

OPENING ADDRESS AT THE AFRICA REGIONAL GROUP MEETING OF THE INTERNATIONAL ASSOCIATION OF JUDGES, 2-6 JUNE 2019, CAPE TOWN, SOUTH AFRICA, BY DM THULARE, AFRICA REPRESENTATIVE OF THE IAJ TO THE SPECIAL RAPPOORTEUR ON JUDICIAL INDEPENDENCE AT THE UNITED NATIONS  
INTRODUCTION

Good morning honourable judges, distinguished guests, ladies and gentlemen. All protocols observed.

It gives me great pleasure to welcome you to Cape Town, South Africa, for this, the Africa Regional Group meeting of the International Association of Judges. I hope that you have been and will still be enjoying your stay in Cape Town, and that the discussions at the Conference so far have been valuable and stimulating.

I want to speak to you this morning about the importance of the judicial associations, and collective associations of judges. As the Africa Representative to the Special Rapporteur on Judicial Independence at the United Nations for the International Association of Judges, and the President of the Judicial Officers Association of South Africa (“JOASA”), the subject is one that is dear to my heart. In my address I hope to re-emphasise, if such re-emphasis is necessary, the importance of organisations such as these.

I intend to do so by dividing my address into three parts. First, I will locate judicial associations within the framework of international legal instruments, and establish the foundation and importance of judicial independence from this perspective. I will then highlight some misperceptions and misunderstandings about the role of judicial associations, before proceeding to highlight a selection of associations, both from this country and internationally. Finally, to buttress the main thrust of my argument, I intend to discuss several examples where judicial associations have played a key role in upholding and furthering judicial independence.

Vaclav Havel, the first president of the Czech Republic, has stated that *“the gathering of citizens in organisations, movements, associations, and trade unions*

*is a necessary condition to the functioning of any well-structured civilised society.”<sup>1</sup>*

Judicial Associations have become one of the major ways of not only ensuring a workable united Judiciary, but also a means to achieving the delivery of quality justice to the citizens. Chief Justice Mogoeng, in his speech at the JOASA AGM in 2018, remarked that:

‘The constitutional values of transparency, accountability and responsiveness apply to the judiciary. We therefore owe the judiciary as an institution to demonstrate capacity and willingness to run affairs. This is done by presenting a united front.’<sup>2</sup>

Judicial associations are an effective counterweight that endeavours to protect judicial independence. YARSAV, the Turkish Association of Judges and Prosecutors, has argued *‘that the professional organisations maintains or acts as a means to strengthening judicial independence’*, and further that:

*“Without associations you cannot speak or share your struggles publicly. It creates a direct way of communication with society, the public. (...) Our association has made the public aware of what is happening in the judicial system.”<sup>3</sup>*

Thus associations can play a role not only in furthering judicial independence by increasing public awareness of the nature and importance of the judiciary, but also provide a means of accountability from the judiciary to the public. Judicial associations may serve to support judicial independence in delivering justice. They may act as a platform for judges to reflect upon the purpose of their office, harmonise their practice and improve the predictability of their decisions. They may also create a sphere of solidarity amongst judicial officers, inter alia through holding regular meetings. A united judicial front is a means to achieving quality justice.

## INTERNATIONAL LEGAL FRAMEWORK

The Right of Judges to join associations is assured by several International instruments.

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<sup>1</sup> Vaclav Havel in Letní přemítání, 1991, quoted in [http://www.ejtn.eu/Documents/THEMIS%202016/Semi%20D/Written\\_paper\\_France\\_1.pdf](http://www.ejtn.eu/Documents/THEMIS%202016/Semi%20D/Written_paper_France_1.pdf), page 2.

<sup>2</sup> <http://www.saflii.org/za/journals/DEREBUS/2014/29.html> on 3 May 2019.

<sup>3</sup> [http://www.ejtn.eu/Documents/THEMIS%202016/Semi%20D/Written\\_paper\\_France\\_1.pdf](http://www.ejtn.eu/Documents/THEMIS%202016/Semi%20D/Written_paper_France_1.pdf) on 9 May 2019.

Article 12 of the IAJ's Universal Charter of the Judge spells out that:

*'The right of a judge to belong to a professional association must be recognised in order to permit the judges to be consulted, and in order to permit them to defend their legitimate interests'*<sup>4</sup>

Further, article 1.7 of the *European Charter on The Statute for Judges* provides that:

*'Professional organisations set up by judges, and to which all judges may freely adhere, contribute notably to the defence of those rights which are conferred on them by their statute, in particular in relation to authorities and bodies which are involved in decisions regarding them'*<sup>5</sup>

While article 1.8 of the same charter highlights the very purpose of these judicial associations:

*'Judges are associated through their representatives and their professional organisations in decisions relating to the administration of the courts and as to the determination of their means, and their allocation at a national and local level. They are consulted in the same manner over plans to modify their statute, and over the determination of the terms of their remuneration and of their social welfare'*<sup>6</sup>

Judicial associations are also recognised as a means to further the independence of national judiciaries, and individual independence of Judges.

Principle 8 of the UN Basic Principles on the Independence of the Judiciary provides that:

*'In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.'*<sup>7</sup>

This provision reaffirms the importance of these freedoms as a means for judges to protect their independence. As the principle states, these freedoms are also enjoyed by all other citizens and are recognized by major international human rights treaties. However, as judges are essential guarantors of human rights and

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<sup>4</sup> Article 12 of the Universal Charter of the Judge.

<sup>5</sup> Article 1.7 of the European Charter on the Statute for Judges.

<sup>6</sup> Article 1.8 of the European Charter on the Statute of the Judge.

<sup>7</sup> International Commission of Jurist, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors

the rule of law, these freedoms have an added importance. In particular, freedom of association and expression are fundamental to the fulfilment of their roles and due to their fundamental role in the administration of justice, judges and magistrates must be careful not to compromise their independence and impartiality.<sup>8</sup>

## JUDICIAL INDEPENDENCE

Alexander Hamilton, quoting Montesquieu's Spirit of Laws, argued that: *'There is no liberty, if the power of the judging be not separated from the legislative and executive powers... the complete independence of the court of justice is peculiarly essential in a limited constitution.'*<sup>9</sup>

The Judiciary is considered a powerful tool in not only safeguarding the constitution of states, but also in upholding the rights of citizens in respective jurisdictions. It is undisputed that the Judiciary holds vital constitutional powers. However, much emphasis should also be paid to its independence, as without this, these powers may become illusory. An independent judiciary is necessary in order to drive nations to achieve quality delivery of justice.

The Independence of the Judiciary is a core element in upholding the rule of law and consequently, preserving the very principle of separation of powers.<sup>10</sup>

The United Nations Basic Principles on the Independence of the Judiciary stipulates that:

*'The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.'*

Article 14 of the International Covenant on Civil and Political Rights, and Article 10 of the Universal Declaration of Human Rights highlight *'that courts and tribunal be independent and impartial.'*<sup>11</sup>

Furthermore, the African Charter on Human and People's Rights establish that:

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<sup>8</sup> Principle 8, United Nations Basic Principles on the Independence of the Judiciary.

<sup>9</sup> The Federalist Papers No. 78, at 402 (Alexander Hamilton) (George W. Carey & James McClellan eds., 1990) (quoting Montesquieu, Spirit of Laws, p. 181).

<sup>10</sup> Nixon M. Joseph v Union of India , The Role of Independent Judiciary in the Promotion and Protection of Human Rights in an Era of Globalization • Md Jahid Hossain Bhuiyan

<sup>11</sup> Article 14, International Covenant on Civil and Political Rights and Article 10, Universal Declaration of Human Rights

*'States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.'*<sup>12</sup>

As well as the need for the courts to be considered independent, there exists a further vital, but sometimes overlooked, element to judicial independence, namely that judges ought to be independent. Going back as far as Federalist paper No 78, it was pointed out that the:

*'Independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws.'*<sup>13</sup>

In contemporary parlance, this is referred to as individual independence, which applies to individual judges and compliments the institutional independence required for the judiciary as an institution. A description of individual judicial independence which includes the capacity to allow each individual judge to follow their own working habits and preferred patterns of handling their caseload has had its fair share of criticism.

However, independent judicial action requires an appropriate level of support which allows a judge to carry out the judicial function without relying on other entities, depending on someone else's assessment of the judge's needs, or giving any thought in the case-deciding role to tangential factors that might influence the speed of deliberation or the outcome.<sup>14</sup> A judge's independence is vital, though subject to important considerations of Judicial conduct, Impartiality and Integrity. The Bangalore Principles of Judicial Conduct affirm the principle of judicial independence, as well as the need for judges to be impartial.<sup>15</sup>

## MISPERCEPTIONS ABOUT JUDICIAL ASSOCIATIONS.

### Associations diminish Judicial Ethics and Conduct.

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<sup>12</sup> Article 26, African Charter on Human and People's Right.

<sup>13</sup> Federalist paper No. 78. [http://avalon.law.yale.edu/18th\\_century/fed78.asp](http://avalon.law.yale.edu/18th_century/fed78.asp) on 9th May 2019.

<sup>14</sup> Deanell Reece Tacha, Independence of the Judiciary for the Third Century, 46 Mercer Law Review 645 (1995), page 648. <file:///C:/Users/User/Downloads/DeanellReeceTachaIndepend.pdf> on 9th May 2019.

<sup>15</sup> Bangalore Principles of Judicial Conduct Commentary page 57 and 62. [https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf) on 9th May 2019.

Principally, a judge's duty is to be independent, impartial and to act with integrity. There seems to be a concern that having judicial officers involved in associations would ignite a lack of trust in the judiciary from wider society. I beg to differ, and identify with a remark, made during a parliamentary debate in Spain, to the effect that denying judges their right to belong to a union was

*'incompatible with the substantial mission of the judge, namely the protection of people's fundamental rights and liberties. Unionization is therefore not seen as a danger to judicial ethics, but as a powerful means to help the judiciary in its core mission.'*<sup>16</sup>

Associations are perceived to have a political or controversial aim.

In general terms, the aims of associations and unions are predominantly political or have a political influence in one way or another, thus giving grounds for some states to restrict or ban judges associations. There appears to be a view that the creation of associations would lead to a politicisation of judges. Judges should appear to be neutral and therefore should remain apolitical.<sup>17</sup>

However, I would argue that judicial associations are indeed an exception to the general rule. Most judicial associations publicize their agendas and aims for transparency purposes, and ensure updates of the association's achievement to promote accountability. Judicial officers, whether or not they are members of associations, will always be bound by the law and by the standards of ethical conduct applicable within their jurisdiction.

## EXAMPLES OF JUDICIAL ASSOCIATIONS

I will now review some selected judicial associations, both from South Africa and internationally. In the interest of time, I will of necessity only discuss some organisations, and this is in no way to underplay the important role played by other organisations which I may be unable to discuss here this morning.

### SOUTH AFRICAN JUDICIAL ASSOCIATIONS;

#### JUDICIAL OFFICERS ASSOCIATION OF SOUTH AFRICA (JOASA)

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<sup>16</sup> [http://www.ejtn.eu/Documents/THEMIS%202016/Semi%20D/Written\\_paper\\_France\\_1.pdf](http://www.ejtn.eu/Documents/THEMIS%202016/Semi%20D/Written_paper_France_1.pdf) on 9 May 2019.

<sup>17</sup> [http://www.ejtn.eu/Documents/THEMIS%202016/Semi%20D/Written\\_paper\\_France\\_1.pdf](http://www.ejtn.eu/Documents/THEMIS%202016/Semi%20D/Written_paper_France_1.pdf) on 9 May 2019.

## Historical Background.

JOASA, established in 1996, is a professional association for South African Judicial Officers. The formation of JOASA took 3 days, culminating in the adoption of a draft constitution by 100 judicial officers from the 9 provinces in March 1996. A steering committee of ten members was elected to take charge of the organizations affairs on interim basis, whilst those who attended carried the message of JOASA to their constituencies across South Africa.

## Objectives.

JOASA aims to promote the independence, strength and coherency of the Judiciary. The association provides guidance to judicial officers, ensures information is collected and publicly given to them to improve their skills, expertise and proficiency. Its mission is to create and promote uniformity amongst judicial officers, but above all to promote and maintain the rule of law, as well as the dignity and the status of the office of judicial officers.<sup>18</sup>

## Achievements.

JOASA has overseen the transition of all magistrates from civil servants to judicial officers in 2003. JOASA successfully led the struggle for magistrates to get car allowances. JOASA is still struggling to dismantle apartheid's stubborn monument and structural flaw of having judicial officers, magistrates, not being recognized as part of the Judiciary. In this struggle, we cannot rely on our leaders, including our appointed Judicial Leadership. JOASA is the leading and legitimate voice of Judicial Officers in this country that advocates for securing a table for Magistrates at the Judicial Council, which is proposed as part of the governance structure for the Judiciary. It is a generational mandate that JOASA has to fulfill or betray. Like other struggles, it is a mandate which JOASA leaders, who are an elected leadership of the Judiciary, pursue with its inherent risks of being career-limiting in terms of their personal development and advancement in the profession.

## THE SOUTH AFRICAN CHAPTER OF THE INTERNATIONAL ASSOCIATION OF WOMEN JUDGES (THE CHAPTER/SAC-IAWJ)

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<sup>18</sup> <http://www.joasa.org.za/>

The SAC-IAWJ is affiliated to the International Association of Women Judges (IAWJ), the “mother body”, which is based in Washington DC, USA<sup>19</sup>.

## Historical Background

The South African Chapter of the International Association of Women Judges (SAC-IAWJ) was launched on 8 August 2004 by the then President of the Republic of South Africa, His Excellency Mr. Thabo Mbeki<sup>20</sup>.

In October 2001, the Gender Directorate of the Department of Justice and Constitutional Development (DOJ) facilitated a Women Judges’ Workshop in Cape Town, with the idea of bringing together women judges from all over the country in order to present them with an avenue to network amongst themselves, share ideas and experiences and organize themselves in a group or entity that would enable them to be heard in decision making processes within the judiciary, particularly those relating to the transformation of the judiciary. The workshop provided the first collective platform for women judges and a commitment was made to host an international conference for sharing of best practices. The idea to form the SAC-IAWJ was born at the resulting international conference of women judges under the theme “Women in the Judiciary Making a Difference” held at the Sheraton Hotel, Cape Town from 3-5 October 2003<sup>21</sup>.

## Objectives of SAC-IAWJ

One of the Chapter’s primary objectives is to empower women judicial officers through continued judicial education, skills development and mentoring Programs<sup>22</sup>.

The Chapter also aims to promote the participation of its members in national and international conferences and training Programs, to support judicial exchanges through seminars, to promote the use of international law and international treaties signed by the government to protect and uplift ordinary women, to pursue the ideal of justice and the Rule of Law as encapsulated in the South African Constitution, to increase judicial officers’ understanding of the broad range of social, economic, psychological and cultural factors that affect

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<sup>19</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>20</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>21</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>22</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>



and/or influence women when they appear in courts, and to promote access to justice as well as equality of all at all levels of the judiciary in South Africa<sup>23</sup>. Additionally, the Chapter supports Programs and activities to discourage violence and abuse in our society, with particular focus on violence against women, children and other vulnerable groups<sup>24</sup>.

## Achievements

Since its establishment in 2004 the Chapter has run several empowerment and developmental Programs such as Jurisprudence of Equality Program (JEP); Combating Human Trafficking; Legal & Judgment Writing and Family Law Dialogue: Developing Family Law Jurisprudence. It also has a Social Responsibility Program under which it pursues the objective to empower the youth, particularly girls, and ordinary women in society<sup>25</sup>.

A number of women Judges today are beneficiaries of the aspirant Judges Programmes initiated by Judicial Leaders and funded through Political Leadership at the instance of the Chapter.

## INTERNATIONAL JUDICIAL ASSOCIATIONS.

### THE AMERICAN JUDGES ASSOCIATION (AJA)

The American Judges Association is the largest independent association of trial and appellate judges in the United States, with about 2,000 members.<sup>26</sup>

### Historical Background

The American Judges Association was originally founded as the National Association of Municipal Judges (NAMJ) in 1959 at Colorado Springs, Colorado, by 30 municipal court judges.<sup>27</sup> As the association's membership grew to include judges from other types of courts and from a wider geographical area, its name was changed to the American Judges Association in 1973. AJA's membership

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<sup>23</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>24</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>25</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>26</sup> [http://aja.ncsc.dni.us/Colo\\_Amend\\_40\\_News\\_Release.pdf](http://aja.ncsc.dni.us/Colo_Amend_40_News_Release.pdf)

<sup>27</sup> <http://aja.ncsc.dni.us/about/>.

includes both present and former judges of courts of all jurisdictions in the United States, Canada, Mexico, Puerto Rico, Guam, American Samoa and The Virgin Islands. Its Board of Governors is composed of representatives from fourteen districts.<sup>28</sup> It is one of the oldest Judges' Associations globally.

With almost fifty years of service and commitment to the judiciary, the AJA continues to strive for excellence in judicial education.

### *Objectives of AJA*

The objective and purpose of the Association is to: promote and improve the effective administration of justice; to maintain the status and independence of the judiciary; to provide a forum for the continuing education of its members and the general public; and for the exchange of new ideas among all judges<sup>29</sup>.

### Past Achievements

The AJA's impact on judicial education has been effective in a number of ways.<sup>30</sup> In 1970, the Association cooperated with the American Judicature Society in organizing the American Academy of Judicial Education, the first such institute to sponsor formal, in-residence training programs for judges of courts of first jurisdiction. AJA has sponsored more than 30 annual conferences, bringing together leading jurists, legal scholars and law enforcement officers to discuss matters of importance affecting the judiciary<sup>31</sup>.

Additionally, the AJA founded the American Judges Foundation, which is a nonprofit corporation formed for the purpose of promoting and improving the Judiciary and Justice by providing financial and other support to projects and groups that promulgate these objectives.<sup>32</sup>

The American Judges Association publishes the *AJA Benchmark*, a quarterly newsletter, *Court Review*, a quarterly journal, and *Domestic Violence*, a booklet to provide judges with information about victims of domestic violence<sup>33</sup>.

## MAGISTRATS EUROPÉENS POUR LA DÉMOCRATIE ET LES LIBERTÉS (MEDEL)

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<sup>28</sup> <http://aja.ncsc.dni.us/about/>.

<sup>29</sup> <http://aja.ncsc.dni.us/htdocs/aboutaja.htm>

<sup>30</sup> <http://aja.ncsc.dni.us/htdocs/aboutaja.htm>

<sup>31</sup> <http://aja.ncsc.dni.us/htdocs/aboutaja.htm>

<sup>32</sup> <http://aja.ncsc.dni.us/htdocs/aboutaja-foundationmembers.htm>

<sup>33</sup> [https://ballotpedia.org/The\\_American\\_Judges\\_Association#cite\\_ref-All\\_4-0](https://ballotpedia.org/The_American_Judges_Association#cite_ref-All_4-0)

## Historical Background

MEDEL (Magistrats Européens pour la Démocratie et les Libertés) is an organization of European judges and prosecutors created with the main purpose to defend the independence of the judiciary, democracy and human rights<sup>34</sup>. It currently comprises 22 national associations from 15 European countries, and is an observer member of the Consultative Council of European Prosecutors of the Council of Europe (CCPE) and the Consultative Council of European Judges of the Council of Europe (CCJE)<sup>35</sup>.

I will return to discuss MEDEL's activities in greater detail in the concluding section of my address.

## INTERNATIONAL ASSOCIATION OF JUDGES

Founded in Salzburg, Austria, in 1953, the International Association of Judges is an organization of national associations of judges, currently comprising 90 national associations or representative groups across five continents. The IAJ's main aim is to safeguard the independence of the judiciary, as an essential requirement of the judicial function and a guarantee of human rights and freedoms.<sup>36</sup>

Other objects of the association are: to safeguard the constitutional and moral standing of the judiciary; to increase the knowledge and understanding of judges by connecting them with judges from other countries, and enabling them to become familiar with the nature and functioning of foreign organisations and laws and how these laws apply in practice; and to study judicial problems of a regional, national or universal interest, in order to arrive at better solutions.<sup>37</sup>

The IAJ expressly disavows "any political or trade union character",<sup>38</sup> and it will be readily apparent from the objectives just set out that the organization is geared towards addressing issues at a wide range of levels with a view to developing depend awareness, understanding, and contributing towards shared knowledge

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<sup>34</sup> <http://www.jca.asn.au/wp-content/uploads/2015/08/2017-3-MEDEL-resolution-Polish-KRS.pdf>

<sup>35</sup> <http://www.jca.asn.au/wp-content/uploads/2015/08/2017-3-MEDEL-resolution-Polish-KRS.pdf>

<sup>36</sup> <https://www.iaj-uim.org/home/>

<sup>37</sup> <https://www.iaj-uim.org/mission-and-values/>

<sup>38</sup> <https://www.iaj-uim.org/mission-and-values/>

and expertise from judicial officers from all across the globe. These interests are plainly not narrow or parochial.

## INTERNATIONAL ASSOCIATION OF WOMEN JUDGES. (IAWJ)

“Until the legal culture changes, there is a place for this association. The legal culture will not change until our society changes. An association of women judges should aspire to change our world.” – Mary-Ann Hedland and Susan Glazebrook.<sup>39</sup>

### Historical Background

In 1989, a group of dynamic and visionary women judges from the National Association of Women Judges – United States of America (NAWJ-USA) reached out to other women on the Bench from all parts of the world and proposed the creation of an international association of lady jurists committed to the promotion of equal justice and the rule of law.<sup>40</sup> Two years of vigorous consultations and brainstorming came to fruition with the establishment of the International Association of Women Judges (IAWJ) in 1991 under the leadership of Judge Arline Pacht. Founded in 1991, IAWJ is a non-profit, non-governmental organization that brings together judges from all levels of the judiciary worldwide, creating a powerful network of influential leaders united by their commitment to equal justice and the rule of law<sup>41</sup>. The IAWJ’s creation led to the establishment of numerous national associations of women judges in various countries, many of them spearheaded by the IAWJ’s founding members<sup>42</sup>.

### Objectives and Mandate of the IAWJ

The mission of the IAWJ is to promote women’s access to the courts and advance women’s rights to equal justice by eliminating gender bias from judicial systems, and by educating the judiciary about human rights law and the role of the judiciary in protecting the rights of women<sup>43</sup>.

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<sup>39</sup> <http://www.iawj.org/about-us/iawjs-25th-anniversary-jubilee-book/>

<sup>40</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>41</sup> <http://www.iawj.org/about-us/>

<sup>42</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>43</sup> <http://www.iawj.org/wp-content/uploads/2017/04/IAWJ-2014-2017-Strategic-Plan.pdf>

The IAWJ believes that women judges are in a unique position to impact the rights of women through the judicial system and to protect and empower women throughout the world. They operate on the premise that, through the exercise of informed and united leadership, women judges can be catalysts for social transformation.<sup>44</sup>

Members of IAWJ work together with the aim to: Cultivate a growing global network of women judges and create opportunities for judicial exchange, Pioneer judicial education programs that advance human rights, and to promote judicial leadership and enhance the capacity of their members and associations worldwide.<sup>45</sup>

## EAST AFRICAN JUDGES ASSOCIATION

The East African Magistrate's and Judges' Association (EAMJA) draws membership from the organizational bodies representing magistrates and judges in three East African Countries namely: the Kenya Magistrates 'and Judges' Association, (KMJA); the Uganda Judicial Officers' Association, (UJOA); and the judges' and Magistrates, Association of Tanzania (JMAT).<sup>46</sup> EAMJA'S historical background dates back to March, 2000 during the KMJA Annual Meeting held in Nairobi, when meeting between KMJA representatives and delegations from UJOA revived an idea hatched earlier on to form a regional body<sup>47</sup>. There followed other meetings in Kampala, Uganda and Arusha, Tanzania. During the Arusha meeting held on 22<sup>nd</sup> February, 2001 the idea was discussed further this time in the presence of representatives from JMAT. During this meeting, three associations resolved to form the EAMJA. This culminated in the EAMJA launch on the 1<sup>st</sup> of September 2001 in Mombasa, Kenya.<sup>48</sup>

The EAJM is focused on promoting the rule of law as a basis for democratic governance in East Africa, and is committed to promoting the accessibility of justice for all in East Africa. To this end, the EAJMA conducts institutional development activities, and holds conferences on judicial issues of sub-regional

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<sup>44</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>45</sup> <http://www.iawj.org/about-us/>

<sup>46</sup> <https://www.eamja.org/index.html>

<sup>47</sup> <https://www.eamja.org/index.html>

<sup>48</sup> <https://www.eamja.org/index.html>

concern. It has been granted observer status with the East African Community (EAC), and publishes the East African Law journal.<sup>49</sup>

## SOME SELECTED INTERVENTIONS BY JUDICIAL ASSOCIATIONS

### *THE AJA*

The American Judges Association actively and successfully<sup>50</sup> opposed a proposed Colorado constitutional amendment that sought to limit the terms of appellate judges. The AJA argued that this amendment would have changed the judicial merit-selection that had been in place for 40 years. AJA's nine-member executive committee adopted a formal position paper opposing Amendment 40 that sought to interfere with the retirement age of Judges in Colorado.<sup>51</sup>

### *MEDEL*

Since the end of 2015, MEDEL, together with other European institutions, including the European Commission, the Council of Europe and the Venice Commission, has been following development in Poland with increasing concern, and noted that the fundamentals of a democratic state based on the rule of law had been and were being constantly undermined.<sup>52</sup> MEDEL has repeatedly called upon Polish authorities to restore the principle of separation of powers, and to ensure the independence of the judiciary. MEDEL has charged that the Government of Poland as well as the President of Poland seemed to ignore the appeals of the international judicial community and continued to implement its "reforms" of the judiciary, which, it argued, were in fact only focused on subordinating judiciary to executive power.<sup>53</sup>

MEDEL expressed deep concern about attempts by the Polish government to lower the mandatory retirement age of judges, endorsing the view that "*these measures undermine the principle of judicial independence, including the irremovability of judges, and thereby Poland fails to fulfil its obligations under*

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<sup>49</sup> <https://www.eamja.org/history.html>

<sup>50</sup> [https://ballotpedia.org/Colorado\\_Term\\_Limits\\_for\\_Supreme\\_Court\\_and\\_Court\\_of\\_Appeals\\_Judges,\\_Initiative\\_40\\_\(2006\)](https://ballotpedia.org/Colorado_Term_Limits_for_Supreme_Court_and_Court_of_Appeals_Judges,_Initiative_40_(2006))

<sup>51</sup> [http://aja.ncsc.dni.us/Colo\\_Amend\\_40\\_News\\_Release.pdf](http://aja.ncsc.dni.us/Colo_Amend_40_News_Release.pdf)

<sup>52</sup> <https://www.medelnet.eu/index.php/activities/an-independent-judiciary/458-solidarity-with-the-judges-of-the-polish-supreme-court>

<sup>53</sup> <https://www.medelnet.eu/index.php/activities/an-independent-judiciary/458-solidarity-with-the-judges-of-the-polish-supreme-court>

*article 19(1) of the treaty on European Union read in connection with article 47 of the charter of fundamental rights of the European Union.*<sup>54</sup>”

MEDEL has also commented on the controversy regarding the tenure of the President of the Polish Supreme Court, and on the attempted enforced retirement of judges of that court.<sup>55</sup> MEDEL has further supported the European Commission’s April 2019 decision to launch an infringement procedure regarding the new disciplinary regime for judges in Poland, and has ‘*expressed its full solidarity with the Polish Judges and Prosecutors who ... fight for the Rule of Law.*’<sup>56</sup>

## THE IAWJ

The achievements of the IAWJ include: encouraging application of human rights law to domestic courts; conducting judicial training on women's human rights throughout the world, research on gender and the law; sponsoring international conferences; promoting ratification of and monitoring compliance with international and regional human rights conventions; facilitating global communication on gender justice issues; fostering judicial exchange visits; protecting judicial independence; honoring significant contributors to women's rights; and collaborating with other institutions on international justice and women's issues<sup>57</sup>.

Through judicial and community level responses, the IAWJ has also addressed issues of gender-based violence, human trafficking, early and forced marriages, corruption, and discrimination in employment, inheritance, education, and health services<sup>58</sup>.

While the role of judges is largely in enforcement of law, guaranteeing rights, and even striking down discriminatory laws and practices, IAWJ members go further by providing expert opinion in law reform, overseeing correctional or other

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<sup>54</sup> <https://www.medelnet.eu/index.php/activities/an-independent-judiciary/507-medel-statement-on-the-new-infringement-procedure-against-poland>

<sup>55</sup> <https://www.medelnet.eu/index.php/activities/an-independent-judiciary/507-medel-statement-on-the-new-infringement-procedure-against-poland>

<sup>56</sup> <https://www.medelnet.eu/index.php/activities/an-independent-judiciary/507-medel-statement-on-the-new-infringement-procedure-against-poland>

<sup>57</sup> <http://www.iawj.org/wp-content/uploads/2017/05/Jubilee-Book-2016-Final.pdf>

<sup>58</sup> <http://www.iawj.org/about-us/>

facilities (e.g., reform schools, orphanages), and educating community members<sup>59</sup>.

These are just some of the many examples of the Judge Associations out there that work tirelessly to ensure that the independence of the judiciary is a reality, it is not put in jeopardy.

## CONCLUSION

I would like to conclude by arguing that the scope and range of activities highlighted in my address ought to serve to rebut any concerns about the role of judicial associations. Far from serving to undermine the esteem and standing of the judiciary, associations can play a crucial role in provide a voice to judicial officers. Ours can be a lonely position, and without the strength and sense of collective common purpose that membership of an organization can bring, it will often not be possible for the views of judicial officers to be heard, even on the most important issues.

The examples I have cited show, I would suggest, that judicial associations play a crucial role, not only in allowing judicial officers to speak out on serious issues affecting the essence of the judiciary, such as judicial independence, but also in helping to facilitate professional development and building knowledge. It is thus my contention that judicial associations are a critical part of the judicial landscape, and ought to be supported and encouraged accordingly, especially by our Chief Justices, Judicial Heads, National Departments, the Legislature and the Executive.

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<sup>59</sup> <http://www.iawj.org/about-us/>