

CMJA NEWS

The Newsletter of the Commonwealth Magistrates' and Judges' Association

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EDITORIAL

Dear Readers,

This e-Newsletter comes to you at a very difficult time for all of us around the world. It is with deep regret that the CMJA has had to cancel its conference in Cardiff, Wales due to take place from 13-17 September 2020. We are very grateful to the Local Organising Committee led by Mr Justice Simon Picken and to the Welsh government, the Judicial Office of England and Wales and the Ministry of Justice of England and Wales for all their support and hard work in preparing for this conference. The CMJA Secretariat has temporarily closed its offices in line with UK government directives in relation to the Covid 19 pandemic but we are continuing to work from home until further notice. We are concerned that all our friends around the Commonwealth remain safe and well. Our thoughts go out to those who are particularly vulnerable and those whose livelihoods have been drastically affected by the pandemic. If you need to get in touch with us or if you just feel that you need, in your isolation to reach out to us for a chat, we are only at the end of an email or whatsapp message. We will try and respond as soon as we can. It is important in these times to stay mentally positive and physically in good health

We note that some of the courts around the Commonwealth have been closed or are working in different ways through increased video links and other methods. We would be extremely interested to hear how the courts are working in these unprecedented times and perhaps we can share ideas across the Commonwealth on how to deal with the administration of justice in these difficult circumstances where remote working has become the norm. Our thoughts are with those who are continuing to sit and staff the courts to ensure that access to justice continues as best it can in the current circumstances. PLEASE EMAIL US on: info@cmja.org with the information. The CMJA will be setting up a forum for exchanges of ideas and experiences on how to deal with COVID 19 in these difficult times.



As the President indicated in his message of 6 April 2020 sent out to all members and which can be found on the CMJA website in the Membership area, it is important that the good administration of justice continues in these hard times and that the governments are not allowed to abuse their powers to curtail the fundamental human rights of people across the Commonwealth. The Judiciary is the last bastion of democracy in these circumstances. If you feel that the independence or integrity of the judiciary as the protectors of the rule of law has been put in jeopardy because of the actions of the government, please let us know. The Special Rapporteurs who work under United Nations Human Rights High Commission stated on 16 March 2020 that:

“Declarations of states of emergency, whether for health or security reasons, have clear guidance from international law, the UN experts said. “The use of emergency powers must be publicly declared and should be notified to the relevant treaty bodies when fundamental rights including movement, family life and assembly are being significantly limited.”

“Moreover, emergency declarations based on the Covid-19 outbreak should not be used as a basis to target particular groups, minorities, or individuals. It should not function as a cover for repressive action under the guise of protecting health nor should it be used to silence the work of human rights defenders.” The Full Statement is available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>

As a member of the NGO Group for the Independence of Judges and Lawyers with the UN Human Rights Council,

the CMJA has endorsed three recent submissions by non governmental organisations in relation to the protection of fundamental human rights during the COVID 19 pandemic. The submissions called and responses to the COVID 19 pandemic to be *“deeply rooted in the cross-cutting principles of respect of human dignity, independence and autonomy of the person, non-discrimination and equality, respect of diversities and inclusion. Any response must comply with international standards on emergency legislation and be firmly grounded on the respect for the rule of law and human rights. Extraordinary measures are legitimate only under exceptional circumstances in so far as they aim at responding to an immediate threat to public health and only to the extent necessary and proportionate to counter such threat.”*

Since the last Newsletter circulated in December 2019, the CMJA has been involved in a number of projects.

In October 2019, the CMJA President, Justice Charles Mkandawire was invited to attend the opening of the new court complex in northern Lesotho.

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In November 2019, the CMJA President participated in the Commonwealth Law Ministers Meeting that was held in Sri Lanka. He also presented the CMJA's activity report for the period 2017-2019. He reported back that the CMJA was congratulated on the work that it was undertaking in relation to the administration of justice across the Commonwealth.

On 12 December 2019, the CMJA together with the other members of the Commonwealth Legal Forum celebrated the Commonwealth's 70th anniversary with a Commonwealth Law Lecture which was given by Lady Mary Arden, DBE Member of the UK Supreme Court. Her talk focused on the Commonwealth (Latimer House) Principles and will be reproduced in the June issue of the Commonwealth Judicial Journal.

In January 2020, the CMJA President attended a conference organised by the German aid agency GIZ, on "Rule of Law, Justice and Development: Judicial Independence in a 21st Century-Supporting Strong Independent African Jurisdictions" which was also attended by a number of members of the CMJA.

In January 2020, the Chairman of the Steering Committee, Sheriff Douglas Allan and Dr Karen Brewer paid a fact finding visit to Ghana in anticipation of the next **Triennial Conference** due to take place in Accra from 12 -17 September 2021. Please note the dates.

The CMJA together with the UK Civil Service College organised a Training Course on Case Management and Ethical Behaviour held in London in February 2020. Eight participants from Australia, Barbados, Kiribati, the ECOWAS Court and Uganda participated in the programme which is now in its fourth year. The CMJA will keep members posted in relation to the next training course which is due to take place in July 2020, subject to COVID 19.

In February 2020, the CMJA President, Justice Mkandawire presided over a panel session at the UNODC's second conference on the Global Judicial Integrity Network which took place in

Doha, Qatar. The CMJA is extremely grateful to Hon. Keith Hollis, former CMJA Director of Studies for coordinating the programme for the session and to Mark Guthrie, former legal advisor to the Commonwealth Secretariat for acting as rapporteur for the panel. Justice Patrick Kiage, CMJA Regional Vice President for East, Central and Southern Africa also spoke at the conference on the use of social media by judges.

The CMJA was represented at the Commonwealth Day Service at Westminster Abbey by the Secretary General and it is appropriate that the Queen's speech for Commonwealth Day refers to unity in adversity. Her Majesty also referred to unity during her speech of 5 April 2020 to the people of the United Kingdom which was also addressed to the peoples of the wider Commonwealth as well.

In these difficult times, we need to be aware that judicial independence and funding still needs to be protected and this newsletter outlines some of the challenges that have been faced by jurisdictions since the last issue. At its last Council Meeting in September 2019, the Council agreed that it would issue a Statement on Acting Appointments. This will be circulated in due course. The CMJA is also currently working on a set of Guidelines for the Funding of the Judiciary and these will be distributed in due course.

Whilst it is important that countries focus on ensuring the health of their citizens is prioritised in funding, it is important to ensure that emergency powers do not curtail the rights of citizens to justice. Human Rights Watch issued a set of recommendations to governments and other institutions in early March on how they can work to contain the coronavirus outbreak while respecting citizens' freedom of expression and movement, the well-being of prisoners and refugees, and other human rights. These are available at: <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>

On a more positive note we would like to congratulate Lord Reed on becoming President of the UK Supreme Court, Sir

James Dingemans (England and Wales) on becoming the Vice President of the Queen's Bench Division and Justice Isaac Lenaola for receiving the ICJ Kenya, Jurist of the Year Award 2019.

COMMONWEALTH DAY MESSAGE BY HER MAJESTY, THE QUEEN

"On Commonwealth occasions, it is always inspiring to be reminded of the diversity of the people and countries that make up our worldwide family. We are made aware of the many associations and influences that combine through Commonwealth connection, helping us to imagine and deliver a common future.



This is particularly striking when we see people from nations, large and small, gathering for the Commonwealth Games, for meetings of Commonwealth governments, and on Commonwealth Day. Such a blend of traditions serves to make us stronger, individually and collectively, by providing the ingredients needed for social, political and economic resilience.

Throughout my life, I have had the opportunity to see and hear how membership of the Commonwealth family means so much to those living in all parts of the world, often in places that are quite remote. Advances in technology and modern media have now enabled many more people to witness and enjoy - with remarkable immediacy - this experience of Commonwealth connection, in areas such as education, medicine and conservation.

Looking to the future, this connectivity means we are also aware, perhaps as never before, that wherever we live, our choices and actions affect the well-being of people and communities living far away, and in very different circumstances. For many, this awareness awakens a desire to employ our planet's natural resources with greater care, and it is encouraging to see how the countries of the Commonwealth continue to devise new ways of working together to achieve prosperity, whilst protecting our planet.

As members of this very special community, on this Commonwealth Day, I hope that the people and countries of the Commonwealth will be inspired by all that we share, and move forward with fresh resolve to enhance the Commonwealth's influence for good in our world.

Elizabeth R.
9 March 2020"



Members of the Factfinding Mission in Accra.

CMJA CONFERENCE, CARDIFF, WALES – SEPTEMBER 2020

CANCELLED

It is with deep regret that the CMJA has decided to cancel the Annual Conference which was due to take place from 13-17 September 2020 due to COVID 19.

We are looking forward to celebrating our 50th Anniversary in the 51st year of the CMJA at the next Triennial Conference due to take place in Accra, Ghana from 12-17 September 2021.

SAVE THE DATES.

GLOBAL JUDICIAL INTEGRITY NETWORK CONFERENCE

The following report was prepared by Mark Guthrie on behalf of the CMJA



The CMJA participated in the second High-Level Meeting of the Global Judicial Integrity Network which was held on 25 and 26 February 2020 in Doha, Qatar. The first High-Level meeting of the Network was held in April 2018 at which the CMJA was represented. The United Nations Office on Drugs and Crime (UNODC), is the convener of the Network.

CMJA Council member Justice Lynne Leitch of the Superior Court of Ontario, Canada, CMJA Regional Vice President and Chairperson of the CMJA Gender Section who is a member of the

Network's advisory panel.

The meeting was opened by Dr Hassan bin Lahdan Alhassan Almohanadi, Chief Justice of the Supreme Judicial Council of Qatar. The meeting was attended by over 700 judicial officers from around the world.

On the opening day of the meeting, in conjunction with the International Association of Judges (IAJ), and International Bar Association (IBA), the CMJA organised a break-out session entitled, "*Judicial immunity and due process in the determination of allegations of judicial misconduct with consideration of issues of judicial independence*".

The CMJA team comprised Justice Charles Mkandawire of the High Court of Malawi and CMJA President, Justice Lynne Leitch and Mark Guthrie of RLC Consulting, Red Lion Chambers in London.

Charles moderated the session, Lynne spoke about "Difficulties in balancing judicial independence and judicial

accountability" while Mark served as the session rapporteur. His Honour Keith Hollis was the session coordinator.

Gerhard Reissner, Honorary President of the IAJ spoke about the most appropriate forum for the determination of allegations of judicial misconduct while Sara Carnegie, IBA Director of Legal Projects spoke about "*A framework and methodology for assessing the quality of disciplinary processes, practices and sanctions for misconduct or judicial corruption*".

The session explored the following issues:

- What is the most appropriate forum for the determination of allegations of judicial misconduct;
- The constitution and leadership of the forum dealing with judicial misconduct cases;
- Sanctions available to deal with judicial misconduct;
- The danger of the executive and legislative branches of government influencing how judicial misconduct cases are handled;
- The relationship between criminal and disciplinary processes in the cases of judicial corruption;
- Are judicial codes of conduct mandatory or aspirational;
- Judicial disciplinary measures must not compromise judicial independence;
- The test of what constitutes judicial misconduct.

The session concluded that:

- Judicial disciplinary processes should be independent, transparent and competent;
- The understanding of what



Chief Justice Sir Albert Palmer of the Solomon Islands, CMJA President Justice Charles Mkandawire and Chief Justice Sir Gibbs Salika of Papua New Guinea.

constitutes judicial misconduct varies from jurisdiction to jurisdiction;

- There must be a clear standard against which judicial conduct is to be judged;
- Cases of misconduct must preserve public confidence in the judiciary as a whole;
- If misused, allegations of judicial misconduct could be used as a weapon against the judiciary.

The session recommended:

- Identify and publish principles of good practice in the constitution of forums hearing complaints of judicial misconduct and procedures for their determination;
- Produce a model test of what constitutes judicial misconduct;
- Contribute to commentaries on the Bangalore Principles in order to further their implementation;
- Develop guidelines on the relationship between criminal and disciplinary proceedings in cases of judicial misconduct;
- Promote its various resources including its judicial conduct and ethics training tools, the guidelines on the use of social media, the paper on gender related integrity issues, the guide to the development of codes of judicial conduct and the resource guide on strengthening judicial integrity and capacity

After a successful two days of discussions, the meeting concluded with the appointment of new members, including the CMJA member Chief Justice Matilda Twomey from the Seychelles, to the Network's advisory panel.

JUDICIAL INDEPENDENCE AND HUMAN RIGHTS ISSUES

Australia

Different jurisdictions in the Commonwealth celebrate their opening of the legal year in different ways and many include a church service. This year, controversy arose in relation at the Opening of the Legal Year in Melbourne, Victoria, Australia where the Catholic Church continued the hundred year old tradition of having a service for lawyers and judges. A number of people protested against the service claiming that such a service impacted on judicial impartiality, although the service was an ecumenical one, open to all lawyers and judges, whatever their religion.

Gambia

In December 2019, the Gambia, with the support of the Islamic States, took Myanmar to the International Court of Justice (ICJ) in relation to its treatment of the Rohingya population, many of whom are in refugee camps in Bangladesh. The Gambia maintained that that Myanmar violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. It further requested the ICJ to consider imposing provisional measures of protection for the Rohingya people. On 23 January 2020, the ICJ ruled that Myanmar needed to protect the Rohingya people although it did not go as far as saying that there had been genocide. The case is still ongoing but demonstrates the progress the Gambia has made in relation to human rights since the presidential elections in 2016.

At the Opening of the Legal Year, the

Attorney General reported on progress made in the justice system with the creation of a Human Rights Commission, the progress with the draft constitution, and the work of the Truth, Reconciliation and Reparations Commission. Mr Abubakar Tambadou also reported on the efforts made to comply with their international obligations.

The reputation of the Gambia in progressing its respect for human rights was marred in late January 2020 when the police arrested people, injured dozens and detained prominent journalists amid protests calling for the president to honour a pledge to step down after three years in office, which the President had declared he would not comply with.

India

The Supreme Court which deals with the appointment and transfer of judges, has thrown out a case brought by the National Lawyers' Campaign for Judicial Transparency and Reforms to review its 1993 judgment which gives the Chief Justice the final authority in appointments to the higher judiciary rather than the Executive. There have been a number of attempts to change the system. In 2014, a constitutional amendment was agreed by the Indian Parliament and a Judicial Appointments Commission was given the power to make appointments. However, the Supreme Court granted a petition brought by a number of Supreme Court Advocates and the amendment to the constitution was annulled as it was deemed to be contrary to the independence of the judiciary. The Supreme Court Collegium continues to make the appointments for judges to the higher courts.

UNODC TRAINING MATERIALS

UNODC's Global Judicial Integrity Network has produced a number of resources on judicial ethics. In these times when many of you are in lockdown, why not consider enhancing your skills. In their recent email to partner organisations, the UNODC Team indicated that the Network's [Judicial Conduct and Ethics e-learning \(and self-directed course\)](#) are still available for free online. The [e-learning course](#) is focused on providing members of judiciaries with a solid understanding of the Bangalore Principles of Judicial Conduct, as well as article 11 of the United Nations Convention against Corruption. These [key documents](#), and the Network's [knowledge products](#) are available on [our website](#) for perusal.

You can also view the [monthly podcasts](#) and [monthly view series](#), so that you can benefit from each other's expertise, even in isolation. One of these new features is a special series of opinion articles on challenges to access to justice during the COVID-19 pandemic. The first article in the series is available at: <https://www.unodc.org/ji/en/views/index.html>.

PLEASE DON'T FORGET TO PAY YOUR MEMBERSHIP DUES ON TIME.

Arrears in Membership dues adversely affects the work that the CMJA can undertake on behalf of its membership and the work that the CMJA does on promoting and protecting judicial independence across the Commonwealth. We would urge all Member Associations and Individual Members to pay their Membership on time

Kenya

The relations between the Executive and the Judiciary continue to be strained. Following the report in the CMJA News in November 2019, the President continued to delay the approval of the appointment of a number of judicial officers put forward by the JSC in August last year. The President had indicated that he wasn't prepared to appoint a number of judges on the basis of adverse reports following findings by the NIS (National Intelligence Services) even though the JSC had undertaken a thorough, transparent vetting of the candidates before submitting their names. The NIS refused to disclose the adverse information held on the said nominees to the JSC. The Constitutional Court ruled in February 2020 that the delay in appointment was 'unreasonable and therefore unconstitutional'. They declared that the President was constitutionally bound to appoint those listed by the JSC; that his failure to do so 'violates the constitution and the Judicial Service Act'; and that his continued delay was a violation of a number of sections of the constitution.

In a separate case, in December 2010, the courts heard a petition in relation to salary and benefits discrimination between those who were appointed from the bench and those who were appointed directly from the legal profession. The Salaries and Remuneration Commission (SRC) and the Judicial Service Commission (JSC) had discriminated against those who were appointed from the legal profession. By failing to 'harmonise' judges' remuneration to avoid a difference between those drawn from private practice and those already in the legal system, the SRC abdicated its constitutional and statutory mandate, Judge Odunga said. Judges' salaries were closely tied to judicial independence. Thus, their remuneration and other benefits were 'constitutionally ringfenced' and could not be varied 'to the disadvantage' of a judge. He stated that "A declaration that any disparity in salary between judges appointed on the same day violated the affected judge's constitutional rights not to be discriminated against. He also declared that appointment as a high court judge was 'a substantive appointment' and not a promotion. Thus, all judges were entitled to similar starting salaries and benefits. Any categorisation of judges by the commissions, based on whether they were appointed from outside or from within the judicial system was unconstitutional, he declared"

Judge Odunga issued a declaration compelling the commission to pay any affected judges the same starting salary as had been paid to other judges, 'whichever is higher'. Any payments of salary or benefits was to be paid 'promptly', backdated to the date of their appointment.

Lesotho

Whilst not strictly speaking a judicial independence issue or a human rights issue, we have been following closely the recent developments in the murder case of the 3rd wife of the current Prime Minister, Thomas Thabane. The Prime Minister's 4th wife has been arrested for organising the murder of the 3rd wife who had refused to grant the Prime Minister a divorce. The Prime Minister himself has been accused of collusion in the murder. He has agreed to resign on 31 July 2020, and his lawyer is claiming immunity from prosecution as he is in office. Parliament is currently considering whether or not to demand his immediate resignation. On 24 February 2020, he appeared in the magistrates' court to face a murder charge. The Case has been referred to the High Court. The Prime Minister's 4th wife, who married him 2 months after the death of his 3rd wife, was granted bail. The Prime Minister's grandson and others are appealing the decision to grant the 4th wife bail.

The Acting Chief Justice, Justice Mahase who was involved in the granting of the 4th wife's bail, was appointed to the post by Thabane after he had suspended Chief Justice Nthomeng Majara from office some months earlier. Whilst the Prime Minister has been trying to get the appointment made permanent, his son has been vocal in criticizing the Acting Chief Justice for granting the bail to the wife of the Prime Minister. The Prime Minister's son in law has been active within the ruling party in trying to get the Prime Minister to resign before 31 July 2020. In the meantime, it has been reported that the Prime Minister wrote to the King to prorogue Parliament for 3 months on 20 March, ostensibly to help combat COVID 19 following a declaration of emergency in the country. The King did not sign the document so the Prime Minister himself signed the document. However, his action has now been referred to the Constitutional Court as it is unclear if he had the authority to sign the prorogation. The Constitutional Court decided on 17 April that the suspension of parliament was illegal.

STOP PRESS: As we go to print we understand that the Prime Minister has agreed to step down immediately following the intervention from a delegation sent by President Ramaphosa of South Africa after the Prime Minister had ordered the army to deploy in the capital, which was widely seen as an attempt at a coup to pre-empt a no confidence vote in Parliament.

Malawi

The CMJA issued a statement jointly with the CLA and CLEA on the situation in Malawi where the judiciary has come under attack following the decision of the

Constitutional Court to annul the results of the May 2019 elections on 3 February 2020 and instructed the Government to hold new elections within 120 days. The Ruling Party is appealing the decision in the Supreme Court.

In January 2020, judges on the Constitutional Court reported an attempted bribery to the Chief Justice who seized the Anti-Corruption Commission. The businessman who allegedly made the bribery attempt was arrested, then bailed and then re-arrested. Since the decision of 3 February 2020, supporters of the ruling party have been spreading misinformation in relation to the judiciary being corrupt and linking them to the businessman's dodgy dealings. The Magistrates and Judges Association of Malawi and the Law Society of Malawi issued statements in mid- February and the CMJA issued their [Statement](#) on 20 February 2020.

This is seen as an attempt to put pressure on the Supreme Court Judges who will have to decide the case. The President lost the case to stay the decision of the constitutional court pending the outcome of the Supreme Court case in mid-April 2020. In the meantime, Justice Jane Ansah, the controversial Chairperson of the Malawi Electoral Commission, announced that the elections will now be held on 2 July 2020 in compliance with the Constitutional Court. Voter registration would take place between 4 April and 7 June.

On 13 April, the Chief Justice rejected the application by the MEC for South African lawyers to be admitted to defend the Government's challenge of the Constitutional Court decision. The Supreme Court reserved its judgment on the case on 16 April.

Maldives

The Maldives quit the Commonwealth in 2016, however the CMJA kept a watching brief on developments in the judiciary in the Maldives. They re-joined the Commonwealth in January 2020 although the judiciary continued to come under the purview of the Ministry of Justice. Some work is currently being undertaken by UNDP to try and improve training in judicial independence in the Maldives.

Malta

In October 2019 Repubblika, an NGO in Malta challenged the judicial appointments system in the country which it claims gives arbitrary power to the Prime Minister and was contrary to EU law. This follows a number of appointments made by the Prime Minister earlier in 2019. Mr Justice Mark Chetcuti (who has become the next Chief Justice) agreed that the issue should be referred to the European Court of Justice (ECJ). The six judges who were

appointed by the Prime Minister have been seen as political appointments. The Prime Minister claimed there was no reason for a referral to the ECJ claiming that the court had to hear evidence to decide whether or not the reference was necessary. However, Justice Chetcuti noted that the question required the court to pronounce itself on delicate aspects of the case which had the possibility of legal implications, especially in view of the recent European Court decision against Poland. The judge also held that for the purposes of this reference, which is of a legalistic nature, no evidence needed to be heard. The European Commission had previously called on the Maltese government to ensure the independence of judicial appointments and dismissals and prosecutions following the death of Maltese journalist Daphne Caruana Galizia.

Namibia

The Supreme Court of Namibia threw out a challenge to the Presidential elections in November 2019 although it did rule that the decision by the former minister of urban and rural development Charles Namoloh's decision to not implement the parts of the Electoral Act requiring a verifiable paper trial for Electronic Voting Machines when the rest of the act came into force was in conflict with the Constitution and invalid. As we go to print, the Supreme Court's decision is currently being challenged.

Nauru

In the last Newsletter, we reported that in June 2019, the newly formed Court of Appeal had 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 December 2019, a new trial took place although the Nauru 19 were unable to employ their previous lawyers from Australia due to a new law which restricts legal practitioners from overseas pleading before the Nauru courts. They were represented by one public defender only. All defendants were found guilty by Justice Fatiaki (former Chief Justice of Fiji) who stated that there was no law in Nauru giving the right of people to be defended in court! Former Justice Muerke stated in an interview that he did not consider the group to have had a fair trial "in any way, shape or form".

Pakistan

The Pakistan government led by former prime minister Nawaz Sharif filed a treason case against former

Prime Minister Musharraf, following the coup in 2007 and the imposition of an state of emergency, which led to the de facto house arrest of a number of superior court judges in their houses and sacking of over 100 judges who refused to sign an oath of allegiance to him. The former Prime Minister who is currently living in exile in Dubai, was condemned to death for high treason by a specially set up court in December 2019 but in January 2020 this decision was reversed by the Lahore High Court. The Pakistan Bar Council has petitioned the Supreme Court to reverse the death penalty decision as it claims the Lahore High Court did not have jurisdiction to deal with a constitutional petition filed by General Musharraf against an order passed by the special court. The case continues.

In October 2019, the President of Pakistan issued a presidential reference to the Supreme Court Council against Justice Qazi Faes Isa for allegedly breaching the judges code of conduct for owning property in the United Kingdom in the name of his wife. The Judge has also written a number of letters to the President but did not explain how he had the funds to acquire the properties in question. However, the Supreme Court Council said at the time that the allegations were not serious enough to warrant his dismissal. Justice Isa's defence counsel stated that there had been a "character assassination" campaign against his client who was in line to become a future Supreme Court Chief Justice. This follows the judgment Justice Isa was involved in which directed the federal and provincial governments to monitor and prosecute those advocating hate, extremism and terrorism and to initiate action against the armed forces who had violated their oath. He further stated that Persons who harmed others should be prosecuted as criminals under the penal code, the terrorism act or the prevention of electronic crimes act.

In February 2020, Justice Isa challenged the petition against him and claimed that the information gathered against him and his family had been gathered through illegal surveillance and investigation. Following the recusal of the newly appointed Attorney General in the case in February 2020, the case was adjourned for a further 3 weeks. It was due to be heard at the end of March 2020 but has been postponed due to the COVID 19 lockdown in Pakistan.

Tanzania

In late 2019, Tanzania decided to withdraw from its declaration under Article 34 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights

("the Protocol") which will ultimately deny individuals and non-governmental organisation the opportunity to submit complaints against Tanzania to the African Court on Human and Peoples' Rights. Tanzania will be the second state to withdraw from this protocol – Rwanda was the first. There are now only eight states that accept Article 34 of the Protocol. Tanzania has yet to release its specific reasons as to why it is withdrawing from Article 34. This decision follows in the wake of a history of judgements against Tanzania – including a recent case where the Court held that Tanzania's mandatory death penalty for murder cases was a violation of human rights. At the time of this article's release, Tanzania had the highest number of judgements against it: of the 76 cases against it, 33 had rulings against Tanzania. When compared to other nations, Tanzania also had the most cases filed by individuals or NGOs with most of those cases addressing a lack of fair trial. There is no set protocol for how withdrawals work, but the Court has held that states can withdraw from the protocol in the past; Rwanda, for example, was able to withdraw from the protocol after a space of one year.

Trinidad and Tobago

In December 2018, we reported on the attempts by the Law Association of Trinidad and Tobago to get the Chief Justice impeached following allegations which appeared in the press of misconduct and misbehaviour. The Law Association pursued the matter and produced a report following further investigation. The Chief Justice took the Law Association to court arguing the Association had no right to undertake an investigation of a judge's activity separately to the constitutional provisions for investigation. However, he lost his case and appealed the decision to the Judicial Committee of the Privy Council. In August 2018, the Judicial Committee of the Privy Council found that "*The Law Association of Trinidad and Tobago had power under the Legal Profession Act 1986 (Trinidad and Tobago) to set up a committee to inquire into allegations of misconduct against the Chief Justice. While it could not make binding findings of fact, it could inquire into whether there were sufficient grounds to refer a complaint to the Prime Minister, and was not prevented from doing so by the Constitution of Trinidad and Tobago 1976 s.137*". The Prime Minister of Trinidad and Tobago refused to pursue the impeachment but the Law Association has continued the case against the Chief Justice and proceeded with a judicial review case of the Prime Minister's decision. In February 2020, Justice Vasheist Kokoram threw out the judicial review of the Prime's Minister's decision. As a result the Law Association decided not to appeal the court's decision.

NEW MEMBERS

We welcome the following new Individual Members as well as some of our former Members back to the CMJA

Individual Members

AUSTRALIA

- Deputy President Bernard McCabe
- Mr Donald Mackenzie
- Chief Justice James Allsop
- Ms Jessica Kerr
- Justice Peter Johnson
- Judge John Coker
- Hon Justice Jacqueline Gleeson
- Justice Rangajeeva Wimalasena

CANADA

- Justice Joel Groves
- Judge Ronald Lamperson
- Chief Judge Derek Redman
- Justice Denis Jacques
- Justice Thomas Cyr
- Hon Julie Dutil
- Hon Michele Monast
- JP Dennis White
- Justice Elizabeth Bennett
- Mr Jamie K Trimble

CYPRUS

- HH Judge Roger Elsey

ENGLAND & WALES

- HHJ Robert Harrison
- HHJ Alexander Milne QC
- Judge Keith Raynor

- Judge Karen Aldred
- Mr Peter Huffam
- Lady Emma Arbuthnot
- Mrs Carolyn Hare
- Lord Colin Carloway
- Judge Julian Philips
- Mrs Elizabeth Harrison
- Ms Kathryn Elizabeth Major

FALKLAND ISLANDS

- Mrs Sarah Whitby

GHANA

- Mr Ebenezer Kweku Ansah

INDIA

- Justice Venugopal Madhavaraj

KENYA

- Mrs Margaret Mwangi
- Judge Mohammed Ibrahim
- Hon Lady Justice Philomena Mbete Mwilu
- Hon Njoki Ndungu

MALAYSIA

- Datuk Abu Backer Hamid Sultan

- Mr Marzuki Spawi
- Dato Seri Noorkhan Mulkiaman Khan

NIGERIA

- Mrs Emuobome Bazunu-Sokoh
- Mrs Aderonke Ajetunmobi
- Miss Olufunmilola Olowoyo

TANZANIA

- Honourable Chana Mhembe Chana

UGANDA

- Hon Justice Ndikabona David Batema
- Mrs Winnie Nankya Jatiko
- Her Worship Sarah Namusobya
- Mrs Justine Atukwasa
- Mr Moses Kazibwe Kawumi
- Ms Pamella Lamunu Ocaya
- Her Worship Patricia Amoko

ZAMBIA

- Judge Elita Phiri Mwikisa

CMJA CONFERENCES

12-17 SEPTEMBER 2021

CMJA TRIENNIAL CONFERENCE,

Accra Ghana

Information to follow shortly

SUPPORT

THE CMJA ENDOWMENT TRUST

TO RAISE **£1,000,000**



To help the CMJA continue to protect and promote judicial independence and the good administration of justice across the Commonwealth

TO DONATE TO THE FUND OR FOR FURTHER INFORMATION

www.cmja.info or email: kbrewer@cmja.org



**CMJA
NINETEENTH
TRIENNIAL CONFERENCE**

**“Access to Justice in a
Modern World”**

12-17 SEPTEMBER 2021

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