



**DIRECTOR OF PUBLIC PROSECUTIONS’
POSITION STATEMENT
15th June, 2021**

1. **A.** The following agencies in the British Virgin Islands (BVI) are designated as law enforcement agencies:
 - i. The Royal Virgin Islands Police Force (RVIPF) – which is under His Excellency, the Governor.
 - ii. Her Majesty’s Customs (HMC) – which is under the Ministry of Finance.
 - iii. The Department of Immigration(DOI) – which is under the Ministry of Natural Resources and Labour.
 - iv. The Financial Investigation Agency (FIA) – which is a statutory body.
- B.** The following Departments within the Government Service are responsible for the Administration of Criminal Justice:
 - i. The Office of the Director of Public Prosecutions (ODPP) which is the sole prosecuting authority in the Territory as stated in Section 59 of the Virgin Islands Constitution Order 2007.
 - ii. The Magistrate’s Court which deals with summary matters, committal proceedings, and first appearances and bail hearings.
 - iii. The Eastern Caribbean Supreme Court, Territory of the Virgin Islands (High Court Registry) – where Court of Appeal matters and High Court matters are heard.
2. Assessment of Performance is done through the agencies and departments providing annual reports, to Cabinet and subsequently to the House of Assembly. Performance of the Criminal Justice System is also assessed through the Criminal Justice Advisory Group which is a governmental group that is chaired by His Excellency the Governor, the membership is the Deputy Governor’s Office, the Office of the Director of Public Prosecutions, the Eastern Caribbean Supreme Court, the Magistrate’s Court and the Ministry of Health and Social Welfare (while the Ministry of Health and Social Welfare is not a law enforcement agency, it is the Ministry responsible for Legal Aid Parole and Her Majesty’s Prison).
3. The Director of Public Prosecutions (DPP) is the sole prosecuting authority in the BVI. The Director of Public Prosecutions under Section 59 of the Virgin Islands Constitutional Order 2007, commences, takes over and discontinues criminal prosecutions. The DPP leads

prosecutions in the Magistrate's Court, the Eastern Caribbean Supreme Court, the Court of Appeal and Privy Council. The DPP also advises the Royal Virgin Islands Police Force (RVIPF), Her Majesty's Customs, the Department of Immigration, Financial Investigations Agency on criminal investigations, and to other Government departments on matters of criminal procedure and criminal litigation.

4. The following are what are considered to be the strengths and weakness of the overall criminal justice system:

Strengths:

- a) There is cooperation between the ODPP and the Courts, in working together to progress matters;
- b) There is in place a system between the ODPP and law enforcement agencies to ensure that they receive advice during the conduct of investigations;
- c) That the VI Constitutional Order 2007 ensures that all accused persons are ensured due process and fair trial.

Weakness:

- a) The ODPP, Magistrate's Court and the Eastern Caribbean Supreme Court, Territory of the Virgin Islands are grossly understaffed and under-resourced.
- b) There has not been sufficient resources and attention provided to assist the ODPP, Magistrate's Court and the High Court in eliminating the backlog of cases that exist as a result of the 2017 Hurricanes and the COVID-10 Pandemic.
- c) There are difficulties with the administration and selection of the jury array, and in having jury trials. In a small jurisdiction such as the BVI it is an issue to find jurors who do not know or are not related to witnesses or accused.
- d) There are insufficient Court Room facilities.
- e) The security at the Courts is unacceptable, and the security needs for Judges, Magistrates, and Prosecutors is below par.
- f) The current Criminal Code and other criminal legislation are outdated. They only receive minimal amendments which may address one issue but cause another to arise.
- g) There are no criminal procedure rules for the High Court. For example, there is no provision to read agreed statements, make admissions as to facts not in issue or for Defense Counsel to file an Accused's statement. The Magistrate's Court is guided by the Magistrate's Code of Procedure, Cap. 44 which requires a proper review and revamp.
- h) Matters take too long to progress from first appearance to conclusion.

- i) There is a need for there to be set custody time limits, and to ensure that law enforcement abides by same.
 - j) There is an urgent need for witness anonymity and other special measures for scared or vulnerable witness.
 - k) There is a problem with pretrial publicity in the online media and the use of public commentary or “blogs”, which can easily prejudice a criminal trial.
 - l) There is need to abolish Police Prosecution, as it is a conflict of interest, for police to investigate and prosecute. They only deal with traffic offences and breach of curfew offences.
5. In order to maintain the strengths and remedy the weakness mentioned the following steps and recommended:
- a) The immediate introductions of criminal procedure rules passed as actual legislation. The Magistrates are creatures of statute and the rules should be passed an Act, to allow the rules to be applicable to the Magistrate’s Court. These rules which were drafted by the Bench and Bar Committee in 2018 – 2019 were received by His Lordship Justice Morely. These rules need to be instigated soonest. The rules are hoped to promote effective case management, and to ensure matters are progressed efficiently. It should also give guidance on schedule of matters and the obligations for Counsel (both Crown and Defense) in a criminal trial.
 - b) A proper review and revamp of the 1997 Criminal Code (as amended) and other criminal legislation to ensure that they are current with developing trends in criminality.
 - c) Proper Security must be established at the Magistrate’s Court and the High Court. There is also need for Prosecuting Counsel to receive security as well.
 - d) In order to eliminate the backlog of cases, all outstanding posts in the High Court Registry and the Magistrate’s Court should be filled. The outstanding posts in the ODPP also need to be filled. Once these positions are filled steps should be taken to give an additional Criminal Court room at the Magistrate’s Court. Eventually there should be a move to have a second Criminal High Court. However, it must be borne in mind that the Madame Chief Justice would be the person who would make that final determination.
 - e) There are persons who witnesses to criminal incidents but who are fearful to come forward. It is necessary to have witness anonymity to protect those persons. The undersigned made an oral presentation on the need for witness anonymity in 2020, and the Deputy Governor’s Office submitted drafting instructions to the Attorney General’s Chambers. No word has been received on this.
 - f) The Jury Act Cap 136 is antiquated and needs to be updated. In 2020 a draft bill was circulated, and comments were provided by the ODPP but no further action has been seen. In light of the COVID-19 Pandemic, including other issues concerning jury arrays (relation

to accused, witnesses, etc.), there is need for a constitutional amendment to allow an election for a judge only trial in cases of murder, gang cases, sexual offences (especially with children), other matters will still be conducted by way of trial by jury.

- g) There is need for a Media legislation on how to properly report criminal matters. The right to freedom of expression must be balanced with an accused's right to a fair trial and the right of privacy as it relates to witnesses.
- h) The Police Prosecution Unit should be transferred to the ODPP, this way proper supervision and guidance can be given. This will be the first step in reforming this Unit. It is hoped that in the next five years to have the role of Junior Crown Counsel to conduct traffic matters, and the minor matters before the Courts.

The Criminal Justice Advisory Group is cognizant of the weakness and strengths identified, and are taking steps to remedy these issues. The Chairman of the Criminal Justice Advisory Group, His Excellency the Governor would be the most appropriate and suitable person to provide that information.

The undersigned finds it prudent and practical to address questions 6, 7 and 8 together.

- 6. The ODPP is a prosecutorial authority and is not an investigative body and is not involved in investigations, any questions concerning investigations should be directed to RVIPF, HMC, DOI and FIA.
- 7. When a matter is investigated prior to charge (in the cases of serious matters i.e. all indictable matters, summary matters, drug matters, drug trafficking, money laundering, theft, sexual offenses, etc.) the file is submitted to the ODPP to be reviewed. When the ODPP reviews a file for any criminal offense, there are two tests that must be satisfied before any criminal proceedings can commence. The first test is the evidential burden, there must be sufficient evidence that would more than likely lead to a conviction. If that burden is satisfied, then the second test is determined: that is whether it is in the public interest to commence a prosecution.
- 8. The responsibility of the DPP does not change based on the type of offence. All offences are treated with equal seriousness. The DPP is responsible for ensuring that every case file presented satisfies the two tests mentioned above before any criminal complaint is laid.
- 9. We cannot speak to internal processes within the law enforcement agencies to deal with insubordinate officers. However, if an officer commits any criminal offence, it is investigated normally by a senior police officer. In some cases, external investigators are brought in to ensure that an honest and thorough investigation is done. As it relates to any suspected criminal act committed by a public officer, a thorough investigation would be conducted normally lead by a senior police officer of the rank of Inspector or above. If deemed necessary by the DPP external investigators or specialists can be sought to ensure that a full and thorough investigation is made

10. There are matters that are currently before the Court involving law enforcement officers and public servants, there are also a number of ongoing investigations involving impropriety of law enforcement officers or public officers. We can indicate that there are approximately:

- Six investigations in progress concerning public servants and, law enforcement officers;
- Two matters before the High Court for trial concerning offences of crimes of dishonesty where the accused are public officers and law enforcement officers;
- Two matters before the Magistrate's Court concerning law enforcement officers.

The undersigned will not and cannot disclose the details of those matters. As to do such shall taint or prejudice the matter which may impeded on the persons involved right to a fair trial as provided in Section 16 of the Virgin Islands Constitution Order, 2007.

11. The challenges faced with prosecutions:

- a) Lack of forensic accounting, and financial investigation resources for financial investigations;
- b) Difficulty in obtaining statements as persons may be fearful or concerned of giving evidence, hence why witness anonymity is important;
- c) As there are cases where records are not properly maintained or lost, it provides difficulty in getting the requisite evidence;
- d) If it is a jury trial, unnecessary publication prejudice matters. If an accused is a well known individual, persons are reluctant to serve on a jury panel.

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