



Statement on the attempted deportation and arbitrary detention of High Court Judge David Lambourne, the continued suspension of the Chief Justice of Kiribati and the continuing disregard for Judicial Independence in Kiribati

The CMJA, CLA and CLEA are deeply concerned about the attempted deportation from Kiribati and current arbitrary detention of High Court Judge David Lambourne, following the withdrawal of the Attorney General's appeal against the decision of the High Court in the constitutional claim brought by Judge Lambourne in November 2021. The Associations are alarmed that the tribunals set up to investigate alleged misbehaviour by Judge David Lambourne and the Chief Justice William Hastings have yet to report on any findings. The Associations are further alarmed that there has been an attempt to deport Judge Lambourne without due process being followed and he has subsequently now been arbitrarily detained by the authorities in Kiribati.

As a Member of the Commonwealth, Kiribati has agreed to abide by the Commonwealth fundamental values including the Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government (2003) and the Commonwealth Charter. *"An independent, effective and competent legal system is integral to upholding the rule of law, engendering public confidence and dispensing justice."* (Commonwealth Charter).

The Latimer House Principles state:

"Relations between parliament and the judiciary should be governed by respect for parliament's primary responsibility for law making on the one hand and for the judiciary's responsibility for the interpretation and application of the law on the other....."

Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place

In addition to providing proper procedures for the removal of judges on grounds of incapacity or misbehaviour that are required to support the principle of independence of the judiciary, any disciplinary procedures should be fairly and objectively administered. Disciplinary proceedings which might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness."

The Basic Principles on the Independence of Judges (1985) state:

"The Independence of the Judiciary shall be guaranteed by the State and enshrined in the Constitutional or the law of the country. It is a duty of all governmental and other institutions to respect and observe the independence of the Judiciary".

The Basic Principles further state:

"Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists."

The Associations urge the government and public authorities of Kiribati to respect the rule of law and comply with orders of the courts.

The above principles ensure that the system of government is accountable and subject to scrutiny and review. They further ensure that everyone, including judicial officers, is entitled to access to justice. Threatening judicial independence, the right of every citizen in Kiribati, with accusations of a judicial coup by judicial officers who are fulfilling their official functions, is completely unacceptable.

The CMJA, CLA and CLEA consider this an assault on judicial independence and due process. Natural justice has not been followed, as outlined in our Statement on 25 May 2022 in relation to the suspension of Judge Lambourne pending an investigation into allegations about his conduct.

We are furthermore concerned about the suspension of the Hon. Chief Justice of Kiribati on 30 June 2022 pending investigation by a tribunal on similar unsubstantiated allegations of inability to perform his duties and misbehaviour. The suspension took place on the exact day when the Hon. Chief Justice was due to hear a challenge of the tribunal set up to hear Judge Lambourne's case. The suspension of the only two high court judges in Kiribati in such circumstances is concerning and will have a detrimental impact on access to justice in the country especially in the light of the imminent expiry of the warrants of appointment for the Court of Appeal.

Whilst we recognise that there should be checks and balances in the relationship between the three organs of state, the CMJA, CLA, CLEA are concerned that any process of investigation is founded in well-established principles of procedural and other fairness and is transparent and open and is not motivated by political or other inappropriate considerations.

The Associations respect the right of all jurisdictions to operate as sovereign entities while emphasising that all members of the Commonwealth are subject to the rule of law and the principles mentioned above.

We urge the government of Kiribati to adhere to the independence of the judiciary in line with the Kiribati constitution and international standards as expressed in the Basic Principles on the Independence of the Judiciary, the Latimer House Principles, and the Commonwealth Charter.

We urge the Commonwealth Ministerial Action Group (CMAG), which is mandated to deal with serious breaches of the Commonwealth fundamental principles, including the undermining of the independence of the judiciary, to consider the actions of the Kiribati government as a matter of urgency.

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Commonwealth Magistrates' and Judges' Association (CMJA)
Commonwealth Legal Education Association (CLEA)
Commonwealth Lawyers Association (CLA)

NOTE TO EDITORS:

The **Commonwealth Magistrates' and Judges' Association** is a not for profit organisation, registered in the UK, whose aims are to promote judicial independence, advance education in the law, the administration of justice the treatment of offenders and the prevention of crime in the Commonwealth. It brings together judicial officers of all ranks from all parts of Commonwealth and provides a forum for the promotion of the highest judicial standards at all levels. www.cmja.org

The **Commonwealth Legal Education Association** is an international non-profit organisation which fosters and promotes high standards of legal education in the Commonwealth. Founded in 1971, it is a Commonwealth-wide body with regional Chapters and Committees in South Asia, Southern Africa, West Africa, the Caribbean and the UK. www.clea-web.com

The **Commonwealth Lawyers Association** is an international non-profit organisation which exists to promote and maintain the rule of law throughout the Commonwealth by ensuring that an independent and efficient legal profession, with the highest standards of ethics and integrity, serves the people of the Commonwealth. www.commonwealthlawyers.com