

# CMJA NEWS

The Newsletter of the Commonwealth Magistrates' and Judges' Association

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## EDITORIAL

I would like to start this editorial with some really positive news. We are delighted that democracy seems to have been restored in the Gambia. Although the Gambia withdrew from the Commonwealth in 2013, the CMJA continued to keep a watching brief on developments in the country. The new President, His Excellency President Adama Barrow has indicated that he wishes to re-join the Commonwealth and hopefully the judiciary will re-join the CMJA in due course.

As you will read in the Judicial Independence Section, the judges who had been suspended in Botswana have now been reinstated and there is positive news from South Africa relating to the International Criminal Court (ICC) membership.

Unfortunately, we cannot report such positive news elsewhere. The CMJA, together with the Commonwealth Lawyers Association and Commonwealth Legal Education Association, issued a statement on the arrest and detention of lawyers and judges in the Cameroon following a prolonged strike of lawyers and teachers who were demonstrating against President Biya's moves to abolish the common law system in the Cameroon.

In other news, as mentioned in the Gender News issued in February, the CMJA's Hon. Vice President and former President, Her Hon. Mrs Justice Norma Wade-Miller was awarded an OBE in Her Majesty's Honours List for services to the judiciary of Bermuda and for her role "as President of the Commonwealth Magistrates' and Judges' Association". Congratulations Norma once again.

In January 2017, as members will know, the CMJA received a gift from the Patron's Fund which was used to produce and distribute the updated: "Guide for the Magistrate in the Commonwealth: Fundamental Principles and Recommended Practices". We are also grateful to the CMJA Endowment Fund for their contribution to the Guide. If you haven't received your copy please

contact the CMJA at [info@cmja.org](mailto:info@cmja.org) and we will send you an electronic copy.

We also would like to thank KPMG, Wellington for their pro-bono assistance in relation to outstanding financial commitments following the CMJA's Conference held in Wellington in September 2015.



Since February, with the help of our CAPA intern Jozoe Tay, the CMJA has been updating its repository on Judicial/Ethical Codes of Conduct. As readers will recall, the Commonwealth (Latimer House) Guidelines of 1998 tasked the CMJA with becoming a repository for such codes / guidelines. The CMJA is currently in the process of updating the information it has on file which is used to assist jurisdictions which do not currently have these or are updating them. We are very grateful to those who have responded so far. Please continue to feed us this valuable information. We are also deeply grateful to Jozoe for her help with the research and drafting of this newsletter.

I was invited to observe and speak at the Judicial Conference of Australia (JCA) Council Meeting on 18 March 2017 in Melbourne, Australia. The CMJA President and I had submitted a full report on the work and activities of the CMJA to the JCA Council. We are delighted to welcome the JCA as a new Member Association of CMJA and look forward to working with them in future.

The CMJA was also represented at the Commonwealth Law Conference (CLC) in Melbourne from 20 to 24 March 2017.

The CMJA has also been working on preparations for the CMJA's next Conference which is being held this year in Dar-Es-Salaam, Tanzania from 24-28th September 2017. You will now have received the Brochure and we look forward to a good participation from around the Commonwealth. The theme for this year is "Building an Effective, Accountable and Inclusive Judiciary". We hope to see you there.

In this newsletter, we have added a

new section relating to the topics to be discussed at the upcoming CMJA Conference.

## PLEASE DON'T FORGET TO PAY YOUR MEMBERSHIP DUES ON TIME.

**Arrears in Membership dues adversely affects the work that the CMJA can undertake on behalf of its membership and the work that the CMJA does on promoting and protecting judicial independence across the Commonwealth. We would urge all Member Associations and Individual Members to pay their Membership on time**

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## CMJA RECEIVES £2,500 GIFT FROM THE PATRON'S FUND

The CMJA was delighted to receive a £2,500 gift from The Patron's Fund, the charitable fund set up to acknowledge the work of the charitable organisations for which Her Majesty, The Queen acts as a Patron, on the occasion of her 90th birthday. Around £750,000 was available to distribute between nearly 300 charities and other organisations in the UK and the Commonwealth. The Fund received generous donations from a range of supporters; including individual donors, businesses, schools, community groups and the proceeds from The Patron's Lunch, the event on the Mall last June.

**Dr Karen Brewer, CMJA's Secretary General** on receiving the news, said that: *'We are delighted to have The Queen as our Patron. The charity is the voice of the judiciary around the Commonwealth and has a distinguished record of monitoring challenges to the integrity and independence of the judiciary. It works with judges and magistrates in the Commonwealth to improve standards and to ensure that there is better respect for the rule of law and the Commonwealth fundamental values, including the Commonwealth (Latimer House) Principles on the Accountability of and Relationship between the Three Branches of Government. The gift from the Patron's Fund will help the CMJA to publish and widely distribute the "Guide for Magistrates in the Commonwealth: Fundamental Principles and Recommended Practices"*

The **CMJA's President, Chief Judge John Lowndes** from Australia said *"The Guide emphasises the key concepts and principles underpinning the role of the judiciary as one of the pillars of democracy and the important part that the magistracy (lower judiciary) play in promoting the rule of law and good governance"*

**Sir Stuart Etherington, Chair of The Board of Trustees for The Patron's Fund, said:** *'The Patron's Fund is very pleased to be able to support the CMJA with its valuable work. The CMJA is among hundreds of organisations for which The Queen acts as a Patron, which between them make a difference to causes and communities in the UK and throughout the Commonwealth.'*

For further information on The Patron's Fund (Registered Charity No. 1164171), visit [www.thepatronsfund.org.uk](http://www.thepatronsfund.org.uk)

## QUEEN'S COMMONWEALTH DAY MESSAGE

**BY HER MAJESTY THE QUEEN, HEAD  
OF THE COMMONWEALTH AND CMJA  
PATRON**

This Commonwealth Day, a baton will set out from Buckingham Palace and begin a long and extraordinary journey. Over the next twelve months, the Baton will visit people living in the nations and territories of our Commonwealth family in every continent and ocean.



Carried on its way by thousands of people of all ages and backgrounds, by the time it reaches its final destination, The Queen's Baton will have brought together through its route and symbolism, almost 2.5 billion people who share the special connection of being Commonwealth citizens.

Contained within the Baton will be a written message that will be opened and read at the Commonwealth Games in Australia next year. However, there is an even more powerful message to be seen and experienced as the Baton passes from hand to hand, from seashore to mountaintop, through cities, towns, and villages. It is the message of a peace-building Commonwealth.

The cornerstones on which peace is founded are, quite simply, respect and understanding for one another. Working together, we build peace by defending the dignity of every individual and community.

By upholding justice and the rule of law, and by striving for societies that are fair and offer opportunities for all, we overcome division and find reconciliation, so that the benefits of progress and prosperity may be multiplied and shared.

As members of the Commonwealth family we can find much to be thankful for in the inheritances we have received from those who came before us. Through consensus and cooperation great things have been achieved.

We can find further reward and fulfilment by continuing to collaborate with others in a spirit of goodwill to build a peaceful and abundant future for all Commonwealth citizens.

**ELIZABETH R.**

13 March 2017

## JUDICIAL INDEPENDENCE ISSUES

### **BOTSWANA**

The CMJA has been continuing to follow developments in Botswana in relation to the four suspended judges. The Law Society of Botswana (LSB) sought to be an amicus curiae in the case but their requests to the High Court and the Appeal Court were turned down on the basis that they had no additional evidence to present and that the judges were qualified enough to be able to deal with the case themselves.

The Chairman of the Bar in his Opening Address for the Legal Year in 2017, Kgalalelo Monthe, called on all the judicial stakeholders to resolve differences and turn a new page in the entire judiciary.

On 31 March 2017, the four suspended judges were reinstated. The Botswana Public Employees Union (BOPEU) commended on the "restoration of sanity" in the Judiciary. Above all, the BOPEU commended all parties involved for their efforts to restore the integrity of the Judiciary. However, the LSB has since expressed their disappointment in the reinstated judges. In a statement by the LSB, the society claimed that the Judiciary had lost its credibility after the judges made their apologies to the President and Chief Justice Dibotelo. In the LSB's opinion, the judges' apologies had adversely made the Judiciary submissive to the Executive thereby impeding the road to a fully independent judiciary especially as the judges had well withstood all the pressure and had confirmed their "strength of character and maturity".

In a separate matter, the Law Society has ongoing litigation with the Judicial Service Commission (JSC) on issues relating to its mandate. *"We have expressed concern that in such cases, it is either the Honourable Chief Justice Maruping Dibotelo, who is Chairman of the Commission, who empanels the bench to decide a matter in which he is a party. This practice is wholly unsatisfactory as it creates a perception of conflict of interest." ".... the Society believes that Judges should be appointed on merit as well as integrity and suitability of character and temperament. Knowledge of the law, the balance of mind, the ability to brush aside the inessential and drive to the heart of a case are crucial."*

Amid the suspension and reinstatement of judges, the Botswana judiciary faces yet another crisis – High Court Justice Abedinigo Tafa had passed down the judgment rendering the re-appointments of Court of Appeal judges by the President invalid.

## **CAMEROON**

Since October/November 2016, lawyers (and other professions) in South and North Western Cameroon (the Anglophone part) have been on strike and there have been a number of judicial officers who have been arrested, including Justice Paul Ayah of the Supreme Court. There is still some confusion over whether or not they were arrested in their capacity as judges or as government lawyers as the Cameroon follows the civil law system where judicial officers were often transferred between the judiciary and government departments. The CMJA undertook further investigations and in early February the CMJA, Commonwealth Lawyers Association (CLA) and Commonwealth Legal Education Association (CLEA) issued a joint statement on the arrest and detention of three lawyers and Justice Ayah under draconian anti-terrorism legislation which carries with it a death sentence (see below). The trial which is taking place in military courts was initially adjourned until 23 March 2017. The International Bar Association Human Rights Initiative (IBAHRI), Amnesty International, the International Commission of Jurists (ICJ) have also issued statements decrying the arrest and detention of the lawyers and judges as have the Law Societies of England and Wales and Upper Canada.

On 21 March 2017, the Mfoundi High Court ruled Justice Ayah should remain behind bars for an unspecified period. He was originally released on that day for health reasons but was re-imprisoned, dashing the hopes of his family and the people of Southern Cameroon. Shortly after the verdict was issued, a defence counsel told the Cameroon Journal that an appeal would be filed against the (illegal) detention.

It was also reported that Barrister Agbor Balla, Dr Fontem Neba and Mancho Bibixy were in court that day but no witness against them was present. Their cases have been adjourned to 27 April 2017.

In addition, Anglophone lawyers from Buea were attacked on the highway between Douala and Yaounde by LRC forces. It was understood that the Anglophone lawyers were on their way to Yaounde to defend their leaders.

The recent moves by President Biya to change the legal system in Anglophone Cameroon from the common law to civil law system which was the cause of the strikes in the first place, continue to be a major concern.

On 20 March 2017 in a separate matter, Barrister Akere Muna, Chairman of the Anti-Corruption Conference Council, left the country to speak at a conference in Johannesburg following a call to appear before the Central Investigation Department. Barrister Muna has been

critical of President Biya's regime and believes that no lawyers should be subject to the violation of basic and fundamental human rights.

### **STATEMENT ON THE ARREST AND DETENTION OF LAWYERS AND JUDGES IN THE CAMEROON**

The Commonwealth Lawyers Association (CLA), Commonwealth Legal Education Association (CLEA) and Commonwealth Magistrates' and Judges' Association (CMJA) are concerned about the recent arrest and detention of judges and lawyers in the North West and South West Cameroon under the Anti-Terrorism Act of 2015.

Where members of the judiciary and the legal profession are accused of criminal conduct the State is entitled to charge them with the relevant crimes, but the manner in which they are charged and arrested must be consistent with the rule of law and the constitutional safeguards that are afforded to everyone in the country concerned. The judiciary and legal profession, like other members of society, may not be subjected to violations of their fundamental human rights no matter what the charges are against them.

By virtue of its membership of the Commonwealth, the Cameroon is committed to the fundamental values and principles of the Commonwealth, at the core of which is a shared belief in, and adherence to, human rights and democratic principles including an independent and impartial judiciary and the independence of the legal profession. Any measure on the part of the Executive which is capable of being seen as eroding the independence and impartiality of the judiciary, or the fundamental rights that they are entitled to as citizens or residents of the Cameroon is a matter of serious concern.

The existence of an independent and impartial judiciary and an independent legal profession is one of the cardinal features of any country governed by the rule of law and enhances economic development.

The CLA, CLEA and CMJA in particular note with concern, the arrest and detention of Justice Paul Ayah Abine who was arrested in violation of article 629 of the Code of Criminal Procedure which states that

*"Where a judicial or legal officer is likely to be charged with committing an offence the competent Procureur General shall request the President of the Supreme Court to appoint an investigating magistrate as well as three other magistrates of a grade at least equal to that of the magistrate incriminated and they shall hear and determine the matter at first instance..."*. The CMJA calls upon the President to

respect due process in relation to the judicial and legal officers that have been arrested.

The CLA, CLEA and CMJA call on the authorities to respect the independence of the legal profession and the judiciary and their right to exercise freedom of opinion and conscience.

The CLA, CLEA and CMJA express its support of members of the judiciary and the legal profession in the Cameroon in their efforts to maintain their independence and to promote democracy and the rule of law.

7 FEBRUARY 2017

COMMONWEALTH LAWYERS ASSOCIATION (CLA)

COMMONWEALTH LEGAL EDUCATION ASSOCIATION (CLEA)

COMMONWEALTH MAGISTRATES' AND JUDGES' ASSOCIATION (CMJA)

## **ENGLAND AND WALES**

More than 200 judges have won a case against the Ministry of Justice in the High Court with regard to their pension entitlements. In 2015 the British government introduced new pension rules which had affected judges who were appointed after a certain date. The British government is considering whether or not to appeal the judgment.

## **GAMBIA**

Although former President Yayha Jammeh withdrew the Gambia from the Commonwealth a number of years ago, the CMJA has kept a watching brief on developments. Following the successful election of Adama Barrow as President in December 2016, former President Jammeh was persuaded to leave the Gambia with his family and the new President was inaugurated in February. The Chief Justice, a Nigerian, had also resigned and fled the country the same weekend as former President Jammeh. The CMJA were delighted to hear that former Supreme Court Judge and former Chief Prosecutor at the International Criminal Tribunal for Rwanda (ICTR), Justice Hassan Jallow was appointed as the new Chief Justice on 15 February 2017. The CMJA has been in touch with both Chief Justice Jallow and the new Minister of Justice Aboubacar Tambadou, a human rights lawyer and former prosecutor at the ICTR, to offer assistance pending their application to the Commonwealth being accepted.

## **MALAYSIA**

The Malaysian Bar Association has expressed concern about the current process of appointing and promoting judges. They are calling for reforms to the process which would exclude the

involvement of the Executive Branch of Government as the Prime Minister currently has a right of veto of any recommendation put forward by the Judicial Appointments Commission (JAC). In addition, the Bar Association also suggested that the three bar associations of Malaysia should be consulted when lawyers were considered appointment as judges.

There also have been moves to increase the jurisdiction of the Syariah courts in Malaysia through a Private Members Bill introduced in 2016. The CMJA will continue to monitor developments.

### **NAURU**

Despite encouraging news regarding the recent election in Nauru, the CMJA has learnt that resident magistrate, Emma Garo has not had her contract renewed following her decision not to sentence three people who had pleaded guilty to various charges linked to anti-government protest.

Justice Minister David Adeang had earlier warned judges to be careful about being too lenient, suggesting their contracts may not be renewed. It is understood that the public prosecutor will appeal the sentences. Readers will recall that there is a history in Nauru of the government removing judges, including Ms Garo's predecessor, Peter Law. These moves have been widely criticized by human rights groups, judicial organisations around the Commonwealth and led to the withdrawal of New Zealand government funding to the judiciary in 2016.

### **SAMOA**

The Samoan Parliament has ordered a commission of inquiry into the Land and Titles Court and the work of its judges. The judges have refused to be involved in the Commission as they believe that it would have an adverse impact on their independence and integrity as judicial officers. The Judiciary has indicated in their response to accusations by the Prime Minister that they are "afraid and embarrassed to be questioned about their reckless handling of matters pertaining to the people of this nation". The Judiciary pointed to that the Land and Titles Court made decisions on a collective basis after an investigation so the decision is a majority decision of the panel. There are also processes in place for appeals which the members of the public can seek to use. Despite this the Commission has started to examine the work of the judges for the court and has opened its consultations to members of the public.

### **SEYCHELLES**

The former Acting Chief Justice was suspended in October 2016 pending a misconduct inquiry related to a series of decisions he delivered shortly before elections the month before. A Seychelles politician has been accused of manipulating

the court system to prevent two political parties from contesting the elections. The Appeal Court stated that "this would not have happened without the indulgence of court and counsel in this case", and saw this as "an abuse of court process by a judge".

### **SOUTH AFRICA**

On 22 February 2017, the High Court in Pretoria ruled that government's decision to withdraw from the International Criminal Court (ICC) was unconstitutional and invalid. President Jacob Zuma and the ministers of justice and international relations were ordered to withdraw the notice of withdrawal. During the hearing in December 2016, Deputy Judge President Phineas Mojapelo told Counsel acting for President Zuma and the Ministers of Justice and International Relations, that the Executive's function was to seek public consultation. He went on to say that it was the executive's prerogative to enter into and withdraw from treaties the country had signed, and that Parliament only needed to give its approval. He also added that it was expected of the executive to go back to Parliament, and that decisions executed by the executive must be on the basis of the expressed authority of the Constitution; if the authority was not expressed in the Constitution, it must go to Parliament. Following on from this decision, the Democratic Alliance Party has laid criminal charges against members of Cabinet, the SAPS, Hawks, the NPA and senior government officials for contravening both the Rome Statute, as well as a High Court Order in aiding and abetting the prohibited escape of warlord Omar Al Bashir from South Africa in June of 2015. On 7 March 2017, South Africa has formally revoked its withdrawal from the ICC.

Further to the report in the last newsletter, the CMJA has continued to monitor the progress of the amended Traditional Courts Bill. The new draft has been seen as an improvement on the previous draft which disenfranchised women and vulnerable members of society of their rights as these courts do not allow women to appear or legal representatives. The new draft appears now to permit people to opt out of traditional courts if they so wish and use other courts and dispute resolution fora instead. However, serious problems remain for rural people seeking to enforce the rights contained in the new Bill. Some clauses are especially worrying in the context of the unequal power relations in rural areas, and the government's continued failure to enforce existing checks and balances on the power of traditional leaders. The two most fundamental criticisms of the old Bill were its consequences for women and that it obliged 18 million South Africans in former homelands to subject themselves to chiefs'

courts, even where claims and disputes about the legitimacy of the chief and his tribal boundaries had been lodged with the Commission on Traditional Leadership Disputes and Claims. Over 1200 such disputes were lodged before the cut-off date of August 2010.

On 18 March 2017, AllAfrica.com site reported that the office of the Chief Justice was broken into and 15 computers bearing confidential and sensitive information were stolen. Parliamentary spokesperson Moloto Mothapo said that this brazen act weakens the judicial system as well as the nation's shared values. The Police and Prisons Civil Rights Union (Popcru) have called this a "well-orchestrated act" that not only threatens the judiciary but also the intelligence services.

While fully supportive of Justice Zondo as the new Deputy Chief Justice of the Republic of South Africa, Democratic Alliance (DA) Leader, Mmusi Maimane, has voiced his opinion on President Zuma's intervention in the appointment. In his response, the DA leader emphasized the importance of a judiciary independent of the Executive's power and of external influences.

### **VANUATU**

Despite numerous reminders from the Chief Justice that suitable court premises need to be provided following the fire that destroyed the Hall of Justice in 2007, the government recently announced that they still haven't found a suitable donor despite announcing that the new Hall would be built at a cost of Vt4 billion (US\$37 million). The Hall of Justice aims to provide the people of Vanuatu a venue that symbolizes the supremacy of the Rule of Law; to house the judicial and administrative headquarters of the Judiciary; and to enhance the judicial services to the people in Port and other urban centres and the six provinces of the country.

## **BUILDING AN EFFECTIVE, ACCOUNTABLE AND INCLUSIVE JUDICIARY**

Whilst this is the **CMJA theme for the forthcoming conference in Tanzania**, the Editor thought readers might be interested in recent reports from Commonwealth jurisdictions related to some of the topics being discussed which include *diversity in the modern judiciary, humanitarian law, terrorism and anti-corruption* amongst many others. The CMJA is always interested in hearing from its members of their experience of these and other topics to be discussed.

The CMJA President has outlined below the Australian experience related to the topic: *What Is In A Name: Magistrate Or Judge?*, which will also be discussed at the Conference. See [www.cmja.biz/programme-outline](http://www.cmja.biz/programme-outline) for further topics to be discussed. Please feel free to write to the Secretary-General at the address below if you have any thoughts on these challenging topics. The following are some recent developments:

### **COMBATING CORRUPTION IN THE JUDICIARY:**

In **Namibia**, a magistrate was suspended from her post on 18 January 2016 after being accused of corruption. The decision was made by the Magistrates' Commission after an investigation performed by the Anti-Corruption Commission was conducted. The magistrate unleashed her anger on social media against the prosecutor general, the magistracy and the Magistrates' Commission amongst many others. This prompted the Magistrates' Commission to obtain an interdict banning her from further publishing defamatory material against the Commission. Following her suspension, the magistrate resigned from her post.

Elsewhere, the CMJA has continued to monitor the developments following the arrest of a number of judges on corruption charges in **Nigeria**. Recent reports have indicated that the National Judicial Institute, responsible for appointments and discipline, has started investigations of these judicial officers.

In a recent report on [AllAfrica.com](http://AllAfrica.com), the Chief Justice of **Uganda** called for the prosecution of two magistrates who had been found guilty of corruption. In both cases, the magistrates were apprehended upon receiving the bribe but were not prosecuted by the Inspector General of Government (IGG). The decision to accept a plea for pardon was condemned by Chief Justice Katureebe who felt that these magistrates should have received a stronger sentence, as they were members of the Judiciary.

### **POOR PUBLIC PERCEPTION:**

As many people will have read, members of the High Court of **England and Wales** dealing with Brexit and Article 50 of the Treaty of Lisbon were accused in January of being "Enemies of the People" also came under criticism for the same reason. The Lord Chancellor who is the defender of the Judiciary under the constitution, failed to respond to the media criticism of the High Court Judges and when the Supreme Court issued their judgement, qualified her defence of the independence of the judiciary by stating that she also believed in the freedom of the press. In Australia, some judicial officers have also been criticized in the media for decisions made

in Court. This is why it is important for the CMJA to consider such issues during the conference in Tanzania. If you have any examples from your jurisdiction, please feel free to write to the CMJA about them.

## **CHANGE OF TITLE FOR THE AUSTRALIAN MAGISTRACY**

### **BY HIS HONOUR CHIEF JUDGE JOHN LOWNDES OF THE NORTHERN TERRITORY**

On the 3 May 2016 magistrates of the Northern Territory of Australia ceased to be called "Magistrates" and were given the title of "Judge" by virtue of the enactment of the *Local Court Act* (NT) 2016. Northern Territory magistrates are now Judges of the Local Court.



This was an important event in Australian legal history. The Northern Territory is the first Australian State or Territory jurisdiction to take the step of changing the title of judicial officers presiding over Magistrates' Courts to that of "Judge". No other State or Territory has yet followed that precedent.

The change of title was entirely justified for a number of reasons – some of which were carefully considered and taken into account by the Northern Territory Government in deciding to legislate the change of title.

The gradual judicialisation of the Australian magistracy has resulted in it becoming such an integral part of the Australian judiciary that there is no logical basis for continuing to refer to judicial officers of the lower courts as magistrates and judicial officers of the intermediate and higher courts as judges.

That process of judicialisation has been brought about by a number of developments, including the transformation of the magistracy from a public service institution to an office which is structurally independent of the executive branch of government, and which now forms an integral part of the judiciary; the consequential judicial independence of the magistracy resulting in the alignment of magistrates with judges as judicially independent officers; the professionalisation of the magistracy as a body of legally trained and competent judicial officers; the expansion of the jurisdiction of courts presided over by magistrates and the increasing complexity of that jurisdiction coupled with the divestiture of the magistracy of many of its administrative functions and the assumption of increasingly complex judicial functions

(John Lowndes 'The Australian Magistracy: From Justices of the Peace to Judges and Beyond Part I' *Australian Law Journal* [2000] 74(8) 510).

The next and final step in the judicialisation of the Australian magistracy is changing the title of magistrates to that of "Judge".

The title of "magistrate" is an anachronistic title which has negative connotations, reflecting a public service magistracy of a bygone age. The continuing use of the title fails to recognise the judicialisation of the magistracy and its concomitant disentanglement from the executive branch of government. The title of "magistrate" is inappropriate because it does not indicate that magistrates are in fact truly independent judicial officers – indeed judges – and members of the judiciary (John Lowndes, 'The Australian Magistracy: From Justices of the Peace to Judges and Beyond Part II' *Australian Law Journal* [2000] 74(9) 597). The continuing use of the anachronistic title has a tendency to compromise or otherwise affect the independence of the lower courts as well as the collective independence and integrity of the Australian judiciary as a whole, given that the magistracy is now an integral part of the national judiciary.

As an integral part of the Australian judiciary, magistrates should be afforded the same degree of independence as judges. The most effective way of ensuring the independence of magistrates is to confer upon them the title of judges (John Lowndes, 597).

There can be no doubt that magistrates are judges in all but title. There is no material difference in the function performed by judges and magistrates. Magistrates perform identical tasks to those performed by judges: they hear and determine cases on the same basis and in the same competent, judicially independent, open and impartial manner as judges do – in other words they "judge" cases. (John Lowndes, 592). The equivalent judicial role performed by magistrates should be appropriately recognised in the title accorded to them.

Furthermore, magistrates are bound by the same body of judicial ethics as the judges of the intermediate and higher courts (John Lowndes, 595). This is made patently clear in the Introduction to the *AJJA Guide to Judicial Conduct*:

The purpose of this publication is to give practical guidance to members of the Australian judiciary at all levels. The words "judge" and "judiciary" when used include all judges and magistrates.

The fact that magistrates and judges are subject to common standards of judicial

conduct – which are directed at maintaining public confidence in the judiciary - should be appropriately reflected in the title accorded to magistrates. The most effective way of ensuring that magistrates are seen by the community to be bound by the same ethical standards as the judges of the intermediate and higher courts, and maintaining public confidence in the judiciary, is to formally recognise magistrates as judges.

Furthermore, Australian magistrates are perceived by the general public to be judges and often referred to by that title by members of the public (John Lowndes, 596). There is an expectation on the part of the community that those who preside over Magistrates Courts will act judicially, that is, they will act as judges (John Lowndes, 596).

Changing the title of magistrates to that of “Judge” would reinforce this public perception and fulfil this expectation by formally and duly recognising the standing that the lower courts (magistrates’ courts) have in the community.

As the Hon Rob Hulls, former Attorney General of Victoria, Australia, recognised many years ago, the change of title for magistrates is important “not only to assist the public in recognising that the Court now has ...more extensive jurisdictions, but also to further help foster and encourage public confidence in the Government’s determination both in the past and possibly in the future to widen the jurisdictions of [the Magistrates Court], thereby increasing the public’s access to affordable and expeditious justice”.

At the same time the former Attorney General further explained the justification for the change of title in these terms:

Whilst there may be many persons interested in accepting appointment to this Court, attracting the best candidates will also be assisted by a demarcation of this Court as it now is from the days when its members did not hold law degrees and had not practised as lawyers. It will help elevate the court’s standing not only in the community at large but also within the legal profession, and it will encourage the better integration and communication between all judicial officers of this State which in turn will help the administration of justice in many regards, judicial education both formal and informal being just one example.

The proposed change of title is neither radical nor without relevant international precedent (John Lowndes, 597). Over three decades ago, in comparable jurisdictions such as Canada and New Zealand, the imperatives

of change of title were recognised and magistrates were renamed “Judges”. Even in England, the bastion of tradition, stipendiary magistrates were renamed “District Judges” in 2000. The various considerations that influenced and prompted the change of title in Canada, England and New Zealand have equal application to the Australian magistracy and support an equivalent change of title in Australia.

The arguments in favour of the change of title are irresistible. Changing the title of magistrates to that of “Judge” is a key mechanism for enhancing the independence of magistrates and the lower courts over which they preside, and for fostering public confidence in those courts and their judicial officers who serve the community by administering justice at the coalface of the Australian judiciary.

In accepting the case for the change of title the Northern Territory has paved the way for the rest of the Federation of Australia – New South Wales, Victoria, Queensland, South Australia, Western Australian, Tasmania and the Australian Capital Territory – to follow its example.

*The content of this article is based on the following two part article as first published by Thomson Reuters:*

*John Lowndes, ‘The Australian Magistracy: From Justices of the Peace to Judges and Beyond Part I’ [2000] 74(8) Australian Law Journal 509 and ‘The Australian Magistracy: From Justices of the Peace to Judges and Beyond Part II’ [2000] 74(9) Australian Law Journal 592.*

*For all subscriptions inquiries please phone from Australia: 1300 304 195, from overseas: +61 28587 7980 or online at [legal.thomsonreuters.com.au/search](http://legal.thomsonreuters.com.au/search). The official PDF version of this article can also be purchased separately from Thomson Reuters.*

## COMMONWEALTH LAW CONFERENCE

### **THRIVING IN A GLOBAL WORLD: BUILDING ON THE RULE OF LAW**

**REPORT BY DR KAREN BREWER,  
SECRETARY-GENERAL OF CMJA**



The CMJA was represented at the 20th Commonwealth Law Conference held in Melbourne, Australia from 20-24 March 2017 by Dr Karen Brewer and Chief Judge John Lowndes, though there were

a number judges who participated in the Conference who were also members of the CMJA. The CMJA also had a stand at the Conference. The theme of the Conference was **“Thriving in a global world: building on the rule of law”**. Keynote Speakers at the Conference included the President of the Law Council of Australia, Ms Fiona McLeod who spoke eloquently about the importance of respecting indigenous peoples and the struggle that has occurred within Australia in ensuring that indigenous rights are protected. She also pointed out that *“The reality is that we must learn from our indigenous peoples and confront the notion of common wealth once again, because the issues that confront humanity – corruption, climate change, environmental degradation, slavery and exploitation, global poverty and inequity – require us to work, not for the benefit of a few enabled sovereign states or a handful of individuals wealthy beyond imagining, but for the common good of all.”* She went on to stress that: *“our efforts to build integrity and accountability in support of the observance of human rights and the rule of law throughout the world, are crucial – both in maintaining trust in the system and social cohesion, and in addressing the causes of inequality and instability.... It is therefore vital that our institutions are continually strengthened and improved to protect as we can against human need, greed or protection of those we hold dear.”* The Conference was opened by the Chief Justice Marilyn Warren, Chief Justice of Victoria.

The Deputy President of Zambia, The Rt Hon. Inonge Mutukwa Wina spoke about gender equality and the importance of protecting women’s rights.

English High Court Judge, Justice James Dingemans chaired a dynamic session on Judicial Appointments where former Federal High Court Judge of Australia, Michael Kirby spoke about the importance, in his estimation, and somewhat controversially, of having Executive involvement in judicial appointments to avoid judicial officers being appointed by the “old boy network” of colleagues whilst the Chief Justice of Ghana, Justice Georgina Wood, pointed out that it was essential, to exclude any political participation in the process. KS Tulsi, senior advocate at the Supreme Court of India, spoke about the recent controversy in India relating to who should be responsible for the appointment of judges (which the CMJA reported on in the last newsletter in April 2016).

The CMJA President, Chief Judge John Lowndes chaired a session on “Judicial Independence”. Justice Joseph Fok of the Court of Appeal of Hong Kong spoke about the impact of the “One country, two systems” processes on the independence

of the judiciary in Hong Kong 20 years on from the Handover. Sir Terence Etherton spoke about the challenges faced in the UK by the judiciary.

Justice Fok also spoke, as did former CJ of the Falkland Islands, the Hon. Christopher Gardner and Justice Abaslom Keniapisia about the challenges faced by non-local judges, that is to say, "overseas non-permanent judges", sitting in courts across the Commonwealth. Other topics discussed included issues surrounding artificial intelligence; freedom of speech, sedition, blasphemy; mediation and ADR; the death penalty in the Commonwealth; counter terrorism, emergency laws and human rights.

The Commonwealth Legal Education Association held the Commonwealth Moot during the Conference. The Final was held at the Melbourne Convention Centre in front of Chief Justice Ivor Archie of Trinidad and Tobago, Justice Stella Amoko of Uganda and Mr Wesley Wong Wai-Chun, Solicitor General of Hong Kong. The Final was held between India and Australia with the Australian students winning after a hard-fought contest.

## 17TH INTERNATIONAL CONFERENCE OF CHIEF JUSTICES OF THE WORLD, LUCKNOW, INDIA

### REPORT BY JUDGE SHAMIM QURESHI, DIRECTOR OF PROGRAMMES

I attended this conference in my personal capacity and not on behalf of CMJA. Despite its title, this conference is for any judge and not merely for chief justices. It is an annual conference convened by Dr Jagdish Gandhi, founder and manager of City Montessori School (CMS) in Lucknow, India. CMS is an amazing private institution with over 53,000 pupils across 20 sites in one city alone. CMS was established with the vision of making children spiritually aware and of implanting in their tender hearts the ideas of world unity and world peace based on the ancient Indian philosophy of 'Vasudhaiva Kutumbakam' (the Earth is but one country and mankind its citizens). For the School's motto, Dr Gandhi selected the words 'Jai Jagat' (Do good to the whole world). Consequently, CMS strives to teach every student the ideals of the oneness of God, unity of humankind, universal brotherhood, world unity and

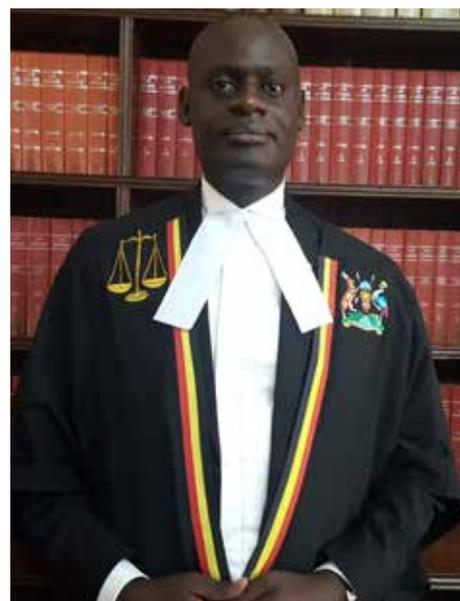
world peace, in addition to the teaching of the prescribed school syllabus. The conference is always based upon Article 51 of the Constitution of India which aims to promote international peace and security between nations, foster respect for international law and encourage settlement of international disputes by arbitration.

Dr Gandhi convenes this conference with an army of helpers who work with military discipline to ensure there are no hiccups during the week. The conference programme is spread out over seven days. There are two day trips for the delegates to see the Taj Mahal in Agra and various sites in New Delhi before they travel by air to Lucknow on day three which has a press conference and a welcome function. The school pupils turn out in force to listen to all the speeches presented over three days.

The three-day conference itself is then divided between plenary sessions in the auditorium and thematic breakout groups. There are numerous topics for discussion including – unity and coexistence of religions; role of civil societies, media and education for creating unity and peace; law, courts and religion; creation of a World Parliament to enact enforceable world law; limitations of the International Court of Justice and the International Criminal Court; relationship between international and domestic law; protection of fundamental human rights; violence against children; rights of children; rights of women and gender equality; role of financial institutions such as IMF and World Bank; regional and international terrorism; ethnic and civil wars, genocide by misguided forces; nuclear proliferation and disarmament; refugee problems; problem of global warming and climate change; international environmental law; effect of global population growth. The list is large enough to engage the interest of any delegate.

Not every main speaker can attend the conference and there are recorded speeches from around the world by heads of government, ambassadors and senior judicial officers. Many delegates are asked to assist in the breakout sessions by chairing or giving short ten minute presentations to the schoolchildren. What is a remarkable sight is the attendance of a substantial number of the children, immaculately turned out and who come prepared with quite difficult questions for speakers. The most memorable thing is they all have a wonderful smile as they go through the day even when the delegates have started to flag.

## MEET OUR MEMBERS: HIS WORSHIP VINCENT MUGABO, UGANDA



His Worship Vincent Emmy Mugabo is the immediate past President of the Uganda Judicial Officers' Association (UJOA). He graduated with a LLB (Hons) from Makerere University and has since acquired several post graduate qualifications. He has recently completed his LLM thesis on "Integrating ADR into the Formal Justice System; Case study of Court Annexed Mediation in Uganda"

He has served in the Judiciary since 1999 and his 16-year career has seen him rise through the ranks. Currently, he is the Deputy Registrar Mediation at the High Court Commercial Division.

He has presented many papers on Justice and this has made him a regular contributor to Justice not only in Uganda but East Africa at large.

In his current role as the Deputy Registrar Mediation, he carries out mediation of Commercial Court matters, supervises a team of Court accredited mediators, has spear headed various programs and activities as far as ADR is concerned including among many the Roll out of ADR to all Courts in Uganda and training of Judicial officers and advocates in mediation at various levels.

As Deputy Registrar Mediation and Chairperson Project Implementation Unit for the ADR Roll out, he is responsible for incorporating gender issues into ADR to improve access to Justice for vulnerable groups. He has been instrumental in sensitising communities on the benefits of ADR especially to the women and vulnerable groups in the society.

## NEW MEMBERS

### AUSTRALIA

Deputy Chief Magistrate Christopher O'Brien

Judge William Garth Everson

Justice Gaetano Pagone

### CANADA

Justice Mona Lynch

Justice Andras Schreck

Her Worship Renee Rerup

Justice James Turnbull

### ENGLAND & WALES

Mr Josh Cocklin

His Honor Judge Neil Bidder

Sir Nicholas Lavender

### INDIA

Mr Muhamed Mustaque Ayumantagath

### MALAYSIA

Mrs Aslina Joned,

Dato' Cyrus Das

### MAURITIUS

Miss Pareemala Devi Mauree

### NIGERIA

Justice Adenike Josephine Coker

### SOUTH AFRICA

Ms Betty Rawheath

### TANZANIA

Judge Robert Vincent Makaramba

Dr Gerald Alex Ndika

### UGANDA

Magistrate Ketty Joan Acaa

Justice Dr Ester Kitimbo Kisaakye

## 2017 DIARY OF EVENTS

**3-6 JULY 2017**

### **"JUDICIAL CASE MANAGEMENT AND ETHICS TRAINING"**

CMJA and the UK Civil Service College  
London, United Kingdom

For further details: contact Ade Arimoro on  
[ade@civilservicecollege.org.uk](mailto:ade@civilservicecollege.org.uk)  
or telephone him on +44 (0)20 8 069 9003

**24 – 28 SEPTEMBER 2017**

### **BUILDING AN EFFECTIVE, ACCOUNTABLE AND INCLUSIVE JUDICIARY**

CMJA Conference,  
Dar-Es-Salaam, Tanzania

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