**CMC56**, Doc 5, **ANNEX II**

**PROPOSAL**

**FINANCIAL OPTIONS FOR**

**CARIBBEAN COMMUNITY ADMINSITRATIVE TRIBUNAL**

**Institutional Heads Meeting March 8, 2016**

**BACKGROUND**

The establishment of a Caribbean Community Administrative Tribunal (CCAT) will be recorded as a defining moment in the evolution and maturity of the Caribbean region.

The success of the CARICOM family is contingent upon sustained and deliberate investment in its greatest asset: its human resources. The Caribbean Community comprise a significant number of employees; both permanent staff and contractual staff. In the ordinary course of events, employment disputes are bound to arise. There exists a troubling lacuna in the constituent instruments of the majority of CARICOM institutions in relation to the settlement of employment disputes. CARICOM institutions enjoy immunity from suit, so that in the event of a staff dispute, there is no recourse to the domestic courts. The immunity granted to international organisations can become problematic; by foreclosing the option of litigation some courts have begun to question whether to uphold immunity. To allow organizational immunity to be invoked in the absence of a robust and independent administrative process to allow for the proper ventilation of employment disputes, runs counter to the tenets of the rule of law.[[1]](#footnote-1) As a result most international institutions have established administrative tribunals to provide an avenue to resolve such matters. One of the most successful of these is the International Labour Organisation Administrative Tribunal (ILOAT) to which sixty international bodies have recourse.

The idea for the CCAT has been mooted at various junctures in our region’s development. Key markers in the evolution of this idea include the Caribbean Law Institute Centre Report produced by Professors Winston Anderson and Ralph Carnegie, under the auspices of CARICAD; the draft statute of the Caribbean Community Administrative Tribunal, as produced by the CARICOM Secretariat for the Meeting of Officials of Institutions and Associate Institutions held in Bridgetown, Barbados on March 22- 24, 2010; and the documented Review of the draft statute as prepared by Mrs. Comtet-Simpson International Labour Law Specialist, ILO Representative.

It is envisioned that the establishment of a Caribbean Administrative Tribunal would serve to remedy the situation by providing an avenue for the ventilation of employment related disputes involving Staff of eligible CARICOM institutions. This process at the CCAT will be only the exercise of a reviewing function in the area of employment disputes. Thus the jurisdiction will only become exercisable where the parties have first had recourse to the internal grievance processes and the dispute remains unresolved.

**BENEFITS**

Chief among the benefits of the CCAT will be the provision of a cost-effective and systematic method of dispute resolution in the event of a dispute between employer and employee.

This will also serve to improve the efficiency, productivity and the industrial relations climate within all CARICOM institutions; all of which can only redound to the benefit of both the employer and the employee.

The CCAT will also improve access to justice by providing a structured and sustainable mechanism to ventilate employment disputes. This is urgently required given that litigation in the domestic sphere is problematic in light of the immunity from suit granted to CARICOM institutions.

In relation to the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission, in particular, the establishment of the CCAT will further the fulfilment of the obligation imposed by Article XII of the Protocol on the Status, Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission which requires the President of the Court to “make appropriate provision for the settlement of disputes arising out of contracts or other disputes of a private law character to which the Court or the Commission is a party.”

The CCAT will ensure that all employment related disputes within CARICOM institutions are subject to review by an independent and impartial adjudicative body which is guided by the tenets of good industrial relations practice.

All of the foregoing will have a concomitant effect in upholding, preserving, enhancing and defending the rule of law within the Region.

**FINANCIAL PROPOSAL**

**Assumptions – Operating Budget**

1. The total estimated five-year costs for the tribunal is **US$187,730.00** which comprises US$81,600 as Variable Costs (VC) and US$48,640.00 as recurring costs (RC).
2. The CCAT will be housed at the CCJ. This will allow for costs savings in staff and recurring expenses associated with premises, security and storage for the first five years.
3. The recurring costs identified includes bare bone estimates for communication, subscriptions, staff training, publishing / advertising notices and making arrangements for sittings, printing tribunal rules, etc. peculiar to the operations of the Tribunal.
4. Since the Tribunal is unlikely to be up and running from the beginning, the full costs for Judges sitting is computed from year 2 when it is anticipated they will first sit to define and agree the rules and procedures for the Tribunal. Thereafter, it is estimated that there will be one sitting per year commencing in year 3 and until appeals increase sufficiently to facilitate more yearly sittings. Each sitting is estimated to last for 2-3 days at a time.
5. The RJLSC will be responsible for recruitment of the Judges to the Tribunal.
6. Three Judges will form the panel at any one sitting.
7. Hiring will be selected from 5 judges to be shortlisted.
8. Estimated cost of stay during hearings comprise airfare, accommodation and per diem (4 days, three nights)
9. Honorarium per judge per sitting is estimated at US$3,000.00. This cost will be fixed for intervals of 5-year period starting from year 2 after establishment of the Tribunal.
10. A recurrent cost (RC) of US$12,460 for administrative arrangements is envisaged per year starting from year 2.
11. In the 1st year of operation (year 2), a one-time cost of US$35,000 is budgeted for the launch of the tribunal and the recruitment of the Judges (and will be donor sponsored). In addition, an estimate of US$20,400 is assumed for the judges identified to sit on the Tribunal to have a first sitting to agree and implement the procedures and rules of the Tribunal. This first sitting of the panel is set out as a variable cost.
12. From the 2nd year of operation (year 3), the VC of US$20,400 is associated with one sitting per year of the panel and a yearly recurrent cost of US$12,060.
13. If more than one sitting per year is required, as a practical cost savings method, these are assumed to be via Skype or other video messaging means.
14. Of note is the fact that the VC will fall if there are no sittings in any one year or less than the estimated number of sittings in the five year projected period.
15. Included also is a small cost of US$400 in year 2 for staff training, in the rules and procedures of the tribunal, if necessary,
16. Below is a table showing the financial estimates per year. All costs are in US$.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Description** | **Year 1** | **Year 2** | **Year 3** | **Year 4** | **Year 5** | **Total** |
| 1 meeting – October/November 2016 | 22,690 |  |  |  |  | 22,690 |
| **Launch of Tribunal***80 Guests (Hospitality @ US$35 each)* |  | 2,800 |  |  |  | 2,800 |
|  | Venue - CCJ Courtroom |  | 0 |  |  |  | 0 |
|  | Memorabilia (400@$US25 each) |  |  10,000  |  |  |  | 10,000  |
|  | Advertising |  |  2,000  |  |  |  |  2,000  |
|  | Printing |  |  3,000  |  |  |  |  3,000  |
| *Airfares (Cost for Recruitment of Judges)* |  | 0 |   |  |  | 0 |
|  | Judges\*5 |  |  6,000  |  |  |  |  6,000  |
|  | *Per Diem (5 judges)* |  |  1,500  |  |  |  |  1,500  |
|  | *Accommodation (5 judges)* |  |  4,500  |  |  |  |  4,500  |
|  | Miscellaneous (Ads and Admin Costs for Recruitment) |  |  5,000  |  |  |  |  5,000  |
| **Total Launch Cost**  |  | 34,800 |   |  |  | **34,800** |
| **Salaries & Allowances (CCJ Employees)** |  | 0 | 0 | 0 | 0 | 0 |
| **Variable Costs**  |  |  |  |  |  |  |
| **Sittings**  |  |  |  |  |  |  |
|  | 3 Judges @ $3000 per session (Honorarium) |  | 9,000 | 9,000 | 9,000 | 9,000 | 36,000 |
|  | 3 Airfares @ $1800 per judge |  | 5,400 | 5,400 | 5,400 | 5,400 | 21,600 |
|  | 3 Accommodation @ $300 p/room p/night p/ judge |  | 3,600 | 3,600 | 3,600 | 3,600 | 14,400 |
|  | 4 days per diem per 3 Judges (US$200 p/day) |  | 2,400 | 2,400 | 2,400 | 2,400 | 9,600 |
| **Total Cost for Sittings** |  | 21,600 | 21,600 | 21,600 | 21,600 | **81,600** |
| **Recurrent Cost** |  |  |  |  |  |  |
| Advertising/Notice |  |  1,200  |  1,200  |  1,200  |  1,200  | 4,800 |
| Contingencies for Flight adjustments |  | 300  | 300  | 300  | 300  | 1,200 |
| Ground Transportation/Gas |  | 600 | 600 | 600 | 600 | 2,400 |
| Stationery & Supplies |  | 800 | 800 | 800 | 800 | 3,200 |
| Printing & Publication |  |  1,200  |  1,200  |  1,200  |  1,200  | 4,800 |
| Subscriptions Professional Associations |  |  900  |  900  |  900  |  900  | 3,600 |
| Administrative Staff Training |  | 400 |  |  |  | 400 |
| Telephone |  |  3,600  |  3,600  |  3,600  |  3,600  | 14,400 |
| Internet |  |  1,200  |  1,200  |  1,200  |  1,200  | 4,800 |
| Mobile  |  | 640 | 640 | 640 | 640 | 2,560 |
| Equipment Repairs & Maintenance |  | 1,200 | 1,200 | 1,200 | 1,200 | 4,800 |
| Miscellaneous |  | 420 | 420 | 420 | 420 | 1,680 |
| Sub-Total |  | *12,460* | *12,060* | *12,060* | *12,060* | ***48,640*** |
| Grand Total | 22,690 | 67,660 | 32,460 | 32,460 | 32,460 | 187,730 |

**Options for financing CCAT**

1. To develop the financing model, the following principles were used:

1. Keep the formula as simple as possible.
2. Price to encourage broad commitment in principle – recognized as an expense by the signatory institution (recall that there is a first signatory on the document – agreement in principle but not full commitment).
3. Price to encourage full participation – recognized as an expense by the participating institution (recall the second signatory on the document – agreement to use and commit funding).
4. Price to also encourage recognition that this is a needed investment for the regional public good of CARICOM Institutions.
5. Arguably, larger organizations may use the CCAT less than smaller ones because their HR systems are more developed.
6. Usingthese principles, various financing models and their pros and cons were explored:
7. Sharing Full Costs equally
8. Sharing Full Costs by # of Employees
9. Sharing Recurrent Costs Equally and Variable Costs shared by # Employees
10. Sharing Recurrent Costs Equally and % Variable Costs shared by # Employees with balance of funding to be made from filing fees.
11. The selected model was a variant of Option C**,** that is, **Sharing Recurrent Costs (US$48,640) Equally plus 20% Variable Costs (US$81,600.00) Shared Equally for first signatories and 80% of Variable Costs Shared by # Employees for second signatories yearly.**

Thus, assuming steady state of CCAT development i.e. from year 2, and 20 organizations committing to a first signature (Pool 1); and four of whom are very large and commit to the second signature (Pool 2 - estimated at <400 employees) e.g. CXC, CARICOM Secretariat, CARDI and CCJ, the contributions would amount to:

* Pool 1: US$771.20 per year per organization (i.e. $608.00 RC + $163.20 VC) **­plus**
* Pool 2: US$33.00 per person per year

**These figures will vary according to the exact number of organizations who commit by their second signature to the establishment of the Tribunal. Further scenario analysis can be done in this regard.**

**Additional options for funding**

Two additional sources of funding to be explored with a view, if successful, to reducing the costs to the institutions are -

* 1. Grant Funding to allow for the build-up of a pool of resources to accommodate the cost to support infrastructure and strengthening establishment of the institution. Institutions to still pay basis costs identified at Pool 1. [JURIST/ EDF]
	2. Fees per application. Here the recommendation is as follows –
		1. Filing fees for use of Tribunal. This will depend on type of matter, eg.

|  |  |
| --- | --- |
| Type 1 Claims | - Unpaid Wages- redundancy pay- holiday pay- notice pay- equal pay- years of service pay |
| Type 2 Claims | - unfair dismissal- discrimination- whistleblowing- equal pay |

 For each claim, there could be two sets of fees to pay –

1. A filing fee
2. A hearing fee

Before hearing, the claimant will be required to pay the fees. Low income earners, eg. Persons with salaries less than say USD1,000.00 monthly can make an application for full or partial waiver.

1. **Doreen Johnson v CARICAD [2009] CCJ 3 (OJ)** [↑](#footnote-ref-1)