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## **MEDIA RELEASE**

(For immediate release)

**No. 06:2020**  
**20 March 2020**

### **CCJ ISSUES ITS FIRST ADVISORY OPINION ON FREEDOM OF MOVEMENT**

The Caribbean Court of Justice (CCJ) on Wednesday last provided its first advisory opinion concerning the interpretation and application of the Revised Treaty of Chaguaramas (RTC). The CARICOM Heads had requested the Court’s advice on two specific questions relating to freedom of movement within the Community. The questions concerned a decision by the Heads a) to enlarge the list of CARICOM workers who were entitled to seek employment in each other’s country by including agricultural workers and security guards (“the enlargement decision”) and b) to agree to the requests made by the states of Antigua and Barbuda and St Kitts and Nevis to opt out of that decision for a period of five years.

The Court was asked to give its opinion on two issues:

- Firstly, whether a Member State could lawfully opt out of that decision of the Conference and
- Secondly, whether the principle of non-reciprocity would allow nationals of any such Member State opting out to gain the benefits of the decision.

The principle of reciprocity means that privileges, favours, or benefits that are granted by one state to the citizens or legal entities of another state should be returned in kind. A principle of non-reciprocity means that such returns are not to be expected.

Article 27(4) of the RTC enables Member States to opt out of commitments arising from the decisions of a competent CARICOM body or Organ provided that the fundamental objectives of the Community, as laid down in the Treaty and are not negatively affected. A “fundamental objective” may be regarded as an issue that is of central importance. In this instance, the Court took the view that a “fundamental objective” would be an issue that lies at the core of the spirit, nature and aspirations of the Community.

The CCJ noted that five conditions are needed for the effective implementation of an opt out. Firstly, one or more of the Member States must make a request to opt out of a decision as the states of St Kitts & Nevis and Antigua & Barbuda did respectively. Secondly, the decision maker must be a competent organ of the

Community and here, there was no dispute that the Conference of Heads was a competent organ. Thirdly, the Conference must agree to the request of the Member State(s) to opt out of the relevant decision. It was also clear here that such an agreement was made and that the two Member States were permitted to opt out of the enlargement decision. Fourthly, in keeping with Article 27(4) of the RTC, the Member State opting out is entitled only to opt out of *the obligations* arising from the decision.

Fifthly, an opt out is permitted only if the “fundamental objectives” of the Community, as laid down in the RTC, are not prejudiced or undermined by the opt out. The question of whether the enlargement decision prejudiced the fundamental objectives of the RTC was crucial to the Court’s opinion. Ultimately, the Court determined that freedom of movement was a fundamental objective of the Caribbean Community laid down in the RTC. The CCJ closely regarded the facts that i) the opt out was made available to two Member States, each of which is categorised as a less developed country; ii) the duration of the opt out in each case was temporary, lasting for a five-year period; and iii) the opt out related only to two categories of skilled nationals.

In response to the first question, the Court advised that it was lawful for Antigua & Barbuda and St Kitts & Nevis to request an opt out of the obligations arising from the enlargement decision of the Conference. It was also lawful for the Conference to grant the opt outs in all the circumstances. The said opt outs did not prejudice the fundamental objective of freedom of movement of skilled nationals.

On the second question of whether the principle of non-reciprocity should be applied to security guards and agricultural workers of Antigua and Barbuda and St Kitts and Nevis respectively, the Court considered the uniqueness of the Caribbean Community, where each member State could veto a Conference decision. The Court stated that the request for and grant of an opt out further the interests of the Community because they allow decisions of the Conference to be taken and implemented in circumstances where those decisions might otherwise have been vetoed. The Court explained and examined the principle of reciprocity and how it applied in the context of the RTC. The Court then concluded that an opt out is to be treated as being non-reciprocal in character and advised that the principle of non-reciprocity applies to enlargement decisions so that nationals of Antigua and Barbuda and St Kitts and Nevis who are security guards and agricultural workers are entitled to enjoy the benefits of the enlargement decision.

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#### About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to

decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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