



The Role of the Caribbean Court of Justice and Importance to Caribbean Judicial and Economic Development

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President of the Caribbean Court of Justice

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The Communication Institute of Media and Communication (CARIMAC) a department of the University of the West Indies (Mona Campus) is the leading academic institution devoted to media and communication research, teaching and training in the English-speaking Caribbean.

Distinguish Lecture

Presented by

The Right Honourable Sir Dennis Byron, President of the Caribbean Court of Justice,

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Introduction

This is the second Media organisation that has invited me as a speaker. In December last year the WINN FM media house in St. Kitts invited me to address their 10th Anniversary Banquet. In my presentation "*The Preservation of a Just Society: the Roles of the CCJ and the Press*"¹ I made the point that there are several similarities between the best journalists and the best Judges. They share qualities of fair-mindedness, honesty, balance and impartiality. They carry out their duties diligently and without fear or favour. They demand accountability, and attack injustice and abuse of power. Like the Judiciary, the Press serves society best when it is completely independent of political control or alliance. The Judiciary and the Press seek to maintain good governance and the rule of law. With this in mind I am delighted that CARIMAC the premier teaching institution for journalism in the Region has invited me to address their students and now the public. My earlier presentation gave me an opportunity to explain to future generations, that the Caribbean Court of Justice ("CCJ") is committed to transparency and openness. I was able to explain the facilities we have established to facilitate the media in gaining access to full information about the Court and

¹ <http://www.caribbeancourtofjustice.org/wp-content/uploads/2013/11/The-Preservation-of-a-Just-Society-TheRoles-of-the-CCJ-and-the-Press.pdf>

its operations. During the course of my address this evening I will again make a brief mention of some of these facilities.

Though there are many variations upon the theme of the CCJ, there are certain aspects of its structure and of its workings which impact upon nearly every presentation which I am asked to give. It is for this reason that, though every effort is made to avoid unnecessary repetition, there are certain common and recurrent elements of the subject which, out of necessity, find their way into most presentations.

Additionally, repetition is one of the universal methods of both teaching and learning. That is yet another reason why some passages from earlier presentations are restated here today.

The field of journalism is one of the most important in the form of democracy which we enjoy within this region: based as it is on the Westminster constitutional model. The three principal arms of the State which are well known are the Legislature, Executive, and the Judiciary. But the media has assumed such a high level of importance as an essential instrument for ensuring that democratic rights are not merely illusory, but are fully enjoyed by the citizenry, that it has been described as a fourth estate which plays a critical role in keeping the public fully supplied with the information which they need to have, if they are to be able to exercise their constitutional rights from a position of knowledge rather than from a standpoint of ignorance.

A responsible media clearly exerts considerable influence upon the direction of society. It also informs the public about the administration of justice. There is adequate regional coverage of Magistrates Court Cases, but insufficient reporting of High Court and Appeal Court Cases. The media can play a critical role in informing the public about the CCJ, its formation and structure,

the details of the cases which have been heard by the CCJ, and the reasons for the decisions reached by the judges of the Court.

Those who have sought to undermine the foundations of democracy have always begun by launching assaults upon the various branches of the media by both overt and more subtle forms of pressure of one kind or another. The response of many heroic media practitioners, confronted with threats to their independence, has been to assert that independence with vigour and determination, even to the point of suffering both physical and mental abuse, loss of liberty, and even death. But responsible observers are now asking whether the media, or at least certain sections of the media, have not become too commercialized: choosing sensation rather than the sober dissemination of information.

Happily, within our English speaking Caribbean region, attacks upon the media, and those who work in it, have been relatively few. But the absence of such frontal attacks has not relieved the media of its duty to report accurately and fairly, to comment objectively, and to refrain from falsehoods, sensationalism, obscenity, divisiveness, defamation and insensitivity. The media must not, however, rest upon its laurels. It must constantly engage itself in the on-going search for excellence, and be forever vigilant to ensure that there is no slippage in the worthy standards that it has already achieved. It cannot and must not sleep.

The media can publicize the fact that decisions of the CCJ are available on its website: www.caribbeabcourtjustice.org for all to see. That website provides a virtual information hub which allows access to any information on the Court and a specific portal for journalists with links to sections of the website pertinent to their work. Members of the media who subscribe to the CCJ Media Mailing List receive firsthand information. The media can also follow the CCJ on Twitter

via its account @CaribbeanCourt. The CCJ Media Liaison can be accessed at pecu@caribbeancourtjustice.org. User friendly Popular Press Summaries, specially written and couched in language readily understandable by lay persons are provided to media houses upon request. These summaries could be published in the media, particularly in cases where there is heightened public interest, and in matters of public importance.

The CCJ now operates in what can modestly be called a hi-tech environment. This is essential to the Court's efficient spanning of the watery divide between Belize in the north and Suriname in the south. Trials and Case Management Conferences can now be conducted by video link. Video and audio recordings are now the norm. The Official Transcript is in the form of an audio digital record, transcripts are available on the Court's website the same night of proceedings, and pleadings and submissions are available to journalists with Court approval.

The technological and other innovations embraced by the CCJ have not come about by accident. They reflect the result of thoughtful planning and careful implementation. The Caribbean Court of Justice Strategic Plan 2013 - 2017 sets out the Mission and the Vision together with the values by which the Court and its staff will be guided in the carrying out of its Mission. These values are:

Integrity

Excellence

Professionalism

Courtesy/Consideration

Efficiency/Effectiveness

Industry

Seven strategic issues have been identified and goals set. The pursuit of those goals will be determined and dedicated with a view to their achievement within the next five years.

I would wish to make two additional points quickly before I move to the next segment. The first is that the arrangements for the appointment of judges of the Court allow for their complete independence and insulation from political control. Secondly, the financial viability of the Court has been established by the creation of a Trust Fund which would provide income for the functioning of the Court. The Trustees of the Fund come from the highest levels of financial competence within the region.

Jamaica

It is always a pleasure to visit Jamaica and to be afforded the opportunity to speak to groups such as yourselves. Jamaica has always enjoyed perhaps the highest degree of visibility, both regionally and internationally, of all the countries of the English speaking Caribbean. In the field of athletics for example, Jamaica burst into world prominence when its great quartet of quarter milers won gold at the London Olympics of 1948. Since then, Jamaican sprinters of both genders have challenged the dominance of the USA in those events. Unknown by many sports fans, and suppressed by the host nations concerned, is the fact that many Jamaican athletes such as Lynford Christie and Donovan Bailey have won Olympic medals for countries such as the United Kingdom and Canada. The tables turned decisively in 2008 when the Jamaican team led by Usain Bolt overtook its great rival to the north as the premier sprinting nation on earth. But what was most satisfying from the regional point of view, was the fact that, for the most part, Usain Bolt's training was conducted in Jamaica by a Jamaican coach.

In the field of education too, Jamaica has been a regional pioneer. The University of the West Indies (UWI) serves some 18 English speaking countries and territories. It was founded in Jamaica in 1948 as the University College of the West Indies (UCWI) in a special relationship with the University of London. It achieved independent university status in 1962. The release of UWI from the umbilical cord which had tethered it to the University of London, served as a precedent for the severance by regional institutions of links which had bound them to organizations outside of the region. The Norman Manley Law School and its sister regional law schools have long replaced the English Inns of Court as the institutions where Caribbean law students receive their professional qualification to practice their chosen profession.

There yet remains one glaring and unfulfilled gap in the rosy picture of Jamaica's emergence from her erstwhile reliance upon extra-regional institutions. It has to do with Jamaica's highest court which still remains the Judicial Committee of Her Majesty's Privy Council in the United Kingdom. One of the tasks immediately ahead of us, as we close the circle of independence, is to complete the integration of those countries into the fold of the CCJ which still remain beyond the pale. Jamaica for its part has already embarked upon processes leading to accession to the CCJ. Indeed, over one hundred years ago, in 1901, the Jamaica Gleaner had argued in an editorial that the Privy Council was, even then, out of step with the contemporary times, and that serious consideration should be given to establishing a final court for the Caribbean region. Even back then, there was a mounting feeling that the region deserved to be served by a Court with an appreciation for Caribbean values, history, and culture.

The discussions on the CCJ have been going on for over a hundred years. When the matter was before the Parliament in Jamaica during the PJ Patterson Government I was very impressed with

the high quality of the debates that characterized the process. The Seaga opposition was in my view very thoughtful and constructive in its criticism. I did not discern any absolute objection to the CCJ during the discussions which were published. These discussions remain an important source of information and formed an important part of the development process of the CCJ.

During those discussions the issue of how to guarantee the important principle of judicial independence was the main thrust of the debates and specific areas of concern were identified with great particularity. As I reviewed the discussions I felt that they played an important role in the evolution of the Court. The concerns that were raised were maturely addressed. It is clear that the structure of the Court benefited from those debates. In my view, all of the concerns were dealt with and today the excellence of the arrangements is no doubt influenced by them. It has been widely accepted including by international commentators that the arrangements are first class and could form a model for international courts. It is my understanding that the proponents of Jamaica's accession to the CCJ continue their work even as I speak to you today. The Government of Jamaica led by the Hon Prime Minister Portia Simpson-Miller, has declared its intention to have Jamaica join the final appellate jurisdiction of the CCJ. It is my understanding that the opposition party has indicated its willingness to cooperate with the Government in the pursuit of this worthy objective, and that discussions towards this end are on-going. This country can be assured of a warm and enthusiastic welcome to the CCJ when the necessary steps have been completed allowing for its entry.

Apparently there are still some concerns about the independence of the court, but I would suggest that those concerns only exist where there is lack of knowledge about the institutional arrangements that have been put in place. Although I have addressed this several times I think it useful to repeat.

In addressing the issue of the independence of the Court, I have been invited to explain a concern expressed by someone, who feels that the smallness of our jurisdictions has given rise to an insidious problem of familiarity and intimacy which could undermine the ability of CCJ to be impartial and free from political interference. I do not support this cynical view of human nature. In the first place, realism must concede that good character escapes some people, but it must also acknowledge that there are people of good and impeccable character from small communities. History is replete with examples. In small societies the judges are well known by the people. Everyone knows them, how they conduct themselves both on and off the bench. The judge is almost literally under the microscope of public attention. It is generally considered that courts gain confidence by being transparent. This reasoning would suggest that confidence should be generated from knowledge. I would have thought that it is easier to trust those who you can see and observe than those who you do not know. I would suggest that our people will have access to our court and information about our judges. I would hope that the Media will be a source of information about the Court and that it will achieve the reputation it deserves from observation of its performance. But in the second place, from the beginning of time, judges have been selected from among their own people. The Bible tells the story in Deuteronomy Chapter One (1) of how Moses appointed leaders from each tribe to be judges. These men had to be well respected for their wisdom and understanding. He instructed the judges to be perfectly fair and impartial and to hear the poor as well as the rich. These are the characteristics applicable to judges even today. Today that practice continues, as judges are usually selected from among their own people. In many countries one qualification for judicial appointment is that the judge must be a national. It is clear that international thinking supports the view that justice is better attained from those who are familiar with the people they are judging. The following excerpts from the Privy Council itself speak:

1. *“It is obvious that, from the mere distance of those colonies and the immense variety of matters arising in them, foreign to our habits and beyond the scope of our knowledge, any judicial tribunal in this country must of necessity be an extremely inadequate court of redress”. – Lord Brougham, Lord Chancellor of England between 1830 -1834.*

2. *"Although the Privy Council has done its best to serve the Caribbean and, I venture to think, has done much to improve the administration of justice in parallel with improvements in the United Kingdom, our remoteness from the community has been a handicap... my own view is that a court of your own is necessary if you are going to have the full benefit of what a final court can do to transform society in partnership with the other two branches of government” – Lord Hoffman at the Annual Dinner of the Law Association of Trinidad and Tobago in 2003.*

3. *“A supreme court of high calibre has been established in the Caribbean which would be able to take account of local values and develop a modern Caribbean jurisprudence in an international context. It is regrettable that political difficulties have obstructed acceptance of its [appellate] jurisdiction and that the outdated jurisdiction of the Judicial Committee of the Privy Council survives ... for many of those States. All possible steps should be taken to encourage the Caribbean States to accept the [appellate] jurisdiction of their own supreme court.” – Francis*

Jacobs, Privy Councillor and former Advocate General of the European Court of Justice, 2008

The Role of the Caribbean Court of Justice

The role of the CCJ has been described as being critical to the development of a Caribbean Jurisprudence which is reflective of the mores, values and aspirations of the Caribbean people and which is steeped in the ethos of the region.

The CCJ has two jurisdictions, rather like two courts in one. It has an Original Jurisdiction. When the Court is sitting in its Original Jurisdiction it functions as an international court resolving disputes between Member States, or between individuals and Member States where there is an allegation of a breach of the Revised Treaty of Chaguaramas (the “RTC”). Then there is the Appellate Jurisdiction, where the CCJ replaces the Privy Council as the final appellate court of the Commonwealth Caribbean Member States.

Allow me to speak first about the Original Jurisdiction.

Brief overview of the CCJ’s Original Jurisdiction

All Member States which signed the CCJ Agreement, including Jamaica, have acceded to the Original Jurisdiction of the Court. As the exclusive adjudicator of disputes arising from the RTC, the CCJ serves to protect the rights and enforce the responsibilities under the Treaty. This is of vital importance to the entire region and facilitates the Vision of the CARICOM Single Market (the “CSME”). The Court’s judgments ensure uniformity in the interpretation and application of

the RTC, and are therefore critical in enabling the legal certainty and predictability which encourage economic growth, social stability and the rule of law. In this aspect of its work, the CCJ is a major tool for the Caribbean people to use to bring home to each and every one the promise of regional economic growth and social stability that our best economists have linked to the CARICOM. It is important to note that under this jurisdiction, it is not only the States, but individuals, ordinary citizens also have a voice and access to the CCJ for justice.

Under the Original Jurisdiction, the CCJ has delivered thirteen judgments and there are two cases currently pending. The Court has already addressed a number of important issues arising out of the RTC. It has addressed issues relating to supporting the regional manufacturing sectors by responding to complaints from a cement manufacturer in Trinidad to compel the Guyanese government to impose the agreed tariffs on cement imports from the Dominican Republic;² and to complaints from manufacturers of wheat products to compel the Suriname Government to impose tariffs on imports from the Netherlands.³ It has addressed the operating methods of the Competition Commission, a CARICOM institution established to ensure that the benefits of free trade are not abused.⁴

Currently pending is the case brought by Jamaican national Shanique Myrie against the State of Barbados. Ms. Myrie is claiming that under the RTC, she has a right to free movement within CARICOM which was violated by Barbadian officials. That trial is scheduled for March and the Court will sit in Jamaica to hear witnesses called by Ms Myrie and the Jamaican Government and then move to Barbados to hear witnesses and evidence in that case. And there is another pending

² Trinidad Cement Limited and TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana [2009] CCJ 5 (OJ); (2009) 75 WIR 327

³ Hummingbird Rice Mills Ltd v Suriname and the Caribbean Community [2012] CCJ 1 (OJ);(2012) 79 WIR 448

⁴ Trinidad Cement Limited v The Competition Commission [2012] CCJ 4 (OJ); (2012) 81 WIR 247

case in which a company from Suriname has sued the State of Guyana over the imposition of an environmental levy. The Case Management Conference in that matter is scheduled for next week. These cases all demonstrate that the Court is fulfilling the vision of contributing to economic development and social stability through addressing matters that are of value to the entire region.

Appellate Jurisdiction of the Court

With regard to the Appellate Jurisdiction, three Member States have fully acceded: Guyana, Belize and Barbados. In the countries in which the CCJ is already the final court, it has been actively facilitating access to justice for the ordinary person.

There is now tremendous relief for litigants in terms of expense and in the complexity of lodging an appeal. Increasing numbers of people from all walks of life are able to obtain quality justice at the highest level. An interesting illustration is the case of *Ross v Sinclair*⁵ from Guyana where the CCJ granted an elderly woman leave to appeal as a poor person. The CCJ further facilitated access to justice by conducting the hearings via audio and video conferencing which spared the parties the burden of travel to Trinidad.

We can look at the case of Barbados for statistical evidence of improved access to justice. In the last five years before Barbados abolished appeals to the Privy Council, a total of eight appeals went from Barbados up to the Privy Council. However, in the seven years since Barbados joined the appellate jurisdiction of the CCJ, there have been twenty-five appeals already. In other words,

⁵ [2008] CCJ 4 (AJ); (2008) 72 WIR 282

there has been an increase of almost 120 per cent in the number of Barbadian citizens gaining the benefit of a second or final appeal.

Access to justice is further enhanced by the use of the latest technology at the CCJ. There are audio and video conferencing facilities that the Court uses regularly to conduct hearings so that litigants and their Counsel are spared the financial burden of travel to Trinidad. Additionally, the CCJ uploads the audio and the video recordings of its hearings of appeals within a matter of hours on its website, providing transparency and access to our proceedings to the public at large.

So the CCJ has been facilitating access to justice for many people, especially in its Appellate Jurisdiction. A comparison of statistics from Jamaica and Barbados may help to show this.

Between 2008 and 2011, the Jamaican Court of Appeal issued an average of 105 judgments per year. However, between those same years, roughly 6 judgments on average were delivered in Jamaican cases by the Privy Council. On the other hand, the Barbados Court of Appeal issued just under 16 judgments per year on average between 2008 and 2011. The Caribbean Court of Justice, however, issued 4 judgments per year in Barbadian cases on average. These figures suggest that over 25% of litigants in Barbados are now able to appeal to the CCJ, whereas only 5.5% of the parties from Jamaica have the benefit of a second or final appeal.

The majority of Commonwealth jurisdictions have delinked from the Privy Council since 1901. The remaining territories include thirteen independent nations and other jurisdictions which are really protectorates of Britain. Of these thirteen independent countries, nine are members of the Commonwealth Caribbean (OECS + Jamaica + TT + Bahamas). Surely, the time has come to complete the circle of independence by abolishing appeals to the Privy Council and enhancing access to justice for all Jamaicans through the CCJ.

One of the region's luminaries, the Right Honourable Telford Georges actually regarded it as "*a compromise of sovereignty*" for us to remain wedded "*to a court which is part of the former colonial hierarchy*". Dr. Kenny Anthony, Prime Minister of St. Lucia, put it this way: "*...the Court has always been about the need for all the peoples of CARICOM, to assert their confidence in their integrity, their civilization, and in themselves. No self-respecting nation should allow its sovereignty to be at large.*"

While we consider the full realisation of Jamaica's independence, I understand that the issue of the Court's own independence has been widely discussed.

The CCJ, in its original jurisdiction, plays a fundamental part in facilitating the integration scheme envisioned by the CSME. As the sole arbiter of disputes arising from the RTC regime, the CCJ acts as a mechanism for the enforcement of the rights and obligations created by the Treaty. The Court ensures the uniform interpretation and application of the RTC, and is therefore crucial to the development of the CSME.

Pursuant to Article XII of the Agreement Establishing the Court, the CCJ has the exclusive jurisdiction to hear and deliver judgment on disputes between Contracting Parties to the Agreement and disputes between any Contracting Party to the Agreement and the Community. Further, applications can be brought directly to the CCJ by private entities including corporations and nationals of Member States as has happened in the Myrie case.

In a domestic case, if a question arises as to the interpretation of the RTC, the domestic court or tribunal is required to refer the matter to the CCJ for adjudication.⁶ The obvious purpose of such a provision is to guarantee that no other courts within the jurisdictions of the Contracting Parties possess the authority to resolve issues concerning the interpretation and application of the RTC.

In this regard, CCJ has already assisted in bringing the Treaty to life. In its original jurisdiction the CCJ has adjudicated on cases which have supported the vision enshrined in the RTC for economic development and social stability within the region. As previously mentioned, there have been cases addressing the movement of goods and the application of common external tariffs brought against the governments of Guyana and Suriname. This has provided evidence that the CSME system can work in supporting the competitiveness of business within the region. The CCJ has also recently addressed the system for ensuring that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct. In addition, it is well known that the regime for the freedom of movement of persons is now the subject of litigation before the court.

To date, all of the twelve signatories to the Agreement Establishing the Court are Members of the Caribbean Association of Banks (“CAB”). This undoubtedly has significant implications not only for CAB Members who are Parties to the RTC but also for individuals and companies belonging to these Member States. The result is that members of the private sector in these States can access the Court in order to vindicate their rights under the Treaty.

⁶ See Articles 211 and 214 of the RTC and *The Caribbean Court of Justice (Original Jurisdiction) Rules 2006*, Rule 11.2

Caribbean Judicial Development

Participation in the several avenues of continuing judicial education and training has now become an integral element of a judge's maintenance of his judicial competence. It goes without saying that upon appointment to the CCJ, a judge brings with him or her all of the habits of selftuition and industry, familiarity with contemporary developments throughout the common law world, and a prodigious capacity for old-fashioned hard work. Thus, by mastering all of the case law and statutes relevant to the issues before the Court – whether in its original or appellate jurisdiction – the judge adds substantially to his or her existing store of knowledge upon the topics involved. A few examples will suffice to illustrate the methods by which the judges of the CCJ enhance their judicial education almost upon a daily basis:

1. Study of recent decisions of common law courts.
2. Preparation for the hearing of cases.
3. Research for the writing of judgments.
4. Participation in case conferences with colleagues.
5. Facilitation of workshops and seminars.
6. Participation in workshops and seminars.
7. Preparation for and participation in judicial conferences within the region and beyond.
8. Preparation of papers for oral delivery or publication in writing.
9. Preparation of teaching materials.

10. Participation in regional and international institutions.
11. Participation in formal and structured training courses.
12. Membership of organizations such as The Commonwealth Judicial Education Institute and the Caribbean Association of Judicial Officers.

The above list is not exhaustive. A continuing knowledge of current affairs, both regional and international, and of contemporary developments in related fields of law is also essential. A studied application of the methods enumerated above, enhanced by the inherent high quality of the judges of the CCJ, has resulted in the delivery of judgments of ground breaking quality which have been commended by both practising Bar Associations and academic communities of the common law world.

Specialist Judicial Institutions

In summarizing, the *practical considerations* facing CARICOM, the matters that come to mind are the importance of regional responses based on a recognition of the principles of economies of scale and the development of expertise including judicial training. These would include the development of regional solutions for regimes governing international trade and intellectual property (IP) rights, and topping the list would be the pooling of drafting resources for harmonising the legislation in these areas and addressing the utility of creating specialist dispute resolution mechanisms.

From the perspective of the CCJ, when we are looking at regional solutions, the concern about specialist judicial institutions in a group of small nations has to incorporate the reality of economies of scales, and the potential for waste in replicating institutions to address small workloads. So the idea of developing specialist judges who can support multiple jurisdictions has great appeal, despite the enormous practical hurdles to overcome. Then there is the concept of the CCJ's regional jurisdiction and its exclusive jurisdiction which points to the Court's role in improving consistency of decision- making on a regional basis. And last but not least, the role of education in the development of expertise in judicial and supporting officers.

Although under the vision of the RTC, there is a specialized organ in the form of the Council of Trade and Economic Development ("COTED") whose job is to address crucial issues in regional trade, the CCJ has to play a vital role in assisting COTED in this respect. The CCJ can bring together the stakeholders and experts. The CCJ is alive to the need for this mandate to be fulfilled and is in a good position to get it done. In this respect the role of the Court is more than just an adjudicatory body. It has already stimulated the establishment of two regional institutions using education as their main tools to improve justice delivery. They are: (1) **The Caribbean Academy of Law and Court Administration (CALCA)**, an educational arm of the CCJ which has as its main objective the advancing of knowledge, education, learning, research, and practical application of law and the administration of justice in the Caribbean context and (2) **The Caribbean Association of Judicial Officers (CAJO)** aimed at enhancing the administration of justice throughout the Caribbean region by encouraging and promoting the development of impartial, competent, efficient and effective judicial officers.

Notwithstanding the existence of a Code of Judicial Conduct, the CCJ has established an Ethics Committee under the Chairmanship of Justice Desiree Bernard. This committee is currently examining a draft Code of Ethics in a painstaking and meticulous fashion. When that draft is finally settled, it will be exposed to public scrutiny before it is formally promulgated.

Conclusion

The framers of the Agreement Establishing the Caribbean Court of Justice were convinced that the Court would have a determinative role in the further development of Caribbean Jurisprudence through the judicial process. Objective observers are in agreement that the Court has made an auspicious beginning in the first seven years of its existence. That beginning augers well, in that true to its foundation principles, the Court by its judgments, will continue to play a constructive role in the judicial and economic development of the region.