**QUESTIONNAIRE**

**RESPONSE BY THE COMMONWEALTH MAGISTRATES’ AND JUDGES’ ASSOCIATION**

Disciplinary liability

1. What are the types of misbehaviour that may give rise to disciplinary proceedings against judges? Are these violations codified in national legislation and/or professional codes of ethics?

The CMJA, as a pan-Commonwealth non-governmental association which monitors issues around the Commonwealth. It has received information on the disciplinary proceedings against a number of judicial officers at all levels although only judges of the superior courts are protected by constitutional provisions and can usually only be removed for “inability to perform their functions or gross misbehaviour”. Judicial Officers in the lower courts are mostly not as well protected as the judges in the superior courts and some have been removed by government officials without any protection for the security of tenure (e.g: Nauru and Gambia under the former President Yaya Jammeh).

Whilst there are professional codes of conduct in over 40 jurisdictions in the Commonwealth, many of these are guidelines rather than codes with specific sanctions. Only two jurisdictions in the Commonwealth to date have codified the codes into national legislation.

The CMJA only intervenes in cases where due process has not been followed and when it is evident that the cases are linked to a disregard of the Commonwealth fundamental values in particular the Commonwealth (Latimer House) Principles on the Three branches of government.

1. Please describe the procedure for bringing disciplinary complaints against judges. Who can initiate disciplinary proceedings against judges? Which body is responsible for receiving disciplinary complaints and conducting disciplinary investigations? Can decisions of the disciplinary body be appealed before a competent court?

Procedures for bringing disciplinary complaints against judges differ from jurisdiction to jurisdiction but we have seen an increase in the establishment over the last 10 years of Judicial Services Commissions (responsible for appointments, investigations and discipline for judicial officers). The CMJA cooperated with the Commonwealth Secretariat on the formulation of a Model Law for Judicial Services Commissions (<https://thecommonwealth.org/sites/default/files/key_reform_pdfs/D16227_2_GPD_ROL_Model_Law_Judicial_Service_Commissions.pdf>)

Also of interest is the Compendium on the Appointment, Tenure and Removal of Judges under the Commonwealth Principles published by the Bingham Centre in 2015 <https://binghamcentre.biicl.org/publications/the-appointment-tenure-and-removal-of-judges-under-commonwealth-principles-a-compendium-and-analysis-of-best-practice>

1. Please provide information on the disciplinary penalties that may be imposed on the judge if found guilty of a professional misconduct. Are these penalties codified in national legislation and/or professional codes of ethics?

In many jurisdictions, whilst minor disciplinary issues are dealt with by the Head of the Judiciary (usually the Chief Justice), if a judge is found guilty of gross misconduct then they are removed from office. The provisions for the removal of judges at the superior level are outlined in the constitutions. This is sometimes supported by legislative norms. However, there has been confusion in the past (e.g: Zambia, Sri Lanka) when constitutional and legislative provisions have been contradictory in what they establish as a procedure. At the lower level, judges are subject legislative provisions, where they exist or an internal process established by the judiciary.
2. Please provide detailed information on the number of judges that have been subject to disciplinary proceedings in the last ten years. How many of them were found guilty of a disciplinary misconduct? How many of them were removed from office?

As indicated above, the CMJA only gets involved in cases where due process has not been followed. In the last 10 years we have dealt with the following cases (see separate list of statements issued attached). In addition the CMJA has followed cases in Zambia and Kenya where judicial officers who have decided against government in a number of cases, have been threatened by the executive branch with impeachment or discipline. These situations are unacceptable.

Civil and criminal liability

1. Can a judge be subject to civil liability and/or criminal responsibility as a result of the exercise of his or her functions? If so, in which cases? Who may lodge a complaint against the judge? And which authority is responsible for adjudicating these cases?

The CMJA unfortunately does not have any data on this issue.

1. Please provide detailed information, including disaggregated data, on the number of judges that have been subject to civil/criminal liability proceedings in the last ten years. How many of them were found liable for judicial errors? What was the outcome of these proceedings?

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