

THE RELATIONSHIP OF ENGLISH-SPEAKING CARIBBEAN AND THE INTER-AMERICAN LEGAL SYSTEM OF HUMAN RIGHTS

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There are 12 countries of Caribbean Community (CARICOM), that is to say, independent autonomous States. These are very new States, especially when compared with the other autonomous States in the Americas. Jamaica, my country was the first to attain its independence from Britain in 1962 and the others followed thereafter. All the CARICOM States are members of the OAS but only two (2), since the Court was established have acceded to its jurisdiction, that is to say, Barbados and Trinidad & Tobago. Trinidad & Tobago denounced the Convention and Jurisdiction of the Court on the 26th of May 1998. This was due to its determination to continue mandatory capital punishment for all those convicted for the crime of murder. Barbados is consequently the only State, which still falls under the jurisdiction of the Court. None of the other States have shown any strong inclination and in some instances some have shown no interest at all to accept the jurisdiction of the Court.

This is not an acceptable state of affairs and it is sad and surprising, because among the first panel of Judges elected when the Court was first established, was a highly respected Jamaican Advocate, Mr. Huntley Munroe of Queens Counsel, and yet Jamaica did not then nor has it now, accepted the jurisdiction of the Court. Barbados, had as a member of the Court, for almost 12 years, the outstanding jurist of international law and human rights law, the late Mr. Oliver Jackman, who was a member up to 2006. That country still upholds its adherence to the jurisdiction of the Court. Mr. Jackman was a member of the Commission and its President before he was elected as a Judge of the Court. I am the 3rd person elected to the Court from the CARICOM States.

It is a fact, which I must admit, that the majority of the people in my Sub-Region, know nothing at all about the Organisation of American States and those who know of it, know nothing or very little about the Inter-American legal system.

Let us take a quick look at the Sub-Region's history within the Commission:-

During the years 1967 – 80, the membership of the newly independent English-speaking countries failed to have any impact on the Commission, which had begun functioning from 1960. Though their cooperation was requested, the Commission stopped translating its seasonal and annual reports from Spanish to English, between 1968, a year after the first Caribbean country joined, and 1976. Translations to English were not done again in 1977 and 1982. It is difficult to understand how the cooperation of the English-speaking Caribbean could have been obtained without them being able to read the record of proceedings in their own language (which is one of the official languages of the Organisation). The Commission also did not mention the newly independent members in any of its annual and seasonal reports, until 1972, when it only briefly noted some Trinidadian and Barbadian legislation. For the years 1975, 1977 and 1979 it restricted itself to this type of brief notes with regard to other Caribbean States. Apart from making note of legislation, no further references were made in those years to any other matter within these States. In 1977, it did note that Jamaica and Grenada were among the first of the Caribbean Member States of the OAS to ratify the Convention.

It is evident, that in those years the OAS, did not meet its mandate “to conduct a continuing survey of the observance of fundamental human rights in each of the Member States of the Organisation” in the English-speaking Caribbean States. There were no on- site visits by the Commission to the region and no specialised reports on any of them. No Commissioners from the English-speaking Caribbean were appointed in those years, despite the explicit representational requirement of the Statute, which says, “the members of the Commission shall represent all the members of the OAS and act in its name”. No petitions against Caribbean countries were published during this period.

Indeed the Commission, only in December 2008, went on its first ever on- site visit to the Sub-Region. This was to my country, Jamaica, 30 years after it ratified the Convention. The visit commenced on the 1st of December 2008 and continued for a week. This immediately followed

the retrograde step of my country's Parliament, which voted in the previous week to retain in the law, the death penalty for capital murder. It is hoped that this visit will go a long way to erase the seeming apathy of the States of CARICOM within the system and of the Organisation towards them.

Arguably, our parliamentary democracies and different legal systems resulted in some differences of their challenges to those obtaining in Latin-American countries, with their past military and dictatorial regimes. No English-speaking CARICOM country has experienced to date a military or dictatorial regime. In addition, the small population of these Caribbean countries, compared to those of Latin American countries, must have naturally resulted in greater attention being paid to Latin American's seemingly larger and more pressing problems. And the Latin American countries full membership of the Commission and of the Court, gave them de facto possession and control of these organs.

From 1980 onwards, the Commission began to show an interest in the development of human rights in the Caribbean, but only in the manner in which the issue resembled those civil and political abuses, which were occurring in Latin American countries. This was in relation to the detention of persons by Maurice Bishop's dual movement in Grenada through the suspension of the Constitution. This put the Sub-Region on the Commission's agenda for the first time and in 1982, a seminar on national, regional and international human rights issues was co-hosted by the Commission in Kingston, Jamaica. It also shortly thereafter reported on two individual petitions from Jamaica, relating to the imposition of the mandatory death penalty after unsatisfactory investigative and judicial processes, and ill treatment by the police. The Commission also noted the ratification by Barbados in that year's annual report, which was one of the few, then translated into English. It also as an "agent for peaceful solution" intervened in some cases of the suppression of press freedom in Grenada as the parties accepted its participation. It promised an on site visit to the island at its earliest opportunity, but it never did so and no explanation for this failure was ever given in any of its annual reports. In these years, because of the petitions from Jamaica, the theme "The need to strengthen the Judiciary" was added to the list of human rights issues, which needed to be addressed in the Caribbean.

In 1986, the first Caribbean member was elected to the Commission, that is, Mr. Oliver Jackman, of Barbados, who served until 1993. Since

then, there have been 5 other members. Their presence has led to an increase in the level of attention, which the Commission began to give and now gives to the Caribbean. In 1986, the first visit by the Commission to the Caribbean, was carried out jointly with the Court. The members visited Jamaica, Trinidad and Tobago, St. Vincent and the Grenadines and Barbados. The objectives of the visit were, to seek additional ratifications of the Convention and of the jurisdiction of the Court; and, to have discussions with government authorities and human rights NGO's about the Inter-American Human Rights System.

This first and long overdue visit denoted at last the Commission's engagement with its duties in the Caribbean. At the end of the visit, it was stated that some assurances had been gained about their objectives, but, only some ratifications of the Convention were realised, from this promotional visit. In 1991, Belize and Guyana joined the OAS and so fell under the Commission's mandate but no mention of this appeared in that year's annual report, nor did the fact that its 22nd regular session was held in the Bahamas that year. The annual reports now contain material on the Caribbean and they are consistently translated into English. Let us hope that the interest of the Commission and of the States themselves will continue to grow.

I am thankful to Mr. Auro Fraser for his article on the Relationship of the Anglophone Caribbean and the Inter-American System of Human Rights, published in 2006, for the historical facts and some insights thereon, which I have related herein. He stated that a great deal about that 1991 visit, evinced a lack of the Commission's commitment to take the sub-region seriously. It is clear that this is not the case today. In any event, a lack of commitment must also be blamed on the States themselves. The Commission's present interest is evident in the fact that it has been conducting seminars in the region. It held a regional seminar, in Jamaica for Public Defenders and Ombudspersons in conjunction with the Inter-American Institute and Jamaica's Public Defender's Office, at which I presented a paper on the Court. It was very well attended and the participants were fully engaged throughout. I do hope that these engagements within the region continue, so that they can ensure knowledge of and consequently interest in, this very important system for the development of the entire region of the Americas.

The recent on-site visit to Jamaica denotes a new era of interest by the Commission and certain forces in the Sub-Region. Of course, only Trini-

dad and Barbados have had cases heard and determined by the Court and those related to the imposition of mandatory death sentences for murder and other consequential matters. The majority of the petitions received by the Commission from CARICOM States, come from Jamaica. These mostly relate to now the imposition of the death penalty for capital murder (since there was an amendment to the law which relates to non-capital murders), extra-judicial killings by the police and the situation of children in State-care in institutions. Jamaica being the largest and most populous of these States, has the greatest number of problems, which give rise to violations of the rights protected by the Convention. As a result, I fervently wish, that it will lead the way for the rest of the region by accepting the jurisdiction of the Court and thereby obtain decisions for its citizens which will eventually lead to a decrease of all violations of the rights protected by the Convention, so that the Sub-Region can be assured of realizing, (I quote from the Preamble of the Convention) the” intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man”- We, of the Anglophone Caribbean independent States must be full partners in the pursuit of this ideal and I trust that the wide media attention of the on-going on-site visit to Jamaica will go a long way to ensure greater knowledge of the System and instill a sense of belonging and possession of it by the people of Jamaica and of the rest of the CARICOM States.