

# CMJA NEWS

The Newsletter of the Commonwealth Magistrates' and Judges' Association

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## EDITORIAL

This is the second issue which has been published during these difficult times. It seems strange that we have all been under various degrees of lockdown since March 2020 and yet judicial officers around the Commonwealth have still been able to adapt and work with new systems and procedures that have been introduced.

I would normally be reporting at this time on the discussions and conclusions of the CMJA's Annual Conference which this year was due to be held in Cardiff, Wales. Whilst this conference was cancelled in April 2020, it was encouraging to receive a letter from our Patron and Head of the Commonwealth, Her Majesty, The Queen wishing us all the best for our 50<sup>th</sup> Anniversary. Celebrations for the 50<sup>th</sup> Anniversary have been postponed and it is hoped can be resurrected at the CMJA's next **Triennial Conference due to take place in Accra, Ghana from 12-17 September 2021**. Please note the dates in your diary. The theme of the Conference is: "**Access to Justice in A Modern World**".

As far as projects are concerned, in July 2020, the CMJA launched "**The Principles on Funding and Resourcing the Judiciary in the Commonwealth**". These Principles are available on the CMJA website at: [www.cmja.org](http://www.cmja.org). As readers will be aware, the CMJA has been concerned for many years about the decreasing funding of the judiciary and we are concerned that this funding will be even further reduced with the economic downturn which is inevitable as a result of the pandemic. These are important Principles that are in line with international standards.

The CMJA has been continuing to work with the Gambia judiciary in the development of its capacity. In July 2020 and September 2020, the CMJA and the Judicial Office of England and Wales undertook virtual seminars with judicial officers in the Gambia, on advancing the work commenced in January 2019 on

Sentencing Guidelines. We are grateful to the British High Commission in Banjul in providing support and assistance for both these seminars and to H.H. Judge Martin Picton for his facilitation of both sessions. The CMJA is also assisting in other areas in the capacity building of the judiciary in the Gambia.

The CMJA has continued to monitor the impact of COVID 19 on judiciaries, judicial officers and their families across the Commonwealth. In July 2020, we were very sad to learn that one of our long standing members, Justice Chaka Makaoone, of Lesotho had passed away from the virus and we sent our condolences to the Judiciary of Lesotho. We hope that all our members are staying safe. The CMJA has also continued with its COVID 19 Forum which is still available to members and we would encourage you make your contribution to the Forum or use this to inform us of how you are dealing with all the new issues arising from the pandemic. Please contact the CMJA for information on how to access the Forum.

It was also with great sadness that the CMJA lost a good friend in Mrs Patsy Robertson in August 2020. Patsy, a journalist from Jamaica who was Director of the Information Division of the Commonwealth Secretariat under 3 Secretaries-General, was a stalwart of the Commonwealth promoting the Commonwealth fundamental values in whatever she did. She was a good friend of the CMJA and contributed to the resurgence of the work the CMJA undertook on Women and Girls Rights, involving the Commonwealth and the CMJA in the Beijing Conference on Women in 1995 when she was senior advisor to the UN at the time. She also got the current CMJA Secretary General involved in the fight for widows' rights through Widows Rights International.

There have been a number of webinars that have been held since the beginning of the pandemic and the CMJA has participated in a number of these organised by the Commonwealth or international organisations. A copy of the paper prepared by the President

for the first webinar is available below. The Global Judicial Integrity Network of the UNODC has also organised a series of webinars. The videos of the UNODC webinars are available on the UNODC's website at: <https://www.unodc.org/ji/multimedia/index.html>

The CMJA has continued during these difficult times to monitor judicial independence and human rights issues across the Commonwealth. It is dependent on information from its members as to the issues that are arising in different jurisdictions in relation to threats against judicial independence and integrity. Whilst we are not a trade union, we do examine each case and assess whether it is indicative of a general threat to the judiciary as a whole. Since the lockdown we have issued a number of statements relating to threats in Malawi and Sri Lanka.

The internal governance work of the CMJA has continued throughout these difficult months and the CMJA's Executive and Steering Committees have met on a quarterly basis. On 12 September, the CMJA's first virtual Council Meeting was held with 23 trustees attending the meeting.

The Council also thanked Sheriff Douglas Allan for his long standing work.

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Douglas, who has been on the Steering Committee since 2000 and chaired the Steering Committee since 2006, retired as Chairman of the Committee at the Council Meeting in September. However, he has agreed to stay on for a year to assist the new Chairperson, Sheriff Andrew Normand, who has been a member of the Steering Committee for a number of years, so that Douglas' vast experience and advice is not lost to the CMJA and he will continue as a CMJA Council Member until his term ends in Ghana in 2021.

On 3 November 2020, the CMJA worked with the Standing International Forum on Commercial Courts (SIFoCC) which is administered by the Judicial Office of England and Wales, on a virtual seminar on **“Commonwealth Commercial Courts - Establishing the new normal”**.

## STOP PRESS

The CMJA is delighted to inform readers of two good news stories coming from Malawi. The CMJA President, Justice Charles Mkandawire was elevated to the Supreme Court on 20<sup>th</sup> October 2020. We also congratulate all those who were elevated to the Supreme Court and High Court recently in Malawi.



We also congratulate Justice Healey Potani, Justice Ivy Kamanga, Justice Redson Kapindu, Justice Dingiswayo Madise and Justice Michael Tembo of Malawi who took the decision to annul the May 2019 Presidential elections in February 2020 and have been awarded the prestigious Chatham House Prize in recognition of the **“courage and independence in the defence of democracy”**. The Chatham House Prize is an annual award for “the person, persons or organisation deemed by members of Chatham House to have made the most significant contribution to the improvement of international relations in the previous year”

## PLEASE DON'T FORGET TO PAY YOUR MEMBERSHIP ON TIME

The CMJA is dependent on timely payment of its membership dues in order to undertake its activities in promoting and protecting judicial independence

We urge Member Associations and Individuals to pay their dues on time. You can pay through the CMJA website at:

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

## PRESIDENT'S MESSAGE



I am taking this opportunity, with the publication of the Newsletter, to follow up on my letter of April 2020, which was circulated to members when we were in the first weeks of the global pandemic and thought we would be back to near normal activity by this time. We hope, more than ever, that our friends, family and work colleagues from around the Commonwealth are safe and remaining positive despite the continued challenges we all face.

We were disappointed to have to cancel our Conference in Cardiff, Wales this year and to put on hold our celebrations for our 50<sup>th</sup> Anniversary. However, we are working towards celebrating this important milestone in our 51<sup>st</sup> year so keep in touch and we will let you know how we will be celebrating such an important event.

We have all had to adapt, in an extremely short period of time, to using new technologies or procedures to ensure the safety and protection of users of our courts. We recognise that it hasn't been easy in many jurisdictions, especially in those where access to the internet is not universal or where connections and power supplies are poor. However, it is important that we all continue to fulfil our responsibilities as judges and magistrates to society.

You will have received a copy of **“The Principles on the Resourcing and Funding of the Judiciary in the Commonwealth”** published in July 2020. The CMJA is conscious that these are precarious times for judiciaries across the world in the face of economic downturns and it is important that measures taken for “efficiency” or “economic” reasons during these difficult times should not undermine the independence of the judiciary or our responsibility as guarantors of the fundamental rights and the rule of law. It is important that we stand firm and continue to ensure the good administration of justice across the Commonwealth in the face of threats against the rule of law and the independence of the judiciary.

As you will be aware from the email updates that the CMJA has been sending out over the last few months, the CMJA secretariat has continued to work throughout these difficult times. It has continued to monitor threats against judicial independence and has produced a number of statements with other associations which were circulated to members and are available on the CMJA website. The CMJA held its first virtual Council Meeting in September 2020 and over 23 Council Members attended this meeting and we received a number of reports from our Council Members in the six regions on how their jurisdictions were coping in the light of COVID 19. In addition, our Treasurer reported on the finances of the CMJA. Like many charitable organisations, the CMJA is extremely dependent on members paying their subscription fees, especially this year when the CMJA had to cancel its Conference. We would kindly urge you to ensure that any outstanding subscription arrears are paid as quickly as possible so that we can continue to support you for the next 50 years!

Charles Mkandawire  
President

## MESSAGE FROM THE CMJA'S PATRON

*In July 2020, the CMJA received a message from Her Majesty, The Queen, Head of the Commonwealth and Patron of the CMJA from Windsor Castle where she was under self-isolation:*

"On the occasion of the Fiftieth Anniversary of the Commonwealth Magistrates' and Judges' Association, I send warm greetings to all of your Members.

As your Patron, I was pleased to learn that you have worked together to overcome the recent challenges faced and have continued to provide good administration of justice across the Commonwealth.

As you mark this milestone in the history of the Association, I send my best wishes to you all for a memorable Anniversary.

ELIZABETH R"

## COMMONWEALTH WEBINARS ON THE RULE OF LAW



*The Commonwealth Secretariat has been organising a series of Webinars on the Rule of Law. The CMJA President spoke during the Webinar on 28 July 2020 and Sheriff Alistair Duff spoke at the request of the CMJA on 18 August 2020. These videos of these webinars are now available at:*

28 July 2020 – Impact of COVID-19 on the rule of law: <https://thecommonwealth.org/media/event/event-rule-law-webinar-series-one>

18 August 2020 – Access to justice: <https://thecommonwealth.org/rule-law-webinar-2-how-has-covid-19-affected-access-justice-commonwealth>

15 September 2020 – Digitisation of courts: <https://thecommonwealth.org/rule-law-webinar-3-new-age-online-courts-has-covid-19-pandemic-ushered-era-develop-justice-through>

### THE IMPACT OF COVID 19 ON THE RULE OF LAW IN THE COMMONWEALTH

*The CMJA President spoke at the first event which was held on 28 July 2020 and which also included, as speakers: Baroness Patricia Scotland, the Secretary General of the Commonwealth, The Rt. Hon Mrs Marlene Malahoo Forte,*



*the Attorney General of Jamaica and Mr Brian Spears, the President of the Commonwealth Lawyers Association. The session was chaired by the Mr Luis Franceschi, the Head of the Governance and Peace Division of the Commonwealth Secretariat.*

*The Following is the presentation that the CMJA President prepared for the Session although he was not able to present the full version:*

### 1. What Have Been The Most Noticeable Effects Of The Covid-19 Pandemic On The Rule Of Law Issues In Your Country?

It is an honour for me to participate in the first WEBINAR on COVID-19 organised by the Commonwealth Secretariat. I have been invited to focus on the subject matter with particular emphasis on the experience from my Country. Let me however point it out on the outset that as President of the Commonwealth Magistrates' and Judges' Association (CMJA), I represent a very wide constituency. It will therefore be difficult for me to confine myself to my experience in Malawi.

Realising the impact of COVID-19 in our respective jurisdictions, as President of the Commonwealth Magistrates' and Judges' Association (CMJA), on 6<sup>th</sup> April 2020, I communicated with members of CMJA in all the six regions on CMJA and COVID-19. I reminded the members that I was aware that judicial officers are continuing to operate in the face of rising challenges, to ensure that the good administration of justice continues in the Commonwealth and that some judicial officers were putting their lives on the line as a result by attending court on a daily basis.

I recognised the fact that in these difficult times, judicial officers will ensure that they protect the most vulnerable members of our society and will continue to serve their fellow citizens.

I, however, cautioned that, with the restrictions imposed due to the pandemic, governments should not use this opportunity to undermine the role of the judiciary who continue to be guarantors of the rule of law and fundamental rights and that the CMJA is keeping vigilant to any developments in the Commonwealth which might jeopardize the independence of the judiciary in these difficult times.

As a result of COVID-19 pandemic, we have noticed that many governments including Malawi, have immediately responded to the pandemic by putting in place several measures. These measures include:

- Legislative actions (passing of laws and regulations, orders/decrees);
- Executive orders/decrees;
- Other practices that have not been codified.

These have included actions taken by governments using existing legislations- for example prosecuting journalists and citizen reporters and protesters.

Most of these government measures are in the form of executive order or proclamation. There are declarations of state of emergency, national health emergency or national disaster. For example;

- I. Botswana, eSwatini, The Gambia, Lesotho, Mozambique, Namibia and Sierra Leone have all declared state of emergency;
- II. Malawi, South Africa and Zimbabwe have declared national state of disaster;
- III. Botswana, The Gambia, Kenya and Uganda declared (Public) health emergencies.

Most of the measures heavily curb freedom of movement and peaceful assembly. The majority of these countries had fully or partially prohibited gatherings. Some have imposed curfews.

Governments are increasingly cracking down on dissent by using 'fake news' or disinformation charges to suppress public criticism of a particular government's response to the pandemic.

## 2. What Innovations Coming Out Of The Pandemic Does My Country Hope To Integrate Into The Post Covid-19 'Norm'?

The judiciaries oversee and check the Executive and legislators' action in the ongoing context of COVID-19. In many jurisdictions, Chief Justices have now issued Practice Directions to make sure that courts remain relevant to current trends. In most jurisdictions now, the CJs have allowed online arguments, virtual courts, video teleconferences etc. For example, in Kenya, the Court of Appeal has successfully conducted several appeal hearings. In Malawi, the High Court Sitting as a Constitutional Court is currently hearing a COVID-19 lockdown case using online system. Online hearings are also happening in Uganda and the list is endless.

Judiciaries in the post COVID-19 period will continue to operate like that. In order for the judiciaries to cope with the challenges of COVID-19, there is need for adequate funding. Funding is one of the biggest challenge that most judiciaries in the Commonwealth encounter. Whilst it is appreciated that at national level there are several competing factors for funding, but most judiciaries have not been on the receiving end. In most cases, justice delivery and rule of law issues have not been a priority for most governments.

The Commonwealth (Latimer House) Principles on the Accountability of and Relationship between the three branches of Government is very fundamental when it comes to the issue of funding.

At the CMJA Council meeting in September 2019, it was agreed that the CMJA would develop a number of recommendations in relation to the funding of the judiciary following the resolution to resources for the judiciary taken at the last Triennial Conference held in Brisbane, Australia in September 2018. In July 2020, a set of Principles on the Funding and Resourcing of the judiciary have now been developed. **These Principles are now of particular importance as Commonwealth Countries are now tackling consequences of COVID-19 pandemic and in the light of the global economic down run that this has caused.**

The implementation of the Commonwealth (Latimer House) Principles is more important than ever in the current climate where emergency measures have curtailed human rights and the rule of law in some of the Commonwealth jurisdictions.

## 3. How Has The Covid-19 Pandemic Affected The Administration Of Justice In My Country?

- There is a general psychological fear for court users to come to court;
- Judicial officers and staff feel that they are not adequately protected;
- There is a feeling that concentration of protective measures are more focused on staff who are in the health sector without taking into account that judicial services are also an essential service;
- Court business has drastically reduced and in turn, there will be a very massive backlog.
- As most of our courts have very poor infrastructure, social distancing is a problem and cases cannot be heard;
- Access to justice has been greatly affected because most Malawians cannot afford to file their cases on line;
- Due to poor infrastructure, it's difficult to have virtual courts;
- Although we have all these challenges, the judiciary has put in place several measures to mitigate the situation;
- The judiciary is now only handling urgent matters.

## 4. Is The Commonwealth Ready For Digitised Legal World?

- Information and communication technologies can play an important role in the administration of justice in the Commonwealth;
- ICT can increase transparency, efficiency and accountability of delivery of justice;
- There are considerable variety of tools and ways to harness the possible effects of digitized technology and there are examples all over the Commonwealth of the successful integration of ICT into digital strategies;
- New technologies like e-filing, virtual courts, video links and many more are now part of any comprehensive digital technology strategies;
- The magic word is adequate funding for the judiciaries;
- There is need to invest in ICT training;
- Resource mobilization for modern equipment;
- Infrastructure development of the justice sector.

All in all, I would say that the Commonwealth is ready to digitize.

## JUDICIAL INDEPENDENCE ISSUES

### INDIA

In August 2020, the CMJA was informed that a prominent Indian lawyer, Prashant Bushan, had been found in contempt of court by the Supreme Court for attempting "to scandalize the entire institution" by posting tweets criticising the Chief Justice and previous senior judges in India. After the case sparked a discussion on freedom of speech and judicial independence in India, the lawyer was given the choice to pay a fine of 1 Rupee or face 3 months in jail. His lawyer paid the fine on his behalf.

### JAMAICA

In August 2020, the Chief Justice of Jamaica issued a statement condemning threats against judges which had appeared on social media. This followed a judgment of the Supreme Court which found that a primary school had not breached the constitutional rights of a five year old girl who was denied access because of her dreadlocks following the lifting of a temporary injunction against the school denying the girl's access in 2018. Whatever the merits of the case, the Chief Justice, in his statement he stated: *"The abuse of Judges by way of social media and other platforms is to be deplored. This practice is to be condemned."* He went on to say:

*"Abuse of Judges presents a grave threat to judicial independence and sets the stage for democracy to be undermined. The publication of pictures of Judges in context where violence is being suggested is unacceptable. While expressing disagreement, members of the public are urged to demonstrate restraint. As stated earlier the Judiciary of Jamaica accepts and welcomes criticisms".*

The case is currently being appealed and the lawyer for the girl and her parents is claiming hair discrimination, an increasingly contentious issue around the globe.

### KENYA

In September 2020, it was announced that the Law Society of Kenya was seeking clarification from the government why it was continuing to flout court orders. The lack of enforcement of court orders has been a major issue in Kenya since the Supreme Court annulled the 2016 elections and has brought the Kenya judiciary in conflict with the current government. In a report in The Nation on 1 September

2020, the President of the Law Society of Kenya, Nelson Havi indicated that they Society would first seek to establish why government officials are unable to comply with court orders or *“at least have him explain why the orders are disregarded”*. It would then compile all cases where government officials have failed to comply with court orders and file a composite case, seeking a declaration that the concerned officials are unfit to hold public office. *“We will further escalate it and, where possible, file a petition to Parliament or county assemblies, and ask for impeachment of the concerned officials,”* he said. The Chief Justice has indicated that *“Disobedience of court orders is a serious issue and abuse of the Constitution. When government officials throw court orders as pieces of papers what are you telling the people? Are there two sets of laws for leaders and common mwananchi [citizens]? It’s serious and can lead to anarchy”*

One of the orders that that has not been resolved as yet, relates to the failure of the President to agree to the appointment of the 41 judicial officers since their names were submitted by the JSC to him in August 2019. In February 2020, the High Court indicated that the President had 14 days to comply with the judgment but to date this has not happened. The President had claimed there were some integrity issues with some of the judges but as yet these have not been explained to the JSC or to the Chief Justice himself. The Kenyan judiciary badly require these judicial officers to be appointed, the Chief Justice pointed out in August this year when he indicated that there are over 400,000 cases filed annually by Kenyans in the courts. The judiciary was only able to dispose of 300,000 due to a low number of judges and magistrates currently serving. It was very sad that one of the lawyers who was to be appointed has recently passed away in a car accident.

In September 2020, the Chief Justice issued an advice to the President to dissolve Parliament having received a number of petitions from citizens claiming that the Parliament failed to enact legislation to implement the two thirds gender rule as outlined in Article 27 of the Constitution. The Supreme Court had previously issued an advisory notice on the issue and advised parliament to complete this task by the 27 August 2015. As this had not been done, the Chief Justice duly advised that the President should dissolve Parliament. The Chief Justice used his powers under Article 261 of the Constitution which states that the Chief Justice can advise

the President to dissolve Parliament if the latter *“fails to enact legislation in accordance with an order”*. This he duly did in his advisory of 21 September 2020. A petition disputing the advisory note by the Chief Justice is due to be heard by a five judge bench in November 2020 although the petitioners are appealing the composition of the bench.

### LESOTHO

The CMJA is also monitoring a similar issue in relation to the standoff between the judiciary and the government following a dispute between the Judicial Services Commission and the government over appointments in Lesotho. At the end of August 2020, the Judicial Service Commission met to consider new appointments and five names were put forward for appointment by the King. However, the Minister of Justice queried the legitimacy of the JSC and the list of names as only two of the four members of the JSC had sat in order to make the decision on the appointments. The JSC responded quoting the legislative provisions under which the JSC operates and pointing out that it had acted constitutionally and within the law and the JSC Rules allowed for a quorum of two people provided that they agreed on the subject of the day. A political party has now taken this case to the courts stating that until there is a change to the law (which the Minister of Justice has tabled in parliament) the current system which does not require approval by the Minister should continue. The Minister had indicated in the press that only “acting appointments” should be made in the interim until is Administration of Justice Bill 2011 is approved by Parliament as part of the wider reforms recommended by SADC.

### MALAWI

In June and August 2020, the CMJA, together with the CLA, CLEA and Rechters voor Rechters (Judges for Judges) issued two Statements ([www.cmja.org](http://www.cmja.org)) following the threats against the Judiciary and the Chief Justice in Malawi prior to the holding of the Presidential elections in August 2020. At the inauguration of the new President, the public gathered to cheer and clapped the judges who attended the ceremony for their strength and courage in the face of adversity.

Following the election of the new President, the CMJA sent a letter to the Chief Justice congratulating him and the judiciary on their fortitude in the face of the previous months’ of pressure. The new President, Lazarus Chakwera, in his State of the Nation address indicated

that one of the pillars he would be concentrating on during his term of office would be the strengthening and capacity building of the independence of the judiciary.

### SRI LANKA

In September 2020, the CMJA, together with the CLA, CLEA, Commonwealth Journalists Association and Judges for Judges (Rechters voor Rechters) issued a Statement ([www.cmja.org](http://www.cmja.org)) on the Proposed 20<sup>th</sup> Amendment to the Constitution which would, if successfully passed in Parliament, effectively diminish the independence of the judiciary in Sri Lanka. Readers may recall that in 2010, Sri Lanka passed the 18<sup>th</sup> amendment to the Constitution which set up a Parliamentary Council but which in effect gave the President vast powers to appoint the Chief Justice, Supreme Court judges and Court of Appeal judges as well as the members of the Judicial Services Commission. The provisions in the proposed 20<sup>th</sup> Amendment to the Constitution reflect similar provisions in the controversial 18<sup>th</sup> amendment. It was disappointing to note that the Supreme Court of Sri Lanka on 9 October 2020, decided, following a petition brought by a number of parties against the proposed Bill, that the Bill did not contravene any entrenched provisions in the Constitution but that certain clauses might require a Referendum to be held unless these clauses are amended. Those clauses include the provision removing the President from being accountable to Parliament, the immunity of the President from lawsuits, as well as giving the power the President to dissolve parliament only after one year in office not to mention the powers he would have over appointments of the judiciary.

### TANZANIA

In July 2020, The African Court of Human and Peoples’ Rights held in that the Tanzania constitution had breached the African Charter on Human and Peoples’ Rights as well as international law by denying the right of citizens to bring a case challenging the presidential elections to court. The Constitution provides that no court within Tanzania can inquire into the election of a presidential candidate, once the electoral commission has declared a winner. The lawyer who brought the case on the basis that his right to non-discrimination had been infringed by the constitutional provision because other litigants could ask the courts to consider any allegation. However, those who wished to challenge the election of a president were barred from going to court. The government of Tanzania

challenged the jurisdiction of the court as the lawyer had not “exhausted internal processes” before bringing the case to the African Court of Human and Peoples’ Rights. However, he claimed that the case would not receive a fair hearing in domestic courts. Tanzania was urged to change its constitution within 12 months and the African Court ordered the judgment to be published on the websites of the Judiciary and Ministry of Justice.

As of November 2020, individuals and NGOs will no longer be able to bring human rights cases to the African Court of Human and Peoples’ Court as Tanzania withdrew from the African Charter Protocol which allows such petitions in November 2019. Tanzania has the highest number of cases pending against it in the Court, most of which relate to the right to a fair trial.

## COMMONWEALTH CHIEF JUSTICES ROUNDTABLE

Although the CMJA had to cancel the meeting of Chief Justices of the Commonwealth in the wings of the CMJA Conference, the Lord Chief Justice of England and Wales held a virtual roundtable with some of the Chief Justices of the Commonwealth of 29 September 2020. The main focus of the meeting was to share experiences of how the different jurisdictions were responding in the face of COVID 19. The virtual roundtable included the Chief Justices from the Gambia, India, Malaysia, Malawi, New Zealand, Northern Ireland, Nigeria, Scotland, Singapore, Rwanda, Tanzania, Uganda and Zambia. A recurring theme during the Meeting was the use of technology. In a speech to the virtual Legal Wales Conference held on 9 October, the Lord Chief Justice spoke about the Roundtable and said: *“One of the fascinating insights was that whether, in advanced economies or those developing, a rapid enhancement of the use of technology had been the only way to ensure that the wheels of justice continued to turn; and as judges, practitioners and other court users have become familiar with its use initial doubts are being dispelled”*. The Lord Chief Justice also mentioned the cancelled Cardiff Conference: *“I was sorry too not to be able to welcome hundreds of judges and magistrates from across the world in Cardiff for the 50th anniversary of the Commonwealth Magistrates’ and Judges’ Association. That should have happened in September. It became impossible, but we are working with the CMJA to bring an annual conference to Wales before too long”*.

The Judiciary of England and Wales led by Lord Justice Flaux, Lead Judge for International Relations and Lord Justice Dingemans, CMJA Council Member, have been holding a number of online discussions since the 29 September with international partners, including Commonwealth countries on the use of technology in transforming justice systems in the future.

## CMJA- SIFoCC VIRTUAL SEMINAR

Earlier this year the CMJA was approached by the Judicial Office of England and Wales (which acts as secretariat to the Standing International Forum on Commercial Courts (SIFoCC)) with a view to cooperating on a virtual seminar building on some of the issues raised at the Chief Justices’ Roundtable mentioned above.

The aims of the virtual seminar were to:

- To build relations between Commercial Courts in the Commonwealth;
- To share experiences and ideas around the ways in which Commercial Courts in the Commonwealth are managing new ways of working; and
- To develop the commercial court dialogue post-covid around business and human rights.

Judicial Officers from the following countries participated in the seminar: The Gambia, New Zealand, India, Malaysia, Tanzania, Australia, Kenya, The East African Court, Singapore, Uganda, Brunei, Maldives, and Cyprus. Several presentations were given by judicial officers around the Commonwealth who were invited to speak for a maximum of 3 minutes each and the virtual seminar was limited to 90 minutes. Mr Justice Robin Knowles, the Judge with day to day responsibility for SIFoCC, chaired the meeting.

CMJA Council Member, Mr Justice James Dingemans, Court of Appeal Judge made the introductory remarks and mentioned that there had been rapid and investment in new technologies since March 2020 in England and Wales to cope with the adverse effects on the courts of COVID 19.

The Seminar was divided into 3 separate sessions: A session on pre-hearings and managing resulting backlogs, a session on new normal procedures are being explored for courts with respect to

technology and a session on business and human rights issues that had arisen during the last few months.

Many jurisdictions had closed their courts for quite a few months and had only resumed when lockdowns had eased. Court cases had been adjourned, especially those dealing with criminal matters although courts had been able to introduce emergency measures and more flexibility and efficiencies. Commercial courts were more able, in most countries, to adapt to working remotely and moved more towards paper hearings. In some jurisdictions, such as the Gambia, this had generated a better understanding and spirit of cooperation between the legal profession, the judiciary, and stakeholders. In addition, the use of virtual hearings had helped with access to justice especially in some remote areas of countries. However, it was evident that elsewhere, lawyers, who are not always considered as part of the “emergency services”, were frustrated through the lack of work especially in criminal and civil matters because of restricted access to courts due to lockdowns. There were also differences in the way individuals had adapted to the introduction of new technologies and this had revealed, a generational gap with some judicial officers and lawyers having to be retrained quickly on new technologies. It was also evident that the public also needed assistance and some jurisdictions had introduced separate rooms within their court buildings with internet connectivity that allowed access to hearings for those who had no connectivity or access to smartphones. There had also been an adverse effect on women who were expected to fulfil their caring duties and school their children whilst working at home. Open access to courts had also been restricted although some jurisdictions had allowed members of the public, on application, to “attend a court hearing virtually”. The media had also been given access in some territories to court hearings and press statements on cases had been issued regularly. The fact that some virtual hearings were available now online had assisted in creating better understanding of the processes and constraints faced by the judiciary. Not all jurisdictions were happy to have live streaming of their hearings however, although some courts such as the UK Supreme Court had done this for some years.

There was concern that going forward, following the end of the pandemic, cost-cutting processes might be introduced, and virtual hearings might remain in place for certain cases. Courts were part of the community and it was also

difficult to hold virtual hearings. Not only was it tiring for those who participated in such hearings but both lawyers and judges felt that assessing behaviour or body language by others participating at the hearings was lost because of the limitations of IT systems. It was also adversely affecting those judicial officers and lawyers who were isolated at home. The long-term affect on the health of those who were attending virtual hearings was a concern.

Human rights had also come under attack during the last few months. The rights to assembly, free speech and unionise been affected and strikes had been banned in some jurisdictions). The right to work had also been affected with government emergency legislation being put in place and many companies going out of business or reducing their work force or salaries due to the economic downturn. It had also been evident that some unscrupulous factories had produced sub-standard santising equipment and this had put lives in jeopardy. The UN Guiding Principles on Business and Human Rights provide that corporations needed to act responsibly, with due diligence to respect human rights norms, avoid environmental degradation and take responsible action to ensure their activities did not jeopardise the rights.

## UNESCO GUIDELINES ON FREEDOM OF EXPRESSION DURING COVID 19



### Highlights

- Judges and judicial officers must be vigilant and act with the highest integrity and independence to uphold the rule of law and the rights of citizens, particularly the right to freedom of expression, during the COVID-19 pandemic. They should also ensure that the rights of citizens to freedom of expression are not unduly restricted by emergency measures.
- When reviewing measures taken by states to address the COVID-19 pandemic, international and national courts and tribunals should be guided by the principles of necessity, proportionality and non-discrimination.
- While respecting the need to ensure public health and safety, states should ensure that the rights of citizens to freedom of expression are not unduly restricted by emergency measures. States should also ensure that the rights of citizens to freedom of expression are not unduly restricted by emergency measures.
- The current context of public health crisis requires that public authorities, including the judiciary, provide special protection to the different angles of the exercise of the right to freedom of expression and freedom of information. Freedom of expression and unfettered access to public information are to be considered as powerful instruments to fight the pandemic and protect the health of the population.
- In a moment of global pandemic, access to the Internet is a critical element of healthcare policy and practice, public information and even the right to life.
- Journalists shall be properly protected from arrests and/or

Since the outbreak of the COVID-19 pandemic, fundamental rights such as freedom of expression, the right of access to information, and the right to privacy have been threatened across the world. Many States of emergency have been declared in many jurisdictions and this has resulted in serious restrictions of several human rights which have led to cases appearing before the courts in a number of countries. For example, in April 2020, the Malawi High Court temporarily blocked the lockdown measures imposed in the country as the country had failed to put in place measures to assist poorer citizens dependent on work and trade.

In August 2020, UNESCO produced Guidelines on the role of judicial operators in the protection and promotion of the right to freedom of expression in relation with the COVID-19 pandemic. <https://unesdoc.unesco.org/ark:/48223/pf0000374208>

### UNESCO recommended that:

- National courts and judges are the first instance in the protection of human rights and play a fundamental role in reviewing the decisions regarding the declaration of state of emergency and/or exceptional measures affecting fundamental rights.
- The current context of public health crisis requires that public authorities, including the judiciary, provide special protection to the different angles of the exercise of the right to freedom of expression and freedom of information. Freedom of expression and unfettered access to public information are to be considered as powerful instruments to fight the pandemic and protect the health of the population.
- During a public health crisis, state authorities - including the judiciary – must guarantee that the information they provide to the public is accurate, or accurate as possible framing them appropriately as uncertain or evolving. These authorities should also provide clear and honest guidance. Failure to comply with this principle may represent a violation of citizens' right to access to information.
- In a moment of global pandemic, access to the Internet is a critical element of healthcare policy and practice, public information and even the right to life.
- Journalists shall be properly protected from arrests and/or

questioning by law enforcement, limitations to report on the situation and possible disruptions in the operation of hospitals, health care facilities, public transportation or other public spaces. They must also be protected from attacks and intimidation by public officials in order to avoid the dissemination of non-official narratives and information, on the broad basis of the existence of a health emergency and exceptional situation.

- Journalists' work should be considered as the provision of an essential service and protected and enabled accordingly, including by granting access to protective masks and other relevant gear.
- Judicial operators, particularly judges, could pay special attention when reviewing cases related to addressing measures to fight disinformation, guaranteeing that international standards on freedom of expression and privacy are fully respected within those measures.
- When considering possible hate speech cases, it is the responsibility of national judicial operators, to make a proper assessment of each piece of content on the basis of principles, rules and conditions established in international law.
- Health data collection must be accompanied by strict personal data protection guarantees and be time limited while also promoting the public's right to know the outcomes of such collection.
- Justice systems need to incorporate the necessary tools which will allow for the continuation of the provision of this fundamental public service under the circumstances of the pandemic.

## DIARY OF EVENTS

**22-27 FEBRUARY – CASE MANAGEMENT AND ETHICAL BEHAVIOUR – A VIRTUAL COURSE.** Please contact Ade Arimoro for more information: [ade@civilservicecollege.org.uk](mailto:ade@civilservicecollege.org.uk)

**12 SEPTEMBER 2020 – Commonwealth Chief Justices Meeting (by invitation only), Accra, Ghana**

**12-17 SEPTEMBER 2020- CMJA TRIENNIAL CONFERENCE ON "Access to Justice in a Modern World", Accra, Ghana**

## Support the Rule of Law with a Legacy to the CMJA

### Why Leave a Legacy to the CMJA?

The CMJA is a charitable organisation which has been working towards achieving respect for the rule of law, fundamental values and the respect for human and peoples' rights across the Commonwealth for 50 years.

All Gifts to the CMJA will assist the Association to achieve its objectives:

- To strengthen its ability to fulfil functions of upholding the Rule of Law throughout the Commonwealth;
- to support the magistracy and the judiciary by providing moral and practical support to judicial officers facing improper challenges to their independence;
- to give advice and training and to provide judicial mentoring so that judiciaries across the Commonwealth can improve standards.

#### HOW DO I GET IN TOUCH?

For more information or advice, or for suggested wordings for other types of gift, please contact

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Web address: [www.cmja.org](http://www.cmja.org)

**CMJA** 

**19<sup>th</sup> TRIENNIAL CONFERENCE**

**"Access to Justice in a Modern World"**

  


**12-17 SEPTEMBER 2021  
ACCRA, GHANA**

**SAVE THE DATES!**

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

## NEW MEMBERS

### NEW MEMBERS

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

#### AUSTRALIA

- Mr AK Wang Chas Wang

#### CAMEROON

- Judge Emmanuel Nkea

#### CANADA

- Justice Myra Bielby
- Justice Robert Maranger

#### ENGLAND AND WALES

- Master John M A Dagnall
- District Judge Timothy Godfrey
- Mrs Suzanne M. Parkinson
- Mr John-Ross Weir

#### GHANA

- Justice Kwasi Anokye Gyimah

#### INDIA

- Mr Robert Prince

#### NIGERIA

- Hon. Mrs. Justice Jane Inyang

#### MALAYSIA

- Datuk Lim Thein Phin Kevin
- Datuk Seri Shiok Fu Teo

#### PAKISTAN

- Justice Rehmat Ali

#### SCOTLAND

- Mr Pino Diemidio

## CMJA VIRTUAL COURSE ON CASE MANAGEMENT AND JUDICIAL ETHICS

Whilst the CMJA has had to postpone the above course, which was due to take place in October 2020, we are looking forward to holding this course virtually in the **week of 22 February 2021**. The CMJA has put together a comprehensive and enlightening virtual programme, in conjunction with UK Civil Service College. The programme has been specially designed to explore

the intricacies of case management principles and the practicalities of judicial ethics in both civil and criminal cases. Our highly experienced judges will take you through judgement writing in plain English, principles of judicial ethics and practical application, efficient pre-trial preparation, using multi agency approach to enhance case progression as well as the appropriate use of special measures for the vulnerable. The programme also provides a collegial space for participants to investigate and tackle challenges within their multi-jurisdictional environment. This highly participatory programme will

challenge the norms of judicial ethics and expose you to new ways of handling both criminal and civil cases in a new and unpredictable environment. As this is a virtual programme conducted on Zoom or Microsoft Teams, there will be an exciting opportunity to observe the proceedings of a live UK court and what happens behind the scenes.

Register now by contacting Ade Arimoro on [ade@civilservicecollege.org.uk](mailto:ade@civilservicecollege.org.uk)

