



GENDER SECTION NEWSLETTER

Published by the Commonwealth Magistrates' and Judges' Association Gender Section

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MESSAGE FROM THE CHAIRPERSON

Greetings and best wishes to you. The Gender Section is pleased once again to send you its latest edition highlighting concerns, activities and following on the theme of



"Justice for Everyone". I am excited to now have a Secretary and Regional Representatives in place and hope that this team will be quite active as well as pro-active in communicating to you and depending on you for your responses. The Newsletter has proven to be very popular and the feedbacks are great and encouraging.

There have been some interesting developments on issues relating to gender since the last issue and some of these are highlighted herein.

The Gender Section is pleased to welcome our new President, Hon John Z Vertes who has been a great supporter of the Gender Section. Of course, his predecessor, who is a

member of the Section gave much support and I am sure that this will be matched by the zealously of our new President. We pledge to support him and to ensure that he stays involved in the happenings of the Section.

Here is a "bird's eye view" of our President. We know he will find time to both read as well as contribute to the continued growth of our Section. So let's get to work and make the Section the best for this Triennial period.

Blessings to you.

Dr. Clover Thompson-Gordon

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

OUR PRESIDENT:

"The Honourable John Z. Vertes served on the superior and appellate courts of Canada's three northern territories for over 20 years. He retired as Chief Justice of the Supreme Court of the Northwest Territories in 2011. John and his wife Louise now live in Calgary, Alberta, where he continues to sit as a deputy judge of the northern superior courts and occasionally lectures at the

University of Calgary Law School. Currently he is acting as the sole commissioner of inquiry on the Alberta Health Preferential Access Inquiry called by the Alberta government in February, 2012. He is a past President of the Canadian Superior Courts Judges Association and a past President of the Canadian Institute for the Administration of Justice. He was elected President of the Commonwealth Magistrates and Judges Association at its triennial meeting in Uganda in September, 2012."

MESSAGE FROM THE PRESIDENT



I am pleased to provide this message of support for the work of the CMJA Gender Section.

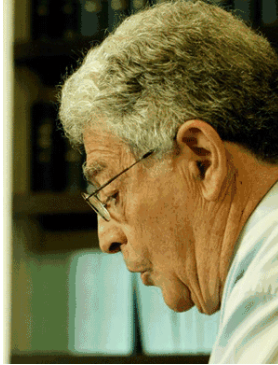
The Gender Section was established in 1994 to promote the interests of women jurists throughout the Commonwealth and to ensure that women have equal access to the law. Under the determined leadership of, first, the Honourable Justice Patricia Macaulay of Sierra Leone and, now, Dr. Clover R. Thompson-Gordon of Jamaica, it has been actively involved in efforts to promote women's human rights and served as a forum for the efforts to redress gender bias on a collaborative basis.

We judges recognize an ethical obligation to conduct ourselves and proceedings without discrimination. To do so we must strive to be aware of and understand differences arising from, for example, gender, race, religious conviction, culture, sexual orientation or disability. This is a fundamental commitment to the recognition of the equal worth and human dignity of all persons and the right to equality before and under the law and equal protection and benefit of the law without discrimination. Similarly, as set out in the Commonwealth (Latimer House) Principles on the Three Branches of Government, governments have an obligation to ensure that judicial appointments are made on the basis of merit and with appropriate consideration to the need for the progressive attainment of gender equity and the removal of historic factors of discrimination. A judiciary that better reflects the society it serves will enhance that society's confidence in its work.

The Gender Section, together with other efforts undertaken by the CMJA, has been at the forefront of achieving these aims. I applaud its work and I urge all CMJA members to learn more about its endeavours and to become involved in its projects.

Hon. John Z. Vertes
President, CMJA

FORMER CHIEF JUSTICE ARTHUR CHASKALSON DIES



At the recent Commonwealth Law Conference held in Cape Town, South Africa, there was a minute silence to mark the passing of former Chief Justice Arthur Chaskalson who died in December 2012 at the age 81 in Johannesburg. Justice Chaskalson was diagnosed with leukemia but died very suddenly, sending shockwaves throughout South Africa and the Commonwealth's legal and judicial fraternity. He was also a great champion of social rights, including gender rights.

Justice Chaskalson had an illustrious career having been part of former President Nelson Mandela's defence team in the Rivonia Trial, which saw Mandela sentenced to life imprisonment. He led a successful career as a human rights lawyer, helping to establish the Legal Resources Centre, a non-profit organisation seeking to use the law to pursue justice and human rights around South Africa. He became one of South Africa's leading jurists in constitutional and human rights issues.

In 2005, Justice Chaskalson retired as Chief Justice but shortly before he retired the then President Thabo Mbeki praised him as a "great son of our people" and a "giant among the architects of our democracy".

As a gesture of gratitude, Mbeki paid tribute to Justice Chaskalson for

everything he had done "as a South African, a lawyer and a judge, to shepherd us towards the construction of a South Africa that truly belongs to all who live in it".

STATEMENT ON THE MOTION TO IMPEACH THE CHIEF JUSTICE OF SRI LANKA



The CMJA, together with the Commonwealth Lawyers Association (CLA) and Commonwealth Legal Education Association (CLEA) have been watching developments in Sri Lanka with concern following the flawed impeachment of their first female Chief Justice in January 2013. Since then judges, magistrates and lawyers have been targeted and harassed by the present government. In a recent joint resolution, issued during the Commonwealth Law Conference held in Cape Town, South Africa, the CLA, CLEA and CMJA :

"1. Called upon the Members of the Commonwealth, through the Commonwealth Ministerial Action Group to place Sri Lanka on the agenda of its next meeting on 26 April 2013 and suspend it from the Councils of the Commonwealth for serious and persistent violations of the Commonwealth fundamental values.

This suspension would not preclude the people of Sri Lanka from participating in non-governmental

Commonwealth activities; and

2. Exhorted Members of the Commonwealth to reconsider the holding of the next Heads of Government Meeting in Sri Lanka as to do so will:

a) tarnish the reputation of the Commonwealth especially given that the Sri Lankan Head of State will thereby assume the role of Chair - in - Office;

b) call into grave question the value, credibility and future of the Commonwealth;

c) be seen as condoning the action of governments who violate its principles and by its silence will undermine the moral authority it purports to have in protecting and promoting fundamental values of the rule of law and human rights

Notwithstanding this resolution, the CLA, CLEA and CMJA affirm their support to those seeking to uphold the rule of law in Sri Lanka”.

Unfortunately, the Commonwealth Ministerial Action Group which met in London on 26 April 2013 did not consider suspending Sri Lanka. In fact to our disappointment, Sri Lanka did not appear at all in the Communiqué.

UN PASSES FIRST RESOLUTION ON FEMALE GENITAL MUTILATION



The UN General Assembly on passed its first resolution condemning female genital mutilation on 27 November 2012.

Whilst the practice is outlawed in most nations, it still continues and the Resolution marked the first time that this inhumane traditional practice (mainly practiced in African, Asia and the Middle East) has been denounced at such a high level in the United Nations.

110 countries, including 50 African nations, co-sponsored the resolution in the General Assembly's Rights Committee. The Resolution called on states to "complement punitive measures with awareness-raising and educational activities" to eliminate female genital mutilation.

Approximately 140 million women worldwide have been subjected to the practice in which a young girl's clitoris and labia are removed, in the belief that this will reduce libido and keep a woman chaste. About three million women and girls each year are said to be forced to undergo the procedure.

"We will continue to spare no efforts with a final objective: ending female genital mutilations in one generation. Today, this goal appears closer than ever," The UN Ambassador to Italy, Cesare Ragaglini, Italy having which has played a leading role in international efforts to eradicate the practice.

He further stated that the UN resolution was a "powerful tool" against widespread resistance because it condemned the practice and called for new measures to be implemented. .

"It is up to us now to exploit it in a more effective way," Ragaglini said. editorial@ug.nationmedia.com

Most recently it has been reported that children as young as 10 in England are being taught about FGM in sex education (Times 29 April 2013).

FEMALE MPs DEFEND UGANDAN MARRIAGE AND DIVORCE BILL



The Ugandan Marriage and Divorce Bill first introduced in 2009 has been recently debated in Parliament.

Despite stiff opposition from male MPs and religious leaders, Female MPs have defended clauses in the bill relating to divorce and the sharing of marital property. The Uganda Women Parliamentary Association (UWOPA) has backed the proposed law which provides for divorce if there is adultery, sexual perversion, cruelty or desertion by a spouse for at least two years, change of religion, incest, bestiality, sodomy, homosexuality or pornography.

The female MPs also defended the Bill in relation to the changes to shared property. It is proposed that matrimonial property such as the home, household items acquired before or during marriage should be shared out. MPs Connie Nakayenze, Ronnah Ninsiima and UWOPA chairperson Betty Amongi said that in Uganda couples have been separating but women have had to walk away with nothing, despite having accumulated wealth with their husbands.

Male MP, Kassiano Wadri stated: "We are going to have a problem with fleeing women". His concerns were echoed by other male MPs. The Bishop of Kasana-Luweero Diocese, Paul Ssemwogerere, also criticised the Bill. He called it anti-Christian and called on MPs to scrap sections that he felt promoted divorce and cohabitation.

In addition, the Marriage and Divorce Bill proposes a five year sentence for Marital Rape. Clause 114 of the Bill provides that a spouse may deny the other spouse the right to sexual

intercourse on reasonable grounds, which include poor health, surgery and after child birth.

In Uganda, women are still forced into sex even when they have given birth and these conditions are worse within marriage, with women experiencing silent torture through forced sexual intercourse with their husbands. The proposal has the backing of the Uganda Chapter of the National African Women Ministers and Parliamentarians and is also supported by male MPs such as Robert Kasule Ssebunya MP who said: "This clause should be held in the Bill because some men are rough and behave like animals".

Women MPs have also urged the Ugandan Government to address other challenges such as lack of access to education, health and other social services which have hindered the development of the grassroots women initiative.

KENYA: POST-ELECTION RAPE SURVIVORS SUE KENYAN GOVT.



In February 2013, eight survivors of sexual violence committed in the

wake of Kenya's December 2007 general elections have taken the government to court over its alleged failure to protect them or investigate the crimes committed against them. The case was heard by the Nairobi High Court and came just before the General Elections in March 2013, which thankfully did not mirror events in 2007. "The survivors are suing the government for non-action both in terms of protecting people from violence during this period [2007-2008] but also for failing to institute investigations to ensure perpetrators can be brought to book," Saida Ali, the executive director of the Coalition on Violence Against Women

(COVAW) was reported to have told the UN News Agency, IRIN.

The case was brought by two men (victims of sexual violence) and six civil society organisations: COVAW, the Independent Medico-Legal Unit (IMLU), the Kenyan Section of the International Commission of Jurists (ICJ Kenya), and Physicians for Human Rights (PHR).

Under the current constitution, the Government has to provide counseling services, treatment and protection to victims of sexual violence. But lawyers for women say that these services are often not available.

It is estimated that there were over 3000 incidents of sexual violence as a result of the 2007 elections.

A recent report by the Small Arms Survey states that: physical and sexual violence against women in Kenya is common and it is rare that such violence is considered a serious crime reflecting the "low status of women in society, patriarchal values and power structures focused on male dominance, discriminatory institutions and implementation of laws, [and] the absence of a legal framework on intimate partner violence."

"The legal framework on sexual violence is strong but is not always implemented, and justice remains largely inaccessible, especially for poor women," Claire Mc Evoy, the report's author, told IRIN.

"We want to, among other things, use the case to compel the government to set up a special division within the High Court to deal with cases of SGBV," Ali said.

Gender Equality is everyone's business!

ZUMA WANTS "AFRICAN" JUSTICE



Since the issue was raised in Munyonyo, Uganda in September 2012, the CMJA

has been monitoring progress with the Traditional Courts Bill in South Africa.

Controversy has continued to rage over the bill since it was introduced in parliament in September 2012. The Bill aims at The Traditional Courts Bill, as currently drafted would allow Chiefs in traditional societies, to be the judges in legal disputes amongst residents within their jurisdiction. Supporters of the Bill believe that the adoption of this Bill would free up the existing judicial system, reduce delays and ensure better productivity within the administration of justice in South Africa. However, the rights of women, children and other vulnerable members of society would be put in jeopardy as the bill as currently drafted does not allow for these vulnerable individuals to choose which court they want their case to be heard in. In addition, traditional courts do not cater for legal representation. As the judicial officers in these traditional courts would not be legally qualified, the existing qualification requirements for judicial officers in South Africa would not apply to them. The Chiefs in the patriarchal, traditional dominated societies of South Africa are not necessarily aware or open to the idea of women's rights or the rights of other vulnerable groups in Society.

Minister Lulu Xingwana, Minister for Women, Children and People with Disabilities, has been a fierce critic of the bill, demanding it be redrafted altogether. She has pointed out that: "the constitution has an equality clause that supersedes custom. I plead with the National Council of Provinces not to pass this bill." "It's oppressive to women and discriminatory. We don't think traditional courts should be allowed

to impose forced labour. Why are we taking our people [back] to the dark ages?" There had been "no consultation" with rural women, Lulu Xingwana said.

The ANC Women's League - which has endorsed Zuma for a second term - has also called for the bill to be recalled.

President Jacob Zuma has tacitly endorsed the controversial Traditional Courts Bill, telling chiefs not to buy in to the legal practices of the white man.

Speaking at the opening of the National House of Traditional Leaders in parliament, President Zuma said Africans had their own way of solving their problems through traditional institutions.



"Let us not be influenced by other cultures and try to think the lawyers are going to help. We have never changed the facts. They tell you they are dealing with cold facts. They will never tell you that these cold facts have warm bodies," he said.

Zuma's view was seen as an endorsement of the controversial Bill,

Whilst the Bill would see access to justice opening up to over 18 Million citizens living in the rural areas, women would be disempowered by not allowing them access to the courts and lawyers.

In March 2013, it was reported that the ANC were considering withdrawing the bill but the latest news is that the Provincial Legislatures are currently examining the Bill and will give the mandate to the national government as to whether or not they support the bill.

Following this the Select Committee on Security and Constitutional Development in Parliament will decide whether or not to continue with the Bill.

WIDOWS' RIGHTS INTERNATIONAL – STATEMENT

In the continued efforts of the Gender Section to fight against the inhumane and degrading treatment suffered by Widows especially in Asia and Africa, we have continued to support the work that Widows Rights International (WRI) are doing in this field and the Gender Section of the CMJA supported the WRI Statement issued prior to the meeting of the Commission on the Status of Women in March 2013. The following were their recommendations:

"1. WRI recommends that the Commission on the Status of Women develop a Protocol on the rights of widows. This could draw on both the General Recommendation and Protocol to the African Charter (see above).

Such a Protocol:

- must encourage community leaders and civil society groups to engage with government to improve the situation of widows.
- must include must provide for criminal penalties for inhuman, degrading and life-threatening mourning rites and for any traditional or cultural practices which restrict the liberty, mobility and financial independence of widows.
- must also safeguard the families and dependents of widows and ensure their rights are protected.

2. WRI recommends that the Commission on the Status of Women

and the Human Rights Commission should require that all States Parties submit information on the status of widows' rights when presenting their country reports.

3. WRI recommends that clauses promoting the rights of widows should be included in all human rights Protocols and that all instruments relating to gender-based violence should include specific provisions relating to violence against widows of all ages.

4. WRI recommends that national governments should be encouraged, when developing legislation and in particular women's rights legislation, to engage with widows as part of any consultative process.

5. WRI recommends that all national governments should be required to record statistics on widows when they provide population statistics to General Assembly, the Economic and Social Council and the Commission on Population and Development.

The Statement was supported by GENDER SECTION, COMMONWEALTH MAGISTRATES' AND JUDGES' ASSOCIATION (CMJA),

FORWARD, UK NATIONAL ALLIANCE OF WOMEN'S ORGANISATIONS, UK WIDOWS IN DEVELOPMENT (WiDO), Nigeria WORLD YOUNG WOMEN'S CHRISTIAN ASSOCIATION (World YWCA), Switzerland WOMEN IN LAW SOUTHERN AFRICA (Malawi) WOMAN OF PURPOSE, Uganda"

Unfortunately the Final Communiqué From the Commission on the Status of Women does not mention widows in any way though as violence against women was the theme, the issue may be covered. It does not condemn any inhumane and degrading treatment of widows much to the disappointment of WRI.

WRI NEEDS YOUR HELP

WRI have received a small grant to enhance their networks of activist widows groups and lawyers dealing with cases related to harmful cultural mourning rites and the inhumane treatment of widows.

It is gathering information with a view to sharing good practice in improving the rights of widows.

If you are (or know) a group, lawyer or judicial officer working in this field in Sub-Saharan Africa, WRI would like to hear from you so that it can build up a repository of good practice and lessons learned and case law.

If you can assist please contact: administrator@widowsrights.org

JAIL TERMS NOT ENOUGH TO STOP SWAZI RAPES



A recent report online by Carmel Rickard, a South African legal affairs specialist outline the increasing

cases of rape that the Swazi Appeal Court has had to deal with recently.

She reported in January 2013 that rape cases were the dominate cases being heard at the Appeals Court.

Swaziland is already considered a pariah state because of King Mswati III's lifestyle and his championing of traditional culture in Swaziland,

including his numerous wives. But Swaziland can also now boast one of the highest levels of HIV/AIDs in the world today with women more affected than men. Treatment is sporadic and only half of the children, she reports are eligible for treatment.

"It's a problem made more complex by community attitudes in this conservative patriarchal society, with a third of Swazi adults believing that violence against women was justified in "certain circumstances". Add to this the problem, familiar to South Africans, that the head of state – a polygamist with 14 wives – sets a particularly poor example of "sound sexual practices".

In a recent case, Nkosana Dlamini was convicted of raping a two-year-old girl but the sentence imposed by the trial judge was deemed by the Appeal Court to be too low. Whilst he was sentenced to 14 years in prison, it allowed him "escape a much more severe penalty which lay well within the judge's sentencing competence, for what can only be described as a shocking episode of child abuse".

The court went on: "The time appears to have come for a ratcheting upwards of the sentences for rape – particularly the rape of young children – in the light of the disturbing numbers and frequency of such cases reaching this court.

"The incidents of rape... of very young children have reached pandemic proportions."

The judges also referred to the hugely alarming case of three 16-year-old boys charged with 18 counts of rape. These boys lay in wait for girls on their way home from primary school and then gang-raped them.

The girls, aged six to 11, were threatened with further violence if they told anyone. Whilst the first attack was reported in August 2002, children continued to be abused for another 3 months and then it was another 8 months before the boys ended up being charged.

The appeal court in Dlamini's case were particularly horrified that whilst the first attack was reported in August 2002, and yet "the ravishing of these children continued unabated" for another three full months and it was a further eight months until the boys were charged.

Carmel concludes that: "Of course it's useful that judges are considering increased sentences. But there are so many other ways that women are oppressed in Swazi society, so much socially-sanctioned violation of their rights, that tougher jail terms alone can do little to make girls and women any safer."

DOMESTIC VIOLENCE CRIMES IN THE PACIFIC



The PNG Post Courier recently reported that the Attorney General and

Minister of Justice in PNG is currently considering introducing the death penalty for crimes against women and sorcery related killings. Whilst the church has called this a "knee-jerk reaction", PNG recognises that there is gender based violence is a real problem. In recent months there have been crimes against women including a beheading and the burning alive of a mother accused of witchcraft, as well as the gang rape of two foreigners last month, drawing international condemnation. PM O'Neill feels that it is time for a strong armed approach to the issue though not everyone agrees that the death penalty should be used for such crimes, there is general agreement that something has to improve.

PNG like many other Pacific nations is fighting a battle against traditional attitudes towards women where domestic violence is considered the norm. In Tonga it has been reported that 91% of women suffer domestic violence. Many have died and the

high rate of physical, sexual and emotional abuse impacts the whole community. Three journalists have recently received awards for exposing the level of gender based violence in Tonga.

In 2008, Kiribati undertook its first survey on domestic violence. This revealed that 68 percent of girls and women aged 14 to 49 years experienced physical or sexual violence at the hands of a partner. The Kiribati government is working on a UN coordinated initiative that addresses capacity building and support for victims. In addition a joint project coordinated by New Zealand Police force to assist in combating violence against women and the response to this violence within law enforcement. UN Women are also working on a project in Kiribati to reduce violence against women.

**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!

Commonwealth Magistrates' and Judges' Association

Annual Conference

**23-26 September
2013**



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