



CARIBBEAN JUSTICE: A NEEDS ASSESSMENT OF THE JUDICIAL SYSTEM

The Honourable Mr Justice Adrian
Saunders, President of the Caribbean Court
of Justice

**UNDP HLPF on Sustainable Development Virtual Side Event Launch:
"Caribbean Justice: A Needs Assessment of the Judicial System"**

Virtual Event
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The NAR includes recommendations at two levels: regional and national. At the regional level, the main recommendations include how to ensure equal access to justice for all by 2030. The report aims to highlight trends across the Caribbean region in order to determine how best the development partners can add value to current efforts and initiatives on improving access to justice and its administration in the Caribbean.

REMARKS

By

The Honourable Mr Justice Adrian Saunders, President of the Caribbean Court of Justice,

on the occasion of

**the UNDP HLPF on Sustainable Development Virtual Side Event
Launch: “Caribbean Justice: A Needs Assessment of the Judicial System”**

17 July 2020

A very pleasant good morning to you, Mr Chairman, Luis Felipe López-Calva, Regional Director of UNDP Latin America and the Caribbean, and my fellow panellists, Your Excellency Marie Legault, High Commissioner of Canada to Barbados and the Eastern Caribbean; Ambassador W Aubrey Webson, Permanent Representative of Antigua and Barbuda to the United Nations; and The Honourable Dame Janice Pereira, Chief Justice of the Eastern Caribbean Supreme Court.

I wish to thank you, Mr Chairman, for the opportunity to make these remarks on this occasion. I also wish to thank UNDP for investing time and resources in the administration of justice in the Caribbean.

It was indicated that my comments could be tailored perhaps to highlighting views on what might be key strategic interventions that could be attractive to donors who wish to support the justice system in the region.

As distinct from identifying a range of specific interventions, in the allotted time I would like to concentrate my focus on a single overarching theme.

From the vantage point of a Judge of the Caribbean Court of Justice, the critical question is, ‘What can the donor community do to advance Caribbean jurisprudence?’

Of course, it goes without saying that a momentous forward step in promoting Caribbean jurisprudence would be taken if all the States in the region followed the lead of Barbados, Guyana, Belize and Dominica in embracing the Caribbean Court of Justice (CCJ) as their final Court of Appeal. This is not the occasion for me to flog *that* horse. But, events occurring over the last two and a half months have brought into sharper relief the incongruity of most of the region’s final appeals being heard in London by their Lordships of Her Majesty’s Privy Council.

Notwithstanding, there are other important ways of promoting Caribbean jurisprudence that can engage the attention of the donor community.

This year marks exactly fifty (50) years since the English-speaking Caribbean began the teaching of law in the region. The opening of the doors of the Faculty of Law of The University of the West Indies in 1970 was a fundamental milestone in the development of a Caribbean jurisprudence. After 50 years of teaching law, this is a good time to reflect, to take stock.

I was in the third cohort of law students attending the Faculty. In those early years, all the textbooks we studied from were written for students studying in the United Kingdom. Despite the valiant

efforts of some faculty, the bulk of the case law used to teach us was cases decided in the United Kingdom. And, of course, the final word on what represented the law was the judgments of the Judicial Committee of the Privy Council. The question is this. After 50 years of producing our own lawyers, judges, legal academics, and our own final appellate court, how much has changed with respect to *the teaching* of the law?

Earlier this year I proposed to Sir Hillary Beckles, The UWI's Vice Chancellor, that the University could partner with the CCJ on a project that would analyse the course materials and worksheets that are used in certain core subjects of the curriculum in the Faculty of Law. The goal would be to discover the extent to which we have transitioned from teaching English law to imbuing our law students with a more Caribbean-centric jurisprudence. The idea was to identify a group of core courses; have a researcher or a team of researchers examine the course materials, worksheets and examination questions for each of these courses in order to discover the extent to which law students are being imbued with Caribbean legal thought. In other words, to make sure that we are in fact advancing the teaching of Caribbean jurisprudence.

Sir Hillary is as enthused as I am about this project. And then, before we could flesh out and consider funding sources, the pandemic set in and set us back. But this is the kind of project I would love to see UNDP assist us with.

Developing our Caribbean jurisprudence must entail a stern examination of our law, both the common law and the statute law, that we have inherited from colonial times. How does this vast

body of law reflect and offer solutions to our present social and economic realities? How do we interpret or render it more in sync with our most noble aspirations?

Caribbean jurisprudence will not thrive without constant and robust assessment and critique of judicial decision-making by the academic community. So far as I can see, there is currently a dearth of such appraisals. For reasons that are not clear to me, there has been a falling off in commentaries on judicial decision-making in the region. It would be wonderful if funding could be found to reinvigorate this endeavour.

I would also like to see support being given for regular principled engagements between members of the legal academic community and the judiciary. But I would not stop at engagements between legal academics and the judiciary. I think we need also to support forms of engagement between judges on the one hand and historians and social scientists on the other.

Over the last 200 years our societies have undergone the most profound transitions imaginable. The scourges of slavery, indentureship, colonialism have all left their mark on social and legal constructs, remnants of which still exist and are reflected in existing law. Lawyers and judges, called upon to interpret such law, often do so in a vacuum, without a proper awareness or appreciation of the real interests the law was originally fashioned to serve. The case of *McEwan*¹ brought to the CCJ from Guyana provided a rare and admirable instance of counsel interrogating the lawfulness of a law, from a historical and sociological standpoint, to assess how it impacted on issues of gender.

¹ *McEwan v The Attorney General of Guyana* [2018] CCJ 30 (AJ), 94 WIR 332.

All of this is simply to say that I would also love to see donor projects that support greater collaboration between our historians and social scientists on the one hand and lawyers and judges on the other. Instead of doing their work in silos, the cream of both disciplines should be meeting periodically, collaborating on ways to ennoble our jurisprudence and dignify our Caribbean civilisation.

There is also the issue of the knowledge products of outstanding Caribbean legal scholars that remain largely un-accessible to all but the most persistent researchers. How can we digitise this material; index and catalogue it; and put it online so that it is made readily available to practitioners and judges? Here is a vital source of Caribbean jurisprudence that is largely hidden away, buried in libraries and archives. Perhaps donor funding can assist in unlocking this treasure so that judges and lawyers and the general public can make use of it. And, of course, this issue also feeds into the matter of Law Reporting in the region. Canadian government funds through the JURIST Project are currently being used to establish a Knowledge Management Centre at the CCJ. Donor funding to ensure that this Project is maintained in an efficient manner can also be considered.

And then there are the regional bodies that, with scarce resources, do their utmost to consolidate Caribbean jurisprudence. I refer to bodies like the Caribbean Association of Judicial Officers (CAJO) that has been providing judicial education for regional judges since 2009; the Caribbean Association of Law Librarians (CARALL) that provides a forum for our under-appreciated law librarians; and the CCJ Academy for Law that has been working with the legal profession to build an awareness of international and comparative law particularly in light of the obligations

undertaken and rights derived from the Revised Treaty of Chaguaramas. It would also be excellent for more support to be given to the activities of these bodies.

Now, if I had more time, I could begin to speak fulsomely about some of the critical features of the administration of justice that are sorely in need of donor support. Courts in the region need to graduate to electronic filing and case management systems and, generally, not just courts but the police and prosecutorial departments too must embrace modern information and communication technology better to serve the public. The criminal justice system in most States is in need of overhaul, a mammoth task that requires all arms of the State to be on the same page at the same time. After 40 years of study after study, task force after task force, the Magistracy in the Eastern Caribbean is still to be fully professionalised and brought fully under the judicial branch and much work remains to be done generally in the Magistrates and Parish Courts across the region. Court connected mediation in some States is still weak or non-existent... and I could go on and on. But I thought it better today that I should focus on the larger theme of how can we engage in promoting Caribbean jurisprudence.

Thank you.