

# CMJA NEWS

The Newsletter of the Commonwealth Magistrates' and Judges' Association

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## EDITORIAL

Welcome to the latest edition of the CMJA News. The CMJA has been extraordinarily busy over the last 6 months with various activities including organising our most recent conference in Brighton and with training programmes. The CMJA has also been keeping an eye on issues of judicial independence throughout the Commonwealth. There are reports on challenges to judicial independence in Tonga and the Maldives.

In this edition, our Hon. Treasurer, reports on the training programme the CMJA ran in Zambia in August, and the EAMJA Meeting in Tanzania in May 2010. In addition the CMJA assisted the Commonwealth Secretariat in their training programme in Swaziland in March 2010.

The CMJA is delighted to welcome the Rwanda Judges' and Registrars' Association, as the newest Member Association. As reported last time, Rwanda joined the Commonwealth in November 2009. We are looking forward to working closely with the Rwandan judiciary and forging strong ties.

As always, the CMJA would not be able to undertake many of its projects without the assistance of interns from the Centre for Programmes Abroad (CAPA). We have been lucky to have the help of four interns since January. In particular, they have helped with the initial work on the Status of Magistrates project (see report below) and updating the Codes/Guidelines of Conduct/Ethics.

The CMJA is the repository for the Codes/Guidelines of Conduct/Ethics for the judiciary around the Commonwealth. We are pleased that we currently have 38 Codes for 45 jurisdictions. Member Associations and judiciaries are encouraged to send in their codes if and when these are updated so our records are accurate.

Following the resolution agreed at the General Assembly in 2009 in Turks and Caicos in relation to the inadequate safeguards of the independence of magistrates' across the Commonwealth, CMJA has undertaken an in-depth survey of jurisdictions over the past few months. An interim report is published on Page 6.

Sir Henry Brooke who has been Executive Vice President and a member of Council since 2006 retired at the Council Meeting in Brighton. The CMJA hugely appreciates the time, effort and energy he has given to the CMJA over the years his expertise and experience will be missed.

Our Executive Administrator, Kate Hubbard is also leaving the CMJA to move to Australia. Kate has worked for the CMJA for 2½ years. We wish her all the best.

August and September saw the passing of three friends of the CMJA. Former Regional Vice President from Tonga, Chief Magistrate Samiuela Palu passed away in September. He was a long serving and highly valued member of the CMJA. We would like to offer his family our sincere condolences.

Lord Bingham of Cornhill, who chaired the Commonwealth Law Lecture in December 2009, also passed away in September. He was a strong believer in the rule of law and human rights. Lord Bingham, who participated in a number of CMJA events, will be greatly missed by the legal community not only in the UK but also across the Commonwealth.

A founding member of South Africa's Constitutional Court, His Hon Justice Tholakele Madala passed away at the age of 73. Judge Madala was strongly committed to human rights and access to justice for all and spoke eloquently at the CMJA's conference in Cyprus in 1998.

We welcome contributions and feedback for the newsletter. Please contact the Secretary General and the address on the back page.

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## BRIGHTON 2010

### **“COMMUNITY JUSTICE AND JUDICIAL INDEPENDENCE: LOCAL ISSUES, COMMONWEALTH STANDARDS”**

The Commonwealth Magistrates’ and Judges’ Association, together with the University of Brighton, held its annual conference in Brighton from 13-16 September 2010. The Conference was attended by over 200 judicial officers and academics at all levels from 35 jurisdictions in the Commonwealth.

The Conference was opened by the President of the CMJA, Mrs Justice Norma Wade Miller of Bermuda and Prof. Julian Crampton, Vice Chancellor of the University of Brighton and marked the 40th anniversary of the Association.

Speakers included the Lord Chief Justice of England and Wales, Justice Khalil Ramday of Pakistan, Baroness Usha Prashar, Chairperson of the

Judicial Appointments Commission of England and Wales, Her Hon. Mrs Sanji Monageng of the International Criminal Court, Mrs Rosemelle Mutoka of Kenya and Mrs Desiree Bernard of the Caribbean Court of Justice.

Some of the issues raised included the preservation of judicial independence in appointments and in the face of pressures from the Executive Branch. Justice Henrietta Abban of Ghana stressed the necessity of judicial independence from Legislature and Executive stating *“virtually all constitutions have due regards for the principle of the separation of powers and this can only have true meaning if the institutions in which power is vested i.e. Legislature, Executive, Judiciary are truly independent”*. Other topics included the role of judicial officers in promoting human rights and protecting the liberty of the individual; issues relating to human rights in the ICC, military courts and war crimes tribunals; the particular challenges of dealing with gender, race, disability and other equality issues in the judiciary and before the

courts; the role of the appellate court; the promotion and protection of the rights of the child and the role of the judiciary in dealing with violence in the family and forced marriages.

For the first time, the issue of piracy on the high seas was discussed in a CMJA forum. Mrs Rosemelle Mutoka described the burgeoning effects that have reached Kenya. Infusing a detailed history of piracy with the laws against it since it began Rosemelle Mutoka gave the audience an uneasy sense of what has taken place at sea. She assessed the various successes and failures of the UNCLOS [United Nation Convention of Law at Sea (UNCLOS) Organisation] as well as the impact it has had on war torn countries like Somalia. The ‘regional’ perspective from Kenyans who have suffered losses in trade, oil, food, imported goods and tourism due to the dangerous atmosphere of the surrounding waters was also pointed out. Rosemelle suggested a concrete solution to ‘move forward’. This plan included first, a piracy/maritime information centre to keep the public



and government officials informed and secondly, a regional court to “try suspected pirates on a full time basis”.

Judge Martin Cardinal talked about the issue of forced marriages and how the UK and international courts have tackled the issue. The inhumane and degrading treatment and discrimination suffered by widows in some parts of the Commonwealth was a topic which Dr Karen Brewer covered under gender based violence. Judge Jeff Blackett, Judge Advocate General of Her Majesty’s Armed Forces, United Kingdom, spoke about the right to a fair trial of an accused person in the Court Martial, and the how they have dealt with soldiers accused of what amounts to human rights abuses committed against the civilian population during operations.

The Conference delegates also paid a visit to the newly opened Supreme Court in London and were given a presentation by Lord Hope of Craighead PC, Deputy President of the court and former President of the Association.

At the end of the Conference, delegates agreed the following statement:

*“Noting the objective of the Commonwealth (Latimer House) Principles endorsed in November 2003, Agreed with a view to strengthening the independence of the judiciary to undertaken an audit of adherence to these principles amongst member countries of the Commonwealth Magistrates’ and Judges’ Association”.*

## SENIOR OFFICIALS OF COMMONWEALTH LAW MINISTRIES MEETING (SOLM) AND MEETING OF THE LAW MINISTERS AND ATTORNEYS GENERAL OF SMALL JURISDICTIONS (LMSJ)

The SOLM met from 18-20 September 2010 to discuss the agenda for the



Delegates at the CMJA 40th Anniversary Dinner, September 2010

Law Ministers Meeting in Sydney in July 2011. Issues discussed included access to justice, legislative drafting, humanitarian law and international disaster response laws, rules and principles, enforcement of judgements and mutual assistance between countries in criminal matters across the Commonwealth as well as human trafficking, counter-terrorism, human rights and strategies to combat corruption.

Dr Karen Brewer, on behalf of the Latimer House Working Group, presented a paper on the status of Implementation of the Commonwealth (Latimer House) Principles and Sir Philip Bailhache presented a report on the CMJA activities since the Law Ministers Meeting in 2008. In addition, our sister organisation, the Commonwealth Lawyers’ Association made a presentation on the decriminalisation of homosexuality across the Commonwealth and the status of the death penalty in the Commonwealth.

The LMSJ met from 21-22 October covered such topics as the role of the Attorney General in small states, e-judiciary and the use of technology in courts in small jurisdictions, media freedom and defamation, juvenile justice in small states, and alternative sentencing and overcrowding in prisons in small states.

The CMJA gave a presentation on the implementation of the Latimer House

Principles and its own activities at the meeting.

## JUDICIAL INDEPENDENCE ISSUES

### MALDIVES

President Nasheed was elected in late 2008 following the introduction of a new Constitution.

In September 2008, a new Chief Justice was appointed in accordance with the transitional provisions of the new Constitution: Judge Uz Ahmed Faiz Hussain. Article 147 of the constitution states the President shall appoint the Chief Justice after consultation with the Judicial Service Commission (JSC) and the confirmation of the appointment by the People’s Majlis.

Under the new provisions of the Constitution, apart from the Chief Justice, all existing judges continued in office but the JSC were tasked with determining whether these existing judges could continue under the new provisions of the Constitution. The JSC was given two years to determine whether existing judges were eligible under Article 149 which states that judges must possess the educational qualifications, experience, and competence and be of high moral character.

It was reported in May 2010 that President Nasheed held reservations about the criteria drawn up by the JSC to determine suitability. In particular, he felt that the complexity of cases currently being heard in the Maldives required more substantive educational criteria than those proposed by the JSC. He did not believe that already 'being in office as a judge' and not having been found guilty of one of the 29 criminal offences as determined by the Commission was sufficient to assess 'high moral character'.

This resulted in standoff between the JSC and the current government; especially as in August 2010 a number of judges were processed by the JSC, one of which had been convicted by the previous government, prior to the introduction of the new constitution for violating the Religious Unity act and disobeying orders. The police surrounded the JSC building in an attempt to stop the judges taking the oath allegedly at the request of the President.

On 1 July 2010 it was reported in Miadhu News that the "Maldives Supreme Court has said that Maldives judiciary will play its part in sustaining the constitutional governance of the country throughout any crisis Maldives faces. The Supreme Court also said that several provisions of the Constitution which pledged for

strengthening democracy will assist in this. It also noted that the first and foremost, Executive, Judiciary and Legislature should not encroach into the duties of other powers and that none of the powers should exert influence on the other."

The deadline for the creation of a new Supreme Court expired on 7 August 2010 and an interim council was set up to look after administrative affairs of the Supreme Court and Department of Justice. The Attorney General resigned on 8 August 2010 citing a 'constitutional void' following the failure of parliament to enact legislature ensuring the continuation of the institution of the judiciary.

A new Supreme Court was appointed on 10 August 2010 and a new Judges Act enacted. This upholds judicial independence, governs ethical standards and rules on appointment and dismissal, as well as powers, responsibilities and practicalities such as salaries and allowances. The law also requires serving judges to meet a certain standard within seven years or face dismissal.

At the 2nd anniversary celebration of the Supreme Court, Chief Justice Faiz noted the importance of judges learning new laws quickly due to the

rapidity at which they were being introduced, passed and ratified over the past two years. To this end, the UNDP has begun a programme "Reaching Justice" to aid judges in becoming accustomed to the new laws.

The Commonwealth Secretary General, Mr Kamallesh Sharma has recently visited the Maldives. Ahead of his visit he stated: "The Commonwealth has a long-standing engagement with Maldives and has been closely associated with its transition to multi-party democracy. I look forward to further discussions on his vision for Maldives and how the Commonwealth can work hand-in-hand with his administration and other stakeholders in Maldives to support national development, including the consolidation of democratic processes, institutions and culture, and in particular, the promotion of the Commonwealth's Latimer House Principles that define the balance between the three branches of government."

## **TONGA**

In April 2010, the Attorney General of Tonga resigned citing interference in the judiciary as one of his reasons for resigning. Some of the current difficulties in Tonga on issues of judicial independence can be traced back to the enquiry into the sinking of Princess Ashika Ferry in August 2009 in which 74 people died and the fact that the government has still not officially published the report from the Commission (even though it is available on the web).

He said that Government, instead of releasing the report, "To the contrary, Cabinet resolved to fund a legal challenge to the Report. The former Minister of Transport Mr Paul Karalus commenced legal proceedings seeking to stop the publication of parts of the report and claim damages from the Royal Commission and an apology."

Controversy also surrounded the non renewal of the Chief Justice's contract and the resignation of Judge Warwick, a judge of the Supreme Court. In addition, the King repealed the JSC Act which had only been in force for

## **REQUEST FOR CASE LAW ON WIDOWS RIGHTS**

Widows Rights International, (WRI) a UK-based charity, is a leading advocate for the rights of widows worldwide and the end to discrimination and the inhuman and degrading treatment suffered by many widows across the globe.

At the CMJA conference held in Brighton, the Secretary General spoke about the challenges faced by widows around the world.

As part of its work to document the plight of widows, your Secretary General, on behalf of WRI is appealing for case law from around the Commonwealth on issues affecting widows, so please forward copies of any decisions or judgements to the CMJA.

If, as a magistrate or judge, you have dealt with cases affecting widows, please let the Secretary General have a copy of any decisions or judgements relating to such cases.

4 years. He replaced the JSC by the creation of a Lord Chancellor who would be responsible, with a Panel (which does not include an independent representative of the Law Society) and this means that the appointment system is under the Executive control contrary to the Latimer House Principles.

The President of the Law Society was of the opinion that the JSC “guaranteed total independence of the judiciary and the ability of everyone, including Government to obtain justice in the courts.” The Act had established a Commission, which comprised the Chief Justice as Chairman and three members who were the Secretary for Justice, the Solicitor General and the President of the Law Society, and it was given the authority to make recommendations to the Privy Council for the appointment (and reappointment) of judges. In its place the Government passed a bill to create the post of Lord Chancellor to fulfil the functions previously undertaken by the Commission.

On 11 August 2010 the Law Society of Tonga issued a statement accusing the Government of attempting to influence the judiciary. The President, Laki Niu said, “The judiciary is no longer independent.” The President was responding to an announcement by the Prime Ministers Office on August 5 that the Privy Council had approved the establishment of a “Royal Commission of Inquiry into reports that Government has attempted unduly to influence the independence of the judiciary.”

In its media statement on 5 August the Prime Minister Office stated that the Government wanted to reassert that it “would not tolerate any interference with the judiciary.”

The depletion of the judiciary includes the loss of a number of magistrates who have not been replaced. The loss in particular of the Chief Magistrate, Samiuela Palu on 19 September, was deeply felt not only with Tonga but in the Commonwealth as well. As a result a number of magistrates have

been brought back from retirement but the situation remains unsatisfactory.

A new Chief Justice, Justice, Hon Michael Scott, formerly on the High Court of Fiji, was appointed in August and started on 27 September.

Tonga will be going to the polls for the election of a new government in November 2010 and the CMJA continues to monitor developments in the judiciary in Tonga.

## **EAST AFRICAN MAGISTRATES' & JUDGES' ASSOCIATION CONFERENCE**

The Eighth EAMJA Conference took place 17th – 22nd May 2010 in Arusha, Tanzania. The CMJA was represented by Mr Paul Norton, the CMJA Treasurer. The theme for this conference was Human Rights in East Africa.



Professor Julian Crampton, Vice Chancellor of the University of Brighton; Mr Paul Norton JP, CMJA Treasurer; Her Hon. Mrs Justice Norma Wade-Miller, CMJA President; Her Hon. Justice Sanji Monageng, International Criminal Court; Deputy President, Supreme Court of the UK Lord Hope of Craighead; His Hon. Chief Justice Mahapela Lehohla, Chief Justice of Lesotho at the CMJA 40th Anniversary Dinner

Over the course of the conference a number of topics were presented including the Role of National & Regional Courts in protecting Human Rights and Developing Human Rights Jurisprudence; Facilitating access to justice through Legal Aid services; The role and place of the Media, Civil Society and the Academia in safeguarding and promoting human rights in East Africa; and The right to political participation and elections.

Paul Norton made two presentations on the work of the CMJA.

The recommendations to come out of this conference included:

- Be mindful of requirements to make reference to EACJ concerning interpretation and application of the EAC Treaty and Protocols;
- National officials and EAC organs to ensure uniformity and consistency of interpretation of EAC Treaty;
- Teaching of EA Community law to students at universities and law schools and as continuing education to the Bench and the Bar throughout East Africa;
- EAMJA should seek ongoing debate embracing EAC, COMESA, and SADC with a view to contributing to the definition of the states and jurisdiction of the courts of the Tripartite Economic Community
- Recognising need for all citizens to have access to justice with clear policy and a comprehensive framework on legal aid
- To accommodate victims of crime in the legal aid schemes
- Judiciaries should encourage and support the establishment of legal aid centres that provide outreach services and enhance access to justice, especially for people living in poverty and other vulnerable groups
- Judiciaries have limited platforms from which they can speak and the need to actively maximise the use of those platforms
- The co-operation between the academia and judiciary in conducting comparative studies on constitutions of East African Community partner states and decisions of human rights in order to develop human rights jurisprudence in East Africa;
- Without compromising judicial independence, the need for judiciaries to cooperate with the media and civil society in creating

awareness amount the people on protection and promotion of human rights

- Recognising the role of courts in ensuring political stability especially during and after elections

## STATUS OF MAGISTRATES – EARLY FINDINGS

The CMJA was originally set up 40 years ago because “Notwithstanding the impressive powers which they should exercise and the fact that many Commonwealth Magistrates worked under heavy pressure their security and independence left much to be desired and in some places the conditions under which they had to operate were appalling.” As stated Sir Thomas Skyrme a founder of the CMJA.

Some 40 years later, there are still problems related to the treatment, training and security of tenure for the magistracy across the Commonwealth.

By magistrate we mean all judicial officers working in the lower courts whether they are professionally qualified or are lay members of society.

At the CMJA’s 2009 conference in Turks and Caicos (TCI) the following resolution was agreed: “This General Assembly deplores the fact that in parts of the Commonwealth the independence of the magistracy is inadequately safeguarded and requests Council together with the Commonwealth Secretariat to take positive steps to eliminate these breaches of the Latimer House Principles wherever they occur.”

This is regarded as a very important three year project culminating in a report back to the General Assembly at the 2012 Triennial.

In the past the CMJA has gathered anecdotal information on the status of magistrates or made representations in different jurisdictions about the status of magistrates, during the course of constitutional or legislative consultations. However, no concrete study had previously been made of the status of magistrates across the Commonwealth.

In order to assess the position of these judicial officers the CMJA has undertaken an in-depth survey of existing practice.

From the questionnaire responses received thus far, it has become clear that there are eight main topics to be focussed on.

### CONSTITUTIONAL/LEGISLATIVE PROTECTION

In most jurisdictions the process for the appointment and removal of judges of the higher courts is mentioned either in the Constitution or statutes of the jurisdiction in question. In the majority of Commonwealth jurisdictions the independence of the magistracy is without legislative protections. It relies on convention and executive self-restraint. If self restraint is not exercised or if conventions are disregarded, salaries and benefits of magistrates may be affected, magistrates may be transferred or dismissed by the executive without prior notification to other posts

Even when procedures are set down in legislation or in the country’s Constitution, these provisions are not always followed in practice.

Sometimes the only safeguards for a magistrate are the statutory safeguards that guarantee immunity from civil or criminal liability for actions taken during the course of the judicial function.

### APPOINTMENTS

In a number of jurisdictions, especially the smaller jurisdictions or overseas/dependent territories, which still retain a Governor or Governor General, the latter may have been given the responsibility for the appointment of magistrates’ as opposed to the Chief Justice, although the Chief Justice may be consulted.

In a number of jurisdictions the process of appointing magistrates differs from that of judges. The methods include a majority decision by the Judicial Service Commission (or similar); separate commissions for appointing different levels of judicial officers; by independent appointments advisory committees, or by qualifying in a judicial service examination.

## **PROGRESSION WITHIN THE JUDICIARY**

In jurisdictions where human resources are limited, progress from the lower judiciary to the higher judiciary can be seen as preferable to the appointment of lawyers with limited experience in court or on the bench. It is especially a challenge when those lawyers are appointed from the ranks of government. In jurisdictions where practising lawyers are favoured for the higher bench, resentment from the lower bench can be detrimental to judicial independence. In some jurisdictions, non-progression between the magistracy and the higher judiciary is considered a guarantee of independence in itself.

## **SECURITY OF TENURE**

The essential requirement of security of tenure is "protection against unjustified or arbitrary removal from judicial office." Although some countries do provide the same security of tenure to all levels of the judiciary, most jurisdictions differentiate between the lower and higher judiciary when it comes to security of tenure. In countries where there are lay magistrates their security of tenure may be even more tenuous.

## **SALARIES AND BENEFITS**

A distinction should first be drawn between the status of lay magistrates and that of professionally qualified magistrates. In most jurisdictions lay magistrates are volunteers who do not receive a salary and may only be paid expenses. They are not entitled to any other benefits such as pensions.

In the case of professionally qualified magistrates, on the other hand, salaries, allowances and benefits may be fixed by the Legislature or the Executive. In some cases salaries may be fixed by the Government in consultation with the higher judiciary.

In some jurisdictions salaries and benefits are dealt with by separate bodies (one for magistrates and one for judges). The age of retirement of magistrates differs from that prescribed for judges in a number of jurisdictions.

## **TRAINING**

Because funding for training course is usually hierarchical, it is rare that magistrates receive the opportunity to undertake training, especially foreign training. Access to training materials, law reports, books and periodicals can be limited. Access to IT is also hierarchical based.

Professionally qualified magistrates may enjoy better training opportunities, due to their educational qualifications, than magistrates at lower grades.

## **DISCIPLINE/REMOVAL**

Again, the procedure for the removal of magistrates may differ whether or not they are lay or professionally qualified. However in some jurisdictions the removal of magistrates, like their appointment, may be left in the hands of politicians – with the criteria for removal being quite vague.

In some jurisdictions the dismissal of magistrates may be governed by the rules that apply to civil servants.

## **INSTITUTIONAL ISSUES AFFECTING THE STATUS OF MAGISTRATES**

The threat to judicial independence is at its strongest at the level of the magistracy. Being at the lower level of the judicial hierarchy, magistrates courts, "tend to be under-resourced and often the recipients of the bread crumbs of the 'fiscal bread-basket.'" This can manifest itself in the lack of facilities available at the courts.

Magistrates' courts may be situated at some distance from the nearest town, in the 'spare room' of the police station or in town halls. These types of spaces are not conducive to the magistracy appearing independent or to the magistrates working effectively.

In most jurisdictions there is little if any interaction between the higher and lower judiciary. This chasm can be detrimental to judicial independence as a whole of the lack of support by the higher judiciary could lead to a lowering of standards in the overall administration of justice and a division of loyalties.

**The CMJA is still accepting responses for this project. If you would like a questionnaire, please contact the CMJA Secretariat.**

## **INSTITUTE OF LEGAL EXECUTIVES**



The Institute of Legal Executives ILEX was founded in 1892 and became a company limited by guarantee in 1963. ILEX has branches throughout England and Wales and many members overseas. It is recognised in England and Wales a core regulator of the legal profession and works closely with Government and the Ministry of Justice.

It is the professional body which represents 22,000 trainee and practicing Legal Executives in England and Wales. It aims to enhance the role and standing of Legal Executives in the legal profession.

In August, announced that the first Legal Executive had been appointed as a Judge. Ian Ashley-Smith was appointed as a Deputy District Judge on the South Eastern Circuit.

Judge Ashley-Smith began his career as an Outdoor Clerk in 1969, a few years after the establishment of the Institute of Legal Executives (ILEX). He qualified as a Fellow in 1981 and specialises in Family Law. He has additionally qualified as a Family Mediator. His appointment is the direct result of changes resulting from the Tribunals Courts and Enforcement Act 2007, which made Legal Executives eligible to apply for selective judicial roles.

## IN THE DOCK: SWAZILAND AIMS TO HELP WITNESSES FEEL SAFER IN COURT

*The following report on the Training the CMJA undertook with the Commonwealth Secretariat was published on the Commonwealth Secretariat's website on 27 April 2010. The CMJA provided support for the training and facilitation. The Director of Programmes was one of the facilitators and one of the CMJA's members, Mrs Delia Turner, helped draft the programme and participated as a facilitator.*

The use of video links and screens in court were discussed during Commonwealth training

Swaziland has sought advice from the Commonwealth Secretariat in improving its treatment of vulnerable witnesses in court, as it continues to deal with high numbers of cases involving sexual violence against children.

Mark Guthrie, a Legal Adviser with the Secretariat, visited the country last month, to speak to judges and magistrates about improving measures to help vulnerable witnesses feel safer in court. A vulnerable witness in Swaziland's legal system means a witness who is younger than 10 years old.

Mr Guthrie said: "I think the training raised awareness of the needs of vulnerable witnesses; it should improve the skills of judges and magistrates in carrying out their function and it should lead to small but effective measures being implemented in courts such as putting up a curtain around the witness box."

A 2007 study by the United Nations Children's Fund (UNICEF) and the Centers for Disease Control and Prevention (CDC) in the USA found that in Swaziland, a country of just over one million people, approximately one in three women experienced some form of sexual violence as a child.

Incidents most frequently occurred in the home, either the home of the respondent or the home of a friend, relative or neighbour. Swaziland also has the highest rate of infection for HIV in the world.

### **NO ALLOWANCES MADE**

Following a needs assessment last July, judges and magistrates, with the latter frequently dealing with the bulk of sexual offences cases, asked for training on working with vulnerable witnesses. At the time a vulnerable witness was treated as any other witness and no allowances were made for the witness being young, even when giving evidence in adult courts.

Delia Turner, a magistrate from Durban, South Africa, with experience of dealing with vulnerable witnesses, visited Swaziland in February 2010 to make sure that the training would meet the needs of magistrates and judges. The training course was designed with input from Shamim Qureshi, a District Judge in Birmingham, UK, and Director of Studies of the Commonwealth Magistrates' and Judges' Association (CMJA).

During the course in March, jointly organised by the Commonwealth Secretariat, CMJA and the Ministry of Justice of Swaziland, the team spoke about sensitivity and patience in dealing with child witnesses, and the use of video links, and screens in court, to provide greater reassurance for witnesses and to prevent them seeing the accused. Currently Swaziland has one court room equipped with CCTV.

They also discussed whether victims are tested for HIV, medical evidence, cross examination of child witnesses and the court's duty to control it.

At the end of the course, the Principal Secretary in the Ministry of Justice said they would begin to use the measures immediately and train their colleagues in what they had learned.

### **PROVIDING PROTECTION**

The course comes at a particularly important time with the impending

enactment of the Sexual Offences and Domestic Violence Bill in Swaziland.

Under the country's current pre-colonial laws, the indecent treatment of children and also rape of a male child are not considered crimes.

The Sexual Offences and Domestic Violence Bill, which was gazetted on 10 July 2009, will strengthen and consolidate certain common law and statutory provisions so as to adequately provide for successfully dealing with, in a non-discriminatory manner, sexual offences and domestic violence. It will also provide adequate protection to complainants, such as special measures for the treatment of witnesses in court.

The Bill has broadened the definition of rape to cover not only unlawful sexual intercourse with another but also unlawful sexual acts committed under certain circumstances, including in any coercive manner, under false pretence or by fraudulent means, under duress, fear of violence or psychological oppression.

## ZAMBIAN SUPREME & HIGH COURT JUDGE TRAINING WORKSHOP

The CMJA was invited to organise a training session on the UN Convention on the Rights of the Child at this training workshop, held 16 – 20 August 2010. The CMJA Treasurer, Mr Paul Norton and the CMJA Director of Programmes, Judge Shamim Qureshi attended.

This report is by Paul Norton

The first part of this workshop was presented by the International and Zambian Associations of Women Judges on Jurisprudence of Equality. The CMJA ran a two day session following this. The session focussed on the UN Conventions on the Rights of the Child. The CMJA were asked to present this topic following on from the resolution that was agreed in Turks and Caicos 2009 on The Law and the Child.



The Chief Justice has indicated that as the UN Convention on Rights of the Child has been signed and ratified by Zambia; judges may refer to the Convention when dealing with cases involving children instead of being limited by domestic statute law.

The CMJA programme for this workshop was based on talks, films, sentencing exercises and discussions on a range of prepared questions. The talks covered the Convention and children/family related court matters. The films related to preparation of children as witnesses in court and the use of 'special measures' such as giving/obtaining of evidence with the use of screens or video links. The sentencing exercises were in respect of criminal acts related to children and the 45 prepared questions referred to aspect of the Convention and how they were dealt with in Zambia. The sentencing exercises and questions were discussed by dividing the participants into three groups and then comparing the results. The aim of this type of training was to enable the judges to hear of experiences of other colleagues in order to help them to deal with situations arising in the future.

During the course of the session it appeared that Zambian judges operate on minimum sentences for many offences rather than working within general guide lines. This ties their sentencing powers in many respects and it was interesting in the sentencing exercises what a wide range of sentencing suggestions were proffered on the same case scenarios. One peculiarity that came to light is that the offence of child defilement (sexual assault including touching of private parts) carries a minimum 15 year sentence, whereas sentencing for rape of a child allows a discretionary sentence up to a maximum of life imprisonment.

The training workshop also included a visit to the Magistrates' Court and the High Court in Livingstone so that facilitators could familiarise themselves with court arrangements in Zambia and discuss concerns of children appearing in court.

## COMMONWEALTH ASSOCIATION OF LAW REFORM AGENCIES



The Commonwealth Association of Law Reform Agencies (CALRAS) is holding its biennial conference in Hyderabad, India on 4 and 5 February 2011. It is organised by CALRAS with the assistance of the Law Commission of India.

The CALRAS Conference is timed to suit those who may also wish to attend the Commonwealth Law Conference (CLC), an entirely separate, large and prestigious international event. This takes place from 5 – 9 February 2011. The CLC includes a session of particular interest to those attending the CALRAS conference. It is entitled "Law Reform and the Need for Change".

Further information regarding the CALRAS conference will be sent out as soon as it is available, in the meantime please direct all enquiries to CALRAS. Email: [thesayers@hotmail.com](mailto:thesayers@hotmail.com) Web: [www.calras.org](http://www.calras.org)

## UN GENERAL ASSEMBLY TO ADDRESS WOMEN AND CHILDREN'S RIGHTS IN CORRECTIONAL SYSTEMS



*This article is based on a report written by Deidra Roberts, WHO for the UN Special, No 698, published September 2010*

In April 2010 the UN Congress on Crime Prevention and Criminal Justice had, sanctioned the "UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Draft), also known as the "Bangkok Rules". These new rules were endorsed by UNODC in May 2009.

It is hoped that world governments will adopt the recommendations for advancing gender equality and children's empowerment. The 70 new rules supplement the 1955 UN Standard Minimum Rules (SMR) for the treatment of prisoners. The SMRs consist of 95 rules. They were adopted by the First Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955.

At the June panel session, Tomris Atabay stated that as a direct outcome of the Salvador Declaration UNODC are currently working on strategies to reduce over-crowding. Other initiatives include defining a set of principles and guidelines to assist countries to improve access to justice and legal defence mechanisms; a handbook on alternatives to over-crowding; and legal aid options to help reduce detention and imprisonment that lead to over-crowding in prisons.

Vongthep Arthakaivalvatee, representing Thailand mentioned that among issues addressed are medical screening of women upon entry to penal institutions and child rearing responsibilities. Other essential areas tackled were women's health in prison, personal hygiene, preventative health measures, and any previous incidence of violence. "This is not just about physical health but also mental health and safety. Ignoring these aspects frequently leads to self-harm and suicide" concluded Mr. Arthakaivalvatee.

In addition, Rachel Brett reported on progress of a project to address the lack of substantive research on how children's rights are restrained by current justice systems. This specific research programme is called Children of Prisoners, interventions, and mitigations to strengthen mental health (COPING). The scope of the COPING project looks at children exposed to "triple jeopardy", through break-up of the family, financial hardship, and extremes of stigma and secrecy, leading to adverse social and educational repercussions. COPING is focusing on three European countries, including the United Kingdom.

*"Extensive research is not only about the children but will actually get them involved in participating in this project by disseminating research results to policy makers, professional bodies and key organisations."*

## NEW MEMBERS

The CMJA is extremely pleased to welcome the **RWANDA JUDGES AND REGISTRARS ASSOCIATION** as our newest Member Association following their admission to the Commonwealth in late 2009.

We are also pleased to welcome the following new individual members to the CMJA:

**Justice Henrietta Abban**  
GHANA  
**Mr Alfred Abhulimen-Hoha**  
NIGERIA  
**Mr Aderemi Adegoroye**  
NIGERIA  
**Magistrate Modupe Aina**  
NIGERIA  
**Justice Joseph Akamba**  
GHANA  
**The Hon. Justice Margaret Akpomiemie**  
NIGERIA  
**Mrs Maimuna Aminu Abubakar**  
NIGERIA  
**Justice Kwabena Asuman-Adu**  
GHANA  
**His Honour Judge Martin Cardinal**  
ENGLAND & WALES  
**His Honour Judge Christopher Critchlow**  
ENGLAND & WALES  
**Mrs Merline C Daley JP**  
JAMAICA  
**Mrs Eunice Bolaji Daodu**  
NIGERIA  
**District Judge Anselm Eldergill**  
ENGLAND & WALES  
**Sheriff Michael Fletcher**  
SCOTLAND  
**Mr Leonard Hedworth**  
ENGLAND & WALES  
**Mrs Elsie Uzoamaka Hudson**  
ENGLAND & WALES  
**Mr Robert N Hulley JP**  
SCOTLAND  
**Mr Del Hunter**  
ENGLAND & WALES  
**Judge Abubakar Idris Kutigi**  
NIGERIA  
**Mrs Esther Nnenna Ifeanyi-Nwuke**  
NIGERIA  
**Mrs Ann-Marie Joseph LL.B ACII**  
ST LUCIA  
**Judge Richard Mac Kogyapwah**  
GHANA  
**Dr John A Lowndes**  
AUSTRALIA

**Magistrate Ibrahim Mohammed**  
NIGERIA  
**Mrs Chikodilu Judith Momodu**  
NIGERIA  
**District Judge Loraine Morgan**  
ENGLAND & WALES  
**Magistrate Wilfred Kopa Muma**  
ZAMBIA  
**Mr Nigel Kalonde Mutuna**  
ZAMBIA  
**Mrs Franca I Oghoator**  
NIGERIA  
**Mrs Caroline Enere Oghuma**  
ENGLAND & WALES  
**Hon. Justice Mark A O'Regan**  
NEW ZEALAND  
**Mr James Uyi Oyomire**  
NIGERIA  
**Mr Isaac Su Kiun Pang**  
MALAYSIA  
**Mr Kolawole Peters**  
NIGERIA  
**Mrs Yetunde Pinheiro**  
NIGERIA  
**Magistrate Asha Jankee Ramano-Egan**  
MAURITIUS  
**Principal Magistrate Don Shanaka Ranasinghe**  
SRI LANKA  
**District Judge Naomi Redhouse**  
ENGLAND & WALES  
**The Honourable Judge William Rodgers**  
CANADA  
**His Honour Emmanuel Siameh**  
GHANA  
**Magistrate Muhammad Haroon Syed**  
PAKISTAN  
**Justice Oluwatoyin Taiwo**  
NIGERIA  
**Mr Keng Seng Tin**  
SINGAPORE  
**Mrs Helen Isang Umana**  
NIGERIA  
**Mrs Geraldine Umugwaneza**  
TANZANIA  
**Magistrate Siyaka M.J Usman**  
NIGERIA  
**Mr Charles Ndudi Wali**  
NIGERIA  
**Justice Paula-Mae Weekes**  
TRINIDAD & TOBAGO  
**Judge Thomas S Woods**  
CANADA  
**Mr Murtala J Zubairu**  
NIGERIA

## CALENDAR OF EVENTS

### Commonwealth Association of Law Reform Agencies

Law Reform  
Hyderabad, India  
4th & 5th February 2011  
[www.calras.org](http://www.calras.org)

### Commonwealth Lawyers Association

17th Commonwealth Law Conference  
Hyderabad, India  
5th – 9th February 2011  
[www.commonwealthlaw2011.com](http://www.commonwealthlaw2011.com)

### Commonwealth Magistrates' and Judges' Association

Kuala Lumpur, Malaysia  
18th – 21st July 2011  
More details to be communicated in due course  
[www.cmja.org](http://www.cmja.org)

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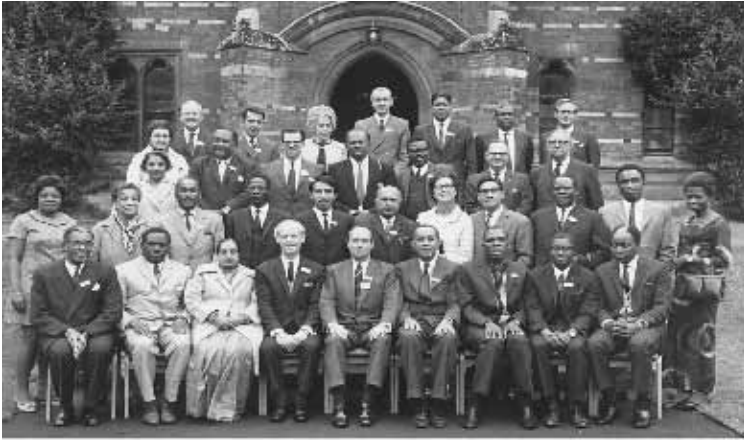
### Commonwealth Magistrates' and Judges Association

Uganda House  
58-59 Trafalgar Square  
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Tel: 0207 976 1007  
Fax: 0207 976 2394  
Email: [info@cmja.org](mailto:info@cmja.org)

## FORTY YEARS IN PHOTOS

The following are some of the photos from the past forty years of the CMJA



CMA Conference Oxford 1970



Sir Thomas Skyrme with His Royal Highness, the King of Tonga during the South Pacific Seminar 1976



Delegates during a day out to Malacca, Malaysia 1975



Delegates at the Opening of the Seventh CMA Conference, Cyprus 1985



Delegates during a day trip in Sydney 1991



Council members in discussion during the study visit to Singapore, 1999



The flagbearers and officers of the Local Organising Committee – CMJA Triennial Conference, Mangochi, Malawi 2003



Mock trial in traditional court – Cape Coast Ghana - 2005



Brighton 2010 CMJA Conference Delegates "Community Justice and Judicial Independence: Local Issues, Commonwealth Standards"

