



GENDER SECTION NEWSLETTER

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MESSAGE FROM THE CHAIRPERSON

Following on from the very popular first issue of the Gender Section Newsletter, published in June 2011, we hope that you will find this second issue of interest. There have been some interesting developments on issues relating to gender rights since the last volume and some of these follow.



The CMJA Gender Section was also represented at the International Association of Women Judges Conference held in London in May this year by Mrs Anita St John Grey. The CMJA Secretary General also participated in the opening ceremony and a number of Gender Section members from around the Commonwealth also participated. A full report will appear in the next issue.

The newsletter contains information about developments on issues relating to HIV/AIDS, the position of women in Africa, forced marriage, and women in the Caribbean.

We also feature Justices of the Peace who have contributed to the growth of the CMJA on a community level. This Edition's feature is The Hon Steadman Fuller, Custos of the Parish of St. Andrew, Jamaica

Further information about the Gender Section and its aims can be found on the CMJA's newly revamped website at: www.cmja.org/gender

The CMJA will be holding a Specialist meeting of the Gender Section during the forthcoming conference in Uganda (see below). If you are attending the Conference we hope you will attend this meeting.

*Dr Clover Thompson-Gordon
OD, JP
Chairperson*

MESSAGE FROM CMJA PRESIDENT, HER HON. MRS JUSTICE NORMA M. WADE-MILLER

As President of the CMJA, I write this message for the Gender Magazine. I wish to commend Dr. Clover Thompson-Gordon the Chairman of the Gender Section

who has initiated this annual magazine to ensure that gender subject matters remains at the forefront our deliberations.

The upcoming CMJA 16th Triennial Conference theme "**Justice for Everyone: Myth or Reality?**" is very thought provoking and it gives force to the Gender argument that equality should be given to everyone. There should be no element of discrimination in any sphere. It is vital that through-out the fifty-four Commonwealth countries each CMJA member understand the work that must be done in their community to ensure that justice for everyone is not a myth but indeed a reality.



Finally, I want to extend a very warm thanks to each of you for your support.

I urge you to continue your unyielding support of CMJA and the gender section.

YOUTHS AND HIV/AIDS IN AFRICA: THE ROLE OF EDUCATION.*



Together young men and women account for half of all new HIV cases globally but more than two thirds are in Africa. Although young people between the ages of 15 -24 years of age account for all new infections in adults, many young people still lack accurate and complete information on HIV and how to avoid exposure to the virus.

Young girls are even less knowledgeable than young boys. For example while more than 70 % of young men know that condoms can protect against HIV exposure, only 55% of young women cite condoms use as an effective prevention strategy. Evidence from a study of 8 countries in sub-Saharan Africa shows women with eight or more years of schooling were 87% less likely to have sex before the age of 18 compared with those with no schooling.¹ Education becomes an important tool in protecting them from HIV transmission. The more educated the young girls are the more aware they are of HIV and prevention methods, and the greater their capacity and ability to negotiate safer sex.

¹ Gupta, Neeru, and Mary Mahy, Sexual Initiation among Adolescence Girls and Boys: Trends and differences in Sub-Saharan Africa. Archives of Sexual Behavior 32 (2003).

The major danger of HIV/AIDS for young girls is the decrease in school enrollment, as girls are twice as likely as boys to be kept out of school to care for sick relatives, or to work to contribute the household income.

In 2005, girls comprised 57 percent of out-of-school children (UNESCO, 2007 c).

Increasing girl's education and employment opportunities contribute in major ways to help them achieve autonomy. The World Bank indicated that education is an effective "social vaccine" against HIV, because education empowers individuals with appropriate skills to receive and act on knowledge including knowledge about HIV/AIDS . As one scholar also stated: "investing in girls' education is the single most effective investment a developing country can make..."² This is particularly needed in a society where poverty, joblessness and impoverishment, are precursors for unsafe practices leading to HIV infection, often in a bid for basic survival.

In Africa, there is an urgent need for stronger political commitment and leadership on the education response to HIV and AIDS and addressing the embedded gender issues. If one views the HIV epidemics as socially constructed, then the role of education in tackling HIV/AIDS has been under-conceptualized and poorly supported politically, technically and financially in African countries. Likewise, the importance of gender sensitivity

² Eileen Kane, Girl's Education in Africa, what do We Know About strategies That Work? African Region Human Development Working series (2004).

in education sector policy making and strategic planning has yet to be fully realized.

I believe education for all should be central to HIV response for young people. This is in keeping with the Millennium Development Goal (MDG) and a goal of Education for All (EFA), which is to ensure that all children (especially girls) have access to complete, free and compulsory primary education of good quality by 2015. This is even more pressing giving that it is estimated that of the 44 countries that will not attain EFA by 2015, 32 will be sub-Saharan African countries with high HIV rates.

**COMMONWEALTH
MAGISTRATES' AND
JUDGES' ASSOCIATION**

**16TH TRIENNIAL
CONFERENCE**

10-15 SEPTEMBER 2012

**“Justice for
Everyone: Myth or
Reality?”**

KAMPALA, UGANDA

**REGISTER NOW TO
AVOID
DISAPPOINTMENT!**

Prioritizing education is not an option but a mandate, because not only is education a major engine for economic and social development but that the very education that supplies a nation's future, is being threatened by the epidemic.

*Florence Shu-Acquaye,
Professor of Law, Nova
Southeastern University, Davie
Florida.*

CELEBRATING WOMEN AND THE AWARD



The following article appeared on the Duke of Edinburgh Award Association Website (<http://www.intaward.org/news-events/Celebrating-women-and-the-Award/>) and is reproduced with their kind permission

On a recent trip to East Africa, IAA Programme Research Officer, Alison Berks met Honourable Lady Justice Mary Atieno Ang'awa, a Kenyan High Court Judge, trustee of the Award Programme in Kenya and role model for women across the globe. With International Women's Day (IWD) in mind, Alison asked Lady Justice Mary about the issues that young women face in Africa today and how youth development

programmes, such as the Award Programme, can help empower young women and enable them to overcome obstacles and challenge traditional views of women's roles.

"The biggest challenge for young women in Africa today is education and remaining in education. Education is key for girls and they need to reach the best level that they can yet it is still usual for girls to exit the education system earlier than boys. In Kenya, it has traditionally been seen to be more important to educate a man rather than a woman because girls leave home when they get married and so they are not worth the investment. A girl's career is just to get married. I still remember being told in a science class at school that I was being taught how to rewire a plug because I might need to fix a kitchen appliance one day if it stops working. After this I dropped science as soon as I could!

"As a youth development programme, the Award teaches a young woman that she can reach the highest levels; if she can climb mountains then she can also achieve at school and at work. The Service Section of the Award Programme is particularly positive as it teaches young people to help, respect and have empathy for others. Participating in community service and being seen to make a difference by community members and peer groups can really help young women to overcome traditional views that they are unable to achieve.

"This is particularly true when a young woman takes the initiative to start her own community project and reaches out to others in this way. A good example in Kenya is Wangari

Maathai, the first African woman to be awarded the Nobel Peace Prize in 2004, who inspired so many other women through her environmental projects (Maathai founded the Green Belt Movement in the 1970s). Today we have many stories, for example those collected through the Peter Cruddas Initiative, of young African women participating in the Award who are reaching out to others through community service projects as part of the Programme.

"Participating in the Award Programme is also character building and can help all young people to develop robust values and principles. There is a lot of corruption in Kenya and young people need to learn not to be influenced by peer pressure and stand up for themselves. The Award can give young people an edge in terms of employability. It is vital that we continue to encourage and support employers to recognise the Award Programme when recruiting.

***Gender Equality is
everybody's business!***

"Alongside supporting young women as a trustee of the President's Award Programme in Kenya, I try and act as a role model to other women in my professional and personal life. I have had to be tough and work hard to prove myself in my career but sometimes it is your actions and the decisions you

make, rather than your words that help inspire and encourage others. I have always applied for professional positions when I know that they would rather employ a man and I encourage other women in my profession to do the same. It is important for women to at least be in the game!”

We thank Lady Justice Mary for her support to the President’s Award Kenya.

FEATURED JUSTICE OF THE PEACE

Profile of The Hon Steadman Alvin Ridout Fuller CD, JP



The Hon Steadman Alvin Ridout Fuller was born in the district of West Prospect, St Catherine on August 21, 1952. He is a graduate of Huddersfield University where he gained the LLB (Hons) degree. He is also a graduate of the University of the West Indies and The Mico Teachers’ College (now Mico University College). He gained his early education at the Tulloch Primary School in Bog Walk where he now serves as Chairman.

Custos Fuller is the Chief Executive Officer of the family owned business, Kingston Bookshop (KB) and a director of Fullon Properties Ltd and Rockstead Farms Ltd. He is a

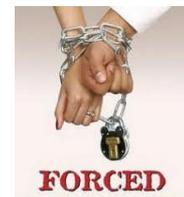
co-founder of the Book Industry Association of Jamaica (BIAJ) and has served as President and Vice-president. Currently, he is the Director with Responsibility for distribution. Mr Fuller was the second recipient of the BIAJ’s prestigious Trail Blazer Award for his pioneering role in the organization. Through his astute management and exceptional leadership ability KB has made tremendous strides over its 35-year history, moving from one store to its present eight stores and a Stationery Centre. The company has contributed significantly to nation building through education – 30 scholarships marking its 30th anniversary, sponsorship of edutainment programmes, an annual salute to teachers and its School Library Upgrade Programme, among other things.

At a personal level, the affable CEO sponsors inner-city basic schools and provided land for one at West Prospect, the place of his birth. Mr Fuller has a deep concern for the development of inner city youths; he mentors a number of them offering not only financial assistance but spends quality time with them.

The restoration of Kingston is another area of special interest for him. This is exhibited through ownership of multiple premises in downtown Kingston, and involvement in a number of community activities. He is Chairman of the Tivoli High School and a Past Member of the City of Kingston Police Consultative Committee. Under his leadership KB has been awarded The KSAC Silver Medal for “support of the Municipality”.

The Hon Steadman Fuller and his wife Sonia have been married for over 30 years; they have four adult children and one grandchild. The family worships at the Webster Memorial United Church.

FORCED MARRIAGE: A BLIGHT ON CIVILIZED SOCIETY



“We don’t want the Commonwealth to be silent... when there are violations of women’s rights, violations of democracy and violations of the rule of law.”
Senator Hugh Segal. (Canada)

Forced marriages have become an increasing problem in the United Kingdom in recent years. While the full scale of the problem is still not known, reported cases are rising year on year. In 2008 the Forced Marriage Unit (FMU) provided advice or support in 1618 cases, which rose to 1682 in 2009 and totaled 1735 in 2010. This has reflected the continued efforts of the Unit to raise awareness among victims and potential victims that forced marriage is unacceptable and help is available.

Government estimates show that in 2011 up to 8,000 cases of mostly young girls and children from many ethnic and religious groups were taken against their will by their relatives to countries such as Afghanistan, Egypt, Bangladesh,

Iran and Turkey to marry men they have never seen before and where they do not speak the language or understand the culture. 50% of the girls were under the age of sixteen and a significant number were as young as 8 years old.

At present forced marriage in the United Kingdom is a civil offence, not a criminal one. Recently the Home Secretary Theresa May, launched a consultation into making forced marriage a crime in its own right. The Forced Marriage Act 2007 allowed courts to issue forced marriage protection orders when a victim, friend or local authority raises the alarm. A breach of such an order can result in up to two years imprisonment. There is however no specific criminal offence in England and Wales of 'forcing someone to marry'. The Universal Declaration of Human Rights, Article 16 (2) states clearly that 'Marriage shall be entered into only with the free and full consent of the intending spouses. 'The types of behaviours prevalent when forcing someone into a marriage can, however, constitute a variety of existing offences, including some very serious ones.

Schools are reluctant to take action to protect their pupils, partly because they fear accusations of racism and religious bias. School summer holidays are the most dangerous time for these young people. There will be thousands of girls who don't come back in September for the start of the academic year.

Specialist voluntary organisations are a vital means of support for individuals at risk of forced marriages, who are often failed by statutory

agencies or do not feel able to approach them. Organisations such as the Southall Black Sisters and the Honour Network Helpline are however both under the threat of closure because of a potential withdrawal of funding by local authorities or government. The helpline was launched in 2008 by Karma Nirvana, the charity founded by Jasvinder Sanghera, a victim herself of forced marriage, and received 4,815 calls in 2010 – 63% from callers who had not reported their situation to the police, teachers or doctors. A recent call to the helpline brought this into sharp relief. The caller was a terrified 14-year-old from the north of England, who, "is always in conflict with her family because she wants to see her friends at the weekend and they don't let her, so they said they will 'sort her out' in the same way they sorted her sister out". Her sister was taken out of school and sent to a village in Pakistan for two years to be "rehabilitated", then married and brought home. Overseas the FMU provides consular assistance to victims who are British nationals prior to or after marriage to secure their return to the UK. In addition to providing direct support to victims, the FMU ensures front line professionals receive up-to-date and relevant information.

'Women as Agents of Change' was the Commonwealth's theme for the year 2011 and the association acknowledged that progress has been made towards gender equality. The Commonwealth is uniquely placed to tackle the issue of early and forced marriage. All Commonwealth countries, despite their significant diversity, have signed up to a set of shared values and principles, including the protection and

promotion of basic human rights. The time has come for the Commonwealth to take a lead on this issue.

The practice we term as early and forced marriage is recognised by Commonwealth member states as a harmful practice that constitutes a violation of the most basic and fundamental right. It is prevalent on a shocking scale throughout the association. Around the world at least ten million girls marry under the age of eighteen every year and of the twenty countries with the highest occurring rates, twelve are within the Commonwealth. It is a brutal transition from childhood to adulthood that harms the education, health, economic and social potential of millions of girls across the Commonwealth.

It is time the Commonwealth made good on its commitments, empowering girls by ending early and forced marriage.

"Forced marriage is sexual and domestic slavery, an affront to every human right protecting individual freedom, dignity and self-determination."

*Anita St John Gray, CMJA
Council Member England and
Wales*

GENDER VIOLENCE IN KIRIBATI



In November 2011, the Secretary General was part of a two person team funded by the

Commonwealth Secretariat who went out to do a needs assessment mission of the judiciary in Kiribati. Kiribati is an island nation in Micronesia, in the Pacific. It has a population of 100,000 and is spread over 32 coral atolls (which cover over 1.3 million square miles).

Kiritimati Island (pronounced Christmas Island), was discovered and named "Christmas Island" by Captain James Cook on his third Pacific voyage on the eve of the 24th December 1777. In 1820 the western group of islands was named the Gilbert Islands, after a British captain named Thomas Gilbert

However, the majority of the population is based on only a few islands and the capital South Tarawa which consists of a number of islands connected by causeways. The highest point on the island is 3 metres high so it is at risk from rising tides and climate change.

Historically Kiribati society is conservative and patriarchal. Women have traditionally been subordinate to their fathers, husbands and the unimane (male elders or old men). Male elders are accorded particular respect. These inequalities were reinforced when Christian missionaries who started arriving around 1850 and this has permeated all the way through society including in education and decision-making. Even though women play significant role in the public sector, only 3 out of the 44 elected to Parliament in the elections in November 2011 were women. The President, who has just been re-elected has indicated that there will be no positive discrimination in favour of women's participation

in decision-making (*Reported By Radio New Zealand International On 19 January 2012: "Kiribati President: No Reserved Seats For Women"*)

This despite the fact that the Speaker of Parliament in August 2011 had indicated that "women can bring a calming effect in parliament as they can be less argumentative and less confrontational than men." A Family Health and Support Study (KFHSS) was undertaken by the Government and it revealed the seriousness of the problem. 68 percent of women between the ages of 15 and 49 years who have ever entered into relationships have reported experiencing physical or sexual violence, or both, by an intimate partner is a cause for concern (SPC, 2010). This level of prevalence is among the highest in the world. The study has been able to document the causes of violence in many instances.

Child abuse and physical and emotional abuse against women is prevalent. Kiribati tradition allows for beatings of wives who are disobedient. The issue has been aggravated by the consumption of alcohol and incidents of drunkenness.

Violence against women and girls remains for the large part however, unreported due pressures from family members to comply with social and cultural norms.

As in other Pacific countries, Kiribati does not have specific legislation related to gender-based violence ("Kiribati: Legal Analysis on Violence Against Women" - Pacific Regional Rights Resource Team, October 2010).

The current legislation remains inadequate as there is no specific domestic violence offence especially if they are living in a house situated on the husband's family land.

Kiribati traditional society allows for a system of apology. This also appears in the Magistrates' Ordinance Act. In traditional society crime was seen as a personal matter to be resolved by the family of the victim. The perpetrator can go to the elders of the family and apologise to the victim. Although there has been an increase in the level of cases reported to the police, in many instances, victims of sexual violence are persuaded by the family to accept the apology. This means that victims fail to appear in court to give evidence and the case has to be dropped. There are no separate witness protection programmes and the convents are often used as crisis centres.

However, awareness raising by government, NGOs and the Police, with the support of outside donors, has meant that more people are aware of the fact that domestic violence is a crime. This has resulted in people being more willing to discuss the issues related to violence against women and children.

The national women's organisation, Aia Maea Ainen Kiribati (AMAK), and the Kiribati Association of Non-Governmental Organisations (KANGO) staged the first public commemoration of White Ribbon Day in Kiribati in 2006. This has continued to be celebrated annually. On 23 November 2011 there was a march in Bairiki to mark the day. NZAid have been working with the Pacific Chiefs of Police and

the New Zealand Police force on a Pacific Prevention of Domestic Violence Programme which has increased awareness of the issues of domestic violence.

UN Women is supporting the Government of Kiribati to eliminate violence against women by providing technical support for the implementation of programmes by the Government of Kiribati

*Dr Karen Brewer, CMJA
Secretary General*

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

The following article has been reproduced with the kind permission of the author and is based on a speech given by the Hon. Mrs Justice Desiree Bernard at the Commonwealth Caribbean Colloquium on Gender, Culture and the Law, Jamaica, 2011

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 [Henry v Henry (1959) 1 WIR, 149] 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," (Article 2(a)) 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" (Article 5(a))

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, [*Gladstone Gooderidge v The Queen (Criminal Appeal No. 3/1997) judgment of Sir Dennis Byron, former Chief Justice*] and two others of recent vintage (2010 and 2011) from Dominica and the British Virgin Islands [*The State v Andrew Valmond (DOMHCR 2010/0009); The Queen v Vernon Anthony Paddy (BVICR 2010/0020)*]. 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 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* [[1990] 1 SCR, 852] 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* [(1999) 57 WIR, 501] 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."

WOMAN OF PURPOSE

Following the Secretary General's attendance at the East African Magistrates' and Judges' Association conference in Entebbe, Uganda in October 2011, in her capacity as a trustee of Widows Rights International, she was privileged to travel to Pallisa, in Eastern Uganda at the invitation of the Executive Director of Woman of Purpose, Mrs. Jane Opolot.

The objective of her visit was to see how Woman of Purpose, which supports rural widows, was assisting the local community and improving the rights of local widows. Karen was very touched and humbled by the celebratory nature of the welcome given to her.

Through her contacts and with the support of the CMJA, Karen had enabled Woman of Purpose to receive funding from a charitable golf-tournament held in the UK .

Woman of Purpose was established in 2003. It works to support widows by providing education on their rights, working with the communities to raise the issue of widows rights and advocating for the enforcement of rights.



It runs a cow scheme by giving poor women heifers which provide families with the valuable milk they need for their families. Women of Purpose have their own grinding mill which allows women from poor communities access to wider markets to sell their ground crops. The organisation has also been involved in building low cost houses or renovating existing houses for widows on community land so that they can look after their families.



The Cow Scheme at work Women of Purpose also run a school in the district for over 100 orphans. They have also recently started a Sewing Institute to teach young girls a new trade.



Karen Brewer visiting one of the disabled widows supported by Women of Purpose with the Executed Director Mrs. Jane Opolot.

CASES AROUND THE COMMONWEALTH



In February 2012, the IBA's Legalbrief Africa, reported on the first case of the women convicted of the rape of a disabled boy.

The 45-year-old woman from Port Elizabeth raped the 13-year-old mentally disabled and physically handicapped teenager in 2009.

She was prosecuted under the Sexual Offences and Related Matters Amendment Act of 2007. This Act has expanded the definition of rape to cover all forms of sexual penetration without consent, irrespective of gender.

The Act also repealed the common law offence of rape and expanded the definition to recognize rape when a woman, man or child is raped by another man or woman. It also amended the list of sexual offences against children and people with mental disabilities to include offences related to

sexual exploitation, grooming, exposure or displaying/creating child pornography

In January 2012, the Krugersdorp Magistrate's Court, in South Africa, sentenced a former husband to 12 years in jail in the first reported case of rape in a marriage since the Domestic Violence Act was introduced in 1996. Annelise Kriek accused her former husband of physically abusing and repeatedly raping her during their marriage of 12 years. He was convicted of one count of rape and one count of assault with intent to do grievous bodily harm.

The magistrate trying the case said "Instead of protecting her, he trampled on her rights. Not only did he proceed to threaten her, he continued to rape her,".

It took Annelise Kriek 13 months and 22 days to obtain an interdict against her former husband. But it took seven years for justice to be served after she took laid criminal charges against him in 2004.

"To all abused women out there, no matter how difficult it may seem to get out, everything else falls into place in the end. In the end, everything works out"



In Kenya, a recent landmark ruling recognized that in accordance with Nandi customary law on woman-to-woman marriages, Monica Jesang Katam could

inherit her late wife's property. Kenyan law may not recognise homosexual acts but in certain traditional communities, if a woman has not had children, she is allowed to take on a younger wife. She takes on the male role by providing a home for the young wife and the latter is encouraged to take on a male partner from her clan. The children will be regarded as the offspring of the marriage and both the younger wife and the children will be able to inherit her property.

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



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

THANK YOU

Thanks to all who helped to put this newsletter together by sharing the interesting articles.



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 Dr. Clover Thompson Gordon (Chair)
 Dr. Karen Brewer (Editor in Chief)
 Gender Section Committee



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