



CounterBalance International

Newsletter of the International Association of Women Judges and the International Women Judges Foundation
Winter 2001, Vol. 7, No. 1

IAWJ-IWJF Election Reflects Unanimity

For the fifth time in IAWJ's 10-year history, members of the Board of Directors unanimously elected the slate of officers who will lead IAWJ-IWJF for the next 2 years.

The IAWJ Constitution and the IWJF's Bylaws provide that the same persons shall serve as officers of both organizations. Traditionally, candidates have run unopposed, and this year was no exception. Thus, the judges who took office on November 1, 2000, are well known to the IAWJ membership.

The Hon. **Mella Carroll**, a High Court Justice in Ireland, and Chairperson of the Host Committee for the Sixth Biennial Conference to be held in Dublin in May 2002, automatically succeeded to the Presidency in accordance with the IAWJ Constitution. The Hon. **Laetitia Mukasa Kikonyogo**, a Justice on Uganda's Supreme Court, shifts from Vice-President to President-elect. Judge **Rosalina Pison**, who is an appellate court judge in the Philippines, formerly Secretary of the organizations, now takes the position of Vice-President, while Justice **Miriam Naveira**, who sits on Puerto Rico's Supreme Court, succeeds to the Secretary's post.

The Hon. **Jane Mathews** is the new face on the roster of IAWJ-IWJF officers. One of IAWJ's original members, founder and first Director of the Australian Association of Women Judges, Justice Mathews now serves on the Australian Federal Court.



With the successful Buenos Aires Conference behind her, former President **Carmen Argibay** takes up her new role as President Ex-officio and Chairperson of the Membership Committee. □

On and Beyond the Edge



by **Marsha Freeman, Director
International Women's Rights Action Watch (IWRAP)**

Ms. Freeman's keynote address at the IAWJ-IWJF Conference in Buenos Aires, Argentina in May, 2000 appears below in abridged form.

I come to you today fresh from an experience that is directly related to the theme of this conference, "Women on the Edge". I recently spent 6 days in Moldova participating in a program to help government officials and NGOs understand the meaning and importance of human rights treaty obligations that relate to women. Traveling...with 4 members of the UN CEDAW Committee, we met with prominent government officials and a wide variety of NGOs. We also met with judges who wanted to talk about the status of the international treaties in their own legal systems and the ways they could use the international standard of non-discrimination in their locally-based cases.

What became clear to me in these discussions is that Moldova is a country "on the edge". Its people are almost over the edge struggling to learn democracy and deal with capitalism without much in the way of background. The government is unstable and the economy is in a shambles.

Pulling Back From the Edge

So what is the approach for pulling back from the edge: institutions built with good will as well as skill, designed to meet citizens' needs for protection, certainty, and opportunity are needed. The hope for Moldova lies in a handful of people who believe in the rule of law and the development of institutions that support its citizens. The government, despite its instability, has ratified all the international human rights treaties, and is constantly in the process of examining and re-drafting legislation to redefine its relationship to the public.

The titles of the conference breakout sessions suggest that the discussions are intended to focus on women in deep trouble, the negative meaning of "on the edge". Women are mentally ill, in prison, dealing with HIV/AIDS... These women are frequently understood to be victims. For women in many of these circumstances... discrimination is one of the primary causes of their situation.

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World News Report

→ Bangladesh

Justice **Nazmun Sultana**, founder and International Director of the Bangladesh Association of Women Judges, was elevated to the High Court, the first woman in her country to reach this level.



Chief Justice Administers Oath to Justice Sultana

→ Brazil

December 14, 2000 has become an historic date in Brazil for that is when the Hon. **Ellen Northfleet** took the oath of office as the first woman to serve on the nation's Supreme Court. Justice Northfleet ascends to the highest bench from the Federal Regional Court in Porte Allegre, where she was the first woman to serve as president of a federal court. Her nomination by Brazil's President was confirmed swiftly and unanimously by the Parliament. The IAWJ takes special pride in her appointment, knowing she will serve with great distinction and advance principles that lie at the core of the IAWJ's mission.



Justice Northfleet makes history

→ Canada

The following excerpts are from an article by Judge **Cheryl Daniel**, recently-elected President of the Canadian Chapter (CC) of the IAWJ, that appeared in the Chapter's newsletter:

I am pleased to report that in 2000, our membership reached the highest number since the CC's inception - 205 members, including 3 men. The CC-IAWJ has experienced the usual growing pains of any young organization. Bylaws and a Constitution were prepared soon after the first organizing meeting. However, little attention was paid to them for the members were more interested in activities such as hosting the 1998 International Conference in Ottawa, implementing the twinning project with The Cameroons, and sending a delegation to the Buenos Aires Conference last May.

The members now are turning their attention to the CC's internal procedures and policies. To this end, a committee was formed to draft amendments to the Bylaws which were submitted to the Board of Directors at their meeting in January 2001.

→ India

The Hon. **Sujata Manohar**, who retired from the Supreme Court of India a year ago, has been appointed to the country's Human Rights Commission.

→ Kenya

Justice **Joyce Aluoch**, International Director of the Kenya Association of Women Judges (KAWJ), submits the following report on the Association's accomplishments last year:

In keeping with a recommendation that emerged from the IAWJ regional conference on domestic violence held in Kampala, Uganda in 1996, the KWJA has played a leading role in creating and designing a Family Division of the High Court.

At their request, the Chief Justice appointed a committee charged with drafting a report and recommendations that would spell out the grounds rules for such a division. After more than a year's hard work, the Committee submitted its report to the Chief Justice, and on December 14, 2000, the Family Division became a reality.

→ Panama

The AMAJUP recently held its chapter meeting at a local playhouse after enjoying "Boardinghouse of Crazy People".

→ Philippines

Justice **Flerida Romero** recently retired from the Supreme Court. However, she will remain an active jurist as a newly-appointed member of the International Labor Organization, joining Justice Mella Carroll.

→ South Korea

The IAWJ welcomes a new national association of South Korean women judges. The Association recently formed after a rule restricting government officials from joining international NGOs was withdrawn.

→ Tanzania

The Hon. **Nathalie Kimaro**, formerly Principal Registrar for the High Court in Dar-Es-Salaam, now is Justice Kimaro after her recent appointment to that court.

→ Uganda

Justice **Laetitia Mukasa Kikonyogo** - the first woman appointed to Uganda's Supreme Court, recently received a new honor: she is the first woman to be appointed Deputy Justice of the Supreme Court.

In a paper delivered at the Buenos Aires Conference, Justice Kikonyogo described a singular service that women judges in her country perform behind the scenes for aggrieved persons. She explained that women judges, in particular, are approached by domestic violence victims, who, not wishing to have their husbands or partners arrested, ask that they reprimand the batterer. The justices often are successful in settling these matters. They refer more intractable complaints to FIDA (a woman lawyers NGO) or to the Legal Aid Clinic.

→ Zimbabwe

Former Magistrate **Euna Makamure** is now Judge Makamure following her appointment to the Labor Court. In addition, Justice **Elizabeth Gwaunza**, co-chair with Judge Makamure of the JEP Task Force, reports the Hon. **Rita Makarau** and the Hon. **Ann Gowora**, have joined her on the High Court bench.

SIXTH BIENNIAL CONFERENCE AND TENTH ANNIVERSARY OF IAWJ-IWJF

theme:
"JUDICIAL CREATIVITY"
"CREATIVITE JUDICIAIRE"
"CREATIVIDAD JUDICIAL"

SET THESE DATES ASIDE
NOW:
MAY 23-26, 2002
DUBLIN, IRELAND

VENUE:
THE VENERABLE
DUBLIN CASTLE
DUBLIN, IRELAND

IN THE HEART OF DUBLIN,
WITHIN MINUTES OF RES-
TAURANTS, SHOPS AND
OTHER TOURIST ATTRAC-
TIONS

the organizing committee,
chaired by the hon. mella
carroll, strongly sug-
gests early registration.
to receive announce-
ments, please email
paul ene mckeever
(paul enemck@compuserve.com)
or fax her at
353-1-662-0126

NGOs CALL FOR HALT OF ICTY ELECTIONS

The IAWJ-IWJF joined other NGOs as signatories to a letter sent on March 8 to UN Secretary General Kofi Annan. The letter, drafted by the Gender Caucus for the International Criminal Court, urges the Secretary General to postpone March 14 elections of nominees to the International War Crimes Tribunal for the Former Yugoslavia, to reopen nominations so that more women can be added to the current list of candidates that included only one woman and 25 men. As this newsletter goes to press, the IAWJ-IWJF have learned that the election was held as originally scheduled. To no one's surprise, the 26 candidates were re-elected.

SEEKING JUDGES FOR ONLINE ADR

PrivateJudge is a dispute resolution service established by NAWJ member Alice Sullivan to provide dispute resolution services using the Internet. PrivateJudge is seeking active and retired judges to join an international panel to resolve commercial disputes. For the past decade, Judge Sullivan retired from the California Superior Court, has managed a dispute resolution practice serving as a mediator or arbiter in more than 1000 cases.

Judge Sullivan explains that the service will allow cases to be filed online and documents to be transferred over a secure computer connection. PrivateJudge will limit its practice to commercial and intellectual property disputes and class actions. The service will be launched in early 2001.

Judge Sullivan is seeking participation by experienced jurists throughout the world. Judges must be in a status (e.g., retired) that allows private compensation, be fluent in English, and comfortable communicating over the Internet. Additional computer training and administrative assistance will be provided to those selected. Interested parties may contact Judge Sullivan by phone at 858-792-3601, or e-mail at info@privatejudge.com.

DUES DEFINITELY DUE

Understanding that IAWJ's expenses are paid solely by dues, and that these expenses have sky-rocketed as the number of members and requests for services have expanded, the Association's first dues increase was approved by the membership at the plenary session of the IAWJ Conference in Buenos Aires.

Effective January 1, 2001

- 1) Dues for all national associations are \$6 (US) a year for each member, with a \$3,500 ceiling. Payments should be sent in one lump sum by March 31, 2001, with a list of current members and their contact information to IAWJ headquarters.
- 2) Individual members' dues remain \$15 per year.

If you pay via wire transfer, please remember to include the \$15 transfer fee.

Wire to:
International Association of Women
Judges
Bank of America, Washington, DC
Acct.#: 001933207050
Routing#: 054001204

Effective January 1, 2003

- 1) All associations will owe \$8 for each member, paid in one lump sum by March 31, 2003, along with the current membership and contact list.
- 2) Individual dues remain at \$15 per member.

WITH RISING COSTS, THE IAWJ HAS HAD TO ADOPT A STRICT MEMBERSHIP POLICY. THEREFORE, AN ASSOCIATION'S OR INDIVIDUAL MEMBER'S FAILURE TO PAY DUES FOR A CONSECUTIVE 2-YEAR PERIOD, ABSENT A WAIVER, WILL RESULT IN BEING DROPPED FROM THE MEMBERSHIP DIRECTORY. THE 2002 DIRECTORY WILL ONLY CONTAIN NAMES OF DUES-PAYING MEMBERS. YOUR COOPERATION WILL BE GREATLY APPRECIATED.

BENCH MARKS

THIS IS NOT GOODBY

by IAWJ-IWJF Past President Carmen Argibay

This *Counterbalance International* issue will have been issued when my term as IAWJ-IWJF President has come to an end. The Hon. Mella Carroll (Ireland) will be our new President and I wish her all the best in her new endeavor. But, dear friends, this is not goodbye because I still shall be around as past president and, more than that, as a member who has enjoyed every minute and every activity of our Association.

It is not my intention to evaluate these two past years; that is up to all of the members. Instead, I want to tell you about some activities that were particularly gratifying to me, and came my way through the IAWJ-IWJF.

One was the JEP ("Towards a Jurisprudence of Equality Project") in South America. A judicial education program designed by the IWJF and funded by the IADB, it was (and is still) a big success in developing domestic jurisprudence based on the international and regional human rights conventions. It was hard work, believe me, but really satisfying when it comes to results.

Another activity I want to highlight was the fifth Biennial International Conference that took place in Buenos Aires, May 17-21, 2000. Of course, many of you were there and probably will remember the quality of the sessions addressing various facets of "Women On the Edge" — the wonderful speakers, the warm attention to everyone, the old and new friends from all around the world that you met and would love to meet again and again, the emotional Awards Dinner where our honoree was The Hon. Navanethem Pillay, President of the UN International War Crimes Tribunal for Rwanda, and so many other good moments we had together. The Argentine Association (AMJA) did not have official support for this very important event, but with the help of IAWJ-IWJF members, it shows how much we can achieve together.

Last, but not least, I want to tell you that my membership with the IAWJ-IWJF put me in contact with exceptional women and NGO's working on behalf of women. Through them, I was invited to sit as a judge on the "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery" (see special column). It was a great honor and I owe it to our Association.

I am convinced that we can make a difference. It is a matter of work, patience, commitment, care, love and more work. I am very proud of this Association and hope with all my heart to see it grow to serve a leadership role around the world for human rights, women's rights, non-violence, peace and a better life for every woman.

This is not goodbye. I plan on staying the course. ☐



Meet the Staff...

IAWJ members regretted having **Dorota Majewska**, IAWJ-IWJF's energetic Program Administrator, return to graduate school last fall to add an MBA to her credentials. Finding a successor to fill Dorota's capable shoes

seemed an impossibility, but luck was with us when **Jane Curtis** walked through the door.



Jane's credentials give only a glimpse of how well-suited she is for the job. She received a

Master of Arts degree in Interdisciplinary Studies from Oregon State University last May, combining courses in women studies, sociology and psychology. In addition to her formal education, Jane brings office management know-how, strategic planning and accounting skills, as well as staff development and supervisory experience.



Diana Ngbokoto

is not exactly a new employee for many IAWJ members have met her through their communications about membership matters over the past several years. What is new is her promotion to full-time status, thanks to a generous grant from the Ford Foundation. Another new factor in Diana's life was the arrival of her third son last August.

Originally from Romania, Diana studied in Switzerland where she earned a B.A. in business economics with a concentration in African economics. On coming to the U.S., she worked with several NGOs that focused on development issues. She will continue to oversee membership matters for the IAWJ, but takes on new responsibilities as IWJF's Project Coordinator for the Jurisprudence of Equality project in East Africa. Her diverse experiences have given her a unique perspective that eminently qualifies her for her new duties that will involve assuring that the JEP participants adhere to a common timeframe, reporting to institutions that have awarded funding for the JEP, and working closely with a newly-hired regional project manager, **Lydia Ddamba**, who is based in Kampala, Uganda. ☐

TOKYO TRIBUNAL REJECTS IMPUNITY FOR WAR CRIMES AGAINST COMFORT WOMEN

by Carmen Argibay

One of the most moving experiences of my life was serving on a tribunal in Tokyo, Japan, where, with other judges, I heard elderly Asian women testify about their sexual enslavement by Japanese invaders prior to and during World War II.

At the end of October, the judges who were invited to serve on the Tribunal — Gabrielle Kirk McDonald, Christine Chinkin, Willy Mutunga, P.N. Bhagwati and I — met at the Hague for two days to review documents and exchange ideas. Finding this meeting too brief, we worked our e-mail systems overtime throughout November as we circulated draft resolutions and shared information. At the last moment, Justice Bhagwati fell ill and was forbidden to travel by his doctor, leaving just four of us on the bench.

The Allies knew about Japan's treatment of the so-called "comfort women" while they were preparing cases to be tried before the International Military Tribunal for the Far East from 1946-1948; yet failed to raise these matters while prosecuting Japanese officers for other war crimes. In the early 1990s, survivors finally began to demand retribution for the crimes committed against them, and two United Nations Special Rapporteurs conducted investigations that shed light on this widespread tragedy. However, Japan rejected all exhortations from the international community to apologize and compensate the survivors.

An End To Impunity

In bringing their excruciating experiences to public attention, the survivors broke a 55 year-long period of silence, recognizing that to conceal criminal actions invites their recurrence and sustains a culture of impunity. The Tribunal echoed this point of view in announcing 3 principles that would guide their work: 1. respect for women's human rights; 2. an end to impunity for perpetrators of war time sexual crimes, and 3. repudiation of the notion that sexual abuse of women is an inevitable consequence of war.

Pity Rejected

In this brief report, I cannot recapture the range of emotions we experienced. While preparing for the hearing, we read the heart-wrenching statements of many survivors, but their oral testimony had an agonizing impact that cannot be expressed in writing. We marveled at the dignity and strength of these women, most of whom were over 70 years old. Tears flowed and moments of anguished silence occurred as witnesses struggled to compose themselves so they could continue testifying. Some witnesses admitted to feelings of profound hatred, others only wanted to be heard. Not one of them sought pity, and firmly rejected the label, "victims", preferring to be known as Japan's "victimized survivors".

Research suggests that Emperor Hirohito's concerns about unfavorable international reaction to the 1937 Nanking massacre spawned the creation of "comfort stations" where "comfort women" were enslaved. Knowledge of this history did not begin to prepare us for the testimony of Yang Mingzhen, a

survivor of the Nanking massacre. At age 7, she witnessed her parents' murder, and then was raped. She survived by begging and gathering what she could on the streets.

Just the Truth

There were some lighter moments, as when Esmeralda Boe, from East Timor was asked to swear she would tell the truth. She replied: "I did not make such a long trip just to visit Japan; I came to tell the truth." She said this so emphatically that we accepted it in lieu of the traditional "I do".

Closing arguments by Chief Prosecutors Patricia Sellers (USA) and Ustinia Dolgopol (Australia), were of the highest quality. Japanese lawyer, Tusguo Imamura, also gave an admirable closing statement as *amicus curiae*. The Japanese government declined to participate.

Judgment Day

We had only one day to prepare our judgment as we wanted to issue it on December 12, International Women's Day. We worked ceaselessly, but in great harmony, completing the decision just in time to read it publicly. However, we had not reckoned with the emotional impact of this two and one-half hour reading. When Judge McDonald announced that we found Emperor Hirohito responsible for the sexual slavery system, the survivors and everyone else in the audience cheered and gave the Court a standing ovation. As the reading ended, the survivors rushed to the stage waving white handkerchiefs. Unbound by whatever enmity exists between their governments, women from North and South Korea, Taiwan and China, Indonesia, East Timor and The Netherlands, the Philippines, Malaysia and Japan, joined hands, rejoiced and sang together.

Some Japanese right-wingers took to the streets with loudspeakers and signs, claiming that the Tribunal was communist-inspired, but violence was avoided. Surprisingly, some feminists argued that we were wasting time on "ancient history." However, when women arrived from Kosovo, Chiapas, Guatemala, Colombia, Algeria, Sierra Leone, Somalia, Palestine, Afghanistan, Burma, Burundi, East Timor, Vietnam and Okinawa on December 11 to present their cases, the comfort women's experiences seemed altogether current.

Lessons Learned

The lessons of the comfort women trial cannot be ignored: it revealed that abominable acts will be regarded as normal and inevitable and will recur if they go unpunished. It also demonstrated that judges from different juridical, social and ethnic backgrounds can work well together when there is a unifying belief in fundamental values and an unwavering acceptance of the need to fiercely defend both men's and women's human rights. The survivors told us that they felt their dignity and humanity had been restored by our work. I feel deeply privileged to have been a part of this historic tribunal. □

On and Beyond the Edge

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[T]here is another meaning to the term “on the edge”. It also refers to pushing systems to their limit and beyond, taking on causes and cases that threaten massive changes in...[society]. Some women live on the edge in the most positive sense, willing to fight for their rights and those of others in the face of stiff opposition and ...ostracism. They refuse to be victims. They are survivors, and want all women to be survivors.

Success Stories

Let me tell you several survivor stories. You may have heard of Unity Dow who 10 years ago sued the government of Botswana over its discriminatory citizenship law. Under that law, married women could not convey their citizenship rights to their children. Since Unity’s husband, Peter, is American, their children who were born and being raised in Botswana did not have residency rights except as dependents of a foreigner with a residency permit. When Peter decided to return to school, their status became uncertain. Being a lawyer, Unity sued and won at the trial level and again on appeal. The courts found the law to be unconstitutional because it discriminated against her on the basis of sex. The decision benefited not only the Dow family but all women. It affirmed the State’s duty to end discrimination in a highly traditional society and has been cited worldwide as both a legal and cultural breakthrough.

The second story involves a lawyer in Nepal who challenged an inheritance law excluding women from inheriting from their fathers unless they were 35 years old and unwed. Personally affected, woman lawyer Sapana Pradhan Malla, won on the point that CEDAW prohibits such discrimination....Both women used their legal systems to fight victimhood, taking enormous personal risks in cultures where women are not supposed to call attention to themselves ...[nor] criticize their traditions. They...demonstrated that systems can be used to challenge victimization. I suggest that as professionals, we have an obligation to make... institutions accessible, useful, and accountable so victimized women can be survivors, expanding opportunities for themselves and others.

Rescue and Prevention

Women in situations of poverty, incarceration, poor health or other difficult conditions, need immediate help. But we cannot ignore the larger question of prevention. Both rescue and prevention must be addressed as rights as well as problems of service delivery. Well-functioning legal systems are crucial to both enforcement of rights and efficient service delivery because they make institutions accountable.

I offer the example of violence against women as a framework for considering the differences between rescue and prevention. When violence against women began to be widely discussed internationally, we in IWRAW noticed that discussion focused on women as victims and on rescue rather than prevention....In the late 1980s and 1990s, much documentation, publicity, and testing of models, such as the well known women’s police stations in Brazil, occurred. However, violence against women will stop only when women understand that they have power as individuals, at least equal to that of men....when they are free to organize their lives on equal footing and walk away from abusive relationships.

Addressing domestic violence at the prevention level, involves power relationships and economic and social equality that is much more complex than designing legislation and creating shelters. It means redesigning educational,

economic and social institutions and policies at all levels. It means a major shift in thinking about rights and the state’s obligation to protect its citizens and promote their welfare; it means supporting a civil society that advocates effectively to change lives.

I suggest that in addressing problems of “women at the edge,” we look deeply at our institutions and consider the issue of policy design that is required to keep women from being pushed “to the edge”. I argue that the justice system does provide opportunities...to affirm the responsibility of the state and civil society to provide the means to prevent victimhood. We have opportunities in our individual lives as well.

Human Rights On Our Daily Agenda

What I am talking about is bringing the human rights concept of nondiscrimination into our thinking and action, ...whether or not the issue is framed as a matter of discrimination. [I]nternational human rights documents and norms have developed to the point that it is now a given that discrimination against women is a human rights violation; that governments are obligated to eliminate it. Judges who are concerned about fundamental fairness can find ways to invoke international norms without going outside their legal system.

In the *Dow* case, Botswana had not ratified any of the international treaties, but the court was mindful of the comity among nations and its membership in the United Nations. A case does not have to rise to constitutional level to have human rights implications.

Consider the inheritance cases in Zimbabwe, *Chihowa v. Mangwendel* (1987), which involved Zimbabwe’s landmark Legal Age of Majority Act, providing that all persons are considered legal adults at age 18, “for all purposes, including customary law”. This remarkable effort leap-frogged on issue-by-issue struggle to eliminate customary limitations on women. Significantly, the case was decided on statutory language but confirmed application of a non-discrimination standard (later overruled in *Magaya v. Magaya*). The lesson taught by these cases concerns the importance of judges’ knowledge and acceptance of a state’s international human rights obligations. Human rights issues resolved as a matter of legal theory have real-life consequences....I urge you to consider the possibilities for using human rights principles to help women move back from the edge, providing opportunities to become survivors. That means learning more about the international human rights standards that apply to all women regardless of whether their governments have ratified;...considering how specific norms of a treaty can be applied in cases; speaking out for human rights principles, ratification of treaties and implementation of treaty obligations.

Returning for a moment to Moldova, the women judges there questioned whether a violent husband should be compelled to leave the household. In a country where private ownership of apartments is a new component of the legal order, the idea of throwing someone out has great implications. Ultimately, we determined that the human rights to integrity of the person and to personal safety that underlie provisions of CEDAW and General Recommendation #19 (on violence against women) outweigh the right to occupy a particular piece of property.

I was impressed by their determination to use an international treaty to find a way to protect a woman in a system that offers little within its own limits. If they succeed, they will have not only protected one woman but changed the system itself. States can change and women can move beyond victimhood. We are in an ideal position to help make that happen. Let us do it. □

High Grades Earned When JEP Comes to East Africa

As the IWJF's pioneering human rights training program "Towards A Jurisprudence of Equality" (JEP) was winding down in South America, it was beginning a new life in East Africa. On October 4, 2000, 10 carefully-selected magistrates and judges from Kenya, Tanzania, Uganda and Zimbabwe began an intensive 10 day workshop that would convert them into trainers equipped to lead JEP seminars for colleagues in their respective countries. In addition to the 10 trainer-candidates, 3 South African observers were on hand as a prelude to initiating the JEP in their country. The JEP is an innovative project designed to prepare judges to apply international, regional and national human rights norms to cases coming before them in their national and local courts involving gender-based discrimination and violence.

Hosted by the National Association of Women Judges/Uganda (NAWJ/U), the Train-the-Trainers (3 Ts) Workshop opened at the Hotel Imperial Botanical Beach in Entebbe. The Hotel provided an ideal venue – located in a serene setting, it is a modern, comfortable structure overlooking Lake Victoria and bordered by the national botanical garden.



Supreme Court Justices Join the JEP Workshop

(l. - r.) Lady Justice Laetitia Kikonyogo, Chief Justice Samuel Wambuzi, Florence Butewga and Judy Lyons Wolf

Uganda's Chief Justice, The Hon. Samuel Wako Wambuzi, delivered words of welcome at the Workshop's opening ceremonies, signaling the importance attached to the training. In fact, he returned to the Workshop on a later date, engaging in lively discourse after observing the trainer-candidates consider the biases that often underlie gender stereotypes.

The Facilitators and the Trainees

Judy Lyons Wolf, formerly with the Georgetown Law School and now a private consultant, and Florence Butegwa, a member of the Organization of African States' Human Rights Commission, are experienced trainers and experts in the law and culture of East Africa. Having worked together for a number of years, their easy collaboration and control of the curriculum created a hospitable, low-key learning environment.

The trainer-candidates, a highly motivated group of 9 women and one stalwart man, included a high court justice, several chief magistrates, an assistant dean at Makerere University Law School, and several principal registrars. The participants voiced their pleasure with the regional nature of the Workshop as it provided them an opportunity to meet and share professional experiences with peers from neighboring Commonwealth countries. Although most did not know one another prior to their arrival, they left Entebbe both as colleagues and friends.

The Curriculum

The 3 Ts Manual, the basic text used at the Workshop, was prepared by Judy Wolf who modeled it on the one first authored by IWJF Human Rights Education Director, Anne Goldstein for the JEP in South America. The workshop curriculum is designed to familiarize the trainer-candidates with substantive human rights law, particularly, the UN Convention on the Elimination of All Forms of Discrimination Against Women, and the African Charter of Human Rights. At the same time, the trainers learned how to convey this information at seminars they will lead in their own countries through highly interactive instruction that included case studies, role playing activities and small group discussions. Thus, the trainers were exposed not only to legal substance, but to a process for translating that substance to their colleagues.



The JEP Entebbe 3Ts Workshop Participants

All Work and Some Play

The trainers had only one day of leisure during the Workshop, and so, made the most of it. They traveled to the northern town of Jinja to view the source of the Nile River. They also had a brief tour of Kampala, Uganda's capital, which included a visit to a shelter for abused women, founded by the Ugandan women judges. The NAWJ/U hosted a cocktail reception for them one evening. On another, Justice Mukasa Kikonyogo hosted a festive cookout at her lovely home where every variety of Ugandan cooking was served.

The group said their farewells at a gala dinner party on the evening before departure. They were honored at this event by the presence of several distinguished guests: Hon. Justice J.W. Tsekooko, who is serving as Honorary Patron of the JEP, and Hon. Janet Mukwaya, Minister of Gender and Community Development. The Minister surprised and delighted the IAWJ members in the audience by pledging that she would make available free of cost to the NAWJ/U for a performance of a domestic violence drama penned by His Worship, David Batema, the only male JEP trainer.

The Workshop Earns Acclaim

As the close of the workshop neared, the trainers gave high marks to the facilitators and curriculum alike, praising the JEP as "useful" and "very relevant" to their work on the bench. □

Honoring President Pillay

by Linda Schade

[Dra. Carmen Argibay introduced Justice Navanethem Pillay, President of the UN International War Crimes Tribunal for Rwanda (IWCTR) as the recipient of the IAWJ-IWJF Human Rights Award, at the Fifth Biennial Conference with the following words:]



Can you imagine the enormous disadvantages of being born a black woman in apartheid South Africa? Can you imagine overcoming those obstacles to earn a Bachelor of Law degree at the University of Natal? Now you can begin to imagine Navanethem Pillay (left) who, in 1967, became the first woman to practice law in Natal.

For 28 years, Justice Pillay defended anti-apartheid activists in court, winning landmark cases, one of which accorded due process rights to political prisoners. She also established the battered woman syndrome as a legitimate defense in domestic violence cases. During this period, Ms. Pillay also earned Master of Laws and SJ degrees in Juridical Sciences at Harvard Law School.

When apartheid fell in 1995, Ms. Pillay was appointed a Deputy Judge to South Africa's Supreme Court, the first woman of color to hold that post. Recognizing her expertise in matters of gender persecution, the UN General Assembly appointed her to the IWCTR in 1995 and again in 1999. On this latter occasion, her colleagues elected her President of the Court.

Justice Pillay has long demonstrated uncommon courage in the fight for women's rights. No better example of this can be found than her historic decision in the Jean-Paul Akayesu case. Her judgment in this case is a milestone: for the first time an international court found rape to be a form of torture and ...a crime against humanity. For us, Navi Pillay stands as a high, bright point in the struggle for human rights. With all my heart, I express the hope that we may be capable of following her example.

The plaque presented to President Pillay reads:

The IAWJ and IWJF
proudly present this Human Rights Award to

The Honorable Navanethem Pillay
President, UN International War Crimes Tribunal for Rwanda
in recognition of her historic decision in the Akayesu case,
where, for the first time, rape was condemned
as a war crime and an act of genocide.

On being honored by the IAWJ-IWJF for her distinguished contributions to the cause of women's human rights, she delivered the following stirring remarks:

A Century of Slaughter

As we look at the human rights record of the 20th century, we see both the greatest achievements and the greatest violations in history.... [M]illions of innocent people have been ruthlessly slaughtered and gross human rights abuses have occurred without accountability. The ashes of the Holocaust inspired the 1948 Universal Declaration of Human Rights (UDHR) adopted -

by the United Nations. Yet, since then we have seen numerous other genocidal campaigns take millions more innocent lives - in Cambodia, in Rwanda - there are no geographical boundaries to the killing and atrocities....

The UDHR reminds us that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind" and that "human rights should be protected by the rule of law". However, despite the lessons of the Holocaust, the response of the international community to crimes against humanity has repeatedly been marked by tolerance of impunity - that is, until recently.

Human Rights Taking Hold

Only in the last decade [has] the rule of law emerged as a real response to contempt for human rights through creation of *ad hoc* international criminal tribunals by the UN. As these tribunals and the new International Criminal Court gather momentum, the concept of individual criminal responsibility at the international level is finally taking hold... We are now on the brink of a new era which could bring legal force to rights set forth in the UDHR and other international legal standards of conduct. An international criminal justice system is the expression of a widely acknowledged need to discard a world where only states matter and the powerful rule in a culture of impunity, in favour of a new world order where fundamental human rights norms are protected and observed by all members of society.

Security Council resolutions established two ad hoc Tribunals to respond to the situation in the former Yugoslavia and Rwanda. Historically, international humanitarian law regulated international warfare. In recent times, conflicts within states, [have] created imperatives for their extension to internal conflicts to address civilians' need for protection. The tribunal statutes incorporate well recognized norms of both international humanitarian law and human rights law by including genocide, crimes against humanity, and grave breaches of the Geneva Convention....

Rape As An Instrument of Genocide

In arriving at its determination regarding events in Rwanda, the Security Council considered reports of massive and systematic rape of women, [but they] were not specifically enumerated as acts of 'genocide'. However, in the case of Jean Paul Akayesu, the Trial Chamber held that these acts caused "...serious bodily or mental harm to members of the group" and were perpetrated with the intent to destroy, in whole or in part, the Tutsi ethnic group, therefore...constituting genocide."

The *Akayesu* judgement, the first to define rape in international law, [states that] rape is: "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive...". In *Akayesu*, the Court recognized that "rape is a form of aggression... The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not catalog specific acts in its definition of torture, focusing rather on the conceptual framework of state-sanctioned violence.... Like torture, rape is used for such purposes as intimidation, degradation, humiliations, discrimination, punishment, or destruction of a person. Rape, in fact, constitutes torture...inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or...person acting in an official capacity." *

continued on p. 9

On the Record

by Arline Pacht
IAWJ-IWJF Director

Honoring President Pillay

continued from p. 8

The IWCTR...has 42 people in custody. Among the accused is virtually the entire political leadership of the forces alleged to have committed one of the most intensive massacres in history - 500,000 Rwandans killed within a period of 100 days. The Tribunal was the first international judicial body in history to deliver a genocide conviction, declar[ing] that rape was perpetrated with the intent to destroy in whole or in part, the Tutsi ethnic group...This case represents a new accountability of political leadership at national, regional and community levels...Although *Akayesu* did not commit any act of rape, the Chamber found that in his position as mayor, he ordered, encouraged and aided the rapes and killings by sending a clear signal of official tolerance for these acts.

As the only woman judge on the IWCTR, my experience is somewhat similar to yours: we serve in institutions rooted in tradition, unduly loyal to...precedent and slow to embrace change. We [must] listen to the voices of women who are the worst sufferers of violence, poverty and deprivation of human rights. I look forward to my association with the IAWJ so that together, we can meet the challenge of keeping pace with evolving international humanitarian norms. □

* *Prosecutor vs. Jean Paul Akayesu*, 2 September 98; case no. IWCTR-96-4-T; para 597; Justice Speaks: Rape is a War Crime.

With Gratitude ...

The IAWJ and IWJF wish to acknowledge with grateful thanks, the generous support of the following institutions, without whose aid, the vital work of these organizations could not progress.

Commonwealth Foundation
DANIDA Foundation
Ford Foundation - NY and Eastern Africa Office
General Service Foundation
Inter-American Development Bank
Joyce Mertz-Gilmore Foundation
Public Welfare Foundation
Scherman Foundation
Shaler Adams Foundation
UNIFEM Trust Fund - New York
US Agency for International Development

The many generous donors who contributed to the IWJF this year will be acknowledged in the next issue of *CounterBalance International*.

Hundreds of women judges gathered in Buenos Aires last May for the IAWJ's Fifth Biennial Conference, drawn by their interest in and commitment to issues seldom examined at other professional meetings, by exciting social events in one of the world's most lively cities, and by the simple joy of coming together. In addition to these appealing attractions, the members also dealt with the following important business matters affecting the IAWJ's and IWJF's future.



Setting Priorities

In 1992, the members agreed to tackle domestic violence as their worldwide priority issue; in 1994, domestic violence continued as a priority, but from a human rights perspective. In 1996, the priority issue expanded to include all forms of gender based violence, while at the Ottawa meeting, violence against children, particularly the girl child was added. In Buenos Aires, the membership endorsed "Women, Work and Poverty," as the next priority issue.

While the IAWJ thinks globally, national associations and individual members act locally. For example, some associations may target national and/or local labor laws that discriminate against women. Others may focus on compliance with human rights conventions that mandate non-discriminatory hiring and employment practices, equal pay for equal work, safe working conditions, or abolition of child and slave labor. Still others may concentrate on sexual harassment, affirmative action or the impact of customary law on the feminization of poverty. In sum, Women, Work and Poverty poses many complex issues for study and action that will draw upon all the talents that IAWJ members can muster.

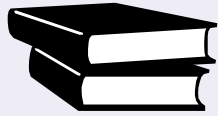
A Proposal for Merger

The Executive Council is considering a merger of the IAWJ and IWJF whereby they would become one organization, with the IAWJ as the survivor. If the Council endorses such a step, the matter will be presented to the Board of Directors for their full consideration and vote with the help of Robert Kapp, a senior partner in the Washington, DC law firm of Hogan and Hartson, and member of the IWJF's Advisory Board. Attorney, Srobhan Rausch, will handle the merger (on a pro bono basis) should a merger be approved.

Annals of the IAWJ-IWJF

To celebrate the IAWJ's tenth birthday in 2002, Conference participants agreed that now was the time to prepare a written history of the parent organizations and the national associations. IAWJ-IWJF officers will draft the international history, while each national association will prepare a chapter describing its own development - how it was founded, its challenges and achievements, where it is going. US International Director, Judge **Leslie Alden**, has volunteered to edit the work, and asks that drafts be sent to IAWJ-IWJF headquarters by April 31, 2001, if possible, by e-mail, or on a diskette.

Clearly, productive years lie ahead; ones that continue to unite women judges globally and further the IAWJ's and IWJF's paramount goal: equal justice for all. □



BOOK NOTES

📖 | **Islam & Equality: Debating the Future of Women and Minority Rights in the Middle East and North Africa.** Scholars and activists consider whether human rights norms can be reconciled with Islamic law when applied to women (1999).

📖 | **Refugees Behind Bars: The Imprisonment Of Asylum Seekers In The Wake Of The 1996 Immigration Act.** This report posits that the US 1996 immigration law results in lengthy detentions of asylum seekers who flee to the US without valid travel documents. Recommendations to Congress and the Immigration and Naturalization Service to improve the system are included (Aug. 1999, \$6).

📖 | **Women at the Peace Table: Making a Difference.** This work outlines the role women have played and can continue to play in bringing their perspective to peace building. UNIFEM.

📖 | **Genero y Derecho:** The first legal textbook by Latin American legal scholars for Latin American law schools, addresses issues of gender and the law. Women and International Law Program, Washington College of Law, American University.

📖 | **Do They Hear You When You Cry:** by F. Kassindja and L. Miller Bashir. Various forms of female genital circumcision are practiced in 25 African nations as well as in a number of southern Asian countries. The author describes her own struggle to escape from this fate, one most Muslim and tribal girls suffer in her native land, Togo. She fled to the U.S. where she was imprisoned, tear gassed, beaten, strip-searched and denied access to medical treatment, but ultimately, was granted asylum in a case that set precedent for future asylum seekers.

📖 | The Canadian Women and International Law Interest Group has compiled recent law school theses that focus on gender and international law including, *inter alia*, Particularity of Rights, Diversity of Contexts: Women, International Human Rights and the Case of Early Marriage. Bunting, Annie, U. of Toronto (1999); Redress for Female Victims of Sexual Violence During Armed Conflict. Michelle Jarvis, U. of Toronto, 1999; and Out of the Ghetto? The Feminist Impact on International Human Rights Law. Delhousie Law School 1998.

ERC-L, or the Electronic Resource Center, a bi-weekly e-mail newsletter lists new resources for human rights education and training on the Human Rights Education Associates (HREA) website. Among the latest publications are:

📖 | **Access to Human Rights Documentation**, by J. Symonides and V. Volodin (Paris: UNESCO, 1997). Covering materials for UNHCR, ILO, WHO, UNESCO, Council of Europe, European Union, Org. of African Unity and OAS. URL: <http://erc.hrea.org/Library/reference/unesco97.html>

📖 | **With an End in Sight: Strategies from the UNIFEM Trust Fund to Eliminate Violence Against Women** (UNDP 2000). In 1996, the U.N. established the UNIFEM Trust Fund In Support of Actions to Eliminate Violence Against Women. Over the next 4 years, the Trust Fund granted awards to 106 projects, all of which aimed at ending violence against women in 66 nations. In the book's introduction, UNIFEM Human Rights Advisor, Roxanna Carillo, points out that although the projects relied on diverse strategies, they fell into 3 major categories — awareness-raising campaigns, direct services for victims of abuse, and training programs for key government personnel, including the judiciary, police and health agencies.

As the last decade was ending, UNIFEM decided the time had come to review the Trust Fund-supported projects to determine which strategies were most effective and amenable to broad replication. From this review, 7 projects were selected to serve as case studies to demonstrate good practices. **With an End in Sight** is a compilation of those 7 projects.

📖 | **Uprooting Gender Bias in Asian-Pacific Courts**

A project of particular interest to IAWJ members, titled Gender and Judges, was developed and introduced by Sakshi, a feminist NGO concerned with sexual violence and women's rights, based in New Delhi. The project's goal was to forge a "collaboration between judges and NGOs ...to introduce gender equality into legal systems in the region."

Sakshi first had to overcome judges' fear that their vaunted impartiality would be compromised by working with NGOs. Sakshi met this challenge by conducting a survey of judges, female litigants and lawyers in 5 Indian cities to document the nature and extent of judicial gender bias. The findings, not unlike those that emerged from gender bias studies in the U.S., detailed deep-rooted problems. One particularly harmful view that emerged held women responsible for male violence. A report of the survey findings led to a meeting of Asian Pacific judges and lawyers where gender bias in the courtroom was examined. This meeting resulted in the formation of the Asia Pacific Advisory Forum on Judicial Education On Equality Issues, a consortium of the judges and NGOs in India, Bangladesh, Pakistan, Nepal, and Sri Lanka. A Forum committee, composed of NGO and judicial representatives, then designed a prototype for interactive gender equality instruction that is being used in judicial workshops throughout the region.

The parallels between Sakshi's project and the IAWJ-IWJF Jurisprudence of Equality project are unmistakable. Both view judges as key actors in the struggle for equal justice, both recognize that judges may harbor biased views of women, both rely on judicial training to educate judges about gender-based violence, both prepare judges to train other judges, believe that trained judges will issue gender-sensitive decisions, encourage similar training for law enforcement officials and law students, rely on a regional approach, and build partnerships with allies to foster change in society. Available online: <http://www.unifem.undp.org/public/tfbook>. □



LANDMARKS



➤ **Argentina.** In a landmark ruling, the Supreme Court relied on a provision of the Convention on the Elimination of All Forms of Discrimination Against Women as authority for holding that a former all-boys private school must open its doors to both girls and boys when it became a public educational institution.

➤ **Colombia.** The Constitutional Court has overturned a law banning pregnant women from remarrying before they give birth, whether they are divorced or separated from their partners. Under the law, which dated back to a 19th century civil code, pregnant women whose marriages had been annulled — and even those who were widows had to give birth before they could marry again. It also established a 270-day “waiting period” for women who wanted to remarry, even if they swore they were not bearing a child, to make sure they showed “no signs of pregnancy.” The Constitutional Court said the law, originally designed to ensure child paternity rights, violated the rights of women. As one of the Justices observed, “The purpose of this law was to dispel doubts about paternity, but today, scientific tests can determine that. It was obsolete and belonged to the 19th century.”

➤ **Trinidad and Tobago.** In May 1995, Indravani Pamela Ramjattan, Denny Baptiste and Haniff Hilaire were convicted of murdering Alexander Jordan and sentenced to death by a Trinidad and Tobago Court. The evidence showed that Ramjattan was 17 years old when her parents forced her to live with Jordan, a violent man who continually beat, raped and threatened to kill her. When she tried to run away, Jordan found her and forced her to return. After one such episode, she asked friends, Baptiste, and Hilaire, to help her escape. When they came to rescue her, Hilaire killed Jordan.

The English Privy Council refused leave to appeal even though one of the judges acknowledged that Jordan had beaten Ramjattan “mercilessly.” In Feb. 1999, based on a new application from Ramjattan’s lawyers that she had suffered from Battered Women’s Syndrome, the Privy Council remanded the case to the Trinidad and Tobago Court of Appeal to consider this new evidence. In October 1999, the Court of Appeal overturned Ramjattan’s murder conviction, finding her guilty of manslaughter instead, and sentenced her to 5 years in prison. Baptiste and Hilaire remain on death row, but their appeals are pending before the Inter-American Court of Human Rights.

➤ **U.S.** After fleeing to the U.S and claiming asylum, Adelaide Abankwah spent over 2 years in a prison. An immigration judge credited her testimony that she feared returning to Ghana to succeed her deceased mother as Queen of her village because she would be subjected to genital mutilation or even killed as punishment for failing to remain a virgin. Nevertheless, the judge denied asylum finding that her problem was “an individual predicament.” The Immigration Appeals Board affirmed, ruling that “she has [not] established that the failure to remain a virgin would result in punishment amounting to persecution.”

The Court of Appeals for the Second Circuit reversed, commenting that “a genuine refugee does not flee her...country armed with affidavits...[or] expert witnesses.” In August 1999, Abankwah was granted asylum.

➤ **ICTY Finds Rape a War Crime.** On February 22, 2001, the International Criminal Tribunal for the former Yugoslavia (ICTY) convicted Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic for raping, torturing, and enslaving women in the town of Foca. The men received sentences of 28, 20 and 12 years, respectively. Of the original 8 Foca indictees, 3 still remain at large. Bosnian Serb wartime leaders Radovan Karadzic and Ratko Mladic also remain at large, indicted for crimes committed under their command, including abuses in Foca. These cases mark the first time that an international tribunal has brought charges solely for crimes of sexual violence against women and the first time that the ICTY found rape and enslavement to be crimes against humanity. The Tribunal further found that the defendants enslaved 6 of the women. Although 2 women were sold as chattel for 500 Deutsch Marks each, the Tribunal found that women’s enslavement did not necessarily require the buying or selling of a human being. The 8-month trial included testimony of 63 witnesses, including 16 victims of rape held for months in sexual slavery and subjected to multiple gang rapes by the defendants and others.

The evidence showed that Bosnian Serb civilian police, and military officials, in collaboration with paramilitary troops and former Yugoslav Army reservists seized Foca in April 1992. Using propaganda to convince the local Bosnian Serb population that they were under threat of a Muslim fundamentalist coup, a “Crisis Committee” established detention centers where non-Serb civilians were detained, tortured, raped, and either expelled, killed, or disappeared. □

**The Members of the IAWJ extend
heartfelt sympathy to
Judge Euna Makamure
and her family
on the untimely loss of her husband
in February 2001**

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