

CMJA NEWS

The Newsletter of the Commonwealth Magistrates' and Judges' Association

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EDITORIAL

Firstly the CMJA would like to apologize for the late publication of this newsletter. We also apologize for the curtailed version of the newsletter. With the CMJA Conference occurring in late September and the CMJA's small offices at the rear of Uganda House having undergone a complete makeover (new carpet, new blinds and repainting) for the first time in 15 or so years at the end of October / beginning of November, the various tasks normally undertaken by the secretariat in October each year have suffered slight delays. However you will be pleased to know that your two members of staff are now working in pristine conditions for the first time in many years and productivity levels will hopefully increase!

In July 2013, the CMJA's Executive and Admin Officer, Ms Temi Akinwotu went on maternity leave. The CMJA were delighted when she gave birth in August to the first, we think, CMJA staff baby – a boy. The Executive Committee and Council congratulated her at the time. In Temi's absence, the CMJA has had the wonderful assistance of Ms Ratha Lehall, who formerly worked with Amicus in London. Ratha will be with the secretariat until the end of April 2014 so you will be seeing her name regularly on correspondence in the next few months.

The CMJA had continued its advocacy work on judicial independence. At the Commonwealth Law Conference in April 2013, the CMJA together with the Commonwealth Lawyers Association (CLA) and the Commonwealth Legal Education Association (CLEA) agreed a resolution calling on the Commonwealth to reconsider holding the Commonwealth Heads of Government Meeting (CHOGM) in Sri Lanka following the flawed impeachment process of former Chief Justice, Shirani Bandaranayake, in January 2013, the continued erosion of judicial independence and the

harassment of lawyers and journalists in the country. Despite statements from the IBA Human Rights Institute, the UN Special Rapporteur on the Independence of Judges and Lawyers, despite our best efforts in the Commonwealth and an additional statement produced by the CLA immediately prior to the CHOGM in Sri Lanka, the meeting went ahead although the Prime Ministers of Canada, India and Mauritius did not attend. The CMJA, CLA and CLEA made a submission on the status of democracy and the rule of law in the Commonwealth prior to the meeting and this was sent to a number of Commonwealth governments directly or via the CMJA Council. In addition, the CMJA, CLA and CLEA issued its biennial confidential report to the Commonwealth Secretary General on the status of implementation of the Commonwealth (Latimer House) Principles just prior to his departure for Sri Lanka. In the Heads of Government Communiqué issued at the end of the CHOGM, the Heads re-affirmed their commitment to the Commonwealth fundamental values as expressed in the Commonwealth Charter, to democracy, the rule of law and human rights. However, time will tell if the chairmanship of the Commonwealth by the Sri Lanka President will be one of inertia in relation to these matters of importance. Watch this space!

In the meantime the CMJA has continued to work on the implementation of the Commonwealth (Latimer House) Principles. 2013 marked the 15th anniversary of the Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence for the Commonwealth which, as everyone knows, led to the formulation of the Commonwealth (Latimer House) Principles on the Three Branches of Government – adopted in 2003, 10 years ago. We were very grateful to the Jersey Judiciary for helping us to mark this historic event by hosting our annual conference in St Helier in September 2013 on the theme: "Is your Latimer House in order?"

As previously reported, in February 2013, the CMJA together with the CLA, CLEA and Commonwealth Parliamentary Association (CPA) were commissioned by the Commonwealth Secretariat, to draft a Latimer House Dialogue Toolkit. As Secretary General of the CMJA, Dr Karen Brewer was appointed as Project Manager for the Toolkit and then had to take up some of the duties of the Project Programme Director following unforeseeable circumstances. The CMJA is very grateful for all the contributions made so far to this project but more particularly to Dr Peter Slinn from the CLEA and to Judge Keith Hollis, our former Director of Studies, without whom, we would have not been able to progress this issue further. We hope to hand over the completed document by at the latest 28 February 2014.

The CMJA was represented at the Senior Officials of Commonwealth Law Ministers Meeting (SOLM) held in London in September 2013. The CMJA is an observer at this meeting. As Secretary of the Latimer House Working Group, Dr Karen Brewer presented a report on the Implementation of the Commonwealth (Latimer House) Principles and the successes and challenges faced in this implementation. The CMJA's Executive Vice President presented a report on the CMJA's activities. The Law Ministers of Small Jurisdictions and Countries Meeting followed on from the SOLM and the CMJA was an observer at this meeting too. A report on CMJA activities was also presented at this meeting. The Law Ministers

CONTENTS

- 1 Editorial
- 2 Is your Latimer House in Order?
- 2 Judicial Independence and Rule of Law Issues
- 4 New Members
- 4 Diary of Events

Meeting will be held in early May 2014 in Botswana.

The CMJA continued to assist the Commonwealth Secretariat in relation to its mandates arising out of the last Commonwealth Law Ministers Meeting held in Sydney, Australia in July 2011. Representatives of the CMJA assisted in the compilation of the reports from the Working Groups on Judicial Assistance and on Cybercrime which were presented to the SOLM in September 2013.

Our Director of Programmes had continued to work with the Legal and Constitutional Affairs Division of the Commonwealth Secretariat to advance the CMJA's objectives in relation to education and training of judicial officers. He drafted the programme and facilitated the training

of magistrates in Kiribati in May 2013. Both the Director of Programmes and the Secretary General were involved in the training programme on independence and integrity of judicial officers from northern Cameroon which was held in Yaoundé in June 2013.

The joint CMJA, CLA and CLEA report on Judicial Appointments Commissions is due to be published shortly and copies will be available on the CMJA website. It contains a number of recommendations in relation to the drafting of a constitutional clause on judicial appointments.

PLEASE ENSURE THAT YOU NOTE NEXT CMJA CONFERENCE IN YOUR DIARIES



IS YOUR LATIMER HOUSE IN ORDER?

This year's Conference was held in St Helier, Jersey and it proved to be a very popular conference. There were 228 participants from 34 jurisdictions who participated in the conference. The CMJA is deeply grateful to the Bailiff of Jersey, Sir Michael Birt, the Jersey Judiciary and in particular Ms Debbie LeMottee for all the work undertaken to make the Conference such a resounding success. Dr Peter Slinn provided an update from the Latimer House Working Group on progress with the implementation of the Commonwealth (Latimer House) principles across the Commonwealth whilst Sir Michael Birt looked at the Principles in the context of Jersey and the small island states and Chief Justice Sir Salamo Injia outlined the challenges that he and the judiciary had faced recently in Papua New

Guinea. There was a discussion on the relationship between the press and the judiciary with speakers including Ms Cheryl Dorall of the Commonwealth Journalists Association and eminent QC, Mr Michael Beloff. Deemster David Doyle from the Isle of Man and Judge Ingrid Mangatal-Munroe outlined the challenges faced in providing objectively independent courts in Small Jurisdictions and Justice Leona Theron of South Africa pointed out some of the problems faced in the judicial appointments process in South Africa. There was also an examination of the effect of the current economic climate on conditions of service of judicial officers and gender issues in the legal profession, judiciary and the courts.

Other topics discussed included judicial training, family law and international courts as well as discipline of judicial officers and fairness in such proceedings.

During the Conference there was a

renewed call from delegates for an in-depth analysis of the implementation of the Principles across the Commonwealth.

As One

This song was sung at the Opening Ceremony by the Choir from La Moye Primary School, St Brelade, Jersey

*We've got to get on together,
Think of each other,
Look at ways to help us get along.
If we can learn how to listen,
Where there's division,
We can live as one.*

*We've got to trust one another,
Stand with each other,
Fix our eyes on all that's right not
wrong.
If we can learn to be sorry,
Love everybody,
We can live as one.*

JUDICIAL INDEPENDENCE AND RULE OF LAW ISSUES

The following are some of the issues which the CMJA has been keeping a watching brief on in the last six months. Readers are encouraged to assist the CMJA by providing information on any issues that might be of concern in relation to the judicial independence and the implementation

of the Commonwealth (Latimer House) Principle. Please contact the CMJA Secretary General if such issues arise.

GAMBIA

The CMJA was sad about the decision by the Gambia President to withdraw his country from the Commonwealth although it recognises that the Gambia has not complied with the Commonwealth fundamental values for a number of years and judicial independence has been precarious. On 3 October 2013, the CLA issued a statement on the withdrawal of the Gambia from the Commonwealth:

"While deeply regretting the withdrawal of The Gambia from the Commonwealth, the Commonwealth

Lawyers Association (CLA) welcomes President Yahya Jammeh's candid and honest acknowledgement of his administration's persistent and public failure to conform with the Commonwealth's fundamental values of democracy, good governance, human rights and the rule of law.

The CLA looks forward to welcoming The Gambia back into the Commonwealth when it has a government which is both willing, and

able, to respect and sustain these important values.”

Most recently the Gambian President Mr Jammeh also criticised the use of “voire dire” by lawyers in criminal trials, which has been mainly used by defense lawyers in cases where they suspect that statements made by their clients while in state custody were made under duress or torture (see: <http://www.jollofnews.com/news/24-news/3984-yahya-jammeh-calls-for-law-reforms-in-gambia->)

FIJI

We previously reported that the Fiji government had rejected the constitution drafted by eminent constitutional academic, Prof Yash Ghai and decided to produce their own draft. This draft was produced in August 2013. Human Rights Watch expressed their disappointment that the draft constitution continued to limit the rights of Fiji citizens. It also creates an indeterminate immunity from prosecution for those involved in the coup in 2006. Speaking in September 2013, Ms Jessie Evans said: “This kind of incredibly broad immunity provision violates international human rights standards and it prevents people from holding their military rulers or their forces to account for past human rights violations.” The Constitution received presidential assent in September 2013 and will enter into force on 31 December 2013. Fiji remains suspended from the Commonwealth pending the holding of elections due to take place in September 2014.

KENYA

In October 2013 the Judicial Services Commission sacked the Chief Registrar of the High Court, Ms Gladys Shollei claiming that the judiciary had lost Sh1.7 billion. In her response she claimed that the JSC were waging a vendetta against her. She has also claimed that the Commissioners have over claimed on their expenses amongst other issues in dispute, including the mandate of the JSC in this matter. The ensuing smear campaign was, according to the Chief Justice, fuelled by misinformation, distortion and lies and has affected the reputation of the Kenyan judiciary and the Judicial Services Commission appointed following the adoption of the new constitution in Kenya. Ms Shollei brought her case to the Industrial Tribunal but the latter rejected her request to be reinstated pending an investigation. The hearing of her case against the JSC is

scheduled for 24 January 2014. In the meantime, a parliamentary report has called for a tribunal to be set up to examine accusations of impropriety by six of the Commissioners of the JSC (<http://www.standardmedia.co.ke/?articleID=2000096659>). The JSC was established under Article 171 of the Constitution. It is mandated to promote and facilitate the independence and accountability of the Judiciary as well as ensure efficient, effective and transparent administration of justice. The Commission’s functions include to recommend to the President persons for appointment as judges, review and make recommendations on conditions of service of judges and judicial officers, and discipline errant ones. The JSC is also responsible for preparing and implementing programmes for training of judicial officers, as well as advise the national government on improving efficiency of the administration of justice. The moves by Parliament have been seen by the Kenya Law Society as a potential problem for the administration of justice in the country.

Despite their election as President and Deputy President, the cases against Uhuru Kenyatta and William Ruto have continued to be pursued by the ICC. In August 2013, consideration was given by Kenya and other African countries to withdrawing from the ICC. However, no decision was made on this at the AU Meeting and the ICC commenced the hearings against both men. In November the AU approached the UN Security Council with a view to postponing the hearings. However, the Security Council rejected the request to suspend the hearings in the Hague for a year. On 25 November 2013 it was reported that a compromise deal has been reached whereby neither defendant needed to be present during their trial at the International Criminal Court in The Hague. But the proposal to ensure that a sitting president can only be tried after serving the presidential term will be deferred to a special Assembly of State Parties in February 2014.

SOUTH AFRICA

In recent months the appointments of judicial officers in South Africa has come under scrutiny again. In April 2013, one of the Commissioners of the Judicial Services Commission resigned, alleging discrimination against white male candidates. The Constitution stipulates that the main criteria to appoint a judge is that individuals need to be “fit and proper” and “appropriately qualified”.

The South African Government has argued that the judiciary needs to be transformed to reflect broadly the racial and gender composition of South Africa. There have been accusations that the Judicial Services Commission is now favouring the issue of race over merit in appointments to the bench, an accusation that the Chief Justice has vigorously rejected.

In June 2013, the Helen Suzman Foundation launched legal action against the Judicial Service Commission (JSC) to seek clarity over the procedure and decision-making process regarding nomination for judicial office and challenged the appointment of certain judges and not others. In July 2013 a private members bill issued by Dene Smuts MP calling for a constitutional amendment to the provisions relating to the JSC was placed before parliament. The aim of the bill would be to reduce political influence on the JSC and to ensure that their demonstrated commitment to the “Constitutional values, professional conscientiousness and personal integrity” as well as demonstrate the ability to perform judicial functions. In November 2013, 7 women were selected for appointment to the bench. Some have seen this as an attempt to address the criticism made that the JSC had previously been slow in appointing women under the transformation of the judiciary policy. The CMJA continues to monitor the situation.

The CMJA has been keeping a watching brief on the Traditional Courts Bill. In October 2013, it was revealed that during the consultation with Provincial Legislatures the majority reject the proposed bill. The National Council of Provinces has placed it back on its agenda for discussion with a view to sending it back to the provinces for further consultation.

SWAZILAND/LESOTHO

In November, it was reported that the Chief Justice of Swaziland Michael Ramodibedi had threatened local media against scandalising courts, after newspapers criticised him.

Justice Ramodibedi and two other Swazi judges made a public statement after newspapers criticised the Chief Justice’s involvement in a High Court case involving a High Court Clerk, Sabatha Gumedze, who had resisted an attempt to transfer her to the Manzini Magistrates Court. This has been seen by the Commonwealth and International press as a direct attack on press freedom.

The Chief Justice has courted controversy in Swaziland in the past (see previous reports on the lawyers' revolt against directives of 2011/2012). Earlier this year it was alleged that he was asked to resign by as President of the Court of Appeal of Lesotho by the current Prime Minister. Justice Ramodibedi instituted proceedings against the Prime Minister claiming he had infringed the provisions of the Constitution, a claim denied by the Prime Minister. He alleged that he had been asked the President to consider vacating his position because both he and the Chief Justice had by their conduct failed to give leadership to the Judiciary as the two most senior judges in Lesotho. In September Justice Ramodibedi was suspended from his role as President of the Court of Appeal of Lesotho pending an investigation by a tribunal composed of former judges of the Constitutional Court of South Africa.

SRI LANKA

In April 2013, the CMJA together with the CLA, CLEA issued a resolution during the Commonwealth Law Conference held in Cape Town, calling for the Commonwealth to reconsider holding the next CHOGM in Sri Lanka, to restore the former Chief Justice to her position and to place Sri Lanka on the agenda of the Commonwealth Ministerial Action Group for serious and persistent violations of the fundamental principles. However, to date CMAG has not done this. Since the impeachment took place, the JSC Secretary has been replaced and judges have been threatened and over 60 judges and magistrates have been moved to other positions around the country. It is also alleged that some have received promotion to ensure their compliance with the current government. In the meantime, the former Chief Justice Shirani Bandaranayake has issued proceedings in court against her impeachment. The CLA and English Bar Human Rights Committee issued an amicus brief in the Supreme Court of Sri Lanka in August 2013. In November 2013, the IBA Human Rights Institute was due to hold a launch of their Report published earlier this year on "Making Commonwealth Values a Reality: the rule of law and the independence of the judiciary". Visas previously granted were revoked at the last minute. Sternford Moyo, IBAHRI Co-Chair commented 'By denying entry to the IBAHRI delegation the Government of Sri Lanka is demonstrating to the world its determination to block

freedom of speech and independent discussion in the country, leaving the Commonwealth Heads cocooned and isolated." The speakers at this launch included both the first and current UN Special Rapporteurs on the Independence of Judges and Lawyers. With the President of Sri Lanka taking on the chairmanship of the Commonwealth, many non-governmental associations involved in the promotion of the Commonwealth fundamental values are concerned that no progress will be made in the next two years as a result.

UGANDA

President Museveni has caused controversy by asking former Chief Justice Benjamin Odoki to remain in post for another 2 years. This appointment has now been challenged by MP Gerald Karuhanga MP on the grounds that it contravenes the Constitution and is contrary to the recommendation of the JSC who had already submitted the name of a suitable candidate to replace Justice Odoki who retired in June this year after 12 years as Chief Justice. The MP also contends that the constitution does not provide for the re-appointment of a retired Chief Justice to the post of a substantive Chief Justice of Uganda. According to reports in the press, this has also caused a rift within the JSC. In the interim Justice Steven Kavuma is Acting Chief Justice.

NEW MEMBERS

AUSTRALIA

Judge John Richard Baulch
The Honourable Justice John Alexander Logan
Mr Michael Halliday

BANGLADESH

Mr Sharif A M Reza Jaker

CAYMAN ISLANDS

Mrs Kirsty- Ann Gunn

ENGLAND AND WALES

Justice James Dingemans
Mr Alan Large
Judge Howard Riddle

FALKLAND ISLANDS

Mr Keith Robert Biles
Hon Chief Justice Christopher Gardner

GHANA

Justice Dennis Adjei
Justice Bawah Jacob Akamba

JERSEY

Mr William James Bailhache
Jurat John Claude Tibbo

Jurat Jill Meredith Clapham
Mr Matthew John Thompson

KENYA

Hon Mr Justice Isaac Lenaola

LESOTHO

Mr Rabuka Isdora Chalitse
Mrs Makamong Gugu Mokhorro

MALAYSIA

Mr Justice Gopal Sri Ram
Mr Stephen Sondoh

MAURITIUS

Mr Shameer Janhangeer
Mr Vijay Appadoo

NIGERIA

Mrs Abosede Folasayo Fagbola
Mrs Iyabode Rabi Salami
Mrs Joyce Oduaki Ejale
Mrs Isi Ukhun Iyioha
Mrs Mobolaji Olajuwon
Justice Oyebola Adepele Ojo
Hon Justice Chinwe Oriaku Onyeabo
Mrs Adenike Kudirat Shonubi
Hon Justice Angela Obiageli Anidi
Mrs Lynda Yeside Balogun
Mrs Tosan Roseline Enabulele
Mr Hilary Igemoh Enemaku
Hon Justice Modupe Fasanmi
Mrs Patricia Igbo Braimoh
Hon Justice John Inyang Okoro
Chief Registrar Abimbola Ayodeji
Olatunji-Daniel
Chief Magistrate Oriyomi Abiodun Sofowora
Hon Justice Abubakar Datti Yahaya
Mrs Caroline Oghuma

PAPUA NEW GUINEA

Chief Justice Salamo Injia

SOLOMON ISLANDS

Justice Stephen Pallaras

TANZANIA

Mr Saidi Mkasiwa

TRINIDAD AND TOBAGO

Mrs Indrani Cedeno

UGANDA

Mr Emmanuel Baguma
Hon Justice Elizabeth Kibula Kabanda

CALENDAR OF EVENTS

17 June 2013 – One day Conference: "The Legal and Judicial Legacy of Empire" London, UK organised jointly by the CMJA, CLEA, Institute of Commonwealth Studies
Contact: CMJA for further details.

7-11 September 2013- CMJA Conference, Livingstone, Zambia
more details to follow on: www.cmja.org