on behalf of the Canadian International Development Agency (CIDA) and the Executing Agency. She gave a brief description of the history and objectives of the project as well as the status of the consultations in the other participating OECS countries. She revealed that Saint Lucia's consultation was preceded by similar events in Antigua and Barbuda and Dominica respectively and will be followed by consultations in Grenada and Saint Vincent and the Grenadines. She indicated that the implementation of concrete project activities will begin by the end of March 2002, with a major pilot activity

aimed at improving the systems and procedures attending court reporting in the Magistrate's Court.

Mrs. Astaphan expressed her delight at the large turnout at the Consultation which she attributed to the efforts of the Deputy Permanent Secretary and staff of the Attorney's General's Chambers.

2.3 Address by the Senator the Hon. Petrus Compton - Attorney General and Minister of Justice of Saint Lucia.

Minister Compton observed that justice reform had taken on the character of a "policy fixation" for Saint Lucia and the rest of the OECS, carrying with it an air of urgency. He noted that the very definition of justice reform presented a significant challenge in that it contained a number of competing demands in a climate of competition for scarce resources.

In Minister Compton's view, funding constraints were such as to generate legitimate concerns about the long term sustainability of the interventions proposed under the JLR project. In the case of Legal Aid, Mr. Compton opined that "block funding" would be a "hard sell" and that it may be necessary to place a predetermined cap on any Government subvention. He was of the view that if Legal Aid is to be sustained, it would have to be driven by the private-sector and NGOs in a strategic partnership with Government. He cautioned that Legal Aid should not be seen in isolation from other measures. He intimated that Government was considering establishing a Public Defenders Office (PDO).

With regard to Alternative Dispute Resolution (ADR), Minister Compton noted that several measures had already been incorporated into the laws in most OECS jurisdictions. The Government of Saint Lucia was persuaded that ADR must become a fully integrated mode and this fact is reflected in the objectives which drive the budgetary allocations and annual work programmes of the AG's Chambers. Provision had also been made in the Criminal Code for Community Mediation (CM) annexed to the Courts. However, the decision has been taken to extract this provision from the Code and place it in a stand-alone law. The intention is that by May 2003, CM will have started in a serious way across the island. However, Minister Compton acknowledged that there were impediments to widespread acceptance to CM driven by self-interest, fear of change and fear of new approaches. He thought that it was important for those who are better informed about the value of CM to educate members of the public who are not. Mr. Compton also intimated that Government was fully committed to introducing an Early Warning System within the school system, with a view to identifying those who are at risk of deviant behaviour and helping them to overcome it.

Minister Compton regarded Alternative Sentencing policies as an imperative for what he termed “justice system diversification”. However, he acknowledged that it was an extremely complex approach. The main challenge was to get the right balance between a creative framework and to provide adequate support for implementation. Minister Compton noted that the new Criminal Code includes a number of new sentencing provisions, including Curfew Orders and Community Service Orders.

Minster Compton observed that there was strong support for Public Legal Education (PLE) within the AG’s Chambers and the Office of the Director of Public Prosecutions. The Ministry of Justice has plans to deepen and strengthen democracy through PLE and has been engaging in discussions with Helen Television Systems on the design of a television programme entitled: On a Point of Law. Airing this programme is to begin in May 2002.

Minister Compton concluded his address by expressing his gratitude to participants and Resource Persons for their interest in and willingness to contribute to the success of the JLR reform initiative.

The full text of Minister Compton’s address is reproduced at Appendix ---- to this Report.

2. 4 Vote of Thanks

The Vote of Thanks was delivered by Miss Marie Ange Louis, Deputy Permanent Secretary in the Attorney General’s Chambers.

3. 0 SESSION # 1 - LEGAL AID

This Plenary Session was chaired by Miss Marcia Lesmond, with Mrs. Nancy Anderson and Mrs. Ann Peters serving as Resource Persons. Mrs. Lorraine Williams and Miss Mary Francis served as Discussants.

3.1 Presentation by Mrs. Nancy Anderson

Mrs. Anderson acquainted participants with the structure and operational dynamics of legal aid arrangements in various countries of the Caribbean. She noted that the raison d’être for legal aid emerged out of the inability of the poor to compete in a market for professional legal services. In addition to the cost barrier, large segments of the poor are deprived entry to, or the use of the legal system, because of psycho-social and class barriers and formalities of the Courts, such as the language used and highly formalised procedures and proceedings.

Mrs. Anderson was of the view that these barriers served to deny access to justice to large segments of the population. Not only does this situation offend the democratic aspirations of society but it also jeopardises the rule of law in these societies.

Participants were introduced to the following basic Legal Aid models:

- (a) the JUDICARE plan in which a private legal practitioner is chosen by the client or is assigned by the State or legal Aid organization. Under this arrangement, the practitioner's legal fees are met by the Government or the Legal Aid organization.
- (b) a salaried Legal Services Programme which includes:
 - legal aid clinics staffed by full-time, salaried Attorneys paid by the legal aid organisation and/or
 - Public Defenders, who are salaries Attorneys in the employ of the State, who act on behalf of indigent accused, who cannot afford to retain Counsel in criminal proceedings brought against them;
 - Clinic Plus arrangement in which private Attorneys are assigned by a Magistrate or Judge and are paid by the Legal Aid Council.

Mrs. Anderson traced attempts in Saint Lucia and Dominica at establishing a Legal Aid Clinic. She noted that several attempts had been made in Saint Lucia, dating back to 1972. To date, there is no statutory legal aid in either country, although Judges often request Attorneys to assist accused persons in murder cases, with nominal fees paid for by the Government. However, she revealed that there was a resurgence of interest in both countries in establishing formal Legal Aid Clinics. She noted that the Saint Lucia Bar Association is spearheading the latest effort to provide legal advice to members of the public and legal representation to eligible persons, initially in specific areas - preliminary inquiries, serious offences at trial, family law matters and cases involving juveniles - at a reduced fee.

Participants were provided with glimpses of Legal Aid arrangements in other Caribbean islands. The JUDICARE system operates in British Virgin Islands, Barbados, Cayman Islands, Guyana, and Trinidad and Tobago while Community Clinics are provided in the Bahamas, Belize, Grenada and Guyana. In Jamaica, all offences in the Courts are covered by legal Aid Legal Aid, with the exception of some drug offences, money laundering and offences not subject to incarceration. Legal Aid is also provided at the Police Station. Under the Act, anyone detained or arrested at a Police Station or correctional institution is entitled to these services

3. 2 Presentation by Mrs. Ann Peters

Mrs. Peters enlightened participants on the structure, aims, and functions of the Grenada Legal Council Clinic (LCC) operated by GRENCODA. She revealed that the LCC was established in November 1987 to:

- provide legal service and representation to persons earning less than EC\$10,000 annually;
- provide counselling services to persons requiring psycho-social care throughout the state;
- develop educational programmes geared towards initiating legislative changes in areas affecting women and children and the family as a unit of society;
- conduct on-going research on existing and emerging social and legal issues with a view to advocating for social and legislative changes;
- collaborate with relevant, social, regional and international agencies and organisations, to effect empowerment of women and children and other marginalised groups in the Grenadian society.

The LCC offers a range of programmes and services to about 15-20 clients daily, through a staff complement that includes:

- Programme Manager
- Counsellor (1)
- Lawyers (2)
- Legal Assistant (1)
- Paralegal Secretary (2)
- Programme Secretary and
- Bailiff(on retainer)

The programmes offered by the LCC include:

- legal service
- Counseling
- community outreach
- advocacy
- public education and research

The problems areas that are seen most frequently include:

- victims of domestic violence
- clients requiring individual/family counseling
- child abuse/sexual abuse
- maintenance

- divorce
- abandonment of children
- clients seeking assistance with food and clothing for their children
- property disputes
- landlord/tenant relationship problems
- juveniles referred by the Courts

One of the major challenges being faced by the LACC is funding. Its annual operating budget is EC\$400, 000. The Government of Grenada contributes \$50,000 annually. This is augmented by nominal user fees. The Clinic is not marketed as a fee service and no client is refused assistance if he/she is unable to pay.

3. 3 Presentation by Discussants

(a) Mrs. Lorraine Williams

Mrs. Williams' presentation focused on the attempts being made by the Bar Association to introduce Legal Aid Services in Saint Lucia. She noted that Legal Aid has been provided by various service organisations such as the Rotary Club, as well as by the Ministry of Social Affairs. She revealed that Mrs. Nancy Anderson has been retained by the Saint Lucia Bar Association to advise on a system to be introduced in Saint Lucia. The Government of Saint Lucia has pledged its support for the Association's efforts. It is envisaged that when established, the Clinic will provide assistance in the following areas:

- family law
- domestic violence
- succession law
- criminal law
- human rights
- landlord/tenant disputes

The main challenge being faced by the Association in setting up the Clinic was funding. Mrs. Williams was of the firm view that Government has a duty to support such a venture.

(b) Presentation by Miss Mary Francis - National Centre for Legal Aid and Human Rights

In her presentation Miss Mary Francis acquainted participants with the functions and operations of the National Centre for Legal Aid and Human Rights which was established in 1998, on the philosophy that justice should not be denied to

anybody. She admitted however, that registration for Legal Aid services was slow. This, she believed may be due to a perception that the Centre is concerned only with human rights issues.

The Centre provides Legal Aid to underprivileged persons in the society. It also acts as a catalyst in getting legal aid policies established by the Government. The Centre's programmes include:

- legal representation of persons referred by the Crisis Centre and by the Prisons;
- public lectures.

Miss Francis agreed that Government had a vested interest in supporting Legal Aid Clinics as the entire society stands to benefit. She opined that the doctrine of equality before the law is a sacred one which the State must uphold.

3.4 Open Discussions

The discussions from the floor produced the following issues and recommendations:

- the Court should examine its procedural arrangements with a view to simplifying these arrangements and making the Court less intimidating to clients;
- in setting up Legal Aid arrangements priority consideration should be given to:
 - strengthening existing institutional arrangements rather than seeking to reinvent the wheel;
 - avoiding overlap in services provided so as to avoid friction among institutions and agencies engaged in providing the same service;
- assuring clients of Legal Aid Clinics that the services that they receive is no less than that which is provided to a client "of means". It was felt that this could only be countered by the professionalism of the Clinic's lawyers;
- legal aid should be treated as a public service in the same way that health services are regarded;
- justice reform should be consciously linked with other reform initiatives now underway, such as local government reform, public sector reform and health sector reform;
- legal aid could be one of the services provided by Local Government Authority;

3.5 Small Group Presentations

Feedback from the Small Groups to the discussion guidelines provided is as follows:

(a) types of Legal Aid Services Required

Participants recommended that priority be given to introducing the following models of legal aid:

- Public Defenders Office
- Clinic
- Clinic Plus and
- JUDICARE

(b) priority target groups/beneficiary

It was recommended that Legal Aid services should be made available in:

- serious criminal matters where there is a real risk of incarceration;
- family matters and
- civil matters such as landlord/tenant disputes

(c) most suitable delivery models

Participants were of the view that the JUDICARE and Clinic Plus model was most likely to work best in Saint Lucia.

(d) Funding

It was felt that funding for legal aid services could be made available through:

- Government subventions
- tax-deductible financial contributions from the private sector
- contributions from clients
- donor agencies
- National Lottery

(e) Barriers to Implementing legal aid services

The following barriers to implementing legal aid services were identified:

- inappropriate location of the Centre providing the service

- lack of funding
- lack of public confidence
- lack of independence on the part of persons providing the service
- poor public perception
- insufficient public education
- duplication of services being offered.

4. 0 SESSION # 2 - SENTENCING ALTERNATIVES

This Plenary session was chaired by Dr. Urban Seraphin, with Mr. Norton Jack - Director of Public Prosecution of Saint Lucia, serving as Resource Person. Mrs. Lucy Myers - Probation Officer and Miss Prisca St. Paul - Director of Upton Gardens Girls Centre served as Discussants.

4. 1 Presentation by Mr. Norton Jack

Mr. Jack began his presentation by acknowledging that the notion that the “punishment should fit the crime” which has been so fundamental to criminal law, is not always achievable in circumstances where the court has to take into consideration, factors such as:

- The circumstances under which the crime has been committed;
- the specific circumstances of the offender,
- the loss or damage suffered by the victim;
- the effect of the crime on society;
- the prevalence of the crime.

He observed that while there are certain crimes at the higher end of the criminal justice spectrum such as murder and rape for which no punishment might seem adequate to the victims or to the society, that increasingly, societies have opted for more realistic and creative methods of punishing offenders, especially for those crimes that are at the lower end of the spectrum, such as the use of obscene language or insulting words, praedial larceny or common assault.

Mr. Jack was of the view that sentencing alternatives are desperately needed in the Magistrate’s Court, which, for most citizens is their very first contact with the Criminal Justice System. He opined that Criminal Justice must be about problem solving, not punishment and retribution and that the Courts must be concerned about opportunities for rehabilitation, about fairness to all and the protection of the society as a whole.

However, Mr. Jack acknowledged that finding appropriate alternatives to the traditional forms of sentencing that are suited to our social and economic realities, is not an easy matter, especially given that such alternatives carry heavy economic, social or administrative costs. He emphasised this by alluding to some of the problems facing today's courts, such as:

- the sentencing of a young, first-time female offender, with behavioural problems, in the absence of "half-way house" for the temporary housing or rehabilitation of such offenders;
- the sentencing of a defendant found guilty of using obscene or insulting language to his/her neighbour, in a situation where the fundamental problem may be a long-standing land dispute;
- a charge of assault where injuries sustained, though painful, are neither life-threatening nor permanent and the defendant, a first-time offender, may not necessarily be a candidate for the imposition of a fine or a term of imprisonment.

Mr. Jack pointed to weaknesses inherent in some of the sentencing alternatives as follows:

- community service programmes (CSPs) do not support themselves, but require significant administrative and economic support from the public purse;
- CSPs are not a viable option unless probation and social welfare departments in the Caribbean are restructured and their staffing upgraded;
- the effectiveness of counseling as an alternative will be limited unless the administrative structures are in place for monitoring and follow-up reports;
- in many psychiatric institutions in the Caribbean, there is no Forensic Unit for the housing and treatment of the criminally insane, which can afford the effective treatment of the offender while ensuring that both the victim and the society are adequately protected from the offender.

Notwithstanding these weaknesses, Mr. Jack was of the firm view that the Courts cannot continue to function in the absence of the following:

- a suitable residential institution for young offenders;
- halfway houses administered by the state for children at risk or troubled young persons;
- secure Forensic Units at Psychiatric institutions for the secure treatment of violent offenders;
- a comprehensive CSP that is adequately staffed and funded;
- increased staffing for probation and social welfare departments;
- training for judicial officers in the effective use of alternative sentences.

Mr. Jack recommended that alternatives to the more traditional forms of sentencing such as incarceration and the imposition of fines should be guided by the following principles:

- (a) the option of imposing alternatives such as community service, counseling or a caution should only be exercised in the case of a non violent offender or a first time offender found guilty by the courts;
- (b) courts should implement a screening system prior to exercising the option. Such a system should include:
 - the offender's criminal, employment, educational and medical history,
 - the offender's ties to the community; and
 - the ability of the relevant authorities to monitor the individual in a community setting.
- (c) the option of ordering that the offender undergo an in-patient or out-patient, substance abuse treatment programme, if the offence is one of possession of a small quantity of an illegal drug for personal use;
- (d) all sentencing alternatives must be underpinned by a daily reporting system which requires offenders to report to a monitoring authority sanctioned by the court, for a specified period;
- (e) rehabilitation and job retraining programmes must become part of the work of an upgraded probation or social welfare department;
- (f) specific guidelines and a training programme should be put in place to assist the Judge or Magistrate in the exercise of his/her discretion, when considering sentencing alternatives.

4.2 Presentation by Discussants

The opinions expressed by Mr. Jack were reinforced in the presentations made by the discussants.

In her presentation, Mrs. Lucy Myers traced the evolution of the probation system in Saint Lucia. She adduced statistics to show that the majority of crimes being handled by the probation services involved persons found guilty of crimes such as housebreaking, stealing, possession of illegal drugs and grievous bodily harm. She observed that while there was a low female component among the offenders, the majority of these offenders were in the 12-15 age group. Invariably, these offenders were sent to prison when they ought to have been sent

for rehabilitation. She revealed that the probation services had been the subject of several reviews undertaken by Penal Reform International (PRI). However, the probation service continues to be constrained by:

- a lack of an appropriate support system
- lack of funding
- inadequate staffing.

Miss St. Paul's presentation addressed sentencing alternatives with regard to delinquent and pre-delinquent girls. She opined that many of the behavioural disorders being expressed by young girls are really a reflection of the lack of supervision, discipline and parenting in the home. Often, many young girls are seeking to distance themselves from the highly unsatisfactory, physical conditions in the home.

Miss St. Prix was of the view that many young female offenders have little or no respect for the probation system, primarily because of the absence of effective sanctions for violating the terms of their probation. She supported Mr. Jack's recommendation that a halfway house for girls be established as a matter of urgency. Further, she recommended that consideration be given to the following:

- the use of electronic monitoring devices to trace the movement of parolees;
- that laws be introduced to strengthen parental responsibility;
- a policy juvenile Liaison Scheme be established as in Barbados;
- house arrests should be introduced

4.3 Open Discussions.

In the ensuing discussions from the floor, it was noted that devices such as house arrests and electronic monitoring systems carried a heavy economic component. It was recommended that:

- a carrot and stick approach be introduced, in which house arrest is used in combination with a stiff penalty for offenders;
- a sustained public education and awareness programme was critical to the success of any alternative sentencing programme;
- there is a need for linkages between the court system and the probation/rehabilitation system;
- measures should be introduced to ensure that adequate treatment is provided for persons who are in need of counseling/rehabilitation but cannot afford to pay the fees being charged by institutions such as Turning Point;
- consideration should be given to the establishment of a Drug Treatment Court as in Jamaica;

- the predisposing factors to crime should be addressed as an integral part of the judicial reform process;
- there is a need for boundaries and guidelines to the creativity that is encouraged by alternative sentencing;
- consideration should be given to sentencing alternatives being implemented in Singapore

4.4 Small Group Presentations

Two small Work Groups were assigned to consider detailed recommendations with regard to Sentencing Alternatives, based on the Guidelines provided by the PLR project. Feedback received was as follows:

(a) Types of Sentencing Alternatives

- curfews
- psychiatric services within/without prison system
- rehabilitation/halfway house
- community service centre
- “boot camp” for first offenders
- a probation support system with expanded services
- Fit Person Orders (such as foster parents with requisite skills)
- enforced training for unskilled offenders
- supervision orders
- bonding and cautioning
- organised community service
- mentoring
- compensation/restitution for the victims
- conditional incarceration

(b) public perceptions regarding sentencing alternatives

- the “man in the street” is likely to think that a community service penalty is too “soft”;
- lack of confidence in the present justice system

Further, it was recommended that these negative perceptions could be countered by sustained education to promote awareness and understanding.

(c) the role of the community

There was a general consensus that communities had a role in assisting offenders to resolve the personal problems that may have led to criminal behaviour. It was recommended that this involvement could take the form of:

- encouraging forgiveness for and tolerance of the offender;
- promoting family participation in the rehabilitation of an offender;
- the establishment/identification of a specialised community agency to assist the offender in his recovery;
- educating community/family members to respect the offender.

(d) Primary responsibility for formulating/implementing sentencing policy

Participants were of the view that the primary responsibility for formulating policy should fall to Government, while the Courts should be left to choose the type of sentencing that is most appropriate for the offence. It was also felt that the Courts, Government, and the community, including the schools, churches and family, all had critical roles to play in implementing the policies .

(e) Modes of Implementing Sentencing Alternatives

It was felt that sentencing alternatives could best be implemented through:

- legislative provisions
- collaborative arrangements among kindred institutions;
- public education and awareness programmes;
- alternative sentencing guidelines/protocols.

(f) Barriers to Change

Barriers to change which would need to be overcome include:

- lack of knowledge about the rationale/benefits to be gained from the introduction of SAs
- lack of funding
- natural resistance to change

(g) Potential Funding Sources

- Government subventions
- private sector support
- international support from NGOs and friendly governments

- client fees
- national lotteries
- philanthropic foundations

(h) Priorities for Sentencing alternatives

- community service
- counseling
- training
- establishment of mentoring/apprenticeship schemes
- bonding
- caution/reprimand
- forced rehabilitation

5.0 SESSION # 3 - ALTERNATIVE/APPROPRIATE DISPUTE RESOLUTION

This Plenary Session was chaired by Mrs. Rumelia Dalphinis - King, with Ms. Donna Parchment as Resource Person. Ms. Floreta Nicholas - Senior Magistrate and Mr. Cuthbert St. Juste, Labour Officer served as Discussants.

5.1 Presentation by Ms. Donna Parchment

Ms. Parchment began her presentation by proposing a shift in terminology from *Alternative* Dispute Resolution to *Appropriate* Dispute Resolution. Such a change, she thought, was useful in making the point that options should be available. Participants were then introduced to a menu of different ADR processes including:

- (a) Mediation - defined as a voluntary dispute resolving process in which a third party facilitates and coordinates the negotiations among disputing parties.
- (b) Restorative Justice - defined as a process which seeks to put victims back at the centre of the justice process and which brings together those affected by a crime to collectively resolve how to deal with the aftermath of the offence and its implications for the parties (includes police cautions, victim-offender mediation, family therapy).
- (c) Conciliation - defined as a process in which prior to an actual court hearing, a neutral third party assists the parties in the search for a mutually acceptable and fair resolution;
- (d) Arbitration - defined as a process that allows an expert to make decisions on the merits of a case following an informal hearing.

Ms. Parchment provided participants with an overview of the ADR processes used in Canada and Jamaica. She noted that following a comprehensive Civil Justice review, Canada decided that it will:

- focus on ADR as a whole;
- use the multi-door concept offering more than one option;
- use case flow management in the way work is organised, through screening, enforced time parameters and encouraging early resolution.

Jamaica has operated a Dispute Resolution Foundation since 1994 as a mechanism for resolving disputes which are supplementary, complementary or as alternatives to litigation. The Foundation educates the public about ADR techniques as a means of handling conflicts and differences without resorting to violence.

Participants were also introduced to the theoretical underpinnings behind concepts such as mutual programming (which helps people to cope with things that they don't expect or anticipate). The elements of conflict were outlined, as well as the typical seven stage mediation process.

The full text of Ms. Parchment's presentation is reproduced at Appendix ---to this Report.

5.2 Presentation by Discussants

Ms. Nicholas' presentation described the present situation in Saint Lucia as it relates to ADR. She revealed that ADR exists to a limited extent through the case management system which allows a Magistrate to invite the parties to explore the possibility of resolving a case outside of the courts. Through such means, approximately 75% of cases are resolved by means other than trial. At the District Court level, leave is obtained to settle a dispute outside of the Court. In April 2000, the District Court established the Fast Lane Court. In this arrangement, trial is used as a last resort. Often cases are settled by the use of bonds to keep the peace.

Another ADR mechanism which is frequently used by the Courts is the Probation Officer. According to Ms. Nicholas, Probation Officers have been helpful in resolving family matters.

Ms. Nicholas revealed that the new rules of the District Court are based on a foundation of impartiality, competence and efficiency. She concluded her presentation by offering her vision of the court of the future, not as a court house, but as a dispute resolution mechanism. However, she was of the firm view that unless there is a properly designed and sustained public education campaign aimed

at getting the public to accept the idea of non-custodial sentences, then ADR will not succeed.

Mr. St. Juste's presentation focused on the mediation and conciliation services provided by the Labour Department. The Department maintains a policy of non-political conciliation, which it regards as critical if it is to sustain the trust and confidence of the Social Partners. Mr. St. Juste revealed that the Draft Labour Code proposes to introduce other forms of ADR, including a system which will allow complaints to be heard and a determination made within six months. He noted that over the past five years or so, there appears to have been a paradigm shift in labour relations from an adversarial approach to one of dialogue.

5.3 Open Discussions

In the discussion from the floor, the following issues and recommendations emerged:

- the training of persons to serve as mediators should be experience - driven, and should utilise research, self-learning and self - teaching techniques;
- a system should be devised and implemented to identify, screen and train a cadre of mediators who should then be deployed across the country and who could be used to train other persons as mediators. It was felt that the Sir Arthur Lewis Community College (SALCC) had a role to play in this endeavour;
- important lessons could be learnt from a pilot project on ADR which is shortly to get underway in Saint Lucia.

5.4 Small Group Presentations

Feedback received from the Work Groups to the questions posed in the Discussion Guide are as follows:

(a) Types of ADR needed

Participants were of the view that all types of ADR were urgently needed. Different types would be needed in different situations, hence signifying support for the concept of *Appropriate Dispute Resolution*. However, participants identified a pressing need for mediation services especially at the community level, supported by a formalised administrative structure.

(b) Types of ADR with greatest potential for impact/delivery

Participants identified Court-affiliated or Court-assisted mediation services as having the greatest potential for positive impact, especially given that culturally, there is a higher regard for court orders. Support for the multi-door approach was also expressed.

(c) Barriers to Implementing ADR Services.

The following barriers were identified:

- cost
- shortage of trained personnel
- failure to retain trained personnel
- resistance to change
- traditional preference for solving disputes through the courts
- unfavourable attitudes of lawyers
- fear among lawyers that ADR might reduce on their earnings

(d) Perceptions of ADR

Generally, participants anticipated that ADR services would be appreciated , once time and money savings become evident. Also, it was felt that over time, persons would come to see the court system as being more humane.

(e) Funding possibilities

It was felt that because of the preference for a Court affiliated system, Government would be required to meet the lion's share of the cost of providing the service. Other funding sources identified include client fees and donations.

(f) ADR Priorities

The following priorities were identified:

- mediation
- community-based mediation
- restorative justice
- use of the Parliamentary Commissioner
- Court-appointed administrator

6. 0 SESSION # 4 - PUBLIC LEGAL EDUCATION (PLE)

This Plenary was chaired by Ms. Ruby Yorke with Ms. Louise Blenman as Resource Person. Mr. David Cox and Dr. George Forde served as Discussants.

6. 1 Presentation by Ms. Louise Blenman - Solicitor General - Attorney General's Chambers

Ms. Blenman's presentation emphasised the importance of an efficient and effective PLE to social and economic development. PLE was needed to address even mundane legal issues of which the public is not aware. If it is done well , PLE would enable citizens to make a meaningful contribution to society.

Ms. Blenman acknowledged that it was difficult to establish a single structure through which PLE can be provided. She thought it was necessary to look at a set of complementary measures aimed at educating the public. She advocated the use of a diversified, interdisciplinary and multi-faceted approach, as a means of reaching a diverse public. One such approach was the use of the Internet. In this regard, she noted that the website maintained by the OECS Supreme Court has been extremely useful.

Ms. Blenman believed that concrete measures were needed to reduce and prevent crime. PLE could be used to restore offenders to a meaningful role. She recommended that PLE programmes should focus on the youth and women because of the problems that are unique to these groups. PLE should not be determined in accordance with the needs of the legal profession but rather in accordance with the needs of the society. The information which is imparted must be accurate.

The full text of Miss Blenman's presentation is carried at Appendix ---- to this Report.

6.2 Presentations by Discussants

Mr. Cox's presentation focused on the role and attitudes of the local Bar Association to PLE. He thought that it would be erroneous to assume that lawyers would automatically be supportive of PLE. He noted that there was a growing perception of the local Bar as being too self-absorbed and self-interested. While that perception was untrue, he thought it was deserved, because the Bar had done little to discourage this perception. He expressed his discomfort with what he described as a "culture of silence" within the Bar. He opined that discussion among Attorneys about the law is crucial to effective PLE. He challenged

participants to come up with serious proposals to encourage the Bar to stop this culture of silence.

Dr. George Forde acquainted participants with the objectives and structure of a Associate Degree in Criminal Justice which the Sir Arthur Lewis Community College (SALCC) plans to introduce as part of its course offerings. He explained that the Programme is designed to prepare students and practicing officers, for service to the community in the fields of law enforcement, criminalistics, private security and investigation. It is intended that the programme would considerably enhance the capacity of the students in the Criminal Justice field and also provide advanced standing towards a full Bachelor's programme in a College where such programmes are offered.

6.3 Floor Discussion

The interventions from the floor were broadly supportive of the views expressed by the presenter and discussants. Participants were pleased to learn of the proposed Criminal Justice programme. However, concern was expressed about the utility of an Associate Degree, given the difficulty which holders of such a qualification have had in building on this platform.

There was a general agreement that the legal fraternity could do a lot more to promote PLE and generally to support Human Rights initiatives. However, Mr. Cox's opinions were countered by the view that many lawyers in private practice were in fact preoccupied with survival issues and often could not find the time to play the advocacy role in the way that they would wish. It was also felt that the sharing of communication with lawyers by the AG's office would help to generate greater interest in PLE by the local Bar.

7.0 SESSION # 5 - COUNSELLING

This Plenary was chaired by Mrs. A. Foster, with Miss Clementia Eugene as Resource Person. Ms Beverly Ann Poyotte served as Discussant.

7.1 Presentation by Resource Person Miss Clementia Eugene - Intake Counsellor, Family Court.

Miss Eugene's presentation was based on the real life experience of a repeat offender who had served twelve prison sentences for diverse offenses. She drew on the offender's story about a traumatised childhood - involving domestic violence, physical and verbal abuse and parental abandonment which resulted in drug addiction and criminal behaviour, - to illustrate the need for counselling

services to be treated as a complementary measure, not only to the justice system, but to other systems such as education system and the workplace.

Miss Eugene intimated that the majority of Saint Lucians had a negative opinion of counselling practices on the island. Many persons considered counselling as being ineffective, non-existent and inadequate. Some persons seem not to understand what it is all about. Those who did, felt that there was a dire need for counselling to be formalised and entrenched within the education system, in the workplace and in communities.

After expounding on the theoretical underpinning of counselling, Miss Eugene examined the state of counselling services within the justice system. She noted that the Social Support Section of the Family Court, offers counselling and mediation services to clients in cases of domestic violence, affiliation (child care and protection, custody, visitation and access) and juvenile matters. She was of the view that:

- the Domestic Violence Act should be amended to make counselling mandatory for the victims, perpetrators and the children who witness domestic violence;
- the granting of a Protection/Occupation/tenancy Order is inadequate to making any attempt at eradicating domestic violence and its attendant social problems and in helping perpetrators of domestic violence to unlearn such destructive behaviour;
- some lawyers may be totally oblivious of the impacts of domestic violence and needed to be educated to better recognise the many faces of this scourge;
- the mandate of the Family Court should be extended to offer counselling to persons who are affected by issues of loss, stress, anxiety and adjustments associated with divorce and legal separation.

Miss Eugene adduced figures on the distribution of criminal cases within the First and second District Courts, to support her recommendation for counselling services to be introduced in these Courts. She noted that it was safe to assume that some of the 10,841 offenders who were processed by the Courts in 2001 may have experienced some form of distress or social hardship that may be attenuated by counselling services.

Miss Eugene concluded her presentation by observing that given the seriousness of Saint Lucia's social problems, there is an urgent need for counsellors and social workers to be more actively involved in the design and implementation of solutions. She issued a call for:

- counselling programmes that are predicated on the outcomes of research and on the psycho-social assessment of the individual client who comes into contact with the justice system;
- the establishment of counselling service agencies that are properly staffed and are well equipped with computers, furnished rooms for various forms of therapy, and the necessary psychological testing materials for diagnosis and evaluation of the process.

7.2 Presentation by Miss Beverly Ann Poyotte

Miss Poyotte's presentation reinforced many of the conclusions and recommendations advanced by Miss Eugene. She used the definition of counselling as "an interpersonal and interactive relationship between two or more people of which one person - the counsellor, is trained to identify and address issues which the other person, - the counselled, is unaware of and which adversely affects his/her emotional and psychological health in some way". In her view, such a definition suggests that:

- counsellors should be properly trained in order to deliver an effective programme or service;
- the average person seeking counselling is a normal individual facing normal life crises;
- counselling services should be widely available and accessible (within all major population centres);
- sustained public education and awareness programmes are needed to promote an understanding of the relevance and importance of counselling and the benefits that it can produce;
- ethical guidelines for counsellors are needed to address issues such as confidentiality and respect for the individual.

7.3 Open Discussions

The floor discussions generated the following issues and recommendations:

- information should be disseminated to the public about the counselling services that are available and how they can be accessed;
- the assistance of the Courts should be secured in getting affected persons to attend counselling support groups.
- consideration should be given to making counselling mandatory;
- trade unions and employers' organisations should be invited to consider including counselling services within the workplace, ideally as part of the Human Resource Management Departments or as part of services offered by trade unions to their members;

- the Ministry of Education should be encouraged to accelerate the posting of Counsellors within the school system;
- an inventory of all community groups and agencies that now provide or are capable of providing approved counselling services, should be prepared, as a first step in a strategy aimed at boosting the capacity of these organisations to provide such services.

7.4 Small Group Presentations

Feedback from the Small Work Groups to the questions contained in the discussion guidelines, is as follows:

(a) Availability of Counselling Resources

Counselling resources are currently available from the following institutions:

- Family Court
- Turning Point
- Golden Hope Hospital
- Boy's Training Centre
- Human Services Division of the Ministry of Health and Human Services
- Saint Lucia Crisis Centre
- Saint Lucia Cancer Society
- Saint Lucia Diabetic and Hypertensive Association
- Aids Action Foundation
- Probationary Services of the Ministry of Social Transformation
- Upton Gardens Girl Centre
- Substance Abuse Advisory Council
- Office of the Parliamentary Commissioner
- Ministry of Education

(b) Types of Counselling Services

The need for the following counselling services were identified:

- clinical services for narcotic and alcohol addiction, emotional or psychological problems, post traumatic events, marital problems, divorce and domestic violence;
- support services
- rehabilitation/occupational

(c) Delivery Modes

It was recommended that counselling services could be provided through:

- enhanced networking;
- strengthening existing services
- legislation /enforcement (as part of alternative sentencing)
- social service agencies
- employee assistance programmes
- labour department/trade unions
- teachers
- youth clubs
- service clubs

(d) Barriers to Implementing Counselling Services

- stigma attached to counselling as being a service offered to the mentally ill persons;
- lack of confidentiality;
- absence of trained professionals
- lack of funding
- absence of public education programmes
- unwillingness of persons to seek counselling
- lack of political will/sensitivity
- cultural and traditional attitudes and beliefs
- lack of private sector sensitivity

(e) Funding opportunities

- User fees
- government subsidies
- donations
- in-kind payment by clients
- local/regional/international agencies
- National Lottery
- National Insurance Scheme.

(f) Priority Counselling Services

- substance abuse
- mental health
- family counselling
- school-based counselling

- support services

(g) Other Areas

The consensus was that:

- counselling services should be voluntary, but should be mandatory in criminal cases
- there should standardised requirements to qualify/certify counsellors.

8.0 CLOSING SESSION

The Consultation was brought to an end following brief remarks by Mrs. Williams and Mrs. Astaphan, in which they pronounced the Consultation as a success. The participants were applauded for their solid participation and for staying with the Consultation right through to its end. Mrs. Williams was especially grateful for the sterling contribution of Miss Marie Ange Louis and the staff of the Attorney General's Chambers. She also commended the Facilitator for his efforts.

Mrs. Astaphan echoed Ms. Williams' remarks. She urged participants to make full use of the JLR Project and to urgently submit projects for urgent consideration.

Impact Consultancy Services

7 March, 2002