

THE COMMONWEALTH MAGISTRATES' AND JUDGES' ASSOCIATION

ABOUT THE CMJA

The Commonwealth Magistrates' and Judges' Association (CMJA) is a unique international judicial association bringing together judicial officers at all levels of the judiciary from over 68 jurisdictions in the Commonwealth and beyond. The CMJA is a company limited by guarantee – without a share capital – and is a registered charity in the United Kingdom.

The aims and objectives of the CMJA are to:

- advance the administration of the law by promoting the independence of the judiciary – the rule of law only able to be observed if there is a strong and independent judiciary, which is sufficiently equipped and prepared to apply the law: *The Victoria Falls Proclamation 1994*;
- advance education in the law, the administration of justice, the treatment of offenders and the prevention of crime within the Commonwealth; and
- disseminate information and literature on all matters of interest concerning the legal process within the various countries comprising the Commonwealth.

For over 45 years the CMJA has played a vital role in developing judicial standards and strengthening judicial independence and enhancing the rule of law. The CMJA acts as a watchdog when there are threats to judicial independence and co-operates with other organisations in promoting the Commonwealth fundamental values and the **Commonwealth (Latimer House) Principles on the Accountability of and Relationship between the Three Branches of Government**. These values and principles include:

- Respect for the independence and integrity of the judiciary, and for the protection of civil, political, economic, social and cultural rights for all without discrimination; and
- A commitment to access to justice and an independent judiciary which are fundamental to the rule of law.

By way of contextualizing and emphasising the continuing vital role played by the CMJA, in 2013 Her Majesty, The Queen, Head of the Commonwealth signed the Commonwealth Charter¹. The Charter endorsed by all Heads of Government in the Commonwealth, brings together the principles and values the organization stands for and that are enshrined in the Commonwealth Declarations since 1971 namely:

- democracy;
- human rights;

¹ <http://thecommonwealth.org/our-charter>

- international peace and security;
- tolerance, respect and understanding;
- freedom of expression;
- separation of powers;
- rule of law;
- good governance;
- sustainable development;
- protection of the environment;
- access to health care, education, food and shelter;
- the importance of young people in the Commonwealth;
- the needs of small states;
- the needs of vulnerable states;
- the role of civil society.

It specifically recognizes in Article VI “*the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary. These are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance*”. It goes on to state in Article VII that it supports “*an independent, impartial, honest and competent judiciary and recognises that an independent, effective and competent legal system is integral to upholding the rule of law, engendering public confidence and dispensing justice.*”

The Commonwealth Charter sets out the principles and values of the Commonwealth that are a benchmark of the minimum standards required for democracy to thrive in the Commonwealth. We all have a duty to ensure that these values are adhered to. To quote Chief Justice Bhagwati of India:

*There are a few institutions which are as vital to the maintenance of democracy and the rule of law. They constitute the life breath of the democratic way of life and the supremacy of law. Drain away this life breath, and democracy will perish, the rule of law will end.*²

The CMJA has been promoting the rule of law, the good administration of justice and judicial independence for over 45 years. It is the only international judicial organisation bringing together judicial officers of all ranks (from lay justices to Chief Justices) and from the larger jurisdictions such as India (1.2 B people) to the smallest jurisdiction (Tuvalu with less than 10,000). The CMJA plays a role within the

² Chief Justice P. N. Bhagwati of India, "Democracy and the Rule of Law" the Vigil Lanka Movement and the Asian Legal Resource Centre [ALRC]Colombo, Sri Lanka, May 1997.

international judicial community in promoting the UN Basic Principles on the Independence of the Judiciary and international instruments which safeguard this independence.

The CMJA was one of the partner organisations that formulated the **Commonwealth Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence** (1998) which led to the **Commonwealth (Latimer House) Principles on the Accountability of and Relationship Between the Three Branches of Government ("The Principles")** endorsed in Abuja in 2003 and integrated in the Commonwealth fundamental values by the Commonwealth Heads of Government and thus in the Charter of the Commonwealth. The Principles provide Commonwealth countries with a set of minimum standards and a roadmap for democracy and good governance by outlining practical ways of implementing the fundamental values of the Commonwealth and enhancing mutual respect between the Executive, Legislature and Judiciary. The CMJA works closely to promote judicial independence, and cooperates with other organisations in ensuring that *"Each Commonwealth Country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability."*³ A colloquium of ministers, parliamentarians, judges, lawyers and legal academics held in the wings of the Law Ministers Meeting in Edinburgh in 2008 produced the **"Edinburgh Plan of Action on the Development and Implementation of the Principles"** (**"Edinburgh Plan of Action"**), the aim of which is to rollout the Principles across the Commonwealth. To date only the Australian Capital Territory Legislature has tried to assess the performance of the three arms of government against the Principles. The CMJA as the Secretariat for the Latimer House Working Group provided input to the consultant appointed by the Australian Capital Territory Legislature. It is hoped that the model put forward by the ACT Legislature will be inspirational around the Commonwealth.

Events in the Commonwealth since the adoption of the Guidelines nineteen years ago and the Principles fifteen years ago have continued to underline the need to enhance an effective means of implementing the Principles and in particular the independence of the Judiciary. An independent Judiciary is a cornerstone of democracy, human rights and good governance, and it is the right of every citizen in the Commonwealth. As such, the quality of a country's Judiciary is paramount not only to the fundamental well-being of the people, but also to the stability of society and economic development. In 2013, the United Nations Human Rights Council passed a resolution calling on: *"All States to guarantee the independence of judges and lawyers and the objectivity and impartiality of prosecutors, as well as their ability to perform their functions accordingly, including by taking effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional functions without interference, harassment, threats or intimidation of any kind..."*⁴ However, far too often the judiciary is seen as a department of state to be treated and compared with other departments, and not as a separate branch of government with equal responsibilities and duties to those given to Parliament or the Executive to protect the rule of law. An independent judiciary free from political or

³ Paragraph I of The Principles.

⁴ A/HRC/23/L.9 – Human Rights Council resolution on the "Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers"- Twenty-third session, June 2013

other interference is not a privilege of a judge or magistrate but the right of every citizen of the Commonwealth. As part of its work to ensure the implementation of the Principles, the Latimer House Working Group which monitors compliance with the Principles across the Commonwealth, and of which the CMJA acts as secretariat, was commissioned by the Commonwealth Secretariat to produce a Toolkit or Dialogue to assist in strengthening the respect between the three branches of power. This was completed in 2015. To date the Working Group is still waiting its rollout.

Since 2015 the CMJA has been a member of a growing network of NGOs led by the International Commission of Jurists (ICJ) and the International Bar Association's Human Rights Institute (IBAHRI), the aim of which is to ensure that the UN and in particular the Human Rights Council considers issues relating to the independence of lawyers and judges. It has supported three fringe sessions at the Human Rights Council Meetings in September 2015, March 2016 and June 2016.

The CMJA has supported four statements and an oral statement in March 2016 during the General Debate of the Human Rights Council Meeting under Item 6 (Universal Periodic Review outcomes). The CMJA has also supported the reports by the IBAHRI on the "**Role of the UPR in Advancing Human Rights in the Administration of Justice**". In June 2016 the CMJA supported the International Commission of Jurists oral statement given to the UN Human Rights Council on 16 June 2016 on "**Judicial Accountability and Attacks on Lawyers**" which coincided with the launch of the ICJ's new **Practitioners Guide on Judicial Accountability**.

The CMJA also supported the IBAHRI Initiative's oral statement on "**Indicators of Independence of Justice Systems**" which was delivered to the UN Human Rights Council on 16 June 2016.

The CMJA and the Commonwealth Lawyer's Association (CLA) provided a Joint Written Briefing on the Independence of Judges and Lawyers for the UN Rapporteur on the Independence of Judges and Lawyers in anticipation of the International Dialogue with the Special Rapporteur on the Independence of Judges and Lawyers held on 15 June 2016.

The CMJA has been involved in consultations on judicial issues such as procedural reforms, impact of constitutional changes on judicial independence, and the impact of legislative reform on courts in Commonwealth jurisdictions, more recently in Kenya, South Africa, Swaziland, Tonga and Zambia. In particular, the CMJA had been concerned about the potential influence politicians might have over the bench and in particular over appointments and discipline. This continues to be a problem across the Commonwealth and in December 2013, the CMJA together with the Commonwealth Lawyers Association (CLA) and Commonwealth Legal Education Association (CLEA) produced a report on: "**Judicial Appointments Commissions: A Model Clause For Constitutions**". The report follows an in-depth examination of the different types of appointments systems across the Commonwealth and proposes a model clause that may assist Commonwealth countries in future reforms of their constitutions and/or statutes in relation to judicial appointments. It provided an input via its Council Members to the consultations on reforms in the judiciary in Australia. The Model Clause has also been used as a basis for the development of a **Model Law on Judicial Services Commissions** by the Commonwealth Secretariat; and the CMJA was an integral part of the regional consultations held with judiciaries around the Commonwealth which led to the drafting of the Model Law.

The CMJA has been involved when judicial officers have been threatened whilst undertaking their judicial functions, for example in Botswana, the Gambia, Fiji,

Pakistan, Papua New Guinea, Swaziland and Zambia where judicial officers have been sacked or replaced without due process. The CMJA has produced joint statements with the CLA and CLEA, more notably in relation to the impeachment of the former Chief Justice of Sri Lanka in January 2013 and in January 2014 in relation to the judicial crisis in Nauru following the deportation of the Chief Magistrate and revocation of the Chief Justice's visa there. It provided support to the beleaguered Chief Justice of Nauru before his resignation in March 2014. More information on these interventions is available at the CMJA's website www.cmja.org.

More recently on 16 June 2016 the CMJA issued a joint statement with the Commonwealth Legal Education Association (CLEA) relating to the suspension of four judges in Botswana in 2015. *Rechters Voor Rechters* (Judges for Judges) also issued a statement in relation to the matter.

On 7 February 2017 the CMJA, CLA and the CLEA issued a Joint Statement on the Arrest and Detention of Lawyers and Judges in the Cameroon. The statement expressed grave concern about the recent arrest and detention of judges and lawyers in the North West and South West Cameroon (Anglophone Cameroon) under the *Anti-Terrorism Act 2015*, following protests at the announcement by President Biya that he was abolishing the common law system in the Cameroon.

The CMJA has worked to improve standards and strengthen judicial independence across the Commonwealth. This is mainly undertaken through its educational programmes.

The CMJA has undertaken needs assessment missions. For example, in February 2016, Dr Karen Brewer, participated in a mission to Bangladesh with Mrs Katalaina Sapolu (Director of the Rule of Law Division, Commonwealth Secretariat), Mark Guthrie (Justice Section, Commonwealth Secretariat), sponsored by the Rule of Law Division, Commonwealth Secretariat.

The CMJA has worked with the Commonwealth Secretariat's Rule of Law Division on training programmes for magistrates and judges on sentencing procedures, how to deal with vulnerable adults or children in court, ethical behavior of judicial officers, gender and human rights and environmental law amongst other topics.

The CMJA Director of Programmes, District Judge Shamin Qureshi, has drafted training programmes and facilitated training in Cameroon, Kiribati, Guyana, the Maldives and Swaziland for judges and magistrates and the CMJA has run courses in Jamaica and St Lucia on environmental law.

In January 2016 Judge Qureshi, along with Chief Justice Maragaret Ramsay – Hale (Turks and Caicos Islands), Magistrate Kirsty –Ann Gun (Cayman Islands) and Mark Guthrie (Rule of Law Division, Commonwealth Secretariat) undertook separate training of police prosecutors and magistrates in Guyana on domestic violence issues. The opening of the programme was attended by the President of Guyana and Chancellor Carl Singh, Head of the Guyanese Judiciary.

The CMJA has also worked with the Pacific Judicial Education Programme run by the Australian Federal Court in order to enhance judicial ethics in some of the smaller jurisdictions of the Pacific, and is a partner organisation of the Commonwealth Legal Information Institute (Commonlii) run by the Australian Legal Information Institute (AustLII).

The independence and integrity of the magistracy has been a constant priority of the Association since its formation. In 2009 at its Triennial Conference held in Turks and Caicos, the CMJA General Assembly deplored the fact that in parts of the Commonwealth the independence of the magistracy (the magistracy also encompassed all members of the lower judiciary) was inadequately safeguarded and requested the CMJA Council together with the Commonwealth Secretariat to take positive steps to eliminate these breaches of the Latimer House Principles wherever they occurred. A set of Guidelines for policy makers in government was drafted as part of the report on the independence and integrity of magistrates in the Commonwealth and this was put before Commonwealth Law Ministers in 2011. The full report on the **"Status of Magistrates in the Commonwealth"**, including the Guidelines is available from the CMJA website: www.cmja.org .

Following on from the Report, the CMJA has continued its work in supporting the strengthening of the lower judiciary. In August 2016 the CMJA announced the launch of the updated **"Guide for the Magistrate in the Commonwealth: Fundamental Principles and Recommended Practices"** (formerly "The Magistrate in the Commonwealth: A Training Manual"), which was edited by the CMJA President, Dr John Lowndes, Chief Judge of the Local Court of the Northern Territory of Australia. With the assistance of a grant from the Patron's Fund, the CMJA distributed the Guide to all its members electronically and to members of the lower judiciary in hardcopy form in January 2017.

The CMJA also holds an educational conference every year and a Triennial Conference every three years.

In September 2016 the CMJA held a successful conference in Georgetown, Guyana on the theme "The Judiciary as Guarantors of the Rule of Law", which was attended by over 220 delegates from 33 jurisdictions in the Commonwealth. The CMJA was also privileged to have as a Keynote Speaker the former Judge of the International Criminal Court and current President of Trinidad and Tobago, President Carmona.

The next **CMJA annual educational conference** to be held in **Dar Es Salaam, Tanzania, from 24-28 September 2017** will focus on **"Building an Effective, Accountable and Inclusive Judiciary"**, and the CMJA hopes to welcome some of the Australian judiciary to this important conference. This is an ideal opportunity for judicial officers to meet and exchange experiences and expertise, and to seek to resolve some of the problems faced and to support their fellow judicial officers in Tanzania and elsewhere in their struggle to ensure judicial independence is respected across the Commonwealth.

The CMJA is a membership organisation bringing together judicial officers at all levels. Through its Commonwealth Judicial Journal and CMJA News published twice a year as well as the regular updates on the CMJA website, the CMJA endeavours to inform its membership of legal and judicial developments across the Commonwealth. The CMJA's Gender Section has also been active in promoting the rights of women and girls and it published a Gender Newsletter twice a year.

If you are interested in becoming a member, please contact the Association at info@cmja.org

OTHER RECENT ACTIVITIES OF THE CMJA INCLUDE

April 2016

His Hon Justice Charles Mkandawire (CMJA Council Member and ICJ Commissioner) participated on behalf of the CMJA in the International Commission of Jurists Conference on **Emerging Threats to Judicial Independence** held in Harare, Zimbabwe from 28-29 April 2016. He spoke at the conference about the importance of the Commonwealth (Latimer House) Principles.

May 2016

The CMJA Secretary General participated in the Commonwealth Meeting for Civil Society, Business and Government Leaders on Anti-Corruption on 11 May 2016 at Marlborough House, London. This meeting immediately preceded the Anti-Corruption Summit organized by the British government on 12 May 2016.

June 2016

The CMJA was represented by Council Member, Mrs Sybil Roach Tennant JP and the CMJA Secretary General at the Joint Commonwealth Secretariat/British Red Cross Seminar " Law, Humanity and the Commonwealth", held in London on 13 June 2016.

Justice John Logan represented the CMJA and spoke on "The Relationship Between Parliament, the Judiciary and the Executive" at the 27th Commonwealth Parliamentary Association Seminar held in Brisbane, Australia from 7-11 June 2016.

October 2016

As an accredited Commonwealth Association, the CMJA was represented at the Senior Officials of Law Ministers Meeting and the Meeting of Small States of Law Ministries which were held in London at the Commonwealth Secretariat. The CMJA presented a report to both meetings on its activities and work. The CMJA was also involved in the presentation in the wings of this meeting on the Latimer House Toolkit.

November 2016

The CMJA was represented at the East African Magistrates and Judges Association (EAMJA) Conference and AGM held in Munyonyo, Kampala, Uganda, from 31 October – 4 November 2016. The theme of the conference was "Transformation of Judiciaries in East Africa for Improved Service Delivery". The CMJA was represented by the Secretary General Dr Karen Brewer, Chief Magistrate Matankiso Nthunya (Regional Vice President of the CMJA) and Justice Patrick Kiage (CMJA Council Member of Kenya). Dr Brewer made a presentation on "Transformation of the Judiciary by Reference to the Commonwealth (Latimer House) Principles". Chief Magistrate Nthunya made a report to the EAMJA AGM and Justice Kiage attended the pre-conference Council Meeting of the EAMJA.

Dr Brewer and Justice Kiage also attended the pre-conference Colloquium on "Gender Equality and the Role of the Judiciary in promoting Women's Access to Justice".

December 2016

A paper on "Judicial Independence and Accountability at the Coalface of the Australian Judiciary" given by the CMJA President at the Northern Territory Bar Association Conference, which was held in Dili, East Timor in July 2016, was made available on the CMJA website.

MEMBERSHIP OF THE CMJA

There are three classes of members, namely Members Associations, Individual Members and Institutional Members.

- **Member Associations**

Member Associations are defined to mean:

Any judicial body of or including magistrates and/or judges in a Commonwealth Country or Countries accepted by the Council as a Judicial Association may, at the discretion of Council, be admitted as a Member Association, and more than one such Association from the same Commonwealth Country may, at the discretion of the Council, be admitted to membership.⁵

"Judicial Association" means:

Any incorporated or unincorporated body or association of persons eligible to be Individual members, whether or not it has a constitution or the equivalent.⁶

The establishment, membership and responsibilities of "Council" are dealt with in clauses 5, 6.1 and 6.2 of the Articles of Association.

- **Individual Members**

The following classes of persons may, at the discretion of Council, be admitted as Individual Members:

- (a) any person who holds or has held the office as a magistrate or judge, including judges in courts having unlimited jurisdiction, in any Commonwealth Country;*
- (b) any resident of a Commonwealth Country of standing or experience in a judicial or other relevant legal sphere.⁷*

- **Institutional Members**

The following classes of members may, at the discretion of Council, be admitted as Institutional Members:

- (a) any association of magistrates and judges drawn from a group of countries that includes a minority of non-Commonwealth members;*

⁵ Clause 3.3 of the Articles of Association.

⁶ Clause 1.3A of the Articles of Association.

⁷ Clause 3.4 of the Articles of Association.

- (b) *a regional treaty-based court in which the appointing State members include a minority of non-Commonwealth members;*
- (c) *a Commission or similar body which performs judicial functions within a Commonwealth Country but includes lay members who do not qualify as Individual Members.*⁸

THE BENEFITS OF MEMBERSHIP OF THE CMJA

Member Associations enjoy the following benefits:

- they receive support when they approach the CMJA for support when judicial independence issues arise in their jurisdiction (including constitutional reviews), the CMJA using its expertise and/or good offices/networks to assist where it is able;
- they contribute to the development of the rule of law through responses to consultations by the CMJA; and receive copies of the reports produced from these consultations;
- they receive multiple copies of journals for onwards distribution to their members;
- they receive copies of the e-Newsletters for onwards distribution to their members;
- they have access to published conference reports and notifications on events being held by the CMJA;
- they receive a discount for one representative at the CMJA Conferences or Group Deals for CMJA Conferences;
- they can nominate up to two people to be registered on the CMJA Members area on the website and take part in discussions on the Messageboard;
- they can nominate regional members for the Council and the Presidency every three years provided that they have cleared any subscription arrears;
- they can vote at the Regional Meetings and General Assembly held every three years provided that they have cleared any subscription arrears;
- they are able to approach the CMJA in relation to training needs, which, provided funding can be found, will be met.

Individual membership of the CMJA has multiple benefits. Individual members:

- receive the Commonwealth Judicial Journal twice a year. It contains articles of interest to members in their judicial work through the Commonwealth;
- receive a Newsletter twice a year. This publication contains information about the Association's recent activities and about members themselves;

⁸ Clause 3.5 of the Articles of Association.

- can exchange views and experiences with like-minded individuals through the network of contacts that the CMJA has around the Commonwealth;
- can attend the Triennial Conferences of the CMJA which are organised every three years to coincide with the Association's General Assembly, as well as the Association's Regional conferences which are held annually between Triennial conferences. Conference registration fees are discounted for individual members;
- can find out about the training courses organised by the CMJA on court administration, case management, human rights and sentencing which are organised periodically in Africa, the Caribbean and the Pacific. The current Judicial Education Programme also included training on judicial ethics and family law, as well as global developments in the law;
- can obtain copies of the Association's publication;
- can join the Gender Section of the CMJA and promote gender equality and women's rights around the Commonwealth;
- can contribute to the work of the Association by promoting its aims in their own jurisdiction and elsewhere around the Commonwealth.

Although membership of the CMJA (whether as an individual member or as a member association) has many tangible benefits, joining an Association like the CMJA is not only about what the Association can offer its members, but about what its members can offer and do for the CMJA in the pursuit of its mandate to maintain judicial independence and preserve the rule of law across the Commonwealth; and ultimately do for the Commonwealth in terms of promoting and protecting the Commonwealth's fundamental values.

Judicial officers in some Commonwealth countries, such as Australia (often referred to as "Lucky Country"), New Zealand, the United Kingdom and Canada, enjoy a much higher level of judicial independence than their colleagues in other Member States. Membership of the CMJA gives members the opportunity to contribute to the work of the CMJA by promoting its aims in their own jurisdiction and around the Commonwealth, and by assisting the CMJA in its efforts to strengthen the independence of judiciaries across the Commonwealth. Member Associations, in particular, are in a position to help the CMJA in its endeavors to improve the lot of those judicial officers in today's international judicial community whose independence does not meet the minimum standards.

The Commonwealth is divided into six regions:

- Caribbean
- East, Central and South Africa
- West Africa
- Indian Ocean
- Atlantic and Mediterranean
- Pacific Ocean

All members of the CMJA, but in particular Member Associations, have the potential to make a significant contribution to the work of the CMJA in their own region.

Take for example, the South Pacific, which is viewed by Australia as its "Near Abroad", and as such part of Australia's natural sphere of influence.⁹ It is an "an area of key strategic importance to Australia, which has a long standing concern over what has been termed 'the arc of instability': the region to the north of Australia, from the South West Pacific through archipelagic South East Asia".¹⁰ As former Prime Minister of Australia, John Howard, stated:

It is in Australia's interests and in the interests of our Pacific Island neighbours to strive for a region that is economically viable, politically stable and free from crime. The potential costs and potential threats to Australia from failing States, including transnational crime and international terrorism, would be immense.¹¹

In a region where there is instability and the potential for fragile governments to fail, stable democracy and good governance are best ensured by the promotion of Commonwealth fundamental values and the Latimer House Principles and their implementation within the region.

Member associations within the Pacific Region can make a significant contribution to the CMJA's promotion of the fundamental values of the Commonwealth and the Latimer House Principles and the implementation of those Principles within the Pacific Region, as well as around the Commonwealth. The contribution made by Member Associations is an important one that serves the interests of their own country as well as the interests of their Pacific neighbours.

⁹ Colonel Peter Brown, paper on "Australian Influence in the South Pacific" 2012, p 1.

¹⁰ Colonel Brown n 9, p 1.

¹¹ Colonel Brown n 9, p 1.