

# **REPORT OF THE 13TH BIENNIAL CONFERENCE OF THE IAWJ**



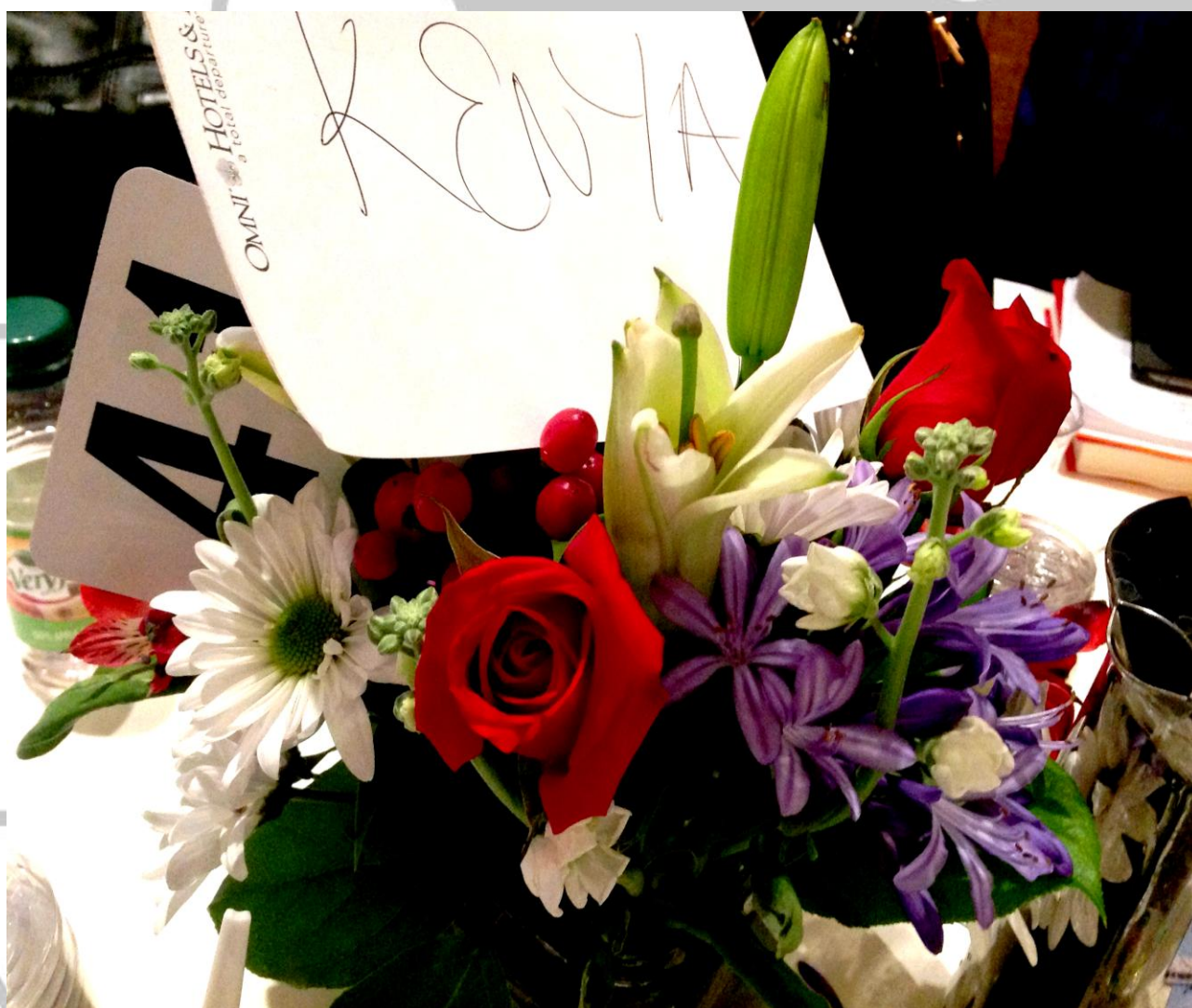
**KENYA WOMEN JUDGES  
ASSOCIATION**

**2016**



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## OVERVIEW

The 13th Biennial Conference of the IAWJ was held between the 26th and 29th of May 2016 in Washington DC, USA. The theme of the conference was "*Women Judges And The Rule Of Law: Assessing The Past, Anticipating The Future.*" The Conference commenced on Thursday, 26th May 2016 with registration, drop off of "Global Treasures" for the "Silent Auction". and a welcome reception where first time attendees were paired up with "mentors". (See attached Conference Agenda.) The formal sessions began on Friday, 27th May and involved ceremonial presentations to honour the festivity of the Silver Jubilee of the IAWJ, jurisprudential exchange sessions, business meetings, social and cultural activities. The panellists delivered informative pieces detailing their leadership and participation in addressing gender inequality, and highlighting new developments in international human rights

## REPRESENTATION AND PARTICIPATION

Over 80 countries were represented by women Judges, Magistrates, Registrars, Administrators, Jurists and accompanying guests composed of members, officials, associates or supporters of national chapters affiliated to the IAWJ. Participants were treated to a week of dialogue and inspiration. The event brought together founding members of the IAWJ as well as the newest members in a global voyage through diverse jurisdictions.

With the generous support of the Judiciary of Kenya and its development partners, the Kenya Women Judges Association sent a delegation of 9 members composed of the following Judges and Magistrates:

- |   |                           |
|---|---------------------------|
| 1. Hon. Lady Justice Hannah Okwengu, JA.  | - Chairperson KWJA.       |
| 2. Hon. Lady Justice Jessie Lesiit, J.    | - Vice Chairperson KWJA.  |
| 3. Hon. Lyna Sarapai, SRM.                | - Secretary KWJA.         |
| 4. Hon. Christine Njagi, RM.              | - Vice - Secretary, KWJA. |
| 5. Hon. Lady Justice Lydia Achode, J.     | - Treasurer, KWJA.        |
| 6. Hon Irene Kahuya, SRM.                 | - Vice -Treasurer, KWJA.  |
| 7. Hon. Lady Justice Roselyn Nambuye, JA. | - EC Member, KWJA.        |
| 8. Hon. Lady Justice Hellen Wasilwa , J.  | - Member, KWJA.           |

The KWJA delegation joined in sharing experiences about jurisprudence and access to justice programs and had ample opportunity to network with the rich diversity of participants from all over the world. They also participated in the social activities of the conference; most notably, the historical tours of the landmarks of Washington DC and the signature "Silent Auction" of the IAWJ dubbed "Global Treasures" where curios from Kenya were sold successfully and proceeds donated to the IAWJ.



During the formal sessions, Kenya was also represented on three different panels courtesy of presentations made by Hon. Lady Justices Nambuye, Wasilwa and Hon. Kahuya presented. The details of their presentations are captured in the report of the sessions below.

## **REPORT OF THE SESSIONS**

**FRIDAY, 27TH MAY 2016**

### **OPENING CEREMONY**

The IAWJ welcomed participants with a gala reception during which the "Roll Call of Nations" was taken. Kenya of course was present - bedecked in National Colours.



## **SESSION ONE : EQUALITY FRONTIERS**

### **PANELISTS**

- **Judith Resnik**, Arthur Liman Professor of Law, Yale Law School, USA;
- **The Right Honourable Lady Brenda Hale**, Deputy President, Supreme Court of the United Kingdom;
- **Deputy Chief Justice Elena I. Highton de Nolasco**, Supreme Court of Argentina; **Justice Teresita Leonardo de Castro**, Supreme Court of the Philippines;
- **Chief Justice Irene Mambilima**, Supreme Court of Zambia;
- **Associate Justice Sonia Sotomayor**, Supreme Court of the United States

These esteemed Judges shared on the Role of Law and on their own work in responding to inequality and in considering the future of mandates for fair and equal treatment.



**The Right Honourable Lady Brenda Hale of UK** lamented that the UK has very few women appointees to the higher benches with herself as the only woman in the House of Lords despite their having been 15 appointments since hers. She expressed the view the reason for the low number of appointments is the fact that the judiciary is under politicians. She stated that affirmative action to increase the number of women in judicial position is shunned as it is felt that it discouraged the best women from applying as they would then be viewed as charity cases as opposed to competent candidates..

In regard to her role in response to inequality, Right Honourable Lady Brenda Hale stated the best approach was to declare that women's rights are human rights. She discussed the negative effectives of the law to capping effective of each households as it most likely affected single women with children. She expressed the need to rule that right to welfare benefit is human rights and that a law developed along those lines is yet to be passed. Right Honourable Lady Brenda Hale advised women not only to makes decision but also to work to work on issues of violence against women and in that regard she shared the efforts that she had made in coming up with an office housed within the court where women can file their complaints against violence have a risk assessment undertaken within 24 hours of filing the complaint. The complaint is referred to a free lawyer and the matter is referred to court where an injunction may be obtained within 24 hours.





**Justice Teresita Leonardo de Castro, IAWJ President Supreme Court of the Philippines** shared that the law has changed to recognize self-defence on battery grounds. Even in absence of aggression when the offence was committed. The battered women syndrome evolved whereby a woman accused of assault, however aggregated against her husband could invoke the defence. That defence was acceptable where

the woman had used evidence of unlawful aggression and continuous battery against her by the husband and she had suffered the battered woman syndrome.

*Justice de Castro*, said that the battered woman syndrome defence operated as a mitigating factor to reduce the seriousness of the offence committed.

## **SESSION TWO: GENDER AND INTERNATIONAL CRIMINAL LAW PROJECT**

This was a particularly inspiring session hosted by the Gender Jurisprudence and International Criminal Law Project which has documented Jurisprudence on Sexual and Gender Based Violence in times of conflict and collated the cases and commentaries in a one-stop research reference resource available at <https://www.genderjurisprudence.org>. From this forum members were taught how to access the online database that contains cases from various jurisdictions on Sexual Gender Based Violence. The training was informative and the one only needs to link into the webpage and access the material.

Later on members were treated to a reception at the National Museum of Women in the Arts hosted by the prolific Judge Ruth Bader Ginsburg also fondly known as the "Notorious RBG"



**SATURDAY, 28<sup>TH</sup> MAY 2016**  
**SESSION ONE: MOOT COURT**

**PANELISTS:**

- **Judge Françoise Carnivet**, Court of Cassation, France.
- **Judge Geri Ettinger**, New South Wales Medical Tribunal, Australia.
- **Justice Carmen Alanis Figueroa**, Federal Electoral Court of Mexico.
- **Judge Margaret McKeown**, U.S. Court of Appeals for the Ninth Circuit, USA.
- **Justice Eusebia Munuo**, Court of Appeals (Retired), Tanzania.
- **Hon. Lady Justice Roselyn Nambuye**, JA, Court of Appeal, Kenya.
- **Justice Janet Tello Gilardi**, Supreme Court of Peru.

***Bailiff:***

Judge Cindy Lederman, Circuit Court Judge, 11th Judicial Circuit Miami Dade, Florida, USA

***Lawyer for the Petitioner:***

Judge Monica Bravo Mayuli, Family Court Judge, Santiago del Estero Province (Argentina)

***Lawyer for Malaganda:***

Professor Macarena Sáez, Faculty Director, Center for Human Rights and Humanitarian Law, American University Washington College of Law

***Coordinator:***

Anne Goldstein, Human Rights Education Director, IAWJ

**CASE STUDY: GRACE SSALI AND DAUGHTERS v. UNITED REPUBLIC OF MALAGANDA**

A complaint filed before the African Commission on Human and Peoples Rights against the United Republic of “Malaganda”. The facts of the case are based on the case presented to the Inter-American Court of Human Rights in *Atala Riffo and Daughters v. Chile*. In the Atala Riffo case, a woman judge from Chile lost custody of her children in the domestic courts of her country because she was living in a same-sex relationship with another woman. In this Moot Court, a mother loses custody over her three daughters because she is living in Malaganda in a same-sex relationship with another woman.

The particulars of the case were that Grace and her husband had both agreed that the mother Grace was to take 2 daughters and the father was to have custody of



one of the daughters. Thereafter the father went to the juvenile Court to petition for the custody of the 2 other daughters based on the fact that the mother was a lesbian and that the development of the children would be affected due to exposure to HIV/AIDS and Sexually Transmitted Diseases and also psychologically the children would be affected as they were not being raised in a normal family setting.

The Court of Appeal and the Junior Court ruled that there was no need to remove the children from the custody of the mother as there were medical, psychological and children's reports as well as education reports that showed that the children were not neglected and that they were learning well in school and that their health was good. The Supreme Court upset the decision and granted custody to the father of the children. The issues before the Panel were whether the rights of the mother were violated and whether the custody issue was properly determined.

The Panel, made of Judges from the Americas, Europe, Asia-Pacific and Africa were asked to take the role of members of the African Commission on Human People's Rights and decide the case under international law. They were also asked to describe how the underlying custody dispute would have been decided under the laws of their respective countries.

The Panel Court heard mock arguments for and by the Advocates for the Petitioner and Malaganda and thereafter deliberated on the issues therein. Each of the panellists then gave an opinion based on their own assessment of the case and highlighting how they would have navigated the approach allowed in their own judicial system to handle the case.

The Panel found in favour of the Petitioner with one dissenting opinion from Hon. Lady Justice Roselyn Nambuye, JA.



*Let us put our heads together: The esteemed Moot Court Panel in caucus.*

### **Judge Francoise Carnivet, Cour de Cassation, France**

In her opinion, Judge Carnivet noted that in France the best interest of the child would be given priority and that there was a right to respect the mother's sexual orientation. She noted that the Court was more concerned with what the society would note of the situation and thus didn't have an objective approach. She also argued that sexual orientation was covered by the Protocol to the African Charter on Human and Peoples' rights on the rights of Women in Africa.

### **Judge Geri Ettinger, New South Wales Medical Tribunal, Australia**

The Judge gave reference to Articles 2 and 18 of the Protocol to the African Charter on Human and Peoples' Rights on the rights of Women in Africa. Article 2 is on the Elimination of Discrimination Against Women. Further she noted that the Family Law Act of 1965 removed fault in the dissolution of marriage and she made reference to the case of L&L in 1983 of Australia where the same was a sexual orientation case and the same noted that homosexuality was only invalid if the same affected the ability of the parent to parent the child.

### **Justice Carmen Alanis Figueroa, Federal Electoral Court of Mexico**

Judge Carmen stated that in their laws there is no term custody but that parents have an opportunity for a shared care arrangement for their children. They also look at the best interest of children and that the views of the children are taken into account.

She asserted that although the best interest of children, especially of tender years more often than not are cared for by the mother, there is still room for considering traditional values in a modern world so that a delicate balance can be applied to achieve critical contact, care and shared arrangement of responsibility.

She cited the principle of continuity, she noted that there was need for the court to provide for access to both families. Due to this there was no need to change the care of the children as there was no harm to the children. Nonetheless she warned that the safety of the children should be the upmost consideration even where the court is minded to preserve the relationship of the larger family.

### **Judge Margaret McKeown, U.S. Court of Appeals for the Ninth Circuit, USA**



Said they apply the nexus test: whether harm will be caused to the child. It Was her view that children don't need mother/father figure to be adjusted. A ban the same sex family in unconstitutional that in this case facts strongly favoured the mother. Children in same sex marriages do not suffer psychologically.

Judge noted that the best interest of the child will be considered and that they looked at the presumption of harm to the children. She noted that in the Perry case the Court ruled that children raised by the same sex parents will grow up well just like children of heterosexual parents.

She noted that a recent case in 2015 noted that a ban on same sex marriages was unconstitutional. In this case she noted that the custody should have been reversed to the mother as there were reports that showed that the children were not affected adversely by the mother's sexual orientation.

### **Justice Eusebia Munuo, Court of Appeals (Retired), Tanzania**



Before stating her opinion she noted that the Chief Counsel for the State of Malaganda in the moot Court session, Professor Macarena Saez was the actual Chief Counsel in the real case. She then gave a brief background of the case detailing that the Petitioner,

In her opinion, "people" under Article 18 of the African Commission on Human and Peoples included single mothers such as the applicant herein. Further that the social, education and medical reports were in favour of the mother. She also stated that the law does not discriminate against robbers, thieves and witches; and therefore should not discriminate against the mother being in a same sex marriage.

She noted that the Court in Tanzania would have looked at the best interest of the children and in this case that all the reports were in favour of the mother and that she had raised her children well and had not in any way failed her children. However, she noted that homosexuality was criminalised in their country.



## **Hon. Lady Justice Roselyn Nambuye, JA Court of Appeal, Kenya.**



Judge opened by noting that as the dissenting voice she gave thoughts for the law to grow. She asserted that in her analysis, the rights of the children and not those of the mother, were the heart of the matter, were the ones violated and should have been the main focus of the court. She argued that the principle of Best interests of the Child had achieved normative status in international law. Applying Articles 2 (5) and (6) of the Constitution of Kenya, which

domesticate international law in Kenya, she noted that under the African Charter parental responsibility was not only shared but also equal; and that this responsibility can be limited in certain circumstances. Such tampering if justifiable cannot be said to be violation especially noting that not all the reports that were issued in this case were favourable to a determination of custody for the mother.

She also cited Article 53 (2) of the Constitution of Kenya 2010 as well as Section 43 of the Children's Act where the principle of the Best Interests of the Child is couched as being of "paramount importance in every matter concerning the child"

She noted with concern that in the case study, the sexual orientation of the mother was an issue that gained undue focus in the legal analysis of the case to the prejudice of the children. She insisted that the central issue should have been the children and their rights. On the matter of whether the mother was discriminated on grounds of sexual orientation, she stated that the law in Kenya proscribes same sex unions but noted that social values stretch and change from time to time thus indicating that related legal developments may accrue in future.

Of critical concern in her opinion, was that the lifestyle of the father and that of his partner was not interrogated and that no report was offered. She asserted that not offering a report about the father and his partner was more a violation of the Children's right to orders made in their best interest than it was a violation of the mothers rights under the Charter and Kenyan Law; thus suggesting that, in that context the issue of the rights of the mother in this case could be considered a distraction in so far as that principle applies

She thus warned the courts to refrain from considering the issues of parents who might be using the children to settle their own scores and emphasized that the best interests of the children was paramount and that upholding the principle took precedence over any rights or interests attributed to the parents.

## **Justice Janet Tello Gilardi, Supreme Court of Peru**

The Judge noted the Court in her country would have looked at the best interest of the children and that sexual orientation is a prohibited category. She asserted that the right to equality of children and non-discrimination of mother was violated. Her argument was that the mother of the children had a right to keep the children since there was no reason to separate her from the children and the views of the children had not been sought.

Secondly, that the mother had a right to sexual orientation and any decision against that was short sighted since no consideration had been given to the conduct of the husband in his heterosexual relationship. Discriminating the mother was prejudicial to the Children to the extent that it violated their right to equal treatment before the law. She exhorted every judge to accord all persons coming before them equal treatment under the law as a way of eliminating stereotypes against sexual discrimination.

## **PLENARY SESSION: RESTORATIVE JUSTICE**

### **PANELISTS:**

- **Judge Nawal Al-Jawhari**, Administrative Court, Jordan
- **Chief Judge Kimberly Craven**, Oglala Lakota Oyate Tribal Courts, South Dakota, USA
- **Judge Lunel Junco Gabayoyo**, Municipal Circuit Trial Court of Sibalom San Remigio, Belison, Antique, Philippines
- **Judge Naurin Aktar Kankon**, Court of Metropolitan Magistracy, Chittagong, Bangladesh

### **Moderator:**

Judge Carolyn Henwood, CNZM, New Zealand

### **Coordinators:**

- Judge Judith C. Chirlin, California Superior Court, Los Angeles (Retired), Executive Director, Western Justice Center, USA
- Chief Justice Dana Fabe, Alaska Supreme Court Honorable Arline Pacht, USA, Founder of IAWJ

In this plenary session there were two moving presentations. One was shared by *Judge Carolyn Henwood*, CNZM, New Zealand and *Chief Judge Kimberly Craven*, Oglala Lakota Oyate Tribal Courts, South Dakota, USA.

**Judge Henwood** stated that the Maori people of New Zealand have suffered many years of discrimination through war, land confiscation and alienation. The Maori were colonized in the 19<sup>th</sup> century. In 1975 the country started correcting using the Waitangi Tribunal and by encouraging the Maori people to flourish. She said that the Maori people have been disfranchised further due to migrations to the cities in search for jobs which in turn disconnected them from their roots. The Judge discussed the recent trend in state responses; that of taking children away from their families and institutionalizing them. She asserted and the impact of this lead to an increase in criminal statistics especially among the youthful Maori people. The Young Persons Family Act enacted in 1989 introduced family group conference with the following outstanding features:



- No children would be taken to court unless it was in the public interest
- Specialized police and lawyers were availed for youthful offenders
- Victims involvement was used
- Accountability was the desired outcome in most cases
- Reparation was achieved.

She summarized by affirming that once the law became effective, there was a 60% reduction of the number of youth coming to court.

**Judge Nawal Al-Jawhari** explained that in Jordan due to strong tribalism if a criminal offence such as murder is committed by a person from one tribe against a person of another tribe, the entire tribe of the victim took place. As a result, revenge attacks were common and were carried out even after a long lapse in time. In order to curtail this, the communities have developed a system called '*Sulha*' .



In that system negotiation between the two tribes and the victim are held before any revenge attack is carried out. The two groups agree on compensation through payment of what they call blood money. The compensation is done through a public ceremony where the offenders family takes responsibility of the offence and the victim's family accepts the compensation. *Sulha* is accepted in court as mitigation and works towards reduction of the sentence.

**Chief Judge Kimberly Craven**, explained that there were fifteen crimes over which the tribal tribunal had no jurisdiction and these were tried by the national or federal courts. Mechanisms had been created to create diversion for young offenders. Alcoholism was said to be high among the communities due to its centrality at



traditional ceremonies. The Judge said that they practice restorative justice through the civil process that allows persons acquitted in criminal cases to seek restoration of their reputation through court declarations. In criminal courts, restorative restoration is achieved through plea agreements. The judge explained that medical evaluations to determine alcohol abuse and mental capacity as a means of addressing the root problems to criminal acts and to address the risk of reoffending were carried out.



*Hon. Lady Justice Koome, JA, follows the proceedings*

## **SESSION THREE: COURTS IN CRISIS**

### **MAINTAINING THE RULE OF LAW IN EMERGENCY SITUATIONS**

#### **PANELISTS:**

- ***Honorable Susan Criss***, (Judge, Retired) Criss & Rousseau Law Firm LLC Texas, USA- Hurricane
- ***Acting Chief Justice, Sushila Karki***, Supreme Court of Nepal –Earthquake
- ***Judge Haemin Lee***, Daejeon District Court, Korea-Sinking of Ferry Boat Court
- ***Judge Jane McKeekan***, District Court, Christchurch, New Zealand-Earthquake
- ***Judge Hellen Wasilwa***, Puisne Judge, Employment & Labour Relations Court, Kenya- Mall Shooting
- ***Ms. Cathy Winter***, Director of Corporate Development, Court Call, LLC, USA

#### **Moderator:**

Judge Jane Spencer Craney, Morgan Superior Court 3, Indiana, USA

#### **Coordinator:**

Judge Judith C. Chirlin, California Superior Court, Los Angeles (Retired), Executive Director, Western Justice Center, USA

How do you maintain the Rule of Law in an emergency or crisis situation and during its aftermath, both immediate and long term? Do you have access to a plan for dealing with the immediate circumstances and a Continuity Of Operations Plan (C.O.O.P.)? Six experienced Judges from around the world discussed their professional and personal experiences with natural and man-made disasters, lessons learned from the ensuing crisis and advice for the future.

From the Westgate mall terror shootings in Kenya (Judge Wasilwa), the aftermath of earthquakes (Judge McKeekan-New Zealand, Judge Karki-Nepal) and hurricanes (Judge Criss-Texas), the compassionate and just response to victims' families after the sinking of the ferry boat in Korea (Judge Lee), and the operational advice and protocols shared by Judge Craney (USA) and Cathy Winter of Court Call, LLC (USA), the panel testified to the heart-felt judicial responses and bold female leadership to recent crises noting to exhort the participants to carry away lessons about preparedness.

**Honourable Susan Criss (Judge Retired), Criss & Rousseau Law Firm LLC Texas, USA-Hurricane**



Judge noted that when the hurricanes struck the first concern was the Court records. She noted that members have to be coordinated and also plan for the records. The same can be stored in the cloud and that plans need to be in place for the cells, the probation departments for the juveniles and also for the Courts to operate.

### **Acting Chief Justice, Sushila Karki, Supreme Court of Nepal-Earthquake**



*Acting Chief Justice, Sushila Karki* of Nepal, shared her personal experience when an earthquake attacked in Kathmandu in April 2015. She said that her home was totally destroyed and she was left shelter less and without food for some days. The earthquake measuring 7.67 on the Richter scale struck while she was in her office on the fourth floor of a building. Nine thousand people lost their lives and many buildings of historical value were destroyed . The court premises were destroyed and family members, including hers

separated for days without trace.

She shared that the experience left her traumatized to date but she had found some relief through meditation. As a way to assist the suffering of the victims of the earthquake, judges and magistrates contributed 30% of their salaries towards the relief.

### **Judge Haemin Lee, Daejeon District Court, Korea-Sinking Ferry Boat**



*Judge Haemin Lee* of Korea, shared on the role that the courts in her country played when an overloaded and poorly maintained ferry boat capsized and sank killing among others, 325 teenagers on a school trip on 16<sup>th</sup> April 2014. The captain of the boat and 13 crew members were charged in court for homicide and violation of shipping laws; tried and convicted in a trial was conducted expeditiously but also in a manner that was sensitive to the victims as well as the need for public

participation in such a traumatic event.

She outlined some of the responsive strategies as follows:

- **Victims and Public participation**

The court rooms were remodelled to accommodate the surviving victims , the families of the deceased and the public who were expected to attend the trials in large numbers. The remodelling was also to facilitate supplementary



testimonies through video conferencing. This allowed for expeditious conclusion and for the public to follow the proceedings. In addition to this, a law was enacted to enable the court to organize for live coverage of the proceeding.

- **Information and Communication**

The court also enabled open communication channels between the victims, the lawyers and the court. There was a simple system where the families of the victims were handed leaflets on the trial process and the court also published leaflets to guide the witnesses around the court and to enable victims to speak about their experiences.

- **Witness protection**

Witnesses were facilitated to testify via video conferencing to minimize contact with the accused persons. Victims were also given the opportunity to cross-examine the accused persons through their lawyers.

- **Psychosocial support:** The court availed stand-by medical staff during court sessions to attend to traumatized witnesses and other stress management needs emerging from the emotive trial. Parties as well as court staff were immediately trained on first aid and underwent manual and mental orientation and debriefing to enable them to understand the tragedy as well as the scope of the trial process. Part of this response included escorting of witnesses by court bailiffs to a rest area specifically prepared for them. The court also organized transportation of witnesses from courts to their homes to mitigate against exposure to re-victimization and secondary trauma expected if they used public transportation at the time.

She concluded by affirming that the response had a desired impact because, after the trial, the families expressed satisfaction in the manner the trials had been conducted. Secondly, trauma to victims was reduced due to good court environment and this assisted the victims to recover faster from the main trauma.

### **Court Judge Jane McKeekan, District Court, Christchurch New Zealand - Earthquake**

After the earthquake there was major destruction of the Courts. They then went to the emergency plans for the Court. They immediately established emergency Courts in 12 sites and even once she held sessions at her dining area in her home. Jury trials were relocated to other cities and that the police visited the offenders to keep track of them.

She noted that the Court records were digitalized and the temporary court sites

included museums, tennis club rooms and other sites. As much as possible they tried to ensure that justice was still served to all despite the quake and later there was restructuring of the Courts and the process went back to normal.

### **Judge Hellen Wasilwa, Puisne Judge, Employment & Labour Relations Court, Kenya - Westgate Mall Shooting**



Judge gave a vivid presentation on the acts of terrorism in the Country highlighting the Westgate mall shooting as well as the Garissa Attack which left many Kenyans dead and injured.

She noted to start her presentation with a reminder that the Somali state had long collapsed and that in 2003, President Bush announced that stabilizing Somalia was the best way of securing the region. In 2011, Kenya launched what is termed as **‘Operation Linda Nchi’** (Operation Protect the Country) and took its army into Somalia to sea. Since then, Kenya has had many terrorist attacks on its soil with thousands of casualties. The Judge gave a brief but terrifying account of what happened two years ago in the Westgate Mall terrorist attack.

Since then, the courts have been compelled to develop jurisprudence addressing the nuances of the crime of terror. Specifically,

- The immediate solutions was the enforcement of stringent bond terms due to the risk of flight of suspects and for their own safety since in some instances the public was baying for blood portending breaches of the peace if suspects are released.
- The courts have now developed jurisprudence on the instances where denial of bail and bond, a constitutional right to all persons in Kenya, citizen or alien, is justifiable. She cited two decisions that were given by Justice Lydia Achode (in attendance) declining the bond for the said accused person
- She also highlighted the establishment of a special court was in Shimo la Tewa Prison, in Shanzu area of the coastal town of Kenya. This was modified it to make it secure for purposes of securing trials of suspects in terrorism cases due to the risk of retaliatory attacks for arrest. She asserted that this was also aimed at reducing the long distance transportation of the suspects from pre-trial custody prison to court.
- She also shared that courts now more readily allow the transfer of suspects of terrorism related cases from courts in small towns to courts in larger towns

to reduce the tensions that arose in those smaller towns in instances where trying the suspects in their home towns would prejudice everyone's security.



*Judge Wasilwa during her presentation*

Judge Wasilwa also highlighted the enactment of more statutes such as the Witness Protection Act, the Victim Protection Act, and the Terrorism Act, all of 2014 as one of the responses undertaken by Parliament to enhance access to and delivery of Justice in the face of organized crime.

In conclusion, she urged the IAWJ to consider the permeating and increasingly globalized nature of the crime of terror and the need for both the IAWJ and its national affiliates to cooperate in developing appropriate responses to it.

#### **Ms. Cathy Winter, Director of Cooperate Development, Court Call, LLC, USA**

The presenter noted that disaster management was critical at all levels and that there was need to plan for the same. She noted the need to have Court records digitalized and also have digital plans. The evidence lockers. Rooms and exhibits need to be planned for in times of disasters.

She gave information on Court call and how they assist Courts to digitalize and also prepare disaster plans.





*Panellists on "Courts in Crisis" respond to queries after the session.*

#### **SESSION FOUR: IAWJ - AFRICA REGIONAL MEETING**

Members representing newly established chapters in Mozambique and Cote d'Ivoire were welcomed by the Vice President of the IAWJ Hon. Lady Justice Binta Nyako of the Federal High Court of Nigerian.

The activities in the region were highlighted by the various chairs of the national associations from the region. The regions received members from the Franco-phone Countries and they also gave their reports. Kenya also submitted their report singling out the biennial elections as well as the ongoing training, sensitization and review projects concerning the Jurisprudence of Equality Program, SGBV, mentorship and positive masculinity.

Members from the African Region were also briefed on the South African Conference with an update about the resolution of the accounting dispute between South Africa and Nigeria in favour of South Africa. It was agreed that it was important for the Region to seek clarification from the IAWJ about apportionment of dues collected from members and participants during the Annual Regional conferences to pave way transparent accounting practices in the future. Later the Region voted unanimously that the next regional conference for 2017 would be hosted by Kenya and that the dates and theme would be circulated.

At the end of the session members within the region also voted for their second representative to the Board of Directors and Judge Imani Aboud Daud from the High Court of Tanzania was elected as the Director representative for the Africa region. This was following the Retirement of Lady Justice Mambilima, CJ of Zambia.

There was a tense moment after Kenya cried foul over alleged violation of an earlier MOU between the South Africa bloc of Associations to cede the position to Kenya following immediately previous representation from Tanzania and Zambia in that order.





*Leaders from the Africa Region attend to money matters.*



*Some advice from the US Supreme Court Archives*



**SUNDAY 29<sup>TH</sup> OF MAY 2016**

**SESSION ONE: IAWJ BUSINESS MEETING**

This was a meeting of the entire IAWJ membership to hear from the IAWJ Board, Officers, and Executive Director on the state of the organization, directions for the future, and discuss and vote on any resolutions.

After the new the incoming leaders of the IAWJ were announced (Full report available at <https://www.iawj.org/who-we-are.html> and the next conference date and venue settled as 2018 in Argentina; attending members were informed that the association had now over 5000 members with 39 national associations.

Some of the programs that members were sensitized about were:

- Global Leadership of Women - GLOW
- Sextortion
- Judicial Leadership

The outstanding thematic issues that were to be considered were:

- Women's leadership within the community and the Judiciary
- Gender based violence
- Human trafficking
- Child rights and protection
- Sextortion (corruption)

The IAWJ encouraged members to consider the following priorities:

- Migration and rights
- Gender justice in conflict and post conflict
- Leading justice sector wide response to GVB through women's leadership model
- Exporting the model globally of gender commission and gender bias taskforce

The next steps were identified as follows:

- Begin the process to create the strategy plan for 2017-2021
- Create thematic working groups
- Launch global initiatives and attend global meetings
- Use regional meetings to develop initiatives together
- Develop and use new communication tools
- Refresh our brand in terms of who we are and why we exist
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## **SESSION TWO: WOMEN AND GIRLS IN DETENTION**

### **PANELISTS**

**Senior Resident Magistrate Irene Kahuya**, Machakos Law Courts, Kenya

**Piper Kerman**, Author of *Orange is the New Black*, USA

**Judge Carla Maria Lendaro**, Civil Court of Appeal of Brescia, Italy

**Justice Vera N. Nkwate Ngassa**, Court of Appeal, South West Region, Cameroon  
Magistrate

**Lisa Ramsumair-Hinds**, San Fernando Drug Treatment Court, Trinidad and Tobago

### **Moderator:**

Judge Denise Johnson, Vermont Supreme Court (Retired), USA

### **Coordinator:**

Justice Ann Walsh Bradley, Wisconsin Supreme Court, USA



**Piper Kerman** was the featured speaker who is the author of the book “**Orange is the New Black**” made opening remarks discussing her experience as a woman in detention in the United States. A panel of judges from diverse jurisdictions discussed the special problems that women and girls face when they are incarcerated and the things that are being done to ameliorate these conditions.

She noted that over 600,000 women are locked away in the world and that women also receive harsher punishments. She noted that the poor women are the ones who were incarcerated the most and that the prison systems didn't address the circumstances of the crimes involving the women. She noted that in the male prisons the men were encouraged and that their facilities were better than the ones where the women were incarcerated. The women were also not encouraged in these prisons and that the prisons were built with the ideas of incarcerating men and not women.

Extracting these conclusions from both her personal experience and that of other prisoners, she argued that the women experience during and after incarceration was different from that of men. Among harrowing scenarios she discovered were the following:-

- most inmates were poor;
- most are victims of harsh drug policies and yet these policies have not reduced substance abuse;

- the increase in incarceration is a direct result of colonialism and racial hierarchy
- no equal justice for all
- there were far more rehabilitation programs for men than for women.
- Women are treated in a patronizing way
- Women facilities were always the ancient and dilapidated ones
- Women prisoners were neglected; particularly,
  - they did not get opportunity to work while in prison;
  - they were not allowed to step out for sunshine while in prison;
  - they have limited access to health lactating and expectant women have the worst experience for lack of facilities.

The other disadvantage of women prisoners was economic based due to the fact that they have young children and households that they are trying to fend for. This means that their incarceration leaves their children uncared for. She spoke of Justice Home which is a program which gave women an opportunity to serve at home under supervision and to have access to mental health care. Through the program, recidivism is reduced. She felt that the released women prisoners needed help to reintegrated into the society sand to access education and work opportunities.

She concluded by recommending that IAWJ members should prefer more rehabilitation for women and children rather than incarceration. Further, that IAWJ members should initiate and support projects that provide for medications, to curb substance abuse as the same reduces recidivism and reduces related costs to government by ½.



**Senior Resident Magistrate Irene Kahuya, Machakos Law Courts, Kenya** made a presentation that demonstrated the leadership of women judicial officers in improving the plight of women prisoners. The presentation was based on experiences from the Machakos Law Courts in Kenya. She shared about some systemic problems that faced by women and children in remand custody and highlighted some of the solutions that the Court implemented in response.

Some of the problems were:

- Absentee juveniles held at the Remand Centre. We immediately approached the institution and were shown the low perimeter wall/fence surrounding the said institution that could easily be accessed by anyone 5 feet tall.



- Delay in placements of girls at the Rescue Centre to their respective destinations (*back to their homes, children homes, rehabilitation schools etc*). The Children Officer would apply for countless adjournments to enable him prepare their reports. On approaching the institution and the children office on why this was happening; we were informed that they did not have fuel to facilitate home visits necessary for accurate report writing. Similarly, the children often gave misleading information about their backgrounds resulting in wild goose chases.
- Delays in conclusion of cases for those in custody as reflected in our monthly returns. We dug back into the actual files and discovered that cases involving children were delayed as a result of the busy diaries of advocates who had taken up their pro-bono cases. As for the women waiting for their appeals to be heard, the delay was as a result of the backlog already existing in the superior courts or due to a disconnect in the subordinate court appeal records required to support the procedures at the superior courts.
- Frequent applications for bail reduction during trials and mitigation for non-custodial sentences upon conviction. At every court appearance, the detainees would always seek for such bail reduction for various reasons but mostly because **Page | 26** their children had been left fending for themselves. The same would be replicated during mitigation once a conviction was pronounced. We sat down as colleagues and resolved on the need to have such information verified.

### **Applied Solutions and responses from Machakos, Kenya**

- Firstly, a study was conducted to find out why the women had difficulty in meeting bond terms and why the probation officers took long to prepare their reports thus increasing incarceration period for them.
- It was discovered that probation officers had no fuel and a lot of their allocation was misused due to misleading information from inmates. As a result, they resolved to engage the Probation Office right from the time of taking plea with clear instructions to furnish the court with background information about the minor which would not only assist in setting the bail terms; but would help the police in tracing them in the case of an escapee.
- They reduced bond terms to make it more accessible to the women prisoners.
- The learned Magistrate in-conjunction with the prison department approached the various cement companies within its jurisdiction to consider rehabilitating the institution fence/ wall as part of their corporate social responsibility. Eventually a donor volunteered and rehabilitated the walls of

the remand facilities for the women and children.

- The Honourable Magistrate also discussed the implications of supplying dishonest information with the children. One reference point that was emphasized was that no matter how grave the situation was in their homes, the court was ready to be part of the solution if they cooperated.. The Children were thus assured even if it meant placing them elsewhere or arresting persons who have contributed to their being away from home.



*Judges Okwengu,JA., Lesiit,J. and Achode,J. follow proceedings at the Conference*

- judicial officers engaged inmates in a sensitization program to make them give honest information and especially to disclose if they have left children at home
- Similarly, local media houses who are members of the Court Users committee that unites all the justice stakeholder, were mobilized to facilitate free radio announcements (during prime time news) requesting the public to check on the children at the facilities to assist with identification of lost children. In the same vein, we asked the local administration was enlisted to make similar public announcements whenever they hosted public gatherings. the turnout by parents and guardians facilitated rescue whereby children in conflict with the law were

taken away with parents and guardians and those remaining in need of care and protection taken to foster homes thus greatly reduced the numbers of children in remand homes.

- Thirdly, the Court approached lawyers to give pro-bono services to child offenders and agreed to prioritize cases involving children by attempting as much as possible to fit into the busy schedules of pro-bono advocates for the sake of expediting justice for the children. Practically, a day or two were set aside on dates that were convenient for both the Prosecution and the Defence so that such a case is expedited. As for those waiting for their appeals to be heard, the Superior Court was approached and the Presiding Judge agreed to prioritise the old appeals involving women during their criminal week or whenever there was a nationwide rapid results initiative such as the “*Justice@last!*” Once such files were identified, they were delicately handled by the court administrators to ensure accuracy of court records for ease of reference at the appeals court.
- Fourthly, the court encouraged interagency participation to ensure that court processes worked in favour of women and children through conducting sensitization of Court User Committees and also engaging close coordination with the Probation Office which would furnish background information in respect to the detainees. That way, the court would be best advised when making a Ruling on applications for bail review or for a non- custodial sentence.

### **Judge Carla Maria Lendaro from the Civil Court of Appeal of Brescia, Italy**

She noted that in Italy they have 5 exclusive women prisons and that within the prison the warders never wore uniforms and that the children in the prisons had play areas and also they had children officers who supported them.

She asserted that this environment mitigated against harmful effects of incarceration on both the women and the children.

### **Magistrate Lisa Ramsumair-Hinds, San Fernando Drug Treatment Court, Trinidad and Tobago**

The presenter informed the session that the criminal responsibility of children in Trinidad and Tobago is 7 years. Further that a child can be brought to Court by the parents for the simple issues of back talk to a parent, coming home late and sexual



orientation. She emphasized that children have a right to be heard and that they have a voice. The girls were often remanded for their own protection and that girls aged 16-18 years were remanded in the women's prisons as there was no home to place them. Unfortunately, this state of affairs also led to their recruitment into drug smuggling by some older women in those prisons. She however remained hopeful because in 2015 they passed the Children's Act and are now exploring juvenile and drug treatment pilot projects to change the situation.

## **CLOSING CEREMONY**

The conference was closed by a festive gala Dinner n commemoration of the 25th Anniversary of the formation of the IAWJ. It was jointly hosted by the NAWJ (USA) and both the incoming and the outgoing officials of the IAWJ. To start with, results of the "Global Treasures" Silent Auction were also announced with Kenya having sold all their items managing to raise a donation of more than USD 500 towards the IAWJ. To cap off the poignant reflections at the gala dinner, it was time to celebrate some members for their outstanding contribution to the agenda of the IAWJ.

### **Roll of Honours:**

- IAWJ Human Rights Award - The Hon. Patricia Wald,
- Inaugural Arline Pacht Global Vision Award - The Hon. Arline Pacht, Founder member and President
- Recognition for Outstanding Service - Lisa Davis - Outgoing Executive Director of the IAWJ

The conference ended with a beautiful musical from Levine Jazz Ensemble accompanying both flashy and teary goodbyes from new and old friends. The more hardened participants ventured to the Hospitality Room for one last **dance as** others retired to prepare for their departure back to their countries.



## ACHIEVEMENTS AND LESSONS

First we took many lessons about organization of the conference and appreciated the value of early preparation and information dissemination to intended participants.

Secondly, this landmark conference also coincided with the Silver Jubilee of the formation of the International Association of Women Judges and participants we were treated to rare historical insights by some of the founding mothers who were present. They shared their vision of stronger and self sufficient national Chapters and exhorted us to form partnerships and be more creative in addressing gender inequality in our societies so that our combined programmatic interventions can have cumulative and sustained impact across the globe.



As a matter of immediate practice, we are now actively pursuing two external partnerships in the areas of leadership and mentorship.

Lastly, but most importantly, the KWJA delegation managed to successfully lobby for Kenya to host the next Africa Regional Meeting of the IAWJ in 2017. We are now in consultation about the themes, schedule, hospitality and other incidental arrangements.



## CONCLUSION

The KWJA is grateful to the Judiciary of Kenya and its partners and to the IAWJ, for the support towards participation in this conference. By participating robustly in this conference, the KWJA has demonstrated once again that they are global leaders amongst their peers.

KWJA is especially proud that despite the challenges it faces, it has maintained its reputation as resource powerhouse in terms of Jurisprudential benchmarking and exchange. This only serves as a demonstration that even as we appreciate our partners and supporters, there is need to mainstream our programs activities into the Judiciary Strategic Plan to the most compatible extent possible and to develop a more sustainable resource mobilization strategy.



***THANK YOU.***



## PICTORIAL



*Part of the KWJA delegation*



*The Secretary made friends take on the tour of the Supreme Court of the USA*





*Members of the Commonwealth Magistrates and Judges Association also attended.*



*Judge Wasilwa was delighted to see her daughter and mentee*





*KWJA members enjoyed networking with other women gurus of law*







Selfie ☺

