

**APPLICATION OF THE
AMERICAN CONVENTION ON
HUMAN RIGHTS IN THE
ENGLISH SPEAKING CARIBBEAN**

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In my letter of acceptance to the Inter-American Court of Human Rights to participate in this seminar, I indicated that I viewed the seminar as an important event in the Human Rights Calendar of the Hemisphere. It is fitting therefore that I congratulate the Court on its initiative to ensure that the fortieth anniversary of the Commission, the thirtieth anniversary of the San José Pact and the twentieth anniversary of the coming into force of the provisions for the establishment of the Court should be appropriately commemorated. It is felicitous that the illustrious Government of Costa Rica has also found it fit to celebrate the significant events that have brought us together today in San José.

In the circumstances, I wish to place on record my sincere thanks to the President and members of the Inter-American Court of Human Rights and the illustrious Government of Costa Rica for this concrete manifestation of their unselfish dedication and commitment to the cause of human rights in our Hemisphere. On the personal level, this seminar has afforded me the opportunity not only to renew some old acquaintances but it has also made it necessary that I consider once more the Human Rights situation in this Hemisphere generally and more specifically the English speaking Caribbean and in my own country.

Our panel will focus on the "Application of the American Convention vis-à-vis the Caribbean" and I know that my fellow panellists will address the specifics of the provisions of the Convention. I will therefore use the little time allowed to me to indicate the Human Rights context of the English-speaking Caribbean today and suggest mechanisms for improvement in the future.

CHARACTERISTICS OF THE REGION

The English-speaking Caribbean is characterised by ethnic, religious, cultural and language diversity between and within states. Their constitutions vary and provide for Unitary and Federal States, Republics and Monarchies. They all cherish and jealously protect their

relatively recent independence and their sovereignty. Apart from Guyana and Belize, they are all small, island States.

As members of the Organization of American States, all the English speaking Caribbean States, including Belize and Guyana, come under the jurisdiction of the Inter-American Commission on Human Rights. However, it is noteworthy that of these, only Barbados, Dominica, Jamaica and Trinidad and Tobago have ever signed and ratified the Convention, and only Trinidad and Tobago accepted the jurisdiction of the Court. It must be noted with concern however, that Trinidad and Tobago denounced the Convention in May of 1998.

All of the English speaking states, with the exception of Guyana, have the Privy Council as their final Court of Appeal. The judiciary in these states is free, fair and independent. And in Guyana, which has its own final Court of Appeal, the judiciary is also free, fair and independent. All the constitutions of these states have adequate provisions for the protection of Human Rights. In the result, Human Rights abuses are not characteristic of these states. The time is ideal, in respect of the English-speaking Caribbean, for the system to pre-empt rather than later to react to developments that suggest increasing disillusionment with the system.

In spite of this generally stable Human Rights climate however, alarms of one type or another have been raised, and these alarms suggest there is need for vigilance. A panel such as our own must therefore take note of such alarms. It is apt also, that any concerns of the Human Rights Community in this Hemisphere be made known so that governments may take precautionary measures or even remedial measures where necessary. I'll refer to four examples of existing concerns.

In the recent past, there have been claims in the region that the *electoral processes* have not been as free and as fair as they have been traditionally perceived to be. In the face of such claims, international observers have become part of the electoral process in some states. The concern of some persons and institutions about the integrity of the electoral process should be viewed with some measure of seriousness by the hemispheric Human Rights Community and by the state authorities in the region. Both precautionary and remedial measures may be necessary to address this relatively new phenomenon. (The Declaration - Art. XX and the Convention - Art. 23 indicate quite clearly the rights of individuals and the responsibility of states in this regard.)

Secondly, the separate responsibility of *the judiciary* in democracies is a universal constitutional imperative for the protection of all rights. The Declaration (Art. II and Art. XVIII) and the Convention (Art. 25) recognize that the protection of individual and other rights mandates the establishment of an independent, fair and functioning Judiciary. In this regard, it is significant and useful that states note that the Commission has indicated that it will not be a Court of fourth instance where the decisions of the Final Courts are concerned, in states where the Judiciary is free, independent and functioning (1997 Annual Report of the Commission).

In individual states, alarms have been raised in respect of the independence of the Judiciary. It was at a regional meeting of Chief Justices that it was found necessary to declare that the Chief Justices insisted on the need for all states to ensure the independence of their individual Judicial Systems. In one Caribbean state, the Judiciary itself has indicated its fear about possible violation of its traditional independence. These concerns were noted by the Bar and an inquiry was agreed to by members of that state's Bar. The Hemispheric Human Rights Community may wish to focus on these concerns in the region.

Thirdly, *Freedom of the Press and of Expression* are now under special consideration by the Commission. In fact, a special rapporteur was appointed in 1997. Such attention is timely and relevant in respect of the enjoyment of these rights in the region. (The Declaration - Art. 4 - and the Convention - Art. 13 -). Although the constitution and the laws of the states recognize and protect the right to freedom of the press and expression, journalists have alleged that they have been coerced by state officials and functionaries to do the bidding of the authorities. Loss of employment or even imprisonment are not unknown to journalists. There is need therefore that the Commission consider the Caribbean reality in its report on freedom of the press and expression in the hemisphere. The rapporteur might gain useful insights from a visit to some states.

Fourthly and finally, the *Right of Assembly* and the *Freedom of Association* (Art. XXI & Art. XXII of the Declaration and Art. 15 and 16 of the Convention) are rights which though protected by national legislation are violated in one way or another from time to time. Trade Unions and Political Organizations complain of restrictions on the enjoyment of these rights. There is no perceived crisis at this point of time, yet there are events that suggest impatience and frustration on the part of the state authorities who for one reason or another are opposed by organized labour and political organizations. Governments often are confronted by the paradox of having come to power with the support of the very organizations which object to their policies.

Over and above the situations described, there is one phenomenon common to all the states in the region which is that there is *general lack of information and knowledge about the hemispheric system* for the protection of Human Rights. This ignorance is not merely at the level of the general population but exists at the level of officials of the Government, the Judiciary, the BAR and Institutions of Higher Learning. Moreover, there is great cynicism about the activities of all Human Rights organizations. These organizations are perceived as supporters of the criminals rather than supporters of victims of crime; they are viewed as impediments to implementation of laws, especially in respect of judicial executions; and not infrequently, Human Rights activists are seen as charlatans in search of financial and political rewards.

For these and other reasons, there is some degree of hostility to the various organs of the Human Rights system in the Hemisphere. Hostility exists at the level of Governments and other state institutions and to some extent even within the press and media generally, which are themselves protected by the very provisions of the Declaration and the Convention.

States in the Caribbean also note that there is not yet universal application of the Convention in the Hemisphere and without knowing or accepting the reasons, pay particular attention to the fact that large and indeed influential English speaking states have not yet ratified the Convention. Incorporation of all English-speaking states will ensure that the system realises its Inter-American character and will also positively redefine that character.

It is in this general context that the American Convention on Human Rights applies in the English-speaking Caribbean. For these reasons there is the need for an enormous and prolonged promotional exercise in the region. I must caution however, that states will have serious problems complying with any far reaching structural changes to the system. I earnestly hope that time is on our side, that is, on the side of those who work towards the enjoyment of all Human Rights in a uniquely happy region of the world. And in this instance patience may not be a virtue.