

**Justice Reform in CARICOM:
Analysis and Programming Options**

Prepared for the
Canadian International Development Agency

by
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NOTE: *The opinions expressed and options presented in this report do not necessarily reflect the views of the Canadian International Development Agency or the Government of Canada.*

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The opinions expressed in this report are those of the authors and do not necessarily reflect the views of CIDA or the Government of Canada. As the authors of this report, we are responsible for errors or omissions.

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List of Abbreviations and Acronyms

ACCBP	Anti-crime Capacity Building Program
ACCP	Assembly of Commonwealth Caribbean Parliamentarians
ADR	Alternative dispute resolution
CAJO	Caribbean Association of Judicial Officers
CARICOM	Caribbean Community
CBA	Canadian Bar Association
CBSI	Caribbean Basin Security Initiative
CCJ	Caribbean Court of Justice
CDB	Caribbean Development Bank
CEA	Canadian executing agency
CECI	Canadian Centre for International Studies and Cooperation
CIDA	Canadian International Development Agency
CJEI	Commonwealth Judicial Education Institute
CKLN	Caribbean Knowledge and Learning Network
CLIC	Caribbean Law Institute Centre
CPP	Community Policing Program
CSME	CARICOM Single Market and Economy
CSO	Civil society organization
CTCBP	Counter-Terrorism Capacity Building Program
DFAIT	Department of Foreign Affairs and International Trade (Canada)
DFID	Department for International Development (United Kingdom)
DPP	Director of Public Prosecutions
DRF	Dispute Resolution Foundation
EA	Executing agency
ECLAC	Economic Commission for Latin America and the Caribbean
ECSC	Eastern Caribbean Supreme Court
EU	European Union
FJA	Office of the Commissioner for Federal Judicial Affairs
GNI	Gross national income
GDP	Gross domestic product
ICCLR	International Centre for Criminal Law Reform and Criminal Justice Policy
ICT	information and communication technology
IDB	Inter-American Development Bank
IGDS	Institute for Gender and Development Studies
ILO	International Labour Organization
ILPS	International Legal Programs Section
IMF	International Monetary Fund
IT	information technology
JEI	Judicial Education Institute
JEMS	Judicial Enforcement Management System
JLR	Judicial and Legal Reform Project
JUST	Justice Undertakings for Social Transformation (Project)

MDG	Millennium Development Goal
NGO	Non-governmental organization
NJI	National Judicial Institute
OCCBA	Organization of Commonwealth Caribbean Bar Associations
OECS	Organization of Eastern Caribbean States
RBM	Results-based management
RDPF	Regional Development Programming Framework
SCLRP	Social Conflict and Legal Reform Project
UN	United Nations
UNDP	United Nations Development Program
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime
US\$	United States Dollar*
USAID	United States Agency for International Development
UWI	University of the West Indies

* Note: Throughout this report all financial data are expressed in Canadian dollars, except where otherwise indicated.

1. Executive Summary

Background

In 2007 Prime Minister Harper confirmed Canada's longstanding, special relationship with the Caribbean when he announced that Canada would allocate \$600 million for regional development assistance to CARICOM over a 10-year period (2007-2017)¹. As part of its 2007 Strategy for the Americas, Canada treats CARICOM as a region of focus. CIDA's Caribbean Program is well aligned with Canada's Strategy for the Americas and centres on two interlinked, thematic priorities – sustainable economic growth and security. Justice reform and CIDA's cross-cutting themes of gender equality and the environment are integral to both streams. CIDA's Caribbean Program already responds to many private sector, trade-related needs, but at the time of this assignment the Agency had no regional, justice reform projects in the pipeline.

Objective of the assignment and methods

CIDA engaged the consultants to provide the Agency and its Caribbean partners with an analysis of the justice sector, particularly the common needs and priorities of CARICOM member states, and to prepare regional programming options in keeping with CIDA's Caribbean Regional Development Program Framework (2010-2015) and the principles of aid effectiveness.

The consultants' primary methodologies were a literature search, a review of more than 80 relevant documents and semi-structured interviews with about 150 stakeholders in 11 Caribbean countries and in Canada. The consultants presented their preliminary findings to CIDA's Caribbean justice reform team and attended a participatory workshop with Caribbean stakeholders in Port of Spain, Trinidad, in November 2011 before drafting this report.

General findings

Strengthening rule of law through justice reform is critically important to CARICOM member states according to all of the Caribbean stakeholders with whom the consultants met. Reform that strengthens rule of law and that bolsters confidence in the justice system is likely to contribute to a positive climate for investors and consumers alike, according to much of the literature reviewed for this report.

Development agencies and international financial institutions have a history of justice sector support to various CARICOM member states and sub-regions, but many past initiatives appear to have been *ad hoc*, donor-driven and uncoordinated. As the United States, the United Kingdom and the European Union now concentrate on security matters in CARICOM, the region's governments and development agencies alike expect CIDA to continue its longstanding assistance to judicial reforms of an institutional and organizational nature.

¹ The 15-member Caribbean Community (CARICOM) consists of 12 island states – Antigua and Barbuda, the Bahamas, Barbados, Commonwealth of Dominica, Grenada, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago – and three continental countries: Belize, Guyana and Suriname. Although Haiti is a member of CARICOM, it benefits from a separate Canadian International Development Agency (CIDA) bilateral program.

Although the justice sector in CARICOM faces serious problems, it has many strengths, including a common legal system, common language, independent judiciary and many talented people committed to reform. The CARICOM justice sector has vibrant national institutions, organizations and resources and a few strong regional entities such as the Caribbean Court of Justice (CCJ), the Eastern Caribbean Supreme Court (ECSC), the University of the West Indies (UWI), the CARICOM Secretariat, the Secretariat of the Organization of Eastern Caribbean States (OECS) and the Dispute Resolution Foundation (DRF). Several Canadian organizations have had experience providing technical assistance to Caribbean countries in the justice sector, most notably, the International Legal Programs Section (ILPS) of the federal Department of Justice, Office of the Commissioner for Federal Judicial Affairs (FJA), National Judicial Institute (NJI), Canadian Bar Association, and the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR).

CARICOM countries have produced some exemplary model reforms to date, including family, commercial and other specialized courts, model laws on domestic violence and trade harmonization, and mediation services.

The justice sector and development organizations interested in supporting reforms across CARICOM face many serious challenges, among them the following:

- Many small, widely dispersed countries whose economies are not well integrated and who for sovereignty concerns may lack the political will to implement some needed justice reforms on a regional basis;
- Dearth of strong organizations able to manage large justice reform programs across CARICOM;
- Rising violent, gang-related crime that often affects women, youth and vulnerable groups and that clogs the courts and prisons;
- Complex gender, child and juvenile justice issues, many impeding access to justice;
- Major shortcomings of the justice systems in dealing with juvenile delinquents;
- Inadequate crime prevention programs targeted at youth, young children and parents;
- Widespread public disillusionment with the justice system; and
- High levels of debt and debt servicing that make new investments in justice reform problematic.

Common needs and priorities

The consultants distilled from their interviews and background research 10 priority areas of reform across the region, most of which are inextricably interlinked, making their order somewhat inconsequential.

Case backlogs were the most frequently expressed impediments to justice in CARICOM. Backlogs affect criminal and civil cases alike, and are particularly severe in magistrate's courts, which handle about 95 percent of cases which come before the courts. Some

magistrate's courts have hundreds of unresolved cases dating back five years or more, thus denying justice to thousands.

Policy to underpin justice reforms and the **political will** to implement reforms once agreed to are lacking in some countries. In a few cases, policy-making capacity is weak and in others fiscal constraints, misunderstanding and competing interests impede the development of policy. Participants at the regional stakeholder workshop in Port of Spain called for a regional body to coordinate the development of justice reform policies across CARICOM and to provide the impetus needed to unlock the political will for implementation where needed.

Court infrastructure, particularly in magistrate's courts, is in poor condition. Courts in the OECS are particularly decrepit, some housed in rented facilities which cannot be retrofitted owing to lease conditions. Many courts are over-crowded and lack proper toilet facilities, air conditioning, waiting rooms for the public and private spaces where attorneys can meet their clients in private. Children and youth often have to sit with accused offenders when waiting for court proceedings. Women's needs are often neglected and few courts are customer-oriented, child-friendly or gender-sensitive in their design and services. Many registries are antiquated and most courts lack technological aids, such as digital recorders, that could make them much more efficient.

Many people with whom the consultants met said **integrating magistrate's courts** and their support staff into the judiciary was a high priority. In most countries, magistrates – the vast majority of whom are women – and their support staff fall under the administrative purview of the executive branch of government rather than under an independent judicial services commission. The system breeds gross inequalities and inefficiencies. For example, most magistrates are hired on contract and are denied adequate pensions, security and professional development.

Stakeholders frequently expressed the need for **law reform** and **more legislative drafters**. National laws pertaining to labour, investment, bankruptcy, insolvency, and social benefits inadequately reflect social and commercial realities in many countries. Law reform is also lagging in relation to human rights, sexual and domestic violence, and white-collar and cyber-related crimes. Legislative reform is, however, severely hobbled in most countries by the lack of legislative draftspersons. In some countries needed legislation has been in development for almost a decade.

Information sharing and knowledge management across the region are far from optimal, despite reliable high-speed Internet and video-conferencing services in most capitals and in the regional and sub-regional courts. Stakeholders at the workshop in Trinidad called for a CARICOM institution with a mandate to support justice reform to lead information sharing and knowledge management in the region. Many thought this issue could be addressed without incurring great expense.

Judges and magistrates have inadequate **access to case law** and other written materials. Magistrates, in particular, are hampered for lack of access to case law. The consultants

found few stakeholders taking advantage of CariLaw, a low-cost searchable online database containing more than 40,000 full-text cases from the region.

Performance standards, performance measurement and evaluation are nascent in CARICOM's justice sector. Several countries have yet to develop standards for case management; few countries have judicial codes of conduct and where they do there is inadequate standardization to allow for comparisons across the region; national bar associations have been remiss in setting professional standards for their members; most chief justices have no formal mechanism and insufficient data with which to assess the performance of the judiciary; few civil society organizations are involved in monitoring the courts; and with a few exceptions, evaluation is compliance-oriented rather than performance-directed.

Many CARICOM countries have common **access to justice** deficiencies, among them: weak implementation of laws designed to protect vulnerable groups, such as women, children and minorities; courts that are insensitive to the needs of women, youth and children; woefully inadequate legal aid; inadequate mediation services; a paucity of rehabilitation programs for young offenders; and lack of public education concerning the justice system and the rights of citizens.

Professional development opportunities for those working in the justice sector are limited. Many judges and most magistrates have few opportunities to educate themselves regarding changes in law and adjudication. The same is true for court administrators, prosecutors and attorneys and others within the justice sector. Few cost-effective online courses are available even though the region has capable judicial educators and a robust information technology infrastructure.

Lessons

The consultants distilled the following lessons from their conversations with stakeholders and from their review of literature:

- An approach to justice reform that is comprehensive, holistic and iterative is often the most successful in achieving sustainable results;
- Leaders from the region must drive justice reform programming, and reform initiatives ought to be anchored in appropriate regional institutions;
- Change management interventions and public engagement go hand in hand with successful justice reform;
- Successful justice reform requires long timelines and progress may be uneven from one country to another within a region;
- Achieving progress in relation to gender equality requires persistence and innovation; and
- Ongoing monitoring and evaluation are essential for the success of justice reform programs.

Conclusions

The political nature of regional justice reform and the interconnectedness of justice systems are among the most critical challenges inherent in mounting a successful regional

program. Although the challenges are substantial, the consultants conclude that there is sufficient demand and ample talent in CARICOM on which to base a program that has the potential to be both transformational and sustainable.

Recommended options

The consultants recommend to CIDA five options for directive programs, roughly in order of priority, all with gender equality integrated. Any component or combination of components could lend itself to responsive initiatives. The options are focused in areas designed to complement the programs of other development agencies in the region, most of which are centred on human security and juvenile justice.

Option #1 is a \$15-million program over 6-8 years with three components: a) Ongoing, region-wide education primarily for judges and magistrates; b) Integration of courts and court administration under independent judicial services commissions; and c) Strengthening case management and court administration, including upgrading of information technology (IT) infrastructure. The CCJ appears the best regional organization to implement this program.

Option #2 is for an \$8-million program over 5-6 years with three components: a) modular, on-the-job training in legislative drafting targeted at mid-level staff employed in the justice sector; b) Revision and/or development of new, harmonized laws; and 3) Dissemination of case law and treaty material to judges, magistrates, prosecutors, defense attorneys and others. UWI's Caribbean Law Institute Centre (CLIC) is likely the most suitable regional organization to implement this initiative.

Option #3 is for an \$8-million program over 5-6 years with four components: a) Information sharing and policy advocacy for automatic mediation; b) Development of policy, legislation and rules of court to make alternative dispute resolution (ADR) automatic under appropriate circumstances; c) Training and support of mediators across the region; and d) A small responsive fund to stimulate change, innovation and leadership in ADR and in restorative justice in CARICOM. The Dispute Resolution Foundation is best equipped to lead this program.

Option #4 is for a \$6-million initiative over six years aimed at educating commercial and industrial court judges, strengthening existing commercial and industrial courts and establishing new ones where necessary. The CCJ or, alternatively, a Canadian executing agency (CEA) selected via public tender with the CCJ as its partner, could implement the program.

Option #5 is a \$7-million, 6-year responsive fund designed to develop innovative, cost-effective and sustainable solutions to common reform issues. Funding criteria would require each recipient to involve one or more CARICOM member states in each project proposed and to share effective practices widely throughout CARICOM. The implementing agency would be determined through an international tender.

2. Background and Context

2.1 The Caribbean Community

The 15-member Caribbean Community (CARICOM) consists of 12 island states and three continental countries. The island states are Antigua and Barbuda, the Bahamas, Barbados, the Commonwealth of Dominica, Grenada, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago; the three continental countries are Belize, Guyana and Suriname. Although Haiti is a member of CARICOM, it benefits from a separate Canadian International Development Agency (CIDA) bilateral program.

Figure 1:

Map of the Caribbean



Source: Map Resources. Adapted by CRS.

The Community's population, excluding Haiti, is 6.7 million, with some island states, such as Saint Kitts and Nevis, Antigua and Barbuda and Montserrat having fewer than 100,000 inhabitants. The region has a combined Gross National Income (GNI) of \$36 billion. Although there are significant differences in the size of economies and levels of development in each country, all are upper-middle income countries except for Guyana. Poverty is, however, significant in every country.

CARICOM countries face similar development challenges such as small populations, limited economic diversification, high levels of debt, heightened exposure to globalization, human resource deficits and susceptibility to natural disasters. The global economic crisis of 2008 was hard on the region's tourism, construction and commodity export sectors. Private sector investment and capital flows, often linked to hotel and tourism-related construction, have fallen. Foreign direct investment declined to 14

percent of Gross Domestic Product (GDP) in 2008 from 16 percent of GDP in 2007 and is expected to remain below pre-crisis levels for some time (CIDA, 2009).

A decline in government revenues, exacerbated by falling customs revenue, has led to serious fiscal difficulties and the need to cut public spending while servicing debt. The consequences include increased unemployment, growing inequality and a rise in crime. The International Monetary Fund's (IMF) April 2010 economic outlook for the region (excluding the Dominican Republic and Haiti) predicted 2¼ percent growth in 2011 but cautioned that constraints stemming from high public debt levels could make the region vulnerable to external economic downturn (IMF, 2011). Many people live just above the poverty line and are at risk of falling below it.

Factors underlying the incidence of poverty include: low income and unemployment owing to small undiversified economies and predominantly unskilled or semi-skilled labour; inequality of income within countries; heavy dependence on volatile export and tourism sectors; inadequate social safety nets; and the impact of natural disasters on livelihoods. A number of countries have poverty reduction strategies – some developed in consultation with the Caribbean Development Bank (CDB) – but implementation is hindered by fiscal pressures.

Caribbean countries have made important strides towards the Millennium Development Goals (MDGs), but the region has faltered in relation to environmental sustainability, maternal mortality and some aspects of gender equality. Progress has been achieved in primary education, but access to, and quality of, secondary and tertiary education are deficient (CIDA, 2009).

CARICOM member countries generally have strong democratic traditions and the former British colonies that gained independence in the 1960s share similar government and legal structures. Although committed to democracy, their political and social institutions lack human and financial resources. Public administration needs strengthening in policy-making and regulation, financial transparency and accountability, and service delivery.

Caribbean governments generally respect human rights and most have ratified the major human rights instruments of the United Nations (UN). Freedom House ranks Caribbean countries as free with respect to political rights and civil liberties, but the scores vary across the region because some countries have heavy-handed police and security forces and others fail to protect vulnerable groups. Crime and violence are often drug-related and threaten the ability of some countries to maintain law, order and personal security. Most Caribbean countries continue to impose the death penalty. Other areas of human rights concern include: the rights of migrant workers; domestic and societal violence against women and children; and discrimination and violence based on race, ethnicity and sexual orientation.

The Caribbean Community and Common Market, established in 1973, is the region's longstanding initiative for economic and political union. CARICOM governments endorsed the creation of a CARICOM Single Market and Economy (CSME) in 2006,

advancing the region beyond a common market. However, despite such initiatives, governments hold firmly to their sovereignty: countries often compete in a limited regional market; and there have been significant regional trade disputes. Some political leaders have yet to fully endorse free movement of labour and not all countries are willing to fully share security information, support joint tourism initiatives, create a common currency (except for the Eastern Caribbean Currency Union), streamline laws and tax structures, and develop an open common market for goods and services.

With the exception of Guyana and Saint Lucia, the legal system of English-speaking Caribbean countries is based on Common Law. Dutch tradition influenced Guyana's system and French Civil Law shaped Saint Lucia's legal tradition. (The Dutch legal system has had a strong influence on Surinam.)

With the exception of Guyana and Barbados, the United Kingdom's Judicial Council of the Privy Council is the final court of appeal in the Commonwealth Caribbean². (The Caribbean Court of Justice [CCJ] is the final court of appeal in Guyana, Barbados and Belize.) Each country has a superior court, consisting of high court, court of appeal and supreme court, and an inferior court, consisting of magistrate's courts (resident magistrate's courts in Jamaica), coroner courts and other specialized courts. Inferior courts have an investigative and trial function in criminal matters; their jurisdiction on civil matters depends on the nature of the court. Specialized courts/tribunals may be inferior or superior. Some specialized courts found in the Caribbean are juvenile, family, divorce, administrative, drug, gun, revenue and industrial courts.

Countries of the Organization of Eastern Caribbean States³ (OECS) recognize the Eastern Caribbean Supreme Court (ECSC), which is comprised of a court of appeal and a high court. The court of appeal is itinerant, traveling to each member state where it hears appeals from the decisions of the high courts and magistrate's courts. The ECSC is composed of a Chief Justice, who is the Head of the Judiciary, three Justices of Appeal, 16 High Court Judges and two Masters, who are primarily responsible for procedural and interlocutory matters. Judges of the ECSC High Court are each assigned to, and reside in, the various member states.

2.2 CIDA's Justice Reform Experience in the Commonwealth Caribbean

Canada has a special relationship with the Caribbean based on longstanding historical, political, business, immigration, and personal links. Canada has provided more than \$2 billion in assistance to the Commonwealth Caribbean since 1963 (CIDA, 2009).

Over the last decade, CIDA funded two flagship programs in legal and judicial reform in the region: the Social Conflict and Legal Reform Project in Jamaica and the Judicial and

² 'Commonwealth Caribbean' refers to the independent English-speaking countries of the Caribbean region, namely Antigua and Barbuda, the Bahamas, Barbados, Commonwealth of Dominica, Grenada, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Belize and Guyana.

³ With a total population of about 650,000, the OECS has seven member states, namely Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. Anguilla and the British Virgin Islands are associate members of the OECS.

Legal Reform Project (JLR) in the OECS. The Agency funded other smaller, complementary initiatives through the Canada Fund for Local Initiatives, the Canada Caribbean Gender Program (the Gender Fund), the Canada Caribbean Co-operation Fund, and non-governmental organization (NGO) initiatives supported by CIDA's Partnerships with Canadians Branch. CIDA's projects have centred on juvenile justice, family law, law reform, integration of the OECS Magistracy and court rules.

CIDA is currently supporting a bilateral project with Jamaica, the Justice Undertakings for Social Transformation (JUST) Project, which is aligned with Jamaica's strategy for justice reform. JUST provides technical assistance and capacity development to justice sector institutions, for instance, Jamaica's Ministry of Justice, Office of the Director of Public Prosecutions and the Office of the Chief Parliamentary Counsel, and to civil society organizations.

CIDA is supporting Guyana's Justice Sector Reform Strategy (2007) with a two-year \$200,000 training program for judges and other personnel involved in Guyana's Family Court. This assistance complements a much larger program – Modernization of the Justice Administration System – which Guyana has financed through a US\$25-million loan from the Inter-American Development Bank (IDB).

At the request of the OECS Heads of Government, CIDA supported the ECSC with technical assistance for its plans to integrate the magistracy into the regional judiciary. The OECS member states have since signed an agreement to this end. CIDA and the CDB provided financial support to enable the ECSC to undertake a feasibility study to refurbish aging court infrastructure in the OECS sub-region. The ECSC is now seeking grant funding of about US\$260 million for new court facilities in the OECS and has approached CIDA and others for support.

2.3 CIDA's Caribbean Program

Canada's Strategy for the Americas (2007) has three objectives: prosperity, democratic governance and security. Canada plans to fulfill its vision for the Americas by "maintaining an integrated and sustained approach underpinned by strong engagement across the federal government" (Department of Foreign Affairs and International Trade [DFAIT], 2011).

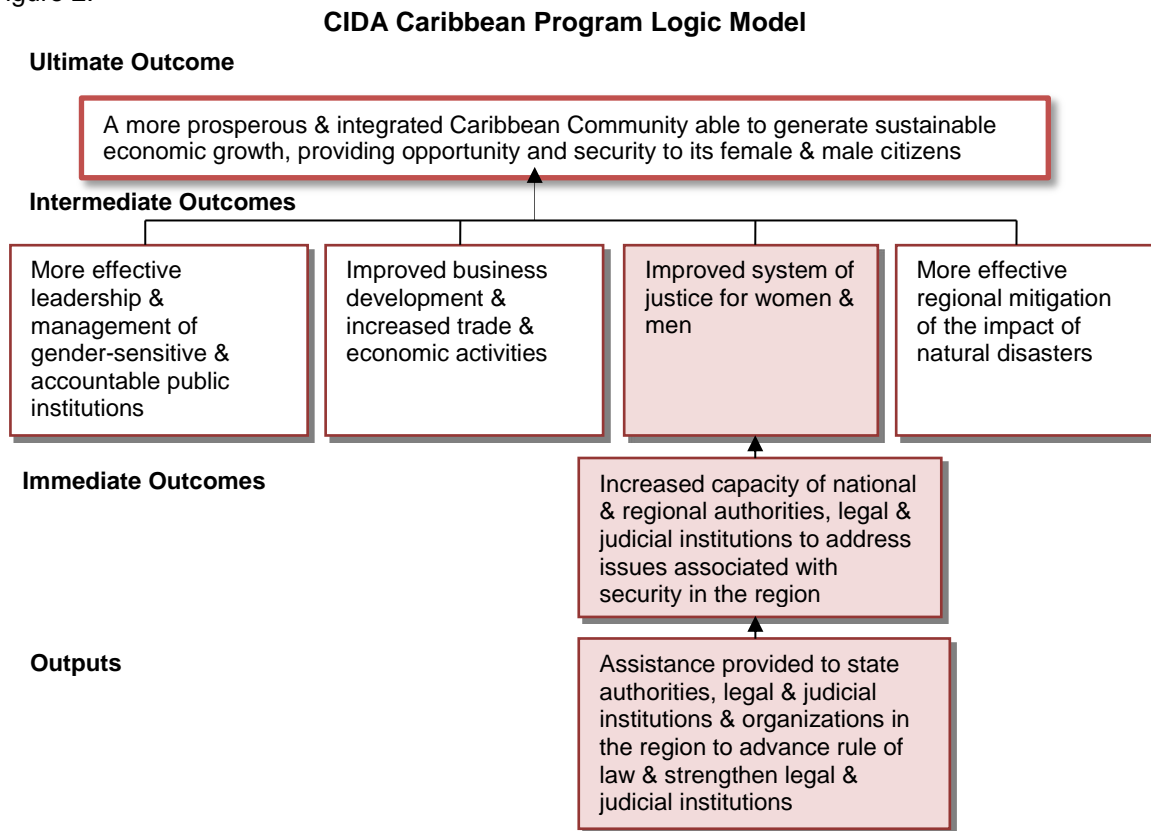
As part of its Strategy for the Americas, Canada treats CARICOM as a region of focus for development assistance. In July 2007, Canada's Prime Minister announced that Canada would allocate \$600 million in development assistance to CARICOM over a 10-year period (2007-2017). The Prime Minister also signalled Canada's intent to launch free trade negotiations between Canada and CARICOM.

CIDA's Caribbean Program is consistent with the objectives of Canada's Strategy for the Americas and aligned with the Agency's strategic outcome of poverty reduction. The objective of the Caribbean Program is *to contribute to a more prosperous and integrated CARICOM that is able to generate sustainable economic growth, providing opportunity and security to its female and male citizens* (CIDA, 2009). To achieve this over the next

10 years, the Program focuses on two interlinked, thematic priorities: sustainable economic growth and security. Justice reform is most closely linked to the security theme. Gender equality and the environment are integrated throughout both streams.

The Caribbean Program’s logical model (shown in part in Figure 2) underscores the centrality of justice reform within the Program and the causal relationship between justice reform and sustainable economic growth.

Figure 2:



Source: CIDA, 2009, Regional Development Programming Framework (RDPF) 2010-2015

The immediate beneficiaries in the justice sector stream include: public officials and the government ministries and departments they represent; legal and judicial professionals and administrators and their professional bodies; and NGOs working in the justice sector. The ultimate beneficiaries are CARICOM citizens, the women, men, children, youth and businesswomen and men who seek justice within the system and who benefit from a society where rule of law predominates.

CIDA’s Caribbean Program already responds to many of the private sector, trade-related capacity needs of CARICOM. Relevant projects include the \$15.7-million CARICOM Trade and Competitiveness Project, and the \$19.95-million Partnership for CARICOM Private Sector Development. Planning is well advanced on: the Private Sector Development and Competitiveness Program (Compete Caribbean) for \$20 million; the Program for Entrepreneurship and Business Incubation (\$20 million); and the Education

for Employment program (\$40 million). CIDA continues to support institutional strengthening of the OECS Secretariat (CIDA, 2009). Planning has also begun on regional programs dealing with leadership and the mitigation of natural disasters.

3. The Consultants' Assignment

3.1 Rationale

The main reason for the assignment was to provide CIDA with information that would assist the Agency in developing new regional programming in the justice sector. CIDA chose to commission a rapid assessment because a great deal of pertinent information was already available, and most stakeholders in the region advised against a prolonged study.

3.2 Terms of Reference

The objective of the assignment was to provide CIDA and its Caribbean partners with an analysis of the justice system in CARICOM, particularly common needs and priorities, and to prepare regional programming options for CIDA in keeping with its Caribbean Regional Development Program Framework (2010-2015) and the principles of aid effectiveness.

3.3 Approach and Methodology

The consultants followed an appreciative, participatory approach, building on the strengths of CARICOM's justice systems and on the advice of those most knowledgeable about them. The consultants took pains to ensure that their recommended programming options stressed endogenous solutions to common problems and the optimal use of Caribbean expertise and resources.

The consultants worked under the direction of CIDA's five-member Caribbean Justice Sector Team. They sought input from the team in preparing their work plan and they presented a summary of their preliminary findings to the team prior to drafting this report. The Canadian consultant met with key stakeholders in Canada and both the Canadian and lead regional consultant traveled to 11 countries in the Caribbean where they met with more than 150 stakeholders. They also participated in a regional stakeholder workshop in Trinidad, November 30 to December 1, 2011. The workshop provided an opportunity to validate the consultants' findings, identify gaps in their analysis, and ensure local ownership and broad consensus regarding action planning.

The consultants' primary methodologies were: literature and document review; interviews with key stakeholders; presentation of the preliminary findings to CIDA; and participation in a participatory workshop with Caribbean stakeholders, prior to drafting this report. The first two methodologies are described as follows.

Literature search and document review

The consultants reviewed a selection of literature pertinent to justice sector reform in the Caribbean as well as country, program and project documents, reports, evaluations and special studies relevant to the Caribbean justice sector. A list of the 80 documents reviewed appears in Appendix A.

Interviews with key stakeholders

Using semi-structured questionnaires, the consultants met with more than 150 stakeholders working in legal, judicial and justice sector reform in 11 Caribbean countries. Stakeholders included:

- Project/program managers and specialists at CIDA and Canada's Department of Foreign Affairs and International Trade (DFAIT);
- Project/program managers and specialists from development agencies involved in justice system reform in CARICOM;
- Judges and senior justice officials, including those of the CCJ and the ECSC;
- Senior officials from regional/sub-regional organizations, such as the CARICOM Secretariat and the OECS Secretariat;
- Experts from universities, think tanks and law firms involved in research and reform in the Caribbean; and
- Civil society organizations (CSOs), such as business and trade organizations, bar associations, women's organizations, alternative dispute resolution (ADR) service providers and human rights advocates.

A list of the people with whom the consultants consulted appears in Appendix B.

4. General Findings

4.1 Justice Reform and Economic Growth

Justice reform is about strengthening rule of law, which embodies the legal maxim that all citizens are equal under the law. When the judicial independence, property rights and efficient and effective court systems are included, rule of law can help foster sustainable economic growth, according to many economists (Kaufmann and Kraay, 2002; Trebilcock and Daniels, 2009; and La Porta *et al*, 1988). Although there is considerable debate as to whether rule of law is a necessary *precondition* for economic growth (see, for example "Order in the jungle", *The Economist*, March 13, 2008), with China and Russia often cited as contradictions, it stands to reason in most Western democratic societies that rule of law helps create stability and predictability, two important conditions for investment. It is generally accepted that few countries have sustained gains in growth without improving rule of law (Trebilcock and Daniels, 2009). Countries, such as Argentina, that have grown economically without strengthening rule of law have subsequently seen their economies deteriorate. Although few scholars now question the importance of judicial reform in relation to sustainable development, there is still much to be learned about the impact of judicial systems on economic performance (Messick, 1999). That this area of development is extremely complex may in part explain why it has

proven difficult to measure. Professor Matthew Stephenson of Harvard's Department of Government and Law School elaborates:

One reason the development community is fostering legal and judicial reform is the belief that, beyond their intrinsic worth, such reforms will help improve economic performance. This belief in the power of legal and judicial reform to spur economic development is supported by a growing body of research showing that economic development is strongly affected by the quality of institutions – including the quality of a nation's legal institutions. But while this work makes the case for reforming legal institutions on economic grounds, it tells little about which institutions to reform and how (Stephenson, n.d).

Regardless of the debate, strengthening rule of law and the ability to reduce and control crime through justice reform is critically important to CARICOM member states, according to all of the Caribbean stakeholders with whom the consultants met. Reform that strengthens rule of law and that bolsters confidence in the justice system is likely to contribute to a positive climate for investors and consumers alike. This was the predominant view throughout CARICOM, most particularly in those countries that rely on tourism and small business to create jobs. Many development agencies posit the view that crime brings with it substantial economic costs. A report by the UNODC and the World Bank found that crime in the English-speaking Caribbean drives away investment, both foreign and domestic, and consequently slows growth (World Bank, 2007). Crime increases the costs of doing business, diverting investment away from business expansion and productivity improvement. It leads to losses through theft, looting, arson, fraud and extortion. Other non-material losses include the immeasurable cost of employee morale, productivity and safety. The report estimates that if Caribbean countries were able to reduce crime levels to those similar to Costa Rica (with a homicide rate of 8.1/100,000), their rates of economic growth would increase notably. For example, Jamaica's GDP growth would be boosted by 5.4 percent annually and Guyana's economy would grow by an additional 1.7 points per year. These views appear to be shared by many development agencies, given the pattern of their assistance as described next.

4.2 External Support for Justice Reform in CARICOM

Appendix C outlines many of the past, present and future justice reform programs and projects in the Caribbean supported by development agencies and international financial institutions. The information shows considerable international support for justice and security-related reforms in the Caribbean over many years, with the IDB, European Union (EU), CIDA and USAID among the major contributors and, along with the UN, among the most consistent supporters over the long term. Much of this support has been in the area of juvenile justice, many agencies directing their resources at measures to curb domestic and gender-related violence in such countries as Jamaica.

The information on external assistance shows a recent trend toward increased support for security-related initiatives, such as those involving policing and drug- and gang-related crime, and diminished assistance for such matters as judicial education and strengthening

the courts and court administration systems. Juvenile justice is, however, the exception; it has had considerable donor support in the past and it appears that it will have continued support for the foreseeable future.

The information in Appendix C and the interviews conducted by the consultants also show that UN organizations, IDB and the CDB will target much of their immediate support on strengthening citizen security⁴, ensuring a rights-based approach and a focus on vulnerable groups.

Most stakeholders in the region praise CIDA for its consistent support for justice reform, according to interviews conducted by the consultants. As USAID, DFID and the EU concentrate on security matters, governments and development agencies alike expect CIDA to continue its longstanding assistance to judicial reforms of an institutional and organizational nature.

The consultants' interviews and the overview presented in Appendix C also suggest that development assistance in the Caribbean has often been donor-driven, somewhat *ad hoc* and in need of better coordination. The coordination of justice reform on a regional basis should, in the opinion of many Caribbean stakeholders, be led by an appropriate CARICOM institution.

4.3 Strengths and Opportunities

4.3.1 The justice sector

Although the justice sector in CARICOM faces serious challenges, it has many strengths. First, the court systems are, for the most part, based on English Common Law and the countries in the region are part of the Commonwealth group of nations who share a common language and common governance systems. This makes it easier to collaborate, share information and learn from each other in matters of justice reform. Second, the region is replete with talent. For example, judges from CARICOM have served on international courts and tribunals and many well-trained, competent people are prepared to assume the task of implementing justice reforms in critical areas of need across the region.

CIDA's regional stakeholder workshop in Port of Spain in late November 2011 verified this finding and underscored not only the diverse strengths of the people involved with the justice sector across the region, but also their commitment to collaborate in its enhancement. Third, although there are serious shortcomings, the foundations of the

⁴ Citizen security refers to the safety of citizens from violent and non-violent threats from state and non-state actors and is based on the understanding that governments retain the primary role for ensuring the survival, livelihood and dignity of their citizens (UNDP, 2011). Although the right of citizens to protection from crime or interpersonal or social violence is not expressly protected under the international human rights law, the right to such protection can be inferred from the obligation of the state to guarantee the security of the individual, as set forth in Article 3 of the Universal Declaration of Human Rights.

justice systems in CARICOM are strong. Judges are independent of the executive branch of their governments; their selection is transparent and largely merit-based; and corruption is largely absent. The independence of the judiciary and the quality of their judgements have earned the region high credibility internationally. For example, experts such as Professor Kate Malleson, one of the authors of *Selecting International Judges: Principles, Process and Politics*, has praised the CCJ's process of selecting independent, high-quality judges as an exemplary model (Mackenzie, Malleson and Martin, 2010)⁵.

4.3.2 Caribbean institutions and organizations

The CARICOM justice sector includes many vibrant institutions, organizations, and resources at the national level and some at the regional level. Although many of the national organizations offer the opportunity for South-South exchange, the consultants will next briefly describe the regional institutions that are best equipped to support justice reform throughout the region.

CCJ

As noted earlier, the CCJ, which is supported by a US\$100-million trust fund, serves CARICOM in its original jurisdiction in respect of the interpretation and application of the Treaty of Chaguaramas and its nine revised protocols. In this jurisdiction the CCJ has the powers to establish legally-binding norms for all member states with respect to the rights and obligations created by the CSME as they relate to the establishment of economic enterprises, the provision of professional services, the movement of capital and the acquisition of land for commercial purposes. Although only Guyana, Belize and Barbados have to date accepted the CCJ as their court of final appeal, it is expected that more will join in future⁶. Regardless, the CCJ is the only court that relates to all courts in the region; its judiciary and professional staff have comprehensive knowledge of the court systems throughout CARICOM; and it has earned the respect of CARICOM member states to play a leadership role on matters pertaining to the judiciary and court administration. (Evidence of this was palpable at the regional stakeholder workshop in Port of Spain.) Among the CCJ's contributions to justice reform are the following:

- Creation of the CCJ (Appellate Jurisdiction) Rules;
- Hosting a conference on the CSME and its legal implications;
- Hosting conferences of the Caribbean Association of Judicial Officers (CAJO); and
- Development and implementation of performance standards for the CCJ.

⁵ Judges and personnel of the CCJ are appointed by an independent service commission, the Regional Judicial and Legal Services Commission.

⁶ For example, the Prime Minister of Saint Kitts and Nevis has urged all OECS countries to take the necessary steps, including constitutional reform, to access the final appellate jurisdiction of the CCJ within a reasonable time. The OECS and Jamaica bar associations have endorsed the same. The new Prime Minister designate of Jamaica stated that her new Government in 2012 will collaborate with the opposition with a view to ensuring Jamaica's access to the appellate jurisdiction of the CCJ.

Complementing its adjudicative acumen, the CCJ has a team of highly qualified court administration professionals, considerable experience in public education and a sophisticated video-conferencing system linked to most CARICOM countries.

The CCJ has received development cooperation assistance since its inception, including €1.3-million from the European Union as part of the EU's 9th European Development Fund. The EU funds were largely aimed at developing the capacity of the Court and assisting the CCJ with its communications and public outreach.

ECSC

The ECSC, which was created following the passage of the *West Indies Act* in 1967, is a superior court of record for the OECS. Its mandate is to serve its member states by providing access to a system of justice that is accountable and independent and administered by officers in a prompt, fair, efficient and effective manner. The ECSC has unlimited jurisdiction in each member state to interpret and apply the laws of the various member states, decide cases of both civil and criminal matters and hear appeals. It has a court administration staff of about 25. The ECSC played a major role in justice reform and judicial education in the OECS. For example, it helped shape the Court of Appeal Rules and Supreme Court Civil Procedure Rules and it was instrumental in developing and disseminating a model family law, as well as a code of ethics for judges.

The ECSC's Judicial Education Institute (JEI), begun in 1997, played a seminal role in training OECS judiciary and court staff. The following are among its accomplishments:

- Implementing orientation and mentoring programs for new judges, masters and magistrates;
- Training court administrators and mediators;
- Sensitizing the OECS judiciary to domestic violence issues;
- Arranging judicial exchanges with other countries;
- Training judicial support staff of magistrate and high courts in customer-oriented service;
- Educating OECS judges in international commercial litigation;
- Training court administration staff in the use of Judicial Enforcement Management System (JEMS) software for case management; and
- Holding a symposium on Court Civil Procedure Rules in collaboration with the OECS Bar Association.

With funding from the CDB and CIDA, the ECSC is coordinating the Halls of Justice initiative, which to date has produced a feasibility study and concept designs for the construction of new and upgraded court facilities in OECS countries.

CARICOM Secretariat

The CARICOM Secretariat is the principal administrative organ of the Caribbean Community, which was established in 1973 with a mandate to, *inter alia*: improve standards of living and work; coordinate sustained economic development and convergence; expand trade and economic relations; enhance levels of international competitiveness; and enhance functional co-operation among its 15 member states. The

Secretariat's mission is *to provide dynamic leadership and service in partnership with Community Institutions and groups, toward the attainment of a viable, internationally competitive and sustainable Community, with improved quality of life for all* (www.caricom.org/ accessed December 15, 2011). Among its main functions are to conduct research, disseminate information to member states, respond to requests from member states for technical assistance on Community-related matters, assist Community organs in the development and implementation of proposals and programs, and mobilize resources from donor agencies.

Over the years, the CARICOM Secretariat has been involved in many development projects, several in the justice sector, particularly in relation to the harmonization of trade and other laws related to CARICOM treaties. The Office of the General Counsel/Legal Services has been involved in education initiatives such as hosting seminars on international treaty law and practice. It has a CARICOM Law website which provides information to member officials, Attorneys-at-Law, students and the general public regarding developments in Community law and jurisprudence. The Office has developed a protocol on contingent rights with respect to the dependents of CARICOM nationals exercising their right to free movement across member states.

The CARICOM Secretariat is active in supporting the Community with legislative drafting. It used to have a regional legislative drafting facility that produced model laws for the region and that helped member states adapt the model laws to their needs. Even though the facility is now defunct, the Office of the General Counsel/Legal Services continues to respond to some of the legislative drafting needs in the region (see Appendix C for details).

The Secretariat has spearheaded a number of initiatives to raise awareness in relation to pressing social issues common to CARICOM member states. For instance, it has organized conferences on youth, crime and violence and has managed regional projects to reduce the incidence of violence against women and girls. The Secretariat's communication and education initiatives are aided by a video-conferencing system linking all member states.

OECS Secretariat

The OECS Secretariat in Saint Lucia is the administrative arm of the OECS, which came into being in 1981 when seven Eastern Caribbean countries signed the Treaty of Basseterre agreeing to cooperate and promote unity. The mission of the OECS is *to be a Center of Excellence contributing to the sustainable development of OECS Member States by supporting their strategic insertion into the global economy while maximizing the benefits accruing from their collective space* (www.oecs.org/, accessed December 15, 2011). Among the objectives of the OECS is the provision to promote economic integration among member states and to assist them in realizing their obligations and responsibilities in their relationships with each other and with the international community using international law as their standard. The Secretariat has a legal unit whose role includes law reform and harmonization, coordination of judicial and legal reform in the OECS and assistance to member states with respect to international treaties,

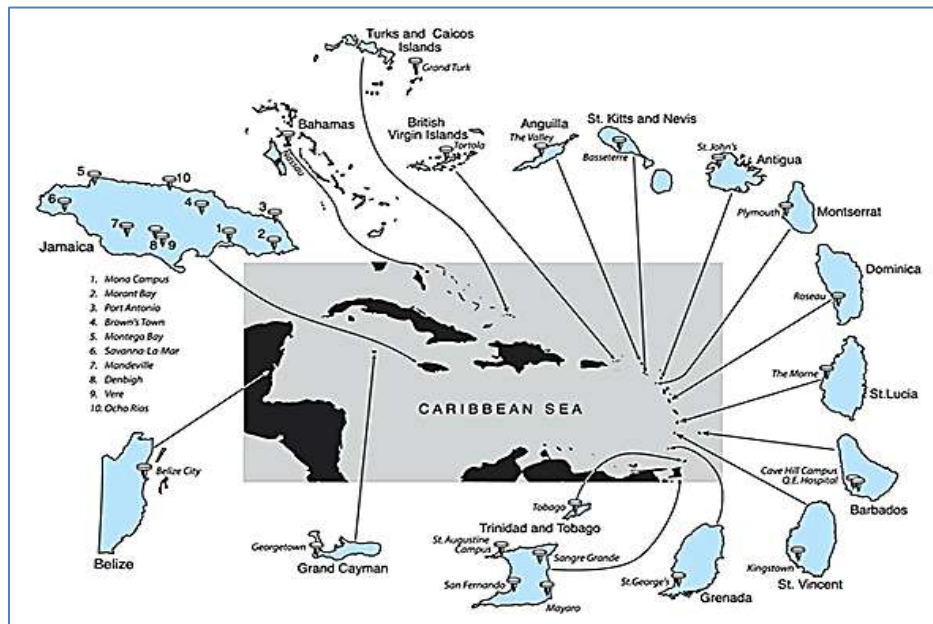
and the provision of routine legal services. The Secretariat and its legal unit have worked with the ECSC in developing model laws for the region such as those pertaining to family law, domestic violence and child justice. The Secretariat was a partner in the \$4.5 million CIDA-funded JLR Project (2002-2008) aimed at increasing the efficiency of the court system, improving court management and fostering fairness and adaptability of the legal system in OECS through such measures as legal aid, ADR, sentencing alternatives, counselling and public legal education. CIDA is currently supporting the Secretariat with the \$3.75-million Institutional Strengthening Project.

University of the West Indies

It has been said that there are two unifying regional institutions in CARICOM; one is the West Indies cricket team, and the other is the University of the West Indies (UWI). Begun in 1948 as a college of the University of London, UWI now serves all countries of the Commonwealth Caribbean from campuses in Jamaica, Barbados and Trinidad and Tobago. UWI offers undergraduate, master and doctoral programs in Humanities and Education, Pure and Applied Sciences, Science and Agriculture, Engineering, Law⁷, Medical Sciences and Social Sciences. With a combined student population of about 40,000 and with 6,600 graduates annually, UWI is the region's premier institution for higher learning. UWI's Open Campus operates in 16 countries and 30 sites throughout the Caribbean providing certificate and undergraduate programs through satellite communications as shown in Figure 3.

Figure 3:

UWI Open Campus Centres



UWI's Faculty of Law offers a Bachelor of Laws degree, which satisfies the requirements for entry into professional law schools of which there are three in CARICOM; one in

⁷ The University of Guyana, Georgetown, has a Faculty of Law which has UWI accreditation.

Trinidad and Tobago, another in Jamaica and a third in the Bahamas. The Council of Legal Education, a regional organization started over 30 years ago, operates each law school. Collectively, the law schools of the Commonwealth Caribbean graduate about 200 students each year. The Faculty of Law Campus in Barbados offers community legal aid services and the Norman Manley Law School in Jamaica runs a legal aid clinic that is open to the public.

The Faculty of Law, Cave Hill Campus, Barbados houses the Caribbean Law Institute Centre (CLIC), an associate institution of CARICOM, which functions as the research arm of the Faculty of Law. It offers legal research services, training and policy analysis to Commonwealth Caribbean governments. The Faculty of Law Library at UWI's campus in Barbados has developed CariLaw, an online database for subscribers. Established more than a decade ago initially with USAID assistance, CariLaw contains the full text of cases, now numbering about 40,000, received from all superior courts in the region, some dating back to the 1950s. The Law Library adds new cases to the database each year through its network of collection points in the region. The database is searchable by date, jurisdiction, subject, judge, citation number, title of case/legislation/treaty and by words or phrases. An annual subscription costs US\$300 or US\$600, depending on the location.

The Institute for Gender and Development Studies (IGDS), based at the Mona Campus in Jamaica with units on each of the other two UWI campuses, offers multidisciplinary and interdisciplinary studies in gender, as well as gender and development studies at undergraduate and graduate levels. Established as a centre in 1993, IGDS conducts research on women and gender-related issues in the Caribbean and provides outreach to, and empowerment of, national and regional institutions concerned with gender and development.

Dispute Resolution Foundation

Incorporated in 1994, the Jamaica-based Dispute Resolution Foundation (DRF) is one of the few regional NGOs in the justice sector. DRF's mandate is *to achieve accommodative and non-violent relationships between citizens, corporations and other organizations within a democratic and restorative justice framework, thereby profiting citizens, communities and the country, by strengthening and expanding the use of mediation and other alternative effective methods of preventing and resolving disputes in Jamaica and the region* (<http://www.disputeresolutionfoundation.com/> 2011). With its staff of about 20, DRF played a central role in the development of mediation services in the courts of Jamaica, as well as those of other CARICOM countries such as Guyana, the Bahamas, Trinidad and Tobago and various OECS member states. DRF has expertise in ADR and restorative justice and is linked to professional mediation organizations worldwide. It has worked with UWI campuses to establish ADR training courses, including one for law students. In 2006, DRF organized the third Caribbean Conference on Dispute Resolution in partnership with UWI's Mona School of Business.

4.3.3 Canadian institutions and organizations

In 2004, CIDA commissioned an assessment of Canadian capacity in international justice reform (CIDA, 2005). The consultants will now provide a few highlights of the report. According to CIDA's 2005 assessment, Canada has a great deal to offer developing and middle-income countries with regard to justice reform including a well-trained legal profession and judiciary, and a well-functioning legal system where respect for human rights, diversity and principles of equality and fairness are paramount. The 2005 assessment notes Canada's particular strengths in four areas outlined below.

Box 1:

Strengths of the Canadian Justice System

- 1. Articulation, Formulation and Drafting of Rules** (Partners include: constitutional and legislative bodies)
 - Law making - strengthening policy and drafting capacity
 - Law reform - constitutional, legislative and procedural aspects
 - Drafting laws related to substantive issues
 - Public participation in the legislative process
 - Development of regulatory frameworks
- 2. Application and Interpretation of Rules** (Partners include: the judiciary, courts, ministries of Justice/Attorney General, Ombudsman, Human Rights Commissions, agencies and tribunals, as well as law-enforcement bodies)
 - Court administration
 - Judicial education
 - Training for prosecutors, police and prisons
 - Training for public defence and public notaries
- 3. Legal Representation and Advice** (Partners include: law faculties, professional associations, legal aid clinics, community and women's groups)
 - Strengthening legal professional associations, including continuous legal education
 - Legal education and support to law faculties and training institutes.
- 4. Access to Justice and Public Awareness** (Partners include: government agencies, courts, civil society, professional associations and the media)
 - Legal aid programs and clinics
 - Public legal education
 - Alternative Dispute Resolution
 - Public interest litigation

Source: CIDA, 2005

The following outlines some of the Canadian government and not-for-profit institutions and organizations with recent Caribbean experience in justice reform.

Federal Department of Justice

The International Legal Programs Section (ILPS) of the Department of Justice provides technical legal assistance to countries interested in strengthening their legal systems. It also supports the department's international activities such as visits to Canada by foreign justice ministers and officials, visits abroad by the Minister and senior departmental officials, and Canadian participation in international events involving justice ministries. The ILPS, which has provided technical assistance to many African, Asian and eastern European countries, is the lead Canadian implementing organization in CIDA's bilateral JUST project in Jamaica. The ILPS has small international development group at its Ottawa office and all of its international activities are supported by external project funding, much of it from CIDA. One of ILPS's limitations is that it cannot procure services outside of Canada.

Office of the Commissioner for Federal Judicial Affairs (FJA)

FJA was created in 1978 under an Act of the Parliament of Canada to safeguard the independence of the judiciary and put federally appointed judges at arm's length from the Department of Justice. Its mandate extends to promoting better administration of justice and providing support for the federal judiciary. FJA's international program, which has three professional staff based in Ottawa, has coordinated the involvement of the Canadian judiciary in international technical cooperation initiatives since 1996, most notably in Ukraine, Russia, Ethiopia and China. FJA has organized programs for visiting delegations from other foreign countries including the OECS. At present, FJA, along with Canada's National Judicial Institute (NJI), is coordinating the involvement of federal and provincial judges and supporting court administration improvements in a \$4.3-million, 2-year CUSO-VSO project, the Judicial Systems Improvement for Commerce and Economy project, supported by CIDA's Partnerships for Canadians Branch. The project is active in Peru, Jamaica and Ghana and ends in 2012. The FJA's key strengths lie in its expertise in judicial independence, case management and court administration. Similar to the federal Department of Justice, FJA cannot undertake foreign procurement.

National Judicial Institute (NJI)

The Ottawa-based NJI is an independent, not-for-profit institution committed to building better justice through leadership in the education of judges in Canada and internationally. NJI provides education programs for federal, provincial and territorial judges that are judge-led and judging-focused in three main areas: substantive law, skills training and social context issues. NJI has experience in Russia, Ukraine, Serbia, Philippines, Pakistan, China, Guatemala, Ethiopia, Rwanda and Ghana. It is a partner in the CIDA-funded CUSO-VSO project aimed at strengthening court systems in Peru, Jamaica and Ghana. Within that project, NJI fielded an Ontario family court judge to advise Jamaica's Chief Justice on establishing child- and family-friendly courts. NJI has no foreign procurement restrictions.

Canadian Bar Association (CBA)

Since 1990, CBA has delivered legal and justice reform and capacity building projects in 29 countries primarily in Asia, Africa and Eastern Europe, often providing technical assistance and institutional capacity development in relation to legal aid services. On

behalf of the IDB, CBA assessed legal aid provisions in the the Bahamas, Belize, Guyana and Trinidad and Tobago and recommended ways to improve access to justice in each participating country. CBA was also instrumental in a comprehensive review of Jamaica's justice system through its support to the Jamaica Justice System Reform Task Force, an initiative of the Government of Jamaica led by the Ministry of Justice and the Public Sector Reform Unit of the Cabinet Office. The Task Force's report was published in 2007.

International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR)
Founded in 1991, the Vancouver-based ICCLR is a not-for-profit organization affiliated with the University of British Columbia, Simon Fraser University and the International Society for the Reform of Criminal Law, and with contributions from the Government of Canada and the province of British Columbia. The Centre's mission is to improve the quality of justice through reform of criminal law, policy, and practice. The Centre promotes democratic principles, rule of law and respect for human rights in criminal law and the administration of criminal justice, domestically, regionally and globally. The primary role of the Centre is to provide advice, information, research and proposals for policy development and legislation. Overseas, the Centre provides technical assistance to governments and other agencies and has experience as a Canadian executing agency (CEA) for CIDA bilateral projects in the justice sector in China. In 2004, ICCLR undertook a comprehensive study of justice- and security-sector programming needs, priorities and opportunities in the Caribbean for CIDA. The Centre's 155-page report was presented to CIDA's Caribbean Program in November 2004 following several months of study and consultations throughout the Caribbean and in Canada.

Commonwealth Judicial Education Institute (CJEI)

Founded in 1998 as an independent parallel official Commonwealth NGO, CJEI is housed at the Dalhousie Law School in Halifax, Nova Scotia, where it is incorporated as a charitable organization. Among the services CJEI provides are the following:

- Sharing information, human and fiscal resources inter-nationally and inter-regionally;
- Encouraging the establishment of new national and regional judicial education bodies in the Commonwealth;
- Developing programs and teaching tools;
- Delivering judicial education programs at the invitation of the Chief Justice in partnership with national judicial education bodies;
- Organizing study tours of justice systems and judicial education processes; and
- Conducting research to support judicial reform.

The CJEI funds most of its educational activities from grants and contributions from international organizations such as CIDA, Commonwealth Foundation, Commonwealth Secretariat, Ford Foundation, Inter-American Development Bank, Nuffield Foundation, USAID and the World Bank. The CJEI has a long history of involvement in the Caribbean having hosted many Caribbean jurists in its education programs and in study tours. The Right Honourable Sir Dennis Byron, President of the CCJ, is President of CJEI's governing committee.

Canadian Centre for International Studies and Cooperation (CECI)

Founded in 1958, CECI is a Montreal-based Canadian NGO with a history of development work in 19 countries. Its mission is to fight poverty and exclusion by strengthening the capacity of disadvantaged communities through peace, human rights and equity initiatives and skills transfer. CECI is one of the largest development organizations in Haiti and has been working there since 1971 with local partners concerned with humanitarian assistance, agricultural development, human rights and gender equality. CIDA has supported many of its projects.

The Caribbean diaspora working in the justice sector in Canada is an informal, often overlooked, Canadian resource that has potential to contribute to justice reform in the Caribbean. Some members of this group attended the conference of the Caribbean Association of Judicial Officers (CAJO) in the Bahamas in October 2011 where they encouraged the consultants to bring this informal network to CIDA's attention.

4.3.4 Model reforms and effective practices

The reform process in the Caribbean has produced some exemplary models and effective practices. Participants attending the stakeholder workshop in Trinidad in November gave numerous examples, among the following:

- CCJ as a model of judicial excellence with its judicial acumen, model administration and exemplary information and communication technology (ICT), which includes remote video-conferencing for case management;
- The Family Court of Trinidad's one-stop, multi-door approach to the delivery of legal and social services and its comprehensive monitoring and evaluation which has aided management to make many refinements to the design of the facility and the delivery of its services;
- The ECSC's mediation services;
- The ECSC's civil procedure rules which make for more effective case management and which allow courts to set performance standards;
- ECSC's website as a rich resource of free information for the public and for judges and lawyers⁸;
- Jamaica's ADR services, which are available through automatic court order in many high courts and resident magistrate's courts, including commercial courts;
- Jamaica's legal literacy work with the media as a means of increasing public knowledge of and access to the justice system;
- Trinidad and Tobago's mediation legislation, standards and code of ethics for mediators;
- Saint Vincent and the Grenadines' Serious Offences Court, which helps to expedite drug- and gun-related cases; and
- Jamaica's and Trinidad and Tobago's integration of court administration into the judiciary as a means of increasing efficiency and professionalism.

⁸ The website includes court timetables and court decisions.

The consultants have mapped many of the justice reform initiatives by country in order to provide a quick snapshot of progress across CARICOM. The reform matrix, which appears in Appendix D, is a work in progress and is not definitive.

Although the region has many strengths and has seen considerable progress, there are formidable challenges for justice reform programming in CARICOM. The report turns to this topic next.

4.4 Challenges

4.4.1 Regional programming

One of the greatest challenges for regional justice reform cooperation in CARICOM is that the English-speaking Caribbean is not a cohesive region. Although the OECS has a common currency and functions reasonably well as a sub-region, CARICOM as a whole is less integrated.

The justice sector is at various levels of development across CARICOM and member states have varying priorities. Some countries, such as those of the OECS, have court infrastructure as their priority; elsewhere it may be training and strengthening court administration. Some countries are already advanced in some areas of reform, such as ADR, where others are lagging, as shown in the justice reform matrix in Appendix D.

Even where countries share priorities, most reform interventions must be made at the national level because of jurisdictional and sovereignty concerns. No country wants another writing its laws or setting its agenda for reform. The manner in which each territory addresses its justice issues is a unique expression of its democracy and political will. It is in part for this reason that previous initiatives to standardize laws through the development of model legislation were not fully implemented. Development agencies that wish to work regionally must be prepared to plan regionally and implement nationally. They must also take pains to adapt their interventions to national contexts. This makes programming challenging and potentially expensive, given the high cost of travel within the region.

The consultants found relatively little appetite for region-wide justice reform related to commercial and trade matters. Much of the documentation reviewed for the assignment reinforced this finding. Fraser (2011), writing in *Trinidad and Tobago's Chamber of Industry and Commerce* magazine, explained it this way:

Colonial imposition, inadequate administrative structures, ignorance of each other, orientation towards the North, insularity—inclusive of the refusal of political leaders to cede a measure of national power for regional sovereignty—and doubtless other factors put an end to the West Indian Federation (1958-1962). Fifty years later, different but similar factors are posing serious threats to the advance of the Caribbean Community.

Many of those interviewed believe that many CARICOM member states lack the political will to implement economic integration measures at the national level even after they have committed to them. As well, countries have different views as to where their economic interests lie. For example, Jamaica is drawn to North American markets, Guyana and Surinam to Brazil, and Belize to Central America.

4.4.2 Rising violent crime

Many Caribbean countries, including some of the smallest island states, are struggling to cope with increased violent, gang-related crime. According to the United Nations Office on Drugs and Crime (UNODC) and the World Bank (2007), murder rates in the Caribbean – at 30 per 100,000 people annually – are higher than in any other region of the world and continue to rise. Reported assault rates are also significantly above the world average⁹. Magistrates have become targets; at least two magistrates, both women, have been shot in recent years in the OECS. Rising violent crime has inflicted severe costs – for victims and for national economies – and generated a climate of fear among citizens, according to UNODC and the World Bank (2007). Respondents ranked crime as the second most important problem after unemployment in four of the Caribbean countries sampled in a 2011 survey (UNDP, 2011). Combating crime is Belize's top domestic priority for which its government devotes six percent of its national budget (Government of Belize, Ministry of Foreign Affairs and Foreign Trade, 2011).

Rising violent crime and drug-related and white-collar crimes have the potential to overwhelm justice systems, according to several experts the consultants interviewed. If this trend continues without redress, many fear that any gains made in reforming criminal justice systems will be wiped out as the number of criminal cases before courts rises to unsustainable levels.

4.4.3 Complex gender, child and juvenile justice issues

In CARICOM, women enjoy relatively high levels of gender equality in many aspects of public life. For example, about 80 percent of UWI law graduates are women and well over 90 percent of all magistrates in the region are women. That women participate fully in public life and are now in many important decision-making positions in the Caribbean, tends to mask some of the more fundamental issues of gender equality, to the extent that many people deny the existence of gender-based discrimination. The situation is exacerbated by the fact that young men have become increasingly disaffected; many drop out of school at an early age, fall prey to gangs and become the perpetrators of violent crimes. Underlying this problem is a lack of services and support programmes for female-headed households, of which there are many particularly among the poor (Tafari-Ama and Campbell, 2011).

⁹ Although violent crime is on the rise, the aggregate rates of crime in the Caribbean have been declining and the level of victimization is lower than that of Central America and most countries in Latin America (UNDP, 2011).

The shift in attention to male youth presents a significant challenge for gender equality and for women's rights in the region. Although many Caribbean women fare well in public life, they tend to be victimized in private settings. The region experiences high levels of sexual and domestic violence, which are often under-reported and ineffectively dealt with by the justice system (United Nations Development Fund for Women [UNIFEM] and the Association of Caribbean Commissioners of Police [ACCP], 2009). For example, conviction rates for sexual offences are low in countries such as Saint Kitts and Nevis, Jamaica and Antigua (UNIFEM and ACCP, 2009). Although the reasons for this are many – weak forensic capability on the part of the police, among them – gender inequality in the justice system is at the root of the problem:

- Sexual offence laws often identify women and girls as victims and men and boys as perpetrators. Some countries, such as Saint Lucia, have adopted the CARICOM Secretariat's model sexual offence legislation, resulting in the introduction of gender-neutral sexual offences, but Jamaica and Belize have outmoded common law and statutory provisions that fail to include concepts of marital rape, rape by oral or anal penetration, and rape committed against men or boys.
- Rules pertaining to evidence in some countries impede justice to female victims of sex offences and violent crimes. The requirement for corroborating evidence has led to standards of proof that are difficult to fulfill unless the victim has been badly wounded. Police, prosecutors and juries frequently interpret as evidence of consent to sexual intercourse any act that is perceived to invite sexual interest, such as exchanging phone numbers (Chambers, 2009). The law in many Caribbean countries allows evidence of a woman's past sexual history.
- Preliminary hearings, wherein police or clerks often lead with evidence, frequently traumatize victims of sexual assault. Victims are often required to relive the details of a sexual assault on multiple occasions before multiple parties, sometimes over a period of several years.
- Jaundiced perceptions of male and female sexuality can contribute to jury prejudices in sexual offence cases. Jamaican studies conducted among jurors¹⁰ and the general population¹¹ show that a majority of persons feel that women often bring rape unto themselves through, for example, their choice of clothing and social lifestyle (Dale, 2007; Royes et al, 2005).

The legal system's capacity to protect women from domestic and intimate-partner violence varies greatly in the Caribbean. Laws in Jamaica and Trinidad have, for example, been updated and reflect many recommendations now incorporated in CARICOM and the OECS' model legislation on domestic violence. In many countries, such as those in the OECS, legal protection from gender-based violence leaves significant gaps in police powers and lags behind cultural norms. For example, protection orders may not be available, or may not apply to visiting relationships or to non-cohabiting partners.

¹⁰ Daye, *An Analysis of the Sex Distribution of Juries in Sexual Offence Cases in Jamaica to Determine if this Factor has any Effect on their Verdicts*, 2007.

¹¹ Royes et al, *Evaluation of the Impact of Gender-Based Interventions in Jamaica*, 2005.

CARICOM governments adopted the *Port of Spain Consensus* at the Third Economic Commission for Latin America and the Caribbean/Caribbean Development and Cooperation Committee Ministerial Conference on Women. It urges governments to engage in gender equality impact assessments of macroeconomic and budgetary policies in order to influence policy and help governments respond to the negative impact of globalization in the region. At the Commonwealth Finance Ministers meeting in Barbados in 2005, ministers recognized the critical importance of gender and agreed to report on progress made to implement gender-responsive budgets.

At the national level, a number of countries in the region have women's or gender policies but many obstacles remain. Trinidad and Tobago's gender policy has been stalled, owing to provisions relating to abortion and sexual orientation. Jamaica has similar issues.

Discriminatory attitudes prevail. As many as one in five Jamaican respondents accept some degree of domestic violence in intimate-partner relationships, according to a recent survey (Royes et al, 2005). Less than two-thirds of respondents felt that the police or courts should be involved in domestic violence and only a third felt that men who strike women should be imprisoned. Similar resistance to the use of courts in cases of domestic violence has been identified in studies in Saint Kitts and Nevis (Della-Guistina, 2007).

A more detailed analysis on gender equality in the Caribbean can be found in CIDA's *Caribbean Program Gender Equality Strategy* (2011).

Not only are there complex gender issues to deal with in any reform of the justice sector in CARICOM, there are also complex issues related to children and youth. Justice systems are deficient in their protection or fulfillment of the rights of children. For example, the limited availability of rehabilitative programmes may result in the courts resorting to probation and corrections orders, despite legislation that gives courts wider disposition powers¹². In Jamaica and in Antigua and Barbuda, the implementation and enforcement of new child care and protection laws lagged for years following their enactment. Changes in laws have sometimes been piecemeal and countries have often failed to take an holistic, rights-based approach in the interests of children¹³.

The consultants note few, if any, preventive programs targeting very young children and their parents, despite evidence that early intervention programs can reduce criminal behaviour and save considerably on costs (UNODC, 2010)¹⁴.

¹² This is the case in Jamaica, in which most of the disposition orders available are not routinely used for children. See the *Caribbean Basin Security Initiative Juvenile Justice Assessment*, USAID, 2011.

¹³ See, for example, UNICEF's comments on Saint Vincent's Child Justice System in the *Compilation Prepared by the Office of the High Commissioner for Human Rights on the Universal Periodic Review of St. Vincent and the Grenadines*, Human Rights Council, 2011.

¹⁴ For a deeper exploration of the cost-effectiveness of early childhood interventions, see Aos, S. et al (2004). *Benefits and Costs of Prevention and Early Intervention Programs for Youth*. Olympia, Washington: Washington State Institute for Public Policy; and Waller, I., and Sansfacon, D. (2000). *Investing Wisely in Crime Prevention: International Experiences*. Montreal: International Centre for the Prevention of Crime.

Male youth between the age of 14 and 24 are the predominant victims and perpetrators of crime in CARICOM, according to the World Bank (2007). High levels of unemployment and poverty, as well as delinquency and low levels of employability skills, in youth at risk undermining the rule of law as significant numbers of disaffected youth join gangs and perpetrate serious criminal offences (CARICOM Commission on Youth Development, 2010). Major shortcomings of the justice systems in dealing with juveniles include:

- Insufficient facilities for youth involved in crime, such that young people are often incarcerated with hardened adult criminals;
- Paucity of rehabilitative programs, particularly those providing psycho-social treatment, to reintegrate young offenders and lack of family-based interventions targeting youth at risk;
- The need to remove status offences that penalize truancy and similar behaviours that would not be considered criminal if committed by adults;
- The low age of criminal responsibility, and the treatment of children as adults under criminal laws; and
- The lawful use of corporal punishment for children who commit crimes¹⁵.

4.4.4 Public disillusionment with the justice system

Coupled with a rise in violent crime and equally troublesome for countries struggling to strengthen rule of law is what appears to be increasing public scepticism of governments' ability to deal effectively with crime and insecurity. Less than 30 percent of respondents to UNDP's 2011 survey of seven Caribbean countries considered police services capable of controlling crime and even fewer were satisfied with police treatment of domestic violence and other crimes that affect vulnerable groups (UNDP, 2011, p. 20). Only 34 percent believed the courts to be fair and the vast majority opined that the justice system yields to political pressure (UNDP, 2011, p. 21).

Waning public confidence in the justice system was the subject of a newspaper editors' forum in Jamaica in 2008 where the president of the Resident Magistrates' Association stated: "I think the delay in the system has eroded the public confidence tremendously"; to which the Director of Public Prosecutions (DPP) added: "It is important to maintain the public interest in the Parliament and the court. If we don't do that, we are going to entrench this question of jungle justice and this must not be allowed to happen" (*Daily Gleaner*, June 15, 2008).

That citizens are increasingly disillusioned with the justice system does not bode well for investment and economic growth in CARICOM. Lack of confidence in the justice system is the rally cry for justice reform.

¹⁵ For example, corporal punishment of children is lawful as a sentence for crime and as a disciplinary measure in prisons in Antigua and Barbuda, the Bahamas, Barbados, Commonwealth of Dominica, Grenada, Saint Kitts and Nevis, and Saint Vincent and the Grenadines (Global Initiative to End all Corporal Punishment of Children, 2011). Whipping up to 12 strokes is legal for sentences for crime in the Commonwealth of Dominica, Saint Kitts and Nevis (Global Initiative to End all Corporal Punishment of Children, 2005).

4.4.5 Economic vulnerabilities

As noted in section 2.1, many CARICOM countries are deeply in debt. In 2008-2009, for example, interest payments on central government debt accounted for 14 percent of GDP in Jamaica, 8.8 percent in Saint Kitts and Nevis, 4.2 percent in Saint Lucia, 3.7 percent in Saint Vincent and the Grenadines and 3.3 percent in Barbados (ECLAC, 2010, p. 22). In 2009, the debt/GDP ratio was 180 percent in St Kitts, 120 percent in Antigua, Grenada and Jamaica, 100 per cent in Barbados and the Commonwealth of Dominica, and 80 percent in Belize, St Lucia and St Vincent. Jamaica owes creditors US\$18.2 billion, which is more than its entire domestic economy produces in a year, a heavier load than Italy, Spain or Ireland, and almost as high as the debt of Greece.

The burden of debt repayment puts severe constraints on public spending. For example, the consultants learned that the Government of Barbados was behind some US\$ 90 million in scheduled payments to the Cave Hill Campus of UWI. Elsewhere, such as in OECS countries, governments have failed to invest in court facilities such that some courthouses and registry offices are in decrepit condition. In Jamaica, for many years more than half the government's budget has been dedicated to debt payments. This has forced Jamaica's government to scrimp on schools, hospitals and infrastructure. Thousands of Jamaican dropouts from overcrowded schools have become easy prey for drug and extortion gangs, according to the Caribbean Policy Research Institute (2011).

The fiscal situation in most CARICOM countries will pose a serious challenge to potentially expensive reforms such as legal aid services, forcing countries to make difficult choices and to seek innovative means to support such initiatives.

There may be ways for CARICOM countries to pay for some justice reforms without incurring more debt and without becoming over-reliant on foreign assistance. For example, in most courts in the region, registry fees for the provision of services are extremely low and need to be raised to reflect operational realities. If the proceeds from fees could be channeled into reforming the justice system, it would help to make the reforms sustainable. The same ought to be done with the fines paid to traffic courts and the cash and property confiscated from drug barons and other convicted offenders.

4.4.6 Dearth of strong, regional organizations capable of managing large regional justice reform programs

A major challenge facing development agencies interested in regional programming in CARICOM is the dearth of organizations with solid track records managing large regional programs. The CARICOM Secretariat and the OECS Secretariat have had considerable experience in this regard, but their implementation of development assistance programs has been uneven, according to many with whom the consultants met and a recent survey of aid effectiveness in the region¹⁶.

¹⁶ Van Houten (2011) noted CARICOM Secretariat's "poor management of implementation and excessive bureaucracy" as one of the key factors contributing to a major gap between the perceived importance of regional aid and its effective delivery (p. 7). "Donors expressed significant criticisms of the performance of

As noted in section 4.3.2, there are other regional organizations with considerable potential to manage development projects in the justice sector, but none has had experience managing programs valued at \$10 million or more. Civil society organizations with a mandate to support regional justice reform are few and none has managed large-scale programs.

4.4.7 Resistance to reform

Justice-sector reform in any country is politically sensitive and bound to encounter resistance. Inefficiencies often provide opportunities for corruption for some in positions of power. This is often the case in countries where performance standards are absent and accountability weak. It is naïve to assume that people would be highly motivated to reform the very system from which they benefit as Dandurand, Griffiths and Chin (2004) have noted.

Resistance to change, which sometimes manifests itself in inordinate delays, may stem from ignorance. If parliamentarians neither understand nor appreciate the significance of legislative changes or investments in judicial education, justice administration and crime prevention, they may be less likely to give them their vote of approval.

Although none of the above challenges is insurmountable on its own, when combined they contribute to the complexity of responding efficaciously to the justice reform priorities of the region, the subject of the next section.

5. Common Needs and Priorities

The consultants have distilled 10 needs and priorities from their discussions with the stakeholders with whom they met during their two missions in the Caribbean and from the participants who attended CIDA's regional stakeholder workshop in Trinidad in November 2011. The needs and priorities expressed at the workshop were largely consistent with what the consultants heard during their field visits. Although few stakeholders in the region singled out gender equality as a priority, it is a cross-cutting theme running through many areas of reform and is particularly relevant to increasing the access of vulnerable groups to justice. The scope of the consultants' assignment did not allow for widespread public input, but the perspectives of users are, wherever possible, incorporated in the needs and priorities below based mainly on the consultants' review of literature, including the public opinion survey carried out by the UNDP in 2011. Many of the reform issues are inextricably interlinked, making their order of priority inconsequential.

CARICOM and CCS [CARICOM Secretariat] and have serious reservations about the organisation as a development partner" (Van Houten, 2011, p. 24).

5.1 Case Backlogs

Case backlogs were, by far, the most frequently expressed impediment to justice in CARICOM. For those awaiting their day in court, justice delayed is justice denied. Backlogs affect criminal and civil cases alike, and are particularly severe in magistrate's courts, which handle about 95 percent of cases that come before the courts. Some magistrate's courts have hundreds of unresolved cases dating back five years or more. The consultants learned that a coroner's court in Jamaica had thousands of cases pending and that more than half of the 460,000 cases before Jamaica's courts in 2010 had been on the books for more than eight months (Robinson, C., *Jamaica Observer*, November 20, 2011). The consultants were told that one high court had yet to resolve a murder case dating back six years. Many judges in the region are months and sometimes years behind in issuing judgements¹⁷.

Some of the many inter-related reasons for backlogs include the following:

- Case management and related administrative systems are under-resourced, inadequately disciplined and inefficient;
- Few courts set rigorous performance standards for the expedition of cases;
- Magistrates and judges are too few in some countries;
- Rules of procedure in some courts need updating;
- Lawyers often ask for and are granted adjournments in court proceedings without compelling reason;
- A steep rise in violent crimes has overwhelmed some courts;
- Court information systems are largely manual: judges take notes by hand as do court clerks;
- Registries are inefficient and records management wanting, such that it can take an inordinately long time to produce court documents;
- Turnover of court administrative staff is rapid in some countries;
- Many court administrative staff have insufficient training and few have opportunities for ongoing professional development in the justice sector;
- Pre-trial hearings, which are common in many CARICOM countries, slow the pace of case resolution;
- Many cases that could be settled outside the courts are not because ADR and restorative justice programs are in an embryonic stage of development; and
- Many countries have no small claims courts, traffic courts or specialized courts that can help streamline case management.

Participants at the regional stakeholder workshop in Port of Spain in November pointed to a number of successful case management practices in the Caribbean that could be emulated in some countries. They called for the development of a model regional case management system with standards to which each country could aspire.

¹⁷ The consultants were told that a judge in one of the region's commercial courts had not issued a written decision in several years.

In rectifying the inordinate backlog of cases in many of the region's courts (and in dealing with most other needed reforms), it is important to have the support of the legal profession. The judiciary and the court administration can only be successful if the bar is engaged in parallel reform efforts aimed at ensuring that lawyers are fully knowledgeable and supportive of proposed changes. The Organization of Commonwealth Caribbean Bar Associations (OCCBA), which is charged with revitalizing national bar associations of the region, has a potential leadership role to play toward this end, working in partnership with national and sub-regional associations, namely the Barbados Bar Association, the Belize Bar Association, the Guyana Bar Association, the Jamaica Bar Association, the Trinidad and Tobago Bar Association, and the OECS Bar Association.

5.2 Policy and Political Will

Policy goes hand in hand with justice reform and in many Caribbean countries the necessary policy frameworks that underpin reforms are lacking. In a few cases, policy-making capacity is weak and in others fiscal constraints and competing interests impede the development of policy. As noted in section 4.2, some countries lack the political will to implement reforms even after legislating them.

Participants at the regional stakeholder workshop in Port of Spain were particularly adamant about the need for policy and political will and called for a regional body to coordinate the development of justice reform policies and to provide the impetus needed to unlock the political will for implementation.

Policy development ought not to be onerous because there are many good examples of reforms throughout the Caribbean. In some cases, however, there may be a need for research and the development of a range of policy options to assist countries in tailoring policies to their particular needs and circumstances. A gender lens should be applied to all policy options (and subsequent legislation where necessary) in order to assess the extent to which they are fair to both women and men and in conformity with international human rights instruments.

Generating political will requires work with heads of state and finance ministers that is politically sensitive. That work could include evaluations and case studies to make the economic case where reforms require increased public expenditure. It may also require parallel initiatives to gain the support of civil society and the understanding of citizens who stand to benefit most from the reforms.

5.3 Infrastructure

Throughout CARICOM, court infrastructure, particularly in magistrate's courts, is badly in need of upgrading. Courts in the OECS are particularly decrepit, some housed in rented facilities that cannot be retrofitted owing to the lease agreements¹⁸. Many courts in CARICOM are overcrowded and lack basic services, such as proper toilet facilities, air

¹⁸ The consultants witnessed first-hand the dire situation in Grenada where they saw the roof of the building housing one of Grenada's high courts collapse as they were interviewing in an adjoining building.

conditioning, waiting rooms for the public and private spaces where attorneys can meet their clients. Few courts are designed to accommodate children and young offenders, many of whom have to sit with accused offenders when awaiting court proceedings. Women's needs are often neglected, especially in cases of domestic violence and rape, where women are required to give testimony in court. With some notable exceptions, such as Port of Spain's Family Court, few courts are customer-oriented, child-friendly or gender-sensitive in design and service delivery.

Several courts the consultants visited had poor air conditioning, inadequate security provisions and insufficient fire and storm protection. Throughout the Caribbean, hurricanes have severely damaged many magistrate's courts in rural areas. Some registry offices visited were rat-infested and mold-ridden. Few countries have digital records of deeds, titles and related documents.

Most courts lack technological aids that would make them much more efficient. For example, analog recording equipment installed under previous CIDA projects in the OECS sub-region needs to be replaced with more efficient digital recording devices. Nowhere is procurement adequately coordinated so as to save through bulk purchases and multi-country maintenance agreements. The lack of an efficient means to record proceedings, especially in magistrate's courts where long-hand records are still the norm, is a major contributor to case backlogs. It also adds significantly to costs. For example, ECSC officials often have to fly with dozens of boxes of records when they hold court in the sub-region.

Closely linked to the information technology (IT) requirements is the need for ongoing training as new equipment is introduced. The consultants were told that court staff in many countries did not make full use of available technology for lack of training. For example, many courts use only a small portion of the capacity of the JEMS case management software available to them.

5.4 Integration

Many people with whom the consultants met gave high priority to integrating magistrate's courts into the judiciary so that the magistrates and the support staff of all branches of the judiciary fall under the common administrative purview of judicial and legal services commissions. In much of the Caribbean, the executive branch of government is responsible for magistrate's courts and their administration, whereas independent judicial and legal services commissions cater to high court judges and their support staff. This two-tiered system poses serious problems and breeds inequality. For example, most magistrates, the vast majority of whom are women, are employed on short-term contracts and lack the tenure and related benefits including security protection and pensions¹⁹. Furthermore, the independence of the magistracy is at risk when remuneration, supervision and operating budgets are controlled by line ministries. Since

¹⁹ This holds true in many parts of Jamaica, which has made significant advancements in magistracy integration.

magistrate's courts are the face of justice for the citizenry of CARICOM, their integration into the judiciary is critically important.

The present system also breeds inefficiencies. Court administration is a specialized field which demands skilled professionals. Professional support staff should handle most non-adjudicative court functions, such the management of human resources, law libraries, court records, statistics and physical plants. Placing these responsibilities under the supervision of an efficient court administrator frees up judicial officers to do what they do best – try cases and adjudicate disputes. However, too often judges and magistrates are burdened with administrative duties for lack of trained staff. Under the present arrangement, experienced court staff are often transferred to other departments with little notice. This results in serious capacity gaps and often causes lengthy delays in court proceedings. Professionalism is undermined when administrative staff have no clear career path within the court system as is now the case in the majority of CARICOM countries.

Integration of the courts, including support staff, is well advanced in Jamaica and Trinidad and Tobago. In 2011, OECS countries signed an agreement to fully integrate the magistracy. Work is underway in the OECS to prepare the necessary legislation at the national level to bring the agreement to fruition. The Halls of Justice project would greatly complement integration because it has the potential to create new court facilities that could bring all courts and related services, such as mediation and social support, under one roof and one common administration.

5.5 Law Reform and Legislative Drafting

Among the most recurrent refrains the consultants heard during their travels throughout CARICOM was the need for new legislation and more legislative drafters.

Many stakeholders in the region told the consultants that some national laws inadequately reflected social and commercial realities, particularly laws pertaining to labour, investment, bankruptcy, insolvency, and social benefits in relation to the flow of people, goods and services within CARICOM. Other areas of law where reform has been lagging relate to human rights, sexual and domestic violence, and white-collar and cyber-related crimes. Legislation is needed in some countries in order to:

- Eliminate preliminary enquires in magistrate's courts so as to reduce the time it takes to determine whether a matter falls under the jurisdiction of the magistrate or the high court judge;
- Enable those in need to avail themselves of government-funded legal aid services;
- Allow bar associations to levy fees as a condition of membership; and
- Revise evidence acts so that witnesses in criminal cases can testify from remote locations.

Although law making is a sovereign concern – usually the work of national law commissions – there are many areas where it makes sense for countries to collaborate regionally for greater efficiency. This has been done with reasonable success through the

CARICOM Secretariat and the OECS Secretariat, but more collaboration is needed, given that most countries are hobbled by a severe lack of legislative draftspersons. In many Caribbean countries the shortage is chronic. For that matter, legislative drafting specialists are in great demand and in short supply globally. The work is demanding and cannot be entirely centralized regionally because new laws need to be consistent with national constitutions.

Many stakeholders spoke of backlogs in the drafting queue, many laws having been more than five years in the making. Although in high demand, UWI's two-year, post-graduate legislative drafting program represents a significant disincentive for many people in the region who would need to leave their home country and live in Barbados to complete the program. Countries have been importing specialists to compensate for the lack of trained draftspersons in the region. However, they have had difficulty sustaining drafting initiatives when the foreign specialists leave. Past efforts on the part of development agencies to close the gap have been marginally successful. What was needed to strengthen local capacity, according to many stakeholders, was a practical, online course targeted at mid-level staff who may not necessarily be law graduates. This, coupled with some expert mentoring and coaching, could go a long way toward meeting the needs of each country.

As noted earlier, updating laws is no guarantee that they will be enacted and enforced. Parliamentarians need to understand and debate draft laws before voting on their enactment. Many politicians, including those in opposition, could benefit from structured, gender-specific training that would help them better understand and analyze the bills before parliament and the steps required to have them enacted. This need could be met in part by the Assembly of Commonwealth Caribbean Parliamentarians (ACCP), which has met only three times since its inception in 1964. If resuscitated, the ACCP could avail itself of the region's distance education infrastructure and fulfill the vision set forth in the Rosehall Declaration to strengthen the ACCP's role in the enhancement of regional integration²⁰.

An often overlooked aspect of law reform is that national governments must inform the public of changes in legislation so that citizens can understand their rights, obligations and responsibilities. Without public engagement, law reform is likely to have limited impact.

5.6 Regional Information Sharing and Knowledge Management

As noted earlier, some information sharing and knowledge management in the justice sector occurs on a regional and sub-regional basis, but these are far from optimal. Ironically, information on reform initiatives in the wider Commonwealth is often more accessible for some CARICOM countries than data on justice reform in neighbouring countries.

²⁰ Rosehall Declaration on regional governance adopted by the CARICOM Summit in July 2003 in Montego Bay, Jamaica.

Although this issue came up frequently during the consultants' conversations in the region, it was voiced most strongly at the regional stakeholders' workshop in Trinidad. Workshop participants said this was a critical need that could be met without great cost, given the region's robust IT infrastructure. They called for more networking and exchanges of information and effective practices from within the region. They said that a CARICOM institution with a mandate to support justice reform ought to play the lead role in this regard. Several thought that it would be helpful to document justice reform in the region from a historical perspective.

Many thought that a common website portal for knowledge generation and information exchange on justice reform would be helpful. Content could include, for example:

- History of reform initiatives, case studies of model reforms and contact information;
- Sources of justice reform development assistance and funding criteria;
- Descriptions of effective practices in case management and efficient court administration;
- Effective practices in Saint Lucia's criminal courts and in Trinidad's Family Court;
- Lessons from the experience of specialized courts that handle industrial disputes such as the Trinidad Industrial Court and the commercial courts of Jamaica and the British Virgin Islands;
- Model laws and reform policies;
- Useful tools for planning public information campaigns;
- Conference papers and related knowledge on justice reform measures in CARICOM;
- Evaluations and related studies from the region and elsewhere;
- Successful measures to increase access to justice for vulnerable groups;
- Experiences integrating gender equality in reform initiatives;
- Listings of experts in the region in particular areas of reform;
- Listings of NGO resources;
- Listings of upcoming learning events and opportunities for professional development; and
- Links to useful resources from outside the region.

Some stakeholders suggested that all donor-assisted justice reform projects in the region ought to be required to share lessons and effective practices throughout the region. Although this makes good sense, the consultants suggest a coordinated approach through a regional agency, such as the CCJ or CARICOM Secretariat, so that member countries would have a single, common source capable of meeting most of their information needs.

5.7 Access to Case Law and Treaty Materials

Access to case law is an issue of concern to many in the justice sector and is closely related to the previous issue. Judges and magistrates have inadequate access to decided cases and other written materials that could assist the resolution of their cases, according to many with whom the consultants met. Magistrates, in particular, are hampered by lack

of access to case law. Many told the consultants that despite continuous efforts on their part to secure small budgets for reference materials they were repeatedly turned down by those holding the purse strings.

Some useful sources have escaped the attention of judges and magistrates for lack of adequate promotion. For instance, the consultants were surprised to learn how few people they met knew about or used CariLaw, the searchable online subscription database of more than 40,000 full-text cases offered by the Faculty of Law Library at UWI's campus in Barbados.

With the increasing number of trade-related treaties affecting the region, it is important for litigants, legal drafters, the judiciary, prosecutors and others to have ready access to treaty law and the cases based on treaty law, particularly those that deal with the relationship between international treaties and domestic law. CARICOM Secretariat's Office of General Counsel has begun collecting treaties but more work is needed to develop a streamlined, automated registry accessible to all.

5.8 Performance Standards, Performance Measurement and Evaluation

The CARICOM justice sector lacks a culture of performance and accountability. During their travels in the region, the consultants often heard that performance standards, accountability and transparency were weak in the justice sector. The consultants noted, for example, the absence of standards for case management in several countries and the difficulty many court administrators faced obtaining timely information on the status of cases. Although the CCJ and ECSC have judicial codes of conduct, few other countries have the same and devote little attention to standardization across the region²¹. Without some degree of standardization, it is difficult to compare performance from one country to another.

Most countries have no formal mechanisms to assess the judiciary's performance. National bar associations have, for the most part, been remiss in setting professional standards for their members. Many countries have yet to enact legislation and to establish rules for disciplining lawyers and attorneys²². With some exceptions, relatively little attention has been paid to public education and engagement, which is likely one of the reasons why many people in CARICOM are disillusioned with the justice system (UNDP, 2011).

The issue of performance standards was brought to the fore during the regional stakeholders' workshop in Port of Spain. Participants pointed to Trinidad's Family Court as the gold standard for monitoring and evaluation, noting that it served the purposes of learning, change and ongoing improvement. Few courts visited elsewhere have anywhere near the same commitment to rigorous self-analysis and improvement. Where monitoring

²¹ Saint Vincent and the Grenadines' *Code for Prosecutors* and Saint Lucia's *Prosecution Witness Charter* 2011 are examples of national codes in use.

²² In 2009, the OECS Bar Association called for sub-regional governments to pass laws to regulate and discipline lawyers, but to date not all OECS countries have complied.

and evaluation exist, they are often tied to donor-funded projects and serve the purpose of accountability and compliance. The consultants concluded that the key to the Family Court's success in Trinidad was that it had the commitment from senior management and well-trained staff who were skilled at inculcating evaluative thinking into almost every process connected with the court's operation.

Performance and accountability are delicate issues that require leadership from representative bodies. The CCJ and the ECSC are the most appropriate organizations to provide that leadership for judges and magistrates; CAJO is perhaps best positioned to represent court administrators within the region; and the national and regional/sub-regional bar associations are best placed to represent lawyers on matters pertaining to performance and accountability. For efficiency, performance standards ought to be developed at the regional level and refined by each country.

CARICOM is not well advanced regarding the involvement of civil society in monitoring the performance of the courts and other components of the justice system. Although representative bodies need to take a leadership role, more room could be made for civil society as has been done in Ukraine, for example, where local NGOs monitor the courts. Women's organizations, child advocate groups and business groups could, for example, play a complementary role. Appropriate civil society engagement could help restore public trust in the justice system. The method of achieving public input will likely differ from state to state, taking into account the nature of the relationships in each state and the varied societal interactions which are unique to each country.

The adage that one cannot manage what one cannot measure rings true. Good court statistics are critically important to the development and maintenance of judicial and court performance standards. The consultants surmise that court statistical units, where they exist, are in need of strengthening. Basic information related to the status of cases is often missing or time-consuming to compile. The consultants were told that in most CARICOM countries court statistics and related data are not sex-disaggregated, which makes gender analysis impossible. Few courts have permanent statisticians. Throughout CARICOM, judges, magistrates, statisticians, IT staff, court registrars and administrators need to collectively determine their statistical requirements, as well as the systems needed to generate accurate and timely information. The CCJ is in a good position to lead this effort because it has an exemplary system in place and it is closely linked with the ECSC, which has made good progress in collecting and utilizing statistics within its jurisdiction.

5.9 Access to Justice

Issues related to access to justice have been documented in many reports in recent years. For example, the ICCLR study conducted for CIDA in 2004 noted the following:

- Weak implementation of laws designed to protect vulnerable groups, such as women, children and minorities;
- Courts lacking in customer-oriented service where citizens are treated with courtesy and respect;

- Courts insensitive to the needs of women, youth and children;
- Limited hours of operation of the courts (coupled with massive backlogs and inordinate delays);
- Woefully inadequate legal aid;
- Inadequate witness protection;
- Inadequate mediation and conflict resolution;
- Few alternatives to incarceration – a dearth of alternative sentencing, restorative justice and probation programs;
- Paucity of rehabilitation programs for young offenders;
- Para-military orientation of police;
- Police corruption;
- Lack of public education about the justice system and the rights of citizens; and
- Limited engagement of civil society organizations in the justice system and its reform.

Although close to a decade has passed since the ICCLR study, the consultants learned that many of the same problems persist in CARICOM today. Legal aid is still unavailable in most countries except for cases involving murder and for the illiterate accused of serious crimes. This means that the vast majority of people represent themselves in court. This puts rape victims, children and youth at great disadvantage. Legal aid, where it exists, is often under-staffed and poorly-funded²³. Many individuals and most small businesses cannot afford litigation and so are poorly served by the justice system. Mediation as an alternative to litigation is often unavailable or unacceptable to the parties involved²⁴. Owing to backlogs, serious criminal cases involving young offenders are sometimes remanded for 2-3 years or more and those on remand do not qualify for rehabilitation programs while incarcerated²⁵.

Much more work is needed in CARICOM to remove barriers of class, race, gender, language, religion and geography. The success of any reform measures depends on the extent to which the region's justice systems become more accessible to poor and excluded members of society.

5.10 Professional Development

In most professions, continuing education and ongoing training are essential in order to keep pace with change. This rings true for judges and magistrates as well as for court administrators, prosecutors and attorneys and others within the justice system. The consultants learned that professional development opportunities in CARICOM's justice sector are limited. During the consultants' regional consultations, judges and magistrates spoke of the difficulties they faced – lack of time and financial resources among them – to avail themselves of educational opportunities designed to keep them abreast of changes

²³ For instance, the consultants were told that there are less than half a dozen lawyers providing legal aid in Barbados for the country's almost 300,000 inhabitants and only a handful of lawyers serving the needy on a *pro bono* basis.

²⁴ Most people are unfamiliar with mediation and want their day in court.

²⁵ The consultants learned that half of Barbados' 1,000 prisoner population is on remand.

in law and adjudication. Magistrates, many of whom have less formal training than judges, have fewer opportunities for professional development than judges.

Some of the judicial education needs expressed to the consultants during their field missions were:

- Updating on specialized criminal and civil law, including laws on banking/credit, investment, contingent rights, intellectual property, taxation, labour, immigration, insolvency, evidence, money laundering and white-collar and cyber crime;
- Implementing performance standards and codes of ethics;
- Updating and implementing rules of court;
- Developing more efficient case management and court administrative practices;
- Integrating gender analysis in adjudication;
- Writing judgments; and
- Using IT to increase efficiency.

Learning opportunities for judges and magistrates ought to include national and regional education programs, exchanges and mentoring, special overseas programs such as those offered by the CJEI in Halifax, and much more extensive use of computer-based learning and video-conferencing. Wherever possible, education programs should take advantage of the region's judicial education bodies such as the Judicial Education Institute of the OECS Supreme Court, the Justice Training Institute of Jamaica and the Judicial Education Institute of Trinidad and Tobago. Programs should also utilize, wherever possible, the resources of the CCJ and ECSC, UWI Faculty of Law, UWI's Open Campus System, the Justice Training Institute of Jamaica and the Caribbean Knowledge and Learning Network.

6. Lessons

It is important for those implementing justice reform programs to learn from past experience because this area of development cooperation is particularly challenging. The consultants noted many lessons during their conversations with stakeholders in the region and in Canada, and from their review of literature. What follows is a distillation of some of the most pertinent lessons, but with a cautionary note that not all may apply in every circumstance. Indeed, that is perhaps the first lesson: no one size fits all when it comes to reforming the complex, interlinked systems of the CARICOM justice sector.

1. ***An approach that is comprehensive, holistic and iterative is often the most successful in achieving sustainable results.*** The approach needs to be attentive to the multi-layered programming environment, heedful of the complex relationships among the multiple actors in the justice system, and responsive to needs as they evolve. Attentiveness to organizational and institutional environmental factors, particularly those of a political nature, is essential. The complexity of regional programming calls for adaptive approaches and ongoing performance measurement and evaluation. Results are not easily predicted and unexpected results, both positive and negative,

are bound to occur. Success usually entails experimentation, critical reflection and frequent course corrections²⁶.

Programming that isolates one or two aspects of the justice system is unlikely to succeed owing to the inter-connectedness of the system's many components. For example, strengthening the prosecution office will likely send more criminal cases to the courts which would increase case backlogs. Getting rid of the backlogs in magistrate's courts through more efficient case management, but without introducing ADR and other reforms, could shift the backlogs to the high courts. Witness protection is another area with symbiotic relationships within the justice system and this is key to the successful removal of case backlogs. Criminal cases are often prolonged in the absence of witness protection, because witnesses are reluctant to give evidence in court. Developing model laws will do little good if legislative drafting capacity is weak at the national level. Improving legislative drafting capacity without engaging parliamentarians and the public is likely to have limited impact.

- 2. *Leaders from the region must drive justice reform programming, and reform initiatives should be anchored in appropriate regional institutions.*** The manner in which justice reform assistance is delivered is as important as the type of assistance offered (Dandurand Griffiths and Chin, 2004)²⁷. Local ownership in any reform initiative is critical and particularly important when the initiative is rolled out on a regional basis. Where leadership from the region takes ownership, greater commitment to implementing reforms is often experienced. Where credible and legitimate leaders are chosen and where institutional incentives for undertaking reform are provided, the efficacy of justice reform assistance is often greatly enhanced (UN, 2011).

When the consultants asked stakeholders in the region what CIDA should *not* do, the most common response, next to “no more studies”, was that it should not lead with a Canadian-based organization and that it should not flood the region with Canadian technical assistance. Stakeholders were resolute in their belief that the region has most of the expertise and technical know-how needed to implement justice reforms and that leadership from the Caribbean was the best way to drive the reform process forward. This does not mean that they wished to exclude outsiders, but rather that any foreign technical assistance must be based on a partnership relationship that features a common vision, equality, mutual respect and strong personal relationships. It also means that foreign funding should ideally flow through institutions based in the region.

- 3. *Change management interventions and public engagement go hand in hand with successful justice reform.*** Most successful justice reform involves institutional and organizational change, which is often time-consuming and trying. Integrating the

²⁶ An iterative approach featuring ongoing evaluation is the essence of developmental evaluation as described by Michael Patton (2011) in *Developmental Evaluation. Applying Complexity Concepts to Enhance Innovation and Use*. New York: The Guildford Press.

magistracy with the judiciary, for example, has significant implications for line ministries, national budget allocations, administrative arrangements and so on. Shifts in power and authority often meet with resistance. The lessons from past development experience point to the need for change management expertise and interventions that can help facilitate organizational and institutional change with minimal conflict²⁸. Change management, which entails organizational systems analysis, mentoring, coaching and communication, helps to get beyond the limitations of technical assistance focused on training. Training alone rarely produces appreciable results²⁹. Experts who fly in, deliver training, and then fly out, do little to build local capacity.

The sensitive nature of justice reform requires broad-based public support to reinforce the political will to act. For this reason, communication and public engagement ought to be an integral component of any strategy for change. The most appropriate mix of knowledge and skills for such work is unlikely to be found in public relations and communications specialists, but rather in individuals with backgrounds in development communication.

4. ***Successful justice reform requires long timelines and progress may be uneven from one country to another within a region.*** Many of the justice reform priorities of CARICOM countries require changes in systems, procedures, legislation, organizational cultures and the attitudes of both the users and the providers of justice services. Such change is not amenable to short-term development assistance. Justice reform must be viewed as a process requiring a long-term perspective measured in decades rather than months or years³⁰.

Not all countries in CARICOM will reform at the same pace, owing to significant differences in capacities, past experience and political will. Demonstration projects and case studies can provide early, visible successes that have the potential to increase the momentum for widespread reform.

5. ***Achieving progress in relation to gender equality requires persistence and innovation.*** Evaluations often show poor performance in relation to gender equality, many projects failing to get beyond women and men's participation in project activities. As with monitoring and evaluation, justice reform initiatives need to allocate adequate financial and human resources to gender equality and make gender

²⁸ The World Bank and UNDP are strong proponents of this lesson in relation to public sector governance initiatives. See, for example, Otoo, S. et al. (2009). *The Capacity Development Results Framework. A strategic and results-oriented approach to capacity development*. Washington DC: World Bank Institute; and UNDP (2006). *Institutional Reform and Change Management: Managing Change in Public Sector Organizations. A UNDP Capacity Development Resource*. New York: UNDP, Capacity Development Group, Bureau of Development Policy.

²⁹ See any number of CIDA evaluations of governance programs, including Stiles, M. (2008). *An Assessment of CIDA's Contribution to Legal and Judicial Reform in China*. Gatineau: China Program, Canadian International Development Agency.

³⁰ See, for example, Biebesheimer, C and Payne, J. (2001). *IDB Experience in Justice Reform*, Washington, D.C.: International Development Bank.

equality a priority from the outset. They need a gender equality strategy that is well-grounded in the region, culturally-nuanced and applied with creativity, given the challenges associated with this issue in CARICOM, as outlined in section 4.4. Although male under-achievement and male-dominated criminal activity are serious regional issues, programs that help young men to become productive citizens need to incorporate gender equality and women's rights. As noted earlier, much could be done to assist governments and the courts of the region to collect and analyze sex-disaggregated data. A rights-based approach can also be helpful, wherein the project develops both the individual capacities to claim rights as well as the institutional capacities to respond to those claims.

- 6. *Ongoing monitoring and evaluation are essential for the success of justice reform programs.*** Justice reform programs need rigorous, ongoing monitoring and evaluation to enhance learning, management decision making and the mutual accountability of implementing partners. This is particularly pertinent to regional programming. Monitoring and evaluation systems need to be developed at the outset, given the difficulty of measuring results across many countries, as reported in the 2003-2004 evaluation of CIDA's Caribbean program (CIDA, 2004). Sufficient resources must be allocated within program budgets to establish baselines at the outset, gather useful data on a regular basis and evaluate strategically. Deep, periodic reflection is needed, wherein the key implementing staff assess progress in relation to the expected outcomes using all available evidence and adjust their strategies accordingly. As noted earlier, working across the region in complex justice systems calls for the participation of a performance advisor or developmental evaluator as member of the implementation team.

7. Conclusions and Programming Options

7.1 Conclusions

This report has provided readers with an update of the state of justice reform in CARICOM and has identified needs, priorities, resources and relevant lessons from which to build a regional program. It has noted 10 impediments to the smooth functioning of national justice systems whose removal would greatly strengthen those systems without compromising national sovereignties. The report has also pointed out many of the challenges inherent in undertaking a regional program of justice reform, in particular, the political nature of the reform process, the social and cultural differences among the countries and the interconnectedness of justice systems. Although the justice system in most countries is severely strained, the report has highlighted the many talented and committed people working within the justice system and the model reforms already underway. The consultants' main conclusion is that despite the many challenges, there is sufficient demand and talent in the region to mount a program that is both transformational and sustainable.

In view of their analysis, the consultants recommend five options for CIDA's consideration. The options assume that CIDA will follow a directive approach in

developing a regional justice reform program. However, any component or combination of components could be used to develop responsive initiatives. The options are focused in areas designed to complement the programs of other development agencies in the region, most of which are centred on human security and juvenile justice. The consultants have also designed the options to build on the mandates and strengths of the proposed regional implementing organizations.

7.2 Programming Options

Option #1: Continuing Education for Judges and Magistrates, Integration of the Magistracy and Strengthening Case Management and Court Administration

Problématique	Throughout the Caribbean, judges and magistrates in particular have limited opportunities for continuing education. Magistrates – the face of justice for most people since they deal with about 95 percent of the cases that come before the courts – are under the control of the executive branch of government in most CARICOM countries (Trinidad and Tobago excepted). This is not only a threat to judicial independence, but it also results in inequality and serious impediments to the efficiency and effectiveness of the justice system. Inefficiencies in the administration of the courts, particularly at the magisterial level, contribute to case backlogs and impede justice. For example, accused offenders are often held in remand for 3-5 years. Few courts, other than the CCJ, have digital recording and modern transcription technology. Strengthening the knowledge and skills of judges and magistrates, helping to make magistrate’s courts more independent of the executive and improving case management and administration systems will improve the justice system significantly.
Outcomes	<p><i>Intermediate</i></p> <ol style="list-style-type: none"> 1. Reduced case backlogs and speedier judgments in civil (including commercial) and criminal cases in participating countries 2. Improved case management and court administrative practices in participating countries 3. Strengthened integration of magistrates and support staff into the judiciary <p><i>Immediate</i></p> <ol style="list-style-type: none"> 4. Improved knowledge and skills of judges and magistrates in such areas as judgment writing, gender analysis, white-collar and cyber-crimes, forensic evidence and case management 5. Improved knowledge and skills of court administrators in efficient court administrative practices, including the use of JEMS and the transcription of evidence given in court proceedings 6. Enhanced sharing of information and best practices among magistrates, judiciary and court administrators in CARICOM 7. Strengthened application of IT for court administration and record keeping 8. Strengthened role of regional judicial training institutions, such as the Judicial Training Institute of Jamaica and the OECS Judicial Education Institute, in delivering ongoing professional development programs to judges and magistrates
Components	This option consists of 3 interlinked components:

1. *Ongoing, region-wide education primarily for judges and magistrates.*
Content will be based on a detailed needs assessment, but will likely include:

- Judges and magistrates' performance standards
- Judges and magistrates' codes of ethics
- Updating on specialized criminal, civil law (including laws related to regional economic integration, such as banking/credit, investment, contingent rights, intellectual property, taxation, labour, immigration, insolvency, evidence, money laundering and white-collar and cyber crime)
- Rules of court
- Efficient case management and court administration
- Gender equality and gender analysis
- Judgment writing

Learning opportunities will include national events, regional events via video-conferencing and face-to-face meetings, special overseas programs such as those offered by the Commonwealth Judicial Education Institute in Halifax, exchanges and mentoring of the magistracy by the judiciary.

2. *Integrating all courts and court administration under independent judicial services commissions.* Since OECS Member States, Jamaica and Barbados have already agreed to the integration of the magistracy, the project will assist by developing action plans and timetables, by facilitating the removal of barriers, and by helping to strengthen the political will to implement integration. The project will showcase examples of successful integration for the remaining countries and facilitate learning, policy development, legislation and action planning where appropriate towards this goal.

3. *Strengthening case management and court administration.*

- Advice to national governments on the advantages and disadvantages of eliminating preliminary inquiries, establishing alternatives to magistrate's courts for settling small claims, traffic violations and other minor offences
- Technical assistance toward the development of new rules for criminal and civil courts where needed
- Research and analysis toward standard systems for tracking the progress of cases through magistrate's, specialized, high courts and appeal courts
- Capacity development including training on JEMS for court administrators
- Bench-bar national and regional/sub-regional workshops to deal with case management issues and performance standards
- Provision of computer hardware and software with commensurate training where warranted
- IT support to ensure optimal integration of cost-efficient IT systems, including digital recording in courts
- Study visits and exchanges to expose court administrators to efficient systems and practices
- Communications campaigns to generate political will, mobilize champions for change and inform target groups of administrative and

	<p>management changes</p> <ul style="list-style-type: none"> • Sharing of info and best practices that can be adapted to national needs via CCJ website, newsletter, webinars, seminars
CEA / EA (executing agency)	CCJ
Other potential partners	<ul style="list-style-type: none"> • Judicial Education Institute of the Eastern Caribbean Supreme Court • Commonwealth Caribbean’s Council of Legal Education • Jamaica Justice Training Institute • Faculty of Law, UWI • Organization of Commonwealth Caribbean Bar Association • Caribbean Association of Court Technologists • Commonwealth Judicial Education Institute (Halifax) • National Judicial Institute (Canada) • Office of the Commissioner for Federal Judicial Affairs Canada
Technical assistance	<ul style="list-style-type: none"> • Curriculum development and training design for distance delivery • Institutional strengthening • Revising rules of courts • Effective court management and efficient court administrative practices • IT support • Action research and policy development re. integration of magistrates into the judiciary • Gender equality • RBM, performance advisory services and results reporting • Social marketing / development communication
<p>Risks</p> <ul style="list-style-type: none"> • CCJ has had little experience managing large projects • Education programs may be too costly to sustain • National funding constraints may impede progress in relation to the job security and remuneration of magistrates • National governments may not have sufficient funds to support new technological and other innovations in relation to court management and administration • Court administrative systems are at different stages of development across the Caribbean • Streamlining court management and administrative systems by eliminating preliminary hearings in criminal cases before magistrate’s courts for example, could shift backlogs to higher courts 	<p>Mitigation</p> <ul style="list-style-type: none"> • Ensure CCJ has appropriate, dedicated project managerial and administrative staff • Provide incentives to encourage national governments to fund continuing education for judges, magistrates and court administration staff and make training programs learner-centred and cost-effective • Strengthen CCJ’s capacity to provide ongoing support • Develop cadre of experts who can work regionally • Provide cost-saving analysis of fully integrating magistrates and their support staff into the judiciary and recommend a phased approach where appropriate • Tailor capacity development measures to needs, ensuring administrative reforms are localized, appropriate and sustainable; train in clusters; train trainers • Examine and, where warranted, revise the

<ul style="list-style-type: none"> Resistance to change 	<p>systems of fees in court registries</p> <ul style="list-style-type: none"> Apply comprehensive changes to magistrate's and high courts Get high-level support for change and introduce technology for automation to reduce opportunities for corruption
Notional budget and timeframe	\$15M over 6-8 years
Notes	<ul style="list-style-type: none"> Delivery of training would be largely via video-conferencing using CCJ's facilities, UWI bridge and those of the Judicial Education Institute of the Eastern Caribbean Supreme Court and the Jamaica Justice Training Institute

Option #2: Strengthening Legislative Drafting Capacity and Access to Case Law and Treaty Materials

Problématique	<p>All countries have a legislative drafting deficit, which impedes justice. Many countries have a backlog of laws awaiting approval but often parliamentarians have a weak understanding of the intent of proposed laws and of the legislative processes needed to ensure their enactment. In some countries, particularly those outside OECS, many laws have not been reformed or revised in decades. Additionally, the judiciary, prosecutors, defence counsels and members of the public encounter difficulty obtaining cases and treaty materials on matters previously decided in other courts in the region and in overseas courts. Cost-effective access to decided cases would assist both prosecution and defence counsels in preparing cases for adjudication.</p>
Outcomes	<p><i>Intermediate</i></p> <ol style="list-style-type: none"> Strengthened legislative drafting capabilities in each participating country Updated laws and strengthened harmonization of relevant laws in CARICOM Increased access to case law and treaty materials by judges, magistrates, prosecutors, defense attorneys and others in the region <p><i>Immediate</i></p> <ol style="list-style-type: none"> Improved knowledge and skills of legal drafters in participating countries including skills in drafting gender-sensitive laws that reflect modern jurisprudence, incorporating international conventions to which countries are a party, as well as CARICOM and OECS treaties Expanded pool of trained legal drafters in CARICOM Strengthened awareness of the need to harmonize laws in CARICOM and of model laws dealing with economic integration Increased awareness on the part of parliamentarians in CARICOM of draft laws and the national legislative processes needed for their enactment Expanded use of and subscription to CARILAW
Components	<ol style="list-style-type: none"> <i>Legislative drafting training:</i> The project will offer ongoing, modular

	<p>training in legislative drafting tailored to legislative drafting staff (lawyers and non-lawyers) in participating countries. Courses will be delivered largely at a distance using computer-based learning and video-conferencing. Courses will be practical in nature, cost-shared with participating governments and accredited by the UWI Faculty of Law.</p> <p>2. <i>Revision and/or development of new, harmonized laws:</i> UWI and participating governments will assess laws within the region, including those pertaining to commerce and trade (e.g., labour, investment, bankruptcy, insolvency, social benefits, etc.), with a view to updating and, where appropriate, harmonizing them with regional integration treaties. UWI will produce model laws and provide technical assistance to participating national law revision/reform commissions where needed in order to adapt model laws to local conditions and circumstances. UWI could also provide technical advice for the creation of such commissions when requested by participating governments. UWI could assist national governments to increase parliamentarians’ understanding of draft laws and the national legislative processes through training, information dissemination and regional workshops.</p> <p>3. <i>Dissemination of case law and treaty material:</i> Working closely with its partners, UWI will develop cost-effective ways to provide judges, magistrates, prosecutors, defence attorneys and others with ready electronic access to decided cases from the region and other jurisdictions. UWI will promote CariLaw and encourage courts in the region to systematically contribute to it. UWI will also work closely with the CARICOM Secretariat’s Office of General Counsel to streamline and automate a treaties registry accessible to all.</p>
CEA / EA	Caribbean Law Institute Centre (CLIC) of UWI
Other potential partners	<ul style="list-style-type: none"> • UWI faculty members involved in the LLM legislative drafting course • All UWI Faculties of Law • University of Guyana Faculty of Law • All regional law schools • CARICOM Secretariat Office of General Counsel • Country legislative drafters • Westlaw, an online legal research service • Canadian law faculties with expertise in legislative drafting, particularly online delivery (e.g., Athabaska University)

Technical assistance	<ul style="list-style-type: none"> • Research / needs assessments • Course development and adaptation of course materials for distance delivery • Drafting model legislation and adapting it to country requirements • Change management and institutional capacity development • IT support / website development • Gender equality • RBM, performance advisory services and results reporting • Social marketing / development communication 	
Risks <ul style="list-style-type: none"> • Model legislation may not adequately reflect national requirements • Drafters once trained may seek employment elsewhere for better pay and career advancement • Laws once drafted may face long delays before enactment • Financial sustainability of maintaining technological and other systems developed to provide access to case law and treaty material • Courts may not systematically provide case materials to CariLaw 	Mitigation <ul style="list-style-type: none"> • Provide TA to adapt model legislation to country needs and circumstances • Train some non-lawyers and work with national governments to provide incentives (e.g., pay incentives and career advancement) to ensure those trained remain • Provide information, training and related incentives to parliamentarians responsible for enacting legislation • Examine and, where warranted, revise fee structures at court registries • Negotiate case law access fees with various suppliers • Identify local focal points within each court registry and give them responsibility for providing case materials to CariLaw. A similar arrangement would relate to all UWI Faculties of Law, the University of Guyana and the Office of the General Counsel in the CARICOM Secretariat 	
Notional budget and timeframe	\$8M over 5-6 years	
Notes	<ul style="list-style-type: none"> • Training to be delivered primarily through video-conferencing and online learning applications • Information to be disseminated by newsletter, website, social media and email listserves 	

Option #3: Alternative Dispute Resolution and Restorative Justice

Problématique	The delivery of justice would be expedited if more civil (including commercial, industrial relations and family law matters) and criminal cases that are now bogged down in Caribbean courts were resolved in a professional, equitable manner outside the courts. However, Caribbean expertise in alternative dispute resolution (ADR) and restorative justice is nascent in most countries and institutional capacity is generally weak.
Outcomes	<p><i>Intermediate</i></p> <ol style="list-style-type: none"> 1. Strengthened policy and legislation to support ADR and restorative justice in participating countries, making ADR automatic under prescribed circumstances 2. Enhanced programs for ADR and restorative justice in participating countries <p><i>Immediate</i></p> <ol style="list-style-type: none"> 3. Enhanced information sharing and awareness across CARICOM regarding the benefits of ADR and restorative justice 4. Strengthened knowledge among governments, NGOs, businesses, judiciaries and magistracies regarding best practices in ADR and restorative justice, including those that are sensitive to gender equality and to cultural differences 5. Strengthened partnerships among governments, NGOs, businesses and communities in relation to ADR and restorative justice 6. Strengthened knowledge and skills of ADR and restorative justice practitioners 7. Strengthened regional network of ADR and restorative justice professionals
Components	<ol style="list-style-type: none"> 1. <i>Information sharing and policy advocacy:</i> The implementing organization will develop an interactive website where it will stream videos and publish an electronic newsletter, and it will hold regional workshops and an annual conference with key stakeholders in CARICOM. It will disseminate case studies and effective practices widely and support study visits and exchanges among Caribbean countries. It will arrange some study visits to Canada, where appropriate. The implementing organization will engage with bar associations and regional commercial and trade organizations to raise their awareness and encourage their support of ADR where appropriate. 2. <i>Policy, legislative development and rules of court to make ADR automatic:</i> The implementing organization will work with participating governments to assess their policy, legislative needs and rules of court to make ADR referrals automatic in appropriate circumstances. It will provide model policy, legislation and rules of court where needed and guide governments and the judiciary/magistracy (via the CCJ) in their adaptation. It will encourage, where appropriate, the use of justices of the peace as ADR professionals. 3. <i>Training and support to mediators:</i> The implementing organization will provide training aimed at strengthening mediation services at supreme courts, magistrate’s courts and specialized courts. It will work with UWI to

	<p>institutionalize the delivery of accredited courses in mediation and restorative justice, some through distance delivery and others through summer programs on campus. Where invited by participating countries, the implementing organization will analyze, design and strengthen the implementation of ADR systems through consultancies. It will support more advanced countries to train less advanced countries through exchanges, mentoring and video-conferencing. The implementing organization will develop a self-sustaining network of ADR and restorative justice practitioners using a website and social media.</p> <p>4. <i>Small responsive fund</i>: The implementing organization will manage a small responsive fund aimed at stimulating change, innovation and leadership in ADR and restorative justice throughout CARICOM.</p>
CEA / EA	Dispute Resolution Foundation
Other potential partners	<ul style="list-style-type: none"> • CCJ • Chief Justices and Chief Magistrates • Organization of Commonwealth Caribbean Bar Associations • OECS Bar Association • National bar associations • Office of Trade Negotiations • Caribbean Export Development Agency • UWI • Canadian Foundation for Dispute Resolution
Technical assistance	<ul style="list-style-type: none"> • Wide range of technical assistance in ADR, mediation and restorative justice, including dispute-audit consulting to assess the suitability of various alternative dispute resolution applications in particular civil, including commercial, and criminal disputes • Legal drafting and court rules • IT support / website and social media • Gender equality • RBM, performance advisory services and results reporting • Social marketing / development communication
<p>Risks</p> <ul style="list-style-type: none"> • DRF lacks experience in managing a project of this magnitude and complexity • DRF has insufficient capacity to serve all countries of CARICOM • Many citizens may resist ADR initially, preferring to have their day in court • Difficult to track and account for results related to a responsive fund 	<p>Mitigation</p> <ul style="list-style-type: none"> • Recruit professional project management team to work with DRF • Include specialist in performance measurement and results reporting on the management team • Phased-in support focused initially on countries that are ready and willing to introduce, or strengthen existing, ADR and/or restorative justice services • Include a vibrant public education component using mass media to promote ADR • Develop solid funding and reporting systems for the responsive fund and train/guide funding recipients where necessary

Notional budget and timeframe	\$8M over 5-6 years
Notes	<ul style="list-style-type: none"> The International Finance Corporation may develop a regional centre for arbitrating private sector disputes

Option #4: Strengthening CARICOM Commercial and Industrial Courts

Problématique	The absence of commercial and industrial courts in some countries and inefficiencies in the administration of these courts where they exist are impediments to economic growth and a stable investment environment in CARICOM. Commercial courts cater mainly to large businesses that can afford to litigate. However, failure to deal with the disputes of medium-size businesses will impair economic development as they are major creators of employment throughout the region. Judges with specialized knowledge of commercial and industrial affairs are in short supply; registries are inefficient; and court rules and procedures need revision to align with CSME realities. Little has been done to facilitate interregional exchange of information on matters pertaining to the functioning of commercial and industrial courts.
Outcomes	<p><i>Intermediate</i></p> <ol style="list-style-type: none"> More well-functioning commercial and industrial courts in CARICOM serving both large and medium-size business enterprises Improved efficiency of existing commercial and industrial courts More efficient registry systems supporting courts <p><i>Immediate</i></p> <ol style="list-style-type: none"> Enhanced knowledge of commercial and industrial law on the part of judges Strengthened legal frameworks for establishing and operating commercial and industrial courts Increased interregional exchanges of best practices Strengthened communication between the bar and the bench on commercial and industrial legal matters and on related court rules and procedures Enhanced provisions for ADR applications in commercial and industrial courts
Components	<ol style="list-style-type: none"> <i>Education of commercial and industrial court judges:</i> The EA/CEA will provide region-wide education for commercial and industrial court judges, via distance delivery, sub-regional and regional workshops, exchanges, coaching and mentoring. Content will be based on a detailed needs assessment, and will likely include: <ul style="list-style-type: none"> Commercial and industrial law matters, including those pertaining to bankruptcy, securities, company law, CSME-related law, labour law Efficient case management and court administration <p>The project may support some special, short-term learning opportunities in Canada for CARICOM judges.</p> <i>Establishing new commercial and industrial courts and strengthening of existing courts:</i> The EA/CEA will encourage and, where requested, provide

	<p>technical assistance to establish new commercial and industrial courts using some of the best performing courts in CARICOM as models. The project will support targeted communication campaigns aimed at informing potential users of the courts, decision makers and interest groups.</p> <p>The EA/CEA will also provide technical assistance in the form of action research, policy development, planning and advice to existing commercial and industrial courts, particularly in relation to pertinent commercial law, case management, court rules and court administration. As warranted, the EA/CEA may also engage the DRF to provide technical assistance in order to develop local capacity to apply ADR expeditiously in certain commercial and industrial matters. The project will provide technical assistance, information on best practices, and distance training aimed at fostering more efficient registry systems supporting commercial and industrial courts. It will use technical assistance, conferences and webinars to strengthen communication between the bar and the bench on commercial and industrial legal matters and related court rules and procedures.</p>
CEA / EA	<p>CCJ Alternatively, CEA via public tender with CCJ as an implementing partner</p>
Other potential partners	<ul style="list-style-type: none"> • Private Sector Organization of Jamaica • Dispute Resolution Foundation • OCCBA, sub-regional and national bar associations • Judicial Education Institute of the Eastern Caribbean Supreme Court • Jamaica Justice Training Institute • Faculty of Law, UWI • The Sir Arthur Lewis Institute of Social and Economic Studies (SALISES), UWI • Caribbean Development Fund • Caribbean Export Development Association • Caribbean Development Fund • Caribbean Association of Industry and Commerce (on Project Advisory Committee) • Caribbean Conference of Trade Unions (on Project Advisory Committee) • Caribbean Association of Court Technologists • NJI-Canada • Office of the Commissioner for Federal Judicial Affairs Canada
Technical assistance	<ul style="list-style-type: none"> • Curriculum/course development • Research, policy development, planning and advice in implementation of new and revised laws of a commercial and industrial nature • Case management and court administration • Registry systems • ADR • IT support for website development, interactive distance learning • Gender equality • RBM, performance advice and results reporting • Social marketing / development communication

<p>Risks</p> <ul style="list-style-type: none"> • Commercial courts benefit mainly large companies and fail to cater to small- and medium-size businesses where most jobs are created • Judges have little time to attend learning events • Governments are slow to change laws and reform court rules and procedures • Some bar associations are unreceptive • Space, infrastructure and budget limitations may prevent development of commercial and industrial courts in some countries, resulting the project benefitting mainly larger island states 	<p>Mitigation</p> <ul style="list-style-type: none"> • Provide incentives to expand the outreach of commercial courts and strengthen ADR • Learner-centered, non-timebound training, distance delivery at times convenient to learners • Provide incentives for national governments to act • Rally bar associations via OCCBA and the OECS Bar Association • Encourage more lawyers to provide <i>pro bono</i> assistance to small businesses • Support Halls of Justice initiatives
<p>Notional budget and timeframe</p>	<p>\$6M over 6 years</p>

Option #5: Responsive Mechanism

<p>Problématique</p>	<p>Many of the justice reform issues faced by national governments throughout the Caribbean are similar in nature, but often with marked differences in local contexts, and countries are at different stages of reform. At present there is limited funding to seek cost-effective solutions to common needs and few regional fora in which to share information and learn. Funding for pilot initiatives to test innovative solutions to problems is extremely limited. Information sharing, when it does occur, happens informally for the most part.</p>
<p>Outcomes</p>	<p><i>Intermediate</i></p> <ol style="list-style-type: none"> 1. More efficient and effective court systems in participating countries 2. Increased collaboration among CARICOM member states and judiciaries on common justice reform issues <p><i>Immediate</i></p> <ol style="list-style-type: none"> 3. Increased knowledge and awareness throughout CARICOM of cost-effective and innovative solutions to impediments to justice 4. Increased information sharing on effective practices in justice reform throughout CARICOM 5. Strengthened networking of key stakeholders across CARICOM
<p>Components</p>	<ol style="list-style-type: none"> 1. <i>A responsive fund, backed by technical assistance:</i> The responsive fund would allow Caribbean organizations to put forward proposals to develop innovative, cost-effective and sustainable solutions to legal and judicial reform issues common to the region and/or of a regional nature. The criteria for funding would require each recipient to involve one or more CARICOM member states and/or judiciaries in each proposed project, to document changes and to share the results and successful practices widely throughout CARICOM. Categories for funding could include:

	<ul style="list-style-type: none"> • Access to justice / legal aid³¹ • Juvenile justice, youth diversion • Commercial and industrial law reform • Access to case material • Developing customer-oriented service models/organizational culture • Public engagement in justice reform • Efficiency and effectiveness of case management and court administration systems, including IT applications <p>Gender equality would be a mandatory, cross-cutting criterion for funding proposals.</p> <p>The project would provide technical assistance; a Caribbean-wide, Internet portal for information dissemination, guidelines, tools and best practices; and regular learning events, including many via online or video-conferencing and some face-to-face workshops, conferences and seminars. The fund would require recipients to integrate gender equality and to commit to scaling up new innovations towards more effective justice for all.</p>
CEA / EA	To be determined through an international tender
Other potential partners	<ul style="list-style-type: none"> • CCJ • UWI • OECS Supreme Court • Regional associations of prosecutors, Attorneys General • Civil society organizations, such as national and regional/sub-regional bar associations, organizations involved in legal education and NGOs involved in policy issues, ADR and restorative / community justice • Private sector organizations • Canadian organizations and institutions with relevant expertise
Technical assistance	<p>Wide-ranging, including research, policy development, IT solutions, court management and administrative expertise, performance measurement, ADR and restorative justice.</p> <ul style="list-style-type: none"> • Gender equality • RBM, performance advice and results reporting
<p>Risks</p> <ul style="list-style-type: none"> • Many small sub-projects, unfocused program • High cost of managing a responsive fund • Lack of transparency and weak accountability 	<p>Mitigation</p> <ul style="list-style-type: none"> • Fine-tune the funding criteria at mid-term to focus more on larger projects with regional implications • Reduce the number of sub-projects funded each year by mid-term and support fewer but larger projects post mid-term • Use high-level advisory group for project

³¹ CIDA must avoid supporting legal aid services that are unaffordable. Envisioned here, for the most part, is assistance that would help broaden legal aid services using locally- or regionally-generated funds, as provincial law foundations and bar associations do in Canada.

<ul style="list-style-type: none"> Some CARICOM member states may be reluctant to accept lessons from other states 	<p>selection and transparent selection criteria</p> <ul style="list-style-type: none"> Incorporate a performance advisor on the CEA/EA team Provide a CIDA monitor and an independent mid-term evaluation Provide incentives in the funding criteria to encourage inter-regional information sharing and learning
<p>Notional budget and timeframe</p>	<p>\$7M over 6 years</p>
<p>Notes</p>	<ul style="list-style-type: none"> An option within this option would be to focus on commercial and trade-related reforms An alternative to this option as a stand-alone project could be to integrate it in one or more of the other recommended options

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Appendix B: List of People Contacted

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11. Appendix C: Development Assistance to Justice Reform in CARICOM

Canadian International Development Agency

Recent past

CIDA supported two recent flagship projects in legal and judicial reform in the region: the Social Conflict and Legal Reform Project in Jamaica – a \$7-million initiative aimed at establishing alternative dispute resolution mechanisms, improving court administration and recordkeeping, expanding access to legal information, and raising awareness for the rights of children and youth – and the \$5.6-million Organization of Eastern Caribbean States (OECS) Judicial and Legal Reform Project. The Agency funded other smaller, complementary initiatives through the Canada Fund for Local Initiatives, the Canada Caribbean Gender Programme (the Gender Fund) and the Canada Caribbean Co-operation Fund in areas such as juvenile justice, family law, law reform, integration of the OECS Magistracy and court rules. CIDA's Partnerships with Canadians Branch as supported a CUSO-VSO project with Canada's National Judicial Institute which sponsored an Ontario family court judge to assist family and magistrate's courts in Jamaica.

CIDA supported Guyana's Justice Sector Reform Strategy (2007) with a two-year \$200,000 training program for judges and other personnel involved in Guyana's new Family Court.

Present

CIDA is funding an \$18-million, bilateral project with Jamaica, the Justice Undertakings for Social Transformation (JUST) Project. It provides technical assistance and capacity development to justice sector institutions such as Jamaica's Ministry of Justice, Office of the Director of Public Prosecutions and the Office of the Chief Parliamentary Counsel, and to civil society organizations to help strengthen social order. The project has a youth and gender focus.

Begun in 2009, the CARICOM-CIDA Trade and Competitiveness Project is a \$15.7 initiative based in the CARICOM Secretariat, covering 12 countries including Surinam. Although centred on trade-related matters, the project is relevant to the justice sector in that it deals with laws and regulations regarding the movement of capital and services, as well as with the harmonization of standards, licensing and administrative practices.

Canada's Department of Foreign Affairs and International Trade

Present

The Anti-crime Capacity Building Program (ACCBP) is \$15 million (2009-2015) responsive fund for the Americas aimed at combatting transnational crime with a focus on security sector reform, anti-money laundering and human trafficking. The program has about 200 projects on file, averaging about \$150,000 each. One project supports Bob Bland, a retired Prosecutor from the UK with 25 years of experience, who is working from the British High Commission with the Attorney General's Office in Trinidad and Tobago for three years (with additional pooled funding from a variety of sources) on a

wide-range of justice reforms, including case management. Other projects, such as one involving Barbados and OECS countries, deal with police training in such matters as forensic investigation.

Pending ministerial approval, the ACCBP will contribute to the establishment of a police training institute for the Regional Security System of the Eastern Caribbean.

Counter-Terrorism Capacity Building Program (CTCBP) is the ACCBP's older sister. The Government of Canada created this responsive fund in 2005. The CTCBP has a \$13 million annual allocation to provide participating countries with training, equipment, technical and legal assistance to assist them in preventing and responding to terrorist activity globally. The program is centred on law enforcement, military and intelligence cooperation, border and transportation security and legislative assistance.

Department for International Development (UK)

Present and future

DFID has partnered with the Jamaica Constabulary Staff College and the UWI Open Campus, to fund the Community Policing Programme (CPP). It aims to train 7,000 police from across the Caribbean in community policing, beginning in Jamaica. Online delivery of the CPP provides the opportunity for active duty officers in the region to be trained at minimum cost and without disrupting their normal duties.

DFID has been supporting a small program run from the British High Commission in Barbados with Dan Sutter, Criminal Justice Advisor, covering Barbados and six OECS countries. The two-year program, which ends in July 2012, is focused on money laundering, witness protection, extradition law reform and related issues. It also involves some training of OECS Supreme Court judges on the proceeds of crime and judicial ethics.

DFID plans to do more justice reform in Jamaica, but on a small a scale. Elsewhere in Caribbean its focus will be on security dealing with such issues a money laundering, proceeds of crime and confiscation of assets.

United States Agency for International Development and the U.S. State Department

Recent past

Under its Sustainable Justice Reform project in Jamaica in the 1990s, USAID has helped to improve court and justice administration, including programs for cost recovery, docket management, courthouse consolidation, administrative policy reform, public education and alternative dispute resolution. Under its Democracy and Governance portfolio in the early 2000s it has assisted Jamaica with judicial and court reforms, civil society strengthening and community policing.

USAID's US\$2-million Caribbean Regional Administration of Justice Program covered fourteen independent Caribbean Community Countries. The program supported the development of mechanisms for court reporting, judicial education, case reporting and

regional legislative drafting. It was instrumental in establishing the now dormant Regional Legislative Drafting Facility in Georgetown, Guyana.

In more recent years, USAID has funded juvenile justice programs in Jamaica and in Guyana it has funded a small program to train mediators and educate judges on criminal matters. Its major focus has been security in the region.

Present and future

In Jamaica, USAID will focus on security matters including anti-corruption, police reform, ethics, integrity, tax reform, customs and risk reduction management. In October 2011, USAID began juvenile justice reform project in the OECS, committing US\$900,000 to strengthen the juvenile justice systems in six independent countries of the OECS through reform measures applied both nationally as well as sub-regionally. This project will be implemented until September 30, 2014 and will focus on:

- Improving the legal and regulatory framework of the juvenile justice system
- Building capacity for effective administration of juvenile justice
- Introducing diversion, detention and rehabilitation processes of the juvenile justice system
- Enhancing juvenile justice approaches through broader involvement of civil society.

The State Department is planning to fund video recording equipment in three OECS countries to allow witnesses to testify at a distance.

USAID is developing a Caribbean Security Initiative to focus on Juvenile Justice and crime prevention that will involve Trinidad and Tobago, Surinam, Barbados and OECS countries. The Agency recently signed US\$6-million agreement with OECS countries that will deal with security-related legal and regulatory systems, capacity development (training and strengthening diversion programs), a small amount of infrastructure development, and advocacy and awareness. USAID expects to use funding from the new Caribbean Basin Security Initiative (CBSI) to augment its youth-related activities, especially in the areas of remedial education and juvenile justice. The CBSI will advance efforts already underway to reduce illicit trafficking, advance public safety and security, and promote social justice.

In November 2011, USAID provided the UNDP with a US\$100,000 grant to allow the UNDP to engage the public in a dialogue on the findings of UNDP Caribbean Human Development Report on Citizen Security. The grant will support UNDP communications and advocacy interventions as follow-up to national and regional consultations hosted by UNDP Caribbean Offices in August and September.

European Union

Present and future

The EU through its 9th European Development Fund has provided the CCJ with a €1.3-million grant for capacity strengthening, institutional support and the public awareness of the Court, particularly in relation to its original jurisdiction.

The EU is funding a €10 million project, with additional support from the World Bank, in partnership with the Caribbean Knowledge and Learning Network (CKLN), a CARICOM entity based in Grenada. EU funding will support the development of a broadband fibre optic network linking tertiary institutions, hospitals, schools, government agencies and CARICOM institutions within the Caribbean. It is designed to enable Caribbean citizens to upgrade and diversify their skills and knowledge through greater regional collaboration and connectivity.

EU supports a vocational training centre for youth and alternative sentencing for youth in Saint Kitts and Nevis, as well as some support for community based-groups to work on juvenile justice.

The EU is developing a new CARIFORUM programming strategy focused on regional integration, €165 million over 5 years. The strategy will support CARICOM's Single Market and Economy (CSME) and economic integration initiatives of the OECS.

Commonwealth Secretariat

Past

In early 2008, the Commonwealth Secretariat, through its Commonwealth Fund for Technical Cooperation, placed three legal experts at the CARICOM Secretariat's Legislative Drafting Facility to assist in developing legislative drafting capacity in the region. The Commonwealth Secretariat also contributed to the Commonwealth Caribbean Legislative Drafting Programme which was conducted at the University of Guyana in 2007 and 2008.

Present and future

The Commonwealth Secretariat is preparing a new program in partnership with Canada's Athabasca University, an accredited open learning institution, to provide legislative drafting training online. The one-year training program will cater to four CARICOM member state employees per year.

Friedrich Ebert Stiftung

Recent past

FES, which maintains a small office in Jamaica, in partnership with UNDP co-hosted a series of workshops on Millennium Development Goal (MDG)1 - Eradicating Extreme Poverty and Hunger, and on the gender dimensions of poverty. The workshops were held in four parishes across Jamaica and targeted leaders and members of community-based organisations active in community development efforts on the ground.

Present and future

FES Jamaica promotes social dialogue working with partners which are key actors in the academic, government and non-government sectors, both nationally and sub-regionally in CARICOM. Recently, FES has been supporting awareness of citizens rights and has helped translate laws into plain language to better inform citizens about the law and their rights before the law.

United Nations

Past

UN organizations have long contributed to justice reform in the Caribbean. For example, UNDP has supported restorative justice programs in Jamaica. UNICEF has trained judges and magistrates on rights of the child and has focused much of its activities on children in conflict with the law. UNICEF, ECLAC and UNDP have helped produce some model family laws for OECS. In 1995 and 1997, the International Labour Organization (ILO) provided technical support in drafting four model laws in the areas of termination of employment; registration, status and recognition of trade unions and employers' organizations; equality of opportunity and treatment in employment and occupation; and occupational safety and health and the working environment. As a follow-up to the model legislation ILO implemented a project on the Harmonization of Labour Legislation in 13 ILO member States in the Caribbean. This project, which was funded largely by Canada, assessed the extent to which national legislation and policies were consistent with fundamental principles and rights, relevant ILO Conventions and CARICOM model labour laws. The ILO has assisted governments and NGOs in the region, such as the National Union of Domestic Employees, based in Trinidad and Tobago, on the rights of domestic workers. The UN has a joint regional program on gender-based violence which has involved education to sensitize the judiciary. ECLAC has worked with CARICOM member states and other UN organizations on migration in the region.

Present and future

UNICEF, along with UN Women, is focusing on youth, women and other vulnerable groups in Jamaica, as well as gender-based violence. UNDP plans to support civil society reports that would parallel the formal UN Human Rights Periodic Reviews. UNFPA will work with the Faculty of Law, UWI, to support youth at risk in OECS countries. UN's Entity for Gender Equality and Women's Empowerment in Barbados plans to support gender and law training of judges in OECS countries.

UNDP is coordinating UN efforts on human rights in the region and UN main focus in the region will be on citizen security. The United Nations Development Assistance Framework for Barbados and the OECS (2012-2016) includes UNODC support for strengthening law enforcement agencies, improving forensic capacities and assisting government in controlling firearms (US\$1.7 million). UN Women plans to focus on governance and will help training women parliamentarians.

Inter-American Development Bank

Recent past

IDB has supported justice reform/governance work in the Caribbean since 1993, including considerable assistance to inner-city communities at risk in Jamaica. It has supported Barbados justice reform with US\$10m over the past 10 years for infrastructure development and juvenile justice. It has also funded some mediation training in Guyana, as well as in Trinidad and Tobago.

Present and future

IDB is helping to strengthen Guyana's justice system through a US\$25 million loan. The IDB's project, entitled Modernization of the Justice Administration System, aims at strengthening the accountability and administrative efficiency of service delivery in the justice sector, enhancing linkages and coordination within justice sector institutions, and improving access to justice.

In 2010 the IDB launched its "Alliance of Cities for Citizen Security" to support to the development of institutional capacity in citizen security. The object of the initiative was to exchange of innovative experiences that contribute to the dissemination of methodologies and actions to prevent and control conflict, violence, and crime, and gradually improve citizen security and prevent violence. Since 2007, IDB has carried out a grant assistance program called the Standardized Regional System of Indicators for Citizen Security and Violence Prevention. The grants are designed to support consensus building among countries and between different institutions within countries on how to measure and compare information related to crime and violence. The initiative achieved successful results according to an evaluation carried out in July 2010 and presently has 15 participants, including three Caribbean countries, the Dominican Republic, Guyana and Jamaica. Agreements have been reached on the definition and method of collecting and comparing data on citizen security and violence prevention through the use of 19 indicators based on public registers and other surveys. A strategy is in place to implement these mechanisms in each of the partner countries. It includes the strengthening of organizations through training, technology and information dissemination.

IDB may contribute to a new mediation centre for the high court in Guyana. Though its Citizens' Security Program in Trinidad and Tobago with Ministry of National Security, it will help strengthen the capacity of the ministry and police with a focus on community policing and crime prevention.

In future IDB will do less justice reform in the Caribbean and will focus more on citizen security. It will begin with a US\$5 million loan and gradually increase its investments. It may also support some ADR as part of this program.

Caribbean Development Bank

The CDB has supported justice reform initiatives in the Caribbean since the early 2000s. Among its first projects was one that supported judicial training in Jamaica and that helped to equip Jamaica's Judicial Training Institute. The CDB has been supporting Halls

of Justice initiative in the OECS and it has funded a juvenile detention facility in Saint Kitts and Nevis. In future, it will emphasize citizen security.

World Bank

International Finance Corp is working on harmonizing commercial laws in the Caribbean in keeping with its strategy to strengthen the business environment and to support small countries.

Donor Coordination

UNDP chairs a donor coordination group for Barbados and the OECS. UNDP also heads a coordination group on donor working on justice reform in Jamaica.

12. Appendix D: CARICOM Justice Sector Reform Matrix

Please note that this table is incomplete owing to the absence of data on reforms in some countries.

- reform implemented
- reform begun/partially implemented
- * Note that OECS countries are served by a sub-regional Commercial Court in the British Virgin Islands

Reforms	Jamaica	Belize	Bahamas	Barbados	Saint Lucia	Dominica	Grenada	Saint Kitts & Nevis	Saint Vincent & Grenadines	Antigua & Barbuda	Montserrat	Trinidad and Tobago	Guyana	Suriname	Bermuda	Turks & Caicos	Cayman
Signatory to the CCJ's original Treaty jurisdiction	●	●		●	●	●	●	●	●	●		●	●	●	-		○
Signatory to the CCJ appellate jurisdiction		●		●									●		-		○
Automatic ADR	●											○			-		
ADR: programs in place in superior courts	●			○	●	●	●	●	●	●	●	○	●		○		●
ADR: programs in place in magistrate's and specialized courts	○											○			○		○
Restorative/Community Justice programs	○											○		●	○		●
Children and youth rehabilitation programs	○	●												●	-		●
Children and youth diversion programs	○	○			●	○	○		●				○	●	○		●
Special correction facilities for children and youth	●	●													●		●
Prevention programs targeted at young children & parents												○			-		●
Legislation and equipment in place to allow children and other vulnerable groups to provide video-recorded or remotely-streamed evidence	○			○	○				○			○			○		●
Children's Courts	●														-		●
Juvenile Courts	○	●		○	○	○	○	○	○	○	○				●	●	●
Family Courts)	○	●			●		○		●	○		●	●		○		○
Small Claims Courts	●														●		●
Commercial Court	○				●*	●*	●*	●*	●*	●*	●*		●		●		●
Industrial Relations Court/Tribunal	●									●		●			○		○
Coroner's Court	●	●		○											●		●
Drug Court	●											○		○	●		●
Customer-oriented ethos in court system	○											○			●		●
Victim Support Program	○														○		○
Laws in conformity with UN human rights conventions	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	●	●
Laws in conformity with UN conventions on gender-based discrimination	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○		●
Laws in conformity with CARICOM treaties	○	○	○	○	○	○	○	○	○	○	○	○	○	○	-		○
Adoption of model sexual offence legislation	●	○	○	○	○	●	○	●	○			○	○		-		○
Adoption of model legislation on domestic violence	●		○	○	○			○				●	○		-		○
Adoption of model witness protection legislation	●			●											●		●
Crown Prosecution Office: police and prosecution separate	●				●	●	○		○						●	●	●

Strengthened Office of the Director of Public Prosecutions	○				○	○	○	○	○	○	○				●	●	●
Reforms	Jamaica	Belize	Bahamas	Barbados	Saint Lucia	Dominica	Grenada	Saint Kitts & Nevis	Saint Vincent & Grenadines	Antigua & Barbuda	Montserrat	Trinidad & Tobago	Guyana	Suriname	Bermuda	Turks & Caicos	Cayman
Agreement to integrate magistrate's courts with OECS Supreme Court					●	●	●	●	●	●	●		●		N/A		
Policy and legislation to integrate magistrate's courts			●		○	○	○	○	○	○	○	●			-		○
Fully integrated magistrate's courts			●		○							●			-		○
Judicial council administering all courts			●		●	●	●	●	●	●		○			-		○
Pre-trials/preliminary inquiries eliminated	○			○	●	○	○		○	○	●	○			○	●	●
Updated Civil Procedure Rules	○	○		○	●	●	●	●	●	●	●	●	○	○	○		●
Systematic program of judicial education	○				●	●	●	●	●	●	●	●			○		○
Systematic program of magistracy education	○				○	○	○	○	○	○	○	●			○		○
Performance standards for judges					○	○	○	○	○	○	○	○			○		○
Performance standards for magistrates															○		○
Performance standards for lawyers/attorneys															○		○
Code of conduct for judges	○	●			●	●	●	●	●	●	●	●			●		●
Code of conduct for magistrates	○	●			●	●	●	●	●	●	●				●		●
Code of conduct for lawyers/attorneys	●	●		○	●		●	●		●		●			●		●
Code of conduct for prosecutors		●							●						○		○
Witness protection	●				●					●		●			●		●
Plea bargaining	○														○		
Office of Public Defender	●														○		
Bar association with statutory membership		●			●		○	●		●		●			●	●	
Legal aid for accused suspected of murder	●	●	●	○	●	●	●	●	●	●	●	●		●	●	●	●
Legal aid for accused in other violent crimes	○	○		○								●		●	●	●	●
Legal aid for accused in non-violent crimes	○	○										●		●	●	●	●
Legal aid for accused in civil matters	●	○		○	○	○	○	○		○		●		●	●		●
Digital recording and reporting system in High Courts	●	●		●	○		○	○	○	○		●			●		●
Digital recording and reporting system in magistrate's courts	○			○		●			○			●			●		●
Digital case management system, such as JEMS	○			○	○	○	○	○	○	○	○	●			○		●
Computerized registries	○				○	○	○	○	○	○	○	●			○		○

12. Appendix E: Caribbean Court of Justice Comments on the Report and CIDA's Response

1. Areas that seem to be underdeveloped
 - a. The relationship of Haiti and Suriname to the project:
 - i. The analysis has concentrated on the commonwealth Caribbean. But we cannot ignore the other two members. This may require some special arrangement including a special study or two special studies because the situation in each country is very different.
 - ii. Suggest that there is some specific recommendation to allow this.
 - iii. It may be that this comes under judicial education, although it is much broader than this and must be commenced with a study and needs analysis.
 - iv. Suriname is closer linked than Haiti at the moment and we can commence certain aspects of the work there through already established contacts.

CIDA: Haiti is a completely separate – and major program for CIDA. Suriname was included but the consultants did not have the resources to visit it.

- b. The analysis of specialised courts and departments of courts and their development under the project:
 - i. The body of the report and its recommendations seemed to concentrate on only two specialised courts, commercial and industrial. This needs to be clarified because it is incomplete. There was a reference to the Trinidad Family Court. But this is an important issue and must be taken cognisance of, but what of the IP, Environment, rent, etc., what about the court divisions where there are no specialised courts, crime, civil, etc..
 - ii. A special study is needed to identify all specialised courts, divisions and tribunals. This should be easy and could be accomplished by questionnaire
 - iii. There is a view on the importance of addressing this for backlog reduction and organisational efficiency.
 - iv. Does this come under education? In any event judicial leadership is needed on this.

CIDA: The general focus was on courts and magistrates courts. Some attention on commercial and industrial courts is linked to fit with CIDA's overarching objective with Sustainable Economic Growth.

- c. Back Log reduction:
 - i. This is a big issue. I note it comes under judicial education and perhaps it is correctly placed, but a number of practical things need to be done to accomplish this in addition to

education and funds will need to be allocated for implementation of agreed policies. This is a critical issue and can be commenced very quickly.

CIDA: *Agreed.*

d. IT support:

- i. The discussion on developing Caribbean technology must be encouraged. Where does this fit in? peculiarly this needs judicial management. It is critical to backlog reduction and all court improvement mechanisms.
- ii. My belief is that it will create great savings as well as increased efficiencies

CIDA: *True, but CIDA cannot cover all costs. Suggest IT communication build on and improve the existing system.*

e. Implementing agency for Option 5:

- i. Should this be specified to be a regional organisation? Despite queries about CARICOM it seems best placed, and may just need capacity strengthening.

CIDA: *This is an option that any regional or other organisation(s) can present through a responsive project proposal.*

f. Management of programming option overlaps:

- i. There are a lot of overlaps between suggested options – how will that be managed?

CIDA: *Yes. These are programming options. It will depend how project proposals are formulated.*

2. The updating of the matrix will cause some changes in the text.

CIDA: *We will simply update the matrix.*

3. It is important to note that there are differences in how the various judiciaries and their administrations are placed. So the issue that faces OECS magistracy is not universal, but each jurisdiction requires some improvement in its corporate structure so that its courts and its administration are all completely administratively under the judiciary. In the matrix, there is reference to a judicial council, but no reference to judicial and legal service commissions. Some jurisdictions have both the magistracy and the high court under the judicial and legal service commission, so the matrix may give a wrong impression.

4. Some member states are republics, so there is no crown prosecution.

CIDA: *True, the footnote should be in the revised matrix.*

6. The matrix put magistracy and specialised courts in the same question for ADR. This should be separated. Some jurisdictions have ADR in some but not in others.

CIDA: *CCJ has updated the matrix.*