EDITORIAL

The CMJA Secretariat has been concentrating over the last few months on the preparations for its first Virtual Conference on “Post Pandemic Innovations” which took place from 12-15 September 2021. The CMJA’s President, Justice Charles Mkandawire, who opened the Conference, spoke about the testing times that the judiciaries and the peoples of the Commonwealth had experienced during the pandemic. The CMJA also held their Council Meeting virtually for the second time on 11 September 2021.

The CMJA has continued to monitor issues of judicial independence across the Commonwealth and has produced a number of Statements since the last newsletter.

The CMJA has also been involved in a number of projects since the last newsletter was issued. The 5th Meeting of Representatives of National Committees on International Humanitarian Law from Commonwealth countries took place in the week of 26 April 2021. The Secretary General represented the CMJA at this meeting. The main focus of the meeting was threefold: the protection of the environment during armed conflict; gender-based violence during armed conflict and starvation and famine in times of armed conflict.

In May 2021, a Workshop was organised by Ms. Anna Dziedzic and Prof Simon Young of Hong Kong University on The Use of Foreign Judges in Domestic Courts. The CMJA Secretary General was invited to participate and speak about the experience of Foreign Judges working in the Commonwealth. The papers from the Workshop will be published in 2022 by Cambridge University Press.

Since the formulation of the Limassol Conclusions in 2002 on Combating Corruption in the Judiciary, the CMJA has continued to work on combating corruption in the Commonwealth. As we have reported previously, the CMJA has worked with the Commonwealth Secretariat on the Commonwealth Anti-Corruption Benchmarks, in particular in relation to the section on the administration of justice. These Benchmarks have now been finalised, endorsed by Commonwealth Law Ministers in Sri Lanka in November 2019, and will be submitted to the CHOGM when it is re-scheduled. The Benchmarks were launched virtually on 2 June 2021.

The CMJA, together with the UK Civil Service College, ran a virtual Course on Judicial Ethics and Case Management in July 2021 which included judges and magistrates from Jamaica and Botswana. The CMJA also ran a Course For Coroners and Judges from 8-12 November 2021 which was attended by participants from Brunei, Cayman Islands, Jamaica and Guyana and was jointly organised with the Civil Service College. The next courses on Judicial Ethics and Case Management will take place from 7-14 February 2022 and from 11-15 July 2022. It is hoped that the courses in 2022 will be hybrid courses.

The CMJA has continued to work with SIoCC (the Standing International Forum on Commercial Courts).

In July the Latimer House Working Group cooperated with the Commonwealth Secretariat’s Rule of Law Section to run a Webinar on “How can the Latimer

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House Principles support recovery from the COVID-19 pandemic?" The CMJA Secretary General provided an historical perspective of the Principles whilst a panel of speakers, including former CMJA President, Honourable John Vertes, contributed to the panel discussion on the topic. A recording of the webinar is available on the Commonwealth Secretariat’s website at: https://thecommonwealth.org/media/event/event-rule-law-virtual-conversations-latimer-house-principles.

In September 2021, the CMJA re-launched an updated version of the Guide for the Magistrate in the Commonwealth: Fundamental Values and Recommended Practices first published in 2017 as part of the process for supporting the judiciary in the lower courts in the Commonwealth and this was widely circulated. This is available on the CMJA’s website.

The CMJA has also been working on revamping its website. This was completed just before the Virtual Conference: Please visit us at www.cmja.org.

Our congratulations go to former Chief Justices of Uganda, Justice Ben Odoki and Justice Bart Katureebe who received the Benedicto Kiwanuka Lifetime Achievement Award in September 2021 for their contribution towards the transformation of the judiciary and justice system in Uganda. The late Chief Justice Benedicto Kiwanuka was murdered during the time of Idi Amin. Our congratulations also go to Dr Emmanuel Ugirashebuja for his recent appointment as Attorney General of Rwanda.

As we go to print, we are delighted to announce that the CMJA’s 19th Triennial Conference will take place from 4-9 September 2022 in Accra, Ghana and look forward to meeting members in person at the Conference.

CMJA PRESIDENT’S SPEECH AT THE OPENING OF THE VIRTUAL CONFERENCE

The following is the Opening Speech given by the Honourable Justice M.C.C. Mkandawire, President of the CMJA for the Virtual Conference on “Post-Pandemic Innovations” on 13 September 2021.

- Your Excellency Paula Mae Weekes, President of Trinidad and Tobago
- The Acting Chancellor of the Judiciary from Guyana
- Chief Justices from various jurisdictions of the six regions of the CMJA
- Justices from Supreme Courts, Constitutional Courts, Appeal Courts, High Courts and Regional Courts/Tribunals
- Registrars
- Magistrates
- Distinguished Delegates
- All Protocols Observed

Good Morning in the Atlantic and Mediterranean, the Caribbean, West Africa and East Central and Southern Africa Regions; Good morning and afternoon in the Indian Ocean Region; Good afternoon and evening in the Pacific Region.

Since we last met in Papua New Guinea (PNG) in 2019, a lot has happened. We have within this period lost some of our beloved members of the Commonwealth Magistrates’ and Judges’ Association. The following are the ones we have been notified of:

1. Justice Regina Sagu, Papua New Guinea
2. Sir Nicholas Kirriwom, Papua New Guinea
3. Chief Justice Irene Mambilima, Zambia
4. Gloria Millwood, Jamaica, former Council Member
5. Lord Justice Cain-Isle of Man

May their souls rest in eternal peace.

The world we all live in today continues to change and change so rapidly that both our intellectual and emotional understanding of it and even of ourselves are changing all the time.

It is just over a year ago that the United Nations General Secretary Antonio Guterres addressed the very first virtual Nelson Mandela Annual Lecture and spoke about the need for a new social order contract in what he called a New Era. The demands of that New Era do indeed continue to exert pressures of various kinds on all peoples around the world.

That this year’s Commonwealth Magistrates’ and Judges’ Association conference also takes place virtually, speaks to the adaptive resourcefulness of the COVID 19 to mutate into new and more deadly strains.

This has forced us into lockdowns of various kinds and simultaneously re-think the way we have lived and how we now face the imperatives to have to cope with a new world based on an understanding clearer to us than never before.

And it is precisely this that we are all equal as human beings perhaps the greatness imperative of the 21st Century emerges from that understanding which is to work together in mutual respect to change the global order profoundly.

In the CMJA we have faced a compelling urgency of the demand to adapt to this new way of doing business.

In light of Covid-19 pandemic, we had to cancel the 2020 Regional Conference which was to be held in Cardiff, Wales. This robbed us of the opportunity to celebrate the 50th Anniversary of the CMJA.

In April this year, we also had to cancel the Triennial Conference scheduled for September 2021 in Accra, Ghana. Today, I should have been delivering this speech in Accra Ghana.

The current Covid-19 outbreak presents an opportunity for the CMJA to explore the various rules of law and judicial independence issues which have been exposed across the Commonwealth as a result of this pandemic. Topical issues are legality of legislative
provisions, human rights protections, law enforcement, judicial independence, access to justice. This virtual conference will aim to bring each of these key areas into our discussion as we work through key topics of interest.

The theme of this conference is “Post Pandemic Innovations”. The conference has attracted a total of 233 delegates from 43 countries. We have 30 Chief Justices who had confirmed to attend the Chief Justices’ Meeting. We have 22 Chief Justices and VIPs attending the conference. It is not my intention to unpack this theme in my opening remarks. Suffice to say that the theme resonates well with what has been going on globally.

Within the thematic structure of this conference, you will be treated to an impressive array of speakers and presenters some of which will give keynote addresses or presentations while others will speak to more specific aspects of the conference’s theme. The conference program speaks for itself.

Over the coming three days, we will be provided with a variety of food for thought. A number of issues will arise for our serious consideration.

These topics are extremely beneficial and informative for the difficulties encountered during this Covid-19 pandemic period and provide efficient and effective means in which to meet these challenges.

I am sure that you will be as excited as I am about the coming three days during which we will have the opportunity to consider and exchange ideas.

This virtual conference has been a particularly challenging conference to organize. I therefore take this opportunity to thank Dr Karen Brewer our Secretary General and Jo Twyman for their great work in putting this conference together. Jo has been of great support especially on the marketing side. Both Jo and Karen were determined to get the numbers up. In a special way, let me thank Speakers, Presenters and Chairpersons of sessions for accepting our invitations to play special roles in this historic virtual conference.

Let me also thank Judge Shamim Qureshi who is Director of Programs, for assembling this formidable conference program. Despite your very busy schedule with judicial work, Judge Qureshi, you have always come to our rescue.

Thanks, should also go to members of the Steering Committee and the Executive Committee of CMJA for the guidance given in order for this virtual conference to be a reality.

I wish you all an enjoyable and rewarding virtual conference.

With these remarks, I officially declare this conference open.

Thank you for your attention and may god bless you.

This was the first venture of the CMJA

CMJA VIRTUAL CONFERENCE

CMJA VIRTUAL CONFERENCE 12-15 SEPTEMBER 2021 - "Post Pandemic Innovations"

into the virtual conference world and we are delighted that 234 delegates from 43 jurisdictions participated in the Conference. The sessions covered some of the challenging issues that have emerged since the pandemic struck. We are deeply grateful to all speakers and chairpersons for their contribution to the success of the Conference. The keynote Speaker at the Conference was Her Excellency Paula Mae Weekes ORTT, President of Trinidad and Tobago, who spoke about the developments and problems experience with access to justice around the Commonwealth. She stressed the importance of continuing to strive to achieve the Sustainable Development Goal 16.3, i.e.: to "Promote the rule of law at the national and international levels and ensure equal access to justice for all", Covid-19 notwithstanding, so that "all individuals are able to seek and obtain remedy for their grievances through the courts", whether these are virtual or in person court hearings. Whilst applauding the electronic innovations used since the pandemic, Her Excellency pointed out that “Judicial innovation will all come to naught without proper investment by our respective governments” and this included investment in electricity and the internet. Funding of the judiciary was also a theme that was raised at the Chief Justices’ Meeting which took place on 12 September 2021. This meeting was chaired by the Lord Chief Justice of England and Wales, Lord Burnett of Maldon. The meeting was attended by 29 Chief Justices from around the Commonwealth who also discussed practical ways of dealing with the backlogs due to COVID 19 all under the theme of the Rule of Law in a post-COVID 19 era.

The Lord Chief Justice of England and Wales also spoke at the Session on “The Efficient Disposal of Cases after COVID 19” about the innovations introduced in England and Wales. Justice Jones Dotse spoke on behalf of the Chief Justice of Ghana, His Hon. Chief Justice Kwasi Amin Yeboah about the developments introduced in Ghana and the continued moves towards the digitalisation of the court systems some of which predated the pandemic. Justice Logan of the Federal Court of Australia pointed out that the independence of the judicial power needs to be maintained despite the emergency lockdowns and restrictions on travel. He also touched on etiquette for remote hearings, stressing that dignity needed to be maintained by judicial officers and lawyers. The challenge was that “remoteness is conducive to casualization in ways in which physical attendance is not”. Whilst
remote hearings have their place, it was important that funding for court premises should not be reduced due to the experience gained during the pandemic and judicial officers recognized the importance of face-to-face hearings. This was raised in the sessions on: “Access to Virtual Legal Systems” and “Problems with Remote Hearings” with judicial officers having to juggle bulky materials online as well as dealing with conflicting systems, challenges with access to remote hearings in rural areas or with limited Wi-Fi connections as well as virtual fatigue although it was agreed that virtual hearings are here to stay in some form or another even after the pandemic has subsided. It was good to hear from Lord Justice Bernard McCloskey of Northern Ireland, Justice Jackie Kamau of Kenya about their experiences of access to virtual legal systems and from Sheriff Donald Corke of Scotland as well as our Council Members, Chief Magistrate Matankiso Nthunya of Lesotho, and Chief Judge Chester Crooks of Jamaica about the challenges with remote hearings in their jurisdictions.

The Sessions on Digital Footprints with presentations by Judge Barry Clarke of England and Wales and Dr John Carey, the Director of the Centre for Judicial Excellence of Papua New Guinea provided a great deal of thought not to mention concern to all who attended the session especially as many participants were unaware of the problems that could befall them during their use of social media, smartphone apps etc. Dr Carey also stressed the importance of digital footprints in combating cybercrime which we are aware has increased during the pandemic. Technology was also mentioned during the session on Artificial Intelligence (AI) and its use in Courts. Readers will remember the interesting article which appeared in the Commonwealth Judicial Journal in December 2020 on “The Rise of AI-Based Decision-Making Tools in Criminal Justice: Implications for Judicial Integrity” which included an input from Prof. Karen Yeung of Birmingham Law School, UK. Prof. Yeung made a presentation during the session at the CMJA Conference on the governance of AI as did Dr Tania Sourdin of Newcastle Law School, Australia.

Some of the other challenges faced during the pandemic were covered in the session on Gender Based Violence in Queensland, Australia as well as the UNODC’s Handbook on Gender Based Violence against Women and Girls, having been one of the experts on the working group that drafted the Handbook. Gender Based Violence was also the theme of this year’s Gender Section Meeting which took place on Sunday 12 September 2021. The CMJA was privileged to have Emeritus Professor Peter Jaffe of the Centre for Research and Education on Violence Against Children of Canada speaking about Violence Against Women and Children across the globe.

Human Rights also featured during the virtual conference. With the UN recently adopting a Resolution stating that a healthy environment was a human right (Resolution 48/13 of 2021), it was apposite that there was a session on Environmental Pollution Litigation and Human Rights. The former President of the East African Court of Justice, Dr Emmanuel Ugirashebuja of Rwanda and Mr Sailesh Mehta from England and Wales both spoke of the effects of environmental pollution on human rights and the cases that they have been involved in. With the assistance of SIFoCC, the CMJA also held a session on the Business and Human Rights chaired by Sir Robin Knowles. Speakers at this session included the Chief Justice of the Bahamas, Justice Chief Justice Brian Moree, Bahamas, Chief Justice Faustin Ntzelivyao of Rwanda, Mrs Justice Bobbie Cheema-Grubb from England and Wales and Judge Elizabeth Tanui of Kenya. The UN Guiding Principles on Business and Human Rights, although not binding on the governments, are increasingly being cited in court cases where issues of labour law, environmental law, gender equality and access to justice.

There were three specialist practical sessions during the Conference. One of Sentencing Guidelines with an introductions to the issues from Justice William Young of New Zealand and from Justice Elizabeth Musoke of Uganda who spoke about the development of Sentencing Guidelines in their jurisdictions; a specialist session on Hague Convention issues in family law from Her Hon Chief Justice Martha Koome of Kenya and a specialist session on Ensuring Fair Court Procedures For Commonwealth Militaries: A Collective Responsibility with Judge Advocate General Alan Large from the UK, Justice Choo Han Teck of Singapore and a contribution from the new Head of the Office of Civil and Criminal Justice Reform (OCCJR) of the Commonwealth Secretariat, Ms Francisca Pretorius.

The CMJA Conference has in the past included a session on judicial wellness. This year the theme was “Judicial Wellness: the Restless Judge”. Her Hon. Judge Kaly Kaul who wrote in the last newsletter about the Judicial Support Helpline she helped set up recently for judicial officers in England and Wales, spoke movingly about her own personal experiences of judicial stress and mental health issues. Dr Dianne Douglas, eminent Trinidadian psychologist, who has spoken at previous CMJA Conferences, gave the delegates some suggestions as to how to cope with the stress of being a judicial officer especially since the pandemic has created more challenges especially for judges operating remotely across the Commonwealth. She suggested that the CMJA might consider developing good practice in this area.

The CMJA’s virtual conference may not have provided the opportunity to delegates to exchange ideas and experiences over coffee breaks, lunches or dinners. However, in addition to the dynamic question and answer sessions, the CMJA provided an opportunity for open discussion during the programme. Whilst not the same as an in-person conference, the feedback and suggestions made during the sessions will be helpful to the CMJA in its work the coming year.

The CMJA virtual conference was able to deal with most technical issues, thanks to our technical team at VideoGeek, especially David Smith. Some speakers did experience their own connectivity problems and indeed the Chairman of the Session on “Judicial Wellness: The Restless Judge”, His Worship Godfrey Kaweesa of Uganda pointed out that he had suffered an electricity outage at the time of the session- but he was able to continue to chair the meeting despite this challenge, showing how adaptable our judicial officers around the Commonwealth have been to the “new normal”. However, we are looking forward to the next in-person conference due to take place in Ghana in September 2022, all going well.

In his Closing address, the CMJA President pointed out that “within our Commonwealth Global Village, we are all encountering similar challenges such as:

• Inadequate funding for our judiciaries;
• Need for training;
• Infrastructure development;
• Case Management;
• Access to Justice.”
"Today is International Day of Democracy or World Democracy Day. It was declared by the United Nations in 2008. The theme this year is "Strengthening Democratic Resilience in the face of future crises". The objective of our celebration today is to review state of democracy in the world. Judiciaries in the Commonwealth have a pivotal role to play in the consolidation of democracy. You will agree with me that in recent years, our judiciaries have experienced increased case load when it comes to electoral justice. This is not only in the Commonwealth. We recently saw how election disputes in the United States ended up in the courts.

In the Commonwealth, we have recent examples of Presidential Election Disputes brought before courts in Kenya, Malawi and Uganda. We have also witnessed an influx of Electoral Disputes in Zambia. It is therefore clear that our society has trust in our courts to adjudicate in these very contentious disputes. We should seize this opportunity to consolidate democracy in the Commonwealth."  

His Hon. Charles Mkandawire, CMJA President, at the Closing Ceremony on 15 September 2021.

UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Business activities contribute to economic development, provide employment and opportunities and increase the standard of living of those employed directly or indirectly as a result of business investment. However, they can also have an adverse effect on human rights. They may impact on the rights to life, health, property, sustenance (water or food). Activities can discriminate on the basis of gender, race, ethnicity, religion or political opinions and businesses are not always compliant with national and international labour standards or environmental or cultural norms.

The UN Guiding Principles on Business and Human Rights (“The Guiding Principles”) make clear in the Commentary on Principle 12 that: “Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect [human rights] applies to all such rights…”

Even though the UN Guiding Principles have no force of law, the Principles state that States have a Duty to Protect against human rights abuse; Corporations have a Responsibility to Respect human rights; and there is a need for there to be Access to Remedy for victims of business-related human rights abuses.

Whilst there have been efforts to provide guidance and training for business entities and lawyers under the Guiding Principles, judges and magistrates in the Commonwealth who may be involved in dealing with issues arising out of the Guiding Principles, have so far received no specific awareness on the Guiding Principles themselves, although awareness raising sessions on topics such as labour, environment and anti-discrimination have been provided through training programmes on these specific issues.

Under the Commonwealth (Latimer House) Principles, “Each Commonwealth country’s Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchments of good governance based on the highest standards of honesty, probity and Accountability”.

It is in this context, that the judiciary, as guarantor of fundamental rights, need to understand the UN Guiding Principles. Training in the UN Guiding Principles should bring the collateral benefits of (1) increasing an understanding of human rights; and (2) providing guidance on the production of timely structured judgments which are comprehensive of the issues before the Judge

Most recently the CMJA has been working on developing judicial training in relation to the UN Guiding Principles on Business and Human Rights. The CMJA, SIFoCC and the Judiciary of Rwanda organised an awareness raising webinar on 16 July 2021 which was attended by Judges of the Supreme Court, Court of Appeal and High Court of Rwanda. Speakers included experts in the filed from academia, the legal profession and the judiciary. It is hoped to expand this training to other jurisdictions.

JUDICIAL INDEPENDENCE

England and Wales

The CMJA has continued to monitor the government’s review of administrative law, mentioned in the last newsletter. In July 2021, the British Government introduced The Judicial Review and Courts Bill to parliament. The Bill is not without controversy especially as the bill was introduced on the same day that the Review of Administrative Law Consultation was announced. Whilst the aim of the government was to restrict the use of judicial review, and to “ensure that the courts are not open to abuse and delay”, legal opinion is that the changes are more limited than previously thought. The two main reforms proposed in the bill relate to the power of courts to quash orders in judicial review cases, setting out time limits for quashing orders to take effect, limiting the retrospective effect of quashing orders, so that actions and regulations found to be unlawful are not overturned and setting out mandatory considerations that the courts need to consider when considering any quashing orders.

The Bill also reverses the Cart judgement (R(Cart) v The Upper Tribunal; R (MR (Pakistan)) v The Upper Tribunal (IAC) [2011] UKSC 28) in which the Supreme Court established the important circumstances when the decisions of the Upper Tribunal would be subject judicial review. Under the new Bill, there is an ouster clause which means that any decision by the Upper Tribunal refusing appeals is final and cannot be set aside by any other court.

In the Commonwealth, we have recent examples of Presidential Election Disputes brought before courts in Kenya, Malawi and Uganda. We have also witnessed an influx of Electoral Disputes in Zambia. It is therefore clear that our society has trust in our courts to adjudicate in these very contentious disputes. We should seize this opportunity to consolidate democracy in the Commonwealth."
Kiribati

Following the report in the last issue of the Newsletter in May 2021, the CMJA was informed that the Amendment to the High Court (Salaries and Allowances) Amendment Bill was passed into law by the Kiribati Parliament in May 2021 despite the Statement issued jointly by the CLA, CLEA and CMJA in relation to the amendment. In November 2021, the Chief Justice of Kiribati found in favour of Justice Lambourne who had brought a case against the decision of the government of Kiribati. The Chief Justice stated that: “Section 5(2)(a) of the High Court Judges (Salaries and Allowances) Act 2017 (as amended by section 2 of the High Court Judges (Salaries and Allowances) (Amendment) Act 2021) is inconsistent with the Constitution” and further stated that: “The applicant holds office as a judge of the High Court of Kiribati for an indefinite period, until such time as he dies, resigns or is the subject of any lawful and constitutional action terminating the appointment”. He pointed out that: “The exercise of statutory discretions by public officials must recognise the constitutional nature of a judge and be in accordance with the Constitution.” Civil Case No. 16 OF 2021- High Court of Kiribati.

Kenya

Following the report in the last newsletter that the President of Kenya had delayed the appointment of 40 judges since August 2019, in early June, President Kenyatta appointed 34 out of the 40 judges proposed by the Judicial Services Commission in 2019. The CMJA together with the CLA, CLEA and Judges for Judges issued a Statement on the appointments made by the President in June 2021 when 6 of the nominations were refused by the President. Former Chief Justices, Mutunga and Maraga have both condemned the refusal to appoint six of the judicial officers, following the Statement issued by the Kenya Magistrates and Judges Association on the issue. They called on the President to respect the Constitution. Chief Justice Martha Koome also indicated that President Kenyatta was obliged to nominate the six left off the list. However, to date they have not been appointed. The CMJA, CLA, CLEA and Judges for Judges’ Statement is available on the CMJA’s website: www.cmja.org. On 21 October, the High Court declared that the President had violated the provisions of the Constitution by not appointing the six nominees outstanding from the August 2019 list. The High Court ruled that if the President did not appoint them within 14 days, they will have been deemed to be appointed: “Upon the lapse of the 14 days, without Uhuru having made the appointment it shall be presumed that his power to make them has expired and his office becomes functus so far as the appointments are concerned and the six nominees shall be deemed duly appointed effective from the date of default as Judges of superior courts for which they were recommended.” After 14 days, the Chief Justice, with the JSC, ‘shall be at liberty to take all the necessary steps’ to swear in the six judges.

The CMJA also kept a watching brief on other issues relating to the relationship between the Executive and Judiciary in Kenya including the recent judgements by the Court rejecting the Building Bridges Initiative Bill put forward by President Kenyatta. The decision of the High Court to reject the Bill was appealed by the President. In August 2021, the Court of Appeal rejected the appeal on the grounds that the “basic structure” doctrine limited amendments to the Constitution and that it could only be amended through civic education, public participation, constituent assembly debate and a referendum. The judges had also found that the president does not have authority to initiate constitutional changes. However, in October, the Attorney General announced he was appealing the case to the Supreme Court.

In June 2021, the High Court rejected the President’s executive order of February 2020 which purported to ‘re-organise’ government and put various judicial bodies and independent commissions under other state departments and ministries and which was the subject of a constitutional challenge brought by the Law Society of Kenya.

Malawi

On 6 September 2021, the High Court of Malawi found the businessman Thom Mpingajira guilty of attempted bribery of five Malawian judges in the Presidential elections case in 2019. The attempted bribery of the five Constitutional Court Judges who were ruling on the disputed 2019 Presidential elections was reported at the time to the Chief Justice. Mr Mpingajira was arrested in January 2020 by the Anti-Corruption Bureau, or ACB, after the Chief Justice, Andrew Nyirenda reported the bribery attempt. The businessman’s bail was revoked in September 2021 and on 5 October 2021 he was sentenced to nine years in prison.

In May 2021, the Malawi Supreme Court ruled that the death penalty was unconstitutional. The President of Malawi supported the judgement and the Human Rights Commission is calling for the implementation of the judgment as the Supreme Court called for all those on death row to be re-sentenced.

Samoa

The CMJA together with the CLA and CLEA issued a statement in support of the judiciary in Samoa following the problems experienced following the political impasse since the elections in April 2021. The Statement supported that of the Law Society of Samoa condemning the derogatory remarks questioning the integrity and independence of the judiciary. The Statement is available on the CMJA’s Website at: www.cmja.org.

Sierra Leone

In July 2021, Sierra Leone abolished the death penalty. The Abolition of the Death Penalty Act was agreed unanimously by Parliament. Previously those convicted of murder, treason and aggravated robbery could be sentenced to death. Those currently on death row will have their sentences commuted to life imprisonment. The new law also provides for a system of judicial discretion whereby judges can consider mitigating circumstances. Sierra Leone joins a growing number of countries which have abolished the death penalty.

Uganda

Unlike in Malawi and Sierra Leone, President Museveni of Uganda has clashed with the judiciary over the granting of bail to those who are accused of murder. He called for the removal of the discretion of the judges in such cases and for the imprisonment of anyone who was accused of a capital offence. However, the Chief Justice, Justice Owiny Dollo stated: “We know that capital offences are a grave concern to the community,” he said. “So, in [the] exercise of judicial discretion, it’s the duty of the judicial officer to look at all these circumstances and make a decision whether to grant or not to grant.” Former Justice of the Supreme Court, Justice Kanyeihamba, stressed the fact that there was a presumption of innocence until proven guilty and that the constitution, which allowed the judicial discretion.
IN INTERNATIONAL HUMANITARIAN LAW ISSUES

In April 2021, the National Committees of Commonwealth Countries held their Fifth Meeting. The theme was: ‘Partnership, persistence and a sense of possibility: National IHL Committees and the Commonwealth’. The meeting was held virtually but supported by the British Foreign, Commonwealth and Development Office and organised by the International Committee of the Red Cross and Red Crescent and the British Red Cross. The following is a summary of the report on the meeting. The full report is available at: fifth_meeting_of_national_ihl_committees_commonwealth_report_final.pdf.

There was a fascinating report from some of the national committees on how the National Committee communicated the importance of international humanitarian law (IHL). Increasingly the importance of a common language and point of reference in the respect for international humanitarian law has been recognised. However, universal principles are best understood when explained or promoted taking into consideration the local context through cultural or religious norms. Ms. Tamalin Bolus, Legal Adviser, ICRC South Africa spoke about a new tool which explores the relevance of IHL in African cultural and warfare traditions. After undertaking research examining the correlation between traditional African customs and practices with the principles and rules of modern IHL, a set of cards was created. A South African artist illustrated the rule or principle being referred to on the card. On the front of the card, an IHL rule is listed alongside a traditional practice; then more detail is given on the back of the card. Mr. Fredrick Tamarua from the Attorney General’s Dept, Papua New Guinea, also mentioned the resolution on “Bringing IHL Home”, notably with reference to ways it might be given effect in the context of Papua New Guinea and the Pacific region. He claimed that recently many countries in the Pacific region have experienced a period of relative peace and, though welcome, this has made it challenging to make the case for why it is urgent to accede to IHL treaties or implement IHL at the domestic level. Some of the convergences between IHL and traditional practices in the Pacific were explored in the 2009 publication, Under the Protection of the Palm: Wars of Dignity in the Pacific.

The Fifth Meeting specifically focussed on the importance during conflict of ensuring there was no damage to the natural environment during armed conflict. The ICRC has developed Guidelines on the Protection of the Natural Environment in Armed Conflict. Any time there is a decision to be made during armed conflict, there needs to be an assessment of the impact of any operation from the legal and operational perspective and international law must be observed. The meeting also focussed on the prevention of sexual violence during armed conflict, which as we are aware is a major challenge and there was a continued need to educate the armed forces and society to protect the vulnerable members of society. The third issued discussed related to starvation and famine caused by armed conflict. Any measures employed during armed conflict that might lead to starvation and suffering contravene IHL. Mr. Nick Dyer, UK Special Envoy for Famine Prevention and Humanitarian Affairs noted that millions of people around the world are facing risks of starvation. Mr. Dyer drew attention to the striking challenge of growing humanitarian need, which is outpacing resources, and intensified by armed conflicts, COVID19 and climate change. He noted that famine is man-made and entirely preventable, often driven by conflict and triggered by deliberate methods of warfare like siege tactics and attacks on livelihoods. Mr Dyer outlined how consequences of conflict, such as limits on free movement and difficulties regarding food production and supply, have devastating human impacts.

UNESCO TOOLS FOR THE PROTECTION OF FREEDOM OF EXPRESSION

The Toolkit follows a global Massive, Open Online Course (MOOC) for judicial actors on international standards on freedom of expression, which gathered close to 5,000 registered participants from 150 countries around the world. Currently available in English, the Toolkit will soon be translated in all UN official languages and Portuguese.

To download this publication, please visit this link: https://unesdoc.unesco.org/ark:/48223/pf0000378755.

DIARY OF EVENTS

8-14 FEBRUARY 2022

CMJA/CSC JUDICIAL CASE MANAGEMENT AND ETHICS VIRTUAL COURSE

Please contact Andrea Davis for further information at andrea@civilservicecollege.org.uk.

11-15 JULY 2022

CMJA/CSC JUDICIAL CASE MANAGEMENT AND ETHICS VIRTUAL COURSE

Please contact Andrea Davis for further information at andrea@civilservicecollege.org.uk.

4- 9 SEPTEMBER 2022

CMJA TRIENNIAL CONFERENCE, ACCRA, GHANA “ACCESS TO JUSTICE IN A MODERN WORLD”

Further details to follow shortly on www.cmja.biz.
The Pacific Judicial Strengthening Initiative (PJSI) administered by the Australian Federal Court with funding from the New Zealand Government has recently published its Collection of toolkits on Judicial and Court Reform. The PJSI was launched in June 2016 in support of developing more accessible, just, efficient, and responsive court services in Pacific Island countries. These activities followed on from the Pacific Judicial Development Program (PJDP) and endeavoured to build fairer societies across the Pacific. These toolkits have been designed to support change by promoting the local use, management, ownership and sustainability of judicial development in Pacific Island countries across the region but are also relevant to other jurisdictions across the Commonwealth. By developing and making available these resources, PJSI aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support. We are grateful to the PJSI who have agreed that we can promote these very valuable toolkits on the following topics across the Commonwealth:

- Access to Justice Assessment Toolkit
- Annual Court Reporting Toolkit
- Enabling Rights and Unrepresented Litigants Toolkit
- Family Violence/Youth Justice Workshops Toolkit
- Gender and Family Violence Toolkit
- Human Rights Toolkit
- Judges’ Orientation Toolkit
- Judicial Complaints Handling Toolkit
- Judicial Conduct Toolkit
- Judicial Decision-making Toolkit
- Judicial Mentoring Toolkit
- Judicial Orientation Session Planning Toolkit
- National Judicial Development Committees Toolkit
- Project Management Toolkit
- Public Information Toolkit
- Reducing Backlog and Delay Toolkit
- Remote Court Proceedings Toolkit
- Training of Trainers
- Time Goals Toolkit
- Efficiency Toolkit

Access to these toolkits is available via the PJSI website at: [Toolkits - Pacific Judicial Strengthening Initiative (fedcourt.gov.au)]

NEW MEMBERS

We welcome the following new Individual Members to the CMJA:

Australia
- Magistrate Ms Cathy McLennan
- Mr Paul Heywood

Canada
- Senior District Judge Paul Goldspring
- Judge Sandra Sukstorf

England & Wales
- Hon Justice Sandra Wilkinson
- Hon Judge Anisa Dhanji
- Miss Belinda Knight
- Professor Prof Richard Percival
- District Judge Anitra Hussain

Fiji
- Hon Justice M D Vinsent Shashikalum Perera

Guyana
- Hon Justice Jo-Ann Barlow

Jersey
- Hon Judge Samantha McFadzean

New Zealand
- Hon Judge Laurence Newhook
- Hon Judge Gus Andree Wiltens

Tanzania
- Hon Judge Butamo Kasuka Phillip

Uganda
- Mrs Florence Nakachwa Dollo

CMJA 19th TRIENNIAL CONFERENCE ACCRA, GHANA

4-9 Sept 2022

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