

Eastern Caribbean Central Bank



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TOPIC

The Caribbean Court of Justice is a necessary institution for Caribbean Independence. Discuss.

The Caribbean Court of Justice (CCJ) is an essential step towards Caribbean independence. It will allow for the advancement and facilitation of the region by being a judicial system that reflects the culture, unity and maturity of its society while discharging the functions and dependency on an international court of justice (Privy Council). The CCJ would also assist in creating an identity in the world on an international level for the Caribbean. The CCJ serves as a means for the Caribbean islands to unite. Further, it will result in a more affordable and accessible justice system than previously offered.

As a final court of appeal, the Caribbean Court of Justice would reduce the dependence on Britain as the Caribbean would no longer address its cases to the Privy Council. For independent Caribbean countries, addressing matters to the Privy Council implies that they are still a step behind from full independence. Depending on a colonial entity is not what one would envisage when already autonomous. Hence, for these territories a domestic judicial system with its own appellate jurisdiction such as the CCJ is mandatory in order to gain their entire independence. Such an example is India, which gained independence in 1947. India discharged functions of the Privy Council by the Abolition of Privy Council Act in 1949 which led to the establishment of the Supreme Court of India in January 1950. India took approximately three years to form a Supreme Court. This allowed them their complete freedom and independence by terminating appeals to the Privy Council. Some islands in the Caribbean have been independent for so many years and yet have not confirmed the CCJ as a final court of appeal.

*“An independent country should assume the responsibility for providing a court of its own choosing for the final determination of legal disputes arising for decision in the country. It is a compromise of sovereignty to leave that decision to a court, which is part of the former colonial hierarchy, a court in the appointment of whose members we have no say.”*¹

Samuel Bulgin’s words reinforce the ability of some independent countries to handle their own legal disputes as a result of relying on the Privy Council and he is right. The Caribbean is powerless in two folds. Firstly, we have no say in meting out justice when we have to rely on the Privy Council’s decisions and secondly, we are made impotent since we have no say in the operation of the Privy Council. Utilising the CCJ, as Caribbean people, would give us that power since we would be the ones making our own decisions. This will mean that judges will have choices in determining laws that are based on our Caribbean experiences, socialisation and attitude towards gender, individual rights and family life. This is because the law of a country should be able to adapt to its society.

The CCJ is therefore in keeping with the spirit of the Caribbean people as it is manned by West Indian judges who are “grounded” in the Caribbean society. They would have internalised the values and social ethos of the Caribbean, unlike the Privy Council. Adrian Saunders expressed his concerns stating *“These judgements re-shaping this area of the law have been rendered by British judges, sitting and residing in England, on the basis of submissions often made by English Queen’s Counsel also resident in United Kingdom.”*²

¹ Hon. Samuel Bulgin. Address to the Law School Students Association on the Caribbean Court of Justice. March 5, 2004.

² Adrian Saunders. The Caribbean Court of Justice and the Legal Profession. 2007 pg. 7

The Caribbean Court of Justice allows for a system which considers the circumstances of our society and the aspirations of our people. Its laws are based in the Caribbean unlike those of the Privy Council in London. The Caribbean society is not kept in mind when laws are made in Britain whereas this is the opposite for the laws of the CCJ. Hence, it is more convenient for Caribbean citizens to have their cases heard by judges who understand the Caribbean laws. Understanding of the Caribbean law allows for sensitivity and insightful handling of cases.

Apart from the Privy Council being unsuitable in cost and ethos for Caribbean situations, what would happen when the Privy Council wants to free itself of the burden the Caribbean has become? Already, the President of the Supreme Court in London, Lord Phillips himself endorsed the CCJ indirectly; he noted that he and his senior judges spend a “disproportionate” amount of time hearing legal appeals from independent countries from the Caribbean and other Commonwealth countries to the Privy Council in London. He furthermore said that he would personally like the time spent on “other” cases reduced. Lord Phillips’ words should encourage the Caribbean to accept the CCJ and become independent in the sense that we would no longer have to depend on them for settling our matters. After all, what would happen to the Caribbean when the Privy Council decides to shut its doors on us? Instead of being in a feeble state then, let us accept that the CCJ would be a necessary institution for our independence.

The Caribbean would be taken more seriously on an international level if it is able to be the final arbiters of justice instead of relying greatly on Britain. If the Caribbean is able to

successfully operate this judicial system, it will prepare the region for engaging in future developments independently. Therefore, the Caribbean Court of Justice would be respected more by the outside world. Let us take for example the case of University of the West Indies (UWI). Many doubted the formation of the university whereas others thought it was a necessary institution for improving the dilapidated state of education in the region. Yet, several decades after, the UWI has developed into a well-respected regional centre for academic achievements and higher education. As a result, our social and economic landscape has been reshaped with educated persons. The outcome of such an organisation in the Caribbean demonstrates our capability to unite and achieve more and for the metropolis to look up to us.

Not only would it do that, residents of the Caribbean would not have to wait long for their cases to be heard at exorbitant and exhausting prices. For when justice is delayed it is denied and when it is, we have no independence. Why should justice be so difficult for one to acquire? Unlike the Privy Council, the CCJ makes justice more affordable. The distance of the Privy Council in London from the Caribbean obviously poses a problem for those in the region who seek affordable and accessible justice. This problem is further supplemented by the poverty in the Caribbean. In contrast to the Privy Council's location, the CCJ is based in Trinidad, an ideal location. Furthermore, the CCJ can travel to various countries to hear disputes and therefore, justice is brought to the homes of people. The CCJ also reduces the money paid to attorneys, who have to travel to the United Kingdom, making it easier to attain justice without long waiting. Essentially, cutting off costly trips to the UK will benefit

us more. We would not be taking our precious foreign exchange out of our country and would have it to keep our market afloat and provide a more stable economy.

Caribbean independence is impossible without all the Caribbean territories being engaged together. This is still to happen more significantly in the nearer future when other islands realise the importance of the CCJ toward independence. It is anticipated that the Caribbean Court of Justice as an institution, would further deepen regional integration amongst the CARICOM states. The Caribbean Court of Justice is an example of the quest for an independent Caribbean free of colonial bondage. It can unite the Caribbean to achieve something together. It can create a stronger, united nation, which is motivated by its togetherness and understanding to be independent from the rule of foreign countries. It has advantages of being more suitable for the Caribbean and at the same time, being the court of final appeal rather than the Privy Council, thus reducing the British influence. The CCJ will allow the Caribbean to handle their judicial affairs how they think best.

References:

1. Caines, Anselm. The Caribbean Court of Justice (CCJ)...Lets us rally behind it!
(<http://www.sknvibes.com>) Visited on 25/02/2010
2. Pollard, Duke. Caribbean Community Secretariat. April 2000
3. Bulgin, Hon. Samuel. Address to the Law School Students Association on the Caribbean Court of Justice. March 5, 2004.
4. Saunders, Adrian. The Caribbean Court of Justice and the legal Profession. 2007 pg 7.