CARICOM-TREATY-FOR-THE-ESTABLISHMENT-OF-SEX-OFFENDER-REGISTRIES AND VICTIMS SUPPORT SYSTEMS.pdf

Jonathan m Bhagan
Ms Gina Y Maharaj, University of the West Indies, Cave Hill Campus
CARICOM TREATY FOR THE ESTABLISHMENT OF
SEX OFFENDER REGISTRIES AND VICTIMS
SUPPORT SYSTEMS

draft produced by Jonathan Bhagan LLB L.E.C. and
Gina Maharaj LLB L.E.C. LLM.

PREAMBLE

The State Parties to the present Treaty Establishing Sex Offender Registries
signed at      on ,

Condemning sex crimes as being among the most heinous acts known to mankind;

Recognizing the need to protect all persons from sex crimes through the implementation of sound policies and the strengthening of regional institutions;

Recognizing further that the right of sex offenders to be protected from potential discrimination is a fundamental human right and must be preserved;

Determined to implement international best practice in the Caribbean region in order to combat the scourge of sex crimes and prevent recidivism amongst offenders;

Recalling the Declaration of Grand Anse, the Revised Treaty of Chaguaramas and the history of movements of the Caribbean Community towards regional integration and cooperation;

Desirous of regional cooperation in achieving the goal of reducing the incidences of sex crimes from future and repeat offenders;

Resolved in ensuring the advancement of fundamental human rights and freedoms in accordance with the highest standards of international law in preserving the rights of sex offenders and thereby preventing this treaty from being used as a tool of oppression or victimization;

Cognisant that multi-sectoral and inter-disciplinary cooperation is necessary to combat all forms of sex crimes, and further in treating those persons suffering from disorders that predispose them to commit sex crimes;

Considering the overlapping relationship between sex crimes and other related criminal activities such as human trafficking and the need to take further steps to address all forms of crimes related to sexual abuse;
Acknowledging the need for continuous research and evaluation of current regional policies in order to ensure that the goal of reducing sex crimes is achieved;

Convinced of the need for rehabilitative and restorative justice policies in conformity with international human rights standards and the criminal justice system in reducing recidivism amongst perpetrators;

 Determined further to make the best use of regional cooperation in the establishment of victims’ support institutions and policies that help in increasing the reporting and conviction rate of sex crimes;

 Desirous further of cooperating with all willing international partners in sharing sex offender registry information so as to protect potential victims of sex crimes globally;

 Committed to building inter-regional and global partnerships in the prevention of sex crimes;

 Mindful that co-operation and joint action is necessary in combatting sex crimes;

 Committed further in ensuring that parties to this treaty harmonize laws against sex crimes in order to facilitate the objectives of this treaty;

 Acknowledging further the need for greater support for civil society organizations, which are the main providers of services to victims of sex crimes;

 Recalling further that the people of the Caribbean Community, acting through various civil society organizations have drafted this treaty of their own accord out of a desire to end the scourge of sex crimes which are in gross violation of the United Nations Declaration on the Rights of a Child, the United Nations Convention on Human Rights, the American Convention on Human Rights and other local and international instruments which are of the highest standards under human rights law in the upholding of respect and dignity of the people;

 Have agreed as follows:

 **ARTICLE 1**

 *Use and Definition of Terms*

'Sex Crimes' are defined as follows

<table>
<thead>
<tr>
<th><strong>Court</strong></th>
<th>means</th>
<th>the</th>
<th>Caribbean</th>
<th>Court</th>
<th>of</th>
<th>Justice</th>
</tr>
</thead>
</table>

**Fundamental Human Rights** means the highest possible standard of human rights found in international law inclusive of the ICCPR, UNHDR, United Nations Convention on the Rights of a Child, ICESCR, ACHR-the Constitutions
of the states parties to this agreement and judicial decisions decided upon by human rights courts and committees in interpreting international human rights

“Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

“Child” shall be taken to mean a person under 18 years of age.

Paraphilia
Pedophilia
Nymphomania
Victim Support Unit

CHAPTER ONE
PRINCIPLES

ARTICLE 2
Purpose and Scope

The purpose and scope of this treaty is as follows:

1. To establish a regional sex offenders registry and mandate that signatories establish local sex offenders registries;

2. To create a system of notification to track whenever an offender moves from one jurisdiction to another, and to ensure that sex offenders registered in non-signatory states are registered when they enter the Caribbean region;

3. To mandate that signatories bring their laws and policies dealing with sex crimes in accordance with international law and international best practice.

4. To mandate that signatories establish victims’ support units in their respective jurisdictions to provide practical assistance to victims of sex crimes;

5. To mandate that a system of treatment, rehabilitation and reintegration be established for former offenders in ensuring that their rate of recidivism is reduced and are able to integrate into society;

6. To ensure that a convicted perpetrator of a sex crime is never employed in a situation that facilitates their predilections; and

7. To introduce measures that increase the conviction rate of perpetrators of sex crimes, deter future offenders and also in accordance with human rights law, protect these offenders from discrimination.
ARTICLE 3
Non-Discrimination

The implementation of the provisions of this Treaty by Contracting Parties, in particular the enjoyment of measures to protect and promote the rights of victims and offenders, shall be secured without discrimination on any ground such as sex, gender, race, ethnicity, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.

CHAPTER THREE
OFFENDER REGISTRATION POLICIES AND DATABASES

ARTICLE 4
Obligation to create local Sex Offender Registries

The parties undertake to establish public sex offender registries in their own jurisdictions which will consist of:

i. A permanent record of all offenders and all their respective convictions for sex crimes; and

ii. The following information and whereabouts of convicted persons:
   a. Age;
   b. Full name;
   c. Place of birth;
   d. Detailed description of perpetrator;
   e. Date and location of all incidents that took place;
   f. Detailed facts of the crime perpetrated
   g. Details of all sentences;
   h. Length of incarceration if incarcerated; and
   i. Photo of offender.
   j.

ARTICLE 5
Establishment of a regional Sex Offender Registry

1. The parties undertake to establish a regional public sex offender registry, which shall include all the information taken from each state’s individual sex offender registry and shall be administered and supervised by the appropriate bodies of the Government.
2. Nationals of States who are parties to this treaty who are convicted by a competent tribunal of the crimes listed in the First Schedule of this instrument anywhere in the world shall be included on this registry.

3. This Registry shall incorporate information regarding registered Sex Offenders provided by INTERPOL via official INTERPOL notices or any other method of transmitting or sharing information.

4. Information from this Registry shall be made available to any nation state or partnered international organization upon request.

**ARTICLE 6**

**Differences in Legislation between State Parties not to be a barrier**

1. The express purpose of this article shall be to ensure that differences in legislation between State Parties do not become barriers to the establishment of a Regional Sex Offenders Registry.

2. The criminal offences for which State Parties to this agreement are concerned are listed in the First Schedule annexed to this instrument and any offences that have the same factual components as the offences listed in the First Schedule whether or not said offences are given the same terminology by the respective legislation of any state party.

3. State Parties undertake to create Sex Crime Equivalency Schedules that categorize crimes in their domestic legislation according to their factual components and equate crimes in domestic legislation to crimes in the First Schedule to this Agreement based on factual components.

4. Where domestic legislation omits to deal with a crime listed in the First Schedule annexed to this instrument State Parties undertake to implement new legislation to bring their legal system into conformity with this instrument.

5. Where there is an express contradiction between the categorization of offences in the First Schedule and the Domestic Legislation of a State Party ???

**ARTICLE 7**

**Obligation to register with local authorities and declare status as an offender**

1. The parties shall undertake to create a legal obligation for all persons previously convicted of sex crimes entering their respective jurisdictions for the
purpose of migration, study or an extended period of stay to immediately declare their status and register with local authorities.

2. The parties undertake to create appropriate mechanisms to punish persons who fail to declare their status as a former sex offender and register with local authorities.

**ARTICLE 8**

*Limitations to be placed on registered offenders*

1. State parties shall implement policies or give legislation effect to ensure that convicted perpetrators of sex crimes are never employed or placed in positions that facilitate their predilections.

2. In the case of a pedophile, said person shall be prohibited from working on or near a school compound or in any facility that cares for children.

3. In the case of a rapist said person shall not be granted coercive powers that may be used to facilitate future rapes e.g. powers of arrest such as for a police officer.

4. A table detailing positions which offenders should be prevented from holding is hereto annexed to the Second Schedule of this instrument.

**CHAPTER FOUR**

**IMPLEMENTATION OF VICTIM SUPPORT UNITS**

**ARTICLE 9**

*Mutual Cooperation with authorities in other jurisdictions*

1. Member States shall establish Victim Support Units in their respective jurisdictions to help victims of sex crimes.

2. Member States undertake to co-operate with each other in helping victims of sex crimes through their respective Victim Support Units by keeping abreast of international best practice and current societal trends to facilitate the altering of legislation and policy regarding to same.

**ARTICLE 10**

*Measures to protect the rights of victims*
1. States Parties shall adopt appropriate measures to protect the rights and interests of victims of the practices prohibited under the present treaty at all stages of the criminal justice process, in particular by:

i. Recognizing the vulnerability of victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

ii. Informing victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

iii. Allowing the views, needs and concerns of victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

iv. Providing appropriate support services to victims throughout the legal process;

v. Protecting, as appropriate, the privacy and identity of victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

vi. Providing, in appropriate cases, for the safety of victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; and

vii. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to victims.

2. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

3. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

**ARTICLE 11**

Victims Advocacy and Sensitivity Training

1. The Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the category of offences mentioned in this treaty.

2. The parties to this treaty undertake to train their police and judicial staff so
as to sensitize them to the needs of victims of all forms of abuse so as to remove potential barriers to the reporting of all forms of sex crimes.

**ARTICLE 12**

**Victims Advocacy Service Center**

1. The Parties agree to establish Victims Advocacy Service Centers in their respective jurisdictions that will work alongside Civil Society organizations to provide the following services:
   
   i. Assistance to victims to ensure their full social reintegration and their full physical and psychological recovery;
   
   ii. Promote awareness in to the public at large, including children, through information by all appropriate means, education and training;
   
   iii. Provide training to Police, Social services and Judicial staff to help sensitize them to the needs of victims;
   
   iv. Provide assistance and counseling to victims at all stages of the criminal justice process with the goal of increasing the number of reports and successful convictions of sex crimes;
   
   v. Provide a safe and non-confrontational environment where victims can report sex crimes;
   
   vi. Provide facilities for victims to apply for protection orders or restraining orders as need be;
   
   vii. Provide or facilitate access to emergency medical attention with the highest priority placed on confidentiality; and
   
   viii. Assist in placing victims in a shelter or some form of accommodation as need be in order to facilitate their recovery and ensure their safety.

2. The Victims Advocacy Service Centers shall have independent security staff, which shall not be affiliated directly with the police or any other branch of government.

3. The staff of the center shall be authorized to apply for protection and/ or restraining orders on behalf of victims.

**ARTICLE 13**

**Financial Support for Civil Society organizations**

2. The parties undertake to provide funding to civil society organizations in their
respective jurisdictions for the purpose of providing support services for victims of sex crimes.

2. Parties shall implement legislation and policies to foster better co-operation between Civil Society organizations and the police and criminal justice systems.

CHAPTER FIVE
TREATMENT AND REHABILITATION FOR OFFENDERS

ARTICLE 14
Counseling and treatment for potential offenders

State Parties shall undertake to provide counseling and support for persons suffering from any condition or paraphilia that may predispose them to commit sex crimes including pedophilia and nymphomania.

ARTICLE 15
Ongoing support for sex offenders

1. State Parties shall undertake to provide counseling and support for sex offenders to assist them in rehabilitation and their reintegration into society.

2. State Parties undertake to assist offenders in finding employment in areas that will not risk them reoffending.

3. State Parties undertake to use the data gathered from sex offenders to continue research in the field of sex crimes to assist in reducing the rate of recidivism.

CHAPTER SIX
GENERAL AND FINAL PROVISIONS

ARTICLE 16
Right of Appeal

1. Persons shall have a right to appeal to the Court if they allege that any policy or law created in accordance with this treaty infringes upon their fundamental human rights.

2. Such appeals shall require special leave from the Court so as not to entertain vexatious or frivolous cases.

ARTICLE 17
CCJ empowered to give advisory opinions

1. The Court shall have exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the Treaty.
2. Advisory opinions shall be delivered only at the request of the following:

   i. State Parties;
   ii. Local Courts;
   iii. INTERPOL; and

\textit{ARTICLE 18}
\textbf{Matters of Treaty Interpretation}

1. With regards to the interpretation of this treaty the Court may regard as persuasive authority the general body of international law.

2. The Court shall give regard to the highest standards of human rights found in international law in delivering its judgment.

\textit{ARTICLE 19}
\textbf{Locus Standi of Private Entities}

Persons, natural or juridical, of a Contracting Party may, with the special leave of the Court, be allowed to appear as parties in proceedings before the Court where:

   i. the Court has determined in any particular case that this Treaty intended that a right or benefit conferred by or under this Treaty on a Contracting Party shall enure to the benefit of such persons directly; and

   ii. the persons concerned have established that such persons have been prejudiced in respect of the enjoyment of the right or benefit mentioned in paragraph of this Article; and

   iii. the Contracting Party entitled to espouse the claim in proceedings before the Court has:

       a) omitted or declined to espouse the claim, or
       b) expressly agreed that the persons concerned may espouse the claim instead of the Contracting Party so entitled; and

   iv. the Court has found that the interest of justice requires that the persons be allowed to espouse the claim.

\textit{ARTICLE 20}
\textbf{Security Exceptions}
Nothing in this Treaty shall be construed:

i. As requiring any Member State to furnish information, the disclosure of which it considers contrary to its essential security interests.

ii. As preventing any Member State from taking any action which it considers necessary for the protection of its essential security interests:
   a) Relating to the supply of services carried out directly or indirectly for the purpose of provisioning a military establishment; or
   b) In time of war or other emergency in international relations.

iii. As preventing any Member State from taking any action in pursuance of its obligations for the maintenance of international peace and security.

**ARTICLE 21**

Signature

This Treaty shall be open for signature on the ___ day of ___ by the Member States of CARICOM.

**ARTICLE 22**

Ratification

1. This Treaty and any amendments thereto shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.

2. Instruments of ratification shall be deposited with the Secretariat, which shall transmit certified copies to the signatory States.

**ARTICLE 23**

Entry Into Force This Treaty

This Treaty shall enter into force on the deposit of the last instrument of ratification by the Member States of CARICOM.

**ARTICLE 24**

Registration

This Treaty and any amendments thereto shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.
**ARTICLE 25**
**Amendments**

1. This Treaty may be amended by the unanimous decision of the Parties.

2. An amendment shall enter into force one month after the date on which the last instrument of ratification is deposited with the Secretariat.

**ARTICLE 26**
**Reservations**

Reservations may be entered to this Treaty with the consent of the signatory States.

**ARTICLE 27**
**Accession**

1. After the entry into force of this Treaty a State or Territory of the Caribbean may, if Conference so determines, accede to this Treaty.

2. Accession shall be on such terms and conditions as Conference decides and shall take effect one month following the deposit of the instrument of accession with the Secretariat of CARICOM.

**OPTIONAL PROTOCOL 1**

Standardized E-Passport for all of CARICOM.

**First Schedule**
This will likely be based on the UK Sexual Offences Act 2003 so as to have access to the caselaw being generated from the UK.

**Second Schedule**
A table detailing positions that offenders must be restricted from accessing including employment. This requires discussion and policy analysis.