



GENDER SECTION NEWSLETTER



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GREETINGS FROM THE CHAIRPERSON Lady Justice Maura McGowan



On 10th March 2023 the UN will celebrate the International Day of Women Judges for the second year. It is a mark of how far recognition of the professional role women play in our legal systems has come. However, we should never forget that in some parts of the world the position is very different; the CJMA will continue to support women in all judicial roles. We all recognise that despite significant progress, there is much to be done.

We are particularly grateful for the impressive contribution that Lynne Leitch has made during her time as chair of this section. Her hard work will doubtless continue in her new role, as President of the CMJA. I am privileged to have been asked to take over as chair of the section. I am

determined, with the help of the representatives, to carry on her good work. I am a High Court Judge in England & Wales and I was the chair of the Bar Council in 2013. I have worked with many jurisdictions on judicial training and trying to increase diversity and inclusion.

The plans for the CMJA conference in Cardiff in 2023 are well underway. It promises to be yet another great opportunity to hear from our wonderful speakers and to meet and learn from one another. It is a chance to reflect on the benefit we all gain from working together.

As always, we are hugely indebted to Dr Karen Brewer; it is her tireless work for the Association that makes the annual conference such a continuing success. Thank you.

NEXT GENDER SECTION MEETING

**11 September 2023
City Hall, Cardiff, Wales**

(see www.cmja.biz for further details about the Conference and Gender Section Meeting)

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NEW GENDER SECTION REPRESENTATIVES

In September 2022, at the General Assembly the following judicial officers were confirmed as the Gender Section representatives from 2022-2025.

CHAIRPERSON
Mrs Justice Maura McGowan

Atlantic and Mediterranean
District Judge Michelle Smith

<u>Caribbean</u> Justice Charmaine Pemberton
<u>East, Central and Southern Africa</u> Ms Atutala Shikalapo
<u>Indian Ocean</u> Datuk Stephen Sondoh
<u>Pacific</u> Ms. Linda Bradford-Morgan
<u>West Africa</u> Hon. Abena Asumah Oppong

GENDER SECTION REPRESENTATIVES.

District Judge Michelle Smith (Atlantic and Mediterranean)



I am a District Judge (Magistrates' Court) based in Birmingham having been appointed in

November 2021. Birmingham Magistrates' Court is the biggest Magistrates Court in Europe and deals with summary and either way criminal cases, both adult and youth, family work and some civil applications. As part of my appointment, I also sit in the First Tier Tribunal (HESC Mental Health) sitting in hospitals and remotely to review a patient's detention under the Mental Health Act.

Recently, I was appointed as a Diversity and Community Relations Judge. This is an additional position and I hope to engage both with the local community to highlight the work of the judiciary but also encourage lawyers from under represented backgrounds to join the judiciary.

Prior to my Judicial appointment, I was a Legal Adviser in the Magistrates court for 14 years. I thoroughly enjoyed this role, forming great working relationships with the local lay justices and advocates. Following this, I was a Senior Crown Prosecutor based in the Magistrates Court Advocacy Team. As part of this, I was the lead in the implementation of the Domestic Abuse framework, working together with all agencies to try to put into place for effective pre and post charge and court practices to improve the effectiveness of the prosecutions in this area.

I thoroughly enjoy sitting as a District Judge and feel privileged every day to have been given this appointment. I hope to continue to work to promote awareness of gender based issues which I encounter as part of my role.

Michelle Smith

Madam Justice Charmaine Althea Joy Pemberton (Caribbean)



Justice Pemberton received her education at Bishop Anstey High School; the University of the West Indies (LL.B

(Hons 1991); The Hugh Wooding Law School (L.E.C. 1983); The Institute of International Relations, St. Augustine (Dip. I.R. (Dist) 1992 and the University of Nottingham (LL.M 1993).

In 1983, she was admitted to the Bar of Trinidad and Tobago as a Solicitor serving in the public service and at the private Bar until 1999. She enjoyed a short stint as a sole practitioner until July, 2000 when she joined the Eastern Caribbean Supreme Court as its first Master. In 2003, she was elevated to Judgeship, and served in St. Lucia and St. Kitts

and Nevis, before becoming the first resident female Judge in Grenada, whilst serving in Dominica as well. In 2005, Justice Pemberton returned to her native Trinidad and Tobago to serve on the High Court Bench in the Civil Division.

Justice Pemberton holds certification as a Mediator and Mediation Trainer in Trinidad and Tobago. She is a Trained Family Law and Divorce Mediator; a Judicial Settlement Officer in both Civil and Family Divisions. She is a Fellow of the CJEI and holds the designation FCI Arb. Justice Pemberton sits on the Supreme Court Rules Committee, the Board of the Trinidad and Tobago Judicial Education Institute and is a Commissioner on the Judicial and Legal Service Commission. She continues her involvement in community affairs by authoring and presenting several papers and sharing her thoughts on diverse topics to a variety of audiences. In September, 2016, she was elevated to the Court of Appeal. Justice Pemberton is a member of the CMJA since assuming office and holds membership in CAJO, IAWJ and NAWJ.

Justice Pemberton enjoys music of all forms especially the steelpan and a good 'jump up' at Carnival time. She is an avid traveller.

Atutala Namwenyo Shikalapo (East, Central and Southern Africa)



I am a Namibian citizen; currently holding a Baccalaureus Juris and LLB degree in Law from the University of Namibia. I am a Senior

Magistrate in Namibia, I currently sit in the Civil Litigation department and I handle all civil disputes and related matters within my Jurisdiction. Before my appointment as a Magistrate, I was a Public Prosecutor for the duration of January 2016 to August 2018, during my tenure as a

Public Prosecutor; I handled all criminal matters under the office of the Prosecutor General, such as illegal hunting and poaching cases, which are predominantly on the rise. I strive to fight for the things I care about and deliver justice to the best of my abilities without fear or favour, and do it in a way that will lead others to join me

Datuk Stephen Sondoh JP (Indian Ocean)



District Chief cum Native Judge Stephen Sondoh is based in Putatan’s Sabah Native Court.

Native Court is a legal institution created specifically to address the application of customary law among the ethnics or indigenous peoples of Sabah thus a legal institution established by a special act known as the Native Courts Enactment 1992. Apart from his duty as Native Court Judge, he is assigned as Panel Judge for the Native Court of Appeal at the High Court. He chairs the Sabah Native Court Action Committee and a Board Member of the Restructuring Native Court Judiciary System.

He is a council member in the Sabah Council of the Justice of the Peace, Chairman of KDCA (Indigenous Association) Council of Elders, Chairman of the Steering Building Committee of "St. Catherine Labour Church Putatan" and a founder/Deputy Chairman of Sabah Native Landowners & Developers Association (A platform to assist the rural community). Stephen had served the Sabah Malaysia government for 39 years. He held various key positions from an Accountant in the State Treasury Department to Assistant Secretary and promoted to Senior Principal Assistant Secretary in the Ministry of Finance. He served for 5 years as District Officer in Penampang district where his duty includes a Magistrate,

Chairman of Tribunal Court and Chairman of District Council. He was appointed as a Commission Member of the State Public Service Commission in 2014 to 2018. Stephen holds a Bachelor of Arts degree from Heriot-Watt University, Edinburgh, Scotland. He received the highest award, the Justice of Peace in 2011.

Magistrate Linda Bradford-Morgan (Pacific)



Linda was appointed as a Queensland magistrate in January 2004. From March 2016 she has sat in the Brisbane Magistrates Court specialist domestic violence list, Queensland Australia. Linda holds a Masters of Law; and Bachelor of Arts and Laws degrees. She is a Graded Arbitrator with the Institute of Arbitrators and Mediators, Australia, Qld Chapter. Linda was a member of the Queensland Building Tribunal 1994-2003 as member then Deputy Chairperson.

Linda was a solicitor in construction law and professional indemnity law 1985-1994.

Linda was appointed as a member of the Council of the Commonwealth Magistrates’ and Judges’ Association (CMJA) to represent the Pacific Region from 2015 to 2022. She is the Vice-president for the Pacific region on the Council 2022 to date as the nominee for the Australian Judicial Officers’ Association. She has been the CMJA Gender representative for the Pacific since 2015. She is a former President of the Queensland Magistrates Association and Australian Association of Magistrates.

In November 2018 Linda was appointed to an expert judicial panel by the United Nations (UNODC) to attend a 3 day conclave to prepare a Handbook for the Global Judiciary on Effective Court Responses for Gender Based Violence against Women and Girls. In June 2018 Linda delivered a keynote address at a Red Rose Foundation event on Strangulation: Changes to the Legal and Justice framework and in 2020 on unconscious gender bias. Linda has delivered several workshops for the Queensland Law Society on Advocacy for domestic and family violence practitioners. She was an inaugural executive member for the launch of the Australian Institute for Strangulation Prevention in 2020.

She was named on the 2019 Women Lawyers Association of Queensland List of Inspirational Judicial officers.

Judge Abena Asumah Oppong (West Africa)

My name is Abena Asuamah Oppong. I am a Ghanaian. I hold an LLM in International Law and



Justice from the Fordham Law School (New York), a Barrister of law from the Ghana School of Law and a Bachelor of Arts (Religious studies major) from the Cape Coast University (Ghana). I am a High Court Judge in Ghana. I currently I sit at the Land Division of the High Court, and I handle land disputes and related matters. Before my appointment as a High Court Judge I was a circuit Judge and between August 2015 and October 2018 I was the judge in charge of the Gender Based Violence Court which is a specialized court set up to handle domestic violence cases, sexual offences and cases involving human trafficking. Before becoming a Circuit Court judge, I served as a

District Magistrate for a period of five years. I aim to dispense justice to humanity in a firm and fair manner without discrimination.

REPORT FROM THE GENDER SECTION MEETING September 2022

The following report is from the Gender Section Meeting which took place on 5 September 2022 during the CMJA's Triennial Conference held in Ghana and was produced by the then Chairperson:

Justice Aguda-Taiwo, who served as the President of the Customary Court of Appeal of Nigeria, was our featured speaker at our well attended annual Gender Section Meeting held in Accra, Ghana on September 5, 2022.

She discussed the many challenges that women and girls are currently facing in Nigeria. With her permission, I am sharing some of the concerns she outlined.

Women and children in Nigeria suffer from poor hygiene or health care, poor nutrition, and lack of water etc.

Section 42 of the 1999 Nigeria amended Constitution provides for the right to freedom from discrimination and Section 43 provides that every citizen of Nigeria shall have the right to acquire and own property anywhere in Nigeria. However, young girls and women face gender discrimination/gender inequality.

Nigeria accounts for more than one in five out-of-school children anywhere in the world. Although primary education is officially free and compulsory, only 67 per cent of eligible children take up a place in primary school. Girls and women face the consequences of limited education. In the north-east of Nigeria only 41 per cent of eligible

girls receive a primary education, 47 per cent in the north-west. There is a higher level of illiteracy amongst women. Women face the consequences of limited education.

Nigeria has the third highest absolute number of women and girls worldwide (19.9 million) who have undergone Female Gender Mutilation. It is more commonly practiced in the south, driven by grandmothers and mothers-in-law aiming to curb promiscuity, prepare girls for marriage and conform to tradition.

The Nigerian Criminal Code contains provisions to protect children against violence and sexual abuse. However, violence against women and girls either through sexual harassment, rape or incest is concerning. A national survey in 2014 found that 6 out of 10 children reported having suffered one or more forms of violence before reaching 18 years of age, with 70 per cent of those experiencing multiple incidents of violence. One in every three Nigerian women suffers physical and/or sexual violence.

Underage sex and teenage pregnancy lead to Vesico-Vagina Fistula (VVF) problems and some are eventually ostracised because of the nature of the disease.

Although the Child's Rights Act 2003 prohibits child marriage, Nigeria has the largest number of child brides in Africa: 23 million girls and women were married as children.

Unfortunately, also, there is a high maternal mortality rate for Nigeria's 40 million women of childbearing age (between 15 and 49 years of age) who suffer a disproportionately high level of health issues surrounding birth. While the country represents 2.4 per cent of the world's population, it currently contributes 10 per cent of global deaths for pregnant mothers. Latest figures show a maternal mortality rate of 576

per 100,000 live births, the fourth highest on Earth. High infant mortality is also a reality.

Women account for 70% of those in extreme poverty. Of 144 countries, Nigeria ranks 122nd in closing the gender gap in the 2017 Global Gender Gap report. Nigerian women only earn 77 cents for every dollar that men earn for the same work. Women account for most of Nigeria's unemployment and underemployment. There is inadequate maternity leave and sexual harassment prevails in schools and places of work.

Nigeria's gross domestic product (GDP) could grow by 23 per cent – or \$229 billion – by 2025 if women took part in the economy to the same extent as men.

Women and girls are either deprived of inheritance or receive less inheritance.

While women accounted for most of Nigeria's agricultural workforce, they represent only 13% of agricultural landowners.

Justice Aguda-Taiwo's remarks sparked significant discussion and the exchange of experiences and perspectives from across the Commonwealth.

Those attending the meeting noted the critical importance of education, including sexual education. Incentives for girls to complete primary and secondary school education are effective.

Judges also play an important role in addressing and resolving these challenges by enforcing the protections offered in legislation. The Gender Section is indebted to Justice Aguda-Taiwo for her thought-provoking presentation.

*Justice Lynne C. Leitch
Gender Section Chair*

ADDRESSING ONLINE VIOLENCE AGAINST WOMEN

The Following is a report by DJ Michelle Smith on the Symposium organised by the Commonwealth Secretariat.

On 25th October 2022, I had the opportunity of attending the Commonwealth Secretariat Symposium on Addressing Online Violence Against Women. At this informative event a number of speakers highlighted the way this specific and increasing problem is being tackled globally.

It was noted that each country tackles online gender-based violence differently, with agencies working within those countries each measuring their success in different ways. This could be for example how effective measures have been in preventing such violence, what support they offer to victims and also how effective prosecutions have been in this area.

The consensus of the meeting was that there needs to be a coherent approach between each countries justice systems, Governments and also the global social media or internet providers to try to tackle increasing online violence against women, girls and children. Having said that, it is significantly important that the agencies working on the ground liaise with the local communities of each country. This is to identify the issues that are the most pertinent to them, educate young people and to work within the specific communities and their cultural dispute resolution systems to achieve effective results.

Increased investment is also said to be necessary to tackle the problem of gender- based violence. Legislation needs to continually evolve to try to ensure safeguarding and protection. Investment can also be promoted from an economic

viewpoint due to the costs incurred when gender- based violence occurs. If such behaviour were prevented, it would provide economic benefits to each country.

The issue of 'Bystanders' was also discussed in relation to tackling gender based online violence. Online bystanding plays a substantial enabling role in online gender based violence. Analysis of data shows that online violence has increased as a result of the Covid Pandemic and work needs to be done to empower users of online platforms to report the viewing of such images. The current dynamic of bystanders not reporting such images in the belief that they are not real or have already been reported needs to be tackled and changed.

We also heard about a Get Safe Online Ambassador Scheme which enables people to try and educate others. There is a drive to engage with the 'Big Tech' firms to promote online respect and work together with local people to best promote the message in relation to online gender-based violence. This initiative not only targets the perpetrators but also communicates with victims of such violence to ensure they can be signposted on a local level to where they can access the appropriate support.

Essentially as the reach and impact of social media and Big Tech firms expand, the risks increase. To effectively tackle such a large problem, a global approach needs to be initiated but tailored to the specific requirements of each country. The issues must be dealt with sensitively with an appreciation of the different perspectives of each country. Information and knowledge sharing is an important tool in the effort to tackle online violence as is raising awareness. It is hoped that by working in this way, a safe and secure cyberspace can be ensured.

Michelle Smith

GENDER MAINSTREAMING IN THE CRIMINAL JUSTICE SYSTEM

On 7 March 2021, the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice adopted by consensus the **Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development ("The Kyoto Declaration"**.

In December 2022, the CMJA's President, Justice Lynne Leitch participated in a Conference on Thematic Discussions on the Implementation of The Kyoto Declaration. She presented a paper under the theme "**Mainstreaming a gender perspective into criminal justice systems"**.

According to UNODC, women staff are underrepresented within criminal justice institutions in many countries, especially in law enforcement agencies. It seems that Judicial and prison systems continue to focus on the needs of a predominantly male population, although the global number of women in prisons has grown in the last 20 years. There continues to be gender-based discrimination in the criminal justice system as women continue to face barriers in accessing justice. The UNODC, in their Background Note for the Conference, stressed the importance of achieving gender equality in the criminal justice workforce and referred to the international declarations, including the Beijing Declaration and Platform for Action (1995), which includes a specific objective on ensuring women's equal access to and full participation in power structures and decision-making. "*The updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime*

Prevention and Criminal Justice call for gender-equitable representation in the justice system, and the Bangkok Rules call for, inter alia, equal access to capacity-building measures.” Without including a gender perspective in criminal justice systems, discrimination will continue, whether through discriminatory legislation and procedures, lack of gender diversity amongst judicial and legal personnel, gender bias or stereotyping to name but a few.

The UNODC in its background paper calls for good practices such as “*prioritizing non-custodial measures for women wherever possible and providing gender-specific hygiene and health care, as well as childcare and rehabilitation programmes in female prisons*”. Readers will recall that the Global Judicial Integrity Network (GJIN), in its Paper on Gender-related integrity issues, highlights some of the challenges. As we are aware, the pandemic has exacerbated the problems of gender-based violence across the world and the UNODC are encouraging more recruitment of women staff in criminal justice systems, as well as better systems for survivors of violence to speak to female officials, access health, social and judicial systems.

GENDER SECTION NEWS

Publication by

**District Judge Michelle Smith
(Atlantic and Mediterranean
Representative)**

**Dr Karen Brewer
(Editor in Chief)**

GENDER RELATED KILLINGS OF WOMEN AND GIRLS

In November 2022, the UNODC and UN Women produced a report on “**Gender Related Killings of Women and Girls**”. On average, the study

found that: more than five women or girls were killed every hour by someone in their own family in 2021. Over 56% of these are killed by family members. As we are aware gender based violence, especially in the home environment increased during the Pandemic but has also been exacerbated by climate change and more recently by the economic downturn. However, femicide figures, according to the data received by the UN, have stayed similar, although the report does point out that due to the differentiation in the criteria for data collection in various countries, the figure could in fact be much higher.

The UN report also points to more violence against those who are defending women’s rights. The advances in women’s rights is also being eroded by regressive laws, force is being used against demonstrators or organisations that support women’s rights.

The report states that most femicides follow on from previous physical, sexual or emotional abuse. Accordingly, based on the data from 75 countries and territories globally, “*female homicides perpetrated by current or former intimate partners account for an average of 65% of all female intimate partner/family-related killings*”.

The report calls for more preventative measures to ensure abuse doesn’t end up in killings including interventions from the criminal justice systems; better data collection which in turn leads to more targeted policies in this area. Whilst laws and policies have been promulgated to combat femicide or female homicides, more detailed laws or policies have been effective in combating such killings. The report mentions the [Inter-American Model Law on the Prevention, Punishment and Eradication of the Gender-Related Killing of Women and Girls](#) (Femicide/Feminicide) which provides a blueprint for best practice in protecting women.

The report outlines the importance of strengthening enforcement agencies and making them more gender sensitive, providing training to deal with survivors of abuse. In addition, the establishment of specialised courts in some countries to deal with gender based violence seems to be ensuring that there is more awareness overall of the need to be more gender-sensitive when dealing with survivors of such abuse. The report also outlines the importance of women’s rights organisations in combatting violence against women and girls

The full report is available at: https://asiapacific.unwomen.org/sites/default/files/2022-11/ap-Femicide_brief_22Nov2022_final2.pdf

SEXUAL VIOLENCE CRIMES IN CANADA

The following article was submitted by Justice Lynne Leitch, former Chairperson of the Gender Section

The evolution of Canadian law respecting sexual violence crimes has been significant. Few parts of the *Criminal Code of Canada* have been altered as dramatically as those dealing with sexual violence.

Outdated terminology has been removed, defences have been modified or eliminated, and new offences have been added – all in an attempt to change the nature of what sort of sexual activity amounts to a crime in Canadian society.

Our law’s approach to sexual offences changed dramatically when vast amendments were made in the 1982 *Criminal Code*. The offences were defined broadly as a sexual assault.

This represented a significant change as the offences were no longer ones against virtue. They were offences against bodily integrity.

There were further reforms in 1983 which removed exemptions for marital rape and prohibited evidence on the complainant's sexual history, subject to limited exceptions. Many of the advancements of the rights of women and girls resulted from decisions of the judiciary which have evolved over time.

Sexual assault was recognized as an assault upon human dignity which constitutes a denial of any concept of equality for women.

The right to privacy for complainants as an important value became entrenched.

Courts concluded that there is no such thing as implied consent to sexual activity.

Sexual assault also became recognized as not only a gendered crime, but often a racialized one.

In a stated response to the low levels of sexual assault reporting, the Canadian Parliament in 2018 enacted further reforms to sexual assault trial procedures by creating new procedures governing the admissibility of a complainant's private records in the hands of the accused (anything from medical or psychiatric records to e-mail and text exchanges with the accused).

These most recent legislative changes were attacked as an unjustified breach of accused's *Charter* rights to a fair trial and to make full answer and defence and to remain silent, but the provisions were upheld in a decision of the Supreme Court of Canada on June 30, 2022.

The judiciary has also supported special considerations for witnesses when appropriate. When testifying in court, a complainant may be entitled to several testimonial accommodations. Further, non-publication orders are made to protect the identity of complainants and their records.

Judges must now be aware, as we instruct juries, that there is no one way in which a sexual assault happens, there is no model or stereotype of a perpetrator or a victim of sexual assault, the victims of sexual assault may react in many different ways and the offence can take place in almost any circumstances between all kinds of different people who react in a variety of ways.

These developments represent what has been referred to as mainstreaming a gender perspective into criminal justice systems. The reforms were designed to break a pattern of discrimination and while of course challenges remain, Canadian law has, and will continue to evolve, to encourage the reporting of incidents of sexual violence, respect privacy interests of women and girls and abolish myths in relation to the credibility of an alleged victim of sexual violence.

NEWS FROM AROUND THE COMMONWEALTH

The following are summaries of various reports that the CMJA has gathered from around the Commonwealth that outline some of the developments in the field of gender and human rights.

COUNTRIES AUSTRALIA

Domestic Violence Legislative Reform: Criminalisation of Coercive Control

The following report was submitted by Mrs Linda Bradford Morgan,

Prior to the enactment of the *Crimes Legislation Amendment (Coercive Control) Bill 2022* (NSW) ('NSW Coercive Control Bill') Australian legislation has not directly addressed coercive control

as a standalone offence of domestic violence.

The NSW Coercive Control Bill inserted section 54D into the *Crimes Act 1900* (NSW) to create an offence against abusive behaviours towards domestic partners, with a key focus on abusive behaviours that form a '*course of conduct that intends to coerce or control another person.*' The offence carries with a maximum penalty of 7 years imprisonment.

Queensland commissioned the Women's Safety and Justice Taskforce chaired by the Honourable Margaret McMurdo AC to examine coercive control and review protective legislation. The Queensland Government is progressively enacting the reforms recommended in the Report "Hear Her Voice" published 2 December 2021. The *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022* (Qld) (Q1d Bill') amends the definition of domestic violence for civil applications for Protection Orders but does not criminalise coercive control. These amendments to domestic violence legislation expressly recognises the pattern of abusive behaviours that constitute coercive control. The Qld Bill proposed amendments to the *Domestic and Family Violence Protection Act 2012* (Qld) broadens the definition of domestic and family violence to refer to a pattern of behaviour as well as strengthening the court's consideration of previous domestic violence history.

The Qld Bill also strengthens laws regarding stalking under the Queensland Criminal Code, and canvasses considerations for the Court on hearing competing allegations of abuse in cross applications for protection orders.

CANADA

On the 23 June 2022 Bill c-28 received Royal Assent. It came into force on 23 June 2022.

This Bill amends S.33.1 of the Criminal Code to provide that persons who engage in violent acts while in a state of self-induced extreme intoxication can be found criminally responsible for such acts if they consumed intoxicants in a criminally negligent manner. This is in response to the Supreme Court of Canada decision in *R v Brown* (2022) and *R v Sullivan and Chan* 2022.

The Honourable David Lametti, Minister of Justice and Attorney General of Canada, and the Honourable Marci Ien, Minister for Women and Gender Equality and Youth, issued the following statement:

“We are very pleased that Bill C-28 completed its legislative journey, has received Royal Assent, and has come into force. Members from all parties and groups in the House of Commons and Senate worked swiftly to close the gap in the law following the Supreme Court of Canada’s (SCC) decisions in R v. Brown and R v. Sullivan and Chan.

The Criminal Code will now ensure that individuals who consume drugs and/or alcohol in a criminally negligent manner are held criminally responsible if they harm others while extremely intoxicated. The coming into force of this legislation is an important step toward ensuring that our criminal justice system supports victims and survivors of crime – women, children, and Indigenous women, girls and 2SLGBTQIA+ persons. It sends a strong message that will hold offenders to account and keep communities safe.

“We are grateful for the support and expeditious passage of this Bill by all Parliamentarians. We thank our colleagues in the House of Commons

and Senators for working together to ensure that our criminal justice system better supports victims and survivors of crime, while respecting Charter rights. We are grateful for the input of many stakeholders across Canada who contributed to the development of this change.

Before and since the SCC decisions, being drunk or high continues to not be a defence to crimes of violence, including sexual assault, and the defence of extreme intoxication will generally not be relevant in cases involving alcohol alone.

The Criminal Code now clearly states that any person who voluntarily consumes intoxicants in a criminally negligent manner, becomes extremely intoxicated and harms others will be held criminally responsible for such acts.

The Government of Canada will continue to take action to maintain public confidence in the criminal justice system and support victims and survivors of crime. This legislation is one of several recent legislative reforms and programs the government has advanced to support victims and survivors of crime, including survivors of sexual assault.”

CAYMAN ISLANDS

The CMJA congratulates Justice Margaret Ramsay-Hale on becoming the new Chief Justice of the Cayman Islands.

Margaret is a former CMJA Regional Vice President and former Chief Justice of Turks and Caicos. We wish her all the best in her new post!

CYPRUS

The Following report has been produced by DJ Michelle Smith

On the 13th November 2022, the first evaluation of Cyprus by the Council of Europe’s Group of Experts on Action against Violence against Women and

Domestic Violence (GREVIO) was published.

This report details the positive steps taken by the Cypriot authorities following the ratification in 2017 of the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence (‘the Convention’).

The report highlights a number of positive legal and policy measures taken which are said to demonstrate the firm resolve to prevent and combat domestic violence and violence against women. These measures include the passing of Law 115(1)/2021 on the Prevention and Combating of Violence against Women and Domestic Violence and Related matters. This criminalises different forms of violence against women and adopts a definition of rape which aligns more closely to the convention. It also importantly criminalises forms of sexual and gendered online harassment. Further legislation which came into force in this jurisdiction includes the Law to Provide for the Protection of Harassment and 2020 Law on Stalking and the Law on Combating Sexism and Sexist behaviour.

One of the positive features of the 115(1)/2021 is the provision for both criminal and civil liability of a legal



person for the commission of violence against women offences, which under certain conditions fosters greater accountability of

employers to ensure that the working environment is free of gender- based violence.

The evaluation details important measures to tackle gender- based violence including the establishment of Women’s House which is a multi- agency and multi professional crisis centre which offers victims of

domestic violence a complete range of support services under one roof, on a 24-hour basis. It also welcomes the establishment the first time of a fully institutionalised national coordinating body with dedicated resources whose functions include the coordination between the relevant stakeholders.

The evaluation however identifies areas of improvement. These include measures needed to address the absence of a rape or sexual violence referral centre capable of providing a holistic and comprehensive support package to victims of such offences. Recommendations have also been made to look at the way forensic evidence is obtained from complainants of such crime as the current measures are said to not be compatible with the Convention.

The report also highlights the fact that although there is an objective to create a centralised database on all forms of violence against women, no progress has been made so far. Data collection is scarce and disjointed and is incapable of providing a comprehensive picture.

Conflicts between the coexistence of the 2000 Violence in the Family Law and the Law 115(1)/2021 have also been identified.

It is further recommended that the attitudes of some enforcement officers in relation to offences of this type needs to be challenged and specialist training should be offered to Lawyers and Judges. Currently trust is being undermined in the system where on occasion the inaction of the police and failure to record the incidents of crime, undermines trust in the system and led to significant underreporting of such offences.

The report also highlights problems which arise in relation to the law and practice of family courts when deciding on custody and visitation

rights after domestic violence and also the significant challenges faced in ensuring an asylum determination procedure which is gender sensitive.

In summary, in addition to other areas in which improvements are required to fully comply with the requirements of the Convention, the recommendations for urgent action to be taken by the authorities include:

- The development of a central policy document which offers a holistic response to all forms of violence against women that is implemented by way of effective operation between the relevant institutions.
- Integrate the perspectives and needs of women who are or may be exposed to or at risk of intersectional discrimination.
- Provide dedicated and sufficient, sustainable funding from programmes and policies on the prevention and combatting of all forms of violence against women and for women organisations specialised in this area.
- Ensure that the National Coordinating Body for the Prevention and Combating of Violence against Women is empowered to co-ordinate and implement all existing policies on violence against women, while avoiding any overlaps with the functions of the Advisory Committee for the Prevention and Combating of Violence in the Family, and ensuring that a separate body is entrusted with the monitoring and evaluation of the relevant policies.
- Take measures to ensure systematic and mandatory initial and in service training on all forms of violence against women.

- Strengthen the capacity and outreach of perpetrator programmes beyond the capital of Cyprus and integrate the programmes into the Criminal Justice System.
- Ensure the roll out of Women's house to other parts of the country.
- Further develop the law 115(1)/2021 in relation to the development and implementation of comprehensive protocols in hospitals to identify, treat and refer victims of such offences including FGM.
- Ensure specialist support services to victims of all forms of violence against women, beyond domestic violence, in an adequate distribution.

The full copy of the report can be found at: <https://rm.coe.int/greivio-inf-2022-29-cyprus-report-for-publication-eng-for-publication/1680a91c5b>

MALAWI

In September 2022, an assistant registrar of the High Court in Lilongwe only awarded nominal punitive damages to Beatrice Mateyo, a women's rights activist who had been awarded she be awarded damages for false imprisonment as well as punitive damages and compensation for the violation of her constitutional rights, when she was falsely arrested for carrying a placard during a demonstration which included the word vagina in one of Malawi's local languages. The assistant registrar claimed that the placard she had carried was offensive. He considered that: *"what she had carried was actually greater form of assault and violence against women; quite abusive, undermining and insulting to the modesty of women who*

happened to be the subject of the march”.

Carmel Rickard, commenting on the issue in Matters of Justice criticised the decision and stated “ *...it is far from unusual for women, protesting against patriarchal practices, deliberately to use words like ‘vagina’, and even other words for a vagina that might be regarded as more crude, in their public protests. This is done in order to claim back parts of their bodies that men have long denigrated and violated. They also argue that to do so will help girls to name and speak about their bodies with more ease, something particularly important during testimony in cases of sexual abuse.*

NIGERIA

In 2022, Rivers State passed a law to ensure more inheritance rights for widows. Despite a Nigeria Supreme Court long standing Ruling ensuring women’s entitlement to family property, widows have continued to see their rights to inherit family property denied. The Supreme Court further clarified the position of women’s inheritance in the 2019 case: *Ukeje & Anor v Ukeje* (Supra). Rivers State has been the first jurisdiction in Nigeria to promulgate legislation on this issue through the Prohibition of the Curtailment of Women’s Right to Share in Family Property Law No. 2 of 2022, was promulgated in September 2022.

In January 2023, it was reported that a rule that forbade women police officers from becoming pregnant had been struck down by the courts as it was discriminatory as it didn’t apply to male officers.

PAKISTAN

In January 2023, UN experts including a number of Special Rapporteurs, expressed alarm at the rise of abductions, forced marriages and forced conversions of young girls

from religious minorities in Pakistan and called on the government to pass legislation to combat these practices and on the courts to examine more closely the evidence and documentation presented to them which is sometimes fraudulent. The UN Experts stated that all victims, regardless of religious background, should be given access to justice and equal protection under the law

SIERRA LEONE

In January 2023, it was announced that the Gender Equality and Women’s Empowerment Act which grants women 14 weeks maternity leave, equal pay and training opportunities. It also imposes a requirement that at least 30% of jobs are reserved for women in both the public and private sectors. In order to ensure compliance with the job quotas, the Sierra Leone government will impose fines for non-compliance equivalent of up to GBP £2,500

SOUTH AFRICA

We congratulate former Justice Yvonne Mokgoro of the Constitutional Court for receiving the Georges Bizos Human Rights Award presented by the South African Legal Resource Centre in September 2022. She received the award for: *“for her remarkable leadership in the pursuit of equality and justice for all”.*

The Debate regarding the recognition of Muslim marriages in South Africa continued in November 2022. Whilst the Muslim Marriage Bill was introduced in 2010, this has never been passed by Parliament. In November 2022, a private members bill was introduced to recognise Muslim Marriages. Currently if you are married under Sharia law and not under civil law, the marriage is not recognised. The Home Affairs Dept has now announced that it will be submitting a new Marriage bill to resolve the gaping holes in the

existing legislation which affects not only Muslim marriages but any marriage (including polygamous marriages) which are not conducted under the statutory process.

UGANDA

The CMJA congratulates Justice Elizabeth Musoke on her elevation to the Supreme Court of Uganda.

CONTRIBUTIONS AND COMMENTS



We would like to hear from you. If you have comments, suggestions, ideas, or concerns please send us an e-mail at

info@cmja.org If you have an interesting story to tell, please send these too!!

**NEXT GENDER SECTION MEETING
11 September 2023
City Hall, Cardiff,
Wales**

(see www.cmja.biz for further details about the Conference and Gender Section Meeting)



CMJA CONFERENCE 10-14 September 2023

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OBJECTIVES OF THE GENDER SECTION

Aims

- ◆ To promote the interests of judicial officers throughout the Commonwealth;
- ◆ To ensure wherever possible, equal access to the law.

Objectives

- ◆ To provide a forum for judicial officers to be able to consider ways of redressing any gender imbalance:
 - Gender Bias and other colleagues;
 - Gender Bias and the Public both specifically and generally;
 - Institutionalized Gender Bias and the Justice System;
- ◆ To exchange information among judicial officers;
- ◆ To encourage the advancement of women;
- ◆ To promote and encourage women to be aware of their legal rights;
- ◆ To address women's groups on issues relating to the law and their legal rights.