



**THE FOURTH SESSION OF THE AD HOC COMMITTEE TO ELABORATE A
COMPREHENSIVE INTERNATIONAL CONVENTION ON COUNTERING
THE USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGIES
FOR CRIMINAL PURPOSES**

**STATEMENT BY
MRS. ANDREA MARTIN-SWABY
ACTING SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS AND
HEAD OF JAMAICA'S CYBERCRIMES AND DIGITAL FORENSICS UNIT**

**ON BEHALF OF
THE CARIBBEAN COMMUNITY
(CARICOM)**

AGENDA ITEM 4: PROVISIONS ON CRIMINALIZATION

PLENARY (ROOM M)

JANUARY 9, 2023

Madame Chair, thank you for giving me the floor.

Jamaica is pleased to deliver this statement on behalf of the 14 member states of CARICOM. In reviewing the articles contained in the chapter on Criminalization, CARICOM has considered, among other things:

1. Whether the offence affects the confidentiality, availability, and integrity of the Information and Communications Technology system;
2. Whether the use of ICTs in the commission of the offence changes the speed, scope and scale or impact of the traditional offline offence;
3. Whether the offence is sufficiently covered by established cyber dependent crimes;
4. Whether the offence is sufficiently covered by existing multilateral instruments.

Against this background, CARICOM wishes to submit the following:

Cluster 1 – Articles 6 to 10

CARICOM supports the offences provided in cluster one as they address crimes which affect the confidentiality, integrity and availability of Information and communications technology system. These crimes are cyber dependent and therefore integral to include in the proposed convention.

Cluster 2 – Articles 11 to 14

In relation to the provisions in cluster 2, CARICOM supports Article 11 [*Computer – Related*] [*Information and communications technology- related*] *Forgery* and Article 12 – [*Computer-related*] [*Information and Communications technology- related*] *fraud*. The use of ICTs changes the scope and nature of the offline traditional offence and are therefore appropriate to be included in this proposed convention.

Article 13 [*Computer- Related*] [*Information and Communications technology-related*] *Theft* is already adequately covered by Article 12. Article 12 addresses the offence of fraud which is committed by means of the manipulation of data and refers to the destruction, blocking, modification, copying of data in circumstances where there is a loss of property to another person or an entity and where the fraudulent act is done for an economic benefit. This is couched in very wide terms and therefore capable of covering the acquisition of rights over property or the theft of property where the perpetrator seeks to permanently deprive the lawful owner of rights over the property through the manipulation of data. The article therefore duplicates elements of Article 12.

With respect to Article 14 on *Illicit use of electronic payment instruments*, CARICOM considers this offence is already captured by Article 10(1)(a)(i) *Misuse of Devices and Programmes*. This article criminalizes the creation, sale, procurement for use of a device, including a program which is designed or adapted for the purpose of committing an offence which is established under the

convention. Computer-related forgery is an offence under Article 11, and therefore any device which is created, forged and which is then used to forge or imitate an electronic payment system, would be captured under Article 10(1)(a)(i). Additionally, it could be covered under Article 6 regarding Illegal Access.

For Article 14 (b) of the offence, the elements could not withstand scrutiny due to the absence of a malicious intent or criminal act. By itself, the act of causing someone to obtain the data of a payment instrument would be a criminal offence.

Article 14 (c) of the offence, "*The use of [an information network or information technology] [a computer system] to gain unauthorized access to the [data] [information] pertaining to any payment instrument*", is already covered by Article 6 Illegal Access.

Cluster 3 – Articles 15 and 16

Regarding the offences outlined in Cluster 3, CARICOM does not support Article 15 which treats with the *Violation of Personal Information*. The provision speaks to legislation being adopted to criminalize the access, sale, provision of any material containing personal information. Such wide language will extend to tangible material such as paper and non-technological systems. Recognising this convention is specific to ICT systems, this provision goes beyond its scope.

In Article 16, which treats with Identity related offences, paragraph (a) addresses the obtaining, receiving or distribution of passwords

or credentials for the purpose of accessing a computer system without right. CARICOM considers that this offence is already covered under Article 10(1)(b). Similarly, Article 16 (b) which addresses the fraudulent use of an electronic signature, password of another person is already covered under Article 12 which treats with ICT-related fraud.

Cluster 4 – Article 17

CARICOM supports cluster 4 which treats with the *Infringement of Copyright*.

Cluster 5 – Articles 18 to 21

In Cluster 5, CARICOM supports Article 18 addressing the *Offences related to online child sexual abuse or exploitation material*. We, however, look forward to hearing the rationale for the inclusion of the reservation in Article 18 (5).

Cluster 7 – Articles 24 and 25

In relation to Article 24, which includes sexual extortion, CARICOM would listen carefully to the views being expressed by member states in the room as this is an activity which is quite prevalent and may not be covered under traditional extortion/ demanding money with menace provisions.

In addition, CARICOM supports Article 25 which addresses non-consensual dissemination of intimate images.

Madame Chair,

At this juncture, CARICOM wishes to make a general comment in relation to clusters 6, 8 and 9, before providing specific observations on each cluster.

The Committee may recall that CARICOM's position at the first meeting in New York in March 2022 was that the chapter on Criminalization should treat primarily with the cyber dependent crimes which address the malicious activities aimed at affecting the integrity, availability and confidentiality of computer data and systems. Activities which were already covered by existing UN instruments or other traditional offences should not be included within the Convention unless the use of ICTs in its commission changes the scope of the offence itself. Further, Member States should also pay attention to the dangers of criminalizing activities which are not otherwise criminal when they are committed without the use of ICTs.

Cluster 6 – Articles 22 and 23

In relation to Articles 22 and 23, the involvement of minors in the commission of an offence is not usually classified as an offence in and of itself. The act of coercion to suicide may not be a criminal offence when it is committed offline. These two articles would benefit from informal negotiations to explore the rationale behind these provisions and usefulness of them within this new instrument.

Clusters 8 and 9 – Articles 26 to 32

At this stage, CARICOM is not in a position to support the articles in clusters 8 & 9. Several of these activities were already criminalized as traditional offences such as those in Articles 30, 31 and 32 and therefore if already covered in existing legal instruments, the issue is what would be the utility of including within this new instrument.

Cluster 10 – Articles 33 and 34

With respect to Cluster 10, CARICOM supports Article 33 on Money Laundering. This provision is consistent with UNTOC and UNCAC and would be a useful tool in this instrument. Regarding Article 34 on Obstruction of Justice, CARICOM supports its inclusion, noting that it is consistent with Article 25 of UNCAC.

CARICOM also supports Article 35 on Liability of Legal Persons, Article 36 on Participation and Attempt and Article 39 addressing Prosecutions, Adjudication and Sanctions.

In conclusion, Madame Chair, CARICOM cannot support at this stage of the negotiations Articles 13, 14, 15, 16, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32. However, CARICOM remains open to discussing these provisions within the informal consultations.

Thank you.