



# GENDER SECTION NEWSLETTER

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## GREETINGS FROM THE CHAIRMAN

The addition of Professor Wallace (see below) to the Gender Section as Advisor, Researcher, Presenter and Member has fueled my interest



and driven my continued dedication. She has now joined two other outstanding Jurists who have agreed to assist in "raising the bar" for this Section for the coming years.

The Secretary General and I have tried over the years to recruit participants for the growth and development of the Section only to have offers made at Conferences without continuity. My absence from conferences, means that I am no longer likely to attend on a regular basis if travel involves long distances, and therefore do not allow personal contact with delegates. I have the time and the energy to be engaged in producing the Newsletter, and corresponding with Judiciaries throughout the Commonwealth, but there is need for active members. Regional representatives are

essential to inform the CMJA of happenings within their Regions and to keep abreast of Gender issues and to be engaged in discussions as they attend the Conferences in my absence.

The gender portfolio is large and varied especially in these days when gender issues are on the "front burner" committing Member States to the 16 core values of democracy, gender equality, sustainable development and international peace and security. Unfortunately there are lapses in the commitments as these members have no contractual obligations after the rise of Conference.

As a Commonwealth Fellow, I am kept advised through Documents and Commonwealth Issues from various sources, so if Regional representatives are committed to the cause, the Section will be vibrant and tend to the problems as they arise.

Unfortunately there is still much discrimination against women of all colour, class and creed. Women are used as sex symbols, trafficking and abuses are common throughout the Commonwealth and the world at large and there remains much in women's suffrage. Proclamations signed by countries are not upheld in accordance to the agreed charter. Young girls are forced into marriages, and abused accordingly

and the abuses and gender inequality continue.

There are so many issues that the Gender Section needs to address, so with much dedication, we get ready to go into our next triennial with new zest and the synergy to be gained from the connection of new and participating Professionals to make the best better for the Section's continued growth and development.

I need to thank Anita, Gloria, Debbie, Madam Justice Norma Wade Miller, Madam Justice Desiree Bernard whose willingness to subscribe articles cannot be overlooked; and the indefatigable and dedicated Secretary General who have all kept me going on and on.

Blessings

*Dr. Clover Thompson-Gordon*

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*Further information about the Gender Section and its aims can be found on the CMJA's website at:*  
[www.cmja.org/gender](http://www.cmja.org/gender)

**JUSTICE MARGARET RAMSAY-HALE GETS TOP JUDGE JOB IN TCI AND WE CONGRATULATE HER!**



The CMJA with its Gender Section hails and congratulates JAMAICAN-born jurist, Margaret Ramsay-Hale who was on 19 June 2014 appointed as the first woman to hold the post of Chief Justice (CJ) in the Turks and Caicos Islands. We are very proud of this achievement of such an affable and sociable lady. Margaret is very humane and compassionate, fun loving, but full of sobriety and passion about her task to serve with justice and fair play.

Margaret Ramsay-Hale, a former model and former Miss Jamaica followed her father, Ian Ramsay QC's footsteps into the law. She studied law at the University of the West Indies and economics at the London School of Economics. She practices law in the Chambers of Howard Hamilton in Jamaica after being called to the bar in 1991. In 1994, she became a Crown Counsel. She was appointed to the Family Courts in St James, Jamaica in 1995, becoming the Resident Magistrate in the parish.

In 1998, she took up the post of Magistrate in the Cayman Islands where she became Chief Magistrate of the Summary Court where she served until she was appointed as Puisne Judge in Turks and Caicos in 2011.

She has been on the CMJA Council since 2009 and became CMJA Regional Vice President for the Caribbean the CMJA in 2012.

Speaking with the Weekly News on 19 June 2014, the newly appointed CJ said: *"It's an incredible honour, one that I don't take lightly at all."*

Whilst she acknowledges that the position is demanding, she is prepared for the hard work and looking forward to reforming the judicial system to ensure better efficiency, building up the collegial bench and establishing a good working relationship with the Bar in TCI.

She will be taking up her position in September 2014 following the recruitment of a replacement for her as Puisne Judge

The announcement was made by the Governor's Office through a press statement in which Governor Peter Beckingham said "He is certain that she will bring a great deal of energy as well as professional wisdom and experience to this very important job in the Turks and Caicos Islands."

*Gender Equality is everyone's business!*

**Ideas? Suggestions?  
Comments? Contributions?**



We would like to hear from you. If you have comments, suggestions, ideas, or concerns please send us an e-mail at [info@cmja.org](mailto:info@cmja.org)

If you have an interesting story to tell, please send these too!

**WELCOME TO PROFESSOR REBECCA M. WALLACE PhD, MA, LLB**



Professor Wallace has had a most distinguished employment history in international law throughout her 33 years in academia. She has taught at several Universities and is currently the Professor of International Human Rights Law at the Robert Gordon University.

As a research Professor her particular emphasis has been on Human Rights and Justice. However she has added expertise in the field of international protection to asylum seekers and refugees, specially gender and children's issues, and has written extensively within the field

She has made a number of presentations and speeches, some at CMJA Conferences, and has had National Mooting Trophy named after her.

We welcome Professor Wallace to the Gender Section of the CMJA as Advisor, Writer, Presenter, Speaker and Member, and look forward to her contribution as we anticipate considerable raise in the profile of the Section and its work. She joins in the interest and dedication of the Gender Chair, members and the hard working Secretary General who has represented the Section in many out of office gender activities.

**RESPECTING THE HUMAN RIGHTS OF WOMEN WITHIN THE JUDICIAL SYSTEMS OF THE COMMONWEALTH CARIBBEAN**



*The Honourable Mme. Justice Désirée P. Bernard  
Judge, Caribbean Court of Justice*

*The following is a speech given by Justice Desiree Bernard at the Commonwealth Caribbean Colloquium on Gender, Culture and the Law in Kingston, Jamaica*

When I was asked to deliver the feature address at the opening of this Colloquium, I pondered over the choice of a topic which would embrace the theme of the Colloquium, "Gender, Culture and the Law" and at the same time indicate areas of the law and practices which were or still are inconsistent with the promotion of women's rights as human rights.

I have heard a theory expressed that woman's inferiority to man stems from the Christian religious belief that woman was created from the rib of the first man, Adam, and hence women owe their very existence to men. I am not prepared to enter into a debate about this theory, but the history of women's societal development has lagged behind that of their male counterparts, and in fact the promulgation of laws accentuated this inferior status, ostensibly thought to be for their own protection. Men arrogated unto themselves the role of protector of those regarded as the "weaker sex." The child-bearer role went hand-in-hand with that of child-rearer; hence all laws were

formulated to accord with this stereotype.

As colonies within the former British Empire the English common law and statutes became ours, and were invariably applied without exception or necessary adaptation to our peculiar customs and culture. The following example illustrates this in large measure. It concerned the lawful marriage of two persons under the provisions of the Muslim Marriage and Divorce Registration Ordinance of Trinidad and Tobago. The wife brought a complaint against her husband for maintenance on the ground of his wilful neglect to maintain her. The magistrate found the complaint proved and made an order. On appeal by the husband evidence was led from an expert witness in Islamic law and custom, and which established that Muslim marriages were potentially polygamous. The Supreme Court of Trinidad and Tobago in its Appellate Jurisdiction held that the only kind of marriage that entitled the parties to remedies under the matrimonial law of England upon which the Trinidad and Tobago marriage laws was based is a marriage that is monogamous in the Christian sense of the term, and a Muslim marriage not being monogamous the magistrate had no jurisdiction to make an order for maintenance.

It must have seemed incredible to nationals of a country whose marriage had been registered in accordance with the law to discover that that marriage was regarded as polygamous and not recognised because it did not conform with the Christian and English concept of marriage. Of course, this was over fifty years ago, during the colonial pre-independence era of the Caribbean. Thankfully, there have been changes which to a large extent reflect our mores and culture although there are still vestiges of that past era reflected in some archaic laws and statutes.

An important feature of life in Caribbean societies is the common-

law relationship. Although a significant proportion of our societies comprise common law unions it was not until fairly recently in some jurisdictions that laws were promulgated to afford some measure of protection for women caught in these relationships with no rights to property acquired by their joint efforts with reputed husbands who may die intestate or fail to provide for them in their wills. Formerly children of such unions were branded as "bastards," a term which happily has been expunged from the statute books in most jurisdictions.

**CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

At this juncture I think it apposite to make reference to what is familiarly called the "Women's Convention." In my respectful view inequality of treatment of persons equates with overt discrimination, particularly in relation to women. After much lobbying by the members of the Commission on the Status of Women the United Nations General Assembly on 18 December, 1979 adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which became the springboard which catapulted women's rights into the stratosphere of human rights guaranteed to all human beings without distinction of any kind. In 2000 implementation of the Convention was listed among the objectives in the U.N. Millennium Declaration as well as combating all forms of violence against women.

This Convention ratified by all states of the Commonwealth Caribbean defined discrimination against women in great detail, but succinctly the effect is that women must not be hindered in any form or fashion in the enjoyment of their basic human rights, and must be accorded equal treatment with men in all areas of their lives. Ratification of the Convention, however, is the first step in the process of compliance with its

provisions; implementation is usually the most difficult. By ratifying states parties undertake, inter alia, "to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle," and "to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudice and customary and all other practices ...."

This gives rise to the question of enforceability of the Convention in the domestic institutions of states parties when its provisions are violated. To put it more directly - how do international treaties become part of the domestic law of a state? Some states though ratifying international treaties take no steps to incorporate them into their domestic law; hence they cannot be enforced in the national legal system, unless incorporated by legislation. Other states regard an international treaty once ratified as being part of its domestic law without further incorporation, and is said to be "self-executing." This means that upon ratification it becomes part of the domestic law and can be enforced within the domestic legal system. These two methods epitomise the dualist (incorporation by legislation) and the monist (incorporation upon ratification) approaches to implementation of the provisions of an international treaty. Ratification of international treaties is invariably the function of the Executive branch of government with implementation by statute being left to the Legislature. The majority of the States of the Commonwealth Caribbean adopt the dualist approach resulting in an international treaty being unenforceable under domestic law until the requisite legislation is passed giving effect to its provisions. The result of this is that judges in domestic courts rarely make reference in judgments to international treaties ratified by their states, but would enforce statutes

enacted to implement the provisions of those treaties.

Guyana is unique among Caribbean states in this regard in that in 2003 the Constitution was amended to provide expressly that every person contemplated by the respective international treaties ratified by the state is entitled to the human rights enshrined in the said treaties, and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of Government. Among the treaties ratified by the Government of Guyana is CEDAW. The amendment thus mandated the judiciary to have regard to this Convention, notwithstanding any legislation giving effect to the provisions of the treaty.

One of the means of determining the effectiveness of any treaty or constitutional instrument is usually by interpretation and pronouncements of the judiciary of a state or by the theoretical assessment of its academics. The conservatism of the judiciary is reflected usually in its reluctance to utilise international treaties in decisions particularly on issues affecting women, preferring to tread the safe and time-honoured path of precedent rather than launching out into deep uncharted international waters where no one has ventured before.

This is particularly so within our Region. Three judgments, however, which I was able to find, indicate that this seems to be changing, one being as far back as 1998 and which emanated from the Eastern Caribbean Court of Appeal, and two others of recent vintage (2010 and 2011) from Dominica and the British Virgin Islands. They were all in the criminal jurisdiction with two involving sexual assaults and one an incident of domestic violence. In two of them reference was made to CEDAW, and the other, the Convention on the Rights of the Child. The victims in all of the cases were female.

In 1977 a colloquium organised by the Commonwealth Secretariat in collaboration with the CARICOM

Secretariat had as its objective increasing sensitivity to and awareness of gender discrimination when encountered by the judiciary of Caribbean states. This colloquium was held in Guyana and I had the honour as Chief Justice of co-chairing it with the then Chief Justice of The Bahamas, Hon. Madame Justice Joan Sawyer. Hon. Mr. Justice P.N. Bhagwati, former Chief Justice of India and a passionate advocate for human rights, delivered the keynote address to about forty Caribbean judges.

The colloquium, inter alia, emphasised the utility of international human rights treaties in domestic litigation and encouraged the incorporation of these treaties in judicial decisions. It may be that the time is ripe for another colloquium to continue the process of sensitisation which began in our Region in 1997.

Before leaving discussion on international treaties I am compelled to make mention of the Charter of Civil Society for the Caribbean Community which, I am sure, is not well known in our Region and which is seldom referred to or relied upon, but which was adopted by our Heads of Government since 1997. It was one of the strongest recommendations of the West Indian Commission contained in its report "Time for Action."

In accepting the recommendation for the Charter the Heads of Government declared "that a CARICOM Charter of Civil Society be developed as an important element of the Community's structure of unity to deal with matters such as free press; a fair and open democratic process; the effective functioning of the parliamentary system; morality in public affairs; respect for fundamental civil, political, economic, social and cultural rights; the rights of women and children; respect for religious diversity; and greater accountability and transparency in government."

The laudable objectives of the Charter mirrored to a large extent the provisions of the Universal Declaration of Human Rights with specific provisions for the promotion of policies and measures aimed at strengthening gender equality including, inter alia, equal opportunities for employment with equal remuneration, and legal protection with effective remedies against domestic violence, sexual abuse and sexual harassment. Our CARICOM states undertake to submit reports periodically to the Secretary General for transmission to the Conference of Heads of Government, and also to establish in each state a National Committee or designated body to monitor and ensure the implementation of the Charter. This is commendable, but we may ask whether its laudable objectives are being pursued. There is no monitoring mechanism so implementation is left to the honour, integrity and commitment of each state. Sensitisation to and dissemination of this Charter among the peoples of the Region should be a priority in order to ensure that it is not just another treaty filled with good intentions but relegated to the annals of history.

**INCORPORATION OF TREATIES BY LEGISLATION**

As stated earlier all of the CARICOM states have ratified or acceded to CEDAW, but one wonders how many of them have enacted legislation or taken positive steps to implement the Convention into their domestic law. Mere ratification is useless without effective means of enforcement and availability of remedies for violation of human rights to which one is entitled. In this regard, in 1980 the then CARICOM Women's Desk (now the Gender Division) embarked on a project to ascertain the legal status of women in the Region, and to identify deficiencies in the laws of member states which hindered women's full development. This led to the formulation of a regional project funded by the Commonwealth Secretariat to draft model legislation

in six critical areas with a focus on addressing gender disparities. The areas identified were citizenship, domestic violence, equal pay, inheritance, sexual harassment and sexual offences; two other areas (equal opportunity and treatment in employment, and maintenance) were added later.

These model pieces of legislation have been very effective in persuading CARICOM states to enact or amend existing statutes in the areas covered by the models. All of the states have legislation in place ensuring married women's rights to maintenance and property, but only two have extended that right to women living in common law relationships. Barbados was the first to do so way back in 1981 by passage of the Family Law Act. This right is gender neutral, and applies equally to men or women in such a union. Trinidad and Tobago enacted the Cohabitation Relationship Act which allows a cohabitant (defined as a woman living with a man in a cohabitation relationship) to apply to the courts for maintenance and for property adjustments. Guyana's Married Persons Property (Amendment) Act of 1990 empowered courts to make orders concerning property acquired during marriage or cohabitation. These enactments in relation to women in common law relationships must be applauded and emulated having regard to the fact, referred to earlier, that such relationships abound in the social fabric of our Caribbean societies. Hopefully, other states will enact similar legislation with all urgency.

Commendably all states have in place legislation to combat domestic violence based, I am sure, on CARICOM's model legislation. This is a problem which is so widespread that it should be the subject of a separate colloquium or as I have urged before at other fora, a summit of CARICOM leaders to ascertain its depth by collection of data and gender disaggregation. The whole problem of violence in our individual

societies needs to be addressed seriously before it consumes us completely. It has already spread beyond boundaries of tolerance, and is not confined to domestic situations, but embraces all sections of society.

Within the context of sexual offences, marital rape is considered an offence in most of our Caribbean states. It, however, applies only where spouses have separated or about to be finally divorced; only in Guyana and Trinidad and Tobago can the offence be committed during marriage.

Overall one can conclude that the political will to improve the status of women in the Caribbean is manifesting itself exponentially although there is still much more ground to be covered.

The effectiveness of any law depends on its implementation and enforceability which to a large extent rests on the shoulders of the judicial arm of a state. Dispensing justice according to law involves conformity with established rules of procedure

*Do not miss the excitement and fun at the CMJA Conference in Zambia.*

*"Judicial Independence and the Challenges of the Modern Era"*



**DO NOT MISS THE AMAZING VICTORIA WATERFALLS**

**Check with CMJA Secretariat for availability of places.**

and precedent which sometimes collide with society's sense of morality and fair play. In this regard I mention what has come to be known as "the battered woman syndrome," and which has been recognised by the courts only within recent times. Although it is not gender specific, it has been used in situations involving women with a history of being abused and who cannot legally rely on the defence of self-defence. It is used now as a defence. The first known case where expert evidence was led to support a history of battering suffered by the female defendant on a charge of murder was the Canadian case of *Lavallee v R* where dicta suggested that "a battered woman need not wait until the physical assault is underway before her apprehensions can be validated in law."

Within our Region in the Trinidadian case of *Indravani Ramjattan v The State* the "battered woman syndrome" defence succeeded when the Court of Appeal accepted the expert evidence of a psychiatrist and found that the appellant facing a conviction for murder of her common law husband had established that the prolonged physical, mental and sexual abuse to which she had been subjected caused abnormality of mind, thereby satisfying the defence of diminished responsibility.

In this address I have attempted to highlight the need for judicial intervention and activism in the enforcement of women's human rights.

In this regard I adopt an excerpt from a paper delivered by former Chief Justice P.N. Bhagwati of India, to whom I referred earlier, at the Asia/South Pacific Regional Judicial Colloquium held in Hong Kong in 1996. The topic was "Creating a Judicial Culture to Promote the Enforcement of Women's Human Rights," and is to this effect: "Judges have a creative function. They cannot afford to just mechanically follow the rules laid down by the legislature; they must

interpret these rules so as to reconcile them with the wider objectives of justice which are encapsulated in the international norms of women's human rights. So long as judges are sensitive to women's human rights and are prepared boldly to advance the law through a process of creative interpretation, women's human rights will be safe."

## RAPE. THE WAR AGAINST WOMEN

By *Anita St John Gray*  
Vice Chair - Gender Section

The UN International Criminal Tribunal for Rwanda delivered the verdict that made sexual violence a war crime on September 2, 1998. In November 1998 the International Criminal Tribunal for the former Yugoslavia decreed that acts of rape constitute torture under international humanitarian law. The UN Resolution 1820 (2008) called for the "immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians". The ICT is currently debating the issues of marginalized victims of rape including domestic violence and rape victims, marital rape victims, male rape victims of both male and female rapists, female-female rape victims, parental-rape incest victims, and child sexual abuse victims. Other issues emerging are the concept of victim blame and its causes, male rape survivors, male-male rape, female sexual aggression, new theories of rape and gender, date rape drugs and their effects as well as the psychological effects of rape trauma syndrome.

The noted Croatian writer Slavenka Drakulic, whose latest book "They Would Never Hurt A Fly" analyzed her experience overseeing the proceedings at the Hague said

"finally sexual violence is recognised as a weapon and can be punished".

At its meeting in March 2013, the Commission on the Status of Women strongly condemned all forms of violence against women and girls. It recognizes their different forms and manifestations, in different contexts, settings, circumstances and relationships, and that domestic violence remains the most prevalent form that affects women of all social strata across the world. It also notes that women and girls who face multiple forms of discrimination are exposed to increased risk of violence. It went on to urge States to strongly condemn violence against women and girls committed in armed conflict and post-conflict situations, and recognizes that sexual and gender-based violence affects victims and survivors, families, communities and societies, and calls for effective measures of accountability and redress as well as effective remedies.

Violent rape in the course of war has been used as a weapon against women from early antiquity. If an army entered a town by force, mass rape both of women and youths regardless of gender was among the punitive measures taken by Greek, Persian or Roman troops. Inhabitants of a conquered town were spared personal violence if the war ended through diplomatic negotiation. Both Livy's History of Rome and Ovid's Fasti record the rape of Lucretia by the son of King Tarquin of Rome. The anger against him resulted in the banishment of the royal family, and the founding of the Roman Republic. When the Roman Empire became Christianized attitudes towards rape changed. St. Augustine's interpretation was that Lucretia's subsequent suicide was an admission that she had secretly encouraged the rapist. This is an attitude that persists in many countries today. Rape in warfare, was prohibited in the armies of Richard 11 and Henry V. Those laws formed the basis for convicting and executing rapists during the Hundred

Years War (1337–1453). Napoleon Bonaparte found rape committed by soldiers particularly distasteful. During his Egyptian Expedition, he declared that "everywhere, the rapist is a monster" and ordered that "anyone guilty of rape would be shot."

In April 2013 the leaders at the G8 summit in London were joined by Angelina Jolie the Hollywood actress who urged that rape as a weapon of war must be stopped. Jolie who serves as a special envoy for the UN High Commissioner for Refugees speaking to an audience in Japan in July 2013 urged them to join her fight to stop sexual violence in times of war. Mary Yamaguchi writes that Jolie hoped her new film "In the land of Blood and Honey" would inspire people to think about rape in war.

Japan, no stranger to sexual violence in war is still to make restitution to the hundreds of thousands of Asian women forced to act as 'comfort women' for its army in World War 11 and also for its part in the massacre of Nanking. Minnie Vautrin, an American woman living in Nanking kept a diary which has been likened to that of Anne Frank. Her entry for 16 December 1937 reads: "There probably is no crime that has not been committed in this city today. Thirty girls were taken from the language school last night, and today I have heard scores of heartbreaking stories of girls who were taken from their homes last night. One of the girls was but 12 years old." Vautrin committed suicide in 1941 in the US.

Early this year a young medical student in India was raped whilst travelling on a bus in Delhi with her boyfriend. She was also attacked with a metal pole that destroyed her internal organs and died in agony in Singapore several days later. A few days after that incident there were mass demonstrations throughout India. Anita Thapa, one of the demonstrators said. 'We have seen the power of the mass campaign in the Delhi rape case. It is a pure people's movement.' This was followed by many demonstrations in

Nepal, Sri Lanka, Bangladesh and Pakistan. In spite of this the rapes have continued and a woman on holiday in India with her husband was gang raped and in Papua New Guinea a woman tourist walking with her husband was also gang raped. In July this year in Cairo, during anti government demonstrations, a 22 year Dutch woman was dragged into a circle of men, and raped so violently that she needed emergency surgery. The latest atrocity is the gang rape of a young journalist working on a story for her paper with a male colleague in Mumbai.

In the United Kingdom, Emily Thornberry, the Labour MP for Islington South and Finsbury, asked questions in parliament about how many rape cases referred to the CPS did not result in prosecutions. The UK Ministry of Justice Office for National Statistics (ONS) released the following figures in January. It reported that approximately 85,000 women are raped on average in England and Wales every year. Over 400,000 women are sexually assaulted each year and 1 in 5 women (aged 16 - 59) have experienced some form of sexual violence since the age of 16.

Many high profile women including Professor Mary Beard, a professor of Classics at Oxford University have been threatened with rape on the social network Twitter. This website is being used as the latest method of intimidating and humiliating women. Women across the spectrum are being attacked on Twitter using the threat of rape just for being women. Labour MP Stella Creasy faced a vicious online attack after she spoke out in support of feminist campaigner Caroline Criado-Perez, who received threats to rape and kill her on Twitter following her successful campaign to put Jane Austen's picture on the new £10 note. Singer and actress Coleen Nolan also received graphic rape threats on Twitter for no reason other than she is a woman.

A strange dichotomy in our modern society is the acceptance of violence

against women by women in literature. Clare Phillipson, director of Wearside Women in Need a UK based charity for victims of domestic violence, has slammed the bestselling trilogy *Fifty Shades of Grey* as "an instruction manual for an abusive individual to sexually torture a vulnerable young woman" E L James's first novel in the series sold more than 5.3m copies in the UK, becoming the bestselling book in British literary history. The book's publisher Arrow defended the trilogy, describing it as "a work of romantic fiction". Amy Bonomi of Michigan State University and colleagues from Ohio State University who analysed the first eight chapters of *Fifty Shades of Grey* say "emotional abuse is present in nearly every interaction". Intimidation, stalking and humiliation also abound, they write in the *Journal of Women's Health*. Lucy Broadbent for *The Guardian* writes rape in the US military has become so widespread that a female soldier in Iraq was far more lightly to be attacked by a fellow soldier than killed by enemy fire. One was even raped during a Scud missile attack. According to SAPRO (sexual assault prevention and response office) in 2011 3,158 sexual crimes were reported with only 510 reaching the courts and the only 104 were convicted. Rape in the military is compounded by the fact that victims are ignored, their wounds untreated and the psychological damage poisoning their lives. The documentary film "The Invisible War" exposes this most shameful of America's secrets. The film paints a shocking picture of the extent of the problem. This film follows the stories of several idealistic young servicewomen who were raped and then betrayed by their own officers when they reported the offence. America still has no nationwide definition of rape. The federal code refers to "aggravated sexual abuse" and the rape definition varies by state.

Gita Saghal of Amnesty International is quoted as saying that it was a mistake to think that the assaults on

civilian women and children were primarily about the spoils of war or for sexual gratification. Rape in war is a military strategy, an orchestrated combat tool. It is used in ethnic conflicts to perpetuate the attacker's control of the social order and to redraw boundaries. Medecins Sans Frontieres says it first came across rape as a weapon in the 1990's. In Bosnia it was used as a means of ethnic cleansing. Women were raped so that they would give birth to Serbian babies. Amnesty this year accused the pro government Janjaweed militias of using rape to punish, humiliate and control. Sexual violence is used to destabilize and terrorize communities. According to the State of the World Children report violence against women has been used in conflicts from Bosnia and Herzegovina to Rwanda Peru, Cambodia Cyprus Haiti Liberia Somalia Uganda and Mozambique.

Pernille Ironside, a child protection specialist for UNICEF in the Eastern Democratic Republic of Congo stated that "Sexual violence in DRC is on a scale and brutality unparalleled elsewhere in the world," "While rape certainly existed prior to the war, the brutal nature of the violations that we see is appalling – with over 1,000 women and girls raped per month." In South Africa four out of ten women say their first sexual experience was rape. Lydia Plygreen write that South Africa is facing a wave of violence against women and children. In February this year Amene Booyens was raped so violently her organs had come out of her body. The perpetrator was named by the victim but the case against him was dropped. Annie Lennox, the singer led an angry protest march in Cape Town. The polygamous president Jacob Zuma who was recently acquitted of the charge of rape after his trial in 2006 said "the whole nation is outraged at this extreme violation of a young human life" South Africa holds the record for the highest reported number of rapes in a country not at war.

The law on rape in China states that "whoever rapes a woman by violence, coercion or any other means shall be sentenced to at least 3 years and less than ten years in prison". Li Tianyi the 17 year old son of an army general was accused of gang rape along with a group of his friends. The victim was a bar hostess and Yi Yanyou, a professor of law at Tsinghua University Beijing claimed that it was less harmful because of her occupation. Social critic and author Li Chengpeng is quoted as saying "a lot of people in China have this shameful logic".

WAR (War Against Rape) is a Non-Governmental Organization whose mission is to publicize the problem of rape in Pakistan. The group has documented the gravity of the problem in Pakistan and of police indifference to it. According to Women's Studies professor Shahla Haeri, rape in Pakistan is "often institutionalized and has the tacit and at times the explicit approval of the state". A report released in 1992 of 60 reported cases of rape showed that 20% involved police officers. According to a study by Human rights Watch there is a rape once every two hours and a gang rape every eight hours.

During the Bangladesh Liberation War of 1971, hundreds of thousands of women were raped by members of the Pakistani military. Systematic rape was used by the perpetrators to terrorise the Bengalis and Hindus, who were looked upon as inferior. The rapes resulted in thousands of pregnancies, abortions, war babies, infanticides, suicides and social ostracism of the victims. Some say that three-quarters of women in Pakistan's jails today are rape victims.

In many countries, rape is still not against the law. In others it is technically illegal but rarely prosecuted. Rape can lead to wedlock in some countries, where charges are dropped if a rapist marries his victim. In Islamic criminal jurisprudence the overwhelming

majority of Muslim Scholars believe that there is no punishment for a woman in Islam who is forced to have sex. Sharia law can make it hard for the victim to prove what happened. It typically demands a confession from the rapist or four male witnesses. In Bangladesh, Somalia and some other Muslim countries, rape victims may themselves end up being punished (including by flogging or stoning) for taking part in illicit sex. Sri Lankan authorities according to the group Human Rights Watch are using rape as a technique to extract confessions from suspected members or supporter of the separatist Liberation Tigers of Tamil Eelam.

Another form of war against women is where rape is perpetrated by those who should be protecting their home life, and it is increasing throughout the world. Rape within marriage used to be an oxymoron. Now most Western countries have criminalised it and as late as 1991 it was criminalized in the United Kingdom. Conservative estimates say that a woman is murdered somewhere in the world every 4 minutes. Women are not safe anywhere if they are not safe in the home. Sexual assault against a woman in the home is a criminal offence and yet it still continues. Violence against women in the civilized world is as rife as it is in the developing worlds.

Rape cannot be condoned at any level and every effort must be made to uphold the rule of law in war and peace and women and children have a right to expect their governments to protect them. When there are violations of women's rights, violations of democracy and violations of the rule of law the Commonwealth cannot be silent. Edmund Burke said 'All it takes for evil to triumph is for good men to do nothing'.

Is our civilization so skin deep that this practice is still considered to be permissible by some? Governments must act to stop this violation of one section of the human race by

another? A consensus on the definition of rape and its condemnation is needed by the nations of the world and a will to punish perpetrators. Everywhere the rapist is a monster.

“Women’s lives and their bodies have been the unacknowledged casualties of war for far too long”  
Amnesty International



## GLOBAL SUMMIT TO END SEXUAL VIOLENCE IN CONFLICT

This summit took place in London from 10-13 June 2014. It was co-chaired by the UK Foreign Secretary and Co-Founder of Preventing Sexual Violence Initiative (“PSVI”), Rt. Hon. William Hague MP and the UNHCR Special Envoy of the UN High Commissioner for Refugees and Co-founder of PSVI Angelina Jolie. This was the largest gathering ever brought together on the subject, with 1,700 delegates and 129 country delegations including 79 Ministers. The Summit agreed practical steps to tackle impunity for the use of rape as a weapon of war, and to begin to change global attitudes to these crimes.

The UK Foreign and Commonwealth Office policy paper outlined the issues: “*Sexual violence in conflict is a uniquely destructive act and method of war. It is an outrage to all morality. Survivors who have gone through the trauma of an attack too often also face rejection by their families and reprisals from their communities. Moreover, sexual violence in conflict often flows from underlying inequalities. Further, a*

*society that believes in human rights for all human beings and opportunities for all its citizens cannot know about the way rape is used as a weapon of war and then simply ignore it.*

*But it is not only our values that are at stake. Sexual violence in conflict poses a grave threat to international peace and security. It exacerbates tension and violence and undermines stability. It is prohibited under international law: under specific provisions of the Geneva Conventions and their Additional Protocols, and under the Rome Statute of the International Criminal Court. It is a grave breach of the Geneva Conventions, and, when used as a method of warfare, it will always be unlawful. States have responsibility for breaches of international law committed by their armed forces. Although it is and has been a feature of most conflicts, it has only recently been discussed openly in international conflict-prevention discourse. Yet it can undermine ceasefires, and prevent lasting reconciliation long after the last bullets have been fired. It affects not only women and girls, but also men and boys.” see: <https://www.gov.uk/government/publications/chairs-summary-global-summit-to-end-sexual-violence-in-conflict/chairs-summary-global-summit-to-end-sexual-violence-in-conflict>*

In addition to government representatives, there were Fringe events including the Royal Court Theatre presenting the World Premiere of award-winning ‘Liberian Girl’; the Jealous Gallery and the European Premiere of Charming Baker’s sculptural work Faith’s Leap; discussion and debate, including Laura Bates from ‘Everyday Sexism’ and Danai Gurira from ‘The Walking Dead.’ Also an exclusive screening of, ‘In the Land of Blood and Honey’, with the opportunity to hear the Director, Angelina Jolie, and the Foreign Secretary, discuss the film and how it inspired the initiative that led to the Global Summit to End

Sexual Violence in Conflict. There will also be a Silent Cinema, and a Marketplace with products from around the world.

The following report is based on a report given by **Mrs Jane Opolot**, Director of Woman of Purpose (a Ugandan NGO promoting women and widows rights in Palissa, Eastern Uganda) and reproduced with her kind permission.

Jane was one of the expert witnesses at a Resolution 1325 Mock trial held during the Fringe events at the Summit and organised by Mrs Zarin Hainsworth, a trustee with Widows Rights International. Prominent English barristers and judges were asked to participate in these mock trials over three days. UN Security Council Resolution 1325 was adopted unanimously on 31st October 2000. However the Security Council acknowledges the changing nature of warfare in which civilians are increasingly targeted and women continue to be excluded from participation in peace processes. UNSCR 1325 addresses not only the inordinate impact of war on women but also the pivotal role women should and do play in conflict management, conflict resolution and sustainable peace. Expert witnesses came from many conflict areas. At the end of the Mock Trials, it was evident that the Resolution 1325 and the other Women, Peace and Security UNSC resolutions have not been effective yet and in many cases there was evidence that these had not been implemented. The key highlight was that a culture of impunity continues to prevail around sexual violence in conflict; thus the launching of the International Protocol on the Documentation and Investigation of sexual violence in conflict (see:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/319054/PSVI\\_protocol\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf)

Mr. Hague emphasized that ‘For the perpetrators, there can be no hiding place; no amnesty; no safe harbour. They will be pursued by any and all

means at our collective disposal.' He also said:-

- that the main purpose of the Protocol is to promote accountability for crimes of sexual violence under international law. It does this by setting out the basic principles of documenting sexual violence as a crime under international law, gleaned from best practice in the field.

- The protocol is not binding on States. Rather, it will serve as a tool to support efforts by national and international justice and human rights practitioners to effectively and protectively document sexual violence as a crime under international law – as a war crime against humanity or act of genocide.

- The guidelines are designed for use primarily by human rights and justice actors, at national and international levels, and any other individual or organisation faced with the challenge of documenting sexual violence as a crime under international law.

### Strategies

The Summit was quite enlightening, enriching and insightful, with participants freely sharing their experiences and challenges. Among the key noteworthy strategies were the following;

(i) The determination to shatter the culture of impunity for the use of rape and sexual violence as weapons of war; changing attitudes as well as laws and lifting the stigma from survivors as well as providing them with help and protection.

(ii) It is a truism that Governments cannot do this alone but rather need public support and engagement. It requires a strong multi-sectoral approach involving the coordinated provision of health services, protection, psychosocial support and access to justice for survivors.

(iii) Putting support services in place is key to increasing the likelihood that

survivors report crimes of sexual violence.

(iv) All practitioners will endeavour to collectively enable a safe and supportive environment in which survivors and witnesses of sexual violence feel sufficiently secure and comfortable to come forward and report crimes. This calls for coordination since there may be multiple efforts to collect, record and analyse information on sexual violence.

### Way Forward

Governments through their representatives and foreign ministers present at the Summit promised to handle the issue as a matter of urgency. I however noted that most Governments have National Action Plans which are well framed on paper but the action part of such plans is yet to be seen. It is everybody's determination that time for action is NOW..



Jane Opolot testifying at the Mock Trial



Jane Opolot with a colleague from DR Congo at the Peace Through Democracy Event on Widows.

### Caring Mothers of Zambia



### GLOBAL SUMMIT TO END FGM and CEFM

On 22 July 2014, the UK Government hosted the first Girls Summit. The objective was to mobilise action both on the domestic and international front to combat FGM (female genital mutilation) and child, and early forced marriage (CEFM). This was jointly sponsored by UNICEF. The summit was well attended.

Equality Now estimates that over 60,000 aged between 0 and 14 years living in the UK had mothers who were forced to undergo FGM and at least 130,000 women immigrants between the ages of 14 and 50+ have had to undergo this harmful practice before they came to the UK.

In the last 10 years it is estimated that 58 Million girls in developing countries were married before the age of 18.

UK Prime Minister, David Cameron stated:

*“All girls have the right to live free from violence and coercion, without being forced into marriage or the lifelong physical and psychological effects of female genital mutilation. Abhorrent practices like these, no matter how deeply rooted in societies, violate the rights of girls and women across the world, including here in the UK.*

*I want to build a better future for all our girls and I am hosting the Girl Summit today so that we say with one voice – let’s end these practices once and for all.”*

The summit brought together politicians, international NGOs, women’s rights groups, faith groups and campaigners from 50 different countries.

Lynne Featherstone, Parliamentary Undersecretary for Development in the UK pointed out in her speech that:

- Girls who give birth under-15 years of age are 5 times more likely to die in childbirth than girls in their 20s;
- The children of child brides are 60% more likely to die before their first birthday than the children of mothers who are over 19;
- Girls who marry earlier are more likely to suffer domestic violence and sexual abuse, and to contract HIV from their husbands; and
- Girls who marry young are more likely to be poor and stay poor.

The Girl Summit has kickstarted a global movement to end child, early and forced marriage and FGM for all girls within a generation. Doing this will help preserve girls' childhoods, promote their education, reduce their exposure to violence and abuse, and

allow them to fulfil their potential in life.

Everyone has a part to play in achieving rights for girls and women around the world. Take a stand against FGM and child marriage today - **pledge your support through Twitter and Facebook** in the pink box. Your voices will be heard at the #GirlSummit.

### **KENYAN PRESIDENT SIGNS POLYGAMY LAW ALLOWING MEN TO MARRY AS MANY WOMEN AS THEY WANT**



In April 2014, a law was passed allowing a Kenyan man to marry as many

women as they wanted, this was despite criticism by women’s groups in the country.

According to a statement from the Presidency, the law was aimed at "consolidates various laws relating to marriage" and to formalise traditional practices.

*"Marriage is the voluntary union of a man and a woman, whether in a monogamous or polygamous union,"* the presidential statement added.

Whilst the bill had initially included a wife’s right to veto the husband’s choice, some male members of parliament objected and this clause was dropped. Female MPs were furious and stormed out of the session following a heated debate.

The National Council of Churches in Kenya (NCCCK), composed of more than 40 churches and Christian organisations in Kenya, had also spoken out against the bill.

The national Federation of Women Lawyers (FIDA Kenya) has said it would challenge the law in court.

*"We know that men are afraid of women's tongues more than anything*

*else,"* MP Soipan Tuya told fellow Members of Parliament when the bill was passed. She also added that if a man were to bring in another party into the family, the wife and family should have some say.

Polygamy is widespread in Kenya, especially amongst those living in traditional and Muslim communities and some claim that the legislation only takes into account a practice which is already common.

One MP, Junet Mohamed stated that *"When you marry an African woman, she must know the second one is on the way, and a third wife... this is Africa,"*

However, inequality still reigns as women are still only allowed to marry one man.

### **GENDER COMMITTEE OF THE CMJA**

**Dr. Clover Thompson Gordon**

(Chair, Council)

**Ms. Anita Grey**

(Vice Chair)

**Ms Debbie LeMottee**

(Secretary)

**Mrs. Gloria Millwood**

(Liaison Officer)

**Mr. Calvin Chin**

(Liaison Officer)

#### **Regional Representatives:**

##### **Atlantic and Mediterranean:**

Justice Lynne Leitch (Canada)

##### **Caribbean:**

Justice Paul Mae Weekes (Trinidad)

##### **East Central and Southern Africa**

Judge Angeline Rutazana (Rwanda)

##### **Indian Ocean**

Justice Chandra Ekanayake (Sri Lanka)

##### **Pacific**

Vacancy to be filled

(if you are interested contact us at

[info@cmja.org](mailto:info@cmja.org))

##### **West Africa**

Mrs. O A Sofowora (Nigeria)