

AGREEMENT ESTABLISHING THE CARIBBEAN COURT OF JUSTICE

THE CONTRACTING PARTIES,

CONVINCED that the Caribbean Court of Justice, (hereinafter referred to as "the Court"), will have a determinative role in the further development of Caribbean jurisprudence through the judicial process;

CONVINCED ALSO of the desirability of entrenching the Court in their national Constitutions;

AWARE that the establishment of the Court is a further step in the deepening of the regional integration process;

RECOGNISING the sovereignty of Members of the Caribbean Community;

HEREBY AGREE as follows:

ARTICLE 1

USE OF TERMS

In this Agreement, unless the context otherwise requires:

'Commission' means the Regional Judicial and Legal Services Commission established by Article V;

'Conference' means the Conference of Heads of Government of Member States of the Caribbean Community;

'Contracting Party' means an entity referred to in Article II which has satisfied the requirements of membership and in relation to which this Agreement is in force;

(a) Original jurisdiction in accordance with the provisions of Part II, and

(b) Appellate jurisdiction in accordance with the provisions of Part III.

2. The decisions of the Court shall be final.

3. The Seat of the Court shall be in the territory of a Contracting Party as determined by a qualified majority of the Contracting Parties but, as circumstances warrant, the Court may sit in the territory of any other Contracting Party.

4. The Government of the Contracting Party in whose territory the Seat of the Court is situated shall provide suitable accommodation for the Seat of the Court and the offices of the Commission and shall conclude with the Court and the Commission an Agreement relating to the Seat of the Court and the offices of the Commission.

5. The Court shall have and use, as occasion may require, a seal having a device or impression with the inscription 'The Caribbean Court of Justice'.

ARTICLE IV

CONSTITUTION OF THE COURT

1. Subject to paragraph 2 of this Article, the Judges of the Court shall be the President and not more than nine other Judges of whom at least three shall possess expertise in international law including international trade law.

2. The number of Judges, excluding the President, may be increased by the Heads of Government, upon the recommendation of the Commission.

3. The Court shall be duly constituted as set out in Parts II and III and may sit

unlimited jurisdiction in civil and criminal matters in the territory of a Contracting Party or in some part of the Commonwealth, or in a State exercising civil law jurisprudence common to Contracting Parties, or a court having jurisdiction in appeals from any such court and who, in the opinion of the Commission, has distinguished himself or herself in that office; or

(b) is or has been engaged in the practice or teaching of law for a period or periods amounting in the aggregate to not less than fifteen years in a Member State of the Caribbean Community or in a Contracting Party or in some part of the Commonwealth, or in a State exercising civil law jurisprudence common to Contracting parties, and has distinguished himself or herself in the legal profession.

11. In making appointments to the office of Judge, regard shall be had to the following criteria: high moral character, intellectual and analytical ability, sound judgment, integrity, and understanding of people and society.

12. The Commission may, prior to appointing a Judge of the Court, consult with associations representative of the legal profession and with other bodies and individuals that it considers appropriate in selecting a Judge of the Court.

ARTICLE V

ESTABLISHMENT OF THE REGIONAL JUDICIAL AND LEGAL SERVICES COMMISSION

1. There is hereby established a Regional Judicial and Legal Services Commission which shall consist of the following persons:

(a) the President who shall be the Chairman of the Commission;

2. Where any person or body required to nominate a candidate for appointment to the Regional Judicial and Legal Services Commission in accordance with paragraph 1, fails to make such nomination within thirty (30) days of a written request in that behalf, the nomination shall be made jointly by the heads of the judiciaries of the Contracting Parties.

3. (1) The Commission shall have responsibility for:

- (a) making appointments to the office of Judge of the Court, other than that of President;
- (b) making appointments of those officials and employees referred to in Article XXVII and for determining the salaries and allowances to be paid to such officials and employees;
- (c) the determination of the terms and conditions of service of officials and employees; and
- (d) the termination of appointments in accordance with the provisions of this Agreement.

(2) The Commission shall, in accordance with the Regulations, exercise disciplinary control over Judges of the Court, other than the President, and over officials and employees of the Court.

4. The term of office of members of the Commission, other than the Chairman shall be three years, but such members shall be eligible for re-appointment for another term of office.

5. The members of the Commission referred to in paragraph 1(b), (c), (d), (f) and (g) shall be appointed by letter under the hand of the President.

12. In the exercise of their functions under this Agreement, the members of the Commission shall neither seek nor receive instructions from any body or person external to the Commission.

13. A quorum for the transaction of business by the Commission shall consist of not less than six members of the Commission including the Chairman or, where the Deputy Chairman is presiding, the Deputy Chairman.

14. Subject to this Article, the Commission shall have power to regulate its own procedure.

ARTICLE VI

THE FIRST APPOINTMENT OF THE PRESIDENT AND MEMBERS OF THE COMMISSION

1. For the purposes of the first appointment of the President and Commissioners and notwithstanding the provisions of paragraph 6 of Article IV, the members of the Commission appointed pursuant to the Agreement shall make a recommendation for the appointment of the President.

2. Notwithstanding the provisions of paragraphs 4 and 5 of Article V:
(a) the term of office of the members of the Commission appointed in accordance with paragraph 1 of this Article shall be one year; and

(b) the members of the Commission mentioned in sub-paragraph (a) of this paragraph shall be appointed by letter under the hand of the heads of the judiciary of the Contracting Parties.

ARTICLE VII

LEGAL STATUS OF THE COMMISSION

1. The Commission shall possess full juridical personality including, in particular, full capacity to contract.

Judge is for any reason unable to perform the functions of that office, then, until some other person has been appointed to act and has assumed the functions of that office or, as the case may be, until the Judge has resumed those functions, they shall be performed by a person qualified for appointment as a Judge of the Court to be appointed by the Commission by letter under the hand of the Chairman of the Commission.

5. The person appointed in accordance with paragraph 4 shall continue to perform the functions of the office until a person is appointed to the office and has assumed the functions thereof or, as the case may be, until the holder resumes office.

ARTICLE IX

TENURE OF OFFICE OF JUDGES

1. The office of a Judge of the Court shall not be abolished while there is a substantive holder thereof.

2. Subject to the provisions of this Article, the President shall hold office for a non-renewable term of seven years or until he attains the age of seventy-two years, whichever is earlier, except that the President shall continue in office, if necessary, for a further period not exceeding three months to enable him to deliver judgment or to do any other thing in relation to any proceedings part-heard by him.

3. Subject to the provisions of this Article, a Judge of the Court shall hold office until he attains the age of seventy-two years, except that he shall continue in office, if necessary, for a further period not exceeding three months to enable him to deliver judgment or to do any other thing in relation to any proceedings part-heard by him.

4. A Judge may be removed from office only for inability to perform the

(b) The tribunal shall enquire into the matter and advise the Heads of Government or the Commission, as the case may be, whether or not the President or the Judge ought to be removed from office.

7. The provisions of any law relating to the holding of commissions of inquiry in the Member State of the Caribbean Community where the inquiry is held shall apply as nearly as may be in relation to tribunals appointed under paragraph 6 of this Article or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that law.

8. If the question of removing the President or any other Judge of the Court from office has been referred to a tribunal under paragraph 6 of this Article, the Heads of Government in the case of the President, or the Commission, in the case of any other Judge of the Court, may suspend such Judge from performing the functions of his office, and any such suspension may at any time be revoked by the Heads of Government or the Commission, as the case may be, and shall in any case cease to have effect if the tribunal advises the Heads of Government or the Commission that the Judge ought not to be removed from office.

9. (1) The President may at any time resign the office of President by writing under the hand of the President addressed to the Chairman for the time being of the Conference.

(2) Any other Judge of the Court may at any time resign the office of Judge of the Court by writing under the hand of the Judge addressed to the Chairman of the Commission.

ARTICLE X

OATH OF OFFICE

1. A Judge of the Court shall not enter upon the duties of that office unless he has taken and subscribed the oath of office as set out in Appendix I to this

- (a) disputes between Contracting Parties to this Agreement;
- (b) disputes between any Contracting Parties to this Agreement and the Community;
- (c) referrals from national courts or tribunals of Contracting Parties to this Agreement;
- (d) applications by nationals in accordance with Article XXIV, concerning the interpretation and application of the Treaty.

2. For the purposes of this part, "national courts" includes the Eastern Caribbean Supreme Court.

ARTICLE XIII

ADVISORY OPINIONS OF THE COURT

1. The Court shall have exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the Treaty.
2. Advisory opinions shall be delivered only at the request of Contracting Parties or the Community.

ARTICLE XIV

REFERRAL TO THE COURT

Where a national court or tribunal of a Contracting Party is seized of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.

Court in the exercise of its original jurisdiction, it may apply to the Court to intervene and it shall be for the Court to decide on the application.

2. Whenever the construction of a convention to which Member States and persons other than those concerned in the case are parties, is in question, the Registrar shall notify all such States and persons forthwith.

3. Every State or person so notified has the right to intervene in the proceedings; but if the right is exercised, the construction given by the judgment will be equally binding on all parties.

ARTICLE XIX

APPLICATION FOR INTERIM MEASURES

The Court shall have the power to prescribe if it considers the circumstances so require, any interim measures that ought to be taken to preserve the rights of a Party.

ARTICLE XX

REVISION OF JUDGMENTS OF THE COURT IN THE EXERCISE OF ITS ORIGINAL JURISDICTION

1. An application for the revision of a judgment of the Court in the exercise of its original jurisdiction may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and to the party claiming revision: provided always that such ignorance was not due to negligence on the part of the applicant.

2. Proceedings for a revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

- (d) providing for the summary determination of any matter which appears to the Court to be frivolous or vexatious or to be brought for the purpose of delay;
- (e) regulating matters relating to the costs and the taxation thereof, of proceedings in the Court;
- (f) providing for the delivery of judgments in an expeditious manner;
- (g) prescribing forms and fees in respect of proceedings in the Court;
- (h) prescribing the time within which any requirement of the rules of Court is to be complied with;
- (i) regulating or prescribing or doing any other thing which may be regulated, prescribed or done by rules of Court.

ARTICLE XXII

JUDGMENT OF THE COURT TO CONSTITUTE STARE DECISIS

Judgments of the Court shall be legally binding precedents for parties in proceedings before the Court unless such judgments have been revised in accordance with Article XX.

ARTICLE XXIII

ALTERNATIVE DISPUTE RESOLUTION

1. Each Contracting Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute

- (d) the Court has found that the interest of justice requires that the persons be allowed to espouse the claim.

PART III
APPELLATE JURISDICTION OF THE COURT

ARTICLE XXV
APPELLATE JURISDICTION OF THE COURT

1. In the exercise of its appellate jurisdiction, the Court is a superior Court of record with such jurisdiction and powers as are conferred on it by this Agreement or by the Constitution or any other law of a Contracting Party.

2. Appeals shall lie to the Court from decisions of the Court of Appeal of a Contracting Party as of right in the following cases:

- (a) final decisions in civil proceedings where the matter in dispute on appeal to the Court is of the value of not less than twenty-five thousand dollars Eastern Caribbean currency (EC\$25,000) or where the appeal involves directly or indirectly a claim or a question respecting property or a right of the aforesaid value;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil or other proceedings which involve a question as to the interpretation of the Constitution of the Contracting Party;
- (d) final decisions given in the exercise of the jurisdiction conferred upon a superior court of a Contracting Party relating to

into force of the Agreement pursuant to the Constitution or any other law of that Party, declared to be final.

6. The Court shall, in relation to any appeal to it in any case, have all the jurisdiction and powers possessed in relation to that case by the Court of Appeal of the Contracting Party from which the appeal was brought.

7. (1) The President shall, in consultation with not less than two nor more than five other Judges of the Court selected by him, make Rules of Court for regulating the practice and procedure of the Court in the exercise of the appellate jurisdiction conferred on the Court and, in relation to appeals brought before the Court, the practice and procedure of any court in respect of such appeals.

(2) Without prejudice to the generality of the preceding sub-paragraph, Rules of Court may be made for all or any of the following purposes –

(a) regulating the sittings of the Court, the selection of Judges for any purpose, and the period to be observed as a vacation in the Court and the transaction of business during any such vacation;

(b) regulating the pleading, practice, procedure, execution of the process of the Court and the duties of the officers of the Court;

(c) regulating matters relating to practice in the Court by Attorneys-at-Law or Legal Practitioners and the representation of persons concerned in any proceedings in the Court;

(d) prescribing the cases in which, and the conditions upon which an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal;

were a judgment, decree, order or sentence of a superior court of that Contracting Party;

(b) The Court has power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of court that any superior court of a Contracting Party has power to make as respects the area within its jurisdiction.

ARTICLE XXVII

OFFICIALS AND EMPLOYEES OF THE COURT

1. There shall be a Registrar of the Court, Deputy Registrars and other officials and employees of the Court as the commission may consider necessary. The holders of those offices shall be paid such salaries and allowances and shall have such other terms and conditions of service as may, from time to time, be determined by the Commission.
2. With the concurrence of the competent authority of a Contracting Party, the Commission may appoint the Registrar of a superior court in the territory of that Contracting Party to be a Deputy Registrar of the Court.
3. The Commission may, by directions in writing and subject to such condition as it thinks fit, delegate any of its powers under paragraph 1 to any one or more of its members or to the Registrar of the Court.
4. For the purposes of paragraph 2 of this Article, "competent authority" means the authority vested with power to make appointments to the office of Registrar of a superior court and to exercise disciplinary control over persons holding or acting in that office.

ARTICLE XXIX

RIGHT OF AUDIENCE

Attorneys-at-Law, legal practitioners or advocates duly admitted to practise law in the courts of a Contracting Party shall, subject to the powers of the Court, not be required to satisfy any other condition in order to practise before the Court wherever the Court is sitting in exercise of its jurisdiction and they shall enjoy the privileges and immunities necessary for the independent exercise of their duties.

ARTICLE XXX

PRIVILEGES AND IMMUNITIES

The privileges and immunities to be recognised and granted by the Contracting Parties to the Judges and officers of the Court necessary to protect their independence and impartiality shall be laid down in a Protocol to this Agreement.

ARTICLE XXXI

REGULATIONS

The Commission may make Regulations –

- (a) governing the appointment, discipline, termination of employment and other terms and conditions of service and employment for –

Instruments of ratification shall be deposited with the Depositary who shall transmit certified copies to the government of each Contracting Party.

ARTICLE XXXV

ENTRY INTO FORCE

This Agreement shall enter into force upon the deposit of Instruments of Ratification or Accession in accordance with Article XXXIV, by at least three Member States of the Caribbean Community.

ARTICLE XXXVI

ACCESSION

1. Any country to which paragraph (b) of Article II applies may accede to this Agreement and become a Contracting Party on such terms and conditions as the Conference may decide.
2. Instruments of Accession shall be deposited with the Depositary.

ARTICLE XXXVII

WITHDRAWAL

1. A Contracting Party may withdraw from this Agreement by giving notice in writing to the Depositary who shall promptly notify the other Contracting Parties accordingly and the withdrawal shall take effect five years after the date on which the notice was received by the Depositary, unless the Contracting Party before the withdrawal becomes effective notifies the Depositary in writing of the cancellation of its notice of withdrawal.

Signed by Owen Arthur for the Government of Barbados on the 14th day of February 2001 at St. Michael, Barbados

Signed by Said Musa for the Government of Belize on the 14th day of February 2001 at St. Michael, Barbados

Signed by

For the Government of the Commonwealth of Dominica on the 15th day of February 2003 at Port-of-Spain Trinidad and Tobago

Signed by Keith Mitchell for the Government of Grenada on the 14th day of February 2001 at St. Michael, Barbados

Signed by Clement Rohee for the Government of the Co-operative Republic of Guyana on the 14th day of February 2001 at St. Michael, Barbados

Signed by

for the Government of Haiti on the day of 2001

at

Signed by Percival J. Patterson for the Government of Jamaica on 14th day of February 2001 at St. Michael, Barbados

Signed by

for the Government of Montserrat on the day of 2001

at

Signed by Denzil Douglas for the Government of St. Kitts and Nevis on 14th day of February 2001 at St. Michael, Barbados

APPENDIX I

I do hereby swear (or solemnly affirm) that I will faithfully exercise the office of President/Judge of the Caribbean Court of Justice without fear or favour, affection or ill-will and in accordance with the Code of Judicial Conduct.

(so help me God (to be omitted in affirmation)).