



GENDER SECTION NEWSLETTER

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Greetings From the Chairperson



This edition of the newsletter continues to highlight the successful careers and achievements of women across the Commonwealth.

I am pleased to draw attention to the accomplishments of Justice Margaret Ramsay-Hill, the first female Chief Justice for the Turks and Caicos Islands.

I have also included a summary of a report and analysis of agreed conclusions from the 61st session of the Commission on the Status of Women held in March 2017 in New York, which illustrates the accomplishments in relation to women's right to work, rights at work

and rights to full and productive employment.

Dr. Karen Brewer shares with us the interesting experience she had attending a Women in Leadership event hosted by the High commissioner for Canada to the United Kingdom featuring an informal conversation between Justice Rosalie Abella of the Supreme Court of Canada and Baroness Hale, Deputy President of the Supreme Court of the U.K.

Dr. Brewer has also included a report on her participation at the March 2017 FIDA UK Congress where the theme was: Rule of Law in the International Market Place and Its Impact on Gender Issues.

Ms Naume Sikohya, the representative to the gender section for East, Central and Southern Africa, has contributed an article discussing the concept of bride price and the need to rethink its role in a modern society.

Also included is interesting information gathered from around the Commonwealth including the Africa Regional Conference of the International Association of Women Judges held in Kenya in May 2017;

challenges in the law in Bangladesh; and positive developments in the law in Malawi, Mauritius, the Solomon Islands, South Africa and Zambia. Lastly, as discussed at the September 26 meeting of the Gender Section in Georgetown, Guyana, we have gathered available data on gender representation in the courts.

CONTENTS

1. Greetings from the Chairperson
2. Profile: The First Female Chief Justice for the Turks and Caicos Islands
2. Bride Price – Rethinking its Role In a Modern Setting
6. 61st Session of the Commission on the Status of Women
7. Women on the Bench: In Conversation with Supreme Court Justices from UK & Canada
8. Women Representation in the Judiciary
9. Rule of Law in the International Marketplace and its Impact on Gender Issues
9. News from Around the Commonwealth
12. A Short History of the Gender Section
13. Seeking Regional Representatives of the Gender Section

As you will see, this information reveals significant differences in the level of female representation in high courts while the participation rate is more encouraging in what we have defined as the subordinate courts. We would welcome input and additional information from our readers.

We very much appreciate Naume's continuing contribution to the newsletter and invite and encourage others to consider making a contribution by informing us of developments or challenges in your jurisdiction, issues of concern and positive legislative and jurisprudential changes.

We are very grateful to the CAPA interns working at the CMJA Secretariat, Alexandra Sandler and Ameena McKnight for their research and compilation of this newsletter. I hope that many of you will attend the next meeting of the Gender Section scheduled for September 26, 2017 at 4 p.m. in Dar-Es-Salaam.

STOP PRESS:

As we go to print, the story of [inequality in BBC Pay](#) between women and men has dominated the headlines in the UK. More information in the next issue!

Profile: The First Female Chief Justice for the Turks and Caicos Islands



The CMJA was delighted to learn of the well-deserved honour bestowed on our friend, Justice Margaret Ramsay-Hale, when she was appointed as

the first female Chief Justice of the Turks and Caicos Islands in 2014. Justice Ramsay-Hale has always been a strong leader within the CMJA and she will bring these qualities to her position as Chief Justice.

In addition, her depth of experience as a lawyer and jurist is most impressive. Prior to her appointment as Chief Justice, Justice Ramsay-Hale was a Judge of the Turks and Caicos Islands Supreme Court. She began her legal career in Jamaica in the Chambers of Howard Hamilton after being called to the Bar in 1991. She then became a Crown Counsel in Jamaica in 1994. Shortly after, Justice Ramsay-Hale was appointed as a judge of the Family Court in St. James, Jamaica in 1995 and eventually moved to the criminal courts as a Resident Magistrate. She then moved to the Cayman Islands to serve as a Magistrate of the Summary Court in 1998, and in 2006 she sat as an Acting Judge of the Grand Court for several months. In 2008, she was appointed Chief Magistrate of the Summary Court, and in 2011 she moved to Turks and Caicos Islands for her appointment to the Supreme Court.

Justice Ramsay-Hale holds a law degree from the University of the West Indies in Kingston, Jamaica and an economics degree from the London School of Economics. Her own illustrious career follows the path carved out by her father – the late Ian Ramsay QC – who has the distinction of being named the first Queens Council in Jamaica. He had his own style of advocacy and knew how to captivate a courtroom. He was a dynamic character and was widely regarded as one of the best lawyers in the Caribbean.

Justice Ramsay-Hale is one of the many women in the Turks and Caicos who hold a top position within the government. In December 2016, the island elected its first female premier, Sharlene Carwright-Robinson. Women also hold the titles of deputy

governor, attorney general, chief magistrate, director of public prosecutions and five of the seven permanent secretaries. Additionally, 14 of the 17 law students from the Turks and Caicos currently training overseas, are female. The island is a shining example of what can be achieved when barriers restricting equal opportunity are removed.

Bride Price – Rethinking its Role in a Modern Society

By Ms Naume Sikohya, Uganda

Bride wealth is defined as “a customary gift before, at, or after the marriage from the husband and his kin to the wife and her kin”.¹ Bride price and bride wealth are often used interchangeably, but some who engage in the custom protest the use of bride price, because they do not consider it a commercial transaction in which a man purchases his wife as a price of property. Matrimonial gifts that flow from the male to the female side of the family are compensation for the women's companionship and labour.² Moreover, it often legitimizes the membership of the children to their father's descent group. In light of this, the term progeny price is also used, emphasizing the transfer of the children rather than their mother to the father's lineage.³ Bride price is a gender issue with implications on gender relations in different socio-cultural contexts. It also impacts Sexual and Reproductive Health and Rights and violence against women. Indeed, its payment has implications on gender relations, values, expectations and roles. In

¹ Adopted from *Stiftung Nasmann Friedrich (1995), Eliminating Discrimination against Women; Constitutional Rights Project Abuja, P.16.*

² Ibid.

³ Ibid.

her ethnographic studies in Kiisi District in Kenya, Silbrersmidt⁴ conceptualized violence as a problem of transition from traditional to modern society. She found that men seemed to have lost identity and their position was weakened by altered gender relations following modernization, resulting into gender antagonism regarding perceived role.

Bride price or bride Wealth, used to validate customary marriages, is a common practice in many African countries. In the past, the tradition of bride price is believed to have operated beneficially to give formal recognition to marriages and protection to wives against abuse, to stabilize the partnership and to join the two families together. Today, however, the practice appears to have become commercialized and to have lost much of its traditional value in many instances. Bride price can appear to be the buying of a wife as a commodity, which can result in abuse towards a woman if she does not fulfil her value or if she attempts to leave and the bride price cannot be repaid. It has also been argued that women seeking to divorce can only do so if the bride-price is repaid to the husband. In such situations, there is much anecdotal evidence that women leaving their marital homes are likely to be turned away from their natal homes if their families are unable to repay bride-price. Domestic violence and the violation of women's human rights have also been identified by some commentator as associated with bride-price, and calls have been made for its reform.

It is important to note that exchange of money and goods to solemnize marriage is by no means unique to Africa, but occurs widely across the world in different forms. In western

⁴Silberschmidt M. CDR Research report No. 16. Copenhagen: 1991. Rethinking men and gender relations: an investigation of men, their changing roles within the household and implication for gender relations in Kisii District, Kenya.

and other countries, for example, the bride-groom may give a costly diamond ring. Many Arab and Islamic states consider bride-wealth as a fundamental requirement of marriage, in terms of Mahr. The practice has similarities with that of dowry, common in the Indian sub-continent, where goods and monies are given to the husband's family by the bride's family (and thus usually pass in the opposite direction to bride-price. However, whereas dowry has resulted in extensive campaigning , academic work , policy development and legislation, bride price in Africa and its impact on women, children, family life and community development is a much neglected area which has attracted relatively little political and policy focus.

During British colonial administration in Africa, customary marriage was not fully recognised as marriage. This was for two reasons: their objection to polygamy and "bride price". Chief Justice Sir Robert Hamilton in **Rex V. Amkeyo**,⁵ stated:

"I know no word that correctly describes it [customary marriage]; 'wife purchase' is not altogether satisfactory, but it comes much nearer to the idea than that of 'marriage' as generally understood among civilized people."

Professor Arthur Phillips in "*Marriage Laws in Africa*", P.7 writes:

Thus bride price is variously interpreted as being primarily in the nature of compensation to the woman's family ... as part of a transaction in which the dominant emphasis is on the formation of an alliance between two kinship groups; as a species of 'marriage insurance', designed to stabilize the marriage and /or to give protection to the wife..."

In recent years, the issues involved in the practice of bride-price have begun to be brought to the fore and awareness has been increasing in

⁵ 7 E.A.L.R. (1917)

Uganda. It has become a central gender and human rights issue and to many scholars, it is seen as the most significant factor holding back women's empowerment. In the last few years, there have been demonstrations against bride-price in rural Uganda and indeed, bride-price reforms or abolition has begun to be an issue for legislative change in some countries, there is little existing systematic evidence on which to base these reforms.

In Uganda, MIFUMI has taken a leading role in piloting work on bride-price. MIFUMI has also been working on local rural laws on bride price in Tororo. Recently, a pioneering new Bridal Gifts Ordinance, superseding the 1964 Bukedi bye-law (which stipulated the amount of bride-price to be given in terms of cows or other animals as a way of limiting or regulating it), was passed in Tororo. This Ordinance, the first regulatory framework in Uganda, made bride-price non-refundable. Further, a constitutional petition on bride-price was filed seeking among others, to make amendments to the Constitution of Uganda on the grounds of the possible harmful impacts on bride-price.

According to Dr. Sylvia Tamale- a law Professor at the prestigious Makerere University, although it is described as a gift, compensation as well as payment, bride price still remains a contentious issue in our society. She argues that irrespective of how it is

**NEXT MEETING OF
THE GENDER
SECTION
26 SEPTEMBER 2017
16.00-17.00
Dar - Es - Salaam
Tanzania**
See www.cmja.biz for further
info on the CMJA Conference

practiced, the aspect that it is some kind of payment stipulates that on traditional marriage, a woman is bought. This she believes is the source of a lot of debate in society. Bride price is such a controversial issue today that a petition was filed seeking court to declare the practice unconstitutional

She cites examples of negative aspects of bride price among others as varying from denial of education to the girl by the parents in a bid to extract wealth from her to promoting early marriages.⁶

Another scholar, Kaye revealed that bride price as a gender issue affects the broad context of people's lives as it influences what roles are considered appropriate for family members. The perception that the woman was paid for reduces the power and her prestige. To some people, where bride price payment is made by, it is perceived power is manifested in than man hence gender inequality.⁷ Indeed, as revealed by MIFUMI the practice of bride price which requires that the cows be refunded if a marriage breaks down, often ties women to abusive relationships. This is because the girl's parent and other family members cannot afford to refund items received from the man's kin family. The practice also reduces women and girls to the status of chattel or property and leaves them open to Domestic Violence and abuse with far reaching social, economic and human rights implication.

Kaye reported that bride price payment is gender issues with implications on gender relations in different socio-cultural contexts. It

⁶Sylvia, Tamale. *The Daily Monitor; Violence to Women Worse than War, Monitor Publications 23- 3 – 4th March 2015, P. 18.*

⁷Kaye D, Mirembe F, Bantebya G. Levels, types, severity and risk factors for domestic violence among women attending antenatal clinic in Mulago hospital, Uganda. *Cent Afr J Med.* 2002;40(5/6):63–68.

also impacts greatly on the Sexual and Reproductive Health and Rights⁸. From the international law perspective, the institution of bride price denies women equality throughout a marriage, and is therefore in violation of both international and domestic law. The Universal Declaration of Rights states that women are entitled to equal rights as to marriage, during marriage and at its dissolution. The practice of bride price is facially discriminatory towards women. A man can marry anyone he likes, and need not ask his parents for permission. A woman must ask her father's permission, since he sets the bride price and has the power to make it too exorbitant for the suitor to afford. A man can leave the marriage without anyone else's permission.

The above notwithstanding, cultural relativists and advocates in support of the practice contend that bride price cannot be abrogated from society completely, it's been part of culture for generations and many people regard it as a good practice. And to many that incline on cultural values and customs having to completely do away with the practice is virtually impossible.⁹

Bride price also known as bride wealth is an amount of money or property or wealth paid by the groom or his family to the parents of a woman upon the marriage of their daughter to the groom.¹⁰ It has been a cherished custom among African societies since time immemorial. However it poses a question on whether a token of appreciation, in this case, bride price, entails the element of a sale. "Bride price opening in a money economy has come to acquire the qualities of a

⁸Ibid.

⁹This is evident for example in Corbin J. Coding, writing memos and diagramming. In: Chenitz WC, Swanson JM, editors. *From practice to grounded theory.* Menlo Park, CA: Addison-Wesley; 1991. pp. 91–101.

¹⁰en Wikipedia.org/wiki/Bride price

sale- it is now, more than ever before, the price of a woman."¹¹

In relation to the modern Uganda where constitutionalism is pertinent, a dilemma of some sort is created when archaic customs that cannot fit into the context of modern times are carried on under the umbrella of customary law. A division is created between the conservative and the radical, both using backing of the Constitution to strength their stance. One of the leading cases that has been this concept to test in modern times is **Mifumi (U) Limited and 12 others v Attorney General**.¹² The petitioners- a non-government organization individuals petitioned the constitutional Court challenging the constitutionality of the customary practice of demand for and payment of bride price, alleging that the pride price as a condition precedent to a marriage, and a demand for and payment of, bride price as a condition precedent to dissolution of marriage should be declared unconstitutional arguing that it infringes on several constitutional provisions.

It was the appellants' contention that the custom of bride price which is practiced by several ethnic groups in Uganda offends Article 31(3) of the Constitution. That Article provides that marriage shall be entered into with the free consent of a man and a woman intending to marry. The appellants' claim was that the demand of bride price by a third party interferes with the free consent guaranteed by the Constitution. It was also their contention that the payment of bride price by men leads them to treat their wives as mere possessions. This, they claimed, perpetuates inequality between men and women which is prohibited by Article 21(1), and (2) of the

¹¹Corinne A.A Packer, "Using Human Rights to Change Tradition: Traditional Practices Harmful to women's Reproductive Health in Sub-Saharan Africa: Vol. 13, School of Human Rights Research Series.

¹²Constitutional Petition No. 12 of 2007.

Constitution. The Petitioners further contention that the demand bride price by parents of a young woman to be married portrays her as an article in a market for sale, and amounts to degrading treatment which is prohibited by Article 24 of the amounts to degrading treatment which is prohibited by Article 24 of the Constitution. They thus prayed the Constitutional Court to declare the custom and practice of demanding and paying, and also of demanding refund of bride price at the dissolution of customary marriage, unconstitutional.

In dismissing the petition, the honourable judges led by Deputy Chief Justice Kikonyogo argued that the custom of payment of bride price is not per se unconstitutional as it does not prohibit a voluntary, mutual agreement between bride and a groom to enter into the bride price arrangement owing to the fact that under Article 31(3) of the Constitution, marriage shall entered into with the free consent of the man and woman intending to marry. Her Lordship seemed to be in agreement with the petitioners because some of the statements she made gave that implication. "e.g." "I am in agreement with the view that the customary practice of the husband demanding a refund of the bride in the event of dissolution of the marriage demeans and undermines the dignity of a woman and it is in violation of Article 33(6) of the Constitution."

However Her Lordship decided that the petition must fail on grounds that the Constitution under Article 50 can adequately cater for the aggrieved victims. In my humble opinion I think Her Lordship in her judgement of the issues was errant. He Lordship ought to have just been straight forward instead giving a false impression of her being in agreement with one side and then deciding against it.

Justice Mpagi – Bahigeine stated in her judgment as follows:

I agree ... that the term 'bride price' is a misnomer coined by colonialists who did not appreciate the meaning and significance of certain cultural rights and ceremonies which include the exchange of intrinsically unique gifts which are merely symbolic as a sine qua non of a marriage. These are a form of appreciation to the bride's parents/guardians for her nurturing and upbringing... this valued customary practice should be clearly distinguished from what is obtaining these days..."

In the over all, the court condemned components of the practice but fell short of outrightly outlawing it. It is my submission that the rule of law demands that a state respects and enforces international law. Under the Convention on the Elimination of all Forms of discrimination Against Women (CEDAW), a treaty adopted by the United Nations Assembly, state parties are required "to embody the principle of equality of men and women in their national constitutions." This in Uganda has been fulfilled by presence of provisions on equality in the Constitution like Article 28 and Article 33. In my opinion, the principle of equality between men and women was not satisfactorily observed in this case because the ruling was in favour of the respondents who were in support of an unfair custom.

CEDAW also requires state parties to "modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of the sexes or on stereotyped roles for men and women."¹³ It is without any

¹³ Uganda has an obligation under International law to take appropriate measures to modify or abolish existing regulations, customs and practices which constitute discrimination against women under Article 21(f) of the Convention on the Elimination of All Forms of Discrimination

shadow of doubt, in my view that the practice no longer serves any useful purpose in society as it has become purely commercialised and highly exploitative and humiliating to women. In many situations, especially where the family is financially constrained, the girl or woman is forced or talked into a marriage because the bride price she fetches goes into the bellies of her parents. Greed and gain have led some parents to force their daughters to leave school, even if they are still young, to wed rich elderly men for a fat bride price.

Uganda also made specific undertakings under the CEDAW Convention to tackle discrimination occurring at the time of contracting the marriage under Article 16(1)(b) which provides as follows:- "States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women the same right freely to choose a spouse and to enter into marriage only with their free and full consent."

Lastly, under Article 16 (1) (c) of the CEDAW Convention, Uganda is also obligated to ensure that women enjoy equal rights and responsibilities during marriage. It provides thus: "States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women the same rights and responsibilities during marriage and at its dissolution."

It is always argued by protagonists of bride price that it promotes the virtue of girls and ensures stability of marriage but bride price in reality is

against Women(CEDAW) which Uganda ratified on 22nd July 1985.

an anachronistic, archaic custom that reduces women to merchandise and thus undermining the dignity of women guaranteed under the constitution. To that extent, the custom qualifies as repugnant to morality and good conscience and for this reason, it should be declared void. The repugnancy is showcased in common notions among the males in the Ugandan society which are characteristic of male supremacy over the female.

From the African perspective, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa is instructive on the matter as far as it urges state parties to outlaw cultural practices and traditions that affect the dignity of women.¹⁴ Counsel prayed that this Court makes a declaration that the custom and practice of demand for refund of bride price as a condition precedent to a valid dissolution of a customary marriage lowers the dignity of women, thereby violating Articles 31(1) (b), 32(2) and 33(1) of the Constitution.

In conclusion, it is contention that the concept of bride price although highly cherished among many African communities requires a holistic rethink. Times have changed and the gender movement is blowing like a monsoon wind for which no further resistance may be possible. It is not useful to continue pretending that the custom can continue to serve while not taking stock of the underlying consequences it has had on the welfare of women and specifically in escalating domestic violence. The practical thing to do is for the practice to be out rightly outlawed as not fitting or consonant with modern democratic practices.

¹⁴ Uganda signed this Protocol on 18th December 2003.

61st Session of the Commission on the Status of Women

By: Justice Lynne Leitch, Canada

The 61st session of the Commission on the Status of Women took place at the United Nations Headquarters in New York, from March 13-24, 2017. A comprehensive report on the meeting and an analysis of Agreed Conclusions was prepared by Ms. Lakshmi Puri, UN Assistant Secretary-General and Deputy Executive Director of UN Women. This article is a brief summary of her report. The priority theme of the 61st session was, "Women's economic empowerment in the changing world of work", involving women's right to work, rights at work and rights to decent work and full and productive employment.

Several areas where gender gaps are prevalent were identified and addressed including income, pension, social security, work force participation, recruitment, retention, promotion, re-entry, leadership, occupational segregation, burden of unpaid care work, and access to economic and productive resources. Working conditions were highlighted as an area of pivotal importance to the economic empowerment of women. Members were encouraged to transition informal workers to the formal economy, specifically in areas of domestic work, to provide safe working conditions and allow for an adequate standard of living. This includes encouraging better work-life balance and the sharing of family responsibilities within the household. Occupational segregations, both physical and social, also need to be addressed to promote women's equal access to and participation in labour markets, education and training.

Efforts should be given to inclusivity in recruitment, retention, re-entry,

promotion and progression of women in the workplace. Finally, gender-responsive social protections must be implemented, including access to child care, elder care, health care, and access to pensions.

The Commission stressed the importance of ending violence against women at work and in the community. Members should strengthen and enforce laws and policies against violence and address the consequences of violence. Victims and survivors should be encouraged to re-enter the labour market.

Women should also be safe travelling to and from work and educational facilities. Communities are advised to implement gender-responsive rural development strategies and urban planning, including building safe affordable and accessible public transit systems, adequate street lighting and separate sanitation facilities.

Barriers to inclusion, including discrimination, should be addressed to ensure that women have access to quality and inclusive education and can participate in the economy in a meaningful way.

The specific needs of new economics, including technological change and migration, must also be addressed and planned for. Women in the workforce should be supported to continue training and education in light of new technologies and women should be active participants in the digital world.

Labour mobility must also be promoted with a particular emphasis on the protection of women migrant workers.

These policies have a number of beneficiary links with Sustainable Development Goals. These include the eradication of poverty; food security and nutrition; access to

education, training and skills development; access to timely and affordable healthcare, including sexual and reproductive health and reproductive rights; access to economic and productive resources; and climate change.

On a national level, countries are encouraged to strengthen and enforce laws and policies, create gender responsive national and local institutions and ensure that these institutions have adequate resources and funding to run effectively. Finally, countries should maintain up-to-date statistics and data to ensure that countries are fully informed and accountable.

On an international level financial resources should be utilized and allocated to prioritize gender equality and the empowerment of women. General equality should be prioritized to ensure inclusive and equitable globalization for all, based on our common humanity.

The Commission recognized the important role of civil society organizations, trade unions, the private sector and the media. Member States were committed to fully engage men and boys as strategic partners and allies.

The Commission highlighted the need to address barriers and stereotypes faced by young women and requested Member States to design and implement educational policies to allow young women to remain in and return to school.

**Gender Section News
Publication by
Justice Lynne Leitch
(Chair)**

**Dr. Karen Brewer
(Editor in Chief)**

It is impressive that the 61st session saw some of the highest numbers in terms of participation of Member States – representatives from 162 Member States, including 89 ministers, and more than 3900 civil society participants from more than 580 organizations and 138 countries attended the session.

As the report noted, the adoption of the Agreed Conclusions by consensus engendered a strong sense of accomplishment, progress and sense of purpose. However, while gains have been made, follow up action and more progress is required

Women on the Bench: In Conversation with Supreme Court Justices from the UK and Canada

By: Dr. Karen Brewer,

As part of her series on Women in Leadership, Her Excellency Janice Charette, High Commissioner for Canada to the United Kingdom invited the CMJA to attend the above event in May 2017. The informal conversation was held between her and the Honourable Rosalie Abella, Justice of the Supreme Court of Canada, and the Right Honourable the Baroness Hale of Richmond DBE, Deputy President of the Supreme Court of the UK. The focus of the exchange between the two judicial officers was on their how they had arrived following different paths to the pinnacle of their careers so far.

Justice Abella, from a very early age wished to become a lawyer but also knew that she was going to be a wife, coming from a traditional Jewish background where it was expected that she would marry. She became a judge at the age of 29 to the Ontario Family Court when she

was pregnant with her first child. She indicated that when she started her career, she was not seen as a threat to male dominance of the profession as there were still very few women who were lawyers but as she progressed through the judicial hierarchy there were more and more challenges. Justice Abella indicated that she had taken every opportunity given to her in her career and she had had a varied career. She felt she was lucky to have been in Canada at a time when changes were occurring and women's equality was being pushed. Justice Abella herself has been instrumental in safeguarding women's rights through her work as the Commissioner for Equality and Employment in 1984 and was responsible for the term "employment equity" being adopted by the Supreme Court of Canada in a decision in 1989. Employment Equity means that employers must be proactive and increase the representation for particular groups including women, disabled persons, minorities and aboriginal peoples.

The Canadian Charter of Rights and Freedoms also stresses that equality is a Human Rights Concept and there is a need to eliminate discrimination, whatever the form it takes. Brenda Hale on the other hand indicated that she "fell into law" as her Headmistress at the time said she was not clever enough to study History. Whilst she was successful in getting into Cambridge to study law, there was still a belief that only those who had been to the top independent boy's school were entitled to rule the world so initial barked at becoming a barrister. She thus went to Manchester University as a lecturer but was asked by the University to sit her bar examinations to become a barrister in Manchester. She worked in Family and Social Welfare law and then she went to the Law Commission where she was involved in the drafting of important legislation. She was appointed to the judiciary in 2004.

The two women discussed the differences in trends in relation to women on the bench. Whereas Canada seems to be making positive steps to include women in the judiciary at all levels, in the UK, according to Brenda Hale, the inflexible cultures that exist in many law firms do not make it easy for women to progress in a career in the law and then onto the bench. The continued lack of facilities within law firms for women to pursue both a family and a career was to be regretted. Added to this, she felt that Law students today seemed only interested in their ultimate career goal and were missing out on opportunities which might arise in their careers and which might give them a wider perspective on the law. It was necessary to get people to change attitudes to ensure that women are given more opportunities to progress in their careers whilst being able to maintain a family life too.

The conversation was an enlightening one by two mainstays of the judicial professions across the Atlantic and HE the High Commissioner, who knew both of the speakers well was able to bring out some interesting facts from her conversation with both. There were also some interesting statistical data produced. In Canada the bench is comprised of 40% women (with 4 out of the 9 Supreme Court judges being women at the moment), statistics which cannot currently be matched by the UK judiciary.

**Women
Representation in
the Judiciary**

The CMJA has been attempting to gather data on gender representation in the courts. Compiled below are the statistics on women representation in the judiciary across the Commonwealth gathered so far. Many countries have made strides to

create a representative judiciary, but most countries have a long way to go to have equal representation.

Highest Courts

In the High Courts, which include the

<i>Highest Courts</i>	
<i>Antigua and Barbuda</i>	50%
<i>Australia</i>	28%
<i>Bangladesh</i>	10%
<i>Barbados</i>	51%
<i>Botswana</i>	7%
<i>Brunei Darussalam</i>	0%
<i>Cameroon</i>	9%
<i>Canada</i>	37%
<i>Cyprus</i>	31%
<i>Dominica</i>	50%
<i>Fiji</i>	7%
<i>Ghana</i>	31%
<i>Grenada</i>	33%
<i>Guyana</i>	41%
<i>India</i>	7%
<i>Jamaica</i>	55%
<i>Kenya</i>	30%
<i>Kiribati</i>	0%
<i>Lesotho</i>	33%
<i>Malaysia</i>	44%
<i>Malta</i>	26%
<i>Mauritius</i>	45%
<i>Mozambique</i>	10%
<i>Namibia</i>	13%
<i>New Zealand</i>	39%
<i>Nigeria</i>	20%
<i>Pakistan</i>	5%
<i>Rwanda</i>	45%
<i>St Kitts and Nevis</i>	100%
<i>St Lucia</i>	60%
<i>St Vincent and Grenadines</i>	33%
<i>Seychelles</i>	33%
<i>Sierra Leone</i>	43%
<i>Singapore</i>	44%
<i>Solomon Islands</i>	0%
<i>South Africa</i>	28%
<i>Sri Lanka</i>	38%
<i>Swaziland</i>	10%
<i>Tonga</i>	0%
<i>Trinidad and Tobago</i>	40%
<i>Uganda</i>	38%
<i>United Kingdom</i>	14%
<i>United Republic of Tanzania</i>	35%
<i>Zambia</i>	53%

Court of Appeals, the Supreme Court, and the High Court, there are startling differences in women representation across the board. In St Kitts and Nevis *both* Supreme Court judges are women. Other notable countries that have met the

Commonwealth goals for representation in the Highest Courts are: Antigua and Barbuda, Barbados, Dominica, Jamaica, and St Lucia. Countries that continue to struggle include Botswana, Cameroon, Fiji, India, and Pakistan. Brunei Darussalam, Kiribati, Solomon Islands, and Tonga remain countries where there are no women in the Highest Courts.

Unfortunately the CMJA has insufficient data for the following: The Bahamas, Belize, Malawi, Nauru, Papua New Guinea, Samoa, Tuvalu, and Vanuatu. Readers are asked to feed-in any relevant information to the CMJA to the Secretary General.

Subordinate Courts

<i>Subordinate Courts</i>	
<i>Antigua and Barbuda</i>	75%
<i>Australia</i>	40%
<i>Bangladesh</i>	9%
<i>Botswana</i>	50%
<i>Brunei Darussalam</i>	67%
<i>Cameroon</i>	9%
<i>Canada</i>	32%
<i>Cyprus</i>	47%
<i>Dominica</i>	50%
<i>Fiji</i>	22%
<i>Grenada</i>	67%
<i>India</i>	15%
<i>Kenya</i>	48%
<i>Kiribati</i>	22%
<i>Malaysia</i>	27%
<i>Malta</i>	50%
<i>Mauritius</i>	68%
<i>Mozambique</i>	17%
<i>New Zealand</i>	33%
<i>Nigeria</i>	20%
<i>Rwanda</i>	50%
<i>St Kitts and Nevis</i>	33%
<i>St Lucia</i>	60%
<i>St Vincent and Grenadines</i>	50%
<i>South Africa</i>	30%
<i>Sri Lanka</i>	23%
<i>Swaziland</i>	43%
<i>Trinidad and Tobago</i>	77%
<i>Uganda</i>	41%
<i>United Kingdom</i>	40%
<i>Zambia</i>	60%

In the Subordinate Courts, which include District Courts, Magistrates Courts, and State Courts, across the

Commonwealth there are more courts reaching equal representation and less with such dismal numbers.

Unfortunately the CMJA had insufficient data for the following: The Bahamas, Barbados, Belize, Ghana, Guyana, Jamaica, Lesotho, Malawi, Namibia, Nauru, Pakistan, Papua New Guinea, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, Tonga, Tuvalu, United Republic of Tanzania, and Vanuatu. Readers are asked to feed-in any relevant information to the CMJA to the Secretary General.

Rule of Law in the International Market Place & Its Impact on Gender Issues

CMJA Council Member for England and Wales, Mrs Sybil Roach Tennant, CMJA Secretary General, Dr Karen Brewer and Ms Jozoe Tay Ting Ni, the CMJA's intern from January-April participated in the FIDA- UK Congress which took place in March 2017. The Keynote Speaker was The Rt Hon. Sir Bernard Rix QC, former Court of Appeal Judge who spoke about the importance of ensuring that women's rights were protected and that they were empowered as this contributed to prosperity and economic development.

Panellists included: Dr Comfort Momoh MBE, a Public Health Specialist with extensive experience of holistic women centred care and a researcher of women's health and a strong campaigner/ supporter against Domestic Violence and for the eradication of FGM. Dr Momoh spoke about the health problems caused by FGM but also spoke about the continued lack of prosecuted cases in the UK for FGM. Although the legislation in the UK has been in existence for around 20 years, there has only been one prosecution and

this failed as victims did not want to come forward.

Father Michael Quaiocoe, Chaplain at Westminster Cathedral and a former Human Rights Lawyer spoke of the increasing problems caused by the trafficking of women/girls and the programmes set up by the Catholic Church in conjunction with other churches to empower women to combat such trafficking.

Karen Brewer spoke about the importance of an independent judiciary and the contribution of women judges to this independence as well as the struggles women have faced in accessing the judiciary. Women not only have to contend with the "glass ceiling" but they also have to contend with the "glass box" as well. Women judicial officers in many instances have been traditionally allocated to family or youth court cases. In the words of Chief Justice Beverley McLachlan of Canada pointed out that *"Too often women are judged by their colleagues and society on the basis of assumptions about their gender rather than their actual ability. Unequal allocation of work often follows women into the legal profession. Frequently women lawyers are asked to work in 'female' areas of the law, such as family law and excluded from areas of 'male expertise' such as criminal law, tax law and securities law, irrespective of their personal aptitudes or preference"*.

Two young Italian lawyers, Nicoletta Errassanito and Ilarria Ongaro spoke eloquently on the issue of Child Rights, focussing their presentation on the threats caused by the phenomenon of "Little Beauty Queens" to the rights of the girl-child and the need for strategies against commercialisation of little girls' bodies and images. Whilst the US was the country where these issues were prevalent, Nicoletta and Ilarria pointed out that this threat had been exported to Europe and was

becoming a major problem in Italy amongst other nations.

News from Around the Commonwealth



International Association of Women Judges
Advancing Human Rights and Equal Justice for All

Africa Regional Conference

The meeting took place in Nairobi, Kenya in May 2017. During the conference it was reported that more women judges were being threatened while handling election related cases than male judges. They were demanding sufficient security while handling these matters.

According to reports of the meeting, Kenyan High Court judge Mary Ang'awa recounted when she had been threatened while she was overseeing an electoral petition, "At the time, I was threatened, I had my police driver and I was in court, be alive to the fact that you too can face such. I do not know what happens in your countries but this is a sensitive issue concerning what measures are in place to protect judicial officers".

Lady Justice Jean Charles from the Republic of Trinidad and Tobago recalled two incidents when she was threatened, once during a drug case concerning the Columbian cartels and again during a high profile murder.

Kenyan Senior Resident Magistrate Lilian Arika voiced her concerns about adequate security for judges while handling election matters.



Bangladesh

Unfortunately according to a UNICEF report, 52% of girls in Bangladesh are married by the age of 18 and 18% by

the age of 15. In February 2017, the Parliament of Bangladesh passed the Child Marriage Restraint Act 2017 which contains provisions allowing for the marriage of children under the age of 18 under “special cases”. Unfortunately, the new Act caused Bangladesh to regress in terms of child marriage.

These “special cases” were left undefined which essentially opens up the possibility that girls could be subjected to other possible forms of abuse. For example: of the “special cases” that could be claimed under the new Act pregnancy by rape may be used as an excuse to force marriage on a girl in order to make the child legitimate



Malawi

Widow’s Rights

In 2016, Malawi women were still being deprived of their property and economic rights, but the courts are moving to change this trend. On the 2 December 2016, the High Court dismissed a case brought by Plaintiffs against two women Defendants regarding land the Defendants inherited from their deceased spouses. The Plaintiffs claimed they were the rightful owners since 2010 when the Dwangwa Cane Growers Trust allocated them the land.

In 2013 after the Malawi Magistrate’s Court ruled in favour of the Defendants, the Plaintiffs tried to circumvent the appeals process by bringing a new case on the same issue to the attention of the High Court. However, the High Court gave the Plaintiffs 14 days to present documentary evidence to prove they had leased the land. When the Plaintiffs failed to produce such documents the High Court of Malawi ruled in favour of the Defendants and the property was returned to the widows and orphans they cared for, three years after they had been

removed from their property. The Plaintiffs were made to pay for the proceedings.

Child Marriage

Whilst the Marriage, Divorce and Family Relations Act came into effect in 2015, Malawi continues to be the country with the 11th highest child marriage rate in the world, according to UNICEF. Unfortunately the Act proved to be insufficient to curtail child marriage under the age of 18.

In February 2017, Parliament voted to amend the Constitution to ensure that girls could not marry before the age of 18. Parliament also removed the parental consent provision for children age 15 and up.



Mauritius

Violence against Women

In May 2017, the government launched the Provision of Sexual Exploitation Abuse (PSEA) Mechanism. Violence against women in Malawi is increasing, with one out of five women experiencing abuse or sexual exploitation. The Minister of Gender, Children, Disability and Social Welfare, Dr. Jean Kalilani, launched this programme and stated, "lack of knowledge, confidence and less access to reporting agencies are some of the reasons that prevent women and children from speaking out cases of sexual exploitation, abuse and gender-based violence. This PSEA will facilitate collaboration in implementing support mechanisms to ensure our women and children are helped and that perpetrators are disciplined".

She hoped that with adequate training in PSEA and the cooperation of governmental and private institutions the country could see a reduction in violence against women.

Strengthening Judicial Responses to Domestic Violence in Mauritius

In May 2017, the Australian High Commission and the Ministry of Gender Equality, Child Development and Family Welfare in collaboration with the Institute for Judicial and Legal Studies and the Mauritius Magistrates Association organized a workshop focusing of Strengthening Judicial Response to Domestic Violence for magistrates in Mauritius.

The Minister of Gender Equality, Child Development and Family Welfare, Mrs Fazila Jeewa-Daureeawoo, stated that even though legislative and institutional provisions were improving domestic violence was still prevalent throughout the country. She stated, “cases of domestic violence should be dealt with in an expeditious manner so that victims are spared the trauma of having to wait for long to obtain a remedy”. She also called on magistrates to protect victims of domestic violence and make sure that the perpetrators understood the severity and punishments of their actions.

More than 50 Magistrates participated in the workshop where they discussed their experiences, processes, and ideas to help each other better handle future domestic violence cases.



Solomon Islands

In June 2017, the Pacific Islands Report reported that the Minister for Women, Youth, Children and Family Affairs Freda Tuki hoped that the new implementations and revisions to the gender equality priorities would continue to guide the government on bridging the current gender gaps. The revised Gender Equality and Women’s Development priorities included:

- Equal participation of women and men in all levels of decision-making, governance and leadership services, and;
- Preventing and responding to violence against women and girls.

The revised Eliminating Violence Against Women and Girls policy included:

- Objectives to strengthen legal frameworks, law enforcement and the justice system, and;
- Assuring victims and survivors have better access to medical, legal, and protective services.



South Africa

Traditional Courts Bill

In the CMJA Newsletter of February 2017, it was reported that, after previous concerns regarding the equal rights of women in the traditional courts provisions have been made to amend the Traditional Courts Bill. The following was reported by Thulani Gqirana in News24 on 23 January 2017,

“Cape Town – The new Traditional Courts Bill has been redrafted to address fears that it gives traditional leaders too much power and women not enough, Deputy Justice Minister John Jeffery said on Monday.

The redrafted bill represented a collation of ideas and wisdom, he told reporters.

Changes included that traditional courts must be constituted of women and men, and for these courts to promote and protect the representation of women.

It would be introduced to Parliament as soon as possible.

Parties would be able to “opt out” of the traditional justice system, a provision not in the previous drafts of the bill.

They could however only opt out in the beginning of the process, Co-operative Governance and Traditional Affairs Deputy Minister Obed Bapela said.

Jeffery however said a summons to appear in a normal court could not simply be ignored. A person had to inform the clerk of the court that they wanted their matter heard in a traditional court.

The bill clarifies sanctions and their enforcement. The previous bill provided for fines to be imposed and for the “deprivation of customary law benefits”. Now, the bill provides for compensation, as opposed to fines.

“Any community service ordered must be for the good of the community and not for the benefit of any member of the court or a traditional leader,” Jeffery said.

Jurisdiction was clarified due to concerns that previous drafts entrenched former Bantustan boundaries.

Jeffery said provision was made for the review of procedural shortcomings in the high court, for instance if the court was not properly constituted or the parties were not allowed to be represented by persons of their choice.

What remained the same, however, was the prohibition of legal representation in traditional courts. This was because traditional court hearings were non-adversarial and lawyers might prolong the process.

Individuals could be represented by family members or friends, Jeffery said.”

Currently the amended Traditional Courts Bill is being considered by the Provincial authorities.

Common Law Marriage

The Constitutional Court of South Africa is currently considering what constitutes a marriage under

traditional practice and whether or not lobola negotiations and umembheso (an exchange of gifts) constitute proof of marriage. In May 2017, former MTN Chief Executive Officer Sifiso Dabengwa and Johannesburg Theatre Chief Executive Officer Xoliswa Nduneni-Ngema decided to separate, Ms Nduneni-Ngema has claimed half of the multimillionaire’s estate.

She claimed that the pair were married after successful lobola negotiations and umembheso even though they did not follow the traditional delivery of the bride to her husband’s family. The High Court and the Supreme Court of Appeal disagreed on what should be the ruling in this case. The High Court found that Mr Dabengwa had not given his consent to be legally married. Ms Nduneni-Ngema argued that the practice was unconstitutional as it was discriminatory against women. In May 2017, it was reported that the case has been referred to the Constitutional Court.



Zambia

In February 2017, it was reported that child marriage in Zambia had reduced from 42% to 31% between 2007 and 2016. President Edgar Lungu stated that this was due to a rigorous five year national strategy to end child marriage by the year 2030. This plan was launched in 2016, and administrative and legislative policies have been introduced by the government to end child marriage.

“One of the key issues in fighting child marriage is the provision of education and, to this end, my Government provided resources to ensure that 14,000 girls were put in school in 2016 and retained until they complete their secondary education,” President Lungu said.

The Zambian President called on all of Africa to work together to eradicate all child marriages throughout the continent.

A Short History of the Gender Section

The association has been actively involved in the rights of women and the girl child since inception. The Commonwealth Harare Declaration of 1991 also focused on the rights as well as becoming synonymous with setting out the principles of democracy and good governance.

The Gender Section of the CMJA was established August 1994 following the [Victoria Falls Proclamation on the Rights of Women](#) which was adopted at the CMJA conference in Zimbabwe (1994). Dr Clover Thompson-Gordon of Jamaica became the Chairperson of the Gender Section in 1999 following a re-launch of the Section. The previous chair was the Hon Miss Justice Patricia Macaulay of Sierra Leone. The current Chairperson is Justice Lynne Leitch of Canada.

Since 2007, there have been a regular **AGM of the Gender Section** held in the wings of each CMJA Conference. These meetings are open to all participants in the conference.

In September 2012, it was agreed that there should be a **restructuring of the Gender Section Committee** which now includes the following: 1 Chairperson (a member of the CMJA Council), 1 Vice Chairperson, 1 Hon Secretary, 6 Regional Representatives, and up to 2 Co-opted Members.

The principles on the Rights of Women and the Girl Child were reaffirmed at the judicial colloquia on the Domestic Application of International Human Rights Norms to promote Women's human rights held

in Beijing (1995), Hong Kong (1996), and Guyana (1997)

Following its creation the Section embarked on a **Gender Bias Project**, intending to survey gender bias within in the judiciaries of the Commonwealth.

The CMJA has hosted and been a part of a multitude of meetings and conferences which promote the rights of women and girl-children.

Since 1999 the CMJA has run a number of **Gender Section Conferences** in conjunction with the Caribbean Regional Conferences in order to raise awareness of gender issues, St Lucia (1999), Barbados (2001), and Bermuda (2007).

The CMJA Annual and Triennial Conferences have also included topics on Domestic Violence, the right of women and girl-children, and the rights of widows.

The CMJA participated in in the first two **World Women Lawyers' Conferences** in London, run by the International Bar Association focussing on the role of women in the judiciary. In 2008, the CMJA, the Royal Commonwealth Society, and SOFIA (the Women Living with HIV/Aids Forum) hosted a seminar where Baroness Helena Kennedy spoke on "**Legal Rights, Social Wrongs**". The Association was also represented at the **International Women Judges Association Conference** held in London (2012). It was also represented more recently in 2016 at a one day seminar on **Gender Equality Jurisprudence and the Role of the Judiciary** held in Munyonyo, Uganda.

The CMJA has been at the forefront of policy development. The Association was an official Observer at the **Commonwealth Ministerial Meeting on Gender in Beijing in 1995** and participated in a workshop that identified **Plans of Action on Gender issues which would ensure**

collaboration on activities between the Commonwealth Secretariat and the Commonwealth associations.

Gender equity was a major topic at the Joint Colloquium on Parliamentary Supremacy and Judicial Independence and was included in the **Commonwealth (Latimer House) Guidelines on Parliamentary Supremacy and Judicial Independence** (1998) and the **Commonwealth (Latimer House) Principles on the Accountability of and Relationship between the Three Branches of Government** (2003) which now form part of the Commonwealth fundamental values.

In 2004 the CMJA was represented on **Commonwealth Gender and Human Rights Expert Group** and was involved in the development of the **Gender and Equality Plan of Action which was adopted by the 2004 Commonwealth Women Affairs Ministers Meeting** in Fiji. The CMJA, together with the Commonwealth Lawyers Association (CLA) and the former Legal and Constitutional Affairs Division of the Commonwealth Secretariat (LCAD), developed a **Gender and Human Rights Toolkit** which was discussed at a two day **workshop for the Pacific on Gender and Human Rights and which is updated regularly**. The two day **workshop also agreed the [Tanoa Recommendations](#)**.

In 2015, the CMJA was represented by the CMJA Secretary General at the at the **First Commonwealth Women's Forum** held in Malta on "*Women in Leadership in the Judiciary*".

In 2009, the CMJA produced a compilation of speeches given at its conferences on issues relating to the rights of women and the girl-child as well as the role of women in the judiciary. The CMJA is currently updating this compilation of papers and this will be made available online in due course.

The first **Gender Newsletter** was produced in 2011. From 2011-2014 one was produced yearly and starting in 2015 it has been produced twice a year.

Please feel free to send us your contributions so that we can share these with colleagues across the Commonwealth through the Newsletter. All previous newsletters are available online at www.cmja.org/gendersection.html

Objectives of the Gender Section

Aims

- ◆ To promote the interests of judicial officers throughout the Commonwealth
To ensure wherever possible, equal access to the law

Objectives

- ◆ To provide a forum for judicial officers to be able to consider ways of redressing any gender imbalance:
 - a) Gender Bias and other colleagues;
 - b) Gender Bias and the Public both specifically and generally;
 - c) Institutionalised Gender Bias and the Justice System.
- ◆ To exchange information among judicial officers;
- ◆ To encourage the advancement of women;
- ◆ To promote and encourage women to be aware of their legal rights;
- ◆ To address women's groups on issues relating to the law and their legal rights.

Seeking Regional Representatives of the Gender Section

In the last newsletter issued in February 2017, we reported that the new Council of the CMJA had been elected in September 2015 in New Zealand, but that there were still vacancies in certain regions for representatives on the Gender Section Committee.

We are STILL seeking nomination from the INDIAN OCEAN REGION
CONTACT: Dr Karen Brewer at the CMJA: kbrewer@cmja.org if you would like your nomination to go forward for the Indian Ocean Region.

Duties of the Regional Representative

Each Regional representative would be expected to galvanise activities within their region and promote the aims and objectives of the Section (see below for further information on the objectives)

Each regional representative would have authority to call on active judicial officers in each of the countries in their region to advance the aims and objectives or assist with information on developments on gender issues.

Each Regional Representative would submit an annual report to the Gender Section Chairperson in time for the chairperson to report back to Council on activities.

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

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.

Gender Section Committee

Justice Lynne Leitch
(Chair, Council)

Mrs Nicole Stoneham
(Vice Chair, Council)

Ms Debbie LeMottee
(Secretary)

Regional Representatives:
Mrs Cordella Bart-Stewart,
Atlantic and Mediterranean

Justice Carolita Bethell,
Caribbean

Ms Naume Sikohya,
East, Central and Southern Africa

Mrs Linda Bradford-Morgan,
Pacific

Mrs Olubunmi Ayobowale
Akokhia,
West Africa