

CMJA NEWS

The Newsletter of the Commonwealth Magistrates' and Judges' Association

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EDITORIAL

The first part of 2019 has been a busy time for the CMJA. In late January the CMJA and the Judicial College of England and Wales ran a joint training course for Magistrates in the Gambia generously funded by ROLE UK and UK AID. The CMJA and Judicial College are also working on future joint ventures. In early February 2019, the fourth course on Case Management and Judicial Ethics which is held jointly with the Civil Service College was run in London. The course attracted a record number of participants. The next one is due to take place in the week of 14 July 2019. The CMJA together with the Commonwealth Lawyers Association (CLA) and Commonwealth Legal Education Association (CLEA) issued a Statement in January regarding due process in the situation being faced by Justice Onnonghen, Chief Justice of Nigeria. This was before he was suspended pending an investigation for non-disclosure of assets in Nigeria.

In February 2019, the International Commission of Jurists (ICJ) published a paper on the **Judges' and Lawyers' Freedoms of Expression, Association and Assembly: overview of international standards.**

On the 8 March, the CMJA Secretary General participated in the celebrations for Women's Day 2019 and a full report will be in the next Gender Newsletter.

Of course the main focus of the work of the CMJA over the last few weeks has been the preparations for our forthcoming

ANNUAL CONFERENCE IN PORT MORESBY, PAPUA NEW GUINEA.

Don't forget to Register for the Conference which will take place from **8-12 September 2019**. Further Details can be found at www.cmja.biz

On a sadder note, we were shocked to hear that Supreme Court Justice Leigh Gower of the Yukon, Canada had passed away in

October 2018 shortly after his participation in the CMJA's Triennial Conference in Brisbane, Australia. Leigh was a firm supporter of the CMJA's activities. He will be sadly missed by all who knew him.

COMMONWEALTH DAY MESSAGE

The following is the message by Her Majesty The Queen, Head of the Commonwealth on Commonwealth Day on 11 March 2019

Commonwealth Day has a special significance this year as we mark the 70th anniversary of the London Declaration, when nations of the Commonwealth agreed to move forward together as free and equal members. The vision and sense of connection that inspired the signatories has stood the test of time, and the Commonwealth continues to grow, adapting to address contemporary needs.

Today, many millions of people around the world are drawn together because of the collective values shared by the Commonwealth. In April last year, I welcomed the leaders of our 53 nations to Buckingham Palace and Windsor Castle for the Commonwealth Heads of Government Meeting, and we all witnessed how the Commonwealth vision offers hope, and inspires us to find ways of protecting our planet, and our people.

We are able to look to the future with greater confidence and optimism as a result of the links that we share, and thanks to the networks of cooperation and mutual support to which we contribute, and on which we draw. With enduring commitment through times of great change, successive generations have demonstrated that whilst the goodwill for which the Commonwealth is renowned may be intangible, its impact is very real.

We experience this as people of all backgrounds continue to find new ways of expressing through action the value of belonging in a connected Commonwealth. I hope and trust that many more will commit to doing so this Commonwealth Day

TRAINING OF MAGISTRATES IN THE GAMBIA



In March 2019, the CMJA was fortunate enough to be able to collaborate with the Judicial College of England and Wales, as well as the Gambian Judicial Training and Research Institute (GTRI), on a Magistrates Training Programme in Gambia. The programme took place between 28 January and 1 February 2019 and was sponsored by ROLE UK and UK AID. This marked the CMJA's second time in assisting the Gambian Judiciary since it re-joined the Commonwealth in February 2018. This year also marks the first time that the CMJA and the Judicial College of England and Wales have worked together. The facilitators involved in the programme were Sir Robin Knowles, Chair of the International Committee of the Judicial College; Sir Peter Thornton, former Chief Coroner for England and Wales; H.H Judge Martin Picton, Circuit Court Judge of England and Wales; Dr Karen Brewer, Secretary General, CMJA; and Ms Grace Karrass, of the Judicial Office, previously

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seconded to ROLE UK. Facilitators from the Gambian Judiciary were Justice Awa Bah – President of the Court of Appeal and Director of the GTRI; Justice Zainab Alami of the High Court; Justice Raymond Sock of the Supreme Court; Justice Saho Cessay of the High Court and Justice Mahonney of the Court of Appeal.

The Chief Justice opened the Training of Magistrates Programme and spoke about the partnership with the CMJA and Judicial College. Both Sir Robin Knowles and Dr Karen Brewer spoke at the Opening Ceremony. The ceremony attracted press coverage; a [video on Youtube](#) shows Dr Karen Brewer speaking at the Magistrates Training Programme as well as the Chief Justice and Sir Robin Knowles; Her Excellency Sharon Wardle, the British High Commissioner to The Gambia, tweeted about the delegation on her Twitter feed: <https://twitter.com/SharonWardleFCO>

This year's Magistrates Training Programme was divided into two sections, the first part focusing on training 30 magistrates from different regions of the Gambia on topics such as case management- in both civil and criminal cases; judgement writing; judicial independence and ethics; and coroners training. The last two days of training, which brought together smaller groups from the senior judiciary and magistracy were focussed firstly on the creation of an Induction Course for Magistrates, so aimed at training the trainers, and secondly on the formulation of

Sentencing Guidelines, which the Gambia do not currently have. On 31 January 2019, the Training of Trainers session, included a presentation by Tim Bisong of the Restorative Justice of Fellowship. He stressed the importance of considering restorative justice as an alternative to sentencing people to prison and was hoping to persuade the magistrates to take a more holistic view of what can be possible before condemning someone to prison. The second day was devoted to the drafting of a Sentencing Guideline on Theft.

The CMJA Secretary General was also privileged to be an Invited Guest at the Opening of the Legal Year which took place on 3 February 2019 at the Law Courts in the presence of the President of the Republic, His Excellency Adama Barrow, the Vice President, the Speaker of the National Assembly, the Minister of Justice, Mr Abubakar Tambadou and a number of other Ministers, former Ministers and guests. During the Ceremony, the first in a number of years, the Chief Justice gave an overview of the number of cases resolved and stressed the importance of having more resources. Also mentioned was the assistance the judiciary had received in relation to the training of judicial officers, including that received from the the CMJA, Judicial College. Also mentioned was the importance of integrating the District Courts into the Judiciary. President Barrow then gave a speech which stressed his commitment

and his government's commitment to the rule of law. The Ceremony was followed by a small reception where judges, ministers, and others were in attendance. Dr Karen Brewer was presented to the President by the Chief Justice and the Minister of Justice spoke about the Secretary General and CMJA's long support of democracy in the Gambia.

On 5 February 2019, Dr Karen Brewer had a short de-briefing session with the Chief Justice, where she reported on the outcomes of the training programme. She elaborated on the commitment of the CMJA and the Judicial College, as well as the individual facilitators to assist where required with any issues that might arise following the training.

The CMJA Secretary General was also privileged to be invited as an observer to attend the e Judicial Strategic Planning Meeting which took place on the 6 February 2019. The Judiciary are currently re-examining their Strategic Plan in the light of the National Development Plan. Their vision of the Gambia Judiciary is: *"An independent, impartial, efficient and effective judicial system for the dispensation of justice without fear or favour."* Their mission is: *"An independent judiciary that advances the causes of justice and the rule of law by ensuring fair and speedy dispensation of justice through an accessible and efficient justice delivery system by highly competent, trusted, motivated and committed staff."*



TERMS AND CONDITIONS OF SERVICE SURVEY

Participants in the CMJA's Triennial Conference in Brisbane, Australia will recall that the Breakout sessions included a survey on Terms and Conditions of Service around the Commonwealth. A summary of the results appears below:

- 46% stated that their salaries/benefits and any other increments are decided by an independent commission on salaries (Some specified that the decisions are made by either the Judicial or recommendations to Parliament)
- 15% stated that their salaries/benefits and any other increments are decided by Parliament alone (Some specified that the decisions are made from CA to SC and vice versa)
- 25% stated that their salaries/benefits and any other increments are decided by the recommendation from the Executive (Some specified that the decision are made through entitlements, district judges, or magistrates)
- 71% stated that the benefits of the judiciary in their country include housing allowance or houses that are provided (Some specified that they are only fixed or limited allowances, or that it is only available in certain locations[circuit] or certain personnel [judges or chief registrar])
- 64% stated that the benefits of the judiciary in their country include a vehicle with or without a driver (Some specified that this is only an allowance, only for certain personnel [judges], or only for business)
- 34% stated that the benefits of the judiciary in their country include a mileage/kilometre allowance (Some specified that this is limited or only available for travelling or circuits)
- 44% stated that the benefits of the judiciary in their country include a security officer/bodyguard (Some specified that this is limited to certain locations or personnel)
- 32% stated that the benefits of the judiciary in their country include medical insurance
- 49% stated that the benefits of the judiciary in their country include holidays
- 95% stated that women and men in the same function receive the same benefits
- 63% stated that the retirement age for judicial officers is a minimum of 60-65

years of age (Some distinguished between Lower courts, High courts, magistrates, Court of Appeal, Lower bench, and Supreme Court)

- 54% stated that the retirement age for judicial officers is 70 (Some distinguished between Appellate Courts, Grand Court, Court of Appeal, Federal Judiciary, Supreme Court, Higher Bench and Upper Bench)
- 95% stated that there is no retirement age difference between women and men
- 43% stated that pension allowances do not differ according to the grade of a judicial officer
- 43% stated that pension allowances do not differ according age (Some specified that this is based on years of service)
- 42% stated that pension allowances do not differ according to gender
- 83% stated they had access to a library or online facilities at work (Some specified that this is limited or partial access)

We are grateful to those who participated in this survey which reflects and to our CAPA intern Alex Taylor for compiling the results.

JUDGES' AND LAWYERS' FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY: OVERVIEW OF INTERNATIONAL STANDARDS

In February 2019, the International Commission of Jurists published an overview of international standards on judges' and lawyers' freedoms of expression, association and assembly, in a submission to the UN Special Rapporteur on the Independence of Judges and Lawyers. The submission outlined the main concerns. The ICJ stated, among other things, that:

- Judges and Prosecutors were like other citizens entitled to freedom of expression, belief, association and assembly, subject only to necessary and proportionate restrictions for valid purposes.
- In principle any such restrictions that are specifically related to their judicial functions, should be established



by the judiciary itself or another independent body with majority membership of judges.

- Any proceedings against a judge or prosecutor related to their exercise of these freedoms should comply fully with international human rights law and standards in terms of the grounds and procedures, including as set out in standards on independence of the judiciary and prosecutors.
- Judges and prosecutors should be required to recuse themselves from any case where they have previously exercised these freedoms in a way that would give rise to a reasonable apprehension of bias in their subsequent conduct of the case.
- However, a judge or prosecutor can never engage in expression, association or assemblies that touch on issues or parties that could speculatively come before the courts at some future point. Total isolation from the community and society is neither realistic nor desirable.
- In general, involvement in or comment on matters of party politics carry particularly high risks of giving rise to perceptions of lack of independence and there is relatively wide scope to enact restrictions on this ground.
- It is particularly important that judges (and prosecutors) exercise their freedoms of expression, association and assembly in order to address: threats to the independence of the judiciary; threats to judicial integrity; fundamental aspects of the administration of justice; or to otherwise promote and protect universally recognized human rights and fundamental freedoms and the rule of law. As such, there is very limited scope for any authority to restrict exercise of these freedoms for these purposes.
- The relevant standards and principles apply to online forms of expression and association (including social media) in an equal or analogous manner to their application to offline forms. However, judges and prosecutors should be aware of and take into account practical aspects of online forms of expression and association.

The full submission can be downloaded from: [Universal-SRIJL Judges-Advocacy-non legal submission-2019-ENG](#)

JUDICIAL INDEPENDENCE ISSUES

CYPRUS

The Supreme Court of Cyprus, as well as the lower courts, have been criticized recently for bias. The condemnation comes from speculation that partiality influenced a number of cases brought before them. One case in particular involved one of the top law firms in Cyprus, where a number of judges' children either work or have previously worked. The news outlet Kathimeri, Cyprus called for the resignation of the President of the Supreme Court. The Council of Europe's Group of States against Corruption (GRECO), suggested that Cyprus' judges should adhere to a code of conduct that addresses rules concerning key issues, such as when they should recuse themselves. He also stated that judicial appointments should be more apparent. In response to the claims and conversations surrounding the controversy, the Supreme Court has since written a statement defending its procedures and conduct, as well as refuting the allegations of bias. The aftermath of these accusations has led to major disputes within Cyprus' judiciary system.

GAMBIA

In March 2019, it was announced that the ECOWAS Court condemned the Republic of the Gambia to pay US\$200,000 in compensation to former Chief Justice Joseph Wowo, whose rights they indicated had been violated as he had been falsely accused of abuse of office, corruption and had been unlawfully imprisoned and denied the right to a fair trial following his dismissal in 2014 by former President Yahaya Jammeh. The press report on the case appeared on the [ECOWAS Court website](#).

KENYA

The relations between the Executive and the Judiciary continue to be strained, with the President criticising the judiciary for a number of injunctions. He has recently expressed his opinion on how he felt that the injunctions threatened several projects, and also spoke out about the mishandled corruption cases. He also reiterated his disapproval for the sentences that were appointed to these cases, which he viewed as too lenient. The Chief Justice later commented on the controversy: *"I must emphasize that the Judiciary does not entertain or condone corruption within its ranks. You are well aware of the current war against corruption. As a judiciary, we cannot be presiding over corruption cases while abetting corruption within our corridors."* In January 2019, the Chief Justice made several new appointments to the magistracy and reshuffled a number of High Court Judges.

There have also been concerns expressed in Kenya that human rights activists are being victimized by the government following the death of Caroline Mwatha, a founding member of the Dandora Social Justice Centre (DSJC) and had been heavily involved in the documentation of numerous cases where the Kenyan Police was being investigated for extra-judicial murders. At the time of her disappearance, she was working on two cases of police harassment. This, in addition to the fact that the police quickly attributed Mwatha's death to an illegal abortion, without obtaining an autopsy first, is leading many people to suspect that they were responsible for her death. Human rights defenders have increasingly come under attack by authorities and armed groups. A report by the KNCHR that 35% of the individuals have been charged with incitement and 23% have been charged with assault. Others were accused of other offences such as causing disturbances, defying court orders, and possessing illegal arms. Human rights activists are seen as opposition to the state. Connections have been made between the death of Willie Kimani, a former lawyer for the International Justice Mission (IJM), who was killed in 2016 and Caroline Mwatha

LESOTHO

Following the report in the last issue of the News that Chief Justice Majara had been suspended pending an investigation into alleged misconduct, it was reported in March 2019 that the Lesotho Government and Justice Nthomeng Majara has reached an agreement on an exit package worth US\$632,000. The former Chief Justice will leave office without having to go through an impeachment process. Readers will recall that Justice Majara's suspension took place on 11 September 2019 whilst she was attending the CMJA Triennial Conference in Brisbane, Australia, triggering a statement by the CMJA on the situation.

NAURU

In the last issue we reported that the Supreme Court had decided in September 2018 to stay the prosecution of the Nauru 19 charged in 2015 for protesting against the breakdown of the rule of law. In March 2019 it was reported that the Nauru government was appealing the decision and that the Court of Appeal set up last year to replace appeals to the High Court of Australia, will be hearing the case in April 2019. Justice Geoff Muecke who was one of the Supreme Court Judges condemned the government's conduct at the time as a "shameful affront to the rule of law". The group includes a former President who was denied medical aid abroad for throat cancer for months and

could well not survive to see the outcome of the case. He is currently in Australia seeking treatment

NIGERIA

In January 2019, we were informed that Justice Onnoghen, the Chief Justice of Nigeria had been arrested for historic non-disclosure of assets. The charges against the Justice Onnoghen just before elections have been seen by some as politically motivated. Whilst the Code of Conduct Tribunal (CCT) was seized of the case, the initial investigation of any misconduct should have firstly been conducted by the National Judicial Council which did not happen in the first instance. The CMJA, CLA and CLEA issued a Statement in January calling for the correct constitutional procedure to be followed. Shortly after Justice Onnoghen was suspended pending an investigation by the CCT. Whilst Justice Onnoghen challenged his suspension before the Court of Appeal the appellate court withheld judgment although the case before the CCT has been fast-tracked. On 29 March 2019, the CCT rejected the submissions by Justice Onnoghen's advocate that the prosecution had not presented sufficient evidence for dismissal of the case and decided to proceed with the case.

In the meantime it has been reported that the National Judicial Council (NJC) has started its own investigation into the allegations against Justice Onnoghen but also in relation to the Acting Chief Justice appointed by the President, Justice Tandi Mohammad, as the procedure for the latter's appointment had not been followed. Under the constitution the National Judicial Council must recommend a Chief Justice to the President but Justice Mohammed accepted the appointment without reference to the National Judicial Council.

STOP PRESS:

As we were going to print with this newsletter we learnt on 5 April 2019 that the National Judicial Council investigation into the above have recommended firstly that Justice Onnoghen should go on compulsory retirement as he had lost the moral authority to continue as Chief Justice and, secondly, that Justice Tandi Mohammad did not commit any offence by agreeing to be sworn in as acting Chief Justice in the absence of any recommendation by the NJC. Justice Onnoghen resigned as the Chief Justice of Nigeria on April 4th 2019.

PAKISTAN

Members may recall that the CLA, CLEA and CMJA sent out a Statement in relation to the Asia Bibi case in November 2018 calling for the end to violent threats against the judges and lawyers involved in the case following the decision by the Supreme Court on 31 October 2019 acquitting her of blasphemy and quashing the death sentence. On 29 January 2019, the Supreme Court upheld their decision. Human Rights Watch reported in January that since the decision in October, Asia Bibi had been confined to a "safe house" since October. Although the Supreme Court decision cleared the way for her to leave Pakistan, she remains in a secret location in Pakistan according to recent news reports.

OTHER DEVELOPMENTS IN THE COMMONWEALTH

BRUNEI

Whilst the system of law in Brunei was changed to Islamic law in 2014, the implementation of sharia law has

been phased in since then. The full implementation of sharia law took place on 3 April 2019. The revisions to the penal code however, have raised international concerns. The measures introduced will include stoning to death for rape, homosexuality and adultery amongst other issues and amputation for theft. The UN Human Rights Commissioner, Michelle Bachelet appealed to the "government to stop the entry into force of this draconian new penal code, which would mark a serious setback for human rights protections for the people of Brunei if implemented." According to reports it also criminalises exposing Muslim children to the beliefs and practices of any religion besides Islam, contrary to the UN Declaration of Human Rights and to the spirit of the Commonwealth Charter which Brunei has signed up to. Mrs Bachelet also pointed out that: "Any religion-based legislation must not violate human rights, including the rights of those belonging to the majority religion as well as of religious minorities and non-believers." On 2 April the Commonwealth Lawyers Association issued a statement calling for Brunei to respect the Commonwealth Charter and

the Declaration of Human Rights. See: <http://www.commonwealthlawyers.com/wp-content/uploads/2019/04/190403-CLA-statement-on-Brunei.pdf>

ENGLAND AND WALES

In December 2018, the Lord Chief Justice, Lord Burnett announced at the first International Forum on Online Courts that they are developing a facility for litigants to access the court process by smart phone. He also urged lawyers to "embrace" technology that improved efficiency and access to justice.

In addition, the Civil Division of the Court of Appeal has been live streaming hearings on the [judiciary's YouTube channel](#) to improve access to justice and understanding of the work of the courts.

UGANDA

At the 21st Annual Judges Conference held in January 2019, President Yoweri Museveni launched the new innovations that Judiciary is undertaking to improve Justice delivery. These innovations included toll-free lines, performance tool for officers, e-payment platform and e-library.



MEET OUR MEMBER

DISTRICT JUDGE SHAMIM QURESHI, ENGLAND AND WALES, CMJA DIRECTOR OF PROGRAMMES

At the age of 5 years, Shamim Qureshi arrived in the UK in 1965 just before an outbreak of war in his home country. Upon completion of school, he did not know which career to go into so he followed a friend into law school to pass the time and delay making important decisions. In 1981, the final year of his degree, his law lecturer (who was also a practising barrister) advised him of the difficulties at the Bar in England at that time and suggested he become a solicitor instead. Upon applying for a place on the solicitor's course, he discovered he was too late and would have to be on a waiting list.

He then tried an application on the Bar course and was accepted. He joined Gray's Inn upon being told they had the most fun at the formal dinners. He passed the Bar Finals and won a scholarship to fund his pupillage, but he could not find a pupillage. Gray's Inn kindly assisted him

by finding a pupil master to take him on. Shamim was called to the Bar in 1982 and later went to work as a public prosecutor for 5 years before going into private practice in chambers in Bristol. In later years, he also taught on the Bar course at university. From 1986 to 2001, he followed his real love of being in the army and joined as a private soldier in the reserve Territorial Army. Three times he applied to be commissioned as an officer and was rejected each time, but when he was a sergeant major after 12 years, he finally received the Queen's Commission as a Captain. In 2002 he became a full time judge and remains so at present. He began hearing appeals in immigration and asylum cases, but now sits in criminal cases and in family cases involving children. He also sits part time in the crown court and courts-martial when required. He has been the Director of Programmes for the CMJA since 2010.

NEW MEMBERS

AUSTRALIA

- Mr David Shepherd
- Dr Allan Collier

BERMUDA

- Mr C Craig Attridge

CANADA

- Hon Kevin Phillips
- Justice William Rodgers

ENGLAND & WALES

- Mr Leonard Hedworth
- Mr David Hughes
- Mr Edwin Omoregie
- Mr Dara Islam
- Mr James Morris
- Mr Damian Croker

GAMBIA

- Ms Sharon Ajakaiye
- Magistrate Peter Adoh Che

GHANA

- Miss Angela Attachie
- Mrs Justice Jennifer Amanda Dodoo

KENYA

- Ms Mugure Thande

MALAYSIA

- Dato Chew KoK Who JP
- Dato Yeak Hui Tan

NEW ZEALAND

- Judge Jackie Moran

NIGERIA

- Miss Nkeonye Maha
- Justice Irobosa Omotoso
- Justice Adegboye Gbolagunte

PAKISTAN

- Mr Abdulrasool Memon

ZAMBIA

- Mrs Fyde Masosa Hamaundu

DIARY OF EVENTS

15-18 JULY 2019

CASE MANAGEMENT AND ETHICAL BEHAVIOUR COURSE

Run by CMJA and the
UK Civil Service College.

Further details are available from
ade@civilservicecollege.org.uk

8-12 SEPTEMBER 2019

CMJA ANNUAL CONFERENCE, PORT MORESBY, PAPUA NEW GUINEA

“Parliamentary Democracy
and the Role of the Judiciary”

Registration now open at
www.cmja.biz

CMJA'S 50TH ANNIVERSARY 2020

The CMJA will be celebrating its 50th Anniversary in 2020.

We are looking for interesting anecdotes from our Membership to celebrate this eventful occasion.

Do you remember participating in any events that were memorable? In what way?

How has your membership helped you in your career in the judiciary?

Have you any funny /interesting stories to tell about your experiences with the CMJA?

Have you any ideas about how we should be celebrating this momentous event?

We would love to hear from you!

Please send the information to the Secretary
General by email or by letter.

**Uganda House, 58-50 Trafalgar Square,
London WC2N 5DX**

or email kbrewer@cmja.org



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and promote judicial independence
and the good administration of justice
across the Commonwealth

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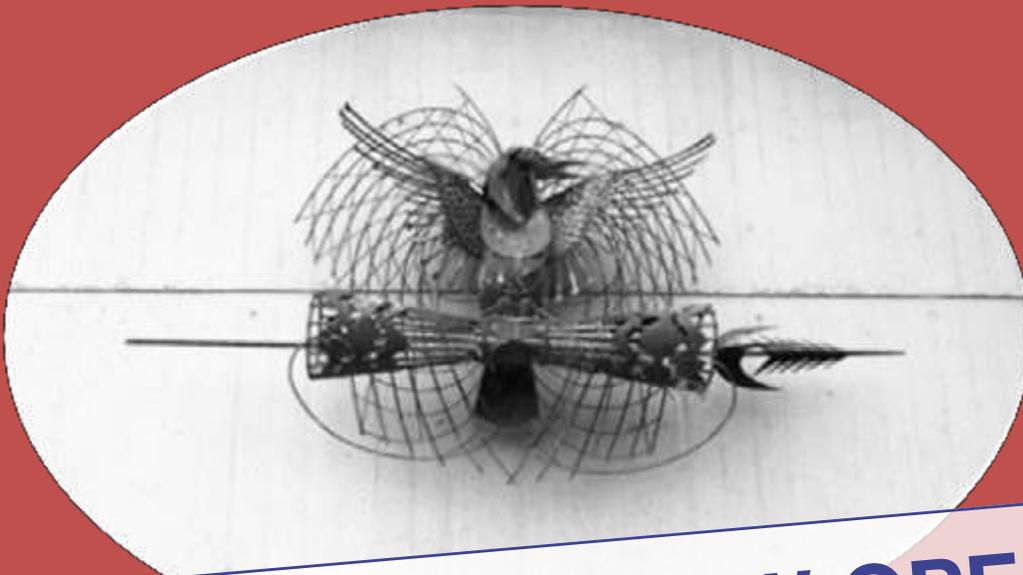


CMJA CONFERENCE 2019



“Parliamentary Democracy and the Role of the Judiciary”

8-12 September 2019



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