

the Commonwealth Judicial Education Institute Report



September 2006 Edition

CJEDI and the Judiciary Confront HIV

In June 2006,

the Commonwealth Judicial Education Institute embarked on a project in partnership with the World Bank to assess the situation in several sub-Saharan African countries with regard to HIV/AIDS and the judiciary, then develop a judicial education programme that can be used in the near future to educate judicial officers and other court staff on the subject.



Photo Courtesy of Wikimedia Commons

Four judges from countries in the target region flew to Halifax to participate in developing the programme: her Worship Flavia S. Anglin, Registrar of the High Court, Uganda; the Honourable Justice Jones V.M. Dotse, Court of Appeal, Ghana; the Honourable Justice Rahila H. Cudjoe, Nigeria, Chief Judge of Kaduna State (also the first woman High Court Judge in that country and the first woman to become the Chief

Judge of that state); and the Honourable Justice Abdu Aboki, Federal Court of Appeal, Nigeria.

The judges received guidance from the renowned Dr. N.R. Madhava Menon of India and CJEDI's chair, Judge Sandra Oxner. Justice K.G. Balakrishnan from the Supreme Court of India (and the next Chief Justice of that court) also participated in a development session.

Justice Dotse began his involvement by delivering a substantial paper of local overview and strategies for addressing the legal, gender and capacity dimensions of HIV/AIDS in Ghana.

The group met to discuss problems associated with HIV/AIDS and violence against women observed in their home jurisdictions.

Included in this was discussion of customary practices still observed in remote parts of those countries, which have harmful effects on women, such as wife inheritance and

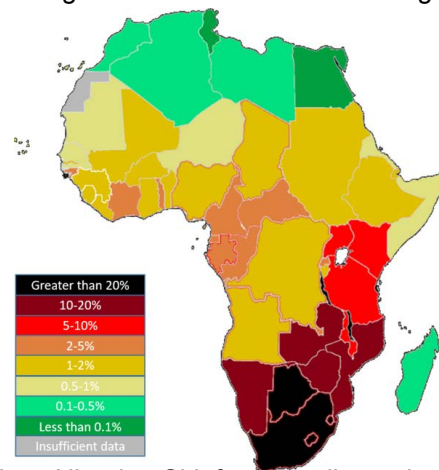


Photo Courtesy of Wikimedia Commons

Number of people in Sub-Saharan Africa living with HIV: 24.5 million.

Source: the United Nations 2006 Report on the Global Aids Epidemic

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female genital cutting. Discussion then moved to the difficulties that arise in law related to HIV/AIDS and gender issues, as these intersect with laws in different jurisdictions and local social conditions. The goal of the programme, however, was not to solve legal dilemmas related to the issue, but prepare the judiciary for such issues before they come to court, so that judges and other court staff will then follow best practices and have available the best information with which to conduct trials and arrive at decisions.

This is essential in a region that suffers from the highest prevalence of HIV infection in the world, and where, according to the UN's 2006 Report on the Global Aids Epidemic, more than 24.5 million people are living with HIV. Indeed, the report also indicates that in one of the target countries, Uganda, the prevalence of HIV infection among adults aged 15 – 49 is approximately 6.7 %.

The program consists of introductory material with current information about HIV / AIDS and some of the legal issues surrounding it, including key cases and developments in African and Commonwealth countries. This material may be adapted for the target

audience and jurisdiction and reproduced for easy distribution and basic education needs. The second level consists of five session plans on topics such as the myth and reality of HIV/AIDS, the issue of nondisclosure of HIV-positive status in consensual

relations, and the treatment of women. The intention is to involve participants in discussion of these difficult topics and raise awareness with teaching materials.

Members of the group also participated in a panel discussion of the problem that discussion was taped and transferred to DVD, for use in educating other judges.

The next step is for the participating nations, with assistance from CJEI, to make applications to the World Bank or other funding agencies so these programmes may be held in-country, and adapted to meet local needs. Additionally, CJEI will make the resulting materials available on its website through the Gateway project so these may be accessed by other countries.



CJIE GATEWAY PROJECT UPDATE

CJIE's Gateway Webmaster, Rui Zhang, has begun creating websites for countries that have responded to the initial call for participants in this exciting new project designed to make judicial education materials available around the world. Website structures have been created for five countries – Ghana, Malawi, Nigeria, Sierra Leone and Tonga – and all fourteen structures will soon be completed, while participating nations scan materials for uploading.



Eventually the Gateway will link judicial education resources of as many as 53 countries in the Commonwealth, organized into subjects such as General Judicial Education, Impartiality, Competency, Efficiency, and Effectiveness, and will consist of print, audio and video teaching materials. The web-linkage of resources will strengthen judicial education programmes, aid in the sharing of resources, and help judicial educators find common solutions to common problems.

Accessibility is the key goal of this CJIE project: rather than having to search the Internet for such resources or have them delivered by mail, judicial educators can start at the Gateway and immediately access materials. If participating countries do not have a website related to judicial education, CJIE will create and host one for them, in the appropriate format. March 31, 2007, is the anticipated completion date of the Gateway.

A Conversation with



Participating in CJEI's 2006 Intensive Study Programme was the Honourable Justice Gibbs Salika, who sits on the Supreme Court of Papua New Guinea. Papua New Guinea ("PNG") occupies the eastern half of the island of New Guinea and many islands, north of Australia. Since World War one, two territories were administered from Australia by two different regimes, until the country gained independence in September of 1975. The law of the country is English common law as of the date of independence, as modified by PNG's own legislation and courts since, with reference to the custom of traditional communities. The legislature has passed laws creating customary land title, creating a legal basis for inalienable tenure to indigenous groups. The Constitution too states that traditional villages and communities should remain as viable units of society – and in this country of five million people, there are more than 850 traditional groups, with as many languages.

Educated at the University of Papua New Guinea, Gibbs Salika practised as a Crown Prosecutor for eight years before being appointed as a Senior Magistrate. He was appointed to the bench in 1990, then became a Justice of the Supreme Court and National Court of Justice; the national court is the trial court (civil and criminal) and the Supreme Court hears appellate and Constitutional cases.

Tell me about current state of judicial education in PNG.

We've been involved in judicial education seriously since about 1996; before that, some judges came to CJEI for this course, including the current Chief Justice, Sir Mari Kapi. A former Chief Justice who attended the programme, Sir Arnold Amet, returned and really got judicial education started at home. He organized a regional body with the Chief Justices and tried to get them together to create something like a judicial academy for the south pacific region. But the financial situation of the member countries prevented it. The body did, however, create a Pacific Judicial Education Program, with funding from the Asia Development Bank, Australian Aid and New Zealand Aid. That's where we started going for judicial education programs.



The first thing we were told to do was have a training needs analysis done in our jurisdiction. They provided the questions and outlined the necessary steps; we did that in our country and took the data back to them to be converted; that way, we could prioritise the area of law for judges to receive training on. Then we were taught how to prioritise: how to run a 2- or 3-day program and create session plans. It was very useful. We could then hone in on individual sessions. This is where you need someone like Dr. Menon – someone who can hone in on the body of the subject, and give a programme that real focus. That's part of the advantage of coming here, to the CJEI



Photo by Christopher Michel, CCA

program, to give you the real focus of what you need in your session plans.

With the session plan complete, each participant presented his or hers, and a video was made, so you can see for yourself how well you've understood and realized your objective. Most importantly you've done the actual thing yourself with all the planning.

What do you hope to take back to PNG from this programme?

I hope to bring back similar process as discussed during the week, reinforcing what is already being done for judicial education in PNG and confirming that this is the way to go. I would like to see that everybody else around the world is doing a similar kind of thing, that judges from Canada would come and tell us, "We've done it this way, and this is the way to go; the developed world is doing this, and we are following. Let's all head in one direction."

How is judicial education funded?

I am chair of a judicial education committee which makes proposals for activities on a yearly basis. Once budgeted, the Chief Justice must approve this; he's been supportive. This is part of the overall budget and done

before that is submitted to the Prime Minister.

Perhaps a higher voice than that of the Chief Justice (with regard to funding) is that of the quarterly Judicial Consultation Meeting; if the body of judges says that a trip to Halifax must happen, then it will. When that body meets, every judge's voice is heard, and if the vote is carried: that's it. It has a big influence on what happens.

But we have problems with finding people with appropriate resources – the judges have no time to consider all these aspects of judicial education. We need people thinking about course content full time, people we can rely on, like Dr. Menon.

We'd like to have a regional body, taking care of PNG, Solomon island, Vanuatu, Fiji, Tonga, Samoa, the Cook Islands – so many little states. We see ourselves as a leader in the region because we're the most populous, and probably have more lawyers than all the other states combined. A judicial academy for the Pacific Region – that would be ideal. Our former Chief Justice was of that mind, and that's my way of thinking too. We face so many similar problems (like African countries). When we put the idea forward to the smaller states, however, they told us, "Okay, you start it, put the money where your mouth is, and pay for personnel, maintenance, et cetera."

I myself had no judicial training before I got onto the bench. All I had was my experience as a lawyer and then bang, I was appointed as a magistrate, straight on, with no training. When I got called to the higher bench, again: no training. I was sworn in on a Friday, and Sunday I was told to go on circuit. I wasn't perturbed; it just came naturally.

But ideally, it would be good to have prospective judges or new appointees to go through an orientation or judicial education program – so they know what to expect and some of the challenges that lay ahead of them. CJEI has been a leader in this, getting judges to think like that. Our current Chief Justice came back a changed man: “This is what we need to do!”

The public perception is that judges have reached the top echelon of their career – why do they need training? They’re expected to already know everything. To that I would say, Yes, I’ve reached the top of my career, but I do not know everything. I might know the law, but courts run on procedures and rules that judges must learn these, and be kept abreast of changing procedures and global trends. Even my own parents said, “What are you going to do over there? You’re already a judge; you don’t need to be trained!”

Oh yes, I do. There are long lists of court cases to be dealt with, and we keep doing things the same way, year in, year out. Case management is one area that needs to be addressed. What can judges do to reduce caseloads?

What about ADR?

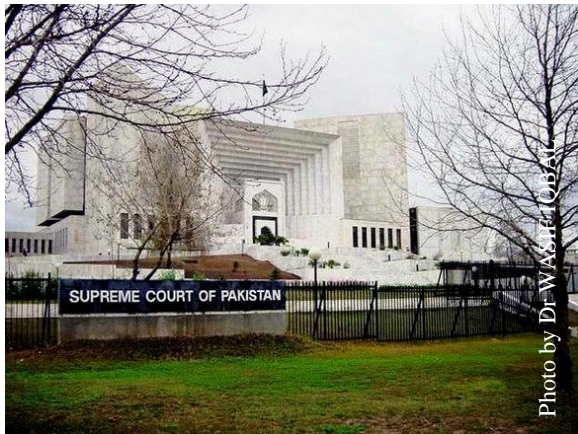
In PNG, when a decision is court-sanctioned with an official seal, people will agree to it. But outside of that? People won’t accept it. ADR has its place, but it’s of limited use. We still maintain our village courts, which have a role to play resolving petty disputes using customary law. Those people need training too, in areas such as perception of bias and understanding the limits of their power – the village chiefs used to be able to make any order up to execution. In an absolute village setting, the chiefs might still tell their people to go to war, and this will happen perhaps with death on both sides, as a result of the orders. Those same chiefs might decide customary law disputes. But continuing education programs exist to say, that isn’t the way to go, and formal government processes are the appropriate place to resolve these disputes.



What are some other issues the judiciary currently faces?

Our magistracy, although now being recognized as part of the whole judiciary, is actually differently established by the Constitution and separate. It has a separate head, the Chief Magistrate, and the Chief Justice has no control over the magistracy. If the judiciary was just one, from top to bottom, it would be better for judicial education and continuity: magistracy could have a greater career path, too. Being under a separate head, the magistrates don’t get the same priority as higher court judges – the higher courts have higher salaries and more privileges, whereas magistrates’ conditions are similar to those of civil servants. We’re trying to correct the problem but it was only in 2000 that magistrates were recognized as part of the judiciary.

PAPUA NEW GUINEA



The Supreme Court of Pakistan Celebrates *50 Years*

Half a century

has passed since the Supreme Court first sat in Pakistan, and this significant milestone is being celebrated with due ceremony and reflection this

summer.

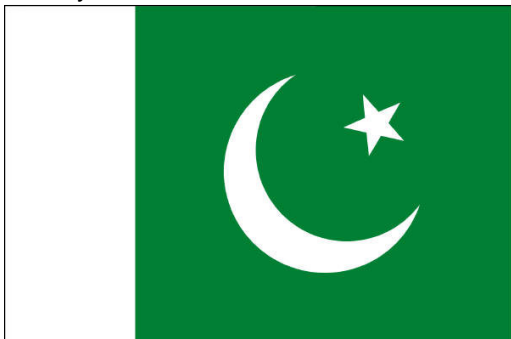
Celebrations to mark the occasion will centre on a four-day program in mid-August, featuring a panel conference, the unveiling of a new monument, a flag-raising ceremony, and several other events. Organizing the event are sitting Justices of the Supreme Court, including the current Chief Justice, the Honourable Mr. Justice Iftikhar Muhammad Chaudhry, and the Director of the Federal Judicial Academy, Mr. Moazzam Hayat. Among the topics being discussed at the conference are the challenges of delayed justice, terrorism, cyber laws, and intellectual property law and globalization. The Chair of CJEI, the Honourable Sandra Oxner, is participating in the conference and speaking on the subject of judicial education.

Pakistan's Supreme Court was established with the enactment of the country's constitution on March 24, 1956. It succeeded the Federal Court of Pakistan, which had been established in 1949 and sat in locations such as Lahore, Karachi, and Rawalpindi. In 1989, then-Prime Minister of Pakistan Benazir Bhutto broke the ground for construction of a new building on Constitution Avenue in Islamabad, and the first phase was completed in 1993. The country's constitution also provides that the Court may sit from time to time in other places, and so, for the convenience of litigants, it has Branch Registries in Lahore, Karachi, Quetta and Peshawar. The Supreme Court building in Islamabad blends Islamic and European architectural conventions with a magnificent marble exterior, designed by the renowned Japanese firm of Kenzo Tange Associates.

"A day to rejoice in humility for all those engaged in the dispensation of justice."

The Chief Justice and eighteen other Justices sit on the bench, routinely deciding more than 1700 cases per month – in January of this year, the Court decided 3,476 cases.

Since the establishment of the state of Pakistan in 1947, political stability has sometimes been compromised by conflicts with its neighbour India, natural disasters and internal dynamics, including a coup d'etat in 1958 and, in 1999, a military coup that brought General Pervez Musharraf to power. The Supreme Court played a significant role in shaping current history: it was called upon to rule on the legitimacy of Musharraf's military government, and did so, accepting its justification under the doctrine of state necessity and allowing the military rulers three years to implement changes before holding free elections. The Court maintains institutional integrity despite the suspension of the constitution by such military rulers. In 1998, the Court overturned a government order that would have suspended some



fundamental rights of citizens. Last year the Court also suspended the acquittals of five men in a controversial rape case involving an illiterate woman from a village in the Punjab.

As the introductory note to the Conference suggest, the anniversary of Pakistan's Supreme Court is cause for both celebration and reflection on the role it plays in the life of the citizenry. "It is a day to rejoice in humility for all those engaged in the dispensation of justice. It is a day of earnest deliberation, a day of reckoning and a day of re-dedication to the goals ahead."

Some Reflections on Judicial Training

By Prof. (Dr.) N.R. MADHAVA MENON
*Former Director, National Judicial Academy
Bhopal, India*

For a country of India's size and complexity, generating over 15 to 20 million cases every year, the 15,000-strong judiciary is perhaps too small for administration of justice. It is amazing to outside observers that the system processes over sixteen million cases annually and still manages to entertain large number of public interest litigation cases (PIL) of unknown litigants who are themselves unable to access courts because of social and economic reasons. The average Indian judge is indeed over-worked and under-paid compared to many of his counterparts in the Commonwealth. Nevertheless, he is undertaking innovative methods to address the perennial problems of delay and arrears (backlog), which is a black spot in an otherwise illustrious story of successful dispensation of justice. In this endeavour, judicial education and training - which is a recent development in India - is playing a significant role in design and techniques.

India at present has eighteen State Judicial Academies each attached to a High Court of the State concerned and an independent National Judicial Academy at Bhopal under the supervision and control of the Indian Supreme Court. While the former is to cater to the training needs of the subordinate judiciary (trial courts), the latter is intended for the higher judiciary (appellate and constitutional courts). While induction training for the subordinate court judges is mandatory and extends for a whole year, continuing education as well as refresher programmes for higher judiciary are optional for judges. The National Judicial Academy, which commenced its activities only in 2003, has in the last three years conducted over 40 residential courses on a variety of subjects to over two thousand judges presiding over the Districts, the High Courts and the Supreme Court. For an academic like me, the tenure at NJA has been a revealing and rewarding experience on



judicial dynamics and judicial administration. No doubt, there is an urge to learn (perhaps unlearn and relearn) provided the learning is incremental and structured in the context of courts' functioning. The work environment of courts and the unavoidable institutional constraints, including the often-unhelpful attitude of superior courts, are said to be factors dampening initiatives for change and reform. While it is easy and welcome to update knowledge of law (legislative and decisional) in training programmes, it is not that easy to impart skills and attitudinal changes to be able to manage efficiently new jurisdictions, as well as accumulated problems of conventional litigation. Of course, the most challenging part of any training is the development and maintenance of highly ethical behaviour expected of judges consistent with independence and impartiality of judiciary.

One thing which clearly emerged from my experience in judicial education and training is that it is integral to judicial performance and judicial reform. It is better organized in independent institutions, preferably manned by a fair mix of academics (*continued on page 13*)



AT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA: AN INTERVIEW WITH SIR DENNIS BYRON

For the past two years, the President of the Commonwealth Judicial Education Institute, the Honourable Chief Justice **Sir Dennis Byron**, has been serving as a judge in the International Criminal Tribunal for Rwanda in Arusha, Tanzania. The tribunal seeks to prosecute criminals for the genocide in Rwanda, with challenges unique to the setting, the circumstances, and this horrific episode in history.

When did you begin your service? In which part of the Tribunal do you serve - trial or appeals?

My service at the International Tribunal for Rwanda began in June 2004. I serve as a Permanent Judge in the Trial section of the

Tribunal, assigned to Trial Chamber III.

How different is this from your role as Judge at home (which is where?) What kind of special training or preparation was involved for this role?

My home is St. Kitts-Nevis, a member State of the Organisation of Eastern Caribbean States. I was Chief Justice of the Eastern Caribbean Supreme Court. I presided over its Court of Appeal and had Administrative and related responsibilities.

As a Trial court Judge my functions are obviously different. I have had previous experience in that capacity, but the ICTR is an International Criminal Court with a specific mandate to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994 in accordance with the UN Statute which established it. The jurisprudence and the rules of practice and evidence are specialized, and different from those applied at the domestic level.

No special training was provided, and all judges who are expected to undertake their judicial function immediately upon their appointment. The safeguard is provided by the criteria set for appointment which is prescribed in Article 12 of the Statute. This prescribes that the judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices.

How many trials have you presided over? Does one judge preside over the entire trial, or is it the work of multiple judges?

The complement of judges is 9 permanent judges and 9 ad litem judges. The statute mandates that the presiding judge must be a permanent judge. The trials are conducted by panels of 3 Judges, a presiding judge and two others, who decide on the law and the facts. Article 19 of the Statute mandates that Trial Chambers shall ensure that trials are fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses. The implementation of these rules involves a wide range of pre-trial adjudication. This is also conducted by a Chamber of three judges, who would have discretion to appoint one of their number to adjudicate on certain interlocutory applications.

I have been assigned to four trials, and as presiding judge in relation to three of them. One trial has been completed, one is at the stage where the judgement is now being prepared for delivery, one is in progress, and the fourth is scheduled to commence in September. In addition, I have been involved as the presiding judge on several pre-trial chambers.

The Tribunal has an official end date - 2008. Is this a realistic goal? Can prosecutions continue after this date? Will you remain part of the Tribunal until it is closed?

The requirement to complete the work of the Tribunal by the end of 2008 does impose serious challenge. However, the challenge has been accepted. The plenary session of the Judges have adopted a "completion strategy" which has been designed to achieve that objective and we are working assiduously. No prosecutions will continue after that date unless there is an extension of the mandate. One of the strategies that has been approved by the UN Security Council, is to require that the existing judges, many of whom would have been completed their tour of duty in May 2007, stay on to end December 2008. I am in that category. In any event, I am involved in an ongoing trial with a rather long witness list, and I will have to stay on for its completion.

How are language issues dealt with? In what language does the Tribunal operate?

There are two official languages, English and French. Most of the accused speak French, but little English. The language spoken in Rwanda is Kinyarwanda, and many of the witnesses speak only this language. Many of the documents tendered in evidence were originally in this language.

The lawyers, both prosecution and defence, come from a variety of backgrounds with differing language skills. The rule is that they must be able to work in either English or French. The issue of translating the paper work is challenging because of its enormity. There are simultaneous translations in the court room in all three languages. Transcripts of evidence are prepared in both official languages. One of the minimum guarantees to a fair trial to which each accused is entitled, is the right to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her. There is a large translation department that undertakes the related tasks. Administrative steps are also undertaken to facilitate the constitution of defence teams with appropriate language skills. But because of the volume of work involved, there have been controversy on the issue of exactly what documents are required to be translated to enable understanding of the nature and cause of the charge. There is also the issue of the time frame for responses, in the sense that if the rules prescribe that responses must be filed within fixed time periods, to what extent should those rules be abridged or extended by reason of delay in the availability of translations. These and related issues have been the subject matter of numerous motions and a body of jurisprudence has developed on the impact of language issues on the fair trial rights of the accused.

Do you face any logistical problems in the court? What are the biggest challenges?

There are many logistical problems. I have just referred to the challenge of language. I would identify the biggest challenge to the trial, as the circumstance that it is not being conducted in the country where the activities being tried occurred. This has affected both the investigation stages and the trial process. The investigators were not supported by the legislative framework of police powers that assist investigations on a national level. The potential witnesses included suspected perpetrators and victims. They are scattered around the world, with varying immigrant status. Many are inside Rwanda; many are in detention, either pre-trial or serving sentences. This is also the case with witnesses in other countries. Many potential witnesses are affected by fear for their security. The tribunal has to rely on the willingness of interviewees and the invocation of article 28 which requires States to cooperate with the ICTR in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law. Synchronising the movement of witnesses to guarantee their availability when required by the court, and providing for their security, involves a wide range of activities, many of which require the exercise of judicial discretions. These could range from orders for the transfer from National Detention Facilities to the detention facilities of the Tribunal, to orders for hearing testimony by video link from other parts of the world, and a wide variety of others. A division of the Registry, the Witness Section, has been established to manage this important support to the trial process.

and Victims

As this is the UN's first war crimes prosecution, I imagine there must be issues with development of the law itself. How is this law developed? To where do tribunal judges look for precedents?

In his book on the Principles of International Criminal Law, Gerhard Werle points out that the idea of universal criminal justice had its roots far back in human history. In the 20th Century however these ideas began to be conceptualized as legal issues, and developed momentum in the decades following the horrors of World War II and the genocide of the European Jews. He identified three milestones that shaped the development of International Criminal Law. The "Nuremburg Principles" as applied by the Nuremburg Tribunal and affirmed by the UN General Assembly; The two UN-created ad hoc Tribunals for the former Yugoslavia and Rwanda; and the high point being the crystallization of the International Criminal Court (ICC).

WANTED FOR GENOCIDE

FELICIEEN KABUGA AUGUSTIN BIZIMANA JEAN-BAPTISTE GATETE AUGUSTIN BIZIMUNGU THARCISSE RENZAZO

ARRESTED **ARRESTED** **ARRESTED**

IDELPHONSE HATEGEMANA YUSUF JOHN MUNYAKAZI RYANDIKAYO CHARLES SIKUBWABO ALOYS NDIMBATI

INDICTED

Rewards of up to U.S. \$5,000,000 are offered for information that leads to the arrest of persons indicted by the International Criminal Tribunal for Rwanda for serious violations of international humanitarian law and their transfer to Tribunal custody. If you have information about any of the above persons, please contact Rewards for Justice through the telephone number or email below.

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UP TO U.S. \$5,000,000 REWARD

(INTERVIEW – continued from previous page) The sources of International Criminal Law are clearly defined. As part of the international legal order, international criminal law originates from the same legal sources. These include international treaties, customary international law, and general principles of law recognized by the world's major legal systems. Decisions from international courts and international legal doctrines can be used as subsidiary means for determining the law. Decisions from national courts applying international law can also be referred to. The ICC statute and its supplements have partially codified many of these principles.

The two UN ad hoc Tribunals, ICTY and ICTR, have their own Statutes and Rules of Practice and Procedure. These contain definitions of the crimes to be tried and regulate the practice and procedure of the trials. Over the years of their existence the ICTY and ICTR have published all decisions and judgements. This is a substantial precedent base. The decisions of the Sierra Leone Court also provides precedents on aspects of international criminal law and procedure. There is a



growing body of legal texts, case reports and other legal literature on these issues.

Who represents the defendants? Do defendants ever represent themselves?

The statute guarantees fair trial to all defendants and one of the elements of fair trial is legal representation.

Under the rules of practice and procedure any defendant who cannot afford to provide such legal services benefits from the legal aid scheme established by the tribunal.

The rules provide for Defendants to opt to conduct their own defence. However, as was seen in the Milosevic Trial in the Hague, the Trial Chamber's obligation to guarantee a fair trial, requires it to be interested in the exercise of such an option to the extent that it must be assured that fair trial rights of the accused would not be adversely affected by such a decision. However, no such situation has as yet evolved at the ICTR, because, as I am presently advised no one at the ICTR has exercised that option. Under the legal aid scheme the relevant organ of the tribunal established a list of suitably qualified lawyers, from every continent of the world, and the accused can make selections from that list. The legal team provided usually includes, one leading counsel with an assistant counsel, a legal assistant, and investigators.

What is the range of sentencing options?

Article 23 of the Statute prescribes the sentencing options. The penalty is limited to imprisonment and the Trial Chambers are required to have recourse to the general practice regarding prison sentences in the courts of Rwanda, and to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

The Tribunal and the Appeals Tribunal work in close proximity. What is this like? Do the same judges who decide tribunals also decide appeals? How often are decisions successfully appealed?

The ICTR is located in Arusha, Tanzania. The ICTY is located in the Hague, Netherlands. Both Tribunals share the same Appeal Chamber. It is constituted by appointment from among members of both Tribunals. The Administrative base of the Appeal Chamber is in The Hague. At the ICTR the appeal judges are only seen on a few occasions when they hear appeals or deliver judgements in the ICTR trial chambers. Much of their adjudicative work relating to the ICTR is done in The Hague. Although the judges are selected from the same panel, once appointed they do not do any more trial work while they are in the Appeal Chamber. Of course if they have been sitting as a trial judge they would not sit on an appeal chamber in which any decision in which they were involved at the trial level is under appeal. I am afraid that I do not have immediate access to the statistic requested. There are a number of appeals, both interlocutory and final. I suppose that a definition of success is required. In many appeals there is more than one issue. It is not unusual for the result of the appeal to include reversals and affirmations. However, it would seem to me that the level of affirmation is significantly high, and that there is satisfaction with the competence and impartiality of the Trial chambers.



You must have many strong memories from your experience so far, working in the Tribunal. Are there any memories or events that stand out particularly for you?

From a personal perspective, it has been particularly rewarding to work and reside on the African Continent. I have been struck by its diversity. For example, I pick on the weather. Within the first month of my arrival in June 2004 I had the unexpected and memorable experience of the wintry months of the tropical part of the southern hemisphere. I certainly had not anticipated that the most important furnishing in my home would be the heater in my bedroom.

I imagine this work might be hard on people working for the Tribunal. What do you do for your own mental well-being? How do you relax?

Living in Arusha is easy and comfortable. It is a newly developing city with a population of about 300,000. Its social life is still rather conservative. It is the jumping off point for game drives on a number of national reserves including the world heritage Serengeti. It is also at the base of the famous Mount Kilimanjaro. It is a growing tourist center with hotels, lodges and restaurants. There are lots of opportunities for outdoor activities, breathtaking scenery that supports walks and hikes and sightseeing. I have been able to find some time for golf and tennis. The society is multi religious. My wife and I have enjoyed hosting and entertaining our relatives and friends. At home we have a good cable TV service, the Internet and a Library.

New Ground Broken at the ICTR

- first case in which an international tribunal has been called upon to interpret the definition of genocide as defined in the Convention for the Prevention and Punishment of the Crime of Genocide (1948)
- the guilty plea of Jean Kambanda, former Prime Minister of Rwanda, led to the first time that an accused person acknowledged his guilt for the crime of genocide before an international criminal tribunal. It was also the first time that a head of government was convicted for the crime of genocide.
- the first judgement Nuremberg in which the role of the media has been examined in the context of international criminal justice



The Honourable Chief Justice Sir **Burton Hall**, a CJJI Fellow in 2002, was elected last August as one of 27 ad litem judges to the International Tribunal for Prosecution of Persons Responsible for Serious violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. This is a four-year term that commenced in August 2005.

BAHAMAS

The Honourable Justice **Sophia Akuffo**, a CJJI fellow in 2002, was one of eleven judges elected to the African Court On Human and Peoples' Rights in January. The judges, the first of this Court, were sworn in on July third. States, individuals, and organizations belonging to the African Union will be able to petition the court on human rights violations.

GHANA

Though he retired from the Supreme Court of Papua New Guinea in December of last year, the Honourable Justice **Don Sawong**, a CJJI fellow in 2002, has been busy with other activities and has been appointed as a one-man Commission of Inquiry into a statutory corporation. He will begin this new role soon.

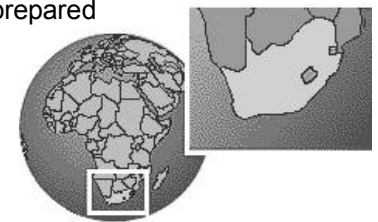
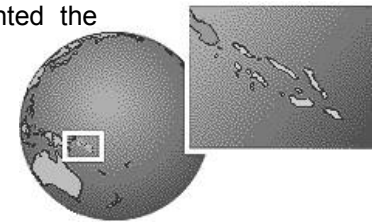
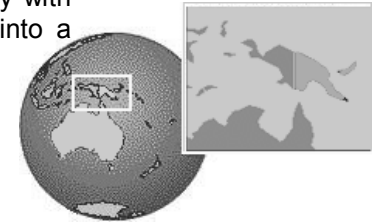
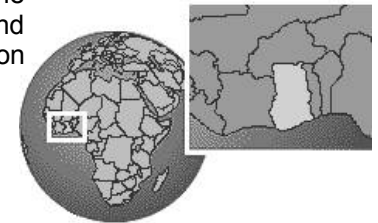
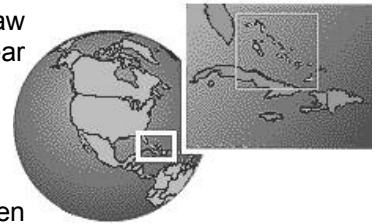
PAPUA NEW GUINEA

Also having retired from the bench, but asked to take on new duties, is the Honourable Mr. Justice **Frank Ofagioro Kabui**, a CJJI fellow in 2004, who has been appointed the Chairman of the Law Reform Commission.

SOLOMON ISLANDS

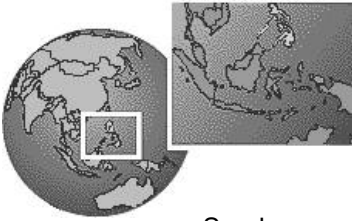
The Honourable Justice **Leona Theron**, CJJI 2005, has been invited and will be an acting judge of the Supreme Court of Appeal from June 1 until November 30, 2006. Also, with the Chair, Deputy Chief Justice **Dikgang Moseneke**, a CJJI fellow in 2006, a bill was prepared to be submitted to Parliament creating a judicial education institute for South Africa.

SOUTH AFRICA

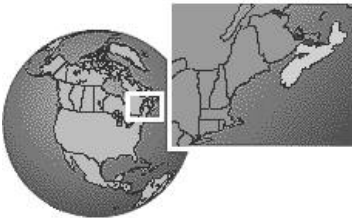


Mme **Eulogia M. Cueva**, a Fellow in 2001, is still with the Philippine Judicial Academy as Professor II and teaching political law at the Lyceum of the Philippines, and has been appointed Deputy Chief Legal Counsel for the Philippine National Bank and concurrently, Head of Litigation.

PHILIPPINES



Send us *your* news. We're eager to share in **the CJEI Report** your news of elevations, marriages, births, honours, or deaths, and other news related to the judiciary such as new civil procedure rules or innovations in case management. We'd also be pleased to learn of any recent judicial education programming that you or others in your court have attended or hosted. Our office email address is cjei@dal.ca and our full contact information may be found on page 16 of this Report.

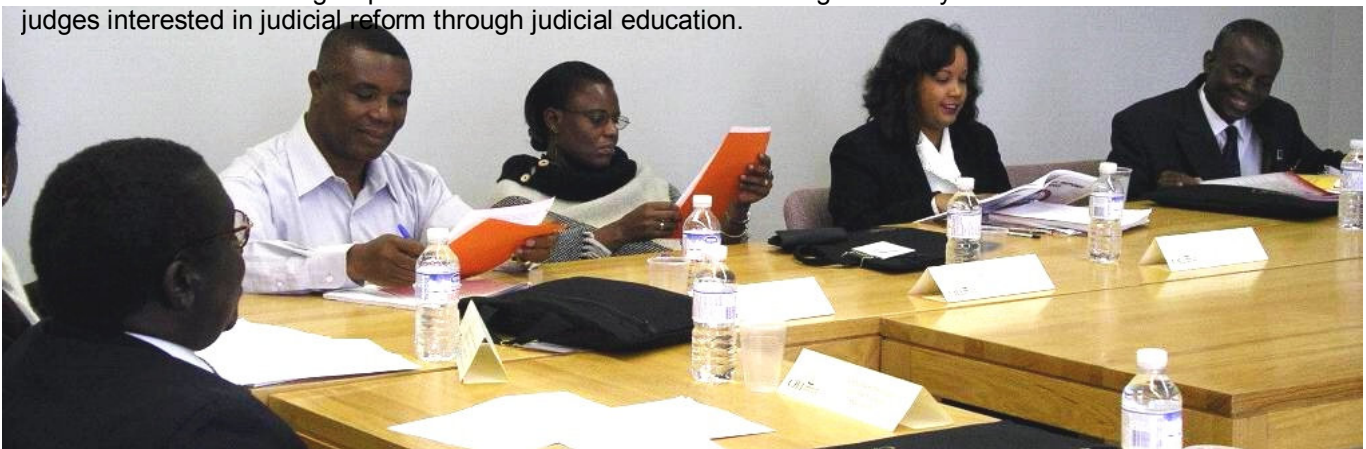


HALIFAX, CANADA

Reflections on Judicial Training by Dr. N.R.M. Menon *(continued from page 7)*

and judges. Of course, the programmes have to get approved by a judicial council consisting of a representative body of judges drawn from all levels of the judiciary. But the implementation has to be in academic hands carefully chosen by the judges themselves. The faculty invariably includes lawyers, judges and court administrators who are trained as trainers in one or more programmes in a good institution. The methodology can be as innovative and challenging as possible provided it is deeply interactive and participatory. Need assessment for designing programmes is necessary but always difficult and incomplete. Standardization and quality management are challenging tasks in which networking and co-operation with kindred institutions may help. There is immense scope for distance education techniques for promoting continuing education at a functional level. In fact, money spent on judicial education (which is miniscule part of judicial budgets today) is a wise investment in improving the dispensation of justice in the long run.

The efforts of the Commonwealth Judicial Education Institute (CJEI) and similar inter-Judicial bodies can contribute a great deal in co-operation and exchange of ideas and techniques in an area which is relatively new and comparatively under-developed. The annual Intensive Study Programme held by CJEI for the benefit judicial trainers and those who control judicial training in the Commonwealth is a tremendous learning experience which deserves to be strengthened by involvement of more and more judges interested in judicial reform through judicial education. of judicial trainers and those who control judicial training in the Commonwealth is a tremendous learning experience which deserves to be strengthened by involvement of more and more judges interested in judicial reform through judicial education.





Court Reporter



On June 20th, the Caribbean Court of Justice sat for the first time in its new location on Henry Street in Port of Spain, Trinidad and Tobago. The CCJ was inaugurated in 2005 and replaced the Judicial Committee of the Privy Council as the court of final appeal for the Barbados and the Republic of Guyana, with the expectation that other English-speaking countries in the Caribbean will also make it their final appellate court, as envisioned in plans going back to February 2001. In addition to its appellate role, the CCJ is also the sole body of original jurisdiction for interpreting and applying the Revised Treaty of Chaguaramas, which fourteen Caribbean states have signed, setting out the Single Market and Economy for the region.

The June case was a closely watched appeal by the government of Barbados seeking to overturn a Court of Appeal decision in that country which commuted the death sentences of a pair of convicted murderers. Judgement was reserved upon conclusion of the hearing. Pro- and anti-death penalty groups throughout the Caribbean have followed the case with great interest.

The Honourable Mr. Justice **Adrian Saunders**, a CJEl fellow in 1998, sits on the Caribbean Court of Justice.

THE CARIBBEAN

The Philippine Congress recently passed into law the Alternate Dispute Resolution Act, regulating the use of ADR mechanisms. The law covers voluntary mediation, med-arb, mini-trials, neutral evaluation and arbitration (i.e. domestic, institutional, construction industry and international commercial arbitration.)

THE PHILIPPINES

Honourable Lord Chief Justice George Kingsley Acquah received Ghana's highest national honour, the Order of the Star of Ghana (Member).

GHANA

On June 26th, the Honourable Justice Arthur Haggai Okello Oder of the Supreme Court of Uganda passed away. After the Chief Justice, Justice Oder was the most senior member of that bench.

Justice Oder studied law in England, receiving his Honours LLB from the University College of Wales, Aberystwyth in 1965. He was called to the bar in that country in 1966 but returned to Uganda at the end of the year to become a State Attorney in the Attorney-General's Chambers. He later went into private practice, but had to leave Uganda for security reasons and live in Zambia during the reign of Idi Amin. Shortly after his return to Uganda in 1979 he was appointed a Puisne Judge of the High Court, and then in 1988, was elevated to Justice of the Supreme Court.

As a Puisne Judge, he chaired the Commission of Inquiry Into Violations of Human Rights, which had a broad mandate to investigate human rights violations in the country and whose findings were influential in Uganda's Bill of Rights and human rights laws. He is survived by his wife Alice and children.

UGANDA

At the Industrial Court of Trinidad and Tobago, a policy decision was made to shift emphasis from adjudication to alternate dispute resolution, and subsequent training of judicial staff has been in keeping with this decision. Two judges completed an Arbitration and Mediation Course at the International Law Institute in Virginia, U.S.A., and another pair attended an Effective Dispute Settlement Course at the National Judicial College in Nevada, U.S.A. Another judge completed an Attachment to the Irish Labour Relations Commission to observe how conciliation is used to resolve most issues in that jurisdiction. Two more judges head to the Irish LRC during their vacation.

Further to that shift in emphasis, the Court's President has issued a discussion paper proposing fixed benches, to optimize judicial time and eliminate the difficulty of finding adjourned dates that coincide with the availability of three judges all sitting on various, differently-constituted benches.

TRINIDAD AND TOBAGO

JUDICIAL EDUCATION EVENTS

August

	WHERE & WHEN	CONTACT
2006 NASJE Conference	August 13 – 16, 2006 Minneapolis, Minnesota, USA	National Association of State Judicial Educators Website: www.nasje.org
CSCJA Annual Meeting: Judges Day	August 15, 2006 St. Johns, Canada	Canadian Superior Courts Judges Association
Evidence Workshop	August 20 - 24, 2006 Whistler, B.C., Canada	National Judicial Institute Website: www.nji.ca Information : Tracy Antochi at (613) 237-1118, ext. 299 Email : tantochi@judicom.gc.ca
Travelling Judicial Professional Development Program	August 21 – 22 Darwin, Australia	National Judicial College of Australia Website: www.njca.com.au Contact the Director 02 6125 6655 Email: ea@njca.anu.edu.au

September

	WHERE & WHEN	CONTACT
24 th AIJA Conference – “Affordable Justice”	September 15 – 17, 2006 Adelaide, South Australia	Australian Institute of Judicial Administration Website: www.plevin.com.au/aijaconference2006/
Communication Skills in the Courtroom	September 20 – 22, 2006 Stratford, Ontario, Canada	National Judicial Institute Website: www.nji.ca Information: Caroline Secours at (613) 237-1118, ext. 227 Email: csecours@judicom.gc.ca

	WHERE & WHEN	CONTACT
Judgement Writing Workshop: Superior Courts	September 22 – 23, 2006 New South Wales, Australia	Judicial Commission of New South Wales Website: www.judcom.nsw.gov.au Information: Ruth Sheard at 02 9299 4421 Email: rsheard@judcom.nsw.gov.au
Judgment Writing Program	September 24 – 26 Adelaide, Australia	National Judicial College of Australia Website: www.njca.com.au Contact: the Director, Phone 02 6125 6652 Fax: 02 6125 6651

October

	WHERE & WHEN	CONTACT
Emerging Issues: Judging in the Context of Diverse Faiths and Cultures	October 4 – 6, 2006 Montreal, Quebec, Canada	National Judicial Institute Website: www.nji.ca Information: Sam Enright at (613) 237-1118, ext. 297 Email: senright@judicom.gc.ca
Criminal Jury Trials Seminar	October 25 – 27, 2006 Vancouver, B.C. Canada	National Judicial Institute Website: www.nji.ca

December

	WHERE & WHEN	CONTACT
Managing Successful Settlement Conferences, Level II	December 6 – 8, 2006 Toronto, Ontario, Canada	National Judicial Institute Website: www.nji.ca



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