

# CMJA NEWS

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## EDITORIAL

As always the months between April and September are busy for the CMJA Secretariat as the time for our annual conference approaches. This year was no exception and we were not only involved in the organisation of the Conference in Papua New Guinea which took place from 8-12 September 2019 on the Theme: "**Parliamentary Democracy and the Role of the Judiciary**" but we have also been working on the **CMJA's 50th Anniversary Conference** which will be held in Cardiff, Wales from 13-17 September 2020 [further information on this will follow shortly]. We are working closely with the Judicial Office of England and Wales and the Welsh Government to make this a memorable occasion for all who will attend.

In May, the CMJA made a written submission to the Commonwealth Secretariat in relation to the Commonwealth Anti-Corruption Benchmarks which they are currently developing. It also participated in the Consultation on the Benchmarks. The Benchmarks were discussed at the Commonwealth Law Ministers Meeting which the CMJA President, Justice Charles Mkandawire, attended in early November in Colombo, Sri Lanka. For further information on the Meeting- see the [Outcome Statement](#) and the [CLMM Declaration on Equal Access to Justice](#) issued after the meeting.

In May the CMJA met with the delegations from Uganda (led by His Hon. Justice Bamwine) to the UK and from Kenya (led by the Hon. Chief Justice David Maraga) who were paying study visits to the courts in London. In addition, we welcomed some visitors to the CMJA Secretariat office in Trafalgar Square and as always our doors are open. Partner organisations were also invited to meet with the Chief Justices of the Gambia, Jamaica and Uganda during a meeting following the Opening of the Legal Year in London on 2 October 2019.

In September, the CMJA held its Council

Meeting during the CMJA Conference and a number of concerns were raised in particular in relation to the increasing number of judges being appointed as "acting" rather than on a permanent basis, especially at the higher level. The continued lack of funding of the judiciary continues to be a major concern which was discussed not only during the Conference itself (see below) but also at the Chief Justices Meeting and at the CMJA Council Meeting.

In addition, the CMJA has continued its partnership with the UNODC in particular in relation to the Global Judicial Integrity Network. You will see below that we have reproduced the Guidelines on the Use of Social Media which UNODC consulted widely on. In addition, we were consulted on an Issues paper on Gender Based Integrity Issues which will hopefully be published shortly on the Network. The CMJA's representative on the Advisory Board and CMJA Regional Vice President for the Atlantic and Mediterranean, Justice Lynne Leitch participated in the Advisory Board Meeting in August 2019 and Justice Patrick Kiage, CMJA Regional Vice President for East, Central and Southern Africa, contributed to the Expert Group Meeting on the Role of Judicial Immunities in Safeguarding Judicial Integrity in August 2019 in Vienna, Austria. The CMJA was also been involved in preparing for the next Global Judicial Integrity Network Conference which was due to be held in Doha, Qatar from 18-19 November 2019 (this Conference has since been postponed to January 2020). The CMJA was asked to lead on the panel session at this conference in cooperation with the International Judges Association and the International Bar Association during this Conference. We are grateful to Keith Hollis, the CMJA's former Director of Studies, for his work on this.

In June 2019, the CMJA was represented by Justice Patrick Kiage, the CMJA Regional Vice President for East, Central and Southern Africa at the 5<sup>th</sup> Commonwealth Red Cross and Red Crescent Conference on International

Humanitarian Law which was held in Kigali, Rwanda. The Theme of the Conference was: "**Celebrating the Geneva Conventions and Building Respect for IHL: A Commonwealth Perspective**".

The CMJA was also represented by Dr Karen Brewer, CMJA Secretary General at the one day seminar on **Protecting Cultural Heritage**, run by the British Red Cross and Commonwealth Secretariat in London in June 2019.

In October, the CMJA was represented by Dr Karen Brewer, CMJA Secretary General, at the **EAMJA Conference** held in Zanzibar on "*Land and Environment for Sustainable Economic Growth in East Africa*". Justice Winston Patterson CMJA Council Member for Guyana represented the CMJA at the Caribbean Judicial Officers Association who held their Biennial Meeting in Belize City.

We were delighted to hear that Sir James Dingemans, one of the CMJA Council Members had been elevated to the Court of Appeal of England and Wales. We are also delighted to hear that some of our members from Uganda have been elevated to the High Court and we congratulate them all.

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## CMJA CONFERENCE PORT MORESBY, PAPUA NEW GUINEA

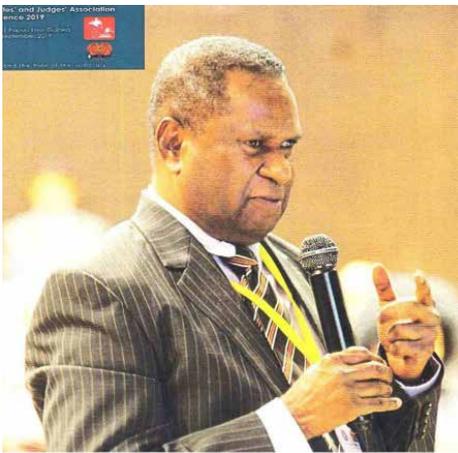
The CMJA's annual educational conference took place in Port Moresby, Papua New Guinea from 8-12 September 2019. It was the first time that the CMJA had held a Conference in Papua New Guinea and we are deeply grateful to the Local Organising Committee, led by the Hon. Chief Justice Sir Gibuma Gibbs Salika for all the hard work put into the Conference to make it such a successful event. We are also deeply grateful to the National Judicial Staff Services and the Centre for Judicial Excellence and in particular for their support of the Conference. The CMJA are indebted to Paul Kelly and the staff of the Judiciary for all their support during the run up and at the Conference itself.

In his Welcome speech at the Opening Sir Gibbs pointed out that Papua New Guinea was a diverse society with over 850 different tribes and over 800 languages. The participants in the Conference were privileged to see

some of the diversity at the different receptions but also at the Opening Ceremony itself when the children from *Port Moresby Grammar School*, all dressed in traditional attire, processed in with the flags of the Commonwealth and sang. The arrival of the Governor General of PNG was hailed by the traditional conch shell. Cultural groups from different parts of PNG also demonstrated their local cultures during the Opening including the Mud Men of the Asaro Tribe who, with their scary masks, slinked silently into the room and started clicking their long bamboo fingernails, slowly moving around the main plenary room at the Conference, in complete silence. In contrast the other tribes who performed during the opening brought the music and culture of PNG to life. The Conference was then opened by the Governor General of PNG. The CMJA also got to experience the cultures of other parts of PNG at the Dinner hosted by the Attorney General's Chambers on Monday and which was held at the Hilton Hotel. The Gala Dinner hosted by the Judiciary of PNG on Wednesday evening was also a spectacular showcase of PNG culture.

The Theme of the Conference this year was: **"Parliamentary Democracy and the Role of the Judiciary"**. Keynote speakers included the Hon. Chief Justice of Ghana, Chief Justice Sophia Akuffo who spoke about the Challenges to the Separation of Powers in Constitutional Democracies. Whilst focusing on the situation in Ghana where the Executive and Legislature still play a role in the appointment of judges, especially at the higher level and exercise financial control which can undermine the independence of the judiciary, the Chief Justice also cited examples in other parts of the Commonwealth, including Zambia, Uganda, Canada and United Kingdom. Sir Peter Thornton presented the Second Keynote Speech on Judicial Leadership, an important topic in a world where judicial officers are being asked to take on more roles as administrators, mentors and leaders of other judicial officers. He urged those attending to think of themselves as leaders in their field: *"you are leaders by virtue of your very appointment as a judge or magistrate, leaders representing, upholding and developing the rule of law, that essential of the democratic process, and following*







the Latimer House Principles to which all Commonwealth countries adhere. You are seen as leaders by litigants and by the public in your open court performance. In civil cases you lead the way where the parties have failed to agree. In criminal cases you hold the ring between the state and the individual. Your role as law-maker, decision maker, arbiter, is perceived as a role of leadership, hopefully of strictly independent leadership” and set out 10 maxims to follow as leaders. Sir James Dingemans of the Court of Appeal of England and Wales and Deputy Chief Justice Sharad Arvind Bobde of India discussed the challenges of a judicial career from appointment to post retirement assignment. The relationship between the Executive and Legislature and the Judiciary was discussed in a number of sessions. In the session on financial independence, Judge Paul Howard of Australia and Hon. Chief Justice Ramsay- Hale of Turks and Caicos debated the problems that arise when insufficient funds are allocated to the judiciary or when the judicial budgets (including salaries and conditions of service) are under the control of one of the other institutions and can be used to curtail independence either directly or indirectly. This also echoed the discussion which was held on the matter at the Chief Justices’ Meeting held in the wings of the Conference. In the session on judicial review of government

decision making, Daniel Musinga (whose presentation was read by Justice Kiage) provided recent examples of where the government are more diligent in ensuring that their decisions are made taking into account the decisions of the courts in judicial review cases. Justice Willie Young of New Zealand decried the increasing abuse of judges in his presentation on “Scandalising the Courts and the Judiciary- controlling the Media”. Whilst it is important to ensure that judges are protected from criticism, if the judiciary does not have the public’s confidence, judicial independence and integrity can be affected. In his presentation on the issue, Justice Hometowu pointed out that in some cases the media have “consciously or unconsciously, propagate misinformation or incomplete information relating to court cases, causing disaffection for the Judiciary” and this can affect the status of judicial officers. Judicial officers only have limited ways of responding and in many cases are not allowed to make comments in the media, thus restricting their right to reply.

The CMJA also had a number of firsts at the CMJA Conference. Justice Newhook from New Zealand made his presentation on environmental law by video, a first and then came in from Auckland by Skype to assist in answering questions from delegates attending the Conference. Justice

Ugirashebuja, the President of the East African Court of Justice also spoke on the subject, following a number of recent cases that have affected the environment in the region. The CMJA also had a session on Human Rights and Witchcraft at which Ruth Kissam of the Tribal Foundation of PNG spoke about witchcraft which continues to be prevalent in many parts and can lead to violence, including gender based violence. Justice Aguda-Taiwo, former President of the Customary Courts in Akure, Ondo State, Nigeria pointed out that the belief in the power of witches continues to be prevalent across the globe and in Africa it has been promoted by some of the churches and women, children and vulnerable adults seem to be targeted more often than not when accusations of “black magic” are bandied around.

A number of specialist sessions were held on the Status of Industrial Labour Courts, Case Tracking, Blasphemy Offences, Military Justice and Cybercrime. The CMJA also discussed Sexual Harassment in the Judiciary during the Breakout Sessions and a Presentation on Marital Rape was given during the Gender Section Meeting.

299 participants attended the Conference in Port Moresby from 44 jurisdictions of the Commonwealth and beyond.

# EAST AFRICAN JUDICIAL OFFICERS ASSOCIATION MEETING



The CMJA Secretary General represented the CMJA at this year's meeting which was generously hosted by the Judiciary of Zanzibar and the Zanzibar Judicial Officers Association from 20-25<sup>th</sup> November 2019. The Theme for the Conference this year was: *"Land and Environment for Sustainable Economic Growth in East Africa"*. There were 207 participants at the Conference from Kenya, Rwanda, Uganda, Tanzania and Zanzibar as well as representation from the East African Court. Whilst there are differences between how land is managed in the different jurisdictions of East Africa and that there was a balance to be brought between economic growth and development and the protection of the environment, it was evident that there was an increasing number of cases where the protection of the environment took precedence over economic development. For example, in June 2019, Kenya's National Environment Tribunal revoked the licence granted to Amu Power Company to build a coal power plant in Lamu, on the Kenyan coast close to the UNESCO World Heritage site and involved the participation of the community in environmental governance. There are a number of similar cases in other parts of the region where the courts have played a role in protecting the environment as was outlined by the dynamic presentation by Justice Kakuru of Uganda. It was also fascinating to hear the developments in land law and registration from Rwanda where land ownership has undergone drastic changes to ensure equal right for both men and women. As a small jurisdiction, Zanzibar has also faced a number of challenges and land issues. It was interesting to hear from the President of Zanzibar and Head of the Revolutionary Government of Zanzibar, His Excellency Ali Mohamed Shein, that he had called together a National Workshop earlier in the year to look into land and resource security on the island and that the government was currently implementing the 28 recommendations that came out of the workshop. Interestingly they are considering land reclamation from the

sea, which is not a new idea, as parts of Stone Town were built on reclaimed land over 150 years ago!

The Secretary General also made a presentation at the Annual General Meeting of the EAMJA about the activities of the CMJA. She also expressed her thanks to the outgoing President, Justice Angeline Rutanza of Rwanda and Officers for the inclusion of the CMJA in the Conferences it held. CMJA Council Members in the region have represented the Association at past events but it was unfortunate that due to the decision of the Kenya Government to cut the Kenya Judiciary budget by 50% (see report below) the CMJA Regional Vice President from Kenya was unable to make the meeting. Congratulations go to Justice Sophia Wambura of Tanzania who became the new President of EAMJA.

## JUDICIAL INDEPENDENCE AND HUMAN RIGHTS ISSUES

### CHAGOS ISLANDS

The International Court of Justice in February 2019, ruled that Mauritius should take control of the British Indian Ocean Territory (also known as the Chagos Islands) after the judges ruled that that the British occupation of the Islands was illegal.

The Judge President Justice Abdulqawi Ahmed Yusuf, said that removing the Chagos archipelago in 1965 from Mauritius was not based on a "free and genuine expression of the people concerned". The UK government retained possession of the Chagos archipelago after the independence of Mauritius in 1968. In 1971 it removed the inhabitants by force so that they could lease the largest island, Diego Garcia, to the USA for its airbase. The inhabitants some of which stayed in Mauritius, some are in the Seychelles and some who are in the UK, have been fighting ever since to be allowed to return to their homes.

*"This continued administration constitutes a wrongful act," he added. "The UK has an obligation to bring to an end its administration of the Chagos archipelago as rapidly as possible and that all member states must co-operate with the United Nations to complete the decolonization of Mauritius."* Said Justice Yusuf.

UN's General Assembly voted in favour of a six-month deadline for the UK to

withdraw from the archipelago, which would then be reunified with Mauritius.

Pope Francis, during his recent visit to Mauritius, also heightened calls for Britain to cede Chagos Islands in compliance with international laws.

### FIJI

In May 2019, it was reported that the son of former Prime Minister Mahendra Chaudery was convicted of scandalising the courts as he posted comments defamatory to the judiciary on Facebook. Acting Chief Justice Kamal Kumar ordered a warrant for the Auckland-based lawyer's arrest although the latter is challenging the order as he is a New Zealand resident.

### LESOTHO

The constitutional crisis in Lesotho continues to cause concern. In April 2019, we reported that the Government was trying to remove the President of the Court of Appeal who is being defended by the Law Society of Lesotho. The Law Society has successfully demanded the recusal of the Acting Chief Justice of Lesotho, Justice Mahase who was appointed last September 2018 following the suspension of Chief Justice Majara. Acting Chief Justice Mahase responded by seeking recusal of all local judges from the case and the appointment of foreign judges to hear the case against the President of the Court of Appeal and also against one of the members of the opposition who has made an official complaint to the Judicial Services Commission against the Acting Chief Justice with a view to seeking her impeachment. The Acting Chief Justice is the chair of the Judicial Services Commission but has suggested that the High Court Judges recuse themselves from the case against her. She said *"Obviously, whatever negative or adverse decision the JSC may come to in the future, the concerned judge may feel that the JSC may have been adversely influenced by the chairperson because that particular judge may have presided over this matter. Consequently, I aver that this is a case where all judges of the High Court bench have to recuse themselves so that aspersions are not cast in the future,"*

### KENYA

In October the CMJA was informed that the Budget of the Judiciary of Kenya had been cut by 50% by the Kenya Treasury despite the fact that the National Assembly had approved the budget. Macharia Njeru who represents the Law Society on the Judicial Service Commission (JSC)

stated that . *“The administration of justice is critical for the rule of law and sustainability of the economy of our country. As is, the budget allocated to Judiciary was inadequate. To cut it even further can only have the effect of grinding to a halt the operations of this critical arm of Government. This is unacceptable, coming against a backdrop of the backlog of cases the Judiciary is grappling with”*. The Judiciary suspended all developments in the judiciary including mobile courts and scraped the ICT budget due to the austerity measures imposed. Since the Presidential elections of 2017 were annulled by the Supreme Court, there has been tension between the two organs of state and the President has previously threatened the judiciary.

The Law Society of Kenya filed a suit in the High Court in October 2019 and won their case in the High Court. The Kenya Chief Justice issued [a statement](#) on the issue on 4 November 2019 decrying the lack of budget and on 8 November 2019, the decision to budget for the Judiciary was restored.

In a separate issue, the Judicial Services Commission had made a recommendation of 41 candidates for judicial postings to the President. However, to date the President has not gazetted these judges claiming that he had “integrity concerns” about the nominees but to date no information on what these “integrity issues” relate to has been sent to the JSC.

## NAURU

In June 2019, the newly formed Nauru Court of Appeal which comprises Sir Albert Palmer, Sir Nicholas Kirriworm and Justice Michael Scott rejected the High Court judgment of Justice Muerke of December 2018 and set aside the permanent stay of proceedings previously granted in the long running criminal proceeding against the Nauru 19 who were accused of inciting violence during protests held outside parliament in June 2015. The Court of Appeal ruled that Justice Muerke had no jurisdiction indicating that a judge specially appointed to determine criminal proceedings, such as Justice Muecke, has no power to determine constitutional issues.

In August 2019, a new President was elected in Nauru. However, President Lionel Aingimea, a former human rights lawyer, said in an interview in September 2019 that no government has ever interfered with the country’s courts although there is evidence to the contrary.

## MALAWI

Since May 2019 there has been increasing political violence in Malawi following the Presidential elections. Opposition parties are disputing the victory by President Peter Mutharika and have accused the Malawi Electoral Commission of mismanagement. The Judiciary is currently hearing the election petition cases but the violence has continued on the streets and the security of judicial officers has been heightened as a result of threats against them. Protesters are also calling for the resignation of the Chairperson of the Electoral Commission.

## SOUTH AFRICA

During the International Association of Judges Regional Meeting in June 2019, the President of JOASA, Daniel Thulare, also raised their concern that South Africa should have a ‘single judiciary’. Whilst there had been a promise some years ago to amalgamate the appointment of magistrates with that of judges, the situation continues as previously and Magistrates continued to fall within the remit of the Department of Justice, a government department, rather than the Office of the Chief Justice.

In recent months the judiciary of South Africa has come under increasing attacks by politicians. In June 2019, Legalbrief Africa reported that the Chief Justice had come under criticism for his travel budget, in September 2019, a number of politicians in South Africa called for reforms in the judiciary. Free State Judge President Cagney Musi rejected allegations made by the province’s former Economic Development MEC and reaffirmed the commitment of the judiciary and staff to the rule of law and judicial independence. Previously, a local councillor attacked the judiciary following his sentence for smashing a glass jug over the head of opposition councillor Rano Kayser during a council brawl in October 2016. On 13 September, the Chief Justice of South Africa called on those who claimed judges were corrupt to provide the evidence. It is widely believed that fake news has been appearing on social media claiming that certain judges are being paid for by the President of the Republic. Justice and Correctional Services Minister Ronald Lamola says the judiciary is being criticised *‘unfairly and in an unwarranted manner’*, adding that personal attacks on judges should be condemned.

## ZAMBIA

In August 2019, the CMJA together with the International Bar Association Human Rights Institute (IBAHRI), the Commonwealth Lawyers Association (CLA), the Southern African Litigation Centre (SALC), the International Commission of Jurists (ICJ) and Judges for Judges issued a statement in relation to the suggested amendments to the Constitution of Zambia that would impact on the independence of the Judiciary. A copy of the Statement is available on the CMJA’s website: [www.cmja.org](http://www.cmja.org). Of particular concern to the CMJA is the disregard for international principles in particular in relation to the suspension and removal of judges as well as the removal of the numbers of judges required in the Constitution. A full analysis of the proposed amendments to the constitution is available on the SALC’s website: <https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/07/An-Analysis-of-Zambias-Proposed-Constitutional-Amendments-Relating-to-the-Judiciary.pdf>

## UNITED KINGDOM

In recent weeks the dominant issues have been around Brexit which is due to go ahead on 31 October 2019. On 24 September 2019, the UK Supreme Court considered the appeals in the following cases related to Brexit: [R \(on the application of Miller\) \(Appellant\) v The Prime Minister \(Respondent\)](#) and in the [Cherry and others \(Respondents\) v Advocate General for Scotland \(Appellant\) \(Scotland\)](#). Whilst the Prime Minister and some MPs threatened to re-assess the appointment of the senior judiciary and impose a US style interrogation system for judicial appointments, this was dismissed at the beginning of October by the Minister of Justice.

# UNODC: NON-BINDING GUIDELINES ON THE USE OF SOCIAL MEDIA BY JUDGES



The CMJA is a partner organisation of UNODC (United Nations Office of Drugs and Crime) and has worked with them on the Global Judicial Integrity Network (GJIN). **The Following Guidelines are reproduced with the kind permission of the UNODC. If you are interested in further resources provided by the UNODC's GJIN please register with the Network at: [unodc.org/ji](http://unodc.org/ji) and under the Network tab, you should select register.**

The following guidelines are the result of the efforts of the Global Judicial Integrity Network to make a recommended set of guidelines for the use of social media by judges based upon existing regional and national standards and other sources, including the [Bangalore Principles of Judicial Conduct](#) and its [Commentary](#). The topic of the use of social media by judges has been identified as one of the priority areas for the Network under its 2018-2019 workplan.

The guidelines were drafted at an [Expert Group Meeting](#) hosted by UNODC on 5-6 November 2018 that brought together judicial and legal experts from all across the world to discuss this emerging topic. The guidelines were then disseminated to all participants of the Global Judicial Integrity Network for further consideration and comments. We are most grateful to all Network participants who have reviewed the guidelines and provided useful feedback, comments and observations.

This text is the final version of the guidelines, incorporating the comments received. The text is currently only available in English, but will be translated into the remaining United Nations official languages, namely Arabic, Chinese, French, Russian and Spanish. The language versions will be posted online as they become available.

## Introduction

The Global Programme for the Implementation of the Doha Declaration

was launched by the United Nations Office on Drugs and Crime to assist Member States in implementing the Doha Declaration, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice in 2015. The Declaration reaffirms Member States' commitment to "make every effort to prevent and counter corruption, and to implement measures aimed at enhancing transparency in public administration and promoting the integrity and accountability of our criminal justice systems, in accordance with the United Nations Convention against Corruption".

In order to achieve these objectives, one key initiative of the Judicial Integrity pillar of the Global Programme was the establishment of a Global Judicial Integrity Network last April 2018 in Vienna, Austria. The Global Judicial Integrity Network is a platform to provide assistance to judiciaries in strengthening judicial integrity and preventing corruption in the justice system.

During the launch event of the Global Judicial Integrity Network in April 2018 and through an online survey disseminated in 2017, judges and other justice sector stakeholders from around the world expressed their concerns regarding the use of social media by members of the judiciary. This concern has also been reflected in the Declaration on Judicial Integrity, adopted at the end of the launch event and setting out the Network's priorities. In particular, the Declaration highlighted the importance of the development of guidance materials and other knowledge products to help judges address challenges to judicial integrity and independence, including those created by the emergence of new information technology tools and social media.

With this in mind, the Global Judicial Integrity Network has embarked on the development of a set of international, non-binding guidelines that could ( a) serve as a source of inspiration for judiciaries that are contemplating addressing the topic; and ( b) inform judges on the various risks and opportunities in using social media. As part of this initiative, an Expert Group Meeting took place at the United Nations Headquarters in Vienna, Austria in November 2018, and a worldwide survey was launched in the same year to determine what specific challenges judges are facing when using social media.

The following text and recommendations stem from the discussions during the Expert Group Meeting, the outcomes of the survey as well as further

wide consultations with the Network participants.

## Preamble

Social media has become an important part of the social life of many people and communities, changing the way in which information about them is collected, communicated and disseminated.

Given the nature of judicial office and the vital importance of public confidence in the integrity and impartiality of the courts, the use of social media by judges, both individually and collectively, raises specific questions and ethical risks that should be addressed.

Although judges, like other citizens, are entitled to freedom of expression, belief, association and assembly, they should always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. The way an individual judge uses social media may have an impact on the public perception of all judges and confidence in judicial systems generally.

The topic of the use of social media by judges is complex. On the one hand, particular instances of judges using social media have led to situations where those judges have been perceived to be biased or subject to inappropriate outside influences. On the other hand, social media can create opportunities to spread the reach of judges' expertise, increase the public's understanding of the law, and foster an environment of open justice and closeness to the communities that judges serve. Additionally, there have been instances where social media has served as a platform for online abuse or harassment of judges.

The universally recognized Bangalore Principles of Judicial Conduct identify six core values that should guide each judge's work and life, namely independence, impartiality, integrity, propriety, equality, and competence and diligence. When using social media, judges should always be guided by the Bangalore Principles as well as the detailed accompanying Commentary. However, it should be noted that when these documents were first drafted, social media platforms did not exist, and so neither document makes specific reference to their use or provides advice regarding the unique challenges and opportunities that social media platforms may create.

There is nowadays a vast array of social media platforms available, with each platform offering different services,

providing different opportunities for interaction, and targeting different audiences. Thus, different expectations may arise regarding the content, type and frequency of engagement for different platforms. In addition, most social media platforms constantly evolve. Consequently, different approaches may be appropriate depending on the nature and type of the social media platform.

Social media facilitates increasing opportunities for a wide variety of online connections and relationships with judges. This may have an impact, among others, on rules and principles governing *ex parte* communications, bias or prejudice, and outside influences.

Concepts like “friending”, “following” in the social media context usually differ from traditional usage. In some cases, they may not mean much more than the relationship established between a content provider (such as a newspaper columnist) and a reader or subscriber. In other cases, however, the degree of online interaction may become more personally engaged or even intimate and thus will require circumspection on the part of the judge, and possibly disclosure, disqualification, recusal, or other actions similar to those established for conventional offline relationships. Much will depend on the nature of the social media platform itself and the methods it has developed for facilitating contact between its users.

What follows is intended to provide guidance to both judges and judiciaries (as well as other judicial office holders and court personnel, as applicable, given that their conduct can also have an impact on judicial integrity and public confidence in the judiciary), and to delineate a broader framework on how to guide and train judges on the use of different social media platforms consistent with international and regional standards of judicial conduct and ethics and existing codes of conduct.

Finally, differences in cultures and legal traditions should also be taken into consideration when addressing the various questions related to the use of social media by judges and tailoring guidance and training to be provided to them.

## Risks and Opportunities in Judges’ Awareness and Use of Social Media

1. It is important that judges, both as citizens and in their judicial role, should be involved in the communities they serve. In an era where such involvement increasingly includes online activities,

judges should not be prohibited from appropriate participation in social media. The public benefit of such judicial involvement and participation must, however, be balanced with the need to maintain public confidence in the judiciary, the right to a fair trial and the impartiality, integrity and independence of the judicial system as a whole.

2. The Bangalore Principles of Judicial Conduct and other existing international, regional, and national rules, standards, and conventions of judicial conduct and judicial ethics apply to judges’ digital lives as much as to their real lives. Social media opens up interesting challenges and opportunities and engages the Bangalore Principles in different ways, and judges should be aware of those. There may also be additional requirements that would inform judges’ discretion in using this technology. Any such additional requirements should not, however, be specific to particular technologies in use at any given time but should be of general applicability.

3. Irrespective of whether they use social media or not, judges should have a general knowledge of social media, including how it may generate evidence in cases that judges may decide. Judges should also have an understanding of existing online communication tools and technology, including artificial-intelligence-powered technology.

4. Judges should receive specific training on the benefits, risks and pitfalls of their personal use of social media, as well as on its use by their family members, close friends and court personnel.

5. Use of social media by individual judges should maintain the moral authority, integrity, decorum, and dignity of their judicial office.

6. Judges should be aware of, and take into consideration, practical aspects of online forms of expression and association. These aspects include a potentially greater reach in terms of publicity or amplification to larger networks, and greater permanence of statements, as well as the potentially significant implications of relatively small and casual actions (such as “liking”) or otherwise relaying information presented by others.

7. Judiciaries are encouraged to seek the assistance of the legal profession and civil society in demystifying courts and access to justice concepts. Judges should be aware that the competent bodies of the courts or judiciaries at large may consider and act upon the

opportunities presented by social media and online communities in this regard.

8. Where the Bangalore Principles of Judicial Conduct and the Commentary refer to judges’ ability to educate the public and the legal profession or engage in public commentary, that may include the use of social media in addition to other forms of communication.

9. Judges should ensure that the level of their social media use does not adversely impact their capacity to perform judicial duties with competence and diligence.

10. Institutional (as opposed to individual) use of social media by the courts can, in appropriate circumstances, be a valuable tool for promoting issues such as

- a. access to justice;
- b. administration of justice, in particular judicial efficiency and expedition of case processing;
- c. accountability;
- d. transparency; and
- e. public confidence in, understanding of, and respect for, the courts and the judiciary.

11. Courts working to create online portals for litigation should consider the risks of allowing court users to use their social media profiles to access such portals, in particular with regards to the data aggregation practices of social media platforms.

## Judges’ Identification on Social Media

12. Judges may use their real names and disclose their judicial status on social media, provided that doing so is not against applicable ethical standards and existing rules.

13. During the development of the present guidelines, contrasting views have been shared with regard to the use of pseudonyms by judges on social media and no consensus has been reached on this issue. As such, the present guidelines neither recommend nor forbid the use of pseudonyms. However, it can be said that, in their behaviour on social media, judges must comply with all ethical standards related to their profession. Pseudonyms should never be used to enable unethical behaviour on social media. Additionally, the use of a pseudonym offers no guarantee that the real name or judicial status will not become known.

**14.** Judges should have regard to the range of social media platforms and should recognize that, with some platforms, it may be beneficial to separate private and professional identities. Understanding how the various social media platforms operate and what type of information may be necessary or appropriate to share on various social media platforms would be an appropriate area for the training of judges.

## **Content and Behaviour on Social Media**

**15.** Judges should avoid expressing views or sharing personal information online that can potentially undermine judicial independence, integrity, propriety, impartiality, the right to fair trial or public confidence in the judiciary. The same principle applies to judges regardless of whether or not they disclose their real names or judicial status on social media platforms.

**16.** Judges should not engage in exchanges over social media sites or messaging services with parties, their representatives or the general public about cases before or likely to come before them for decision.

**17.** Judges should be circumspect in tone and language and be professional and prudent in respect of all interactions on all social media platforms. It may be helpful to consider in respect of each item of social media content (such as posts, comments on posts, status updates, photographs, etc.) what its impact on judicial dignity might be if disclosed to the general public. The same caution applies when reacting to social media content uploaded by others.

**18.** Judges should treat others with dignity and respect, not use social media to trivialize the concerns of others, or make remarks that discriminate on any prohibited ground.

**19.** It is recognized that social media makes it much easier to research parties online and discover things that are not part of evidence that is before the court or tribunal. Subject to the rules of evidence of different jurisdictions, judges should refrain from researching the aspects of a case online, including parties and witnesses, as this could potentially influence judges' decisions on a case (or lead to a perception that it has had such an influence).

**20.** Judges should consider whether any digital content antedating their ascension to the bench might damage public confidence in their impartiality or in the impartiality of the judiciary

in general. Judges should follow the applicable rules of their jurisdictions regarding the disclosure and removal of such content. If no rules are in place, judges should consider removing the content. It may be necessary to take advice on whether it would be correct to remove it and how to do so.

**21.** If a judge has been insulted or abused online, he or she should seek advice from senior judicial colleagues or other mechanisms in place in the judiciary but should refrain from responding directly. Judiciaries are encouraged to provide guidance for judges on how to deal with harassment or abuse online.

**22.** A judge may use social media platforms to follow topics of interest. It may be worth following a diverse range of topics and commentators to avoid creating their own "echo chambers". However, a judge should be wary of following or liking particular advocacy groups, campaigns, or commentators where association with them could damage public confidence in the judge's impartiality or the impartiality of the judiciary in general.

**23.** Judges should ensure that they do not use their social media accounts to directly or indirectly advance their own or third-party's financial or commercial interest.

## **Friendships and Relationships Online**

**24.** Judges should be aware that concepts like "friending", "following", etc., in the social media context, can differ from traditional usage and may be less intimate or engaged. However, where the degree of interaction, online or otherwise, becomes more personally engaged or intimate, judges, should continue to observe the Bangalore Principles of Judicial Conduct, necessitating, in appropriate situations, circumspection, disclosure, disqualification, recusal, or other actions similar to those established for conventional offline relationships.

**25.** Judges should periodically monitor past and present social media accounts and should take steps to review content and relationships as and when necessary.

**26.** Judges should develop and consistently apply an appropriate etiquette for removing and/or blocking followers/friends/etc., especially where failure to do so would reasonably create an appearance of bias or prejudice.

**27.** It is prudent and wise for judges to exercise due care and diligence

when creating online friendships and connections and/or accepting online friend requests.

**28.** Whenever there is uncertainty as to either online relationships or content, judges are encouraged to seek guidance of approved social media experts and/or judicial ethics advisers provided by the judiciaries.

**29.** Judges should avoid accepting or sending friend requests from or to parties or their legal representatives, and engaging in any other social media interactions with them. The same applies to witnesses or any other known interested persons.

**30.** Judges should be trained on how to inform their immediate families, close friends, court personnel, etc. about the ethical obligations of a judge and how use of social media can undermine compliance with those obligations.

## **Privacy and security**

**31.** Judges are advised to acquaint themselves with the security and privacy policies, rules, and settings of the social media platforms they use, periodically review them, and exercise caution, with a view to ensuring personal, professional, and institutional integrity and protection.

**32.** Regardless of the settings, it is advisable for judges not to make any comment or engage in any conduct on social media that might be embarrassing or improper were it to become public knowledge.

**33.** Judges should be aware of the risks and propriety of sharing personal information on social media. Judges should be particularly aware of the privacy and security risks of revealing their location or any similar information directly or indirectly through posts on social media. Additionally, judges should be aware that even if they are not active social media users, privacy and security risks may arise from the use of social media by their family members, close friends, court personnel, etc.

**34.** Judges should be aware that how they are perceived on social media may be based not only on their active use of social media, but also based on what information they receive and from whom they received it, even if the contact was not requested by them.

**35.** Irrespective of whether they use social media or not, judges should be wary of how they behave in public because photos or recordings may be taken that can be spread quickly on social media platforms.

36. Courts and judiciaries should prioritize and facilitate the training of judges on the use of social media to enable them to effectively manage the accounts they use.

## Training

37. Judges should be periodically provided with training to address pertinent questions and issues, such as:

- i. What social media platforms are available for use;
- ii. How these platforms operate;
- iii. What benefits there are to participating in these platforms;
- iv. What the potential risks/ consequences of such participation are;
- v. How judges should participate with appropriate reticence to protect their security and to fulfil their obligations to maintain judicial independence, the dignity of office and public confidence;
- vi. How family members should be adequately informed to play their part in ensuring that judges are not subject to security risks and are successfully fulfilling their obligations as judges;
- vii. How the use of social media by court personnel may also have an impact on public confidence in the judiciary, judicial integrity, impartiality and independence; and
- viii. Why to avoid researching parties and discovering things that are not part of evidence that is before the court or tribunal.

38. Training should be provided to newly appointed judges. In addition, training should be provided to judges with some level of permanency and on a continuous basis and, if possible, should also be available electronically.

39. There should be ongoing confidential resources for inquiry and advice as needed. The judiciary should consider publishing an anonymous compilation of such advice and direction. The judiciary may also consider preparing other practical guidance for judges on the topic of the use of social media.

## INTERNATIONAL HUMANITARIAN LAW

The CMJA's Regional Vice President for East, Central and Southern Africa, Justice Patrick Kiage of Kenya participated in the **5<sup>th</sup> Commonwealth Red Cross and Red Crescent Conference** on International Humanitarian Law which was held in Kigali, Rwanda from 10-14 June 2019. The Meeting also marked the 70<sup>th</sup> and 10<sup>th</sup> anniversaries respectively of the Geneva Conventions of 1949 and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) as well as the 25<sup>th</sup> anniversary of the genocide in Rwanda. The Outcome Statement of the Conference agreed to:

1. give greater priority to promoting respect for IHL in their policies, practice and law;
2. encourage Commonwealth States to ratify or accede to IHL treaties, including the three Additional Protocols to the Geneva Conventions, to which they are not yet party;
3. work together to assist Commonwealth States in establishing National IHL Committees or similar entities to advise and assist governments to become party to relevant legal instruments and to take actions, beginning in peacetime, towards further implementation of and respect for the law;
4. encourage Commonwealth States to examine the IHL treaties to which they are party and to conduct, with the support of their National Societies and of their National IHL Committees where they exist, a study or report on the domestic implementation of their obligations under those treaties;
5. where necessary, encourage Commonwealth States, with the support of their National IHL Committees where they exist, to adopt effective legislative and other measures to implement those IHL treaties to which they are party, including measures to address serious violations of IHL;
6. invite Commonwealth States and National Societies to continue to work together in areas of mutual humanitarian concern, such as those topics addressed at this conference, which include but are not limited to protection of civilians, prevention of and response to sexual and gender-based violence, disaster risk management, and addressing violations of IHL;
7. prepare, individually and together with other Commonwealth States and National Societies, for the 33<sup>rd</sup> International

Conference of the Red Cross and Red Crescent, with reference to the proposed objectives and themes and guided among other things by the dialogue at the Kigali Conference;

8. consider one or more individual and / or joint pledges to the 33<sup>rd</sup> International Conference, in particular those complementary to the IHL Roadmap and / or related to the Conference themes of IHL, shifting vulnerabilities and trust in humanitarian action;
9. maintain and extend contacts and co-operation among Conference participants, including the Commonwealth Secretariat, the International Federation of Red Cross and Red Crescent Societies, the International Committee of the Red Cross and National IHL Committees;
10. hold a Sixth Commonwealth Red Cross and Red Crescent Conference on IHL in advance of the 34<sup>th</sup> International Conference of the Red Cross and Red Crescent, which is likely to be held in 2023, and strive to ensure that all Commonwealth States, National Societies, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the Commonwealth Secretariat actively support and participate in such an event, including encouraging one State and National Red Cross or Red Crescent Society to offer to host the conference;
11. invite the Commonwealth Secretariat to continue to work to include IHL on the agenda of relevant Commonwealth meetings and to continue its valuable work in the field of IHL such as awareness raising and promotion of the ratification / accession and implementation of IHL instruments.

At a separate meeting in June, the Secretary General, Dr Karen Brewer represented the CMJA at the Seminar organised by the British Red Cross and the Commonwealth Secretariat on **“Protecting Cultural heritage in conflict situations and natural disasters”** which focussed on the importance of protecting cultural heritage to preserve these for peace and to safeguard against terrorism amongst other issues (the illicit trafficking of artefacts being one of the big sources of funding of terrorism now). *“...numerous military theorists and strategists, from Sun Tzu in 6th Century BC China, to von Clausewitz in 19th Century Europe, have argued that allowing the cultural property of your enemy to be destroyed (or worse, destroying it yourself) is bad military practice as it can lead to resentment, make subjugated populations difficult to govern, and become the first reason for the next conflict”*.

## NEW MEMBERS

We were delighted to welcome the COMESA Court as a new Institutional Member in May 2019 and to welcome back the Gambia Magistrates Association as a Member Association and the Indian Judiciary as a Member Association in September 2019.

### Individual Members

#### AUSTRALIA

- Ms Wendy Cull
- Judge Paul Howard
- The Hon Jennifer Coate
- Mr Glenn Hay
- Deputy President Bernard McCabe

#### BOTSWANA

- Justice Harold Ruhukya

#### CANADA

- Justice William Rodgers
- Justice Paul Rouleau
- Madam Justice Gillian Marriot
- Ms Carol-Ann Cushie
- Justice Joel Groves

#### COMESA COURT

- Mr Wael RadyEgypt
- Judge Abdulahi Elamin Elbashir
- Mr Phillipe Hitima Ruboneza
- Miss Qinisile Mabuza
- Dr Leonard Gacuko
- Justice Chinembiri Energy Bhunu

#### ENGLAND & WALES

- Mr Yu Tan
- Mr Robert Idris Talog Davies
- Judge Paul Huw Thomas
- Mr Richard Kwame Inyundo
- Judge Jake Pratt
- Judge Calista Jane Probyn
- Mr John Beckley
- Dr Anton van Dellen
- HH Judge Barry Paul Cotter Q.C
- HH Judge David Wicks
- Dr Phebe Mann
- Mr Nicholas Hill
- His Honour Judge Richard Foster
- Dr John Bache
- Judge Tacey Cronin
- HH Judge John Milwyn Jarman
- Sir Nicholas Blake
- Mr Laurence Seeff
- Professor Barry Godfrey
- Judge

#### GHANA

- His Honour Yaw Poku Achampong
- Judge Eric Daning
- Her Worship Felicia Gandedzi

#### HONG KONG

- Judge James McGowan

#### INDIA

- Prof (Dr) Sivakumar Sivanandan

#### ISLE OF MAN

- Mr David Doyle

#### JAMAICA

- Mr Dale Errol Staple

#### KENYA

- Hon Nyambura Mbatia
- Hon Maureen Kesse
- Hon Lillian Isuma Lewa
- Justice David Kelani Maraga
- Hon Peter Omuyele Mukholi
- Justice Aaron Gitonga Ringera

#### MALAWI

- Justice Dr Michael Charles Mtambo
- Justice Texious Shadreck Masoamphambe
- Justice Edward Bandawe Twea

#### MALDIVES

- Mr Ibrahim Zahir

#### MAURITIUS

- Mr David Chan Kan Cheong

#### NEW ZEALAND

- Judge David Graham Smith
- Ms Alison Lorna Holt

#### NIGERIA

- Mrs Bukunola Adebisi
- Mr Jonathan Agbu
- Her Worship Fatima Ahmadu Suka
- Mrs Omolayo Ajadi
- Mrs Fatimah Badrudeen
- Miss Christine Clement Ende
- Mrs Mariya Dongondaji Haruna
- Mr Emmanuel Idowu
- Hon Justice Joseph Ikyegh
- Chief Magistrate Felicia Ikyegh
- Mr Denis Teghtegh Ingya
- Hon Justice Ifeoma Jombo-Ofo
- Mrs Amina Modi Yabo
- Her Worship Raliya Uthman Mohammed

#### PAKISTAN

- Justice Muhammed Farrukh Khan

#### PAPUA NEW GUINEA

- Justice Thomas Anis
- Judge Ravunama Auka
- Judge Kingsley Allen David
- Judge Les Gavara-Nanu
- Mrs Betty Kup Jacobs
- Justice Ere Kariko
- Justice Stephen Kassman
- Justice John Kaumi
- Ms Josephine Kilage
- Mr Ben Kome
- Mr Robert Lee Lindsay
- Magistrate Kaputin Magaru
- Justice Panuel Mogish
- Justice Jacinta Joan Murray
- Justice John K Numapo
- Mrs Maristella Painap
- Judge Hitelai Dorothy Polume-Kiele
- Ms Regina Bartori Sagu
- Chief Justice Gibuma Gibbs Salika
- Ms Lorna Sani
- His Worship Pious Tapil
- Ms Marianne Patricia Tivese

#### SCOTLAND

- Sheriff Donald Corke

#### SIERRA LEONE

- Hon Justice Reginald Sydney Fynn
- Chief Justice Desmond Babatunde Edwards
- Justice Glenna Thompson
- Judge Komba Kamanda
- Hon Mr Justice Sengu Mohamed Koroma
- Hon Lady Justice Fatmatta Bintu Alhadi

#### SOLOMON ISLAND

- Ms Maelyn Bird

#### TANZANIA

- Judge Eliezer Mbuki Feleshi
- Hon Yufnalis Okubo

#### UGANDA

- Chief Judge Asaph Ruhinda
- Ms Jackline Kagoya
- His Worship Imoran Isaac Kintu

#### VANUATU

- Justice Viran Molisa Trief

#### ZAMBIA

- Judge Chilombo Bridget Maka-Phiri
- Dr Winnie Sithole Mwenda
- Justice Lombe Phyllis Chibesakunda
- Judge Mathew Chisunka
- Mr Ikechukwu Iduma
- Mr Lubeta Emmanuel Lubeta

## CMJA CONFERENCE

13-17 SEPTEMBER 2020

*"CMJA@50: Back to the Future"*  
*"CMJA@50: Dychwelyd i'r Dyfodol"*



Welcome to Cardiff, Croeso i Gaerdydd

[www.cmja.biz](http://www.cmja.biz)

## DIARY OF EVENTS

### Training Courses

**10-13 FEBRUARY 2020:**

**JUDICIAL CASE MANAGEMENT  
AND ETHICS COURSE, LONDON**

Contact [ade@civilservicecollege.org.uk](mailto:ade@civilservicecollege.org.uk)  
for further details

**27-30 APRIL 2020:**

**PRACTICAL COURSE FOR  
CORONERS AND JUDGES, LONDON**

Contact [ade@civilservicecollege.org.uk](mailto:ade@civilservicecollege.org.uk)  
for further details

## CMJA CONFERENCES

**13-17 SEPTEMBER 2020**

**"CMJA@50: BACK TO THE FUTURE"  
CONFERENCE, IN CARDIFF, WALES.**

Information to be circulated in  
due course on [www.cmja.biz](http://www.cmja.biz)

**12 -17 SEPTEMBER 2021**

**CMJA TRIENNIAL CONFERENCE:  
ACCRA, GHANA.**