



GENDER SECTION NEWSLETTER



Published by the Commonwealth Magistrates' and Judges' Association Gender Section

Volume 6 Issue 2

August 2019

GREETINGS FROM THE CHAIRPERSON



This issue of our newsletter contains a plethora of information outlining positive changes across the Commonwealth in relation to gender issues.

We begin with an article submitted by Ugandan Magistrate Kyabiika discussing challenges of sexual harassment offences and the efforts being made to improve access to justice for victims of sexual and gender based violence.

Next, Dr. Brewer shares the discussions at the Commonwealth Secretariat's seminar to celebrate International Women's Day. We are very pleased that our Secretary General was invited to participate at this event.

We also include a summary of the U.N. Women Report: Progress of the World's Women, which happily does reflect considerable progress in relation to women's equality and autonomy.

In addition, we have highlighted a report on gender responsive climate action considered by the Human Rights Council in June 2019.

Lastly, we have included news from around the Commonwealth which focuses on legislative issues, interesting cases, judicial appointments, challenges and positive developments.

We very much value contributions to the newsletter from our members and look forward to hearing from you. We are very grateful to Jackie Bryant, our CAP intern, for putting this edition of the newsletter together for the CMJA.

I look forward to seeing you all in Papua New Guinea for the next meeting of the gender section.

**Gender Section News
Publication by
Justice Lynne Leitch
(Chair)
Dr. Karen Brewer
(Editor in Chief)**

CONTENTS

1	Greetings from the Chairperson
2	Emerging Issues in Ugandan Courts
3	Levelling The Law For Women's Equality
4	UN Women's Report 2018-2019
5	The Impact of Climate Change on Women across the Globe
6	New from Around the Commonwealth
7	Gender Section Representatives
8	

EMERGING GENDER ISSUES IN UGANDAN COURTS

Magistrate, W. Naigaga Kyabiika is a member of the Uganda Judicial Officers' Association, and Treasurer on the Executive Committee (2018-2020).

The following article is Judge Kyabiika's analysis surrounding the emerging gender related issues in Ugandan courts.

Sexual harassment refers to behaviour characterized by the making of unwelcome and inappropriate sexual remarks or physical advances in both public and private settings. Public places may entail: work places, places

of worship, educational institutions, markets, walk ways, and social media communications, etc..

Private places include homes. Sexual harassment behaviours range from mild transgressions to physical sexual abuse or assault. Anyone can become a victim regardless of race, gender, sex, age, class, and status. The social vice has far reaching effects. A victim stands high chances of losing confidence, performing below expectations at the workplace or school, losing a job, failure to advance in educational pursuits and sustaining physical harm.

Of all acts of Sexual- and Gender-based violence, sexual harassment receives the least attention. The offense is often treated with indifference and ignored as an issue of trivial concern. Victims are, more often than not, ridiculed and castigated for being attention seekers. For generations, a sexual claim has been believed to be a charge only advanced to taint the character of the defendant. This has resulted into coming up with laws and court room procedures that empower defendants and push victims into silence. With a world view that encourages freedom from punishment for wrongdoers, sexual harassment cases have soared to reach disturbing levels.

The case of *Uganda vs. Brian Isiko* makes an interesting illustration regarding how the deeply rooted sexual harassment is tolerated in the Ugandan society. Brian Isiko was sentenced to two years in prison for sexually harassing a female member of Parliament, Sylvia Rwabwogo. A big part of the public wondered how a woman who was not only an adult, but a Member of Parliament could be affected by love messages from a 25 year old boy. Many found the sentence to be very harsh and castigated the female judicial officer, Her Worship Gladys Kasamanyu, for denying this young man the chance to be in school. The public painted the

defendant as a young man who was simply just making his feelings known. The case was appealed and its conviction squashed. The conviction and sentence were squashed because the trial magistrate failed to follow the proper procedure in taking down a plea of guilty. It is now before another magistrate for a re-hearing. The case illustrates the willingness of the courts positively tackling sexual harassment amidst an environment that tolerates the vice.

It is interesting to note that the case has so far been handled by female judges: Her Worship Gladys Kasamanyu (first trial magistrate), Justice Jane Frances Abodo (Appellant judge), and Her Worship Stella Amabilisi (Second Trial magistrate). This illustrates the role of the female judges in bringing to the forefront gender related issues that are often left on the way side in public discourse. Researchers have noted that Women judges, however, are naturally more inclined to speak out against gender related issues (Bauer & Dawuni 2016). It will be simplistic to say, however, that all women judges would advance gender related issues and male judges would leave the same issues on the wayside. Judicial officers are products of society. Appreciating gender related issues may be due to natural instincts, however, professional training is also credited for the positive change in Ugandan Courts (Judge Batema and Judge Mugabe 2004).

The judicial officers are not lone soldiers in bringing gender related issues to the fore front. The judicial administration in 2018, set up special courts on Sexual and Gender Based Violence to improve access to justice for the victims. A pilot project has seen these special courts set up in High Court Criminal Division in Kampala; High Court Circuits of Moroto, Soroti, Masaka, Mukono, Gulu, Bushenyi, and Mbale; and the Chief Magistrate Courts of Nabweru, Iganga, Lira, Kapchorwa and Sironko.

The judicial officers who sit in these courts have undergone training to prepare them in handling cases that involve acts of sexual and gender based violence. The ground has now been set to see how these courts will fare in advancing gender related issues that have been often neglected and thus affecting access to justice for the victims.

In conclusion, this discussion has pointed out both the judicial administration and individual judicial officers have come up to advance gender related issues. The administration has strategically answered the plight of victims by setting up special courts to hear their cases and improving the capacity of the judicial officers to handle these special cases by training them. The discussion has also noted that female judges have a role they play in advancing often neglected gender issues.

Sexual harassment will be a topic of discussion at the annual CMJA conference in Papua, New Guinea in September 2019.

LEVELLING THE LAW FOR WOMEN'S EQUALITY

The CMJA Secretary General, Dr. Karen Brewer, was invited to attend the Commonwealth Secretariat seminar to celebrate International Women's Day on 8 March 2019. The UN theme for this year's Women's Day was "Think Equal, Build Smart, Innovate for Change". The Commonwealth theme was: "Levelling the Law for Women's Equality". The following is a report written by Dr. Karen Brewer about the seminar.

The Commonwealth Secretary General, Baroness Scotland, stressed the importance of legislative reforms to ensure that these do not

discriminate against women. She stressed the fact that according to a report produced by the McKinsey Global Institute, women had a potential to contribute US \$28 Trillion to the economy worldwide, if they were not discriminated against by archaic laws which limit their potential to own property, inherit from husbands or fathers or which force them into marriages at an early age, amongst other discriminatory provisions.

Other speakers included the High Commissioner for Ghana to the United Kingdom who stressed some of the issues in Ghana which held back women such as the continued practice of FGM, poverty, domestic abuse, inadequate representation in Parliament (currently only 10%) not to mention the continued problems encountered in relation to property rights and inheritance laws which discriminate against widows. The High Commissioner from Antigua and Barbuda, stated that domestic violence was deeply rooted in the population, but the government was making progress and had put in place free court services, training of judicial officers and a hotline to help combat such sexual violence. They were changing their Domestic Violence Act to include the crimes of stalking and cyber-stalking and violence from strangers (ie: people outside the household). They were creating safe havens for victims of such gender based violence and had launched a Sexual Offences Model Court in November 2018, the first in the Caribbean. The High Commissioner for Cyprus to the UK pointed out that there was currently only one woman in parliament. Sexual violence was prevalent, but it was estimated that there was at least 30% of unreported cases of such violence. However improvements had been made in maternity rights (including maternity protective leave for surrogates and laws allowing women to breast-feed in public). The High Commissioner for the Solomon Islands pointed out

that whilst there had only been 3 women elected to Parliament, there were 5 who were Permanent Secretaries in Ministries and a woman who was a High Commissioner to New Zealand. There continued to be problems for women's access to education, and the Penal Code had only just been changed to ensure protection under the law for women. It was evident that women had a role to play in mediation, and he illustrated this by the role that women had played in mediating with both sides in the conflict in the Solomon Islands in the 1980s/1990s where they had played a major role in bringing together communities and militants. There were some other reforms that needed to take place such as changes to cultural beliefs. Whilst the transfer of land was through women, they continued not to have "power" in decision making. The Bangladeshi High Commissioner spoke about the patriarchal society of Bangladesh. She indicated that international reports (through the UN and other fora) were of paramount importance in influencing change. Whilst Bangladesh has a women Prime Minister and girls' inclusion was high at the primary school level, this wasn't the case in secondary school and 40% of the workforce was made up of women. The problem was that there was little access to resources. The Prime Minister had wanted in the 2011 National Women's Development Policy to change property law and inheritance law in line with international principles. However, this had not yet occurred.

UN WOMEN REPORT: PROGRESS OF THE WORLD'S WOMEN 2019-2020

The following is a summary of the Progress of the World's Women 2019-2020 entitle "Families in a Changing World ", a report of the data collected and launched at the Human Rights Council by UN Women in June 2019.

The evolving world and cultural standards requires evolving laws and policies to better support women and families across the globe. This report proposes a comprehensive agenda for gender rights activists, national governments and agencies as well as policy makers to make human rights a reality for all women and girls and to promote a legal framework which provides equality in family law.

Today, women are increasingly able to exercise agency and voice within their families and daily lives.

NEXT MEETING OF THE GENDER SECTION 9 SEPTEMBER 2019, The Stanley Hotel, Port Moresby Papua New Guinea

Speaker:

***Justice Kumudini Wickramasinghe
Sri Lanka***

See www.cmja.biz for further info on the CMJA Conference

If you have any suggestions for subjects to be discussed at this meeting please contact kbrewer@cmja.org

Women have more of a right to choose whether and when they want to have children. They are also more likely to delay marriage and family planning, and have been increasingly practicing economic autonomy. The education and employment opportunities given to women and girls have dramatically shifted because of activism, legal reform and normative/cultural changes that have given them more access to their political rights and freedoms that were previously denied.

However, there is still a way to go. Within families, women and girls too often face violence and discrimination. Over their lifetimes, around one in three women can expect to experience physical or sexual abuse at the hands of an intimate partner. In some countries, the rights of women and girls to inherit property are still being denied. Women around the world are also still legally being required to obey their husbands, which stifle their voices and erode their independence. It is crucial to evolve the family dynamic, so women and girls can realize their rights and can be free from violence and discrimination.

Migrant women and girls must also be protected and not denied their human rights to autonomy, security, education, and ownership. Universal access to social protections (including health, education, and childcare) and public services should not be limited to citizenship and migration status. It is critical to ensure that migrant women and their families are able to meet their caring responsibilities and are not pushed into poverty. There also needs to be policy that protects them from having to leave their families behind, in the hopes of seeking out education and/or employment opportunities elsewhere.

The Sustainable Development Goals (SDGs) call for gender equality and the empowerment of all women and girls including the elimination of violence and harassment, ensuring women

have access to economic resources, reproductive healthcare, and educational and employment opportunities; and SDG 5 promotes shared responsibility for the provision of unpaid care and domestic work, which disproportionately falls on women and girls. There is an increasing burden on women which comes with marriage and children and this can affect the participation of women in the workforce and increase “motherhood penalties” in wages.



There must be more done to support working families without assigning all the domestic responsibility solely to women and girls. UN Women propose the construction of national care systems, including paid maternity and paternity leave, cash benefits that enable self-employed workers to take time off, social programs for families and for children, additional support for lone parents, and adequate pensions through a combination of gender-responsive contributory and non-contributory systems.

Within families there is an unequal bargaining power that impacts the outcomes for women and girls; for example, in the sharing of resources, the division of unpaid care, and/or who assumes the responsibility of domestic work. Though there has been progress in women’s increased access to resources, income, autonomy, security, and ownership, in many developed countries there is still more work to be done. Though women’s gains have been evolving, those who live with a male partner still generally contribute less than half of the family income and accumulate an even smaller share of its wealth (Sierminska and Girshina 2017). Lone mother households, which consist of 84% of single-parent households, also

face a higher risk of poverty compared to two-parent families. Actions by states, communities, and markets can help women bargain for an equal share within their family dynamic.

Violence in the family has been recognised as a public concern rather than a private issue. Despite the increasing number of violence prevention measures, violence against women and girls persists at astonishingly high rates. In 2017, an estimated 58% of all female victims of intentional homicide were killed by a member of their own family, amounting to 137 killed each day (United Nations Office on Drugs & Crime, UNODC 2018).

Families today are increasingly becoming more diverse. Variations in family composition across regions and within countries are largely based on the differences in public policies, social norms, demographic shifts and employment patterns. Women and men across the world are delaying or opting out of marriage. This has enabled women to complete their education, gain a stronger foothold in the labour market, and support themselves financially (Barker 2017). A rise in divorce rates has been one of the most visible features of family change in most regions since the 1980s (Harkonen 2017). The liberalisation of divorce laws in some developed countries has led to lower rates of suicide by women, a lower incidence of reported domestic violence and fewer instances of women being murdered by their spouses (Stevenson and Wolfers 2016). Divorce and separation also has the adverse consequences of making women more vulnerable; it could potentially lead to the loss of all marital assets, resources, or even child custody (De Vaus et al. 2015; Gadalla 2008). After all, there is still a stigma about getting a divorce largely influenced by how states, communities and religious institutions influence, regulate, and even intervene in marriage and family life

through law, policies, and customs. Family laws governing marriage, divorce, custody and guardianship, adoption and inheritance often include gender discriminatory provisions, creating an unequal playing field for women and girls in many parts of the world. A lack of legal rights to initiate a divorce, or the threat of losing custody of children, can skew gendered power relations within marriages, and trap women in unsatisfactory or even violent relationships. Often, women going through divorce are not being compensated for their contributions and domestic work for their family, because they are not receiving a separate income for it. Women's agency to exit unhappy partnerships is also undermined in context where marital property regimes fail to recognize their unpaid contributions or where men are not required to pay their fair share for their children's maintenance.

Public services including education and reproductive healthcare play a critical role in supporting families and advancing gender equality. Women's voices in reproductive matters are increasing because they are exercising greater agency in decisions regarding childbearing, specifically whether and when to have children, and how many, and childrearing, specifically the sharing of domestic work and quality services they provide to their children. Control over their own reproductive health is an undeniable right all women should possess. In 1970, only 42.2% of women worldwide aged 15-49 married or in a union who wanted to use a modern method of contraception did so; in 2015, this has increased to 77.2%.

Families, economies and governments have a very symbiotic relationship; each one needing the other to flourish and to achieve stable and prosperous societies. More than 70 years ago, the Universal Declaration of Human Rights recognised families as a fundamental unit of society, one which requires

protection and assistance (UN General Assembly 1948, 217 III). In international law, the protection of the family is intrinsically linked to the principle of equality and non-discrimination, especially with regard to marriage (Sepulveda Carmona 2017). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) makes clear that all laws, policies and practices regarding the family should be undertaken without discriminating against individual members of the family or against any form of family. It also contests that the artificial separation of the 'public' from the 'private' sphere and made it clear that States have as much obligation to ensure human rights are fulfilled in the 'private' world of marriage and family, as they do in the 'public' world of markets and politics (Pateman 1983). CEDAW, and additional conventions like the International Conference on Population and Development (ICPD) and Conventions on the Rights of the Child (CRC) also provided a legal framework that details how couples and individuals have the right to decide whether and when they want to have children, the obligation to eradicate violence against women and girls, and to protect the rights of the child.

This report proposes a policy package that would guarantee access to basic income security and essential healthcare over the life cycle to all people, in line with the International Labour Organization (ILO) Protection Floors Recommendations, 2012 (No. 202); and ensure that pre-school children and older adults can access quality care services. In order for this to be affordable, governments must increase tax revenues, expand social security coverage, borrow or restructure debt, curtail South-North transfers, eliminate illicit financial flows and leverage aid and transfers.

THE IMPACT OF CLIMATE CHANGE ON WOMEN ACROSS THE GLOBE

The Human Rights Council, at its 41st Session held in June 2019, considered a Report on a gender-responsive climate action for the women's and girls' full and effective enjoyment of human rights. The full report is available online: A/HRC/41/26)

Gender inequality, discrimination, patriarchal structures, and systemic barriers are all being perpetuated by climate change. Women are more likely to experience harmful social, political, and economic barriers. Not only do they constitute most of the world's poor, but also are often dependent on natural resources as primary sources of food, income, and survival. Lack of natural resources and climate change-related food insecurity impacts the nutritional needs of women significantly. Growing prevalence of blood conditions, like anaemia, are rising in women according to the Food and Agriculture Organization (FAO): in 2016 it was 32.2%, a 2.5 percent increase from 2012. A family's food allocation also promotes gender inequality because women are more likely to skip meals or reduce consumption during times of scarcity. Poor and rural women are more likely to suffer food insecurity or live in food deserts and experience economic vulnerability. Lack of close proximity to food and water can also increase the potential for sexual- and gender- based violence.



Fossil fuel emissions contribute to millions of deaths and health complications per year, estimating at

about 7 million deaths a year according to the World Health Organization (WHO). Climate change can also affect women's mental health, increasingly and disproportionately putting pressure on women to assume more of a domestic role in supporting their families. Climate change can also destroy essential infrastructure, which would compromise the quality, availability, and accessibility of sexual and reproductive health services. Lack of access and availability leads to many women resorting to unsafe—and even life threatening—methods in attempting to control their bodies and health.

Extreme temperatures, sea-level rise, and poor air quality can all threaten a woman's quality of life, since it can affect maternal and child health. It could also heighten risk of maternal morbidity, congenital defects, increase preterm births, and maternal and perinatal deaths.

Women who are displaced from natural disasters are especially vulnerable to harassment and institutional sexism and have limited access to health or relief services. Because law enforcement have strained resources during a disaster, women are even less likely to report an assault or receive assistance. LBGTQ women are especially vulnerable because of discrimination, homophobia and transphobia that excludes them from recovery and response efforts.

Climate change can make resources scarce, which can increase unemployment rates for women. Gender is a strong determinant for who moves/migrates to find employment and better opportunities and who stays to defend and advocate for the community. Gender-specific violence increases as women mainly assume the position of defending the ecosystems that their families and communities occupy. Lack of policy that mitigates the impact of climate change can

jeopardize women's livelihood, freedom of expression, right to assembly, and active political participation. When women are not included in the decision-making process regarding climate action, you neglect to effectively tackle the issues directly. Inequality, displacement, and marginalization are more likely to be perpetuated.

Failing to address structural and gender-specific discrimination will inhibit the transition into a sustainable economy, which is ideal for all. Women's perspectives often include not just their own experiences, but also consider how it will impact the larger community. Women offer more of a holistic view on how to combat climate change when given the platform to actively participate. Climate action can decrease carbon emissions, but also transform gender norms and women's participation in economics, environmental causes, and political activities. Women should be key contributors in working to alleviate the Sustainable Development Goals set by the United Nations General Assembly in 2015 for the year 2030. The CEDAW Committee has also emphasized the necessity for gender-responsive climate action, ensuring gender equitable outcomes and promoting a sustainable climate.

NEWS FROM AROUND THE COMMONWEALTH

BANGLADESH

Under classical Hindu law, property is always inherited by the men and boys in the family, women and girls are not eligible to inherit. Childless widowed women or women who do not have sons are also excluded. Even if a Hindu woman does inherit, she has very limited rights to her property. A woman does not get to choose what

happens to the property in case of her untimely passing. It would revert back to the next heir of the person she had inherited the property from.

The passing of Hindu Widow's Remarriage Act of 1856 allowed Hindu women of Bangladesh to validly remarry after their husband's death, but their claims over their former deceased husband's property was then lost to them.

Bangladesh is one of the 160 countries that ratified the CEDAW. The country's Constitution has also emphasised non-discrimination on the grounds of religion, sex, race, or caste among individuals in Bangladesh.

Whilst countries like India have brought changes in Hindu law and have put policies in place to combat inequality and the Hindu Succession Act of 1956 allows a husband's property to be divided into equal shares between his son, daughter, widow and mother, in Bangladesh is functioning under an obligation to enact and enforce laws and frame policies that would reform existing Hindu laws that would eliminate all forms of discrimination faced by women. But, there are still no significant changes under Hindu law, which continue to inhibit women's property rights.

CANADA

In Canada currently, sexual assault case training is not mandatory for judges. Former interim Conservative leader Rona Ambrose recently introduced Bill C-337 to the House of Commons to change that, requiring all judges and potential judicial candidates to undergo training about sexual assault and the law. The bill, presented in February 2017, was passed three months later in the House, but has since languished in the Senate.

Some senators proposed amendments to the bill, which would drop the mandatory aspect of undergoing training in sexual assault law for all applications for judicial posts. Instead, only making it a requirement to commit to the training for the successful applicants. Another amendment called for the training courses not be solely developed by victims' groups. The Bill has also been seen as impacting on judicial independence and create the perception of judicial bias in favour of victims.

The Canadian Women's Foundation (CWF) called for the Senate to prioritise the bill and bring it to vote before the deadline:.

As Andrea Gunraj, the Vice-President of public engagement of the CWF, articulates, training is necessary when there is a prevailing, male-dominated culture within the judicial system that can reproduce stereotypes about gender, victims, sexual assault crimes, and survivors and what they are responsible for/could have prevented. These antiquated beliefs about women can really perpetuate a bias that hinders proper judgement around issues of sexual violence. Gunraj notes that proper reform on the handling of sexual assault cases is needed throughout the legal spectrum, not only for judges but police officers as well, in order to effectively combat the issues regarding how these cases are being addressed, reported, and deliberated on.

Despite all of the lobbying efforts, Bill C-337 mandating sexual assault training for lawyers seeking to be judges on federal courts, was not passed because the Senate time to discuss this elapsed

In 2015, Quebec court Judge Eliana Marengo refused to allow Rania El-Alloul, a Muslim woman, to appear before her wearing a hijab. She was

ordered to remove it if she wanted her case to proceed. Judge Marengo told El-Alloul, "In my opinion, you are not suitably dressed. Decorum is important. Hats and sunglasses, for example, are not allowed. And I don't see why scarves on the head would be either".

Judge Marengo's misconduct triggered the investigation of the Conseil de la Magistrature, which is the judicial investigative council of Quebec. Quebec's judicial council said her alleged misconduct was serious enough to warrant her removal from the bench. Judge Marengo has sought unsuccessfully to have the Supreme Court of Canada end the disciplinary case against her since the incident took place, even arguing that the investigation against her breaches the principle of judicial independence.

In October 2018, the Court of Appeals in a separate case ruled that Marengo forcing El-Alloul to remove her hijab if she wanted to proceed with her case was a violation of El-Alloul's fundamental rights. Citizens who wear religious attire cannot be denied access to justice. All Canadian courtrooms are considered as spaces of religious neutrality, and judges shall not use this neutrality as justification for preventing litigants from access to the judicial system.

ENGLAND & WALES

The CMJA was delighted to hear of the news that Dame Victoria Sharp was sworn in as the new President of the Queen's Bench Division in June 2019.

Dame Victoria Sharp was formerly the Vice-President and now succeeds Sir Brian Leveson, who has retired. She is the first woman to hold this position.

ESWATINI

In May 2019, the government of eSwatini denied reports that King Mswati III, Africa's last absolute monarch who has 14 wives had ordered men to have at least two wives or face incarceration. The story was picked up by several online publications, including the *Zambian Observer*, and said Swazi men would be required to marry at least two or more wives or be jailed. The story has been called out the story for being malicious, incredibly inaccurate and very untrue. Government spokesman, Percy Simelane, stated, "His Majesty has not made any pronouncement to that effect as it has never been an issue raised by the people" and that the story was "not only a disgrace to the monarchy and the culture of eSwatini but a disgrace to journalism".

GAMBIA

In June 2019, the Truth and Reconciliation Commission of the Gambia has been apprised of the alleged rape of former Gambian Beauty Queen by former President Yahya Jammeh. "I was betrayed by the highest office of the land and no one could really do anything about it", said by former Gambian beauty queen, Fatou "Toufah" Jallow. Fatou Jallow has returned to her homeland from Canada to present her allegations to the Truth, Reconciliation, and Reparations Commission (TRRC) which was set up by current President of Gambia, Adama Barrow, to investigate human rights abuses committed during Jammeh's 22 years in power. Her accusations are backed by the Human Rights Watch and Trial International, which are helping seek reparations and campaign against sexual violence in the Gambia.

Jallow is not the only women who has come forward in regards to sexual assault and violence perpetuated by the former President. Jammeh has

found political asylum in Equatorial Guinea, and President Barrow has indicated that he would wait for the TRRC's final report before considering whether to push for Jammeh's extradition.

INDIA

In April 2019, A Muslim couple, Yasmin Zuber Ahmad Peerzade and Zuber Ahmad Nazir Ahmad Peerzade, filed a petition seeking out the right for women to pray in mosques. The Supreme Court issued a notice to the Centre and the All India Muslim Personal Law Board (AIMPLB). The couple are arguing that women have the right to worship in Mosques but the court was not entirely convinced by their petition, stating that the right of equality could only be demanded from the state. Justices SA Bobde and SA Nazeer declared it a public interest litigation only because of a verdict made last year regarding the Sabarimala worshipping site in Kerala, which allowed women of all ages, including those of childbearing age to pray at the hilltop shrine. Previous Muslim laws barred women from entering mosques and offering prayers, and in today's society, women are still being discouraged from entering certain mosques and praying in the same enclosure as men. But because there are no specific laws saying they cannot worship in a mosque, their petition is being deemed as a local issue in the public's eye.

In India, widows continue to be perceived as being a burden on society because of their status, the constraints on access to resources and their sexual vulnerability. They are one of the most marginalised and vulnerable communities in India. In contrast, male widows are not subjected to the same level of scrutiny and socio-economic exclusion.

Despite there being 44 million widows in India, there is a still an absence of

welfare-driven approaches in government programmes. This exacerbates economic anxieties of widows immensely and makes them dependent on pensions or doles.

The Supreme Court has now constructed an expert committee to strategize and implement plans of policy as to how to better the social and economic strata of widows in India.

KENYA

In May 2019, a Kenyan court has ordered former President Daniel arap Moi to pay 1.06 billion shillings in compensation to a Susan Cheburet Chelugui after transferring 53 acres of her land to himself after her husband died. The former leader, Kenya's longest serving President, transferred the land to his name and then sold the land to a timber firm called Rai Plywood Limited. During court, the company testified and provided proof of the transaction. Former President Moi was unable to provide to the court any proof of how he had come to possess the land, and was found guilty of illegally sweeping the land from the Cheluga family. This ruling has been seen as a strong precedent in limiting the illegal practices of land grabbing committed by high-ranking government officials and businessmen.

MALTA

The Maltese Government has announced that three of the six judicial appointments to Malta's courts will be women. It has also appointed three new female magistrates, which raises the female judiciary participation in Malta by 53%.

MOZAMBIQUE

In July 2019, it was announced that the Mozambique's Parliament had voted unanimously to outlaw child

marriage. The minimum legal age to get married is now 18. Under the new bill, any adult who marries and/or engages in a sexual relationship with a child under 18 will be incarcerated for 8-12 years. Any public servant who authorises a marriage where one of the partners is less than 18 years old will also be jailed for between 2-8 years. Parents, guardians, and relatives who would hand over a child for marriage in exchange for payment or benefit, will also face criminal charges and serve a jail sentence between 2-8 years. Any religious authority that authorises this type of marriage union will face a two year sentence.

This bill does, however, have a clause that allows children at the age of 16 to get married with parental consent. This clause allows many contingencies that has caused many families to abuse the law, marrying off their children at a much younger age than 16.

Since 1990, Mozambique has been a signatory of the UN Conventions on the Rights of the Child, which clearly and irrefutably classifies a child as any individual under the age of 18. The African Charter on the Rights and Welfare of the Child requires all countries signing onto the Charter to take staunch legal measures to eliminate all forms of child marriage, where one party is under 18.

NAMIBIA

In May 2019, Kathova Shiputa was charged by a traditional court for being the cause of her husband's suicide. She was sentenced to pay 15 cows or N\$30,000 as punishment. Her husband committed suicide after he was found in bed with another woman, and then assaulted his wife who then had a police report filed against him. She was told by the traditional court that she should not have complained to the police about her husband threatening her with a knife. Shiputa has asked the High

Court to intervene, deeming the actions of the traditional courts to be repressive, unfair, and an excessive exercise of power.

NORTHERN IRELAND

As we reported last time, in Northern Ireland, abortion remained illegal in almost all circumstances, including rape and incest. Human rights activists, including Amnesty International in Northern Ireland, had lobbied for an urgent change in policy to protect women's right to choose and access safe and affordable abortions, without having to put themselves through financially debilitating situations, potential incarceration—with a guarantee you would face a longer prison sentence than your attacker—or even life-threatening measures to get an abortion.

The total of women from Northern Ireland who travelled to Britain for an abortion increased by 20% this year. A total of 1,053 abortions were carried out for women who were from Northern Ireland, which is a significant increase from the 861 just two years ago.

In July 2019, the UK government voted to bring Northern Ireland in line with the rest of the UK and provide access to abortion.

SOUTH AFRICA

According to the gender-based violence advocacy group, Ilitha Labantu, the South African justice system is failing to adequately protect women who have lodged complaints against their intimate partners. The Western Cape High Court has heard cases in which women have made complaints against their intimate partners and end up victims of femicide. Activist groups are now lobbying for better law enforcement to prioritise protecting marginalised women in urgent need.

On 5 June 2019, South Africans across the country marched to the Union Buildings in Pretoria against the signing into law of the Traditional and Khoi-San Leadership Bill and Traditional Courts Bill, which both give new oppressive powers to unelected leaders, adversely denying people some of their constitutional rights.

A final, revised version of the Bill was reintroduced to Parliament in January 2017, after being tabled five years prior. Many activist groups are still not satisfied with the Bill's provisions. Some of the major concerns about the Bill is that it prohibits legal representation, does not have a voluntary opt-out clause, and will disempower women by denying them the right to represent themselves in traditional courts. Not only will the Bills' passing delegate power to leaders who have not been elected, but it also abridging the consensual nature of customary law under the Constitution.

SCOTLAND

A constant debate about women's rights, gender equality, menopause, pensions, decriminalisation of sex work, poverty, maternity leave and surrogacy is leading to an upsurge in grassroots women's campaigns in Scotland. More women are striving to have a more direct and active role in politics in order to give agency to the issues affecting women. They are starting their own women's groups and campaign more effectively, since their agendas no longer reflect—if they ever did—the goals of the main political parties and unions in Scotland.

Ann Porter, chair and co-founder of the grassroots organisation called Dundee's Feisty Women, says, "A whole movement is definitely under way across Scotland and we are part of it. We started as a pensions campaigning group but we have realised there are many more issues

around equality that needed to be tackled".

Most of the organisations are combating intersectional issues, how social, political, and economic inequalities lead women to be discriminated against not only by their gender, but their age, religion, race, sexuality, and class as well. Lucy Hunter Blackburn, a policy analyst, said, "Women who had assumed that legislation, systems and structures now existed to protect their interests have discovered this is not the case. We are coming together to work unpaid because we are worried. The legitimacy of existing well-funded structures speaking for women is now in the frame: we need those organisations to respond positively to what is happening".

UNITED KINGDOM

A gay woman wrongly deported from the UK five years ago has been told she can return in a landmark court decision that could open the door to thousands of similar immigration cases. The 25-year-old woman arrived in 2011 and claimed asylum in the UK on the basis that because she was a lesbian, she would be at risk of persecution in Uganda. In 2013, she was denied and removed. The officers of the Home Office did not believe she was gay. But a High Court judge has now ruled that the government's decision to reject her asylum claim was reached by an unfair process which did not give her a sufficient amount of time to support her case. She is one of thousands of asylum seekers whose cases were decided under the Home Office's "detained fast-track" system; which aimed to make decisions within two weeks and required that people were kept in detention during the process. Under the detained fast track system, 99% of claims were rejected. The system came to end in 2015 after being deemed structurally unfair by the High Court.

In the past, gay asylum seekers have gone through extreme measures to prove their sexual identity or else be deported back to their countries. To justify requests for refuge, individuals have even gone so far as to film themselves having sex for evidentiary support to their claim. Many who are seeking asylum do so because they were at risk if returned to countries where homosexuality is illegal. There are cases where asylum seekers were deported back to their countries and were lynched once it was discovered that they were gay. There must be more done to protect vulnerable LGBTQ asylum seekers against discrimination from an incredibly demoralizing immigration process.

The Home Office has now been ordered to facilitate the return of the Ugandan asylum seeker. Her case is the first successful appeal allowing a claimant to return to the UK. Bella Sankey, director of Detention Action, said the judgement marked an important first step in putting right a mass wrong". So far, the Home Office has been attempting to construct a new immigration system that is quite similar to the previous one, which would continue obstructing asylum seekers from being approved. Pierre Makhlouf, assistant director at Bail for Immigration Detainees, has said on the matter that "We're aware that several thousand people went through this process, and the fact that it was an unfair and unjust process indicates that thousands of people have been wrongly served in by the justice system

ZAMBIA

In July 2019, the Appeals Court heard the appeal from the High Court which had imposed a 30 year sentence on Try Hamenda for the assault and rape of his 12 year old cousin. He appealed the sentence claiming that under Tonga tradition "one can abduct a woman and have sexual intercourse with her and later formalise the marriage". The Appeals court

stressed, that despite the Tonga tradition, his actions were violent, even describing it as torture (Rickard 2019). The judges could not justify a barbaric traditional practice that offends the law. The family relation between the girl and the accused was also an aggravating factor against the Hamenda. They upheld the decision of the High Court.

It is important to note that the appeal judges were women and that the majority of Zambian courts are still dominated by men, who admittedly feel less empathy for women and girls being abducted and raped.

According to some, the all women bench that heard the case. Missed an opportunity to condemn the practice as a whole and not just in this particular case. The Tonga tradition continues to perpetuate gender inequality and violence.

COMMENTS AND CONTRIBUTIONS



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!!

GENDER SECTION REPRESENTATIVES

CHAIRPERSON

*Mrs Justice Lynne Leitch,
Canada*

Atlantic and Mediterranean

*Mrs Bridget Shaw,
Jersey*

Caribbean

*Justice Carolita Bethell,
Bahamas*

East, Central and Southern Africa

*Ms. Naume Sikohya,
Uganda*

Indian Ocean

*Judge Kumudini Wickremasinghe,
Sri Lanka*

Pacific

*Mrs. Linda Bradford-Morgan,
Australia*

West Africa

*Justice Sedina Agbemava,
Ghana*

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:
 - a) Gender Bias and other colleagues;
 - b) Gender Bias and the Public both specifically and generally;
 - c) 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.

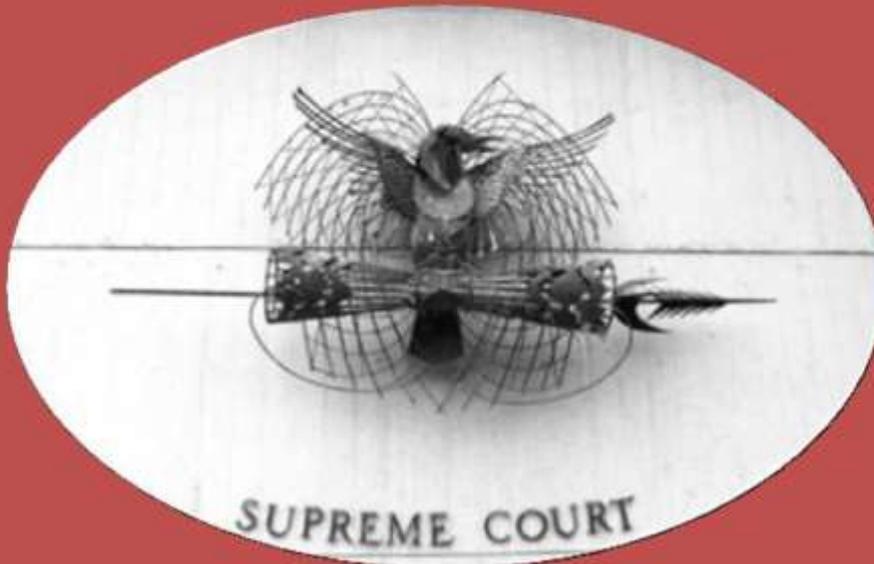


**CMJA
CONFERENCE
2019**



**“Parliamentary Democracy and
the Role of the Judiciary”**

8-12 September 2019



**Port Moresby,
Papua New Guinea**



www.cmja.biz

