The fundamental rights provisions in our various Constitutions of the Commonwealth Caribbean, being reflections of overarching principles of international human rights, have opened up our domestic law in a major way to the influences of international law. Decisions from the Caribbean Court of Justice (CCJ) show that Commonwealth Caribbean jurisprudence is now fully in step with developments in the wider world and not only draws upon, but contributes to these developments.

International instruments such as the European Convention on Human Rights, especially since it has become a part of English law to which we still reflexively turn for judicial decisions, have been heavily relied upon in Caribbean cases involving human rights, such as the protection of the law, cruel and unusual treatment, the right to life, protection of property and more. For present purposes I would like, in this brief look at developments in the CCJ, to focus on the contributions made to the CCJ jurisprudence by one of the collaborators of today's symposium, the International Labour Organization (ILO). We have seen in our Caribbean jurisprudence direct reliance on ILO Conventions, including unratified Conventions, as sources of primary and previously undeclared and unestablished rights, as well as ratified Conventions which have been transformed into domestic law.
At the time of the conference on which this special issue is based, there was scheduled for hearing in the Caribbean Court of Justice (CCJ) on 24th March 2015 an appeal in the *Maya Land Rights No 2 case*¹ in which the issue is whether there exists Maya customary land tenure in the Maya villages in southern Belize and whether it gives rise to rights to property that are protected by the Constitution of Belize. A fundamental question that calls for determination revolves around *ILO Convention No 169 Indigenous and Tribal Peoples in Independent Countries*. That Convention has not been ratified by Belize.

The question of rights under an unratified Convention first arose in Belize in the *Maya Land Rights No 1 case*,² which was the landmark decision that recognized and declared customary land rights for the Maya peoples. At the time that case was argued there was nothing in local legislation or judicial decisions that addressed the matter of what legal and enforceable rights were possessed by the Maya peoples in relation to the large areas of lands they have historically occupied in southern Belize. The core of the court’s finding that such customary land rights existed, the nature of them and the protection that attached to them was based squarely on international law, including the unratified *ILO Convention No 169*. This is what Chief Justice Conteh had to say:

130. Moreover, although Belize has yet to ratify Convention No. 169 of the International Labour Organization concerning *Indigenous and Tribal Peoples in Independent Countries* (ILO No. 169) of 7th June 1989, it is not in doubt that Article 14 of this instrument contains provisions concerning indigenous peoples right to land that resonate with the general principles of international law regarding indigenous peoples.

131. Also, importantly in this regard is the recent *Declaration on the Rights of Indigenous Peoples* adopted by the General Assembly of the United Nations on 13 September 2007. Of course, unlike resolutions of the Security Council, General Assembly Resolutions are not ordinarily binding on member states. But where these resolutions or Declarations contain principles of general international law, states are not expected to disregard them.

The Chief Justice highlighted the clear declaration made by the international instrument of the right of indigenous people to the lands, territories and resources they have traditionally owned, occupied or otherwise used or acquired. He concluded:
134. I conclude therefore, that the defendants are bound, in both domestic law in virtue of the Constitutional provisions that have been canvassed in this case, and international law, arising from Belize's obligation thereunder, to respect the rights to and interests of the claimants as members of the indigenous Maya community, to their lands and resources which are the subject of this case.

This exercise of judicial activism in drawing upon unratified international Conventions to flesh out broad statements of constitutional principles was remarkable. The decision was not appealed and in fact the Government took steps to implement the orders made in the judgment. Subsequently the same issue of customary land tenure rights arose in relation to different lands. Maya umbrella organizations and virtually all of the individual villages in the district brought a fresh claim, which gives rise to the current appeal to the CCJ. Consequently, the approach of relying on international law to inform and expand domestic law provisions is now scheduled to receive a definitive treatment from the CCJ.

Less than a year before the decision in the Maya Land Rights No 1 case, the CCJ had given its decision in Attorney General of Barbados v Joseph and Boyce. The pellucid discussion by Professor Antoine makes it unnecessary for me to discuss that case. Although the Joseph and Boyce decision was not referred to in the Maya Land Rights judgment, the CCJ pronouncements and approach undoubtedly gave strength to the first instance Belize court. It could hardly be otherwise since, as you will recall, what the CCJ discussed in Joseph and Boyce was whether an unincorporated international law instrument gave rights in domestic law.

Quite simply, international human rights law has been relied on by Caribbean courts in constitutional law cases because of the value of making that reliance. No one and nothing has imposed that reliance into our jurisprudence or process. It is the value of doing so that accounts for why it has been done and makes it inevitable that the CCJ will continue to play a leading role in the Caribbean in shaping our jurisprudence consistently with developments on the international plane.

The textual similarity of human rights norms in our constitutions with the major international instruments, such as the Universal Declaration of Human Rights and the European Convention on Human Rights, is well known and readily leads to comparison between domestic and international instruments. Inevitably, provisions or concepts from such international
instruments have become incorporated into, or reflected in domestic legislation. In this age of Internet access to legal material, including text, decisions and writings, it is easy to draw upon international sources for meaningful assistance by way of inspiration, clarification, and exposition.

In *Mayan King Ltd v Reyes* the CCJ delivered a judgment that provides a textbook presentation of how international law, and specifically ILO Conventions, serve as a source of domestic labour law and may be relied on directly by the court as a guide for interpreting domestic law. The opening paragraphs of the lead judgment display a keen appreciation of the ways in which international law informed the legislation the CCJ was required to interpret and apply. The Court stated:

1. The Act was passed in the year 2000. If we are to accept what is stated in Hansard by the Minister of Labour, its passage was preceded by “extensive and fruitful” consultations with persons representing affected organizations. It was enacted in part to comply with two International Labour Organisation Conventions, namely, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Belize has ratified both Conventions. The Conventions are the foundation upon which trade union activity is premised. They cover the basic principles of trade union rights, assuring to workers such benefits as the right to organise and join independent trade unions of their choice and the right to engage in collective bargaining. In particular they guarantee to workers the right not to be discriminated against at work for trade union activities.

2. The Conventions express concepts that are fully in line with the Belize Constitution. That Constitution guarantees to every person the right not to be hindered in the enjoyment of the freedom of assembly and association, that is to say, the right to assemble freely and associate with other persons. In particular, section 13 of the Constitution assures workers the right to form or belong to trade unions for the protection of their interests. The Act proceeds in the same vein. In at least five different areas the Act refers to the Constitution and places the rights laid out under its provisions on par with the constitutional guarantee. In our view the Act fleshes out and provides meaningful content to section 13. The exercise of the rights captured by the Act has a major impact on work and living conditions, as well as on the development and progress of the economic and social system. The Act therefore promotes better job security and a more stable industrial, social and economic environment.
The CCJ therefore identified state obligations in relation to workers' rights in domestic law as a result of these international obligations.

The examples selected, especially the Mayan King case, confirm the leadership role that the CCJ has played and will continue to play in developing a Caribbean jurisprudence that is congruent with developments in international law. The CCJ has used international law as a guide for interpreting domestic law; as offering jurisprudential principles based on international law; and to strengthen a decision based on domestic law.

We are familiar as students, lawyers and judges with significant changes in the law that have taken place in our own time. Disparate instances of these that spring to mind include the judicial abolition of the mandatory death penalty, the judicial abolition of the rule that a husband could not be guilty of the rape of his wife and the introduction of the new civil procedure rules in our various countries. The increased use of international law to assist in deciding domestic law cases is another significant change that is now well established in Commonwealth Caribbean jurisprudence, to which the CCJ has contributed significantly. We must be grateful for that leadership.

NOTES ON CONTRIBUTOR

Mr. Denys Barrow, CBE, SC, is a graduate of the University of the West-Indies, was admitted to the Bar in 1977, and commenced his stint as an Acting Appeal Court Judge from April 1, 2005. Justice Barrow SC was a Senior Attorney in Belize before being invited to join the Eastern Caribbean Supreme Court and brought to the Court a wealth of experience as a Barrister and Solicitor in Belize where he was regarded as a first rate litigator. Former Justice Barrow has served as a High Court Judge in St. Lucia, Grenada and the British Virgin Islands between 2000 and 2005. He has also sat on the ILO’s Committee of Experts and as a member of the Committee of Experts for the Prevention of Torture in the Americas. He currently heads a thriving law practice in his homeland Belize.

NOTES

1 CCJ BZCV2014/02 Maya Leaders Alliance v AG of Belize. Since the time of writing the case has been heard but judgment has been withheld. See Antoine, Assessing Ten Years of CCJ Jurisprudence, in this volume.
20171%20and%2020172%20of%202007%20(Consolidated)%20Maya%20and%20Rights.pdf

3 [2006] CCJ 3

4 See Antoine, R-M. B. 'Assessing Ten Years of CCJ Jurisprudence', in this volume.

5 [2012] CCJ 3 (AJ);

6 S.4(1); s.4(2)(g); s.5(2)(b); s.5(2)(d) and s.5(2)(e).