

Message from the Editor - Prof. (Dr.) N.R. Madhava Menon

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There is a lot happening across the Commonwealth in the sphere of judicial intervention in the matter of constitutional governance and maintenance of rule of law which attract the attention of people everywhere. In Sri Lanka, the Chief Justice was removed by the president through an impeachment procedure under questionable circumstances. In Pakistan, the Supreme Court is in constant war with the other two wings of government for alleged corruption of the country's President and the defiance of the government in implementing Supreme Court orders. In India, impeachment proceedings were initiated against a High Court judge who refused to quit the job even after an inquiry committee appointed by the Chief Justice found him guilty of misconduct. Towards the end of the impeachment proceedings, the judge concerned resigned and frustrated his removal. All these developments in South Asia indicate the difficult times that judiciary is faced with in maintaining rule of law and constitutional governance.



What is the message for judicial educators from these developments? Judicial education and training are not to be equated with efficient management of litigation and timely delivery of justice alone. With democracy, human rights and constitutional governance assuming centre stage in post-colonial societies, justice delivery has undergone a qualitative change under the influence of their respective struggles for freedom, equality, equity and justice. These values are reflected in their constitutions though not necessarily in the laws they inherited. Constitutionalisation of the legal system is a slow process in which the judiciary from top to bottom plays a key role. The issue of access to justice, gender justice, justice to the child and the disabled are all awaiting to be addressed adequately particularly in the trial courts where the bulk of litigants seek justice. Unfortunately, many trial court judges are not equipped with the justice tools and techniques necessary to apply constitutional principles in civil and criminal dispute. Alternate dispute resolution techniques, however, provide some leeway to accommodate the concerns of public law in private law adjudication. The Canadian Judicial Academy has experimented with a major project on social context judging with some degree of success. There are other examples now available in this regard from other jurisdictions as well. It is necessary for judicial educators to look at the experiments and adopt a set of good practices to promote a constitutional culture in all courts at all levels lest the litigants should feel aggrieved of being denied the fruits of freedom and liberty in full measure.

Message from the Chair



One of the highlights of my life was my recent trip to Papua New Guinea to work with the Honourable Chief Justice Salamo Injia, Justice Gibbs Salika (CJEI Fellow 2006; Chair of the Board of the Centre for Judicial Excellence) and Justice Regina Sagu (CJEI Fellow 2011; Director of the Centre for Judicial Excellence) in the establishment of their five year curriculum plan. Their dedication to and enthusiasm for a well functioning judicial education body was most impressive and a great joy to me. Needless to say, Papua New Guinea is a beautiful and fascinating country. I was kindly and warmly received and will always cherish the memories of my visit.

The Chief Justice had generously arranged for a donation to CJEI in exchange for CJEI services in supporting them in their important and challenging work in establishing a world class well functioning judicial academy.

Here in Halifax we have been busy working on this June's Intensive Study Programme, - revising and updating the curriculum; preparing a draft section for Codes of Judicial Ethics and Conduct to provide some guidance to judges on their social media activities; preparing for the Patron Chief Justices' Meeting at the Commonwealth Law Conference in South Africa in April to review our work and fundraising for our Fact Finding Study and augmentation of our electronic judicial education network.

We will soon be in a position to announce the date and location of our next Biennial Meeting of Commonwealth Judicial Educators to be held in 2014. I look forward to seeing many of you there as we review newly arising challenges in our judicial education work.

Judge (R) Sandra E. Oxner

The new Judicial Institute for Scotland

The year 2013 will see substantial changes for the Judicial Studies Committee of Scotland, starting with a move to new premises and, importantly a change of name and identity. From 1st January 2013 the JSC will become the Judicial Institute for Scotland and will be based in Parliament House in Edinburgh, the historic centre of the supreme courts in Scotland.

The move to new premises will have a significant impact on the current Judicial Education curriculum. Traditionally all judicial training activities have taken place at external venues including hotels, conference centres and Higher Education Institutes. The move to new premises will bring with it a dedicated learning suite where all future training activities will take place.

The learning suite will be a modern and purpose-built learning space comprising fully integrated IT systems designed to support an effective and innovative learning environment. The learning suite will house two mock courtrooms at either end of the L-shaped room to simulate an authentic learning space. These mock courtrooms will allow us to replicate a court scene with great accuracy providing a safe and supportive learning environment and enabling us to effectively embed practice-based education into the curriculum. The central learning space will accommodate seven individual learning pods. These will consist of a plectrum shaped table, to optimise group learning opportunities, fitted with touch-screen local control stations which will be able to operate the accompanying



Photo by Lorna Campbell, CAA

multimedia systems, including audio recording equipment, PCs with internet access and video screens. Each learning pod will be fully networked thereby allowing each station to interact with each other, sharing ideas and information, all of which can be centrally controlled by the master presentation station. In addition to this there will be two interactive whiteboards, video-conference facilities and video recording equipment which are also fully networked to each learning pod and can be operated at a local level or from the central station. This will allow us to access information and media from multiple sources simultaneously and thereby create an engaging and interactive learning experience.

The learning suite will also have the capacity to divide into four separate learning spaces through the use of soundproof, moveable partitions. This enables us to create smaller seminar rooms when necessary, conduct multiple or synchronous training events and to have concurrent use of the mock courtrooms. This will create the flexibility necessary for an effective and practical and learner-centred training environment.

The JSC eagerly anticipates these developments but, of course, they will also bring key challenges. The three day residential courses that the JSC has traditionally offered will cease to run and will be replaced by one and two day courses delivered in-house in the new learning suite. Where there are obvious challenges to redesigning the curriculum, there are also vital opportunities. The new curriculum will be a comprehensive and streamlined set of core courses, built on coherent and consistent learning themes with clearly articulated learning points. The curriculum will be focused, targeted and experiential and, in time, will fully embrace a blended learning model. We have recruited a learning technologist, Jackie Carter, to support this endeavour and she will be a key contributor to the success of the technology-enhanced learning suite and to the development of online and blended learning modules. In keeping with the myriad changes that are afoot, we will also enjoy a new virtual learning environment, to be launched in the new year.

Needless to say, the next six months will be very busy with many exciting opportunities afforded to us. The year 2013 will mark a period of considerable change and progress for the new Judicial Institute for Scotland and we look forward to sharing our experiences. We hope this change and innovation will provide a unique and progressive learning model that meets the needs of judicial education in Scotland for many years to come.

Biennial Meeting of Commonwealth Judicial Educators



CJEI's Biennial Meeting of Commonwealth Judicial Educators hosted by the Chief Justice and Judiciary of the Seychelles was held at the Kempinski Seychelles Resort Baie Lazare from April 24 – 27, 2012. The meeting is by

invitation to leaders in judicial education in the Commonwealth and was attended by 48 judge educators from 24 countries.

A CJEI Board Meeting was held the day prior to the meeting which was open to all participants. The Board reviewed the work done over the past two years and commented on the proposed work plan for the forthcoming two year period.

The programme was designed to achieve the following four objectives:

1. To develop programme modules ready to be taken away for presentation by national judicial education organizations;
2. To exchange information on common problems and solutions in Commonwealth judicial education;
3. To gather research in preparation of a report on the status of judicial education in the Commonwealth. When completed, this report will be the first of such biennial reports and will be used as a baseline to chart the progress of Commonwealth national judicial education; and
4. A meeting of our Board of Directors and heads of Commonwealth judicial education bodies to evaluate work completed over the last two years and chart a work plan for the coming two years.

In addition to the above noted objectives, the Biennial Meeting seeks to introduce cutting edge programming and to model in the sessions appropriate adult education techniques. The methodology of developing effective electronic judicial education programming was also demonstrated and discussed.

Four items were featured at this meeting:

1. The Board Meeting, session discussion and informal discussion at coffee breaks and social activities provided well utilized opportunities for discussion of solutions to common problems.
2. The countries represented were given an opportunity to present the results of the survey document on judicial education previously sent to them by CJEI. They augmented this information with discussions of their accomplishments and challenges. This information forms the background for a forthcoming CJEI report on the status of judicial education in the Commonwealth which we hope to revise and publish at two year intervals. This will give judicial education bodies a snapshot of judicial education as it is in the Commonwealth and provide a chance to view the accomplishments of themselves and others in the intervening period.
3. The raising of judicial issues for discussion through a reading by the participants of an abridged version of Shakespeare's *The Merchant of Venice*. Both participants and audience enjoyed this session and the excellent discussion which followed, led by the distinguished Asian legal academic Dr. N.R. Madhava Menon. The use of the Shakespearean play came from the realized expectation that it would catch attention and spark intellectual interest to these much discussed topics in a new way.
4. A session was held to evaluate interest in the development of a programme for newly appointed Commonwealth Chief Justices and Chief Judges. This session was met with enthusiasm and the development and presentation of such a programme was endorsed.

Participant session evaluation forms and evaluative meetings of faculty were of the view that the objectives had been achieved although, as usual, there were requests for further time to be given to many of the topics under discussion. Some topics were more popular than others. The most popular session was "Judicial Ethics in an Electronic Age" which canvassed the hazards to the judicial image that can flow from judicial participation in social media. A committee was established to make recommendations for additions to the Bangalore Principles and Commentaries to cover this new area of concern.

While all the social events were congenial and provided opportunities for information exchange and friendships to develop, the dinner hosted by the Honourable Chief Justice Fredrick Egonda-Ntende of the Seychelles was a particularly outstanding event. The fact that three Chief Justice participants organized themselves into the musical entertainment of the evening greatly contributed to the ambience of this much enjoyed evening.

Training Mission to Male, Maldives

At the invitation of the Honourable Chief Justice Ahmed Faiz Hussein, the Right Honourable Sir Dennis Byron, President of the Caribbean Court of Justice and President of the Commonwealth Judicial Education Institute (CJEI) and Judge (R) Sandra E. Oxner, a retired Canadian judge and Chairperson of the CJEI undertook a training mission to Male, Maldives from May 2 - 4, 2012 to conduct a one day education programme. President Byron and Judge Oxner were received at the airport by CJEI Fellow 2009 Justice Ali Hameed, Chief Judicial Administrator, the Court Secretary General and other court officials.

The Maldivian Court Service had engaged an excellent meeting room at the Nasandura Palace Hotel. Seventeen judges drawn from the Civil Court and High Court (Appeal) were in attendance. Other judges came and went evidently in accordance with judicial duties.

President Byron taught the morning session which was divided into two topics. The first part of the morning was on "The Use of International Court Judgements in Domestic Law". After a brief introductory lecture, President Byron disseminated to the tables a hypothetical fact situation relating to the definition of rape.

There was excellent discussion concerning the issue with some judges holding there was no problem of rape in the Maldives as there were no such cases before them and others saying that rape actually occurred, as in other countries, but the cases were not brought forward for varying reasons. Many judges agreed this was an injustice to the victims of such crimes.

The second part of the morning was dedicated to discussion on "New Trends in Court Management". A

PowerPoint presentation was used to initiate discussion which was lively. This is a subject under consideration at this time in the Maldives.

Judge Oxner was the facilitator of the afternoon session which was given over to the topics of "Judicial Ethics" and "Conduct on and off the Bench". She gave a brief PowerPoint presentation illustrating the point that members of the judiciary could be predators of judicial impartiality acting or being perceived to act in a biased way.

Following this a set of hypothetical fact situations raising ethical issues, developed with members of the Indian Judiciary, was given to the participants in their working groups for their analysis. Each table was provided with a copy of the Commentary on the Bangalore Principles of Judicial Conduct so that recourse could be made to these principles in coming to an appropriate solution of the problem. The hypotheticals again engendered a lively discussion and all groups came up with solutions consistent with the Bangalore Principles.

Short clips of commercial films "My Cousin Vinny" and "The Castle" were then viewed. These portrayed judges in the course of their duties. The purpose of this was to allow participants to identify positive and negative judicial characteristics which they could identify with from a safe distance. This session was very successful with full participation from the groups.

At the conclusion of the afternoon, the Chief Justice and two other judges of the Supreme Court (one being CJEI Fellow 2009 Justice Ali Hameed) attended the presentation of certificates.

19th Annual Intensive Study Programme for Judicial Educators



Participants with His Honour Brigadier-General the Hon. J.J. Grant (Ret'd), Lieutenant Governor of Nova Scotia

The CJEI organized its nineteenth annual Intensive Study Programme for Judicial Educators (ISP) from June 3 – 22, 2012. The programme was attended by ten participants from seven countries. In attendance were: Ms. Santosh Snehi Mann, Director (Academics), Delhi Judicial Academy, India; Ms. Aditi Choudhary, Additional Director (Academics), Delhi Judicial Academy, India; The Honourable Mr. Justice Edward M. Muriithi, High Court, Kenya; The Honourable Mr. Justice Noor-ul-Haq N. Qureshi, High Court, Pakistan; Ms. Samia Asad, Civil Judge-cum-Judicial Magistrate; Pakistan; The Honourable Mr. Justice Ambeng Kandakasi, Supreme Court, Papua New Guinea; The Honourable Mme. Justice Cynthia C.L.A. Valstein-Montnor, Chief Justice, Suriname; Ms. Eva Kiaki Nkya, Deputy Registrar, High Court, Tanzania; The Honourable Mr. Justice Winston Anderson, Caribbean Court of Justice, Trinidad and Tobago; and Her Honour Mrs. Victoria Harrigin, Industrial Court, Trinidad and Tobago.

Participants spent the first two weeks completing the study component of the programme at Schulich School of Law, Dalhousie University in Halifax. The programme topics included: judicial education reform; providing instruction for adults; review of functions, objectives, definition and levels of judicial education; targets of judicial education; discussion of structures of judicial education bodies; discussion of national standards and objectives; judicial ethics and the appearance of bias in the world of social media; balancing national security and human rights; judgement writing; impact of judicial decisions on the environment; developing and presenting blended learning programmes; curricula development; use of sentencing hypotheticals; long range judicial education planning; judicial impartiality; judicial discipline; judicial performance feedback; portrayal of judges in film; case flow management; use of great literature in judicial education programming; and importance and methodology of programme evaluation.

The final week of the programme was spent in Ottawa and Toronto. At Ottawa, the participants spent their time visiting the Supreme Court of Canada, Superior Court of Justice, Office of the Commissioner for Federal Judicial Affairs, Canadian Judicial Council and National Judicial Institute. In Toronto they visited the specialized courts at Old City Hall (Drug Treatment Court, Mental Health Court, Aboriginal Persons Court), Office of the Chief Justice of the Ontario Court of Justice and Osgoode Hall.

In addition to the rigorous academic sessions, there were social events such as the reception hosted by His Honour Brigadier-General the Hon. J.J. Grant (Ret'd), Lieutenant Governor of Nova Scotia at Government House and reception hosted by The Honourable Ross Landry, Minister of Justice at Province House.

The programme evaluation by the participants was positive and encouraging. The participants left the programme armed with new tools and skills for judicial training and were all confident and enthusiastic that they will be able to initiate judicial education reforms in their home countries.

Article Review by Muhammad Amir Munir,¹ CJEI Fellow 2008

Judicial Education and Training: Importance in Islam²

by Munir Ahmad Mughal³

Availability: Free downloadable pdf file available at <http://ssrn.com/abstract=2102378>.

Judicial education in a formal setting was not available in Pakistan until early 1980s when the Shariah Academy, Islamabad⁴ was established to provide continuing legal and judicial education and training to judges, lawyers and court staff.⁵ Prior to this, though no formal school for such an education was available but the Pakistan Law Commission⁶ had identified in early 1970s that the judicial arm of the state needs training and education through a formal judicial services academy. However, this idea could not be materialized until 1988 when the Government of Pakistan, Ministry of Law and Justice⁷ established the Federal Judicial Academy (FJA) through a resolution. The Academy started giving training and education to judges as per needs assessment.

Judicial service in Pakistan is not federal in character. All the provinces and federal capital territory have courts established in them which are under control and superintendence of the respective high court of each province and the Islamabad Capital Territory (ICT).⁸ Thus there exists district judiciaries in each province to provide justice to the people at their door steps. As there was no formal training institution in the country, the FJA became stream of judicial education. It arranged pre-service and in-service training programs for judges, magistrates, law officers and court personnel. Since early 1990s up until 2011, all the four provinces have established their own independent

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² The review of this article has been written on the desire of Hon'ble Judge Sandra E. Oxner, Chairperson of the Commonwealth Judicial Education Institute, Halifax, Canada.

³ Author has been a former Judge of the Lahore High Court (www.lhc.gov.pk), a former Member of the Council of Islamic Ideology (www.cii.gov.pk), a former Chief Law Officer of the WAPDA/PEPCO (www.wapda.gov.pk). Presently, he is teaching law at Punjab University and other colleges. He is also Member of the Law College Committee of the Punjab University Law College (www.pulc.edu.pk). Author has written many articles, research papers and made speeches on Radio Pakistan and the Pakistan Television. His articles have been published in other countries as well. Author's articles can be accessed online freely at <http://ssrn.com/author=1697634>. For any comments, he can be contacted at justicemunir@gmail.com.

⁴ www.iiu.edu.pk/shariaacademy. Visited 13.09.2012.

⁵ For a comparative study of the four provincial judicial academies and other relevant information, visit <http://cjei.org/publications/CJEI%20Report%20Summer%202009.pdf>. Visited 13.09.2012.

⁶ www.ljcp.gov.pk. Visited 13.09.2012.

⁷ www.pakistan.gov.pk. Visited 13.09.2012.

⁸ For Supreme Court, visit www.supremecourt.gov.pk. For Federal Shariat Court, visit <http://www.federalshariatcourt.gov.pk>. For provincial high courts, see www.lhc.gov.pk (for Lahore High Court), www.peshawarhighcourt.gov.pk (Peshawar High Court), www.sindhhighcourt.gov.pk (Sindh High Court), www.bhc.gov.pk (Balochistan High Court); www.ihc.gov.pk (Islamabad High Court).

judicial academies to cater for their own needs and resources.⁹ Only the Islamabad Capital Territory has no independent judicial training institute. The reason is that the FJA can share the burden of ICT judicial officers and there are very few judicial officers. This has established a regime of judicial education through formalized collegial training programs.

The purpose to establish these academies is to provide academic backbone to the members of the judiciary and allied staff. The Constitution of Islamic Republic of Pakistan 1973 clearly mentions that the Islam shall be the State Religion. It means that the country has to be governed under the principles of shariah as enshrined by the Holy Qur'an and Sunnah. No law can be enacted by the Parliament which is against the Holy Qur'an and Sunnah. Laws inconsistent with the Shariah have to be struck down by the Federal Shariat Court.

Keeping in view the above, it would be beneficial to read the article under review as it traces the roots of judicial education in Qur'an, *Hadith*, fiqh literature and conduct of the state by the Prophet ((PEACE BE UPON HIM)) and other subsequent caliphs and governments. The famous talk between the prophet Muhammad ((PEACE BE UPON HIM)) and Hadrat Muaz bin Jabal (AMUH), letter of Hadrat Umar, the Second righteous caliph, to Abu Musa al-Ashari, books and treatise on the Islamic legal and judicial system. The gist of the article is that it has established that the judicial education was a part of Islamic political, legal and judicial system where the appointees to judicial office were given training and on-the-job-guidance.

It would be further pertinent to mention that the judicial education regime in Pakistan is still at rudimentary stage while there virtually exist no data or research on judicial education.¹⁰ This instant article will be a good addition to the existing knowledge on the point.

The article provides its abstract as under:

Abstract:¹¹

“This paper discusses and traces the roots of judicial education and different codes of judicial conduct in Islamic Shar`ah.

Islam emphasises on justice as it is nearer to piety. The historical study of development of Islamic legal and judicial system provides us an insight into the life and workings of qadis, judges, judicial officers, courts and court administrators. Many codes have since been found in place for the guidance of the judges and judicial officers, magistrates, presiding officers of special courts etc. The first amongst them was Qur'an itself. Hadith literature also establishes itself as a second source of judicial education. There is not a single book of ahadith in which the two books are not mentioned, viz., kitab al-aqdiya and kitab al-ahkam. The first one is on judicial education with practical examples and the other is on legal education with practical examples.

In the later periods, books on Adab al-Qadi were written by the classical writers who were top class jurists of their times. The most famous of them are those of Imam Muhammad, Imam Khassaf, and Imam Mawardi. Commentaries have also been written on this subject by the later authors and commentators like Sadr al-Shaheed. Books on legal opinions are also in great numbers.

The literature developed by fuqaha becomes the third important source in this regard. In recent centuries, we have

⁹ www.fja.gov.pk (Federal Judicial Academy); www.pja.gov.pk (Punjab Judicial Academy); www.sja.gos.pk (Sindh Judicial Academy); www.kpkjudicialacademy.gov.pk (Khyber-Pakhtunkhawa Judicial Academy)

¹⁰ I have read a paper in International Judicial Conference held under the auspices of the Supreme Court of Pakistan wherein it has been made a case that now the time has come where the South Asian Region must come up for a regional judicial education body. For free downloading of paper titled “South Asian Chapter of CJEI: A Blue Print for Establishing a Regional Judicial Education Body in South Asia”, visit <http://ssrn.com/abstract=2052394>. Visited 13.09.2012.

¹¹ <http://ssrn.com/abstract=2102378>. Visited 13 August 2012.

seen that the books like Fatawa `Alamgiri and Mejella Ahkam al-`Adaliyya were published for guidance of not only the judges but for the litigants' own understanding of the legal questions and their probable answers. The last two mentioned were — in modern terms — bench books for the qadis and judges. Shah Waliyullah Muhaddith Dehlawi's Hujjatullahi'l Baligha is also a master piece work and great contribution towards Islamic thought who not only pointed out the social diseases but also indicated the recipe available in the Holy Qur'an and Sunnah. Modern writers like Justice Muhammad al-Ghazzali, in his book on Shah Waliyullah, has written a complete chapter on judiciary. Dr. Wahba Zuhaily's book Fiqh al-Islami wa Adillatuhu is the latest book in the field on Islamic legal and judicial system. Reconstruction of Religious Thought in Islam is also an important book in modern times which guides us towards Islamic culture and society.

Judicial training was also at the high priority since the advent of Islam. The famous appointments of Hadrat Ali (رضى الله عنه) and Mu`adh bin Jabal (رضى الله تعالى عنه) with specific guidance on judicial conduct and art of judging in the form of dialogue with the Prophet Muhammad (peace be upon him) are a couple of examples of direct judicial education to the newly appointed judges.

The codes of judicial conduct issued by Hadrat `Umar bin al-Khattab (رضى الله تعالى عنه) to Abu Musa al-Ash`ari and the letter of Hadrat Ali (رضى الله تعالى عنه) to Ashtar are best examples of judicial education and are still leading documents on the subject in Islamic Legal and Judicial system.”

This shows the depth of the study made in the article under review. I hope that the readers will be happy to read this article which is timely and relevant.

CONCEPT NOTE – DEMOCRACY AND JUSTICE DELIVERY: In Search of a Solid Constitutional Framework for Accessible, Equal, Timely and Quality Justice in Tanzania

By The Hon. Amir Hamis Msumi, CJEI Fellow 2009

BACKGROUND

Tanzania, a nation of slightly over 40 million people being served by a total of 85 Judges and 298 Resident and District Magistrates and 753 Primary Court Magistrates, is set on having a new Constitution by April, 2014. The Constitutional Review Act, 2011, as amended in 2012 (the Act) is in force. The National Constitutional Review Commission (the Commission) is in place.

The Commission is mandated under the Act to coordinate and collect public opinions from a broad spectrum of people, individually and/or collectively, on the constitutional review process, so that Tanzania may eventually have a Constitution based on a general consensus. In this task, the Commission is to be guided, *inter alia*, by the principles of democratic governance, the promotion and protection of human rights, separation of powers, the rule of law and equality before the law.

The place and role of the Judiciary are clearly stated in Articles 4(1) and 107 A of the current Constitution. The Judiciary is one of the three organs of the State (Art 4 (1). It is the only State organ with the final authority in the dispensation of justice (Art.107A). This mandate is projected to be maintained under the new Constitutional dispensation. The challenge of the justice delivery system in Tanzania is to deliver effective, speedy, quality, and fair justice. This demands having in place a more accessible and credible Judiciary. This makes the Judiciary a crucial stakeholder and a key participant in the entire constitutional review process.

OBJECTIVES OF THE PROJECT

1. To position the Judiciary of Tanzania as one of the key stakeholders in the constitution review process.
2. To meaningfully contribute to the on-going constitutional review process on issues of interest and concern to the public and the Judiciary.
3. To provide the Constitutional Review Commission with information and other reliable data on the Judiciary, the administration of justice, respect for the rule of law and the protection and enforcement of human rights and other constitutional rights.
4. To increase awareness among the Judiciary staff on the constitutional review process and on the role and function of the Judiciary under the Constitution.
5. To enhance accountability, effectiveness, efficiency and transparency, as well as public confidence and trust in the Judiciary.
6. To initiate and draw up proposals on improved democratic governance, constitutional supremacy, rule of law, separation of powers, protection and enforcement of human rights, access to justice, the administration of justice, independence of the Judiciary, its institutions and of the legal profession and on any other related principles or norms that may be considered in the constitutional review process and the new constitutional dispensation in Tanzania.
7. To evaluate and suggest effective dispute resolution and litigation arrangements for Parliamentary and Presidential elections.
8. To propose appropriate judicial mechanisms for the effective protection and enforcement of human rights.
9. To collect views and to ensure coordinated responses of the Judiciary as a whole on the administration of justice and the Court system, and on other constitutional principles, including the separation of powers, rule of law, independence of the Judiciary and on human rights.
10. To identify, interest and solicit expertise from Regional and International Organization and from individual experts on constitutional Law, Human Rights, Rule of Law, Electoral Disputes and other relevant fields.
11. To review the system and arrangements for judicial appointments, promotion and discipline and propose improvements that guarantee the institutional capacity and independence of the Judiciary and judicial officers.

PROJECT IMPLEMENTATION/MONITORING

In order to ensure proper start-up and implementation of the Project, Honourable Mohamed Chande Othman, the Chief Justice of Tanzania, found it imperative to constitute an internal Study Group or Committee whose Terms of Reference appear hereunder. The Committee has been commissioned, within a period of twelve months (subject to renewal), to urgently and assiduously collate information, experience, best practices and data, which would enable the Judiciary, as the custodian of the Constitution, to meaningfully prepare its eventual inputs in the entire constitutional review process.

The Committee comprises of the following members: (a) Hon. E.M.K. Rutakangwa, Justice of Appeal – Chairperson; (b) Hon. S.J. Bwana, Justice of Appeal – Vice Chairperson; (c) Hon. S. Mjasiri, Justice of Appeal – Member; (d) Hon. R.V. Makaramba, Judge of the High Court– Member; (e) Hon. A.N.M. Sumari, Judge of the High Court– Member; (f) Hon. S.E.A. Mugasha, Judge of the High Court– Member; (g) Hon. J.H.K. Utamwa, Judge of the High Court– Member; (h) Hon. F.A. Twaib, Judge of the High Court– Member; (i) Hon. A.H. Msumi, Deputy Registrar – Secretary; and (j) Hon. E.K. Nkya, Deputy Registrar – to head the Secretariat.

TASKS AND TERMS OF REFERENCE OF THE WORKING GROUP

1. To analyze and document the constitutional development of Tanzania in respect of the Judiciary, its related institutions and the dispensation of justice.
2. To undertake a comprehensive study of the provisions of various Constitutions of the Commonwealth countries, the European Union member States and any other countries on separation of powers, rule of law, human rights, the dispensation of justice, independence of the judiciary and its institutions and connected matters.
3. To collect and compile information on the experience of Eastern and Southern African countries on their Constitutions and the Judiciary and related institutions/issues.
4. To prepare and propose a programme/action plan for internal consultations within the Judiciary on the constitutional review process.
5. To examine the law and application of the Basic Rights and Duties Enforcement Act, Cap. 3 R.E. 2002 in the determination of constitutional petitions by the Courts.
6. To examine the law, procedure and application of electoral litigation by the Courts and propose improvements, including the prompt and effective determination of Presidential and Parliamentary election litigation.
7. To solicit comments and suggestions from within the Judiciary and from professional judicial or legal associations, (e.g. JMAT, TAWJA, TLS, ZLSC, TAWLA, LHRC, LEAT, EMJA, TARJA, ZAJOA, TANLAP, etc.)
8. To propose any other principles of democratic governance, human rights, rule of law, law or justice that may be considered in the constitutional review process in respect of the dispensation of justice or the judiciary.
9. To serve as resource persons on the subject of study.
10. To make any appropriate recommendations.

SCOPE OF WORK OF THE PROJECT

The scope of work will involve: comparative analysis; documentary review and solicitation of stakeholders views.

METHODOLOGY

1. Conducting structured meetings, conferences and workshops, interviews, literature surveys, questionnaires and correspondences with stakeholders.
2. Conducting analytical/comparative documentary research on selected Constitutions of Commonwealth Countries, European Union, SADC and EAC on matters relating to the Judiciary and other constitutional principles and norms.
3. Identifying, interviewing and soliciting inputs from experts in constitutional law, Human Rights law and other relevant fields.
4. Organizing conferences, symposiums and workshops for Judges, Magistrates and non-judicial staff of the Judiciary.
5. Building capacity for the Judiciary, including the Study Group through study visits, training sessions, sensitization and awareness exercises for the Judiciary.

EXPECTED ACCOMPLISHMENTS/OUTCOMES

1. Effective contribution by the Judiciary in the constitutional review process in areas of interest and concern to the Public, the Judiciary and the Legal Profession.
 2. Increased awareness and commitment among Judiciary staff on the position and function of the Judiciary as an institution in the constitutional review process.
 3. Comprehensive Judiciary proposals on improved democratic governance, rule of law, human rights and related constitutional principles.
 4. Enhanced access to justice, with particular reference to the poor, the vulnerable and marginalized individuals and communities, victims of crimes and witnesses.
 5. Enhanced legal and institutional mechanisms for the protection and enforcement of Human Rights and constitutional rights.
 6. Renewed building of public trust and confidence in the Judiciary and respect of the Rule of Law.
 7. Increased easiness and capacity to realize and put into operation the outcome of the constitutional review process.
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INDIAN NATIONAL MISSION FOR IMPROVING DELIVERY OF JUSTICE

By Dr. N.R. Madhava Menon

In October 2009, on the basis of a Vision Document adopted at a Judicial Conference in New Delhi, the Government of India approved in principle a National Mission for reducing pendency and delays in the judicial system and enhancing accountability through structural changes, higher performance standards and capacity building of institutions involved. There have been many attempts in the past to achieve the goals which did not yield the desired results because of lack of institutional capacities, inadequate funding and want of political will to undertake the reforms needed. When it was realized that without judicial reform the development agenda cannot be carried forward, the Thirteenth Finance Commission made specific recommendations for grant of substantial funds to the judiciary for the improvement of delivery of justice. At the instance of then Law Minister, the Union Government announced a series of policy initiatives aimed to bring down pendency (the life of a case in the system) from an average of 15 years to 3 years within a three year period! It was considered by many as too ambitious for a system used to chronic delays, outmoded procedures and indifferent management. With money made available and the strategies and plans worked out in consultation with the judiciary, the Government has now come up with a National Mission to accomplish the goal within a period of five years coinciding with the Twelfth Five Year Plan. The object of this article is to look at the Mission Goals, analyze the components of the Action Plan, examine the strategies proposed and evaluate the prospects, given the conditions obtaining on the ground and the constraints prevailing in the system.

Finance Commission Catalyses Action:

For a long time the judiciary was outside the radar of the Planning Commission which distributed development grants. And when it started providing funds, it turned out to be too small to make any capacity improvement of the system as a whole. Neither did the State Governments increase the number of courts required to handle the mounting cases nor did the existing ones receive the infrastructure needed to process the cases efficiently. Judiciary is still to acquire the ICT support systems to modernize its processes with the result it is continuing to labour under the weight of over three crore (30 million) pending cases for a long time. Recommending support required to improve judicial outcomes, the Finance Commission stated, "... At the very least, current filings need to be disposed off, to prevent accumulation of arrears. The enormous delay in disposal of cases results not only in immense hardship, including those borne by the large number of under-trials, but also hinders economic development".

Prescribing a condition that the government (Centre and State), the single largest litigant in the country, frame a litigation policy aimed to reduce avoidable and unnecessary litigation, the Finance Commission recommended grant of Rupees Five Thousand crores for improving judicial outcomes through six strategic initiatives. These included increasing the number of court working hours using the existing infrastructure by holding shift courts in morning/evening hours, increased use of Lok Adalats to ease pressure on courts, promotion of the use of Alternate Dispute Resolution methods outside the court system, intensive training to judicial officers and public prosecutors for enhancing their functional capacities, addition of better facilities in judicial academies of every State and creation of the post of Court Managers in every judicial district to assist the judiciary in their administrative functions. A series of orders were issued by the Central Government sanctioning the funds and providing Guidelines for utilization of the grant. Having received the funds, the State Governments, in turn, have started issuing orders for utilization by the judiciary in their respective jurisdictions. Activities have started, though in a slow pace, heralding the arrival of judicial reforms long awaited by the litigant public.

Strategic Initiatives of the Mission Plan:

The Department of Justice which is now headed by an independent Secretary level officer under the Ministry of Law and Justice has assumed the role of the Mission Directorate with the Secretary to Government as the Mission Leader. Judicial reform is now as much a function of the Government as it is of the judiciary. For the first time, the Planning Commission has constituted a Working Group on Justice for preparing the demands of the justice system under the 12th Plan and one can expect continued support, besides the Finance Commission allocations, for the Mission initiatives of the Justice Department. In short, the time is opportune for a major breakthrough in the delivery of justice if the National Mission now proposed for 2011-'16 could generate the required momentum among the actual players including judges, lawyers and litigants. The first step in this direction is to understand the implications of the Strategic Initiatives of the Action Plan and to respond adequately to the role and responsibilities envisaged under it.

The Action Plan contemplates five strategic initiatives which include policy changes, re-engineering procedures, human resource development, leveraging ICT and improving infrastructure of subordinate judiciary.

Among the policy initiatives, the Government has already moved legislations proposing to increase retirement age of High Court judges and to enhance judicial standards and accountability. To exclude unnecessary litigation, National and State litigation policies are announced and are in the process of their implementation as part of the National Mission. The long awaited All India Judicial Service is being taken up for Parliament's consideration. Improving the capacities of the judiciary proportionate to the workload is under way through the mechanism of judicial impact assessment as part of the legislative process. For improving the human resources of the judicial system, legal education reforms are also being considered as part of the Mission. Thus perceived, one can say that the policy support for the National Mission is well under way which shows the political will for systemic changes to achieve the goals.

Re-engineering of court processes removing bottlenecks and fast-tracking procedures constitute a major strategy to reduce delay in litigation. This may require amendments to statutes and rules of court for which the Law Commission is being asked to work on a continuing basis. Together with Lok Adalats, mediation, plea bargaining and negotiated settlements a large portion of pending cases are expected to be resolved without taking much of judicial time. Clubbing together similar kinds of cases, leaving administrative functions to trained Court Managers, introducing modern management tools and systems for docket and case management etc. are other process re-engineering strategies mooted to reduce delay and pendency. In fact, since 2007 the E-Courts project was initiated at a cost of Rs.440 crores (now revised to Rs.935 crores) for provision of ICT infrastructure to district and subordinate courts and to computerize judicial records. This is scheduled for completion by 2014 enabling the National Arrears Grid to be fully operational for integration with the Mission Plan. With introduction of e-courts along with video conferencing, e-filing and related ICT-enabled services, the justice delivery system can be transformed to become people-friendly, less expensive and expeditious.

Of course, the human resource component will still be critical for maintaining the quality of justice and, as such, the Mission proposes not only increasing available manpower by filling up vacancies in judicial posts at all levels but also strengthening their training through the network of judicial academies. Similar efforts to provide continuing education and training for lawyers and public prosecutors are also under way with the involvement of Bar Councils and law schools. In fact, many of the shortcomings in the institutions and procedures can be overcome if motivated, competent personnel are available in the system in adequate numbers.

Another significant component of the Mission is about the development of infrastructure of district and subordinate courts long neglected by the States and the Centre. During the 12th Plan all the 15,000 courts in the country are expected to have adequate buildings and equipments to be able to operate with maximum efficiency. Towards this end, substantial funds are sought to be provided by the Union Government to the State Governments on a 75:25 sharing basis. States have been asked to develop the designs of modern court complexes in every district and estimate their requirements for funds and hopefully the judicial architecture will soon see a decisive change towards efficiency and litigant-friendly atmosphere. The Gram Nyayalayas to help the rural folk to access inexpensive justice at their doorsteps is another step envisaged under infrastructure development. Again, with police modernization, forensic science development, criminal tracking network system and similar initiatives now being implemented, it is hoped that criminal justice will soon have a human face while providing better support to the justice system.

Popular Support for Time-bound Implementation:

Now since the plan is ready and the funds are made available, what is needed for the success of the Mission is time-bound implementation on mission mode by the functionaries and popular support to sustain the momentum from within and outside the system. Unfortunately, even informed sections do not believe that pendency and arrears can be controlled given the prevailing mindset of those in charge of the systems and the undue benefits vested interests enjoy by keeping the systems as they are. The litigant public seem to be reconciled to their fate and those powerful among them are increasingly using extra-judicial methods to get their due. Of course, this was the sentiment in early 1990s about the economy as well. A decisive leadership took the risk and made the change possible which the people welcomed in due course. Can such a thing happen in the judicial sector in the present context when the political will seem to be forthcoming and the funds are provided? The answer depends on the type of leadership that the judiciary provides to their subordinates particularly in the next five years. There is every reason to believe that the Indian judicial management of 2020 will be vastly more efficient and dynamic than it is today.

Eastern Caribbean Supreme Court JEI Annual Report Section July 2011 – June 2012

*By Alana Simmons, JEI Program Coordinator
CJEI Fellow 2007*

Introduction

With Sir Hugh Rawlins at the helm of the Court, the provision of continuing education remains a major focus and a critical aspect of the Court's reform process. In this context the Judicial Education Institute (JEI), under the chairmanship of Hon. Justice Louise Esther Blenman and the support of JEI Program Coordinator, Ms. Alana Simmons, undertook several highly successful training

initiatives which featured a diverse offering of outstanding speakers on topics targeted to keep judicial officers (Judges, Masters, Magistrates, etc.) abreast of important developments of the law. The Institute's new pedagogical approach to the provision of training enabled participants to be a part of a more meaningful learning experience; and the overwhelming response has been very positive.

The financial contributions of visionary donor agencies impacted significantly on the success of these programs; and the Institute places on record its gratitude to all the contributing agencies without whose support it would have been impossible to facilitate the level of training that was experienced by the Court's judicial officers.

Annual Judicial Conference

The year commenced with the Annual Judicial Conference held in August of 2011. The event was held at the Sandals Halcyon Resort and Spa from August 2 – 5, 2011. This was the first time the Judges of the ECSC received training in Judicial Ethics and Independence since the adoption of the Code of Ethics in 2000.

The training sensitised the members of the judiciary on matters of ethics and the independence of the judiciary. The judges were able to discuss and identify appropriate and inappropriate behaviour by Judges both on and off the bench. They identified best practices by reference to both the ECSC code of Ethics and best practice internationally, including the Bangalore principles. They dealt with applications for recusal, giving extempore judgments setting out reasons for decisions and finally they identified the core principles and importance of judicial independence, they also looked at circumstances in which judicial independence may be compromised in practice and they applied strategies to deal with any threat to judicial independence.

In addition to the training on Judicial Ethics and Independence there was a one day training session on the Proceeds of Crime. The one day session was a follow-up to training held for Judges at the Judicial Conference held in December of 2009. The follow-up reinforced the importance of the money laundering legislation while providing opportunity for the practical application.

The training was for Judges and Masters of the OECS however, the training attracted Judges from Jamaica, Trinidad and Barbados.

Her Ladyship Hon. Dame Linda Dobbs, QC, Director of International Training of the Judicial Studies Board of England and Wales and Mrs. Desiree Artesi barrister of England facilitated the training on Judicial Ethics and Independence while Mr. Brian Lett, QC conducted the training on Confiscation and Money Laundering.

The Annual Judicial Conference was a resounding success. The facilitators were outstanding and were very well received by the Judges. Dame Linda Dobbs in particular was exceptional. Her presentations were erudite and enlightening and the training will assist judicial officers in their continued efforts to ensure that they conform to high ethical judicial standards and maintain the independence of the judiciary. This would go a long way to ensuring that the Court continues to deliver justice in an effective, efficient and impartial manner.

Joint Symposium of the OECS Bar Association & JEI

The Joint Symposium of the OECS Bar Association and the JEI has become a fixture on the Court's calendar. The year of activities commenced with the Symposium which was held in Antigua at the Rex Halcyon Cove Hotel on Saturday September 17, 2011. The recent amendments to the Civil Procedure Rules 2000 and the New Practice Directions were the focal point of the discourse by the OECS Bar Members and Judges.

The discussants included Mr. David di Mambro who was the Institute's nominee, and Mr. Terrence Byron representing the OECS Bar. This event was very timely and successful since it allowed participants to discuss extensive amendments to the Rules and the new practice directions issued by the Hon. Chief Justice and scheduled to come into effect in October 2011. It also provided an excellent opportunity for ongoing discussions between JEI and the Bar.

Judgment Writing Symposium for Judges and Magistrates

With the appointment of Mrs. Georgis Taylor-Alexander as the third Master of the Eastern Caribbean Supreme Court, the JEI provided the opportunity for her to participate in a Judgment Writing Symposium. This activity is an annual event which takes place in New York and is facilitated by Professor James Raymond, an expert in the field of judgment writing. He is the President of the International Institute for Legal Writing and Reasoning. Master Taylor-Alexander reported that the training was well appreciated and would no doubt enhance her judgment writing skills.

Colloquium on Gender and the Law

The JEI in partnership with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) hosted a Judicial Colloquium on Gender and the Law for Judges of the Court at the Bay Gardens

Beach Resort and Spa in Saint Lucia on November 17 – 18, 2011.

The session explored how gender norms shape the experience and use of court processes in the Caribbean as well as how these norms inform judicial decision making.

The facilitators were from various disciplines and were leading experts in their respective fields. These included Judges, Psychologists, Professors, Attorneys and Social workers from the Caribbean, namely: Barbados, Guyana, Jamaica, Trinidad and Tobago and Grenada.

At the opening ceremony the Chair of JEI, Justice Louise Blenman delivered the welcome remarks; the Hon. Chief Justice Sir Hugh A. Rawlins delivered the Opening Remarks, and the Program Director of the UN-Women, Ms. Roberta Clarke delivered the Opening Address. The feature address was delivered by Professor Eudine Violet Barribeau, Deputy Principal of the University of the West Indies, Cave Hill Campus, Barbados.

The participants discussed how courts utilize international human rights treaty to ensure the enjoyment of rights of equality and non-discrimination. They were afforded the opportunity to exchange experiences and best practices on the use of international human rights treaty in domestic courts at different levels, and discuss the strategies for more creative and widespread use of international human rights norms contained in the Convention at the domestic level.

The event was a great success; participants found the discussions enlightening and stimulating and were very grateful for the training they received.

The Colloquium was fully funded by UN-Women.

Orientation Program for Newly Appointed Judicial Officers

Following the Colloquium, an Orientation Program was convened for Master Georgis Taylor Alexander and Justice Richard Floyd, newly appointed Master and Judge respectively to the Eastern Caribbean Supreme Court.

The topics presented included: Court Administration, The Role of the Registrar, JEMS, Overriding Objectives, Applications and Costs, Case Management, Case Management and Summation.

Facilitators included: Chief Justice Sir Hugh A. Rawlins; Justice Francis Cumberbatch; Justice Albert Redhead; Master Cheryl Mathurin; Master Pearletta Lanns; Mrs. Kimberly Cenac Phulgence, Chief Registrar; Mr. Gregory Girard, Court Administrator; Mrs. Tamara Glasgow Cox, Human Resource Manager; and Mr. Mark Ernest, IT Manager.

The positive responses gathered from completed evaluation forms administered at the end of the session indicated that participants viewed the orientation program as necessary; and agreed that the training will greatly aid in understanding and executing their jobs as judicial officers.

Customer Service Training for Judicial Support Staff of the British Virgin Islands

The JEI completed its first round of Customer Service Training for the islands of the OECS when it held the training for judicial support staff of the High and Magistrates Courts and Commercial Division in the British Virgin Islands in December 2011. The training was done over a four-day period: December 5 & 6, 2011 (group 1) and December 7 & 8, 2011 (group 2).

On the first day of each group session the Permanent Secretary in the Deputy Governor's office, Mr. David Archer, welcomed the participants. He lauded the timeliness of the training and hoped that it would translate into positive changes for the staff in the respective courts.

The topics covered included: Customer Relations, Change Management, Time and Stress Management and Building Positive Relationships & Team Building. There was a high level of participation, especially from group two.

At the end of the training participants from each group completed evaluation forms to assess the workshop. Results indicated that the training was a great success and participants looked forward to future events of a similar nature.

Proceeds of Crime Advocacy Workshop

The JEI collaborated with the Eastern Caribbean Financial Investigations Advisory Team (ECFIAT) to host a Proceeds of Crime workshop for Crown and Police prosecutors from the independent OECS territories and Barbados. The training was conducted in

Saint Lucia and Grenada, March 26 & 27, 2012 and March 29 & 30, 2012 respectively.

The training took the form of mock trials with Justice Francis Cumberbatch presiding in Saint Lucia and Justice Clare Henry in Grenada.

The main facilitators were Ms. Nicole Saunders from ECFIAT and Mr. James Denison a barrister from England and an expert in the field of proceeds of crime.

The training was an excellent opportunity for the prosecutors and the Judges to learn and understand the legislation using this hands-on approach. Both sides were able to learn from each other and also discern the best practices when presiding over proceeds of crime matters.

The prosecutors were very happy for the opportunity provided by the ECFIAT team and the British High Commission for funding this important training. ECFIAT plans to host other workshops of this nature, since both JEI and ECFIAT are of the opinion that workshops which adopt the learning by doing approach are always the most successful.

The JEI would like to place on record its sincere gratitude to Mr. Karl Burrows, Resident British High Commissioner of Saint Lucia for his unswerving support to JEI over the years, and last year in particular.

Biennial Magistrates Conference 2012

The final event on the JEI's calendar for the year was the Biennial Magistrates Conference. The Institute partnered with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the United Nations Children's Fund to host the Magistrates Conference. The conference was held at the St. Kitts Marriott Beach Resort and Casino on 25th - 27th April 2012. After the conference on Gender and the law on 25th - 27th April 2012, the Magistrates were sensitized on the Judicial Enforcement Management Systems (JEMS) on Friday, 27th April 2012.

The conference provided the Magistrates the opportunity to broaden their knowledge of women's international human rights law and the relationship between international and domestic law. They benefited from a greater appreciation of the relationship between gender, law and development and how gender stereotypes influence the administration of justice, access to justice and the rule of law.

In addition, the magistrates were better able to appreciate the meaning of gender equality and how it applies in concrete situations that arise in adjudication. Finally, they were able to strengthen their understanding of the nature causes and consequences of gender based violence in the Caribbean and assess effective judicial remedies and responses.

The facilitators and presenters included authorities in the fields of law, psychology, education, and social work.

At the opening ceremony of the Conference the Rt. Hon. Dr Denzil Douglas, Prime Minister of St. Kitts and Nevis congratulated the meeting on its agenda including the consideration of the socially destabilising issue of family violence – its social, psychological and gender dimensions. He acknowledged that gender stereotypes influence the administration of justice, access to justice, and the rule of law and the participation by the magistrates at this important event reflected a laudable commitment to self-assessment and self-correction.

Her Ladyship, the Hon. Justice Louise Blenman, Chair of the JEI, extended greetings, on behalf of the Chief Justice Sir Hugh A. Rawlins, to the magistrates, with his unswerving commitment to continued education and more importantly his support for the Conference.

Roberta Clarke, Regional Program Director of UN Women, expressed her appreciation to the JEI for its commitment to dialogue on the role of the courts in advancing gender equality. She reminded the meeting that Magistrates as the interpreters and appliers of law are the first responders, the guardians of the public trust in the rule of law and natural justice.

Her Ladyship, Hon. Justice Janice Pereira, Justice of Appeal, in setting the stage for the conference, encouraged the participants to critically examine the gendered assumptions in the law and in court practice and to seek ways to redress any inequalities that may exist, such as in the corroboration warning and the recent Complaint rule.

At the end of the meeting, the Magistrates were challenged by Mrs Heather Stewart, Child Protection Specialist of UNICEF to indicate from their new gained understanding of the areas mentioned above how they would make a difference in their respective jurisdictions.

The participants in completing the evaluation forms indicated that they all considered the conference to be a resounding success. They found the discussions enlightening and stimulating and were very grateful for the training they received.

After the sessions on Gender and the law the JEI in collaboration with the IT Department of the Court's Headquarter hosted the JEMS workshop for Magistrates on the final day, Friday, 27th April 2012.

Other JEI Activities

The JEI Program Coordinator Ms. Alana Simmons worked with the IT Department to coordinate the eighth annual Caribbean Association of Court Technology Users (CACTUS) Conference held in Grenada from April 2 – 4, 2012 at the Coyaba Beach Resort and Spa.

CACTUS is a group of Caribbean Court Technology Users formed primarily to provide an avenue for the sharing of ideas, information and knowledge pertaining to the effective use of JEMS and other Court-related technology within the Judicial System of the Caribbean. It also provides an opportunity for participants to discuss some of the future plans relating to technology use in their jurisdiction.

At this year's conference participants were able to experience the enhanced software capabilities and also get a glimpse of the new case management software on the market.

At the end of the conference it was agreed that the conference will move from an annual event to a biennial one.

Conclusion

In conclusion, the Chair of the JEI, Justice Louise Blenman, the JEI Management Committee which consists of the Chief registrar, Mrs. Kimberly Cenac-Phulgence; the Court Administrator, Mr. Gregory Girard; the Director of Projects, Mr. Francis Letang, the Accountant, Mr. Irvin Ferdinand and the JEI Program Coordinator, Ms. Alana Simmons would like to express our sincere gratitude to His Lordship, the Hon. Chief Justice, Sir Hugh A. Rawlins for the excellent and unwavering support, inspiration and guidance which he provided to the Institute. We also wish to applaud his outstanding commitment to the provision of continuing education for Judicial Officers, Court staff and members of the ECSC headquarters. His background in education is testimony to the great emphasis he places on training for all levels of Judiciary.

It is very unfortunate that we will be losing such a stalwart of the JEI as he goes on retirement at the end of the law year. Specifically the JEI would like to thank Sir Hugh for his guidance and support throughout his years as Chairman and Chief Justice and also a valued member of the faculty at our numerous conferences. We wish him and Lady Claudette personal fulfillment and God's richest blessings. We are confident that should the need arise in the future JEI will be able to call on him for support.

PHILIPPINE JUDICIAL ACADEMY (PHILJA) NEWS

As of 31 August 2012

I. Judicial Education Programs

A. PHILJA HOLDS TWO (2) ORIENTATION SEMINAR-WORKSHOPS FOR NEWLY APPOINTED JUDGES

As of 31 August 2012 PHILJA has trained a total of ninety-six (96) newly appointed judges in two separate batches. The first batch underwent the Orientation Seminar-Workshop from March 20-29, 2012, while the second batch had theirs on June 13-22, 2012. Both batches had their training at the newly built PHILJA Training Center in Tagaytay City.



The Orientation Program, which lasts for two (2) weeks, addresses the following core areas: *The Judicial Person* that deals with the values, attitude, behavior and outlook of a member of the Bench; *Judicial Skills* that introduces them to management and administrative skills as well as research, communication and decision-writing skills that the judicial office demands; and *Judicial Knowledge* that engages the participants in a more intense study of substantive and procedural law from a judicial perspective.

B. PHILJA'S PRE-JUDICATURE PROGRAM

PHILJA has conducted three (3) Pre-Judicature Programs as of August 2012, with a total of one hundred thirty-three (133) lawyers-aspirants to judicial posts attending. The Pre-Judicature Program which lasts for ten (10) days, provides initial training for aspirants to judicial positions. It is oriented towards a career in the judiciary wherein aspirants are offered a judicial perspective on the law and introduces them to skills,



attitudes, values and conduct called for by their appointment to the Bench. The subjects are approached from a judicial perspective – that is, the resolution of disputes by a judge. The completion of the program and obtaining a passing mark in the Written Evaluative Examination will entitle a graduate to a full credit of thirty-six (36) MCLE units for the compliance period covered and fifteen (15) units towards the

Master of Laws degree at the San Beda College Graduate School of Law upon favorable endorsement by the Chancellor.

C. PHILJA CONDUCTS CAPACITY BUILDING SEMINAR-WORKSHOPS ON ENVIRONMENTAL LAWS AND THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

For 2012, PHILJA continues its special focus program featuring environmental laws and the Rules of Procedure for Environmental Cases. The Supreme Court began its initiative on environmental justice as early as 2009 when it held the *Forum on Environmental Justice: Upholding the Right to a Balanced and Healthful Ecology*. Soon after the Forum, the Supreme Court promulgated the first-of-its-kind Rules of Procedure for Environmental Cases with provisions empowering communities to assert their environmental rights. This was complemented by a series of Multi-Sectoral Capacity Building on Environmental Laws and Rules of Procedure on Environmental Cases which began in 2010. For 2012 and still in partnership with the Department of Environment and Natural Resources (DENR), PHILJA



conducted seven (7) similar capacity-building seminars for a total of four hundred thirty (430) participants from the National Capital Judicial Region (NCJR), Luzon, Visayas, Mindanao, and the Autonomous Region in Muslim Mindanao (ARMM). Being a multi-sectoral seminar, the participants comprised of judges, clerks of court, mediators, prosecutors, Public Attorneys Office (PAO) lawyers and representatives from DENR, Philippine National Police (PNP), Philippine Coast Guard (PCG), National Commission on Indigenous Peoples (NCIP) and the Bureau of Fisheries and Aquatic Resources (BFAR). The highlight of the program is

the workshop wherein the participants are divided into groups and assigned a case study to be presented in a moot court. The purpose of this exercise is to allow the participants to show what they have learned from the lectures and at the same time get insights from the resource person on the proper procedures to be observed in handling environmental cases.

D. PHILJA SEMINARS AND PROGRAMS

As of 31 August 2012, PHILJA has conducted a total of one hundred fifteen (115) seminars. This is inclusive of regular programs, special focus programs, convention-seminars, development programs for court personnel, program for quasi-judicial agencies and discussion sessions. *(For a complete description of PHILJA's programs and courses please check <http://philja.judiciary.gov.ph>)*

II. New Procedural Rules

A. RULES OF PROCEDURE ON ENVIRONMENTAL CASES

In early 2009, SC convened a Technical Working Group (TWG) to draft the Rules of Procedure for Environmental Cases. The composition of the TWG included esteemed members of the academe and legal profession, who provided input relating to procedural issues in environmental cases, and how to best address them. The TWG presented the draft Rules of Procedure for Environmental Cases to the participants of the *Forum on Environmental Justice: Upholding the Right to Balanced and Healthful Ecology* on April 16-17, 2009, conducted by the Supreme Court and held simultaneously in Baguio City, Iloilo City and Davao City

The participants came from different sectors and organizations, including the academe, prosecutors, environmental lawyers and NGOs, in addition to members of the judicial, legislative, and the executive branches of government. Following the Forum, the draft Rules were submitted to the Sub-committee on Rules of Procedure for Environmental Cases for further review. On April 13, 2010, the Court *En Banc* approved the Rules. The Rules were published in the Philippine Star on April 14, 2010 and took effect on April 29, 2010. The objectives of the Rules are (1) To protect and advance the constitutional right of the people to a balanced and healthful ecology; (2) To provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties recognized under the Constitution, existing laws, rules and regulations, and international agreements; (3) To introduce and adopt innovations and best practices ensuring the effective enforcement of remedies and redress for violation of environmental laws; and (4) To enable the courts to monitor and exact compliance with orders and judgments in environmental cases.

To accomplish the aforementioned goals, the Rules has (a) adopted liberalized standing requirements for plaintiffs in environmental cases; (b) facilitated access to courts by providing for litigation tools such as citizen's suits and anti-SLAPP provisions; (c) adopted the precautionary principle as a rule of evidence; and, (d) provided innovations necessary for the proper administration of environmental justice.

B. RULE OF PROCEDURE FOR SMALL CLAIMS CASES

In its effort to make justice more accessible and at the same time help de-clog court dockets, the Supreme Court introduced the Rule of Procedure for Small Claims Cases as part of judicial reform. By this Rule the Supreme Court implemented a system of filing and prosecuting small claims, without the need for the services of lawyers, no formal pleadings and no strict legal rules of evidence. The Rule shall govern the procedure in actions before the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts for payment of money where the value of the claim does not

exceed One Hundred Thousand Pesos (P100,000.00) exclusive of interest and costs. The effective date of the implementation/roll-out of the Rule, as amended, to all first level courts, except the Shari'a Circuit Courts, was on March 18, 2010. To aid the judges and court personnel in the performance of their duties under the Rule, PHILJA continuously conducted seminars since the Rule was first introduced in 2008.

C. JUDICIAL AFFIDAVIT RULE

On 4 September 2012 the Supreme Court promulgated A.M. No. 12-8-8-SC otherwise known as the Judicial Affidavit Rule. Judicial affidavits are sworn statements containing the witness' testimony in question-and-answer form. The affidavit will contain the name of witness, name of the lawyer who took the testimony, a statement that the witness is answering questions under oath and that he may be held criminally liable for false testimony or perjury. They are usually used in place of the traditional direct testimony to expedite the presentation of evidence.

Under the approved rule, direct testimony will no longer be conducted and lawyers and prosecutors can directly cross-examine witnesses since their affidavits and exhibits will be submitted in court not later than five days before the pre-trial or scheduled hearing of a case. This will shorten court proceedings since the witnesses no longer have to repeat what they stated in their written testimony.

The rule, which was adopted upon the recommendation of Senior Associate Justice Antonio Carpio, head of the SC Committee on the Revision of the Rules of Court, and Associate Justice Roberto Abad, head of the Sub-Committee on the Revision of the Rules on Civil Procedure, will apply to all actions, proceedings and incidents requiring the presentation of evidence in appellate and lower courts, as well as in quasi-judicial bodies. The cutting down of trial time is a needed reform in the judiciary, where case resolution takes an average period of 6 years. The rule will take effect by January 1, 2013.

III. Delay Reduction Strategies

A. The Guidelines for Litigation in Quezon City Trial Courts (A.M. No. 11-6-10-SC, April 16, 2012)

A pilot program on compressing litigation by cutting out certain procedures without sacrificing the parties' constitutional right to due process, the Guidelines for Litigation in Quezon City Trial Courts is not only timely but appropriate: Quezon City has the largest territory and the largest population in the National Capital Judicial Region (2,761,720 as of April 15, 2012, comprising 24% of the population of the NCJR), resulting in the biggest inflow of cases (for 2011, 9,346 newly filed cases, and from January to June 2012, 4,843 for the Regional Trial Courts; while for the Metropolitan Trial Courts, 5,737 newly filed cases for 2011, and from January to June 2012, 2,738) and one of the highest dockets (43,397 cases pending as of April 2012 among the 45 Regional Trial Court branches and 13 Metropolitan Trial Courts) in the country. A simple collection of money case lasts an average of three years before judgment is finally rendered.

From a formal consensus of opinions by all stakeholders (the Judges, the Integrated Bar of the Philippines, and the Department of Justice through the Office of the City Prosecutor and the Public Attorneys Office), the Guidelines were drawn up and among its innovations are page limitations for pleadings and memoranda to be filed by the parties; preclusion of postponements save only for acts of God or fortuitous events; shorter timelines for the arraignment of accused, especially those in detention; prohibitions against dilatory motions and non-compliant motions; mandatory oral offer of evidence instead of the usual written one; and requiring affidavits in lieu of oral testimony in specified cases. Now on its fifth month of implementation,

the Guidelines have received enthusiastic reviews from litigants and lawyers alike. *(Press Release by Judge Filomena D. Singh, Presiding Judge, Regional Trial Court, Quezon City and designated Communicator for Judicial Reforms)*

(Please refer also to item II B and C)

IV. Improvements in Court Infrastructures

A. Inauguration of Angeles City Halls of Justice

Senior Associate Justice Antonio T. Carpio led the inauguration of the Jose Abad Santos Hall of Justice (HOJ) in Angeles City on July 5, 2012. The Angeles City HOJ is one of the three pilot model courts in the Philippines, the other two are Halls of Justice are in Lapu-Lapu in Visayas and Cagayan de Oro in Mindanao, all of which were built through World Bank funds. The pilot courts are envisioned strengthen the access to justice through the installation of systems and technology, the rehabilitation of the courthouse, and the empowerment of human resources.



City Hall with bigger office spaces, courtrooms and judges' chambers, storage rooms for each court and detention areas for each courtroom, a canteen, meeting rooms, multi-function rooms, maintenance room, information and technology (IT) room, library, centralized holding area for detention prisoners, medical and dental clinic, and judges' lounge and lawyers' center, among others.

The Angeles City Hall of Justice was renamed after the fifth Chief Justice of the Supreme Court of the Philippines and served as Acting President of the Philippines during World War II, Jose Abad Santos, who is from Pampanga.

B. PHILJA Training Center

In October 2011 PHILJA began operating the PHILJA Training Center (PTC) in Tagaytay City. The PTC is composed of three (3) buildings: (a) the Main Building which houses all training facilities such as an auditorium, lecture rooms, breakout rooms, and a computer room, among others; (b) Lodging Building which features hotel-type lodging facilities; and (c) the Annex Training Facility which houses additional training facilities and some recreational facilities such as badminton court, swimming pool and game room, among others.



PHILJA used to hold some of its programs in an old clubhouse with a maximum capacity of sixty persons. With the new PTC, the judges and court personnel now undergo their trainings/seminars with the use of

state of the art training facilities like the Global Distance Learning Network, which can link the PTC to other remote sites via videoconferencing facilities.

The construction of the PTC's Main and Lodging Buildings was funded through Japan's Non-Project Grant Assistance while the renovation of the Annex Training Facility was funded by the World Bank.

V. Landmark Judgments

A. Metro Manila Development Authority (MMDA), et al., v. Concerned Residents of Manila Bay, G.R. No. 171947-48, December 18, 2008

The Concerned Residents of Manila Bay filed a complaint before the Regional Trial Court (RTC) in Imus, Cavite against several government agencies, among them the petitioners, for the cleanup, rehabilitation, and protection of the Manila Bay. The complaint alleged that the water quality of the Manila Bay had fallen way below the allowable standards set by law. In their individual causes of action, respondents alleged that the continued neglect of petitioners in abating the pollution of the Manila Bay constitutes a violation of, among others:

- (1) Respondents' constitutional right to life, health, and a balanced ecology;
- (2) The Environment Code (PD 1152);
- (3) The Pollution Control Law (PD 984);
- (4) The Water Code (PD 1067);
- (5) The Sanitation Code (PD 856);
- (6) The Illegal Disposal of Wastes Decree (PD 825);
- (7) The Marine Pollution Law (PD 979);
- (8) Executive Order No. 192;
- (9) The Toxic and Hazardous Wastes Law (Republic Act No. 6969);
- (10) Civil Code provisions on nuisance and human relations;
- (11) The Trust Doctrine and the Principle of Guardianship; and
- (12) International Law

The RTC rendered a decision in favor of respondents. The DENR, Department of Public Works and Highways (DPWH), Metropolitan Manila Development Authority (MMDA), Philippine Coast Guard (PCG), Philippine National Police (PNP) Maritime Group, and five other executive departments and agencies filed directly with the Supreme Court a petition for review.

The Supreme Court denied the petition and affirmed the RTC decision with some modification. The petitioner government agencies were ordered to clean up, rehabilitate and preserve Manila Bay. The petitioners' obligation to perform their duties as defined by law, on one hand, and how they are to carry out such duties, on the other, are two different concepts. While the implementation of the MMDA's mandated tasks may entail a decision-making process, the enforcement of the law or the very act of doing what the law exacts to be done is ministerial in nature and may be compelled by mandamus.

The MMDA's duty to put up an adequate and appropriate sanitary landfill and solid waste and liquid disposal as well as other alternative garbage disposal systems is ministerial, its duty being a statutory imposition. The MMDA's duty in this regard is spelled out in Sec. 3(c) of Republic Act No. (RA) 7924 creating the MMDA. The MMDA's duty in the area of solid waste disposal, as may be noted, is set forth not only in the Environment Code (PD 1152) and RA 9003, but in its charter as well. This duty of putting up a proper waste disposal system cannot be characterized as discretionary, for, as earlier stated, discretion presupposes the power or right given by law to public functionaries to act officially according to their judgment or conscience. A discretionary duty is one that "allows a person to exercise judgment and choose

to perform or not to perform.” Any suggestion that the MMDA has the option whether or not to perform its solid waste disposal-related duties ought to be dismissed for want of legal basis.

The heads of petitioners-agencies MMDA, DENR, DepEd, DOH, DA, DPWH, DBM, PCG, PNP Maritime Group, DILG, and also of MWSS, LWUA, and PPA, in line with the principle of “continuing mandamus,” shall, from finality of the decision, each submit to the Court a quarterly progressive report of the activities undertaken in accordance with this Decision.

B. Navia v. Pardico, G.R. Nos. 184467, June 19, 2012

Benhur Pardico disappeared after being invited for an investigation to the Security Office of Grand Royale Subdivision. Virginia Pardico, representing her husband Benhur Pardico, filed a petition for Writ of Amparo before the Regional Trial Court (RTC) of Malolos City. The RTC granted the petition. The petitioners filed a motion for reconsideration which the RTC denied. Hence, this petition for review on *certiorari*.

Voting unanimously, the Supreme Court dismissed for being fatally defective the petition for writ of *amparo* filed by Virginia Pardico. For the protective writ of *amparo* to issue, allegation and proof that the persons subject thereof are missing are not enough. It must also be shown and proved by substantial evidence that the disappearance was carried out by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge the same or give information on the fate or whereabouts of said missing persons, with the intention of removing them from the protection of the law for a prolonged period of time. Simply put, the petitioner in an *amparo* case has the burden of proving by substantial evidence the indispensable element of government participation.

Under Section 1 of AM No. 07-9-12-SC, *The Rule on the Writ of Amparo*, a writ of *amparo* may lie against a private individual or entity. However, the Court underscored that even if the person sought to be held accountable or responsible in an *amparo* petition is a private individual or entity, still, government involvement in the disappearance remains an indispensable element. The Court noted that *The Rule on the Writ of Amparo*, promulgated to arrest the rampant extralegal killings and enforced disappearances in the country, was aimed at providing an expeditious and effective relief “to any person whose right to life, liberty, and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.”

C. Archbishop Fernando Capalla, et al. V COMELEC, G.R. No. 201112, June 13, 2012

The COMELEC and Smartmatic-TIM entered into a contract of lease of the *Automated Election System* (AES Contract) with option to purchase (OTP) the goods listed in the contract. The COMELEC was given until December 31, 2010 within which to exercise the option. On September 23, 2010, the COMELEC partially exercised its OTP 920 units of PCOS machines with corresponding canvassing/consolidation system (CCS) for the special elections in certain areas. In a letter dated December 18, 2010, Smartmatic-TIM, proposed a temporary extension of the option period on the remaining 81,280 PCOS machines until March 31, 2011, waiving the storage costs and covering the maintenance costs. Several extensions were given for the COMELEC to exercise the OTP until its final extension on March 31, 2012.

On March 21, 2012, the COMELEC resolved to exercise the OTP the PCOS and CCS hardware and software in accordance with the AES contract subject to the following conditions: (1) the warranties agreed upon in the AES contract shall be in full force and effect; (2) the original price for the hardware and software covered by the OTP as specified in the AES contract shall be maintained, excluding the cost of the 920 units of PCOS and related peripherals previously purchased for use in the 2010 special elections; and (3) all other

services related to the 2013 AES shall be subject to public bidding. On March 29, 2012, the COMELEC resolved to accept Smartmatic-TIM's offer to extend the period to exercise the OTP until March 31, 2012 and to authorize Chairman Brillantes to sign for and on behalf of the COMELEC the Agreement on the Extension of the OTP under the AES Contract. The aforesaid Extension Agreement was signed on March 30, 2012 and on even date, the COMELEC resolved to approve the Deed of Sale between the COMELEC and Smartmatic-TIM to purchase the latter's PCOS machines (hardware and software) and to authorize Chairman Brillantes to sign the Deed of Sale for and on behalf of the COMELEC. The Deed of Sale was forthwith executed.

Claiming that the foregoing issuances of the COMELEC, as well as the transactions entered pursuant thereto, are illegal and unconstitutional, petitioners come before the Court in four separate Petitions for *Certiorari*, Prohibition, and *Mandamus* imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC in issuing the assailed Resolutions and in executing the assailed Extension Agreement and Deed.

The Supreme Court dismissed the petitions. It is a basic rule in the interpretation of contracts that an instrument must be construed so as to give effect to all the provisions of the contract. In essence, the contract must be read and taken as a whole. While the contract indeed specifically required the COMELEC to notify Smartmatic-TIM of its OTP the subject goods until December 31, 2010, a reading of the other provisions of the AES contract would show that the parties are given the right to amend the contract which may include the period within which to exercise the option. There is, likewise, no prohibition on the extension of the period, provided that the contract is still effective. Smartmatic-TIM categorically stated in its Consolidated Comment to the petitions that the Comelec still retains ₱50M of the amount due Smartmatic-TIM as performance security. In short, the performance security had not yet been released to Smartmatic-TIM, which indicates that the AES contract is still effective and not yet terminated. Consequently, pursuant to Article 19 of the contract, the provisions thereof may still be amended by mutual agreement of the parties provided said amendment is in writing and signed by the parties. In light of the provisions of the AES contract, there is, therefore, nothing wrong with the execution of the Extension Agreement.

Smartmatic-TIM was not granted additional right that was not previously available to the other bidders. Admittedly, the AES contract was awarded to Smartmatic-TIM after compliance with all the requirements of a competitive public bidding. The RFP, Bid Bulletins and the AES contract identified the contract as one of lease with option to purchase. The AES contract is primarily a contract of lease of goods listed in the contract and purchase of services also stated in the contract. Section 4.3 thereof gives the COMELEC the OTP the goods agreed upon. The same provision states the conditions in exercising the option, including the additional amount that the COMELEC is required to pay should it exercise such right. It is, therefore, undisputed that this grant of option is recognized by both parties and is already a part of the principal contract of lease. Having been included in the RFP and the bid bulletins, this right given to the COMELEC to exercise the option was known to all the bidders and was considered in preparing their bids. The bidders were apprised that aside from the lease of goods and purchase of services, their proposals should include an OTP the subject goods. Although the AES contract was amended after the award of the contract to Smartmatic-TIM, the amendment only pertains to the period within which the Comelec could exercise the option because of its failure to exercise the same prior to the deadline originally agreed upon by the parties. The option contract in this case was already a part of the original contract and not given only after Smartmatic-TIM emerged as winner. The OTP was actually a requirement by the Comelec when the contract of lease was bid upon. To be sure, the Extension Agreement does not contain a provision favorable to Smartmatic-TIM not previously made available to the other bidders. Hence, the competitive public bidding conducted for the AES contract was sufficient. A new public bidding would be a superfluity.

NEWS AND NOTES

BANGLADESH

Judge A.E.M. Ismail Hossain (CJEI Fellow 2008) was promoted to a Joint District and Sessions Judge in May 2012. As a Joint District Judge, he has both civil original and appellate jurisdiction and as a Joint Sessions Judge, he tries criminal cases with a maximum sentence of 10 years imprisonment. Also, he is Judge of the Special Tribunal No. 4 in Comilla District which hears cases serious in nature that may involve a death penalty.

BOTSWANA

Justice G. Tebogo-Maruping (CJEI Fellow 2000) is now Judge President of the Industrial Court of Botswana. This court specializes in Labour Law and is at the same level as the High Court of Botswana.

GHANA

Justice Sophia A. B. Akuffo (CJEI Fellow 2002) was elected President of the African Court on Human and Peoples' Rights on 18 September 2012 for a two-year term.

Justice Sophia A. B. Akuffo was first elected as a Judge in 2006 for a two-year term and re-elected in 2008 for a six-year term. She was elected as Vice-President of the African Court in September 2008 for a two-year term and re-elected in September 2010 for a final two-year term. She is a Judge of the Supreme Court of Ghana and a member of several organizations, including the Advisory Committee of the Commonwealth Judicial Education Institute.



(Source: <http://www.african-court.org/en/index.php/about-the-court/jurisdiction-3/judges>)



Justice Marful Sau of the Court of Appeal has replaced Justice Joseph Akamba as the Director of the Judicial Training Institute of Ghana.



Justice Mahamadu Iddrisu (CJEI Fellow 2006), a judge of the High Court of Ghana in Kumasi State, was transferred to Accra in September 2012 and put in charge of the Lands Court – a division of the High Court.



Several of our Ghanaian CJEI Fellows have been elevated:

- Justice Joseph Akamba (CJEI Fellow 2009) was sworn in as a Supreme Court Justice on 9th November 2012.
- Justice Gertrude Torkornoo (CJEI Fellow 2009) was sworn in as a Justice of the Court of Appeal on 9th November 2012.
- Her Ladyship Nana Adwoa Coleman (CJEI Fellow 2003) was sworn in as a Judge of the High Court on 17th November 2012.

MALAWI

Justice R.R. Mzikamanda (CJEI Fellow 1995) has been appointed to the Supreme Court of Appeal. He was awarded the title of Senior Counsel, an equivalent of Queens Counsel in England. Also, he has been appointed as Director of the Anti-Corruption Bureau, which position he takes up on secondment early December, 2012.

The Honourable Chief Justice has appointed Justice Chifundo J. Kachale as Chairman of the Judicial Training Committee. He will replace Justice Mzikamanda who has held this position since 1998.

OECS



On 28 September 2012 and for the first time in the history of the Organization of Eastern Caribbean States (OECS) Supreme Court we have seen the appointment of a female Chief Justice. Her Ladyship Madam Justice Janice Pereira takes over from His Lordship Sir Hugh Rawlins.

Justice Pereira was born on Virgin Gorda in the British Virgin Islands. She obtained her law degree with honours from the University of the West Indies, Cave Hill Campus, Barbados in 1979 and the Legal Education Certificate from the Norman Manley Law School, Kingston, Jamaica in 1981. She was called to the Bar in the British Virgin Islands in 1981 and the Bar in St. Kitts and Nevis in 2000.

Between 1981 and 1984 Justice Pereira served as Acting Registrar General, Acting Registrar of the Supreme Court and Registrar of Companies, BVI. She served as Additional Magistrate and acted as Magistrate, BVI between 1981 and 1985. She was an Associate Attorney at Law, J.S. Archibald and Company, Tortola between 1985 and 1989; Associate Attorney, Harney Westwood & Riegels, Tortola in 1989 and Attorney at Law (Civil Litigation, Commercial and Banking), McW Todman & Co, Tortola from 1989 to 1990). She was a law partner in Farara George-Creque & Kerrins, Tortola and engaged in active practice at the Bar in the conduct of matters at all levels of the Courts from 1985 to 2003.

Her Ladyship served as a High Court Judge of the Eastern Caribbean Supreme Court from 2003 to 2008 and Court of Appeal from 2009 to 2012 and Acting Chief Justice from 1 August, 2012.



Sir Hugh Rawlins (CJEI Fellow 2004) demitted the Office of Chief Justice of Eastern Caribbean Supreme Court on August 1, 2012. He has commenced teaching at the Faculty of Law, University of West Indies in Barbados as the Course Director of the LLM Legislative Drafting Programme. Also in July 2012, he was appointed a Judge of the International Labour Organization's Administrative Tribunal which has its offices in Geneva, Switzerland.



Justice Rita Olivetti (CJEI Fellow 2005) retired from the Eastern Caribbean Supreme Court at the end of August 2012.



Master Cheryl Mathurin (CJEI Fellow 2011) is now an acting High Court Judge, Eastern Caribbean Supreme Court in Anguilla.

PHILIPPINES



Lawyer-academician Maria Lourdes P.A. Sereno was appointed on August 16, 2010 as the 169th Justice and on August 24, 2012 as the 24th Chief Justice of the Supreme Court. Born on July 2, 1960, she is among the youngest Associate Justice and the first woman Chief Justice of the Supreme Court. She may also be one of the longest-serving ever, as she is to mandatorily retire in 2030 after serving a 20-year term.

Despite her family's humble means, Chief Justice Sereno's parents were able to nurture in her a passion for learning and personal excellence during her formative years. A native of Siasi, Sulu, her father was assigned there, and her mother, a public school teacher, saved what little money they had to buy second-hand books that she would eagerly read. Her appetite for literature and reflection served her well during her primary schooling and enabled her to graduate with honors at the Kamuning Elementary School and Quezon City High School. She was then awarded generous scholarships by the government and several private institutions that allowed her to earn an Economics degree at the Ateneo de Manila University, and a Bachelor of Laws degree at the University of the Philippines.

After graduating valedictorian from the UP College of Law in 1984, Chief Justice Sereno joined the largest law firm in the country. While she enjoyed her very challenging work in the law firm, her family started to grow. Choosing to spend more time with her two young children and her husband, she opted to leave the law firm in 1986.

She joined the UP College of Law where she was able to mold young women and men in the principles of Civil and Commercial law. From being one of the youngest faculty members, she would eventually go on to lead and administer two institutions based in the UP Law Center – the Institute of International Legal Studies and the Information and Publication Division. She was a professor at the UP College of Law for nearly 20 years. At one point, she also became Deputy Commissioner of the Commission on Human Rights and was partly responsible for writing the organizational plans for the Commission. She has also taught at the Philippine Judicial Academy and several international academies. In 1992, Chief Justice Sereno was awarded a De Witt Fellowship and a Ford-Rockefeller Scholarship to pursue her Masters of Laws at the University of Michigan, Ann Arbor, where she developed her proficiency in law and economics and international trade law. When she and her family returned to the Philippines, she played a key role in developing those fields of law.

At the age of 38, she was appointed as legal counsellor at the World Trade Organizations' Appellate Body Secretariat in Geneva. Her international experience and her pioneering achievements in the legal profession were recognized when she was selected as one of The Outstanding Women in the Nation's Service (TOWNS) for law.

At the age of 39, she was chosen as the only female member of the 1999 Preparatory Commission on Constitutional Reform where she was elected Chairperson of the Commission's Steering Committee. Here, she helped the various sectoral committees identify key constitutional issues, and integrated their findings into a common framework for analysis of the various constitutional provisions. In the same year, together with Justice Jose Campos, Commissioner Haydee Yorac, and other professors from the UP College of Law, she co-founded Accesslaw, a corporation that provided the first annotated electronic research system in Philippine law.

Access to justice is one of the centerpiece advocacies of Chief Justice Sereno. One of her earlier works in law school included a review of the interface between domestic laws and indigenous customary laws. The United Nations Development Program commissioned her to write a paper on judicial reform, which eventually became the basis for the first external reform program that was welcomed by the Supreme Court. Among the activities the project birthed was the first-ever dialogue between the Members of the Supreme Court and representatives of the basic sectors. She also assisted in the High Tribunal's pilot projects on mediation and judicial case management systems, and wrote a widely-

quoted survey-based paper on justice and the cost of doing business, together with professors from the UP School of Economics.

Prior to her joining the Court, she was engaged to assist in major international litigation for the Republic, after which she joined the Asian Institute of Management as Executive Director of its think-tank - the AIM Policy Center - where she pursued her interest in policy reform and its impact on governance and the economy.

Believing in what she could deliver for justice and judicial reform, President Benigno C. Aquino III made her his first appointee to the Supreme Court.

She is married to Mario Jose E. Sereno. They are blessed with two children, Maria Sophia and Jose Lorenzo.

(Source: <http://sc.judiciary.gov.ph/pio/news/2012/08/08251201.php>)

TRINIDAD AND TOBAGO

Eleanor Donaldson-Honeywell (CJEI Fellow 2006) former Industrial Court Judge, currently holds a non judicial office as the Solicitor General of Trinidad and Tobago and heads the Civil Law Department at the Ministry of the Attorney General.

UGANDA

Justice Yorokamu Bamwine (CJEI Fellow 1995) is Principal Judge of the High Court of Uganda and in charge of the entire High Court of Uganda and courts subordinate thereto. Constitutionally this places him as number three in the judicial hierarchy after the Chief Justice and Deputy Chief Justice. He remains active in judicial education and has recently trained various categories of judicial officers in Liberia and Lesotho through the Kampala office of the International Law Institute.

ZAMBIA

Judge Gertrude Chawatama (CJEI Fellow 1999) is currently serving on the Kenyan Truth Justice and Reconciliation Commission as one of the three international Commissioners.

Obituaries

Justice Joseph Nyamihana Mulenga (CJEI Fellow 2002)

Judge and Member of the African Court on Human and Peoples' Rights, Justice Joseph Nyamihana Mulenga (CJEI Fellow 2002) passed away on Wednesday 29 August 2012. According to family sources, Justice Mulenga had been unwell for a while and succumbed to his illness on Wednesday afternoon in Kampala, Uganda.



Justice Joseph Nyamihana Mulenga S.C., a Uganda national, was elected a Judge of the African Court in 2008 for a term of six years. Previously, Mr. Justice Mulenga served in the East African Court of Justice (2001-2008), initially as Vice-President and finally as President of the East African Court.

Before joining the regional courts, Justice Mulenga served in the national judiciary in Uganda. He first worked as a Public Prosecutor in the Department of Public Prosecutions in Uganda, rising through the ranks from Pupil State Attorney to Senior State Attorney. He also served as a Cabinet Minister, first as Minister of Justice and Attorney General, and then, briefly, as Minister of Regional Co-operation (1986-1989). From 1997 to 2009, he was appointed a Justice of the Supreme Court of Uganda (1997-2009).

Prior to the judicial appointments, Justice Mulenga practiced law at the Uganda Bar (1967 -1997). He was also well known as a private practitioner of Law and consultant for his private firm, Kampala Associated Advocates. In addition to the legal practice, Justice Mulenga participated in Ugandan politics and was once a member of parliament.

Justice Joseph Mulenga graduated from London University with a Bachelor of Laws (LL.B) in 1965. The following year he became a Barrister-at-Law of the Royal Society of the Middle Temple of London, United Kingdom.

His death is indeed a great loss to judicial fraternity in Uganda, the African Court and Africa as a whole.

(Source: <http://www.african-court.org/en/index.php/news/latest-news/261-honourable-justice-joseph-nyamihana-mulenga-passed-away>)



Sir Kubulan Los (CJEI Fellow 1996)

Submitted by Justice Nicholas Kirriwom, CJEI Fellow 2011

One of Papua New Guinea's senior statesman, lawyer, public servant and departmental head, diplomat and finally a judge for 24 years until his retirement, Sir Kubulan Los, died at his Boroko home in the capital city of Port Moresby on 7 August, 2012. He was 70 years old. His wife Lady Hilan Los died two years earlier. He was buried in the town public cemetery beside his wife in his home Province of Madang on 19 August, 2012. Both are survived by three sons, two of whom are lawyers and one daughter, all married with children.

He was called to the bar in 1972 and after serving in various capacities besides being a practising lawyer, he was appointed to the bench in April 1983. He retired from the bench in April 2007 after reaching his compulsory retirement age of 65. Post retirement he served as Chairman of the Parole Board of Papua New Guinea in an acting capacity for several years until forced to quit work by poor health.

Sir Kubulan was knighted by Her Majesty Queen Elizabeth The Second for distinguished service to the Public Service in 1992. In 1996 His Honour joined the elite group of Her Majesty's Commonwealth Fellows after completing the program run by the Commonwealth Judicial Education Institute in Halifax, Nova Scotia, Canada.

His Honour is best remembered by his former judicial colleagues and the legal profession in Papua New Guinea especially those in the capital city as the judge with the motto: '***Upon becoming a judge, you're a judge for 24 hours and 7 days a week, until you're a judge no more***' - and turned his home into a courthouse where he heard ex parte applications and gave interim restraining orders after hours when civil liberties and basic human rights of citizens as guaranteed under the Constitution were at stake. And he lived up to that motto till he retired.

Governance Structure of CJEI

The governing committee of the Institute consists of the Right Honourable Sir Dennis Byron, President; the Honourable Justice Madan B. Lokur, Vice President; Judge (R) Sandra E. Oxner, Chairperson; the Right Honourable Chief Justice Beverley McLachlin, Canada; the Honourable Chief Justice Ivor Archie, Trinidad & Tobago; the Honourable Justice Sophia Akuffo, Ghana; the Honourable Justice Rahila Hadea Cudjoe, Nigeria; the Honourable Justice Asif Saeed Khan Khosa, Pakistan; the Honourable Justice Yvonne Mokgoro, South Africa; the Honourable Justice Leona Theron, South Africa; the Honourable Justice Irene Mambilima, Zambia; the Honourable Judge Gertrude Chawatama, Zambia; Professor John A. Yogis, QC, Canada; Professor Michael Deturbide, Canada; and Mr. Larry Smith, C.A., Honourary Secretary/ Treasurer.

Chief Justices of the Commonwealth countries are Patrons to the Institute. The Executive Directors of Commonwealth judicial education bodies form an Advisory Board to the Institute.

Upcoming events

CJIE Patron Chief Justices' Meeting	April 14, 2013, Cape Town, South Africa
Commonwealth Law Conference	April 14 - 18, 2013, Cape Town, South Africa
CJIE Intensive Study Programme for Judicial Educators	June 2 - 21, 2013, Halifax, Ottawa and Toronto, Canada
International Organization for Judicial Training Conference	November 3 - 7, 2013, Washington, DC, USA

Editor: Professor N.R. Madhava Menon

We are eager to share in the CJIE Report news on judicial education developments, judicial reforms, elevations, honours, or obituaries and other news related to the judiciary such as new innovations to tackle arrears and delays, strategies to improve access to justice, landmark judgments, or recent judicial education initiatives in your country.

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