

Office of the
Director of
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'To No One Will We Sell, To No One
Deny or Delay Right or Justice'
Chapter 40, Magna Carta 1215

IN THIS ISSUE:

	PAGE
Editorial	1
Mr Rashid Ahmine scoops Prestigious Award at Annual Asset Recovery Conference in South Africa	2
Annual conference on asset recovery, hosted by the National Prosecution Authority of South Africa and UNODC	3
Training programme on Financial Investigations in Victoria, Seychelles	5
GPEN Webinar: "Is badness online acceptable?"	6
Etes-vous victime de discrimination?	7
Obituary: Mr. Guy Ollivry, QC	9
Case summary	10
La mise en ligne de 'Tanya so zistwar'	12

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The views expressed in the articles are those of the particular authors and should under no account be considered as binding on the Office.

EDITORIAL



Dear readers,

In 2012, Mr Rashid Ahmine, Senior Assistant Director of Public Prosecutions, was awarded the Prosecutor of the Year Award by the International Association of Prosecutors for his outstanding performance in the fight against crimes both domestically and internationally and for successfully promoting international cooperation and human rights. This year, in September last at the Annual Asset

Recovery Conference in South Africa, Judge Edwin Cameron presented an award to Mr Ahmine for his outstanding contribution to the establishment of the Mauritian Asset Recovery Unit and the development of the Asset Recovery regime in Mauritius.

Some of the various issues discussed at the Annual Asset Recovery Conference have been reported for your benefit. Two of our officers attended a training programme in Seychelles on financial investigations and they share their experience with us in this issue. Miss Aarti Burthony, legal intern, addresses the issue of discrimination and explains the role of the Equal Opportunities Commission.

As usual, you will find a summary of the latest Supreme Court judgments as well as those of the Judicial Committee of the Privy Council.

I wish you a pleasant reading.

**Zaynah Essop,
State Counsel**

Mr Rashid Ahmine scoops Prestigious Award at Annual Asset Recovery Conference in South Africa



Mr Rashid Ahmine, Senior Assistant DPP, and two law officers attended the annual conference on asset recovery, hosted by the National Prosecution Authority of South Africa and UNODC from the 28th to 30th September 2015.

The cherry on the proverbial sundae was the bestowing of award to one person from the ARINSA countries that played a key role and contributed most to the implementation and development of an asset recovery mechanism in his country. Member countries of the ARINSA were invited to submit the names of individuals of their respective for their significant contributions to the field of asset recovery.

The award, which was presented by Judge Edwin Cameron, went to Mr. Rashid Ahmine, for outstanding contribution to the establishment of the Mauritian Asset Recovery Unit (ARU) and the development of the asset recovery regime in Mauritius. Mr. R. Ahmine stressed on the importance of regional cooperation in terms of asset recovery and thanked ARINSA, UNODC and the NPA for the support they have provided to the ARA in terms of capacity building and implementing best practices in the field.

In the great wealth and firmament of ARINSA's generosity, this particular award may perhaps be found by many to be a well-deserved token for a hard-working individual, and the mere fact of it must be regarded as a boost to Mauritius' drive in achieving a better tomorrow.

Mr Rashid Ahmine was called to the bar of Mauritius in December 1994 and was appointed Senior Assistant DPP in 2011. One year later, in 2012, he was awarded 'Prosecutor of the Year' by the international Association of Prosecutors (IAP) for showing an outstanding performance domestically and internationally in the fight against crime in Bangkok.



Annual conference on asset recovery, hosted by the National Prosecution Authority of South Africa and UNODC.

As far as the asset recovery purists are concerned, having Mr. Willie Hoffmeyer, National Deputy DPP and former head of Asset Forfeiture Unit (AFU) in South Africa, South African Judge Edwin Cameron and Mr. Andrew Mitchell QC, Head of 33 Chancery Lane Chambers, an asset recovery expert, in the same room on a panel of experts, would be a farfetched situation nearing the realm of the fanciful. Luckily, for three officers of the Office of the Director of Public Prosecutions, this situation materialized during the annual conference on asset recovery, hosted by the National Prosecution Authority of South Africa and UNODC.

The conference, spanning over three days, was held in Johannesburg South Africa from the 28th to the 30th of September 2015. Mauritius was represented by three officers of the ODPP and one investigator from the Enforcement Authority and along with six other member countries of ARINSA, were privileged guests to that event.

After the traditional introductory remarks by the National DPP of South Africa and other eminent personalities including Mr. Willie Hoffmeyer, the presentations and discussions ensued. Among the highlights of the first day were the speeches made by delegates from each of the guests countries, including Mauritius. The gist of the speeches was with regards to the implementation and progress of the asset recovery mechanism in the respective nations and the priceless assistance that ARINSA and the NPA provided towards that end.

The conference hit full throttle on the second day. The participants were treated with a series of presentations on different areas of asset recovery ranging from tracing of assets, affected gifts, ways to secure property pending freezing orders to legal issues such as the calculation of benefit and standard of proof regarding forfeiture orders.

Of particular importance was the presentation regarding affected gifts and how it could lead to the tracing of hidden proceeds of crime. An affected gift under the South African law is defined as any gift made by a defendant not more than 7 years before the fixed date or any gift made by a defendant if it was a gift of property received by the defendant in connection with an offence committed by him or another person. Thus, although the person who received the affected gift is not implicated in any crime and is not a party to the proceedings during a confiscation application, the value of the gift is a realisable property of the Defendant and should be added to the amount which must be realised. The value of the gift thus affects the value of the confiscation order directly.

Equally important, especially for the Mauritian jurisdiction, was the presentation regarding the evaluation of benefit by Mr. Andrew Mitchell QC. A confiscation order can be applied for against a person who has been found guilty of smuggling or drug dealing even though the articles which were being attempted to be brought unlawfully within a particular jurisdiction has been seized by the authorities. For example, unlawful drugs which have been seized from the mule at the airport or port, an application for a confiscation order can be applied for against the main drug trafficker with regards to the value of the drugs seized. The value of the drugs seized would be construed as the potential benefit.

The presentations were each followed by stimulating debates involving the panelists and the participants. The importance of such high quality presentations and debates for countries with burgeoning asset recovery regimes, such as Mauritius, cannot be stressed enough.

The Honourable Edwin Cameron QC is a judge on the Constitutional Court of South Africa. He is well known for his HIV/AIDS and gay-rights activism and was hailed by Nelson Mandela as "one of South Africa's new heroes". The intervention of Judge Cameron, also regarded as a respected expert on asset recovery, was the main event of the three-day conference. The topic of his speech was "Asset Recovery: Friend of Democracy" as he chose to address the audience on the importance of the asset forfeiture strategy and tool in the effort to deter and combat crime and that in our more modern circumstance it has a rightful and legitimate place in such efforts - this now being endorsed and confirmed by the Constitutional court of South Africa in what is known as the Elran case (**NDPP v ELRAN [2013] ZACC 2**). He also provided the audience with some useful insights on the court's approach with regards to asset recovery applications and dazzled more than one with his anecdotes concerning his activism and the positive development of the justice system of South Africa since the end of the apartheid system in South Africa.

Pravin Harrah, Principal State Counsel &
Nithiraj Bisnatsingh, State Counsel

Training programme on Financial Investigations in
Victoria, Seychelles



From the 14th to the 17th September 2015, Jean Michel Ah Sen, Principal State Counsel, and myself participated in a training programme on Financial Investigations in Victoria, Seychelles. Serviced by seasoned agents of the Federal Bureau of Investigation (FBI), the work sessions were highly interactive and touched upon a number of topical issues such as investment frauds and Ponzi schemes.

The FBI trainers shared their experience in investigating serious financial crimes and demonstrated how computer forensics could assist in audit trailing and in the gathering of evidence generally.

We have also had the opportunity to hear about the various legislation in force in the United States of America allowing intrusive surveillance in the fight against white-collar crimes. Clearly the plethora of laws in that field enables the law enforcement agents to act with the greatest efficacy; there is a lot to be learnt from the American framework.

Of particular interest was the use of forensic accounting in the context of case presentation in court. We have been shown how complex financial statements could be simplified so as to enable jury members to better understand the evidence adduced.

Overall, the four-day course was very fruitful and has enabled us to enhance our knowledge on organised financial offences.

**Medaven Armoogum,
Ag. Senior State Counsel**

GPEN Webinar:
"Is badness online acceptable?"



The Office of the DPP attended, within its premises, a webinar organised by the Global Prosecutors E-Crime Network (GPEN) on 21st October 2015. This one-hour webinar was conducted by adjunct Professor Phair who is an influential analyst on the intersection of technology, crime and society and has served the Australian Federal Police as Detective Superintendent.

Adjunct Professor Phair talked about the way people behave online, which is way different from what people would normally do socially. He gave an example of the music and cinematographic industry and the "free downloads" available on the Internet. Those people would not have robbed a music shop for a CD for instance but they still do it online.

Pr. Nigel Phair outlined the dangers of the internet. "You can have great software, hardware, firewall... and that's great until someone clicks on a link or brings in a USB drive", he stated. He also added that this could compromise an organisation because the hackers attacking may want to steal your data, control your servers or get information on customers.

Pr. Nigel Phair also talked about social media where there can be a lot of bullying. He addressed the issue money scam which is present on the internet and bank phishing. He said that there is a range of criminal actors involved in the phishing scam. He thinks that it is somehow difficult to get them all without a proper mutual legal assistance.

The GPEN is a global network that improves international cooperation among cybercrime prosecutors. Visit the GPEN's website to get their monthly newsletters <http://www.iap-association.org/GPEN/Publications#news>

Mr Ashley Victor,
Public Relations Officer

Etes-vous victime de discrimination?

L'un des principes fondamentaux des droits humains est que toute personne doit être traitée avec égalité. Le fait de ne pas traiter toute personne, placée dans une situation identique, de façon égale, sur le fondement d'un critère établi par la loi, donne lieu à la discrimination. En effet, la discrimination conduit à traiter des personnes différentes plus mal, en raison de caractéristiques spécifiques dans un élan d'intolérance.

A sa création en 1948, les Nations Unies ont introduit le concept que « tous êtres humains naissent libres et égaux en dignité et en droits » en vertu de l'article 1 de la Déclaration Universelle des Droits de l'Homme. Sous ladite Déclaration tout être humain a droit à une protection légale contre toute discrimination comme prévu à l'article 7. D'autres traités internationaux se sont par la suite ralliés au mouvement de lutte contre la discrimination. Ces textes ont élargi le champ d'application des caractéristiques discriminatoires ainsi que celui des groupes de personnes vulnérables visées. Parmi les conventions figurent: la Convention internationale pour l'élimination de toutes les formes de discrimination raciale; la Convention sur les droits des enfants; la Convention sur l'élimination de toute forme de discrimination contre les femmes; et la Convention relative aux droits des personnes handicapées.

Dans un Etat où les droits humains sont respectés, la loi tend à protéger tout individu contre toute forme de discrimination. Ainsi, en vertu de l'**article 16** de la **Constitution mauricienne**, il est interdit de discriminer toute personne sur la base de race, de caste, de lieu d'origine, d'opinion politique, de couleur ou de croyance. Ces personnes sont soumises à des incapacités ou des restrictions auxquelles ne sont pas soumises les personnes ne répondant pas à ces critères. Afin de mieux s'armer pour lutter contre la discrimination, le législateur mauricien en 2008 a introduit l' **Equal Opportunities Act (EOA)** dans le but de promouvoir et de veiller à l'égalité des chances.

L'**EOA** a donné vie à l'Equal Opportunities Commission (la Commission). Au sein de la Commission, est établi l' Equal Opportunities Division (la Division) comme prévu à la **section 27** de l' **EOA**. La Division reçoit et traite les plaintes de discrimination alléguées. Selon les dispositions de la **section 28** de l' **EOA**, toute plainte de discrimination alléguée doit être communiquée en écrit à la Division avec une description de l'acte de discrimination. La plainte doit être logée dans un délai de douze mois à compter de la date de la discrimination alléguée ; mais la Division peut étendre ce délai de douze mois dépendant de

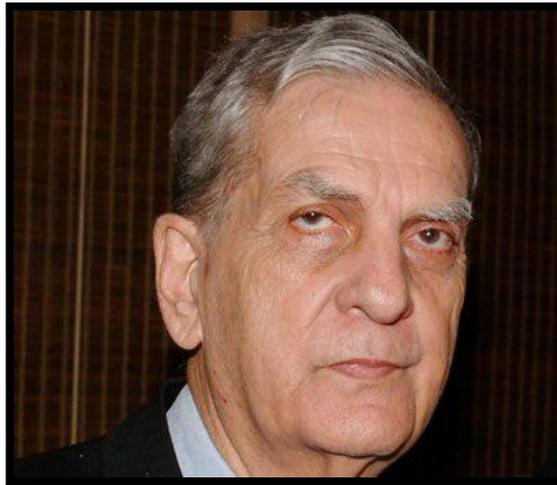
la bonne foi démontrée par le plaignant comme établi à la **section 28(2) (b)**. La **section 29(1)** prévoit qu'une personne handicapée qui en raison de son handicap ne peut se permettre de loger sa plainte peut mandater une tierce personne pour agir à sa place. La **section 29(3)** dispose que cette tierce personne peut recevoir une permission écrite de la part de la personne handicapée concernée ou alors toute autre forme de permission acceptée par la Division.

La Division retient et enquête sur les plaintes qui font objet de discrimination sous la forme directe, indirecte et par victimisation selon les **sections 5, 6 et 7** de l'EOA respectivement. Il faut savoir que ces trois formes de discrimination doivent se produire entre les personnes de différentes caractéristiques énumérées à la **section 2**. En outre, la Division traite des cas de discrimination qui se produit entre des personnes sur les critères d'âge, caste, couleur, croyances, origine ethnique, handicap, lieu d'origine, opinion politique, race, sexe ou orientation sexuelle.

La **section 30(1)** place la Division sous l'obligation d'enquêter sur les plaintes de discrimination fondée. Pour besoin de son enquête, la Division peut convoquer toute personne concernée et exiger des documents relatifs à la plainte d'après la **section 30(2)**. Il est important de souligner que toute personne qui refuse de comparaître suite à sa convocation par la Division commet une offense criminelle passible d'une amende ne dépassant pas Rs 10, 000 sous la **section 30(5)**. Après enquête, la Division doit prioritairement réconcilier les parties ; en l'occurrence le plaignant et le défendeur comme établi à la **section 32(1)**. Lorsque la réconciliation n'a pas été possible, la Division réfère le cas à l'Equal Opportunities Tribunal (le Tribunal) comme prévu à la **section 33 (3)**. Toutefois quand l'enquête de la Division révèle qu'une offense a été commise sous l'EOA ou sous une autre loi ; la Division doit référer le cas au Directeur des Poursuites Publique selon la **section 27(4) (b)**.

Le Tribunal est habilité à se prononcer sur les plaintes qui lui sont référés par la Division en vertu de la **section 35(1) (a)**. Les parties peuvent se faire représenter par un avocat ou un avoué devant le Tribunal selon la **section 38(3)**. Le montant de la compensation imposée sur le défendeur par le Tribunal ne dépasse pas Rs 500, 000 selon la **section 35(1) (c) (ii)**. Le non-paiement de la compensation imposée sur le défendeur place ce dernier d'être appelé à fournir une somme additionnelle ne dépassant pas Rs 500, 000 par le Tribunal en vertu de la **section 35(3) (a)**. Une plainte qui fait l'objet de poursuite au civil ne peut pas être entendue par le Tribunal comme clairement établi à la **section 35(5)**. Enfin, le public a le droit d'assister aux audiences du Tribunal sauf s'il est autrement décidé en vertu de la **section 36(2) (b)**.

Obituary: Mr. Guy Ollivry, QC



It is with great sadness that the Office of the DPP learnt of the demise of Mr. Guy Ollivry, QC on the 3rd November 2015. He was the Chairman of the Law Reform Commission (LRC) and in that capacity, produced a number of influential papers with the objective of updating our legislation. Mr Ollivry passed away at the age of 82, following a prolonged illness.

Mr. Guy Ollivry QC was known as a person with great qualities, succeeding all that he had undertaken. He had had a long and successful career as an advocate since his debut in 1957. Mostly known as an expert in constitutional matters, he contributed to the preparation of a new Constitution in Seychelles in 1993. His knowledge in constitutional matters brought him to work abroad, as the advisor of the president of Cameroon.

Mr Guy Ollivry QC also had a rich political career. Being the founder of the 'Union Démocratique Mauricienne' (UDM), he was elected as minister of the Economy twice and he was the mayor of Curepipe for a year.

He was elected to the presidency of the Bar Council twice. He was much appreciated in the legal profession and he contributed a lot to the Mauritian jurisprudence.

The ODPP presents its heartfelt condolences to his family and friends. He will be deeply missed. **Editorial team**

SUMMARY OF SUPREME COURT JUDGMENTS:**October 2015****RIVALLAND JOSEPH DÉSIRÉ ROBERT v THE STATE [2015] SC] 380**
Hon. E. Balancy, Senior Puisne Judge & Hon. A. A. Caunhye, Judge
Conspiracy, credibility of witness

The appellant was prosecuted, before the Intermediate Court, for the offence of conspiracy under Section 109 of the Criminal Code (Supplementary) Act, to wit: between the years 1982 and 1997, in the District of Port Louis, wilfully and unlawfully agreed with another person, namely Louis Joseph Marie Gérard Tyack, to do an act which was wrongful to another person, namely Air Mauritius Ltd. That act was particularised as “to operate a scheme involving fictitious payments of a special commission by Air Mauritius Company Ltd in favour of Rogers & Co Ltd, which commission was in fact not due to Rogers Co Ltd.”

After hearing evidence relating to the outstanding charge against the appellant under count 1, the Learned Magistrates of the Intermediate Court found him guilty as charged and sentenced him to undergo six months’ imprisonment.

Three sets of grounds of appeal containing a total of 38 grounds challenging his conviction and sentence were lodged on behalf of the appellant. At the hearing, some of those grounds were dropped, and arguments were offered by Counsel on both sides on the outstanding grounds.

It was submitted by the Appellant that the evidence of Mr Tyack which formed the basis of his conviction could not be relied upon in view of the flagrant contradiction between the evidence given by him at the trial and the contents of his plea in the civil case.

The Court of appeal was of the view that this appeal must succeed if the fresh evidence adduced was found to have substantially undermined the latter’s credibility such as to raise a reasonable doubt about the guilt of the appellant. After examining the plea of witness Tyack qua defendant in the civil case, the Court came to the conclusion that his testimony was indeed substantially undermined. On the basis of this testimony, the trial Court found, inter alia, that the appellant had agreed with witness Tyack to operate a scheme whereby money would be withdrawn from the accounts of Air Mauritius Ltd for the payment of a fictitious special commission to Rogers Co Ltd. However, in the civil case witness Tyack’s plea was in clear contradiction with that testimony.

The contradiction appeared to the Court of Appeal to be a very serious one on a crucial issue and, after anxious consideration, they were of the view that it substantially undermined the credibility of witness Tyack, the sole material witness who was also an accomplice in relation to which the trial Court gave itself the corroboration warning before deciding to accept his evidence as true.

The Court of Appeal was not satisfied that the prosecution had proved the guilt of the appellant (then accused) beyond reasonable doubt and concluded that the conviction of the appellant cannot safely be allowed to stand. Both conviction and sentence were quashed.

GANGARAMA. v THE STATE [2015] SC] 383
Hon. N. Devat, Judge & Hon. J. Benjamin G. Marie Joseph, Judge
Previous convictions not shown to accused

The appellant was prosecuted together with two other individuals, one of whom has passed away, before the Intermediate Court on an information containing fourteen counts.

The offences which concerned the appellant are counts III, IV and V which are respectively as follows:-

- (i) aiding and abetting the author of a crime - breach of sections 38(3) and 301(1) and 305(1)(b) of the Criminal Code;
- (ii) possession of article obtained by means of a crime - breach of sections 40, 301(1) and 305(1)(b) of the Criminal Code; and
- (iii) breach of condition attached to provisional licence - breach of Regulation 55(1)(a) of GN 97/54 and sections 44(2)(b) and 190(1)(3) of the Road Traffic Act.

After a guilty plea, the learned Magistrate sentenced the appellant to one year imprisonment under each of counts III and IV and to pay a fine of Rs 10,000 under count V after stating that he had taken into consideration the appellant’s guilty plea, evidence of his personal circumstances and his expression of remorse as deposed to by him under oath, Counsel’s plea of mitigation and documents purporting to be the appellant’s record of convictions (i.e. Doc X and X1).

He appealed to challenge the sentence of imprisonment as being manifestly harsh and excessive.

In his skeleton arguments filed, learned Counsel for the appellant

sought to introduce a new ground of appeal challenging the regularity of the proceedings in respect of the record of convictions filed by the prosecution on which the learned Magistrate had inter alia, acted in passing sentence on the appellant.

The court record shows that at the sitting of 19 September 2014, after the judgment convicting the appellant was read out and filed, the prosecutor produced for the purpose of sentence a list of previous convictions for cognate and non-cognate offences purportedly relating to the appellant. However, the record did not show whether the documents were read over to the appellant and whether he had admitted or denied same.

The learned Counsel for the respondent submitted that this constituted a serious irregularity as the learned Magistrate failed to ask the appellant whether he admitted or denied the contents of documents X and X1.

Both Counsels agreed that the sentence under counts III and IV be declared a nullity and the case be remitted back to the Magistrate for a fresh hearing. Hence, appeal was allowed and sentence under counts III and IV quashed.

CHOCALINGUM J v THE STATE [2015] SC 374

Hon. K.P. Matadeen, Chief Justice, Hon. R. Hajee Abdoula, Judge & Hon. D. Chan Kan Cheong, Judge

Murdered his own mother for money

The appellant was charged with having, on or about 23 February 2007, at Old Cemetery Road, Pamplemousses, criminally, wilfully and with premeditation killed his mother Daivannai Chocalingum born Dorasami. He pleaded not guilty to the charge. On 12 February 2013, he was found guilty as charged by a jury by a majority verdict of 7 to 2. He was sentenced by the Presiding Judge to undergo 42 years' penal servitude.

The appellant appealed against his conviction on a number of grounds. Prosecution relied substantially on the testimony of witness Madanlall Noyan, supported by: (a) a number of exhibits secured by the police; (b) the conclusions of Mr Beeharry, a former Chief Forensic Scientist, confirming that a metal bar had been sawn and detached from inside the victim's house; and (c) the findings and medical evidence of Dr Boolell, who conducted the autopsy on the victim.

According to witness Noyan, the appellant came to look for him and they both planned to go to victim's place in order to cut a metal bar

from a window and also to kill her because she did not give appellant any money.

The appellant gave a number of statements to the police wherein he denied the charge. In essence, he denied having murdered the victim as alleged by Noyan and raised an alibi.

Overall, the Appellate Court did not agree with the points raised by the appellant under the different grounds and concluded that there had been no unfairness or miscarriage of justice in the present matter. Hence, all the grounds of appeal having failed, the present appeal was dismissed.

SUMMARY OF PRIVY COUNCIL JUDGMENT:

October 2015

MILTON AND ANOTHER (APPELLANTS) v THE QUEEN (RESPONDENT) (BRITISH VIRGIN ISLANDS) [2015] UKPC 42

From the Court of Appeal of the Eastern Caribbean Supreme Court (British Virgin Islands)

Murder, planning to kill own sister

This is a case where Andrew Milton and Dennis Campbell were convicted of the murder of Dorcas Elizabeth Rhule and of conspiracy to murder Kerrian Ebanks, after a trial in the High Court of the British Virgin Islands. They were each sentenced to life imprisonment for murder, with eligibility for parole after 35 years, and to concurrent sentences of ten years' imprisonment for conspiracy to murder. They appealed against conviction and sentence to the Eastern Caribbean Supreme Court sitting as the Court of Appeal for the British Virgin Islands. Their appeals were dismissed and appealed to the Board against his conviction, and Milton and Campbell both appeal against their sentence.

Milton and Kerrian were brother and sister. Milton made a plan with Campbell to kill his sister. According to the prosecution's case, on the evening of 3 October, 2006, they drove to Kerrian's apartment, equipped with gun, black gloves and a roll of duct tape. When they reached there Kerrian was not there at first but her room-mate, Louise, was. When Kerrian arrived, she was accosted by Milton with a gun. She fled but Louise was strangled and her body was thrown from the outside balcony. The accused parties left the apartment and tried unsuccessfully to steal Kerrian's jeep.

Taking all the circumstances and evidence into consideration, the Board was left in no doubt that on the evidence Campbell's conviction was the only proper verdict, and that the deficiencies of the summing-up on the issues mentioned in the matter by the defence carried no miscarriage of justice.

The Court of Appeal considered that the case was sufficiently serious to warrant a 30 year starting point, and that the final sentence reflected the seriousness of the offence, taking into account the severe aggravating features.

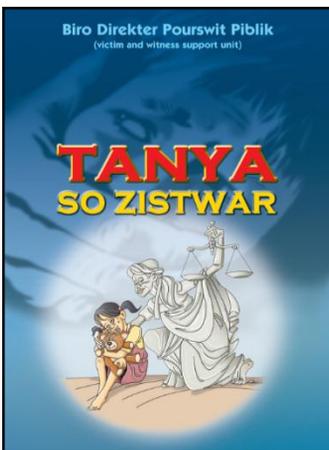
It was no doubt that this was a callous and ruthless crime, involving two victims, considerable pre-planning and an attack with a gun. The Board stated that the sentence was carefully reviewed by the Court of Appeal, which was in a better position than the Board to assess the appropriate level of sentence in the British Virgin Islands, and the Board did not consider that it would be right for it to interfere with the Court of Appeal's judgment.

Hence, the appeal was dismissed.

“Tout homme est un criminel qui s'ignore.”

- Albert Camus

La mise en ligne de 'Tanya so zistwar'



Le Bureau du Directeur des Poursuites Publiques à travers son Victim and Witness Support Unit, tient à informer ses lecteurs, que la publication de '*Tanya so zistwar*' est désormais disponible sur sa page web :

<http://dpp.govmu.org/English/Pages/default.aspx>.

'*Tanya so zistwar*' est un livret instructif produit en 2013, par le Bureau du DPP avec la collaboration de l'ambassade des Etats-Unis dans l'optique d'aider les enfants et les parents à identifier et à dénoncer les cas d'abus sexuel sur mineur.

L'objectif du livret est de véhiculer des informations utiles aux enfants et aux parents sur les procédures judiciaires, les permettant à mieux se préparer si jamais ils sont confrontés à de telle situation.