

Caribbean Community (CARICOM) – Culture

Comunidade Caribenha (CARICOM) – Cultura

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February 2023

ABSTRACT: The role of culture in Caribbean Community's (CARICOM's) agenda is claimed to be very important. The CARICOM Secretariat has a culture program, aiming to strengthen the creativity of people. CARICOM annually manages the Caribbean Festival of Arts (CARIFESTA). A huge issue is that of the cultural restitutions. Most CARICOM Member States have become States Parties to International Conventions related to cultural heritage. Sadly, all international Conventions concerning protection of cultural heritage do not have retroactive effect. There is also a CARICOM commission on reparations for slavery and native genocide against the governments of Britain, France and the Netherlands, the transatlantic slave trade, between the 16th to 19th centuries, being much associated with the Caribbean heritage. Languages are important for the cultural identity of people. It may be stated on CARICOM's site that "Our languages are part of the legacy of the various civilisations from which our ancestors came", but it is also stated that "[f]or many member states, the English Language is a major unifying factor". Indigenous languages should be of more concern to CARICOM. The creation of the Caribbean Court of Justice (CCJ) in 2005, is considered very important toward the Caribbean integration and thus, also to the protection of the region's culture and cultural heritage – important part of their identity. However, only 4 Member States so far have accepted the CCJ as their Highest Court of Appeal. CARICOM should be more active in regard to the protection of culture and cultural heritage of its Member States.

KEY WORDS: Cultural heritage; Slave trade; Cultural tourism; Languages; Caribbean court of justice; University of the West Indies; Legal cultures.

RESUMO: O papel da cultura na ordem de trabalhos da Caribbean Community (CARICOM) é reconhecido como sendo muito importante. A Secretaria da CARICOM tem um programa cultural destinado a reforçar a criatividade das gentes, organizando anualmente a Festa Caribenha das Artes (CARIFESTA). A maioria dos Estados-Membros da CARICOM tornaram-se Estados-Membros das Convenções Internacionais relacionadas com o património cultural. Tristemente, todas as Convenções Internacionais relativas à protecção do património cultural não têm efeito retroativo. Também há uma Comissão CARICOM de reparação para a escravidão e o genocídio dos nativos contra os governos de Grã-Bretanha, França e dos Países Baixos, na medida em que o tráfico transatlântico de escravos, entre os séculos XVI e XIX, está muito associado ao património caribenho. As línguas são importantes para a identidade cultural das pessoas. No site da CARICOM afirma-se que "As nossas línguas são parte do legado das várias civilizações das quais nossos ancestrais vieram", mas afirma-se também que "para muitos Estados-Membros, a língua inglesa é um factor unificador importante". A criação do Tribunal de Justiça Caribenho em 2005, é considerada muito importante para a integração Caribenha e assim também para a protecção da cultura e do património cultural da região – parte importante da sua identidade. No entanto, apenas 4 Estados-Membros aceitaram até agora o Tribunal de Justiça Caribenho como seu Tribunal Supremo. A CARICOM deveria

desempenhar um papel mais activo com respeito à protecção da cultura e do património cultural de seus Estados-Membros.

PALAVRAS-CHAVE: Património cultural; Tráfico de escravos; Turismo cultural; Línguas; Tribunal de Justiça Caribenho; Universidade das Índias Ocidentais; Culturas jurídicas.

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1. Creation of CARICOM

Caribbean countries gained step-by-step independence from their former colonizers. Early efforts had led to the establishment of the West Indies Federation (1958)¹, the Caribbean Free Trade Association (CARIFTA) (1965), and finally to the Caribbean Community (CARICOM) (1973).²

On December 8, 1972, Trinidad and Tobago, Guyana, Barbados and Jamaica established diplomatic relations with Cuba, a country with which CARICOM countries share historical and cultural roots.

CARICOM was created on July 4, 1973: The Treaty of Chaguaramas was signed then by the Prime Ministers of Barbados, Guyana, Jamaica and Trinidad & Tobago. The Treaty was revised in 2002,³ with the aim of an eventual establishment of a single market and a single economy.⁴

There are 15 Members and 5 Associate Members – the latter participate as Observers.

The 15 Members are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St Kitts and Nevis, Saint Lucia, St Vincent and the Grenadines, Suriname, Trinidad and Tobago.

The 5 Associate Members are: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Turks and Caicos Islands. These countries are still dependent territories of the United Kingdom – as is Montserrat, which nevertheless is a full member.

As it is mentioned, when the agreement of 1973 was reached, “the net was cast further to embrace some states on the South American mainland as well as some former colonies of the Netherlands”⁵ (Belize, Guyana and Suriname). French speaking former colonies, that is Guadeloupe and Martinique (overseas departments of France) and St. Barthelemy and St Martin (French overseas collectivities) are not members of CARICOM. Haiti (a since long independent francophone state) signed the 1973 agreement but has never been a functional part of the Community.

According to the Treaty of Chaguaramas of the Caribbean Community, any other State or Territory of the Caribbean Region may become member of CARICOM, if the Conference of Heads of Government believes that that State or Territory is able and willing to exercise the rights and assume the obligations of the organization’s membership.

It is pointed out that “a striking feature of the CARICOM structure is the deliberate diffusion of authority and competence among a multiplicity of Organs, Bodies, Institutions, and Associate

¹ That was a Britain’s movement, before the independence of its West Indian territories. It was an attempt “to consolidate the Caribbean colonies’ political existence into the West Indian Federation, a federal political organization of all of Britain’s West Indian territories”, see KAREN E. BRAVO, “CARICOM, the Myth of Sovereignty, and Aspirational Economic Integration”, in *North Carolina Journal of International Law & Commercial Regulation* 31 (2005), p. 154.

² <https://caricom.org/history-of-the-caribbean-community/> (accessed 8.2.2023).

³ <https://caricom.org/our-community/who-we-are/> (accessed 8.2.2023).

⁴ About the creation and structure of CARICOM, see also GABRIELA MENDIZÁBAL BERMÚDEZ, “CARICOM y la protección social de los trabajadores migrantes regionales” in *Revista Latinoamericana de Derecho Social* 31 (2020), p. 8.

⁵ C.M. ARMAND DE MESTRAL, “The Constitutional Functions of the Caribbean Court of Justice”, in *McGill Journal of Dispute Resolution* 1 (2015), p. 45.

Institutions.”⁶ It is also argued that the foreclosure of participation by citizens of the Community is a disadvantage, since they cannot be directly heard.

CARICOM’s principal governing bodies are the Conference of Heads of Government of the Member States and the Community Council of Ministers.

The Conference of Heads of Government of the Member States is the supreme governing body of the CARICOM. It sets the goals and directions of the Organization. Furthermore, “it is the final authority for the conclusion of Treaties on behalf of CARICOM as well as for entering into relationships between CARICOM and other International Organizations and States”.⁷ The decisions of the Conference of Heads of Government are generally taken unanimously.

The Community Council of Ministers is the second highest organ of CARICOM and is composed of the Member States’ Ministers responsible for Community Affairs and “any other Minister designated by the Member States in their absolute discretion” (art. 13 para. 1 of the Revised Treaty of Chaguaramas). It is responsible for the implementation of strategic plans, coordinating the integration of different sectors, and promoting cooperation among members.⁸

The headquarters are located in Georgetown, Guyana. There are also several institutions that function under the CARICOM umbrella.⁹

There are many things that unite the State Members of CARICOM, though there are also issues of friction (to say the least) either between Member States or between them and other countries.¹⁰ However, increased regionalization of economic relations, all over the world, and perhaps the need to create a solid structure that would “protect” mainly economically the relatively recently independent countries of that part of the world, led to CARICOM. A single market and a single economy were CARICOM’s principal target, at the beginning, but culture was not – and should not be – neglected. At least, that is what is being claimed.

2. Culture – Cultural Heritage – Indigenous rights

The role of culture in CARICOM’s agenda is claimed to be very important. The CARICOM Secretariat has a Culture work program and works with Member States, Community

⁶ KAREN E. BRAVO, “CARICOM, the Myth of Sovereignty, and Aspirational Economic Integration”, in *North Carolina Journal of International Law & Commercial Regulation* 31 (2005) p. 176.

⁷ <https://caricom.org/the-conference-of-heads-of-government/> (accessed 8.2.2023)

⁸ <https://caricom.org/the-community-council-of-ministers/> (accessed 8.2.2023)

⁹ <https://caricom.org/institutions/> (accessed 8.2.2023)

¹⁰ For example: Guyana has been in dispute, since the 19th century, with Suriname over the 15,540-square kilometer New River Triangle, an area reputedly rich in natural resources, including timber and bauxite. Venezuela claims five-eighths of Guyana’s 83,000 square mile territory. There is a Belize-Guatemala territorial claim that is not yet fully resolved. Barbados and Trinidad & Tobago contested a claim for maritime boundary delimitation before the United Nations Conference on the Law of the Sea (UNCLOS) and a judgment was rendered on April 11, 2006, see CLIFFORD E. GRIFFIN, “Regional Integration in the Caribbean: A Sisyphean Odyssey”, *The Whitehead Journal of Diplomacy and International Relations* 13 (2012) p. 104. In 1990, Venezuela and Trinidad & Tobago had signed a maritime boundary treaty that purported to assign to Trinidad & Tobago, ocean territory that Barbados claimed as its own. The 2006 award set the boundary nearly midway between the land of the two island countries.

Institutions and some regional and international partners in order to design and implement projects aiming to strengthen the creativity of people.

There is a Caribbean Festival of Arts (CARIFESTA) which offers a platform for regional practitioners to deploy their creativity and at the same time strengthens the Region's tourism sector.¹¹ Each year, the host is a different CARICOM Member State. This event brings together the artistic work of various countries in the region. In 2021, the host was Antigua and Barbuda.¹²

As we may read on the CARICOM's site, 14 CARICOM countries are participating in an innovative multi-nation initiative aimed at identifying untapped cultural heritage resources and to develop new tools for monitoring and incentivizing their protection.¹³

The Organization of American States (OAS) representative was declaring in Barbados, in 2017: "I believe that the project and our involvement in it should respond to an area of priority within our Member States. While not all CARICOM Member States have made specific reference to the development of the Cultural Industries, in general, and of Cultural Heritage, in particular, among their national priorities, the inherent potential of the region's Cultural Heritage has a direct effect on the realisation of other stated goals related to poverty alleviation, social stability, inclusion, and the creation of job opportunities".¹⁴

In the "Strategic Plan for the Caribbean Community 2015-2019: Repositioning CARICOM"¹⁵, one of the "strategic priorities to 2019" was (and is) to strengthen the CARICOM Identity and Spirit of the Community. In order to do so, four primary strategies were proposed, the second of which is:

"Refining and promoting the CARICOM Identity and Civilization"

As the accompanying text says: "[T]his strategy will focus on building the strong sense of Community unity and pride that is essential for regional integration and the CARICOM Agenda. This will involve facilitating dialogue across the Community; refine and then promote the "CARICOM Civilization"; promoting the Ideal Caribbean Person; identifying appropriate 'symbols' of CARICOM around which to reignite pride, the spirit of integration e.g. the CARICOM Song, CARICOM Day, marquee events, sports (e.g. West Indies Cricket); redefining and reorienting the CARICOM related curriculum in schools; and integration of the Diaspora".

At the 18th Meeting of the Conference of Heads of Government of the Caribbean Community, at a special session dedicated to Education and Human Resource Development, held on July 1, 1997, in Montego Bay, Jamaica, the Ideal Caribbean Person was defined as someone who, among other things:¹⁶

¹¹ About the history of CARIFESTA, see <https://caricom.org/history-of-carifesta/> (accessed 8.2.2023)

¹² <https://caricom.org/carifesta-through-the-years/> (accessed 8.2.2023)

¹³ <https://caricom.org/oas-undertaking-cultural-project-in-caricom-countries/> (accessed 8.2.2023)

¹⁴ <https://www.barbadosadvocate.com/news/championing-culture> (accessed 8.2.2023)

¹⁵ <https://caricom.org/documents/strategic-plan-caribbean-community-2015-2019/> (accessed 8.2.2023). No other plan seems to have been prepared.

¹⁶ https://caricom.org/documents/12063-creative_productive_citizens_for_the_21st_century.pdf (accessed 8.2.2023).

- “.....
- sees ethnic, religious and other diversity as a source of strength and richness;
 - is aware of the importance of living in harmony with the environment;
 - has a strong appreciation of family and kinship values, community cohesion, and moral issues including responsibility for and accountability to self and community;
 - has an informed respect for the cultural heritage;
 -

In the forward to “The CARICOM Human Resource Development (HRD) 2030 Strategy: Unlocking Caribbean Human Potential”, the Secretary-General and Chief Executive Officer of the CARICOM, Ambassador Irwin LaRocque, pointed out that the HRD 2030 Strategy “targets the development of the ‘Ideal Caribbean Person’ articulated by the Leaders in 1997 and derives its values from that document. In doing so, it addresses the development of skills and competencies, not only for the economy, but also for personal development and good citizenship”.¹⁷

In a survey about indigenous rights in the three islands Dominica, Saint Vincent, Trinidad and Tobago, three significant issues have been pointed out, among others:

- 1) Dominica is the only member state of the Caribbean Community to have ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169)¹⁸. This is considered very strange, given the fact that this Convention recognizes Indigenous peoples’ right to self-determination within a nation-state, a right of which, indigenous peoples had been absolutely deprived during the colonial era.
- 2) Saint Vincent and Grenadines is leading the CARICOM commission on reparations for slavery¹⁹ and native genocide against the governments of Britain, France and the Netherlands. Britain took colonial control in St Vincent in 1763 and in 1764 declared that all the lands (about 100,000 acres) belonged to the British Crown. Until 1800, the British deprived the Kalinago (indigenous people) and the Garifuna (the descendants of persons of mixed blood, Kalinago and African) people of their lands and pushed them to the worst parcels of land (just 238 acres) in the north-east of St. Vincent²⁰.
- 3) The term “Carib” is no longer used in documentation in the three islands. Thus:
 - the Santa Rosa Carib Community is now called the First Peoples Community;
 - the “Carib Reserve” is officially renamed “Kalinago Reserve”;
 - the word Garifuna has replaced the term Carib, in Saint Vincent.²¹

A huge issue is that of the cultural restitutions. CARICOM Member States have become States Parties to International Conventions related to cultural heritage. 7 Member States are Parties to the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import,

¹⁷ <https://caricom.org/documents/caricom-hrd-2030-strategy/> (accessed 8.2.2023).

¹⁸ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169,/Document (accessed 8.2.2023).

¹⁹ See more about Slave Trade, *infra*.

²⁰ RALF E. GONSALVES, *The Case for Caribbean Reparatory Justice*, Strategy Forum, Inc. Kingstown, St. Vincent and Grenadines, 2014, p. 12.

²¹ AMY STRECKER, “Revival, Recognition, Restitution: Indigenous Rights in the Eastern Caribbean”, in *International Journal of Cultural Property* 23 (2016), pp. 183-184.

Export and Transfer of Ownership of Cultural Property.²² 14 Member States, that is, all except Montserrat, are Parties to the UNESCO 1972 World Heritage Convention.²³ 13 Member States (all except Guyana and Montserrat) are States Parties to the UNESCO 2003 Convention for the Safeguarding of the Intangible Cultural Heritage.²⁴ 14 Member States (all except Montserrat) are Parties to the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.²⁵ It seems that no CARICOM Member State is Party to the UNIDROIT 1995 Convention on the International Return of Stolen or Illegally Exported Cultural Objects.²⁶

It seems that until recently there has been a lack of restitution of cultural objects cases (with some exceptions) against former European colonial powers, compared to other former occupied territories. As it is mentioned, this is due to a number of reasons. First, many of those cultural objects that are in European (private or public) collections are archaeological materials rather linked to cultures living in the Caribbean prior to 1492; second, these collections have not been adequately catalogued, something that makes restitution claims frail enough; and third, indigenous descendants have not considered those cultural objects, of significant political importance, as have the indigenous in other former colonies.²⁷

Research has shown that there are collections of Caribbean archaeological objects in 59 museums across Europe: in Austria, Belgium, Denmark, France, Germany, Italy, the Netherlands, Portugal, Russia, Spain, Sweden, Switzerland, United Kingdom. The objects of those collections come from several (if not all) Caribbean islands. Sadly, all international Conventions concerning protection of cultural heritage do not have retroactive effect. However, as it is argued, “the absence of a concrete legal basis for claims does not preclude the possibility of returns based on international human rights norms or ethical considerations”.²⁸ There are new principles of international law, considered as soft law, that can be very effective in contributing to the combatting of illicit trade of cultural objects.²⁹

3. Specific Cultural Issues

3.1. Cultural Tourism — Built Heritage

In April 2011, a CARICOM Heritage Experts Meeting was held in Barbados, to discuss regional initiatives in relation to world heritage. The CARICOM Secretariat Program Manager for Culture and Community Development, while delivering opening remarks, said that the region had gained international recognition for its many traditional and contemporary cultural expressions

²² <https://en.unesco.org/fighttrafficking/1970> (accessed 8.2.2023).

²³ <https://whc.unesco.org/> (accessed 8.2.2023).

²⁴ <https://ich.unesco.org/en/convention> (accessed 8.2.2023).

²⁵ <https://en.unesco.org/creativity/convention> (accessed 8.2.2023).

²⁶ <https://www.unidroit.org/instruments/cultural-property/1995-convention/> (accessed 8.2.2023).

²⁷ MARIANA FRANÇOSO/AMY STRECKER, “Caribbean Collections in European Museums and the Question of Returns”, *International Journal of Cultural Property* 24 (2017), pp. 452-453.

²⁸ MARIANA FRANÇOSO/AMY STRECKER, “Caribbean Collections in European Museums and the Question of Returns”, *International Journal of Cultural Property* 24 (2017), pp. 456-457, 467.

²⁹ ELINA MOUSTAIRA, *Art Collections, Private and Public: A Comparative Legal Study*, Springer, 2015, p. 116.

in music, crafts, the literary arts, fashion, festivals and theatre, but as she stated, “the natural and built heritage of the region is equally valuable and authentic and there are many aspects that could be further developed to strengthen the region’s heritage tourism product in a sustainable way”.³⁰

The World Heritage Center designed a Caribbean Action Plan for World Heritage to assist Caribbean States Parties, among other things, in the identification, protection and conservation of their heritage. This initiative had as a consequence that 7 CARICOM Member States have sites on the World Heritage List. These Member States are: Barbados, Belize, Dominica, St Kitts and Nevis, Suriname, St. Lucia and Haiti.

In 1982, the Organization of the Wider Caribbean on Monuments and Sites (CARIMOS) was created. It had as its mandate to identify and study the historic monuments of the Caribbean region and also to provide technical assistance in the restoration and preservation of the built heritage of the region. The initial project was of a ten years period. It was welcomed by OAS during that time. In 1992, the members decided that they should carry on the project and thus, in 1995, it was constituted as a regional organization.

CARIMOS is a non-governmental organization, all its members are honorary and it has a Governing Board formed by 9 members from various countries. Members of CARIMOS are in several countries; among others: Cuba, Colombia, Guyana, Grenada, Costa Rica, Panama, Guatemala, Honduras, Florida (the state).

CARIMOS has been working on establishing a Caribbean Heritage Database. In 2002, the first phase of the Caribbean Cultural Heritage Inventory project was completed.³¹ Works and research continued. Architectural heritage in those countries shows, obviously, a large mix of influences. A clear example of that is Trinidad and Tobago, one of the most multicultural societies in the world. Its architectural heritage reflects various styles, as for example “English Colonial, neo-Classical, African, Indian, Moorish, Irish, Spanish, French, German and different mixes”.³²

It seems that there are no news of CARIMOS works, during the last decade. Perhaps CARICOM could contribute to the restoration and preservation of the built heritage of the region.

3.2. Cultural Industries

CARICOM, recognizing the importance of the Caribbean’s cultural and creative industries as factors for economic growth, in 1994 developed a Regional Cultural Policy. The Standing

³⁰ Stated by LESLIE-ANN JORDAN/LEE JOLLIFFE, “Heritage tourism in the Caribbean: current themes and challenges”, in *Journal of Heritage Tourism* 8 (2013), p. 2.

³¹ LESLIE-ANN JORDAN, “Managing built heritage for tourism in Trinidad and Tobago: challenges and opportunities”, in *Journal of Heritage Tourism* 8 (2013), p. 50.

³² LESLIE-ANN JORDAN, “Managing built heritage for tourism in Trinidad and Tobago: challenges and opportunities”, in *Journal of Heritage Tourism* 8 (2013), p. 52.

Committee of Ministers of Education (SCME) decided that “cultural and artistic activity needs to receive the same kind of attention, incentive and support that other areas traditionally have received. As they pointed out, action was necessary in the areas of “Training” and “Sectoral Activities/Institutions”. Therefore, they set detailed policy framework and objectives that the CARICOM Governments and People should follow.³³

In 2007, CARICOM published the “Cultural Industries in CARICOM: Trade and Development Challenges”, and in 2008 established the Regional Task Force on Cultural Industries. In 2015, during the Twenty-Sixth Inter-Sessional Meeting of the Conference of Heads of Government of CARICOM, the Caribbean leaders acknowledged that cultural and creative industries could contribute to the development of the region. CARICOM and CEDA (Caribbean Export Development Agency) proposed the establishment of the Caribbean Creative Industries Management Unit (CCIMU).³⁴

CCIMU was launched in 2016. It is believed that there are many obstacles to its functioning. Nevertheless, the CDB (Caribbean Development Bank), in 2017, announced the establishment of a Cultural and Creative Industries Innovation Fund “as a pilot intervention by providing grants and technical assistance to governments, business support organizations and academia that support this sector”.³⁵

3.3. Slave trade

“In 1838 the British State paid £20 million to the last (official) British slave owners as a compensation for “expropriation” of those enslaved due to the abolition of slavery in the British Empire and in particular in the British Caribbean. The amount of compensation made up for around 40 per cent of the government’s expenditures in that year, today it would equate to almost £200 billion”.³⁶ The slaves got nothing...

The transatlantic slave trade, between the 16th to 19th centuries³⁷, is very much associated with the Caribbean heritage. There were people in the region transported from various countries for enslavement in the “New World” and this is a legacy that makes “the Caribbean a significant region under the Cultural Tourism component of the UNESCO Slave Route Project”.³⁸ It was in those islands that the slave trade began and where the debate about its abolition originated. The Slave Code of Barbados, of 1661, was “the progenitor of legislating

³³ <https://caricom.org/documents/12068-regional-cultural-policy-of-the-caribbean-community.pdf> (accessed 8.2.2023)

³⁴ Id.

³⁵ Id. p. 104.

³⁶ ANDREAS BUSER, “Colonial Injustices and the Law of State Responsibility: The CARICOM Claim to Compensate Slavery and (Native) Genocide”, in *Heidelberg Journal of International Law*, 2 (2017), p. 410.

³⁷ According to various studies, between the 16th and 19th century, 12-15 million Africans were brought to the American continent, in the frame of the transatlantic enslaved trade, see JOSÉ ATILES-OSORIA, “Colonial State Crimes and the CARICOM Mobilization for Reparation and Justice”, in *State Crime Journal* 7 (2018), p. 356.

³⁸ PATRICIA ELAINE GREEN, “Caribbean Cultural Landscape: the English Caribbean potential in the journey from ‘tentative listing’ to being ‘inscribed’”, *Journal of Heritage Tourism* 8 (2013), p. 66.

colonial enslavement”, the “first comprehensive slave code in the English Americas”.³⁹ The Haitian Revolution against French Colonial Rule, that began in 1791 and ended in 1804 with the former colony’s independence, had a considerable impact in 19th North America; it was an inspiration for the US abolition debates.⁴⁰

In 2013, state members of the CARICOM created the Caribbean Reparation Commission, whose aim would be to establish the moral, ethical and legal case for reparations for the crimes against humanity that European colonial powers had committed during the colonial era. The above Commission developed the CARICOM Reparations Justice Program, setting the political and legal framework for the pursuit of reparations against European governments of former colonial powers, for native genocide, slavery, the transatlantic enslaved trade and massive land dispossession.⁴¹

It was no surprise that there have been many reactions to that. One of the counter-arguments is that slavery was legal at that time, an argument really odious.

Claims of cultural memory are there – or should be. The new postcolonial society should be one that remembers.⁴²

4. Languages and names – Their importance for the cultural identity of the people

Law is not independent from other social facts.⁴³ It is declared that, together with law, language, knowledge and quality of the human effort, that is, material objects and mental creations, constitute people’s culture. Among those elements, law and language are particularly important.⁴⁴

Languages and names are evidence and testimony of the stratification of influences and civilizations in the studied region.

As it is stated, “[a]t the time of Spanish intervention in the Caribbean, there were seven different indigenous speech communities in the Antilles: *Ciboney Taíno* in Hispaniola, all of central Cuba, all but the southern Lucayan Islands, and Jamaica; *Macorís*, in two dialects, in the Dominican Republic section of northern Hispaniola; *Ciguayo* on the Samaná Peninsula of

³⁹ JUSTINE COLLINS, “English Societal Laws as the Origins of the Comprehensive Slave Laws of the British West Indies” in EVES, WILLIAM/HUDSON, JOHN/IVARSEN, INGRID/WHITE, SARAH B. (eds.) *Common Law, Civil Law, and Colonial Law. Essays in Comparative Legal History from the Twelfth to the Twentieth Centuries*, Cambridge University Press, 2021, pp. 306-307.

⁴⁰ CHARLES FORSDICK, “Postcolonizing the Americas” in HUGGAN, GRAHAM (ed) *The Oxford Handbook of Postcolonial Studies*, Oxford University Press, 2013, p. 663.

⁴¹ JOSÉ ATILES-OSORIA, “Colonial State Crimes and the CARICOM Mobilization for Reparation and Justice”, in *State Crime Journal* 7 (2018), p. 349.

⁴² MICHAEL ROTHBERG, “Remembering Back. Cultural Memory, Colonial Legacies, and Postcolonial Studies” in HUGGAN, GRAHAM (ed) *The Oxford Handbook of Postcolonial Studies*, Oxford University Press, 2013, p. 366.

⁴³ ELINA MOUSTAIRA, “The Art Work as a Text Through Which to Explore Legal Ideas” in *Koinodikion (Greek Journal of Private International Law)* 2002, pp. 201-202.

⁴⁴ RODOLFO SACCO, “Diversity and Uniformity in the Law”, in *American Journal of Comparative Law* 49 (2001), p. 172.

northeastern Hispaniola; *Guanahátabay* in Pinar del Río province of far-western Cuba; *Classic Taíno* in Hispaniola, Puerto Rico, Vieques, and the Virgin and Leeward Islands; *Kalíphuna* in the Windward Islands; and *Karina Carib*, also in the Windward Islands”.⁴⁵

Taíno is the name with which the native peoples who were living in the Great Antilles during the Spanish invasion are known. It means “noble” or “good”. Originally, they were called Island Arawaks because they were speaking an Arawak language, but in the 1980s they were called by the name Taíno, in order to not be confused with the Arawaks of South America.⁴⁶

As it is also stated by others, “the most often used common names are Ciboney, Arawak, and Carib. These have come to represent three different cultures. The “Ciboney” or “Guanahatabey” are stone-age peoples who lacked pottery and agriculture. The “Arawak” originated in lowland South America and introduced pottery and agriculture to the islands. The Carib were the last immigrants who arrived from South America and colonized the Lesser Antilles in the century prior to the arrival of Europeans. In addition, the name Lucayan has been used to denote the prehistoric peoples of the Bahama archipelago”⁴⁷ – from the Spanish “Lucayos” and the Arawak “Lukku Cairi”.⁴⁸

The Caribs of the Lesser Antilles were the first of the “New World” peoples to be given a name (by Columbus), while those that only more recently are known as Taíno, were not given any. The name “Caribs” was soon extended to peoples of the mainland of South America (especially the Guianas and coastal Venezuela), thus the name “Island Caribs” has been more recently introduced by the anthropologists, for the people of the Lesser Antilles and for their languages.⁴⁹

Today, the languages that are spoken there, are:

English, complemented by French and Spanish but also by African and Indian expressions.

More specifically, spoken languages are:

In Dominica and Saint Lucia, English and French-based creole/kweyol;

in Haiti, creole and French;

in Jamaica and Guyana, English and creole⁵⁰;

in Suriname, Dutch and creole (Sranatonga);

⁴⁵ JULIAN GRANBERRY, “Indigenous Languages of the Caribbean”, in KEEGAN, WILLIAM F./HOFMAN, CORINNE L/RODRÍGUEZ RAMOS, RENIEL (eds) *Oxford Handbook of Caribbean Archaeology*, Oxford University Press, 2013, p. 61.

⁴⁶ WILLIAM F. KEEGAN, “The “Classic” Taíno”, in KEEGAN, WILLIAM F./HOFMAN, CORINNE L/RODRÍGUEZ RAMOS, RENIEL (eds) *Oxford Handbook of Caribbean Archaeology*, Oxford University Press, 2013, p. 70.

⁴⁷ WILLIAM F. KEEGAN/CORINNE HOFMAN/RENIEL RODRÍGUEZ RAMOS, “Introduction” in KEEGAN, WILLIAM F./HOFMAN, CORINNE L/RODRÍGUEZ RAMOS, RENIEL (eds) *Oxford Handbook of Caribbean Archaeology*, Oxford University Press, 2013, p. 10.

⁴⁸ MARY JANE BERMAN/PERRY L. GNIVECKY/MCHAEAL P. PATEMAN, “The Bahama Archipelago”, in KEEGAN, WILLIAM F./HOFMAN, CORINNE L/RODRÍGUEZ RAMOS, RENIEL (eds) “Oxford Handbook of Caribbean Archaeology”, Oxford University Press, 2013, p. 264.

⁴⁹ LOUIS ALLAIRE, “Ethnohistory of the Caribs” in KEEGAN, WILLIAM F./HOFMAN, CORINNE L/RODRÍGUEZ RAMOS, RENIEL (eds), *Oxford Handbook of Caribbean Archaeology*, Oxford University Press, 2013, pp. 97-98.

⁵⁰ Jamaican Creole (also known variously as patois, patwah, patwa), is widely spoken by the people, but it has no official status, see ANTHONY HOYTE-WEST, “Spanish and Creole: Exploring Aspects of Minority and Minoritised Languages in Jamaica and Trinidad & Tobago” *Adeptus* 19: Article 2722 (2022) <https://doi.org/10.11649/a.2722> (accessed 8.2.2023).

in Trinidad and Tobago and in Suriname, Hindi too, in some communities. However, though in Trinidad and Tobago, Spanish, French, Hindi and French Creole were widely spoken in the past, the dominance of the English rule had as a consequence the dominance of the English language.⁵¹

Indigenous languages and variations of them are mainly: Arawak⁵², Wai Wai, Makushi, Garifuna, Mayan.⁵³

The Haitian Creole is recognized by the country's constitution as one of the country's official languages, alongside French. Sadly, in the Anglophone Caribbean, none of the creolized variants has any official status. As it is pointed out, "the continuing linguistic dominance of European languages within the region is highlighted by the fact that the Caribbean Community (CARICOM) has only designated English, together with French and Dutch, as the organisation's official working languages".⁵⁴ This fact does not really enhance the various languages of the region nor is a proof of a real independence. It may be stated on CARICOM's site that "Our languages are part of the legacy of the various civilisations from which our ancestors came", but it continues stating that "[f]or many member states, the English Language is a major unifying factor".⁵⁵

Language is a socially conditioned process, that may form an important structural element of peoples' identities.⁵⁶ It keeps the knowledge and wisdom of people "alive" and becomes a vehicle for them (knowledge and wisdom).⁵⁷ Indigenous languages should be of more concern to CARICOM.

5. Culture and Law – Legal Cultures

5.1. Caribbean Court of Justice

According to researchers, the idea of a final indigenous court for the Commonwealth Caribbean goes back to 1901 and was raised by an editorial in the Daily Gleaner newspaper of Jamaica.⁵⁸

⁵¹ ANTHONY HOYTE-WEST, "A return to the past? The Spanish as the First Foreign Language policy in Trinidad & Tobago", in *Open Linguistics* 7 (2021), p. 235.

⁵² "The Arawak were the most widely distributed language family in the Americas in 1492. It was the most northerly Amazonian language, found among tropical forest agriculturalists and related peoples who came to dominate much of the Caribbean during the last Holocene", see MICHAEL HECKENBERGER, "The Arawak Diaspora. Perspectives from South America" in KEEGAN, WILLIAM F./HOFMAN, CORINNE L/RODRÍGUEZ RAMOS, RENIEL (eds), *Oxford Handbook of Caribbean Archaeology*, Oxford University Press, 2013, p. 113.

⁵³ <https://caricom.org/our-community/who-we-are/> (accessed 8.2.2023).

⁵⁴ ANTHONY HOYTE-WEST, "Spanish and Creole: Exploring Aspects of Minority and Minoritised Languages in Jamaica and Trinidad & Tobago" *Adeptus* 19: Article 2722 (2022) <https://doi.org/10.11649/a.2722> (accessed 8.2.2023).

⁵⁵ <https://caricom.org/our-community/who-we-are/our-culture/> (accessed 8.2.2023)

⁵⁶ ELINA MOUSTAIRA, "Narratives of Laws, Narratives of Peoples", in JAMES A.R. NAFZIGER (ed.), *Comparative Law and Anthropology*, Edward Elgar Publishing Limited, 2017, p. 300.

⁵⁷ See GORDON CHRISTIE, "Culture, Self-Determination and Colonialism: Issues Around the Revitalization of Indigenous Legal Traditions" *Indigenous Law Journal* 6 (2007), p. 21, who notes that the cultural and self-determination arguments "function differently between Indigenous and non-Indigenous societies and authorities".

⁵⁸ According to DUKE E. POLLARD, *The Caribbean Court of Justice: Closing the Circle of Independence*, 2004, p. 199 - cited by NEIL DENNIS, "Using One's Head to Sustain One's Heart: A New Focus for the Establishment of the Caribbean Court of Justice", in *Fordham International Law Journal* 26 (2002), p. 1781.

According to another researcher, the idea about the establishment of a West Indian Court of Appeal goes back to a meeting of colonial governors in 1947, in Barbados.⁵⁹

Following the independence of the countries of the area, it was Jamaica that first called for the establishment of a regional court of last resort, in 1970. In 1972, the Organisation of Commonwealth Caribbean Bar Associations (OCCBA) made a similar proposal.⁶⁰

The Caribbean Court of Justice (CCJ)⁶¹ was created in 2001 and inaugurated in 2005. It is considered very important toward the Caribbean integration and thus, also to the protection of the region's culture and cultural heritage – important part of their identity. The concept of sovereignty or independence was the one which played the most crucial role. The former colonies needed to be truly independent and the abolishment of appeals to the Privy Council would strongly contribute to that.⁶² On the other hand, the creation of CCJ somehow stirred a tension between a common regional purpose and the desire to hold on to state sovereignty.⁶³ The path was meant to be difficult.

Its creation was decided in 2001, through the signature of two documents:

- 1) The *Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy*⁶⁴, which called for the creation of the Court; and
- 2) The *Agreement Establishing the Caribbean Court of Justice*⁶⁵, which officially set the terms for the Court's existence.⁶⁶

The *Revised Treaty* was signed in 2001 by 14 Members – not by Bahamas.

The *Agreement* was signed in 2001 by 10 Member States and entered into force on 23 July 2002. In 2003 it was also signed by Dominica and St Vincent & the Grenadines. Bahamas, Haiti and Montserrat have not signed it. The CCJ is unique in that it has double jurisdiction: it has original jurisdiction to hear cases involving Caribbean Community Law and it has appellate jurisdiction over other civil and criminal matters – the aim was for it to replace the Judicial Committee of the Privy Council.⁶⁷ Interestingly enough, the CCJ is not supposed to decide only

⁵⁹ HUGH RAWLINS, *The Caribbean Court of Justice: The History and Analysis of the Debate*, 2000, p. 5, available at [https://www.ceintelligence.com/files/documents/ccj_rawlins\(1\).pdf](https://www.ceintelligence.com/files/documents/ccj_rawlins(1).pdf) (accessed 8.2.2023).

⁶⁰ DAVID SIMMONS, "The Caribbean Court of Justice: A Unique Institution of Caribbean Creativity", in *Nova Law Review* 29 (2005), pp. 174-175.

⁶¹ <https://caricom.org/institutions/caribbean-court-of-justice-ccj/> (accessed 8.2.2023)

⁶² GISELLE REID, "The Legacy of Colonialism: A Hindrance to Self-Determination" in *Touro International Law Review* 10 (2000), p. 301.

⁶³ See MICHELLE SCROBIE, "The Caribbean Court Of Justice And Regionalism In The Commonwealth Caribbean" in *Caribbean Journal of International Relations & Diplomacy* 4 (2016) p. 96, who points out that "From the legal perspective, the CCJ was born of a desire for an indigenous judicial system, a Caribbean legal philosophy and a 'Caribbean Common Law' that would separate the region from the colonial legal heritage".

⁶⁴ <https://treaty.caricom.org/> (accessed 8.2.2023).

⁶⁵ <https://caricom.org/treaties/agreement-establishing-the-caribbean-court-of-justice-ccj/> (accessed 8.2.2023)

⁶⁶ LEE CABATINGAN, "Time and Transcendence: Narrating Higher Authority at the Caribbean Court of Justice", in *Law & Society Review* 50 (2016), p. 676.

⁶⁷ SALVATORE CASERTA/MIKAEL RASK MADSEN, "Between Community Law and Common Law: The Rise of the Caribbean Court of Justice at the Intersection of Regional Integration and Post-Colonial Legacies", in *Law & Contemporary Problems* 79 (2016), p. 90.

appeals from the common law-influenced countries of CARICOM, but also appeals from the civil law-influenced countries, Haiti and Suriname.⁶⁸

It seems that this second jurisdiction has not been easy to accept, since so far only 4 Member States have accepted it, have ratified the CCJ as their highest Court of Appeal: Guyana and Barbados in 2005, Belize in 2010, and Dominica in 2015. The fact that the other Member States continue to appeal their cases to the Privy Council, means that Privy Council precedent still reigns there.⁶⁹ It is a rather sad and frustrating event, especially when one takes into account that most Member States had signed the Agreement that established the Court, which Agreement states: "All signatories committed to the accession to the Court in its appellate jurisdiction, convinced of the 'determinative role of the Court in the further development of Caribbean jurisprudence' and the 'deepening of the regional integration process'".⁷⁰ Holding that the acceptance of that specific jurisdiction of the Court would mean a partial transfer of their national sovereignty to the Court⁷¹ is even more paradoxical, when one knows that appealing to the Judicial Committee of the Privy Council is a huge transfer of their national sovereignty, a survival of colonialism.

Notwithstanding the above mentioned, it seems that during the first decade of its existence the Court began to create jurisprudence, just as other international courts have done – "in tune with the theories of pragmatism and realism".⁷² It must be noted, that before the creation of CCJ, the appellants to the Privy Council were either very rich (cases of high finance) or sentenced to death. All the other cases were mostly judged by the domestic courts of the various Caribbean states, giving often different decisions to similar matters. As it is stated, in the first three years since its creation, "civil appeals petitioned to the court outnumbered criminal appeals petitioned by almost seven to one, whereas, under the Privy Council, civil appeals had never outnumbered criminal appeals". This has been possible because the CCJ deemed many appellants too poor to pay filing costs and granted them the right not to pay.⁷³

The Caribbean Court of Justice has its headquarters in Trinidad and Tobago, however, in order to exercise its original jurisdiction, it is an itinerant court, sitting in any of the Member States, as required.⁷⁴ The fact that Trinidad and Tobago itself, one of the larger and wealthier Caribbean countries, is still unwilling to accede to the Court's appellate jurisdiction, is somehow threatening the future of CCJ, as far as this appellate jurisdiction is concerned.⁷⁵ Commentators stress the fact that ECJ too was slow to develop, at the beginning. It remains to be seen, in

⁶⁸ OLIVER JONES/CHANTAL ONONAIWU, "Smoothing the Way: The Privy Council and Jamaica's Accession to the Caribbean Court of Appeal", in *Caribbean Law Review* 16 (2006), p. 184.

⁶⁹ LEE CABATINGAN, "Time and Transcendence: Narrating Higher Authority at the Caribbean Court of Justice", in *Law & Society Review* 50 (2016), p. 680.

⁷⁰ Cited by RONALD SINGH, "The Caribbean Court of Justice: First Decade, 'Steady' Progress", in ResearchGate, 2015

⁷¹ RONALD SINGH, "The Caribbean Court of Justice: Can a Rights-Based Approach Confer Jurisdiction on the Court when there is an Ouster Clause?", ResearchGate, 2020.

⁷² RONALD SINGH, "The Caribbean Court of Justice: First Decade, 'Steady' Progress", in ResearchGate, 2015.

⁷³ ANDREW N. MAHARAJH, "Caribbean Court of Justice: A Horizontally and Vertically Comparative Study of the Caribbean's First Independent and Interdependent Court", in *Cornell International Law Journal* 47 (2014), p. 747.

⁷⁴ <https://caricom.org/institutions/caribbean-court-of-justice-ccj/> (accessed 8.2.2023).

⁷⁵ MICHELLE SCROBIE, "The Caribbean Court Of Justice And Regionalism In The Commonwealth Caribbean" in *Caribbean Journal of International Relations & Diplomacy* 4 (2016), p. 100.

the years to come, whether their optimism is well-founded. The legal cultures of the region, as it happens in other regions with a colonial legacy too, are formed by many elements. The crucial question perhaps is whether those legal cultures will get rid of the shadows of the former colonizers and will feel safe enough to accept such an appellate jurisdiction.

5.2. University of the West Indies – Caribbean Legal Systems

Law is the means and the aim. Law is part of the general culture of a human community. Legal culture is the expression of the identity of a people. Legal cultures, legal systems are being formed and transformed, keeping more or less intact some elements that were and are considered as the core of their identity.

It had been thought that in the “Caribbean Integration through Law” would also contribute the foundation of the University College of the West Indies in 1948, which is now the University of the West Indies (UWI) – since 1962.⁷⁶ The Law Faculty was founded in 1970⁷⁷ and local law schools were established in Jamaica (1973), Trinidad & Tobago (1973) and The Bahamas (1998), which schools were certified to issue legal diplomas. As it is pointed out, the fact that “these students were obliged to move around the Caribbean to get their diplomas, ... contributed to the creation of a collective identity.”⁷⁸

Countries’ laws in general and of course the specific regulations “that envision cultural properties and the social identities imagined to pertain to them”⁷⁹, are particular historic products. In the past, comparativists were speaking about legal families. Some of them still do. However, contemporary approaches to comparative law have realized that the “tool” of legal families is not adequate to explain the richness of the different legal cultures, of the different legal systems. Even when countries copied, received, transplanted foreign models of law, they never acquired similar laws to those models. History, language, tradition, politics, mentality, to name only a few, are disciplines and factors that give us the keys to understand, to “interpret” the multicoloured nature of the various laws.

Generally, the Caribbean legal systems are the result of many influences, not least of which was the colonial heritage – mostly the English common law. As it is mentioned, though, not

⁷⁶ <https://caricom.org/institutions/university-of-the-west-indies-uwi/> (accessed 8.2.2023).

⁷⁷ According to DAVID SIMMONS, “The Caribbean Court of Justice: A Unique Institution of Caribbean Creativity”, in *Nova Law Review* 29 (2005), p. 175, “the movement for such a court gained momentum after the inauguration of the Faculty of Law of the UWI”.

⁷⁸ SALVATORE CASERTA/MIKAEL RASK MADSEN, “Between Community Law and Common Law: The Rise of the Caribbean Court of Justice at the Intersection of Regional Integration and Post-Colonial Legacies”, in *Law & Contemporary Problems* 79 (2016), pp. 95-96.

⁷⁹ RICHARD HANDLER, “Cultural property and culture theory”, in *Journal of Social Anthropology* 2003, p. 363, who claims (rightfully, I believe) that defining cultural property is never simply a matter of objects; it is a matter of objects in relation with concrete social identities.

only English law was received, but civil law too. Guyana and St. Lucia have retained aspects of civil law. St Lucia changed hands between the English and the French fourteen times!⁸⁰

Sadly, here too, one observes that law, instead of reflecting and engineering society, “still looks very alien and foreign to many”, since Commonwealth Caribbean courts and jurists still rely almost totally on English precedent, confirming the opinion according to which, ex colonies’ people often remain “mimic men” – a term that was used to describe West-Indians and that became “famous” by V.S. Naipaul (Nobel Prize Winner for literature, born in Trinidad and Tobago) who published a book with this title in 1967.⁸¹

6. Conclusion

It seems that not enough has been done so far by CARICOM, to protect the culture and cultural heritage of its Member States – and consequently, of all the region’s cultural heritage.

Culture is the way of life of each people, anthropologists rightly say. It forms people’s distinctive identity, it is reflected in tangible and intangible traces. These traces are threatened by the indifference or the inadequate care by those who have the power. CARICOM focuses on economy and politics, and this is understandable, since that was the main reason of its creation. It speaks about culture, mother language, it set a supreme court for all the Member States, in order to exclude the judicial expression of the colonial era, the Judicial Committee of the Privy Council, etc., but the results are not brilliant. Much more needs to be done, for the preservation and enhancement of the cultures and the collective culture, of the particular identities and the collective identity of the Caribbean region.

The protection of indigenous languages is one of the most urgent and important steps to be taken. When the official language of a State is the language of its former colonizer, one cannot really speak about absolute independence. Furthermore, this fact threatens the existence and survival of the indigenous languages, since the scarce use of them will lead to their extinction. And the extinction of a language, as it has been often pointed out, causes the loss of a specific way of looking at the world.

Furthermore, CARICOM could and should be more active in regard to the restitution/repatriation of the stolen or illegally removed from its Member States cultural objects – elements of the countries and their peoples’ identities. More steps should be taken, either on judicial or on diplomatic level.

⁸⁰ ROSE-MARIE B ANTOINE, “Waiting to Exhale: Commonwealth Caribbean Law and Legal Systems”, in *Nova Law Review* 29 (2005), p. 144.

⁸¹ ROSE-MARIE B ANTOINE, “Waiting to Exhale: Commonwealth Caribbean Law and Legal Systems”, in *Nova Law Review* 29 (2005), pp. 145-146.

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(texto submetido a 15.01.2023 e aceite para publicação a 8.02.2023)