

A history of International Association of Women Judges programmes – then and now

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E aku nui, e aku rahi, tēnei te mihi maioha ki a koutou katoa. Kei ngā mana whenua, e rere ana ngā whakamiha ki a koutou i tō koutou manaakitanga.² My esteemed peers, I greet you all who have gathered here for this auspicious occasion. To the First Nations of this territory, I extend my greetings and respect to you for welcoming us here.

Some history

I have been asked to talk to you about the current programs of the IAWJ but I thought I should start with some history so these programs can be seen in context.³ I begin at the beginning, with the US national women judges' association (NAWJ for short) approaching its tenth anniversary.⁴ Judge Arline Pacht was asked by the then president of the NAWJ to head an international outreach committee. This led to 50 women judges from around the world coming to Washington DC in October 1989 to join more than 450 United States women judges and their guests for the US association's annual meeting.

I have talked to a number of the international judges who were invited to that meeting and their consistent comment is that they were absolutely blown away by being in the company of so many women judges. Throughout their careers most of them had never been in legal gatherings where they had more than one or two women colleagues present. They also said that it was heartening to realise how much they had in common with their sister judges from around the world, despite different cultures, languages and judicial systems.

¹ President of the IAWJ and judge of Te Kōti Mana Nui o Aotearoa/Supreme Court of New Zealand. This paper was presented at the conference of the International Association of Women Judges Canadian Chapter/Association Internationale des Femmes Judges Chapitre Canadien, held in Yellowknife, Canada, 20-23 June 2022. My thanks to the Canadian chapter for their hospitality and to the National Judicial Institute for its support. Thanks also to my associate, Rachel McConnell, for her assistance with this paper.

² The greeting is in te reo Māori, the language of the indigenous peoples of Aotearoa/New Zealand.

³ A fuller history of the IAWJ and its foundational programs can be found in the Jubilee Books for the 20 and 25 year anniversaries respectively. See Mary-Ann Hedlund, Susan Glazebrook, Arline Pacht and Jill Wainwright (eds) *The IAWJ: Twenty Years of Judging for Equality* (2011) [*Jubilee Book 2011*] and Arline Pacht and Susan Glazebrook (eds) *The IAWJ: Twenty-Five years of Judging for Equality* (2016) [*Jubilee Book 2016*].

⁴ The NAWJ was formed in 1979 by Justice Joan Dempsey Klein and Justice Vaino Spencer. For more information on the NAWJ, please visit <www.nawj.org>.

The international attendees at that meeting were unanimous that a new global association of women judges should be formed. They realized that, as strong as they might be individually, they could be far more effective when working together in common cause. As Arline Pacht put it, “The concept of women judges acting collectively to reject laws or customs that condoned violence and discrimination against women was an idea whose time had come.”⁵

The next two years were spent working through the logistics of forming the international association and, in October 199, the IAWJ was formally constituted. Reflected in the bylaws was the fact that the IAWJ was to have the rule of law and gender equality at its very core.

I should pause here to pay tribute to Arline. She is the mother of the IAWJ and there is no doubt that, without her vision and persistence, the organisation could not have achieved what it has. She continues to inspire.⁶

In those early days, working out of her basement and on a shoestring budget, Arline was determined to leverage off the combined experience and influence of the members around the world and to concentrate on one priority issue that would improve the lives of women. During the early discussions, it was clear that everywhere around the world the major issue affecting women related to violence. At that time domestic violence was typically considered a private family issue and rarely, if ever, led to legal action. It was agreed therefore that this would be the priority issue for the new association.

A number of the affiliated women judges’ associations around the world tailored training sessions on this subject for their members and colleagues and, where appropriate in terms of judicial ethics, also began pressing for changes in support services, policy and legislation relating to violence against women.⁷

Arline was determined to go further and approached Anne Goldstein, then a young academic and human rights expert and currently still with the IAWJ as senior advisor. Arline asked Anne

⁵ *Jubilee Book 2016*, above n 3, at 11

⁶ In 2016 the IAWJ instituted a biennial Global Vision Award in Arline’s honour.

⁷ See for example, in Argentina where IAWJ member, Justice Elena Highton de Nolasco, established a domestic violence office of the Supreme Court: Elena Highton de Nolasco/Supreme Court of Argentina “Supreme Court of Argentina – Domestic Violence Office (press release, undated) <www.nawj.org/uploads/files/midyear_conference/materials/domestic_violence_office_supreme_court_of_argentina.pdf>.

to develop a training program for judges on gender violence, using international human rights law as the core. This led to the development of the IAWJ's flagship program, the Jurisprudence for Equality program or JEP and a major fundraising effort by Arline to take the project to the world.⁸

There are a number of features of JEP which still form the core of IAWJ's programs which have moved on to cover a variety of other topics of importance to women, including corruption, HIV/AIDS, trafficking and leadership.

IAWJ Programs: Core Features

The first feature is that the IAWJ programs must take account not only of local conditions, culture and laws but also local priorities. Local ownership of programs is essential. The IAWJ sought and received support for JEP from Chief Justices, Ministries of Justice and national judicial training institutes. In other words, the IAWJ sought the widest possible buy-in at the national level. This was seen as necessary for sustainability and ensuring the training would have a continuing impact.⁹ The involvement of the local women judges' association has also been vital to the success of IAWJ programs.

The second is that the programs must be judge led in the sense that the trainers are facilitators only, leveraging off the expertise in the room and encouraging the judges to use their skills to look at issues in a new way. The sessions should be as interactive as possible, using a mix of materials and techniques to engage the participants.

The third feature is respect. As Anne Goldstein has said, the IAWJ approaches its work from the premise that judges who come to our conferences and trainings genuinely care about human rights. You can draw out their thinking and reasoning with respectful dialogue (instead of "correcting" or talking down).¹⁰ In this way you are planting seeds of change. JEP is different from a judicial training model which asks judges to recognize the biases that they bring to the

⁸ The history of JEP is set out in Arline Pacht's "The First Fourteen Years: The IAWJ's History from 1988 to 2002" in *Jubilee Book 2011*, above n 3, at 7–18 and Anne Goldstein's "The Jurisprudence of Equality – An Intellectual History" in *Jubilee Book 2011* at 44–58 and reproduced in the *Jubilee Book 2016*, above n 3, at 84–96. Additional updating material was also published in "The Jurisprudence of Equality Programme, 2010-16" in *Jubilee Book 2016* at 97–103.

⁹ *Jubilee Book 2011*, above n 3, at 51.

¹⁰ At 50.

bench. JEP starts by asking judges to draw on their strengths of analytical skills, intellectual rigour and experience to institute change.

Finally, and most important, is the principle of inclusion. From the start JEP took into account not only the rights of women and girls, but also the rights of men and boys. JEP welcomed male judges as course participants and as trainers. And JEP has brought together judges of many different religions, political philosophies, and legal systems. The IAWJ believes that engagement, rather than exclusion, creates the best opportunity for achieving lasting change.

A JEP example

A story from Anne Goldstein illustrates aspects of the training approach. This comes from a time when Anne was observing a seminar for magistrates in El Salvador in 2003.¹¹ Two senior trainers from El Salvador and a visiting judge from neighbouring Guatemala led the seminar.

The trainers showed a film about domestic violence, produced in San Salvador. It was called “Ramon y Marta”. In the film, we see Marta caring for the children, getting them dinner, putting them to bed. Ramon goes out drinking with friends, comes home late and beats Marta. The next day we see Marta doing the mending and the laundry, trying to prepare for the next onslaught and working out how to shield the children.

The movie was entirely ordinary in its depiction of the scenario – except that the actor playing Ramon was a woman, and the actor playing Marta was a man. It was apparently incredibly disconcerting to watch. Two of the male magistrates in the room were obviously having a hard time with the movie and ended up storming angrily out of the room, saying something like “You are trying to turn us into [homosexuals]!”¹²

One of these two magistrates had been assigned to act as a guide the next day for Anne and other out-of-towners to see the local sights. They went to a waterfall and a museum and then, at Anne’s request, he took them to El Mozote where in December 1981 during the civil war, US-trained Salvadoran troops had massacred over 800 civilians. The magistrate told Anne that his sister was a prosecutor and had been there when they examined the bodies in one of the

¹¹ At 55.

¹² A more colloquial term was apparently used.

houses: a man and a woman, obviously killed as they tried to shield their baby – tragically to no avail.

On the last day of the seminar, Anne’s magistrate guide thanked her for coming. He told her that he would try to apply what he had learned. About a year later, Anne ran into one of the trainers. She asked if the trainer had heard anything from her magistrate guide and was told that he had become “their best friend” on matters of domestic violence, issuing restraining orders and providing effective remedies.

So the moral of the story is not to write off magistrates and judges who express scepticism or even open hostility. They would not be so engaged if they were not thinking.

I will now talk a little bit about two other past programs. The first one illustrates the importance of outreach and of recognising and supporting the power of traditional women leaders.

Global Leadership of Women (GLOW)

The GLOW project was funded by the Netherlands and was part of that country’s response to Security Council Resolution 1325 designed to increase the participation of women in national, regional and international mechanisms for the prevention, resolution and management of conflict.¹³

The IAWJ program concentrated on leadership as it relates to sexual assault cases.¹⁴ It brought judges from three countries in West Africa (Cameroon, Ghana and Nigeria) and three countries in South Asia (Bangladesh, India and Nepal) together with judges sitting on international tribunals in The Hague. The international judges were included because of their experience of trying war crimes related to sexual assault. Each of the jurisdictions then ran in country programs tailored to their specific issues and interests.

¹³ SC RES 1325 (2000).

¹⁴ Several contributors to the *Jubilee Book 2016*, above n 3, detail the GLOW project and various affiliated association experiences with the project: see Anne Goldstein “The Jurisprudence of Equality Programme, 2010-16” at 97–99 ; Joan D Winship “The History of the IAWJ from 2010 to 2015” at 47; Marianne de Rooij “The Netherlands and the IAWJ” at 180; and Gita Mittal “India” at 154.

One of the most interesting in country projects was in Ghana in 2014 and related to the Queen Mothers who are traditional women leaders. The colonial encounter diminished their authority but in recent times the Queen Mothers had organized to re-claim their status.

The Queen Mothers have jurisdiction to resolve minor crimes but are supposed to bring more serious offenses to the police. But sexual assault victims had been very reluctant to report the offences to the police. This meant that, if the Queen Mothers did not try to help them, no justice would be possible. Some of the Queen Mothers explained that their concept of a just resolution was focused on arranging a marriage between the victim and her attacker. They were concerned that, since the victim had lost her virginity, she would have difficulty arranging a match with anyone else.

The Ghana chapter convened a meeting between the judges and the Queen Mothers and invited a psychologist who worked with rape survivors, a police officer from the victim support unit, and a judge serving on a dedicated gender-based violence court.

Many Queen Mothers described the day as transformative.¹⁵ One commented that she now for the first time had come to realize that she herself had been raped. Another said that the new Domestic Violence Act would become her bedtime reading every night until she had memorized it. Armed with this statute, she would no longer be intimidated by the police. The Queen Mothers were also, at their request, provided with simple material they could take back to their villages to talk to children and their mothers about sexual assault.

Sextortion

The second project illustrates the advantage of an international organisation focused on women in terms of identifying a practice that had until then gone unnoticed, unpunished and unnamed. The IAWJ came up with the term sextortion to describe the abuse of power to obtain a sexual benefit or advantage.¹⁶ In effect, sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe.¹⁷

¹⁵ At 99.

¹⁶ IAWJ *Toolkit: Naming, Shaming and Ending Sextortion* (2012) [Sextortion Toolkit]. See also Joan D Winship “The history of the IAWJ from 2010 to 2015” *Jubilee Book 2016* at 44–45; and Nancy Hendry “Stopping the Abuse of Power Through Sexual Exploitation: Naming, Shaming, and Ending Sextortion” in *Jubilee Book 2016* 104–111.

¹⁷ Sextortion Toolkit, above n 16, at 5.

IAWJ Senior advisor, Nancy Hendry, has been the driving force behind this concept and is a world recognised expert. She explains that the concept arose from conversations that her colleagues from the IAWJ had with judges from different countries in about 2008.¹⁸ In one instance, the judges from Uganda told them about the concerns they had when they sentenced people to jail. They knew that the jails did not always provide medication and other necessities to prisoners. So, prisoners were dependent on having wives, girlfriends and daughters bring those things to the jail. And they were hearing that the guards were demanding sex in exchange for actually delivering medications and other necessities to the prisoners. And this was happening in a country where HIV was widespread at the time.

At about the same time, the IAWJ was hearing about women from Central America and what was happening to them when they attempted to migrate North. When they reached the border, they would be asked for money and, if they did not have money, they would be asked for sex. And again, this seemed to be happening with impunity. What is more the practice was so ingrained that, if women were ultimately returned to their communities after an unsuccessful effort to migrate North, they were perceived as prostitutes, because people just assumed that they would have had to trade their bodies along the way.

Based on the initial finding that there was a pattern of behaviour, the IAWJ decided to research the phenomenon in three different countries: Bosnia-Herzegovina, Tanzania and the Philippines. The result was a toolkit on countering sextortion.¹⁹ And the IAWJ has been successful in having the concept incorporated into international efforts to counter corruption and therefore squarely on the international agenda.²⁰

¹⁸ Alice R Bertram “Noticing and Combating Sextortion: An Interview with Nancy Hendry” (10 March 2020) EuropeNow <www.europenowjournal.org>.

¹⁹ Sextortion Toolkit, above n 16. The toolkit is available through the UNODC website (see <www.unodc.org/res/ji/import/guide/naming_shaming_ending_sextortion/naming_shaming_ending_sextortion.pdf> or by request to the IAWJ).

²⁰ Such as the Global Judicial Integrity Network, which is a UN Office on Drugs and Crime-led initiative. It has the aim of supporting judicial integrity and the prevention of justice sector corruption globally. IAWJ Past President, Judge Vanessa Ruiz, is on the advisory board. See UNODC “The Global Judicial Integrity Network” at <<https://www.unodc.org/ji/resdb/>> for more information.

Human trafficking

A particular focus of the IAWJ in recent years has been on human trafficking. Again the international nature of the organisation has been of importance, given the cross border nature of the issues. We have had projects on trafficking in Latin America and the Caribbean.

Uganda and Kenya

One of the current projects is designed to increase the effectiveness of prosecutions and reduce the prevalence of labour trafficking in Kenya and Uganda.²¹ In both those countries there are issues of internal trafficking of children (domestic servitude, child begging) and cross-border trafficking of children from Uganda to Kenya. In addition, workers from East Africa have been taken to the Middle East where they have fallen victim to severe exploitation and even disappeared altogether.²² There are issues with recruitment agencies, the ability of governments to support victims, and the identification of victims within the justice system (particularly in cases of migrants).

In addition, many cases of exploitation are embedded in cultural practices such as child marriage or societal class structures (child domestic servitude).²³ Often these are cases where parents or family members are responsible for the exploitation. Courts struggle to prosecute these cases, which are normalized within society.

The training aims to educate judicial officers on trafficking laws, both national and international, and to make prosecutions more victim and trauma focused. The judges afterwards comment how the training had given them new insight as to why victims frequently would “clam up” and not testify clearly against their traffickers. It also made them realise that their tools for evaluating witness demeanour failed to take into account the experience of trauma.

²¹ This is a collaborative program with our partners, Global Fund to End Modern Slavery alongside the Kenya Chapter of the IAWJ and the National Association of Women Judges Uganda: see Sabrina Thulander “GFEMS partners with IAWJ to strengthen Justice Delivery in Kenya and Uganda” (1 April 2021) Global Fund to End Modern Slavery <www.gfems.org>. The IAWJ Director of Programs, Jane Charles Voltaire, has primary responsibility the IAWJ’s contributions to the program and provided the information on it for this paper.

²² See Bart Robertson “Prevalence Estimate: Forced Labor Among Kenyan Workers in the Gulf Cooperation Council” (2 March 2022) Global Fund to End Modern Slavery <www.gfems.org>. See also the full report Sheldon Zhang and others *Forced Labor Among Kenyan Migrant Workers in the Gulf Cooperation Council (GCC) Countries: A Prevalence Estimation Report* (Global Fund to End Modern Slavery, December 2021).

²³ Zhang and others, above n 22, at 29.

The training has also focused on equipping justice sector actors with the knowledge and skills to identify possible trafficking victims in cases that come before the courts in noncriminal contexts or in contexts in which trafficking victims are charged with criminal offenses (e.g., in labour disputes, deportation proceedings, or petty theft cases in which the defendant is acting under the control of another) and to make sure that they are able to recognize red flags of human trafficking and ask appropriate screening questions.²⁴ Benchbooks on trafficking have been published in both Uganda²⁵ and Kenya.²⁶

Another aim of the program has been to facilitate dialogue to strengthen cross border ties.²⁷ A cross-border case study was used to help participants identify pathways to strengthen cross-border coordination. The hope is that these dialogues make members from each country more aware of some of the factors that contribute to cross-border trafficking and that they will begin to identify gaps in enforcement in their own country. It is also hoped to continue to build a network of expert judges who can communicate via informal channels.

Haiti

Another trafficking project that has just wound up (but with hopes of an extension) is in Haiti.²⁸ The IAWJ has worked for a number of years in Haiti on issues related to human trafficking. It has had various partners in this work, both outside the country and within, including most significantly the Haitian chapter of the IAWJ.²⁹

Haiti has a population of more than 10 million people. It is one of the poorest countries in the world and the poorest in the Latin American Caribbean region. Some 52 per cent of the population live below the poverty line.³⁰ It is generally known as a source, transit, and destination country for forced labour and sex trafficking. To make matters worse Haiti has been hit in recent years by a rapid succession of natural disasters,³¹ ongoing political crises, a high

²⁴ For a description of the training program and approaches see: Joyce Kavuma and the IAWJ “In Uganda, Women Judges are Leading Efforts to Ensure Justice Systems Heal not Harm” (9 March 2022) Global Fund to End Modern Slavery <www.gfems.org>.

²⁵ The training manual works through a number of scenarios to illustrate the various aspects of the problem and to encourage judges and other actors to develop strategies for addressing the issues.

²⁶ This benchbook was produced by the IAWJ in association with GFEMS and the US Department of State. Kavuma and the IAWJ, above n 24.

²⁷ See the “IAWJ PROGRAMME BEST sur la lutte contre la traite des personnes” Facebook page for more details: <www.facebook.com/IAWJLutteTraitedesPersonnesHaiti>.

²⁸ In June 2020, sadly Judge Mimose Janvier (PAP Court of Appeals), a critical project stakeholder, passed away. I pay tribute to her.

²⁹ World Bank “The World Bank in Haiti” (14 June 2022) <www.worldbank.org>.

³⁰ Including the 2010 earthquake that killed over 100,000 people, followed by a cholera outbreak; Hurricane Sandy in 2010; Hurricane Matthew in 2016, Hurricane Laura in 2020 (alongside the Covid-19 pandemic) and most recently in 2021 an earthquake followed by a tsunami.

level of public violence and the weakening of governmental institutions.³² The country as a result since 2018 has gone through numerous shut-downs (“peyi-lòk”), where courts were unable to operate fully and the already small number of police were focused on stabilizing zones throughout the country.³³

All this has increased the risks of labour and sexual exploitation for vulnerable groups, including women, children, individuals who identify as LGBTQI, and people with disabilities. To top it all off the Covid-19 pandemic has resulted in job losses and increased poverty, which has created the ideal backdrop for even more proliferation of exploitation.³⁴

The current IAWJ project in Haiti was conducted in conjunction with the Lumos Foundation and Catholic Relief Services and, as local partners, the Haitian judicial training college³⁵, the University of Haiti, the National Counter Trafficking Committee and of course the IAWJ’s Haitian chapter.³⁶ Having the involvement of in country bodies supports the long-term sustainability of the program and reinforces the capacity of local institutions.

In this instance it was also vital for the program to be able to be run at all. The situation in Haiti meant that none of the IAWJ staff were able to travel there this time (although they had been there on previous occasions for earlier programs). And this also meant that much of the program had to be conducted virtually. Switching to online training was not without challenges. The IAWJ had to train judicial college technicians and provide the college with additional internet capacity to run online trainings. But the change to virtual also had its advantages in that the program was able to reach decision makers in isolated parts of the country who had not been exposed to such training before.

This program, like the previous programs, focused mostly on child domestic servitude and child exploitation in orphanages. Child domestic servitude is a longstanding practice in Haiti. It is called Restavek and is an often informal arrangement where a child from a poor rural

³² The crisis deepened last year when the president was assassinated: Consant Méheut and others “Political Crisis in Haiti Deepens Over Rival Claims to Power” *The New York Times* (online ed, New York, 8 July 2021). See also United Nations “Haiti remains in ‘acute political and institutional crisis’, Security Council hears” (18 February 2022) <<http://news.un.org>>.

³³ Edwidge Danticat “Demonstrators in Haiti are fighting for an uncertain future” *The New Yorker* (online ed, New York, 10 October 2019).

³⁴ Carrie Kahn “Covid-19 is igniting a public health emergency in Haiti, despite low case numbers” (17 June 2021) National Public Radio <www.npr.org>.

³⁵ IAWJ Haitian chapter member, Judge Maguy Florestal (Court of Appeals – Port-au-Prince) is the Director of Training at the judicial training college.

³⁶ The IAWJ Director of Programs, Jane Charles Voltaire, has primary responsibility for this program and provided the information on it for this paper.

family is sent to live with a host family that is purportedly better equipped to provide for that child's most basic needs (i.e., food, shelter, and education). Of course that is not the reality for most of these children.

There are an estimated 250,000 – 300,000 children subject to domestic servitude under the Restavek regime and an estimated 25,000 children living in residential facilities and many of these in fact have a living parent or parents.³⁷

The worsening conditions in Haiti over recent years have led families into varying levels of economic desperation as households cling to any and every available means of survival, including the practice of child labour. As more families struggle to make ends meet, the practice of forced child labour is expected to expand and become more prominent across both urban and rural areas. One of the biggest challenges has been to raise awareness within vulnerable communities and explain to community leaders and parents the dangers of sending their children to work as domestic servants or placing their children in the care of an orphanage. All parents want a better life for their children and it is very easy to see how this can be exploited when parents are desperate and very poor.

There is an anti trafficking law in Haiti but enforcement has been virtually non-existent.³⁸ The main contributing factors relate to the fact that the public, law enforcement and many justice sector actors are not well informed about the law and its coverage (particularly as no creole version is available) and that victim services are not readily available. As a result, few cases, are identified, investigated, and prosecuted.

The target participants of the current training were judges, prosecutors, law enforcement and regional representatives of the national coordination committee. A big concentration in the program was on the identification and protection of victims, putting victims in touch with services and appropriate questioning techniques. Victim services are run by the Ministry of Social Affairs but in reality the country relies heavily on NGOs and other private entities to provide victim services.

³⁷ See the website "Restavek Freedom" for more resources and information: <www.restavekfreedom.org>.
³⁸ The Trafficking in Persons Act 2014 (TIP) criminalised trafficking.

The project also involved the running of a national debate competition for students on trafficking.³⁹ The involvement of universities and students is an important component of many IAWJ training programs as it enables the next generation of legal professionals to be aware of the issues at the start of their careers. Apparently the students were really engaged and have started a project to document trafficking in Haiti.

Botswana LGBTQI+ project

Another very exciting project is one run jointly by the IAWJ, the Botswana Chapter and the University of Botswana Law Department.⁴⁰ This is a two-year project grant to promote a more inclusive approach to human rights and ensure that LGBTQI+ persons enjoy the rights to which they are entitled as citizens.

The background to the program is that in 2019 the High Court had issued a landmark decision striking down as unconstitutional the colonial era law against “unnatural” sexual acts.⁴¹ This had been interpreted to mean acts of sodomy between any two adults. An earlier version of the law had made explicit that only sodomy between men was “unnatural”. Parliament had revised the law to make it “nondiscriminatory,” but the Court determined that “it is not the business of the law to regulate private consensual sexual encounters between adults”.⁴² The government appealed against the High Court decision and the planning for the program continued without knowing whether or not the decision would be overturned. It was in fact upheld by the Court of Appeal, the decision being released late last year.⁴³

The Law School already provided a human rights course as part of its core curriculum. The grant enabled the school to develop a new course segment on LGBTQI rights, run moot courts on the topic, and put out word to the community that the school's human rights clinic was

³⁹ IAWJ “Law School Debate Competition – Haiti” (press release, 25 February 2022). The debate was held entirely in Creole with the motion of the debate “the 2014 law against human trafficking lacks legal strength without a version in Haitian Creole”. Winners were awarded grants including internet and data plan access.

⁴⁰ IAWJ Program Officer Audrey Cavanass has primary responsibility for the Botswana project.

⁴¹ *Letsweletse Motshidiemang v Attorney General* (High Court, MAHGB-000591-16) 11 June 2019.

⁴² At [222].

⁴³ *Attorney-General v Letsweletse Motshidiemang* (Court of Appeal, No CACBG-157-19, 29 November 2021). At [115] of the decision the Court said: “At present, [the laws] serve only to stigmatise gay men unnecessarily, which has a harmful effect on them, and as far as I am aware there has never been any prosecution of a woman, or even any thought of doing so, for the offence of sodomy.” See also Ananya Upadhya “Botswana appeals court upholds decriminalization of same-sex sexual relations” (30 November 2021) Jurist <www.jurist.org>.

willing and ready to have students (under faculty supervision) help members of the LGBTQI community.⁴⁴

The other aspect of the program is workshops for judges. A comprehensive training manual has been developed covering international law, the Yogyakarta Principles,⁴⁵ definitional issues and terminology and various relevant court decisions, as well as outlining the forms of discrimination and tackling the various arguments used to justify such discrimination. The workshops also cover the principles of adult education so that participants can then use these to conduct programs of their own. A feature of the training has been the involvement of members of the LGBTQI community describing their experiences. Judge Amy Dawson from Michigan was also one of the guest presenters. She has done amazing work on the overrepresentation of LGBTQI adolescents in juvenile and family courts. She has a lot to share on how to make the courts more responsive to the needs of these groups.

By the end of the program, judges who had earlier expressed scepticism described themselves as converts, promising to keep the discussions going among their colleagues, and also within their churches and other circles. Anne Goldstein recently commented that this is how change happens. Not necessarily or even primarily by landmark court decisions, but also by quiet conversations - among colleagues, family and friends.

Empowering judges in Columbia, Guatemala and Mexico

Also a current project nearing completion is an initiative of the International Legal Assistance Consortium (ILAC).⁴⁶ The objective of the project is to promote peace and social stability by supporting and empowering judges and justice sector actors in Colombia, Guatemala and Mexico in their fight against corruption and impunity while defending judicial independence.⁴⁷

The project held dialogue sessions and roundtables with local judges and conducted research. This has resulted in three discussion papers making various recommendations to the relevant

⁴⁴ We have heard they are already receiving referrals.

⁴⁵ The Yogyakarta Principles are set out at <<http://yogyakartaprinciples.org>>. The principles were formulated in 2006 by a group of human rights experts in relation to sexual orientation and gender identity. The principles have since been updated to add 10 additional principles in 2017. They are not legally binding nor have they been adopted by the UN. They thus do not have any official status at international law. The name “Yogyakarta” refers to the city in Indonesia where the initial meeting took place.

⁴⁶ The project is a collaboration between ILAC, the Cyrus R Vance Center for International Justice of the New York City Bar Association and the IAWJ. IAWJ’s Program Officer, Audrey Cavaness has been primarily responsible for the IAWJ part of the project.

⁴⁷ See ILAC “Judges as Peacebuilders: ILAC Launches a Series of Discussion Papers on Latin America” (press release, undated).

national governments and published in Spanish and English. The first paper deals with how to counter attacks on those who enforce justice.⁴⁸ The second one highlights the role of justice providers in the fight against corruption.⁴⁹ The third paper (for which the IAWJ was responsible) relates to judicial diversity.⁵⁰

Key recommendations from that diversity paper are to increase transparency in the promotion and appointment processes for all positions in the judiciary with precise pre-established criteria for merit, competence and experience, and to establish quotas or diversity goals in the calls for applications for judges.⁵¹ It was also recommended that special calls for applications be made for judges who speak indigenous languages.⁵²

The second recommendation was to adopt internal mechanisms within the judiciary to report cases of harassment and violence and to institute zero-tolerance policies for harassment and violence within the judiciary, as well as protection, investigation and sanction measures.⁵³

The third recommendation was to adopt protocols and training for judging with a gender and diversity perspective.⁵⁴

The final recommendation was to respect and promote the right to freedom of expression and association with regard to judicial associations and to consult judicial associations on issues influencing the functioning of the country's judiciary, including measures to strengthen diversity. Also recommended was the creation of a mentoring system for new judges, especially those from minority groups or in situations of vulnerability.⁵⁵

Co-Impact

One piece of very good news is that the IAWJ has been successful in obtaining a multi year grant from Co-Impact.⁵⁶ This gives us money to run programs in four jurisdictions in the global

⁴⁸ ILAC *Attacks against Judges: Institutional Weakness and Lack of Legal Guarantees for Judicial Independence in Colombia, Guatemala and Mexico – Discussion Paper I of the Judges as Peacebuilders Project* (2022).

⁴⁹ ILAC *Judges as anti-corruption actors in Colombia, Guatemala and Mexico – Discussion Paper II of the Judges as Peacebuilders Project* (2022).

⁵⁰ ILAC *Judicial Diversity: A Tool to Increase Access to Justice in Colombia, Guatemala and Mexico – Discussion Paper III of the Judges as Peacebuilders Project* (2022).

⁵¹ At 34.

⁵² At 35.

⁵³ At 36.

⁵⁴ At 37–38.

⁵⁵ At 38–39.

⁵⁶ See <www.co-impact.org>. IAWJ Executive Director, Christie Jones, has primary responsibility for the Co-Impact grant.

south⁵⁷ but we are free to choose the content of programs depending on local needs and preferences. We are also going to be able to use some of the money to strengthen the capacity of the executive office to provide services to the IAWJ members more generally. As the project is in its early stages I cannot give more detail at this stage but watch this space.

Comments on the IAWJ

I now want to offer a few comments on the IAWJ generally. The main benefits of the IAWJ arise from its philosophy and structure of inclusion. But paradoxically, the main weaknesses of the IAWJ (largely related to lack of funding) also comes from its philosophy and structure. The challenge is to fix the weaknesses while keeping the benefits.

The philosophy of the IAWJ is to welcome as voting members all judicial and quasi judicial officers, regardless of geography, place in the court hierarchy and religious and other beliefs and indeed regardless of gender, although most of our members are women judges. We also welcome as non voting members all who agree with our mission, although we have not pushed hard to recruit non voting members.

We have worked hard to ensure a geographical spread of members and we now have some 6,500 members from over 100 jurisdictions and territories. We also have a very good network of affiliated women judges' associations around the world and more associations are forming.⁵⁸ This gives us not only the strength of numbers but also strength in diversity.

We can take comfort from our similar experiences as women and as judges but also learn and grow from considering and discussing our differences. We can have our longstanding ideas and beliefs challenged and understand that our way is not necessarily the right or the only way or at least not the right way for other jurisdictions and not necessarily even for our own jurisdictions. We can hear about innovations in court procedures and substantive law in other jurisdictions and consider how these might be applied in our own. For example, we have members who have set up specialized courts dealing with human trafficking, elder abuse or drug addiction. We have members who have piloted programs with special populations, including prison interventions and domestic violence treatment diversion projects. We have

⁵⁷ The jurisdictions are Mexico, the Philippines, South Africa and Nigeria.

⁵⁸ For a list of affiliated associations please see: IAWJ "IAWJ Member Associations" <www.iawj.org> (under the membership tab).

judges supervising moot courts to engage the next generation of legal leaders and undertaking other measures to ensure an inclusive and diverse legal profession.

Our IAWJ governance structure is also designed to ensure representation from around the world on our international board and among the officers. We also ensure that the biennial conference rotates between our five regions and that the location of regional conferences held in the intervening years rotates within the region. It is a part of our philosophy of inclusion and it reflects a deep seated belief that this is the right path for an international organisation fighting to further gender equality, access to justice and human rights.

As Anne Goldstein, recently pointed out: “IAWJ is probably the only organization you can belong to where a woman who earned her university degree in Sharia law may find herself seated at a conference lunch or on a panel beside a woman who is an evangelical Christian and on the other side an atheist woman married to an agnostic woman. All three are talking about their common passion for helping abused children or domestic violence victims – and what binds them together as judges is a lot more important to all of them than what might separate them.”

As part of our inclusion philosophy, the IAWJ membership fees have been deliberately kept low to ensure all judges can join (although even at this low level, some judges would still struggle to join). Differential membership fees, depending on means, have been suggested but rejected as there is a concern that this might create a hierarchy rather than the current equality between members.

What this means is that membership dues do not give sufficient revenue to run the organisation. We do get some donations but it is fair to say that this has not been a large source of revenue. We also have the surplus from the biennial conference, every two years. But we could not run the organisation in the form we do without grants for projects. While we would never take on a project that does not fit within our aims, we are nevertheless constrained by donor priorities and not our own. It also means there is less money and time available for services to members. And our lack of funds not related to specific grants and our philosophy of local ownership of programs has meant that course materials have not necessarily been readily available to be adapted for use in other jurisdictions.

As the organisation has got bigger, too, it has probably got more remote from its members or at least from those in jurisdictions not directly represented on the international board. I have

appointed a committee to look at means of ensuring that our members generally are more engaged. One idea is to have, as well as the international board, a council where all affiliated associations and other groups, such as the judges on international courts, are represented. This council might for example elect the officers of the IAWJ who are currently elected by the international board. If anyone has any other ideas or would like to be on the committee then please let me know.⁵⁹

To finish

I want to finish with one of my favourite stories told by Anne Goldstein. It arose out of a 2004 meeting to discuss human trafficking and migration in the Americas.⁶⁰

In the course of the discussion Angela Torres, a magistrate from El Salvador shared a story. Sometimes, she said, the problems in her court seem too big for the law to cope with. Some years earlier she had had a case where an orphanage had brought to court a three year-old girl with vastly complex special needs, both physical and mental. The orphanage did not have the skills or the resources to help this child and was seeking Angela's permission to relinquish her.

Angela looked around the room and asked. "What would become of this child, if even the orphanage wanted to abandon her? What authority did the courts have to see that the child got the resources she needed in a country as poor as El Salvador? Was the Economic, Social and Cultural Convention of any use here?" And finally, she asked in a tone of agony, "What is a judge supposed to do?"

She stopped. Everyone looked at her, lost. No one had anything to offer. Finally, someone asked, "What did you do?"

She replied, "Why I took her home, of course. She is my daughter now. And she is doing much better. My other children – they have left, for school and careers in other countries. This child, she will never leave me. We are so happy together."

⁵⁹ My IAWJ email address is iawjpresident@iawj.org. The committee will also examine other governance issues, including the role of the Board of Managerial Trustees.

⁶⁰ Anne Goldstein "The Jurisprudence of Equality Programme: an Intellectual History" in *Jubilee Book 2011*, above n 3 at 57.

This is obviously an extreme example of solution-based judging but it illustrates the spirit in which women judges seek solutions rather than rely on black letter law.

The story has a bittersweet ending. Angela came to a follow-up consultation in Washington a year later. Part way through the seminar she broke down in tears. Just that week, her daughter, whose health had again deteriorated, had died. In one of their last conversations, she had made her mother promise that, if she lived, Angela would go to Washington and bring her home a new computer – and if she died, that Angela would go to Washington, all the same.