

COMMERCIAL CRIME AND ITS EFFECT ON DEVELOPING COMMONWEALTH COUNTRIES

Memorandum by the GOVERNMENT OF ZAMBIA

World economic recession is a fact of life. Its causes and effects on the developed nations are daily reported through the media and there is little point in reiterating them. What may not be so apparent are its deep rooted effects on developing Commonwealth countries. The recession has hit such countries at a time in their development when they can ill afford the loss of momentum in their economic growth. For example, there is a double effect each time the price of oil is increased. Obviously, more hard currency will be required for actual payment of the increase whilst manufacturing countries must correspondingly increase the price of their goods to their consumers - the developing nations.

1. In some Commonwealth countries severe regional and domestic problems have enhanced the downward trend in their economic viability consequent of world recession. In our region, one has only to recognise the effects of freedom wars, refugees, droughts, slumps in commodity prices, etc. to understand the magnitude of the problem. It is not always apparent, however, that dire shortage of hard currency leaves in its wake a fertile ground on which commercial crime will thrive.

2. Where economic instability develops, a general lack of confidence follows in the business and commercial communities, resulting in organised efforts by criminal elements to remove from the affected country convertible assets to countries of stronger economy. In order to do so, the occurrence, particularly in Africa, of forged and counterfeit instruments is steadily increasing. The business world in these communities are not always conversant with actual currency notes, bank drafts, travellers' cheques etc., usually in high denominations, and in hard currency. Businessmen have normally dealt with reputable banking houses and confirming houses and do not therefore come in contact with the actual hard currencies. The manufacturer of the forged instrument is therefore not intending to defraud banks etc. His object is satisfied when the unsuspecting businessman has accepted the forged instrument. The businessman will not normally report the deception to the authorities because of his own involvement in the transaction, having first agreed to deal illegally in hard currency.

3. For similar reasons businessmen are tempted to engage the services of dubious confirming houses or indeed suppliers where re-invoicing of goods can be undertaken, causing an additional outflow in hard currency. The re-invoicing usually has the effect of undervaluing export commodities or overvaluing imports, the price differences being credited to the account of the businessman. There is also the instance of manufactured goods being supplied to developing nations which are inferior for any number of reasons (refurbished, second-hand, obsolete, inferior quality etc.). Such goods are being priced as new and would seem acceptable on face value but, once again, the device is used to drain off hard currency.

4. When a developing country is in the throes of an economic crisis and internationally known and respected lending houses come to the rescue there generally follows on the dubious loan offers and credit facility entrepreneurs offering attractive loans and credit. These usually amount to advance fee confidence tricksters or simply 'finder's fee' seekers. Africa, in particular, has been beset by such characters.

5. I have not attempted to provide an exhaustive list of the type of commercial crime affecting developing countries. There are obviously many more categories of commercial crime of a domestic nature which are common to us all. My emphasis has been on the type of commercial crime which has as its vehicle international trading and banking.

6. Now I come to the most serious effect of an economic collapse in a developing country. Where there is abject poverty as a result of any or all of the causes already mentioned there will follow an escalation in the domestic crime rate. Criminologists will agree that persons with non-criminal backgrounds or tendencies will revert to unorthodox means, including crime, in order to survive. As a result of meeting his daily needs by theft an otherwise law abiding subject will develop a criminal mind. Naturally the criminal will not wish to be caught and ultimately violent crime ensues. A country which has a growing crime or security problem earns the reputation of instability, providing the cause once again for the outflow of hard currency (thereby completing the vicious circle).

7. From our observations already stated I have briefly tried to show the causes and effects of an unfavourable economic situation brought about not necessarily by poor Government or lack of control but rather by circumstances beyond human control.

8. As far as commercial crime is concerned, we, as Commonwealth Members, ought to put our minds to the question of prevention. Prevention is much more desirable than detection and prosecution.

9. The likelihood of acceptable evidence for Court proceedings becoming available in prosecuting the confidence tricksters, advance fee fraudsters, counterfeiters and the utterers of forged instruments is almost nil. Banking institutions, for instance, in the United Kingdom (as the natural centre of most Commonwealth business) are not keen to send witnesses to Court overseas. Indeed, in most cases evidence is just not made available.

10. Exchange Control offences are viewed throughout the world in much the same way as income tax violations. They are domestic regulations and as such are not looked upon as international crime. Yet, as already described, to allow the uncontrolled outflow of hard currency from a country which just cannot provide a free economy is disastrous to that country. It is not obviously recognisable that Exchange Control offences, in the ultimate, are in many cases much more serious and damaging to a country than the more easily identifiable crimes of robbery, theft, etc. The earlier we recognise this fact and act the better.

11. Countries enjoying a free economy can afford the luxury of delay in justice and ultimate retribution to the offenders. In the developing world, however, the situation is much more immediate. I feel that we must always be ahead of the criminal in his attempts at exploitation and in this regard mutual trust and understanding between Commonwealth law enforcement agencies is essential.

12. It is our proposal, therefore, that in order to further the preventative role, the office of the Commonwealth Fraud Liaison Service provided through the Commonwealth Secretariat is not only continued but reinforced. We are all aware that the office of the Commonwealth Fraud Office has provided an invaluable intelligence service to developing Commonwealth countries and in a number of cases has helped to prevent large scale frauds taking place. I emphasise that it is not practical in most circumstances to contemplate Court proceedings. We must rely on mutual trust and confidence in the prevention of the type of commercial crime previously described.

13. The Commonwealth Fraud Liaison Service currently facilitates co-operation and communication between Commonwealth law enforcement agencies. It also liaises with outside agencies appropriate to the type of information or communication required. We must augment this service so as to provide all the intelligence necessary at an appropriate centre to combat the escalation in economic offences. In this regard there is an urgent need not only to continue with the Service but to do all that we can to enhance its vital role.

14. It may be argued that the International Criminal Police Organisation (Interpol) already provides this service. Very often the use of Interpol services has been effective but subscribers to Interpol do not have in common, as we do, law, language, Parliaments and, in most cases, administrations all based on common ground. It is for this very reason that a mutual trust and understanding already exists within the Commonwealth in all other areas. We are merely proposing that the same understanding and co-operation is extended in the eternal fight against crime. We refer in particular to the type of crime already mentioned which affects developing countries much more than developed countries.

15. May we in conclusion once more urge, that consideration be given to enlarging and strengthening the Commonwealth Fraud Office so that particular commercial crime areas and criminals who operate on an international basis may be "targeted" for concerted Commonwealth Action. Let us not think domestically on this issue. Let us think internationally as crime knows no border.