NOTE: The respondent stipulates that researchers should seek permission from her before publishing and disseminating work drawing on this interview.

Interview with Dr Karen Brewer, Secretary General, Commonwealth Magistrates' and Judges' Association

Key:
SO: Sue Onslow (Interviewer)
KB: Karen Brewer (Respondent)
s.l. = sounds like

SO: This is Dr Sue Onslow talking to Dr Karen Brewer, Secretary General of the Commonwealth Magistrates' and Judges' Association (CMJA), at Uganda House on Thursday 10th January 2013. Karen, thank you very much indeed for agreeing to talk to me. I wondered if you could begin by telling me please, when you came to the CMJA?

KB: I came to the CMJA in 1998, but I had been involved with the Commonwealth since 1987 as I used to work for the Law Society of England and Wales which administered the Commonwealth Lawyers Association (CLA). So I've worked for two Commonwealth organisations in the last 25 years.

SO: What was your view of the CLA in terms of its activities, its influence, its organisational strengths and weaknesses?

KB: At the time I was involved, the Commonwealth Lawyers Association was administered by the Law Society of England and Wales. And it was quite a substantial part of the work that I undertook as an International Relations Officer in the International Division (of the Law Society). The CLA was a membership organisation, just as the CMJA is a membership organisation. It still exists as a membership organisation. It did a lot of work in promoting links between lawyers on the Commonwealth scene. It had a number of projects to advance the organisation of law societies, bar associations and legal exchanges within the Commonwealth.

SO: Were there legal exchanges with lawyers in South Africa from 1989 onwards, contributing to the constitutional negotiations?

KB: Not directly, no. There were some links with South Africa: not through the Commonwealth Lawyers Association, but there were some links with South

Africa through the Law Society itself. But they only started to develop when President Mandela came to power after apartheid, in 1994.

SO: Did the Harare Declaration of 1991 in any way change the focus and approach of the CLA?

KB: Yes, because in fact the CLA was one of the founder members of the Commonwealth Human Rights Initiative (CHRI), and they've been a member ever since. They were highly involved in the drafting of the report that went to Harare in 1991 from the CHRI which, I believe from a historical point of view, had some influence over the way the Harare Declaration was worded at that time in 1991.

SO: Were you involved in any of the diplomacy around the drafting of that report?

KB: No, I wasn't. There were advisors on CHRI and I can't remember the name of the CLA representative on the Advisory Commission. The Advisory Commissioners were responsible for the drafting of that report. The Executive Secretary at the time, Hamish Adamson, was in regular contact with its representative. But there was no particular influence; they were like the EPG, they were independent people. They received information from us, but they had their own views.

SO: So there was no contribution from the CLA to the whole process, to the politics around the drafting of the report?

KB: I think there was a contribution to the content to a certain extent, but there was no redrafting or editing by the CLA or any of the other Commonwealth associations who were members of the CHRI. As far as I am aware, it was the Advisory Commission to the CHRI that did the drafting beforehand.

SO: Did your organisation send a representative down to the Harare meeting in 1991?

KB: No, we didn't, not in Harare. We didn't have observer status or an accreditation at that particular point.

SO: When did that come?

KB: It came after 1995. Well, it came at Auckland basically. In the run up to the CHOGM, we were asked by the CHRI to allow representatives from Nigeria to use some of the places that were allocated to the CLA, as an accredited organisation, for Ken Saro Wiwa's son and I think four other Nigerians who attended the CHOGM to try and influence the way things went. Richard Bourne probably could tell you a bit more about that side of things because he was the one who organised it with the then Executive Secretary at the CLA, Hamish Adamson. Hamish was asked by Richard to provide the places for these five people to go to Auckland.

SO: Had you or your organisation, the CLA, been in touch with Ken Saro Wiwa's son prior to that point?

KB: We hadn't been in touch with Ken Saro Wiwa's son, but we had been involved through the CLA council member in a lot of the issues related to the situation in Nigeria at the time. When the (Nigerian) Bar Association was closed down, it was our Council Member, who was President of the Bar Association at the time, that protected the assets of the Bar Association, by blocking them and not allowing Abacha's government from taking over the premises and the regulation of the lawyers. And we had passed a number of resolutions - I'm talking with the CLA hat I had on at the time - we had passed a number of resolutions on the situation in Nigeria and we had had representation at the Commonwealth Law Conferences from Nigeria. Lawyers, including our Council Member, travelled overland to get out of the country, to come to the conference to get support from the Commonwealth legal community for the plight of the Nigerian lawyers. 1990 was our New Zealand conference, 1993 Cyprus, and at the 1996 conference in Toronto as well. In all three conferences, we had some representation from the civil society organisation or from the Bar Association of Nigeria to come into the conference to ask us to put the resolutions. The three conferences produced three resolutions about the situation in Nigeria and Nigerian lawyers, to support the Nigerian lawyers. We were also very much involved when Param Cumaraswamy was UN Rapporteur for the Independence of Judges and Lawyers, because he had been one of our council members. He was Special Envoy for the UN to Nigeria at one point too. We briefed him on the situation on a regular basis from our point of view.

SO: Was it contentious getting these resolutions at the CLA conferences, or were they unanimous?

KB: Unanimous.

SO: So there was no politicking behind the scenes? There was unanimous support for the beleaguered Nigerian Bar Association?

KB: For the lawyers, yes, absolutely.

SO: In what ways were these resolutions then used? As any sort of diplomatic crowbar to pressure the British government, or to pressure the Abacha regime?

KB: I don't know if they were used with the British government, but they were definitely used to try and get the Commonwealth to listen to us and they were communicated to the Commonwealth Secretariat. Because it was a lawyers forum, it was also communicated on the legal networks and support was, I think, more to do with encouraging support from the legal networks and getting the word out to people: 'This is the situation, and to support our colleagues, our sisters and brothers in Nigeria at the time.' I think that gave the Nigerian Human Rights Associations and the Bar Association, courage to continue with the fight to restore democracy.

SO: International solidarity is enormously important.

KB: Exactly. It was absolutely paramount in our area of work, and in both the Commonwealth Lawyers Association, and the Commonwealth Magistrates' and Judges' Association.

SO: Yes: to communicate that sense of not suffering alone, that there is intellectual support and activity on your behalf outside your own community.

KB: Yes. The fact that many of the Nigerian lawyers who came to the Commonwealth Law Conferences at that time, or came to Council Meetings, was important. Priscilla O'Kuye, the President of the (Nigerian) Bar Association was a Council member at that time. And we were never sure that she was ever going to appear at the council meetings, because we couldn't communicate on a regular basis with her – there was no internet or emails at the time. Telephones were tapped, so you had to be very careful. She found her way out, she sometimes walked miles over the borders to get to our meetings. But she always turned up in the six years or so she was a member of the Council.

SO: A woman of great courage.

KB: And we had Olisa Agbakoba and Gani Fawehinmi, eminent lawyers from the civil liberties organisation, at the time. And they walked miles via Ghana, Sierra Leone, and other places, to get to our meetings, to talk about the situation in Nigeria. These are the courageous people at the frontline that we were very, very proud to have tried to help at least.

SO: Yes. Do you recall clearly what the response of the Commonwealth Secretariat and the Secretary General was to this attack on the Nigerian judiciary?

KB: I don't know how the Secretary General responded, as that wasn't really an area I was directly involved in. I think they listened and they tried to deal with it. Nigeria was suspended from the Commonwealth in 1995 and it probably was part of the influence of what happened afterwards.

SO: In addition to providing the international solidarity and support for the beleaguered leader and the members of the Bar Council in Nigeria, did you provide any other form of legal advice and support for Ken Saro Wiwa and the other Ogoni people who were in detention?

KB: No, not directly, no. We didn't provide any direct support for that. I think we received the funding from CIDA to provide support for their travel to New Zealand in conjunction with the CHRI. CIDA (Canadian International Development Agency) and the Canadian High Commission in Abuja at that time was very helpful. But I was mainly on the periphery of those particular negotiations. So it's only what I remember from what other people told me.

SO: The Millbrook Declaration was made at the Auckland CHOGM in 1995. Were you involved in any way? What were your observations of the emergence of this Declaration?

KB: We welcomed it. The CLA welcomed the fact that there was now a process in place, that you could suspend countries that did not comply with the Commonwealth fundamental values. And we were a great promoter of the Harare Declaration in between 1991 and 1995, as part of CHRI and as part of

the work that we were doing as lawyers in the Commonwealth. We had an obligation to protect the rule of law, good governance and promote human rights. And so therefore we welcomed that particular advance. Then in 1995 with the Millbrook Programme of Action, I don't know if it gave the CLA clout, but it gave the law associations something to be able to use. We were able to use that and say, "Look, you're not conforming with Millbrook." We then on a regular basis fed in information, either through the Law Society, or through the CLA itself, to the CMAG process when there were threats against lawyers at the time.

SO: You're describing an important institutional change in enabling civil society actors within the Commonwealth?

KB: Yes, because at that particular time when CMAG was set up, although it was for military coups or military governments, you were able to provide direct input to CMAG. After I came into this organisation (the CMJA) in 1998 and we had the coup in Pakistan, we were invited as CMJA together with CHRI and another Commonwealth organisation, as well as local civil society organisations and international bodies who worked in Pakistan, to present evidence to CMAG in person.

SO: What you're implying here is a process that has some unexpected consequences for some nominally democratic governments within the Commonwealth, because CMAG was set up, as you say, explicitly to deal with military coups?

KB: Well, it wasn't explicitly to deal with military coups. It was set up to deal with undemocratic processes in the Commonwealth. Now, the interpretation at the beginning was it would only deal with military coups because they were the most urgent and pressing issues. It did change; it strengthened its commitment to dealing with severe and persistent violations in 2003 (or 2002?). This coincided with the development of the Commonwealth Latimer House Principles as well. Heads of Government agreed to deal with severe and persistent violations. But the interpretation of the actual Foreign Ministers on CMAG, as to their mandate, didn't change.

SO: Could you say that's a constructive tension between civil society organisations and Commonwealth governmental heads, or an unwelcome evolution of an institution?

KB: It's an unwelcome evolution, because when Pakistan was reinstated Musharaf still hadn't complied with what we within the CMJA felt were the requirements. When Pakistan was reinstated, we felt it was far too early for them to have been reinstated because the situation of the judiciary had not been resolved at that particular time. When the coup happened in 1999, Musharaf obliged judges to sign an oath of allegiance to himself and we said, "Well, that was unconstitutional and illegal." And we said, "That shouldn't have happened", and we made the representations as such to CMAG.

SO: In January 2002, the Ministerial Action Group approved Musharaf's roadmap to the October 9 election. And this was what you were not endorsing?

KB: Yes, because they approved the roadmap, but they ignored the issue about the oath of allegiance of the judiciary, and the situation where the judiciary was subjected to political will. We felt that was contrary to the Harare Declaration at that time. We did have the Latimer House Guidelines of 1998 which led to the Principles (in 2003). Although we hadn't the Principles at that particular time, we were saying, "It's contrary to the Latimer House Guidelines. And it's contrary to all UN principles on the independence of judges."

SO: How did you then bring up your protest, your pressure to bear on the Commonwealth Ministerial Action Group?

KB: We sent letters to the Secretary General at the time. We sent emails to the Political Affairs division and the Legal and Constitutional Affairs division at the Commonwealth Secretariat. I think in fact we may have sent a letter to the chairman of CMAG at the time, I'm not too sure. I'd have to check that. But these messages were prior to the decision in 2002; they didn't take into account the issues.

SO: So you were lobbying entirely through the Commonwealth structures rather than trying to use the British-Pakistan bilateral relationship?

KB: No, no, we have never used that.

SO: I'm just wondering about that avenue, as here we are physically sitting in Uganda House in Trafalgar Square, with Whitehall down the road.

KB: Because we're a judicial organisation and we are a charity, we have to be careful about politicisation of the work that we do. We are an apolitical organisation. So therefore we have worked through the Commonwealth to advance the issues relating to the Commonwealth fundamental values in certain countries. Most of that work has been done, until very recently, through several subtle channels. We don't publicise what we've done.

SO: This is 'outer diplomacy'?

KB: Outer diplomacy, yes, and it's just as valid**.** When there have been Commonwealth meetings we have raised the issue from time to time, depending on what the issue was. We've fed into the special envoys, but unfortunately most of the special envoys have got very limited terms of reference; in the cases of Pakistan and Fiji at that time, their terms of reference did not really include the position of the judiciary. And I will be honest: I think a lot of the problems that arose in Fiji after that time, from 2000 onwards, related to the division, the split in the judiciary created after the previous coup. The problems that we're now facing with the Fijians being suspended from the Commonwealth for a number of years, relate to that time because the special envoy was not really given the terms of reference to deal with the judicial problem.

SO: The Commonwealth Ministerial Action Groups listed Fiji's suspension from the Commonwealth in December 2000, but kept it on the agenda until the Supreme Court ruled on the government's constitutionality.

KB: But they didn't deal with the split within the judiciary. And that was a major issue in the coup at the time. That was a problem for us because we had two sides of the judiciary who were at loggerheads; and when the coup happened in 2006, Colonel Banaimarama used that split judiciary to produce a coup within the judiciary itself. He appointed as Chief Justice, a judge who had previously been a strong supporter of judicial independence which only exacerbated the situation and created a system where judges were compromised by supporting a change in regime.

SO: Because it was a political appointment, contravening independence of the judiciary?

KB: It contravened the judicial services commission process and the provisions of the constitution at the time. And unfortunately the process was completely flawed, so the independence of the Acting Chief Justice who was then appointed Chief Justice, was tainted. His position was compromised by agreeing to serve under those circumstances. Then when the constitution was suspended a year later, most of the Court of Appeal judges resigned and some of the judges of the High Court resigned. But the Chief Justice didn't resign.

SO: You had moved by this point in 1998, from the CLA – the Commonwealth Law Association - to the CMJA, but obviously you kept your affiliation within the CLA?

KB: Yes, I'd moved in March '98. I kept my affiliation with the CLA. We worked very closely with the CLA because we were joint supporters and sponsors of the Latimer House Colloquium Principles. In fact, it was the CMJA who got me involved in the preparatory work for the Latimer House Joint colloquium in 1997 prior to commencing in the post at the CMJA. And I got the CLEA involved, so therefore all four organisations (CLA, CMJA, CLEA and CPA) were linked in. I was invited, as CLA representative, to a meeting with the Commonwealth Parliamentary Association by the former Secretary General of the CMJA, and then during the preparations for the Colloquium, I moved from the CLA to the CMJA.

SO: Are you unusual in moving smoothly between these organisations, or are there others that –

KB: No, others have done so, and have moved between organisations. There are quite a few people who have moved between Commonwealth associations.

SO: So it gives actually greater strength to the CMJA precisely, because of that close affiliation between the CLA and the CMJA, even though in administrative and financial terms, CMJA is a separate entity?

KB: We have to keep our independence because lawyers and judges have to be independent from each other too.

SO: So the CLA is an association of 'advocacy', whether CMJA is an association of 'adjudication'?

KB: Yes, exactly. As an organisation, we work very closely together in the advocacy on the fundamental rights and fundamental values of the Commonwealth. I see my role being the representative of the judiciary, magistrates and judges, as we're the only international organisation that brings the magistrates and judges together. I see my role as trying to work with organisations that promote good governance and the rule of law, to advance these principles as far as we can, but with an emphasis on the judiciary. We work very closely with the CLA … I don't know if I want this on the record but I have contributed to many of the statements that the CLA have produced over the last five years or ten years up until say recently, which relate to judicial independence.

SO: You have given your professional opinion as the Secretary General of the CMJA.

KB: Yes.

SO: I'm very interested in actual process, away from public presentation of process.

KB: Yes, that's it. Well, there is no actual recognised process: Until recently the CMJA Council and Membership did not feel that the CMJA should make public statements. We have worked behind the scenes to persuade the Commonwealth Secretariat to consider threats against judicial independence on the same level as other democratic crises. If we can't persuade the Commonwealth to advance the issues raised with us, then we also use our other networks to advance the issues.

SO: Absolutely, that's the point of networks.

KB: And the CLA has been a very good network for us, not to influence, but to provide advice to and support. We have also worked very closely with the International Bar Association and the International Commission of Jurists in the past; and we work closely with the UN Rapporteur on Independence of Judges and Lawyers. We need to ensure we get the message across without putting lives into jeopardy. I think this is one of the points that we have to be always aware of. It came to the fore in the late 1990s and early 2000, when Zimbabwe were going through problems. Chief Justice Gubbay was in a very difficult position at the time. There was absolutely no way that we could make a public statement about the problems facing the judiciary in Zimbabwe as we were placing peoples' lives in jeopardy.

SO: As Ken Saro Wiwa proved this, before the Millbrook Declaration?

KB: Yes, exactly. So that's why we've worked very closely with the Commonwealth Secretariat, to get them to put the pressure on governments, because they are the inter-governmental organisation. We were very much aware of pressures that were brought to bear in Zimbabwe, and we were very much aware of communications monitoring as well. We tried to get the message to the Chief Justice and to the various judges that we are there and we're working in the background, but we're not making public statements about it. If we're asked by a Chief Justice or one of our organisations to do something about it, then we've got something to hold on to. But even then it's

discreet advice we provide to the Commonwealth usually; we can't always say what we're doing, but we're doing something. And if they ask us for information then that's fine, we can provide it. We can provide information on an objective basis. If they ask us for help, then we do the work behind the scenes.

SO: That is acting in a responsive role?

KB: In the case of the Solomon Islands, when the Chief Justice and the judiciary were under threat in the late 1990s: I think it was late 1999, or early 2000, the Chief Justice's daughter was assaulted and a few others were mugged. He sent an email to us and he said, "We need help." I said, "Can I send this information on?" Now you would say 'go viral', but you know, it would be viral within a confined network. And so I used my network: I used the IBA, the CLA, the Law Society of England and Wales, Human Rights groups and any organisations that I was linked into at the time. And as a result, the Chief Justice and the judiciary in the Solomon Islands felt that they had the support outside, they knew they had solidarity outside. So they were able to work together to protect judicial independence. This didn't happen in Fiji. In the Solomon Islands, they stood as a group and said, "Well, we're right." A united front against the world; or the politicians. We were trying to influence the way things were going. That's an extremely important issue. And over the years the CMJA has worked on strengthening that solidarity, and strengthening its work on judicial independence.

SO: So there's been a shift of the CMJA from an establishment to a much more pro-active organisation?

KB: Absolutely. When I came into the office I was accused of leaving the activist association (The Law Society of England and Wales) to go to the establishment by a former member of staff of LIBERTY. She said, "Karen, you've joined the establishment." And I said, "Well, I'm not so sure I have." Some of our members don't want us to do things. Some of them say, "It's okay, we'll deal with it." And we have to respect their wishes and that's fine. We don't do anything without first asking what our Members want us to do. But sometimes it's very clear that they want us to do something.

SO: What do you do if the members are divided among themselves within the country?

KB: That happened in Fiji. That is a difficult issue. We then look towards the Commonwealth (Latimer House) Principles and say, "Look, as far as we're aware, these principles are being violated". We still continue to advocate for change but we monitor the situation. And in the case of Fiji, because there was a split - part of the judiciary was compliant/complicit with the coup in 2000, part weren't - we tried to get the Commonwealth Special Envoy to work with the judiciary to resolve the conflicting issues. But that process didn't work. Unfortunately there are problems with special envoys – it seems there is more emphasis on resolving the political or democratic issues relating to elections - not on the structure to strengthen the judiciary as a third branch of power. They are happy to deal with the legislature, with the executive, but they're forgetting the judiciary.

One of the big problems that we still face is that in the Commonwealth the judiciary is still not considered important to democracy. Within Commonwealth governments, the judiciary is still not considered an equal partner in power. We are the third branch of power. But the judiciary is being eroded: you see that through budgetary cuts, you see that in this country through pension cuts. And then you see that in other places: the argument is, 'It's part of the Department of Justice, so therefore we don't need to think about the independence of the judiciary.' At the Commonwealth level, it doesn't figure in the terms of reference of many special envoys to strengthen the judiciary.

SO: Is that a reflection that varying value is attached to the independence of the judiciary within Commonwealth members?

KB: Exactly. One of the things that I was brought in to do was to promote the image of the judiciary within the Commonwealth: to promote the image of the CMJA, but also to promote the influence of the judiciary. People pay lip service to the constitutional provision: 'An independent judiciary is guaranteed.'

SO: But Karen, you said it yourself, you were brought in to promote the image of the judiciary, and your role is to promote the influence of the judiciary.

KB: Exactly, because they can't promote themselves, they've got to be independent. And the issue is not that we want to promote the image of the judiciary, we want to make sure that people recognise the separation of powers; really it's three branches, not just two and 'we'll forget about the judiciary.'

SO: Karen, it's enormously important, particularly with the growing emphasis on democratisation as a key adjunct to development. With economic and political liberalisation, the contemporary emphasis is on good governance: the judiciary sits firmly, squarely, in the middle of that.

KB: Yes. Without an independent judiciary you won't have good governance. And whatever the debate's currently about – for example, the Sri Lankan Chief Justice and her impeachment - whatever you think about whether or not the process is right or not, the politicisation of the judiciary through this process just demonstrates how little consideration has been given to the independence of the judiciary.

SO: If we could go back to the Latimer House Principles, and talk more about Pakistan, as well as Fiji, Zimbabwe and Sri Lanka.

KB: We did a lot of work in Fiji and Pakistan as well. On Pakistan, I think what I would say is perhaps to emphasise what you said about the CMAG process. We welcomed the opportunity to go to the CMAG meeting here; and sit in and listen to the debate and contribute to it. We were given an opportunity to speak. We had to prepare both a written submission and an oral submission. It was about 2001 or somewhere around that time. We were one of the Commonwealth Associations who were asked to make submissions and the

CHRI was the other. And I think the Commonwealth Press Union might have been involved; and then there was the Aga Khan Foundation and a number of civil society organisations there, who were all allowed to make short five minute presentations on their findings, which contributed to the debates. We were allowed to sit in and then observe the actual debates of the foreign ministers.

SO: And what was your professional viewpoint of those debates?

KB: They were very logical debates, but I think what we appreciated was to being involved and asked for our views on the challenges in Pakistan. That was what was appreciated; because we were there, we were able to listen to what the ministers were saying. We weren't part of the decision process. We weren't there for the decision process, but we were there for a lot of the debates on the issues, and a lot of the input from the British government, from all the governments actually.

SO: So there's a question of transparency for civil society organisations?

KB: Well, for our associations who were there, definitely.

SO: I'm just thinking of the value of that informed debate, rather than an exclusive, narrow elite discussion.

KB: Absolutely, yes. We appreciated it enormously. Although I didn't have a lot of information, I was able to get information from my member association or from individual members in Pakistan at that time, which enhanced our presentation. We had a double opportunity as we would at a ministerial meeting: to have a written submission and the oral submission. We had to limit our oral submission - we were six organisations who were given the opportunity to speak and present.

SO: So again this was an evolution of the consultation and information process within the Commonwealth?

KB: Yes, and that was fantastic from our point of view. It's regrettable that CMAG no longer used this method after that meeting as far as I am aware.

SO: Would you care to speculate, or do you have any idea why that would have been a one-off?

KB: There was a change in the CMAG membership. The chairman changed, the content changed and civil society was no longer invited to make submissions in person. We have lobbied since then for us to do it again, to be allowed some kind of formal network, a formal system to appear under the Latimer House process. And I'll come back to that. But so far we're still waiting.

SO: You were obviously intimately involved in the negotiations around the Latimer House process.

KB: I was intimately involved right from the beginning, at the CLA and then the CMJA. We were involved in the first joint colloquium which led to the guidelines being adopted in 1998 at Latimer House. Dr Peter Slinn (of the

CLEA) and I were intimately involved in the drafting of the guidelines, because they were done in June 1998, during the joint colloquium.

The guidelines were agreed between representatives of the four organisations: the Commonwealth Parliamentary Association, ourselves, Commonwealth Lawyers Association and Commonwealth Legal and Education Association. And the guidelines were adopted in 1998. They were a non-governmental paper, though the colloquium itself was funded with Commonwealth Secretariat, Commonwealth Foundation and British government support. The four organisations were keen for the Guidelines to be adopted across the Commonwealth. There was a lot of debate within the law ministers about whether or not the guidelines should be adopted in full. We were granted observer status at the senior officials of law ministers meetings and we were able to talk at these meetings and then at the law ministers meetings in St Vincent's, and Trinidad & Tobago. We had representatives at both those meetings.

In St Vincent's the Commonwealth law ministers rejected the Guidelines and threw them back to senior officials. They had a number of issues to do with appointment systems, and budgets - who controlled the budgets. Because we had said the judiciary should control the budget for the judiciary and with appointments, they said, "Well we can suggest a judicial appointments commission." Following St Vincent's the Latimer House Working Group (set up by the four organisations in 1998) added footnotes to the Latimer House Guidelines to clarify certain issues. We had debates within our own associations as to what we should add and what we shouldn't have in the Guidelines. One major issue was about judicial and public appointments. It was important that appointments should ensure that there was no longer any historic discrimination on the basis of gender and race and all those issues. That was a footnote we put in following the Commonwealth Law Conference in 1999 in Kuala Lumpur. The Guidelines were therefore refined. And we then re-presented them to the senior officials meeting after St Vincent's; some governments interpreted the law ministers throwing it back to the senior officials as kicking it into the long grass. The Gibraltar Premier mentioned this in particular. This led to a number of rebuttals that I had to make as secretary of the Latimer House Working Group, about what the referral to the senior officials really meant.

SO: The politics around all of this: was it personal, was it constitutional, was it national political?

KB: National political and constitutional probably in many cases. In the case of Gibraltar, I think it was probably political, because there were problems of judicial independence in Gibraltar.

SO: Is that because of the anomalous position of Gibraltar as a British overseas dependency?

KB: No, it's because of the personalities.

SO: So was a case of internal Gibraltar politics influencing their official attitude?

KB: Yes. The Premier (Caruna) was a lawyer, and was confident of his interpretation of the meaning of judicial independence which didn't quite fit into what the Latimer House Guidelines were saying. There were a number of representations that were made implying that the Guidelines were going nowhere. The main issue was after the St Vincent's Meeting some governments felt that the decision made by Ministers meant that the Guidelines were not to be taken forward. But in a sense, we took that as a challenge to us in the Latimer House Working Group.

SO: Excuse me, who's 'we'?

KB: After the Guidelines were drafted and circulated and we had put it on the agenda for the senior officials, the representatives from the four organisations who had been involved with the joint colloquium (CLA, CMJA, CLEA & CPA), came together in a working group and we've been a working group ever since under my secretariat here. So we created a Latimer House Working Group to advance the Guidelines firstly and then the Commonwealth (Latimer House) Principles distilled from these Guidelines secondly. So when I say 'we', I mean the Latimer House Working Group took it as a challenge. There are more than four representatives on it: it's got the four organisations on it, and the Commonwealth Secretariat is represented on it. We can speak without the Commonwealth Secretariat there, but then we don't necessarily represent ourselves as the Latimer House Working Group. We might say 'the four organisations on the Latimer House Working Group are...' But we've got the Commonwealth Secretariat because we wanted them to actually advance these guidelines into principles.

SO: How senior is the Commonwealth Secretariat representative?

KB: It used to be the Director of the Legal and Constitutional Affairs Division starting with Diane Stafford – now we have representatives of the Justice Section.

SO: I was struck by what Purna Sen said at the Sri Lanka CA/B meeting about the question of standing within the Secretariat of human rights, that it didn't have a status of being a full division. It was an office, and as such this was indicative of the particular lower political importance within the organisation of human rights issues. I was wondering whether it was the same with the level of importance accorded to Latimer Working Group liaison.

KB: Under the previous Secretary General, Don McKinnon, we had very strong support from the office of the Secretary General.

SO: Was that very closely tied, would you think, with the persona and the attitude to the authority of office and the role of the Commonwealth SG, Don McKinnon? Or was it the particular dynamism of Diane Stafford?

KB: It was a combination of the dynamism of the then Deputy Secretary General, Kris Srinivasan, who supported the Latimer House Principles, and who gave us the money for the first colloquium. It was the support of Di Stafford as well, and then Betty Mould Idrissu within the Legal Division: both of them took this forward. But the direction when it came to the law ministers was taken,

especially in Trinidad & Tobago, by the Secretary General himself. Between the St Vincent's and Trinidad & Tobago meetings, we had refined the guidelines. At St Vincent's it was said we needed an expert group, and an expert group was put together. That included ministers from Kenya, Singapore and South Africa as well as representation from the UK. But it also included our four organisations. It's the first time a ministerial action expert group actually included NGOs. So we were part of the drafting process for those principles. So we worked with those ministers to get the principles drafted. We provided the first draft of the principles.

SO: This is, after all, acting in best bureaucratic practice for providing policy drafts?

KB: Exactly. They were never going to accept the guidelines which were 10 pages long. So they needed a summarised version. We provided the first draft of the summarised version for discussion. We talked about it. We were part of the decision making process as to what should be included and what shouldn't be included. We acted as a full member of the expert group basically. And we came up with a draft which was then circulated by the Legal Division to all senior officials and law ministers. The senior officials before the Trinidad meeting said, "Okay, well this seems good enough, you know. Tweak it here and there, but it seems good enough." And that was then sent on to the Trinidad & Tobago meeting. Now, I was not there in Trinidad & Tobago. We had a representative there but I wasn't there personally. But I know that there was quite a big debate in Trinidad, at the ministerial meeting. There was a very big risk in Trinidad that the Principles were not going to gain consensus. And it was only because of the diligence of Don McKinnon who saw this as a very important document that it went through. He put his political weight and authority of office behind the draft; he used discussions in the wings of the ministerial meeting on this particular issue, so that we were able to get it through the law ministers. And then once it got through the law ministers, it was then a document we could then take forward to CHOGM, but it was very much touch and go. I think it was only because Don McKinnon talked to a few ministers, and did some private diplomacy. But once it got through law ministers, then it gave us the authority to use that document around the Commonwealth. The then UN Special Rapporteur on the Independence of Judges and Lawyers at the time, who was still Param Cumaraswamy, was then able to use the principles when he went on missions across the Commonwealth. He could then quote the Latimer House Principles, endorsed by law ministers.

SO: Yes. You've got a referential document that has been agreed.

KB: Exactly, that has been agreed by the governments. It still wasn't adopted by CHOGM but at least then of course the process was (in progress). The law ministers came to an agreement by May 2003 and then the Principles were put forward to CHOGM in the November in Abuja.

SO: Were there more private objections behind the scenes?

KB: Not that I am aware of. And I was not privy to anything, and we weren't invited to the debates. The arguments had taken place in the previous year. In November 2003, that was when Zimbabwe left; in a sense they were about to

suspend Zimbabwe when they left. So the Latimer House Principles was the positive element coming out of the Abuja CHOGM. And so that's the process which led to the Principles. And of course from then on we have been concerned about the implementation of the Principles. We had great support from Don McKinnon and from the Legal Division through Betty Mould Idrissu and her staff. That led in turn to us having the Pan African colloquium on the Principles in 2005, which came up with a plan of action for Africa. This included giving the Secretary General the obligation to report to Heads of Government on the situation in Africa. Since then, before every CHOGM we have prepared a report on the whole of the Commonwealth - not just Africa, but on the whole of the Commonwealth.

SO: Again, is that your initiative, Karen?

KB: Yes, that's our initiative. The Latimer House Working Group does a report to help the Secretary General in his reporting back. Ever since we've done a report prior to every CHOGM meeting; about three months prior, we report on the good and bad practices vis-à-vis Latimer House.

SO: How have those reports gone down at successive CHOGMS?

KB: We've been thanked by the Secretary General. I don't know whether he uses it, but we have been thanked by the Secretary General for our submissions.

SO: Has anybody else thanked you?

KB: No, I don't think so, no.

SO: Has anybody else come up to you quietly afterwards and objected to this report?

KB: No. It's a private report for the Secretary General. It's to be used in his own report. So I don't know how he uses it in his own report, on issues of that kind. So it's a private thing, but I know most of the Secretariat staff see it. It's private and confidential; it's usually more the Directors who see it.

SO: 'Private and confidential' documents have a habit of 20 copies being circulated.

KB: Yes, something like that. Anyway, so that was the Pan African forum and that also gave us some obligations. One of the obligations of the Guidelines was that we should be the repository of the ethical codes for the judiciary in the Commonwealth. And we had done a lot of work in that area on strengthening the ethical codes. We do a biennial trawl of Commonwealth jurisdictions, to where their codes are and if they have codes - because we have a copy. We've got between 38 and 40 Commonwealth codes or guidelines of conduct for judicial officers. This is something that maybe 20 years ago no judiciary in the world would have thought about. But now a majority of Commonwealth countries have got codes of conduct for their judiciaries. So it's not just dealing with independence of the judiciary, it's also dealing with their own internal codes. We also contributed to the Bangalore Code of Conduct on corruption in the judiciary which was adopted by the UN. So we've worked on that and on those projects as well.

We're talking about accountability and independence as well. So we were balancing both things. It's all part of the Latimer House process. One of the issues in Latimer House was that although we had a Pan African Plan of Action, we didn't have anything for the rest of the Commonwealth. So we organised a joint colloquium in the wings of the law ministers meeting in Edinburgh in 2008, which included some ministers and senior officials as well. Now we report regularly to the senior officials of law ministries and law ministers themselves on Latimer House issues.

SO: How often do Commonwealth law ministers meet?

KB: Every three years. And in between there's a senior officials of law ministries meeting. And there's a meeting of small states' law ministers. So this September (2013) there will be a meeting of the senior officials of law ministers, and law ministers of small states. And then in 2014 there will be a meeting with the law ministers. So we (the Latimer House Working Group) report to senior officials, then senior officials take the agenda on to law ministers. The senior officials of law ministries meetings are usually in London. We feed into the law ministers meeting. The last time we didn't do a report to the law ministers of small states and one of the ministers enquired why it wasn't on the agenda for that particular meeting though it had been part of the agenda for the senior officials of law ministries meeting. So I was asked to provide an update to the small states ministers meeting. We are also given the opportunity as partner organisations and observers to provide a report on our activities. Part of our written report would include an update on judicial independence issues.

But coming back to Edinburgh: we were able to have a colloquium. 2008 was the 10th anniversary of the Latimer House Guidelines and the 5th anniversary of the Principles. We were given the opportunity to run a second joint colloquium which, like the first one, brought together lawyers, judges, politicians, and some of the ministers who were attending the ministerial meeting to discuss the issues together. We came up with what we call now the Edinburgh Plan of Action which reflects a lot of the action agreed in Nairobi in 2005. In the Edinburgh Plan of Action we proposed, on the advice of a then Commonwealth Secretariat member of staff, to set up the standing committee to provide information on good and bad practice on Latimer House issues around the Commonwealth, as well as other ways of implementing the Latimer House Principles.

This was to feed into CMAG, and to the good offices. It was to help. It would have included our organisations but it would have included other organisations like the Commonwealth local government forum and the media organisations who would feed in by a proper mechanism. It was an excellent idea, but senior officials said no, law ministers said no. So we continue to monitor implementation of the Principles through the Latimer House Working Group on an *ad hoc* basis.

SO: But you wanted to provide it in an institutional standardised form?

KB: We wanted to give it an institutional and standardised form. So when they said no, we said, "Okay, well we already do it on an *ad hoc* basis." We still do it on an *ad hoc* basis.

SO: How *ad hoc* is that?

KB: As *ad hoc* as an overworked Secretary General can monitor what's going on, and as *ad hoc* as people feed in information to this.

SO: Given your dedicated working practices, Karen, I'd say you make it as standardised as possible.

KB: Well yes, as much as possible as we can. There are other ways that we can encourage the implementation of the Latimer House Principles. We've run seminars and training courses. And all our organisations include Latimer House issues in their conferences or their educational programmes. It's been a standardised issue in all the training that we've done with the Commonwealth Secretariat, or without, on ethics and judicial independence. In the CMJA's case - and it appears in CLA and we see them in conferences - it's on the agenda all the time as an active issue. After the second Latimer House colloquium in 2008, the Commonwealth Parliamentary Association got an email from the Legislature of the Australian Capital Territory (ACT) to say, "We want to implement Latimer House in ACT. We need to know how it's being implemented elsewhere." We said, "Well, you're the first!"

SO: 'So you can be our model'?

KB: So we provided background information and details of everything that they needed. In fact they're basically our model for everything now. It's a small jurisdiction; although it's part of Australia, it's a small jurisdiction within Australia. Because it's a small jurisdiction, they are experiencing the same issues as other small jurisdictions, and we've got a lot of small jurisdictions in the Commonwealth. So we provided information through the CPA, through ourselves and they did a first report. They said, "This is what we're going to do, we're going to put somebody in charge. We're going to try and get a model together." We worked with them a couple of times. It was quite interesting that the ACT legislature was a very positive influence. In 2011 I went to Kiribati on a needs assessment mission with the Commonwealth Secretariat. I was asked to visit the Legal Counsel in Parliament. Everywhere we go, we arm ourselves with the little blue booklet (ie: the compiled documents relating to the Latimer House Principles) and I started to talk about Latimer House and he said, "It's okay, it's been dealt with. Two people from the ACT legislature are talking about Latimer House at the moment for the newly elected parliament." That was impressive so far away from the Commonwealth Secretariat and Latimer House itself. There we were, sitting in Tarawa: I'd taken 20 copies of the booklet, I think my colleague had too. And in fact we didn't need to distribute these.

We felt in Don McKinnon's time the implementation of the Latimer House Principles were a priority. Don McKinnon mentioned it every time he had a speech on governance: he mentioned it 25 times! His staff was diligent in mentioning the Latimer House process. In 2005 Don McKinnon was instrumental in the Principles becoming an integral part of the Commonwealth

fundamental values. But when Don McKinnon left in 2008, we felt that the priority lapsed. And of course Betty Mould Iddrisu left shortly after. It hasn't been given the same priority as it should have been recently. The problem we have been facing recently is that whereas we used to feel that at least we were listened to, now we are not. I think ever since Pakistan was allowed back into the Commonwealth, the CMAG hasn't been listening to what we've had to say, allowing countries in that clearly still violate the Commonwealth principles.

SO: If I could just go onto Zimbabwe and the politics of the Commonwealth reaction to Zimbabwe's violation of these principles: you say that at the Abuja CHOGM, Robert Mugabe withdrew Zimbabwe from the Commonwealth. As a civil society organisation, are you still in touch with members of the Zimbabwe Judiciary?

KB: Not really, no. Their membership lapsed because of they withdrew from the Commonwealth. The independence of the judiciary was compromised. A lot of the judiciary resigned in the run up to 2003. People were appointed on dubious terms. Some of the judges appointed by the President were given the same land deals on 'political variable' terms which mean that their independence is compromised. There are a few that are still trying to work independently, but at the level that counts, it doesn't get very far. We have worked behind the scenes to try and help. This is where we work with the Commonwealth Lawyers Association, and the Commonwealth Legal Education Association; Peter Slinn is a member of the Zimbabwe CSO forum that was set up a few years ago and represents the lawyers and the CLEA. But we still keep in touch with them about issues. But we don't have direct contact anymore with any of the judges in Zimbabwe.

SO: Are you aware whether there's been any approach from MDC to the CLA, requesting advice on constitutional reform?

KB: I'm not aware of any approach from Zimbabwe directly, from MDC or anybody there.

SO: That would be complicated, I realise, but I just wondered whether there was any solicited and provided advice.

KB: No, as far as I am aware, there's been none at all.

SO: What of Sri Lanka?

KB: Sri Lanka? That's a nightmare. Going back to what I said before, because of the frustration we have been experiencing recently, where we feel that our briefings on problems in the judiciary in relation to Papua New Guinea firstly, in relations to the situation in Zambia, in relation to a few things that have happened in South Africa, have not been fully taken on board by the Commonwealth Secretariat. In Papua New Guinea, the Chief Justice last year was sacked, reappointed, re-sacked, reappointed, arrested - all in a short time frame between August 2011 and January 2012. There was a problem with the prime minister-ship and there was a challenge. This is just a bit of background: the Prime Minister left for medical treatment to go to Australia I

think, and whilst he was there in Australia, the Speaker of Parliament took over his position.

SO: Under constitutional arrangements, or he just arrogated authority?

KB: He assumed authority. And got the Parliament to say there was a vote of no confidence while the Prime Minister was out of the country. This led to the Prime Minister Michael Somari coming back, challenging in court this procedure. Before the Supreme Court said, "Yes, he's right", the acting Prime Minister in post didn't like this challenge and claimed that the Chief Justice was politicised. So they suspended him, pending examination of his behaviour. But then they realised they couldn't do that because of the procedures in place, so they had to reinstate The Chief Justice. The Supreme Court then sat without the Chief Justice and judged that the removal of the Chief Justice was illegal and he had to be re-instated. In the meantime, this case is going on through the courts and in the end they found in favour of the Prime Minister who'd gone for medical illnesses. The day after that happened the Chief Justice was then sacked again. It was a very complicated case with all the ins and outs!

SO: At what point were you alerted, or involved?

KB: We were alerted from September onwards, because it was 2011 so we were in Malaysia and we had people from Papua New Guinea coming to our conference. The Chief Justice couldn't come to our conference. The Commonwealth Secretariat had scheduled a judicial training for January 2012. From September to December 2011 we weren't sure what was going to happen. In the meantime other organisations such as LawAsia became involved. Our Australian membership became concerned and contacted us. We sent an email to the Commonwealth Secretariat expressing our concern and two letters to the Secretary General but we felt they were not taking the situation seriously throughout.

SO: Not taking a stand on the Latimer Principles?

KB: Yes, they weren't taking it seriously enough. In the end, they reinstated the Chief Justice in time for the ComSec training course attended by members of the judiciary and magistracy. It was on ethics and judicial independence. Some Australian judges who were sitting temporarily in the Court of Appeal to clear the backlog of cases also attended. The week after the training course, these judges had to go back to Australia; and the day after they left, or even as they were on the plane, they arrested the PNG Chief Justice on perversion of the course of justice, or whatever it was. The reaction from the Commonwealth Secretariat was limited to an acknowledgment of our notification of events in PNG.

The Secretary General says that he can't tell us every time there have been discussions behind the scenes. He has to deal with these issues with delicacy and using subtle diplomacy. We have done it that way ourselves in the past.

SO: Discreet diplomacy.

KB: Discreet diplomacy. But it was a series of excessively discrete diplomacy which led to us thinking, 'Well, hang on. It's not on CMAG, it's not even mentioned in the communiqués. Nothing has been mentioned. We're not getting the feedback from people. At the same time we had the problem within the judiciary in Malawi. In Malawi we had court staff on strike from January through to March 2012, because their pay rises which had been agreed by two legislatures in a row, had not been implemented by the government. The courts were all closed in Malawi for three months. And nobody was acting on it. Then the judges decided, 'Well we're going to join them because we're in the same boat as the court staff. They haven't been paid, our review hasn't been implemented for two legislatures, so yes, we're going to do the same thing.'

So we had everybody on strike in the judiciary in the month of March last year in Malawi. I just happened to send an email about the whole situation just as the Secretary General went to Malawi in March. Simon (Gimson) said, "Okay, right, well its part of our briefing, thanks very much, Karen. I'll report back after we come back." I got no report back. I got nothing. I saw the communiqué and it said, "We have agreed with the President that we will provide training for the judiciary.' Nothing about rule of law, good governance and the situation there. It's frustrating when we spend hours trying to help these people. We gave them the name of the person at the Malawi judiciary to contact. Nobody contacted the judiciary. The Secretary General didn't actually see any members of the judiciary; as far as I know he didn't even see the Chief Justice, unless it was at a reception, I'm not so sure. But we were so frustrated. That was Malawi.

At the same time all that was happening, in the Maldives the senior civil judge who had been at our conference in 2011, was kidnapped in January 2012 and couldn't be found. There was a ruction within the Maldives, 'where was he? What was he doing?' So we sent an urgent message again around the same time (to the Secretariat) saying, "What are you doing about this?" And then they said, "Oh well, we're looking into it. We're not sure what we're going to do. We'll see what we're doing. Or we might send a mission out." I said, "You've got to send a high level mission." It ended up being the Director of the Legal Division and the head of the Justice section going. That was not high enough as far as we were concerned. This was a kidnapping; and it was in the third and a half week of the kidnapping that they sent Akbar Khan, Jarvis Matiya and a couple of others out with them to the Maldives. Whilst they were in the air, the President was allegedly forced to resign at gunpoint. It was only then that CMAG came into it, only then that they said, "We'd better send out an even higher delegation". Only then did the new CMAG process come into it (ie: a virtual meeting of CMAG members and decisions taken after that). It is frustrating when there is inaction on such a serious issue!

SO: Question, how far do you see the problem at the Commonwealth Secretariat, being a problem of funding?

KB: No. That's not the problem, funding. I don't have the funds to respond! I can ring the Chief Justice up and you're getting up-to-date information. I know the Malawi Chief Justice's telephone number; when we had the first crisis in Malawi in 2002/2003, I was on the telephone. It's not a question of resources. It's a question of political will. And what you interpret as being part of your

remit, because from the time that Musharaf's roadmap was approved in 2002 to the review of the CMAG, there was all the problems. The Sri Lankan Foreign Minister was the chairman of CMAG before the last CHOGM. So any issues related to political intervention in the judiciary or stuff like that were not heard. Whilst it was agreed some time ago that CMAG should examine severe and persistent violations of the Commonwealth Principles, CMAG itself limited this remit and therefore we had no way of getting the message to be heard!

These are not things that we haven't said ourselves directly to the Commonwealth Secretariat. The issue is that CMAG diminished its own remit between 2002 and the review of its activities in 2010. You're welcome to look at our submission to CMAG about their review. I think we did it in 2009/2010.

SO: If you would, that would be terrific.

KB: I can email you those things. We did this. We said that it has to consider severe and persistent violations across the Commonwealth. We have problems as well in the Cameroon and the Gambia. The Gambia should have been re examined by CMAG years ago; again, it came off CMAG after the elections in 2001. I was part of the Commonwealth observer mission for the elections in the Gambia. I said at that time, "We shouldn't take them off." But the Secretariat said, "No, we're going to go down this route. We're going to take them off the agenda for CMAG."

As Secretary General of CMJA, I don't have any sanction. But the President of the Gambia has sacked so many magistrates you wouldn't believe it. The Attorney General sacked the magistrates, but that's only a process issue. The President has sacked so many judges. Under the original Gambian constitution, you have to have a tribunal composed of, I think, three foreign judges and maybe one or two others, to hear cases to remove a judge. He sacked two high court judges, then he sacked the Chief Justice. At one stage - I don't know when it was - he sacked the Chief Justice on the Friday, realised the Deputy Secretary General and delegation from the Commonwealth Secretariat were coming on the Saturday, so reinstated him on the Saturday and then as soon as they were on the plane, he re-sacked him. The current Chief Justice has been there two years, so that's not bad going. They went through about five in the space of three years! 'Oh, I don't like this one, I'll get another one. Oh, I don't like this one, I'll get another one.'

Everybody knows the situation, and this is not to mention the abuses against journalists, and editors of newspapers. That's another issue: the numbers of lawyers who have been put in prison, the number of journalists that have been imprisoned or editors of newspapers that have been imprisoned in the Gambia. These are serious and persistent violations. We now recognise freedom of expression within the Commonwealth. It's recognised in Latimer House. The Trinidad & Tobago Declaration on Values and Principles recognised the right to freedom of expression. But does the Gambia actually take any notice of that? No, absolutely not and many countries in the Commonwealth don't. The Commonwealth countries say it's a lack of resources - "We can't implement Latimer House and the Harare Declaration." I am sorry, but it doesn't take much to just say, "Okay, well, I'd rather not pay the judge."!

SO: So you feel strongly what's the point of having declarations if you don't abide by them?

KB: Absolutely. But apparently they're aspirational. We've said, you have agreed to this, it's not an aspirational document, it's what you have agreed to abide by. The Sri Lanka government recently said, "We don't have to comply with the Latimer House Principles." But they also have UN obligations.

SO: Is it because they feel it's an interference in their sovereign affairs?

KB: Absolutely. We followed the parliamentary process but due process was not followed in the case of the impeachment of the Chief Justice. The Sri Lanka court of appeal is now divided. Apparently the President of the Court of Appeal issued a writ supporting the Supreme Court's writ to quash the Chief Justice's impeachment. This morning I received an email saying, "Apparently half of the Court of Appeal said that the President and court appeal didn't have the authority to do this." So now he's in trouble. And that's what happens. Then you politicise the whole judiciary. And now they are all members of ours (the CMJA), part of the Court of Appeal is saying, "You could do it." Part of the court of appeal saying, "You can't do it." And now we have a split in the judiciary which I was worried about. Up till now there's been a solidarity of judges and judiciary within Sri Lanka. I don't know what's happened in the last 24 hours. But there's a split. Parliament continues to say, "Well, we've got the authority. We're going to impeach him. And by tomorrow the Chief Justice will be gone. We don't care about the Commonwealth." I'm not going to say anything about whether CHOGM should be held there or not, because that's not my area. But on this particular issue, due process was not followed. The rights of an individual to a fair trial weren't followed.

SO: Going back to the original selection of Sri Lanka as the CHOGM venue for 2013, were you aware of the debates around that?

KB: Yes. I don't mind saying that Sri Lanka's judicial reputation hasn't been good recently. I'm not talking about politics but talking about from a judiciary point of view.

SO: I was thinking, Karen, more of the politics of the selection of Sri Lanka as an appropriate venue for CHOGM.

KB: Yes, well there were debates about the appropriateness of the venue, we have had other CHOGMS in locations where there have been problems: Trinidad & Tobago and Uganda.

SO: Going back to the Kampala CHOGM of 2007, then Port of Spain (2009) then Sri Lanka, how do these stack up? Does there tend to be a particular group that says, "This is the Commonwealth. We will hold it in any Commonwealth country no matter its human rights record, no matter –"

KB: As far as I know it's agreed by consensus. Although it may have been contentious**,** they were agreed by consensus in the end. As for Sri Lanka: the

Canadians and the Australians were dead set against it and the UK was originally set against it. But what happened in Perth? I don't know, something happened, they changed their views.

SO: I've heard that two substantial African Commonwealth countries expressed an opinion that it should be held there. And once these two were for Sri Lanka, the rest of the African Commonwealth contingent fell in line. I don't know if that's in fact what happened, but that's what I've been told.

KB: I have no idea, but all I know is that we had contention over Uganda; at least from our point of view, the judiciary of Uganda is independent. There may be problems in relation to the politics in Uganda, but I do know the judiciary has been quite straight from that point of view. And there are definitely issues in relation to human rights issues. But at the time the Ugandan CHOGM was held, I could safely say that I didn't have a problem with the judiciary, and that's one of the reasons we went there too last year. In Trinidad & Tobago we had a major issue because Patrick Manning was trying to control the judiciary at the time, or trying to change the constitution so as to reduce the independence of the judiciary at the time. And I made my points known about the Trinidad issue. But that's not a consideration at CHOGM venues. As for Sri Lanka, I've talked informally to people. The Sri Lankan judiciary is politicised. It has been politicised for years. And I'm not saying that what the Sri Lankan chief justice has done is right or wrong. All I am saying is that due process has not been followed. The government's international obligation to provide anybody with the ability to have a free and fair trial has been compromised.

Yes, ComSec responded to the Maldives. But only four weeks after the chief judge was kidnapped and they only really reacted vehemently when the President allegedly was forced to resign at allegedly gunpoint.

SO: So it seems that it's only the head of the executive, which is the tipping point, rather than the head of the judiciary?

KB: There are places where positive things have happened. But it becomes very worrisome when you let things slide.

SO: Speaking of the positives, in terms of the Commonwealth as an adjunct to good governance, good practice, where would you particularly point to?

KB: As I said, the ACT was a good example from our point of view. In the UK, we've got separation of powers; the fact that we now have separated out the Ministry of Justice from the judiciary and the judiciary has its own budget. And in many countries in the Commonwealth they have moved towards separation of financial autonomy. It doesn't always work. But there is more work to be done in that area.

We recently had a meeting with the Secretary General. At our council meeting in September, we took a resolution that we needed to put pressure on the Commonwealth to try and get some kind of recognition and implementation of the Latimer House Principles.

SO: Obviously there's been a review of CMAG because of its inefficiencies shall we say, and you presented a report to that. Were your views solicited in the recent EPG?

KB: Yes. And we presented two reports on that.

SO: Yes. And so Sir Ron Sanders as Rapporteur was able to absorb your opinions? Have they come through in the final report?

KB: Yes, some of them have, but not all of them. We made a submission as the three legal organisations of Latimer House to the proposed Charter as well and on the proposal for a Commissioner for Democracy, Rule of Law and Human Rights. The draft charter included in the EPG, was done very much in haste, as far as we were aware. And it was done as an example. It should not have been included in the final report. It was taken as a final document and that is why the original draft had received an enormous amount of criticisms. So in our submission we actually redrafted our version of the Charter and actually I did an analysis of what came out in December in the final agreed Charter and there are some similarities. A bit wordier than what we had, and there is one important change. It's a declaration and aspirational. At the bottom it says aspirational, "we aspire to..". We said we commit to, they say we aspire to.

SO: Karen, although you weren't at the Perth meeting, were you aware around the politics of the presentation of the EPG report?

KB: Yes.

SO: What was your view of that politicking?

KB: To be expected.

SO: Could it have been circumvented if it was to be expected? Were there ways around it? Was this an inevitable roadblock?

KB: Inevitable. The reaction from Sri Lanka was inevitable, definitely, because that was to be expected. And there is still this wariness of - even if there are personalities in the Commonwealth - of non-governmental interference in governmental affairs.

SO: So despite the fact you are 'diplomatic actors', you're not accorded recognition of the value of your views?

KB: Yes.

SO: That's a very exclusive view of politics these days.

KB: There's a lot of rhetoric and a lot of 'We are partners, you are partners, we are partnering together, we are working together.' But the partnership is unequal, when you want me, you click your fingers but when we need you, you can wait.

SO: So it's a partnership between a rider and a horse?

KB: Yeah, yeah, it actually is a good analogy.

SO: It's not original!

KB: Yes, 'the partnerships are only on my terms.' Commonwealth associations are accredited, but it doesn't give us equal standing, it doesn't give us access to people; we talk to people, we can hire the rooms, we can do that type of thing. But if the personalities of the people in the Commonwealth Secretariat do not want us involved, they won't involve us. They won't consult us. We don't have a standing right to work either as a partner or to work with the Commonwealth Secretariat. And so sometimes it's difficult. We hear of training of judges in certain areas. And we say "Well, hang on a second." We read the weekly reports and we say, "Well we've got something to say on this issue. Why didn't somebody talk to me? I might not have the resources to send somebody, but I actually have a vast network of professional judges. You organise a training in a Commonwealth country for judges and you don't even invite our representative from that country. They don't know it. They find it out from me who finds it out from them. The Commonwealth Secretariat has a problem within itself of non-communication. But it also has a problem communicating with the organisations, like ours. And also it has an issue with involving CSOs despite Collum, despite the high level review, despite the EPG, you feel like second class citizens.

SO: I'm going to suggest this to you, you don't have to agree: is that inevitably a problem of a civil society organisation? I'm not suggesting that this is grassroots activism, because your members have a professional standing and it could be said that in some ways, NGOs, civil society organisations are a necessary and valuable safety valve.

KB: As Commonwealth Associations with accreditation, we have always been led to believe that we are organisations that work in partnership towards the same goals. That is towards the goals of implementation of the Commonwealth fundamental principles, of democracy and development, whatever you talk about it. We've always been told every time we're talking about it, and we believe it ourselves, that we're working together in partnerships towards the Commonwealth fundamental values. We have never ever been lobbying or lobbyist organisations. We have always worked towards the fundamental goals. We do advocacy within our areas. We try and assist the capacity building that the Commonwealth Secretariat is doing. We try and assist in our own way. And that's been recognised. That was recognised in Collum. That was recognised in the high level review that we're working as partner organisations. It was both an unspoken agreement with the Secretariat and the Commonwealth Foundation but this is changing with the new direction of the Commonwealth Foundation.

The heads of government said to the Foundation, "You have to be more aligned to the Commonwealth fundamental values and the mandates of the Commonwealth *as a whole.* They have interpreted this very, very, very narrowly and are now concentrating on participatory governance, which means that they want dialogue between the citizen - whoever that is - and the government, but only at a local level. They've devalued the professional

expertise and input of the Commonwealth Associations. We are no longer considered as a part of the family. Commonwealth Associations are lumped together with all the other CSOs in relation to the grants that they give out and all grants have to be based on participatory governance. We had a total debate on this yesterday and I still don't understand the issue because you cannot hold conferences or workshops without dialogue. The conferences or workshops have to come after you've done the participatory bit of the governance as a learning exercise. And I can't ask my Magistrates and Judges Association of Swaziland to speak to the King to try and influence the way he's going.

From my point of view that's lobbying, that's not advocacy. It's got nothing to do with advocacy. And my associations depend on me for solidarity. Where is the solidarity if I can't do anything at an international level to help them? How do you dialogue at a regional level without having a meeting or a workshop or a seminar? We talk about knowledge management. But for knowledge management we need exchanges and the only way of doing the exchanges in most parts of the Commonwealth still, because of the distances and of the power restrictions and resource restrictions and the limited access to internet and mobile phones, is to come together to have a pow wow as in the old days.

How can I now support the judiciary in the Commonwealth if these restrictions on our activities are placed by Commonwealth organisations – funding or not. If the judiciary in Gambia says, "We need pens and paper to write our judgements on." Is that a Commonwealth issue that needs Commonwealth attention? No, it's a Gambian issue to do with that particular magistrate's court that we need to deal with. It's not a Commonwealth issue. It's not participatory governance to get money to pay for pens and paper for the judiciary in the Gambia.

SO: Is this in part, a product of the small size of the Commonwealth Foundation itself so it's only got -

KB: Don't even go there! Don't even go there, Sue! Because, oh well we haven't got the resources.

SO: I'm sorry, you've heard that before!

KB: We heard it yesterday, 'We haven't the resources.' You're talking to 82 Commonwealth Associations that aren't as wealthy. We're not rich, but rich in manpower terms; as we are here in this office, we've got two people. CLA has one person. CLEA has one person. Some of them don't have any persons. They've got volunteers. And you don't say, "Well, we don't have the manpower and the resources. We've lost some money." Okay, but you've lost some money, so have we! But funnily enough I still manage to do the work, maybe I am killing myself, but I still manage to do the work and I still manage to respond to projects and I still manage to respond to enquiries and I still manage to do all that.

SO: And you're working as a facilitator for your profession.

KB: And in 67 jurisdictions of the world.

SO: Exactly, and are working in a dynamic enabling way.

KB: Try to.

SO: You're succeeding!

KB: We've done a lot of training with the Commonwealth Secretariat. And again, the Commonwealth Secretariat's changing strategy towards becoming a brokering house and a clearinghouse for projects will affect us because they no longer want to do things. They want to let other people do things. 'Clearing house' is what they call themselves under the new strategic plan. Yes, we might be involved. Yes, we might even get some work out of it. But it's unlikely we're going to get paid for it. We do a lot of work for them for free. All the training stuff is done without charging them. Many organisations would charge.

All our professional organisations as far as I am aware have never once charged the Commonwealth Secretariat for their time. A judge's time could cost up to £750 a day or an hour; a lawyer's time would cost definitely that. But all our associations have taken the view 'if it's Commonwealth then okay, yes, we'll go and we'll do this mission for you, we'll help with your report, we'll do this, we'll advance your projects in these particular jurisdictions.' And yes, they pay the expenses, fine, on the spot; but that's it. All the work that comes out of it, all the issues that come onto it, the time they spend, if it's five days, ten days, whatever.

SO: Karen, I'm very aware that I'm exhausting you and you need to have your lunch. I'd like to ask you briefly about Mozambique and Rwanda, who joined the Commonwealth with very different legal systems, very different political cultures.

KB: Right. Mozambique 1990s: I understood the logic at the time, no opinion I don't think on the membership of the Commonwealth. And I understood the logic because Mozambique was surrounded by Commonwealth countries. I understood the logic because it was a reward to Mozambique to join the Commonwealth because of what they had done for the Commonwealth with South Africa during the apartheid era. I actually think Mozambique to date has made more progress than many countries in the Commonwealth, that have been around for far too long; this is both on an economic point of view and on progress capacity building and everything. I'm not going to say 'a fully success story', but it's good in parts.

Rwanda, now: Rwanda came after the new membership ideas were put in place. Rwanda came after Latimer House. Rwanda does not comply with Latimer House in many issues. The Rwanda judiciary is trying and it's doing a goodish job. But I think there's a few problems with the politics and the government. I wasn't in favour of Rwanda joining before it could actually comply with all of the Latimer House requirements.

SO: Okay. It applied for membership in 2008. Its formal first meeting was the Port of Spain CHOGM in 2009. Were you involved in any of the negotiations? Did your members express an opinion as members of the

judiciary and judges about whether in neutral terms Rwanda should join?

KB: We were never consulted on any of these issues. I may have had my own reasons to think that it was too early because they hadn't got all of their systems in place. But it was something that was pushed through.

SO: Who was doing the pushing, do you know?

KB: Uganda and the East Africans because Rwanda joined the East African Community. Uganda, as far as I am aware, initiated the push, and then they were followed by other countries in East Africa. That's what I understood.

SO: My last question is on Hong Kong, and its anomalous position. In the run up to transfer, were CMJA involved in any way in the negotiations, contacting the Hong Kong lawyers?

KB: The run up to the joint declaration predates my time at the CMJA. But I can answer it from a CLA point of view and also from a personal point of view because that's my subject for my PhD.

SO: I've hit the jackpot!

KB: In the run up to the joint declaration the legal community was involved in inputting on issues to do with what should be in or not in with the joint declaration. I think it was more of submissions rather than consultation by the British government. Definitely the consultation by the Chinese government, but the British government did talk to many of the lawyers in Hong Kong and get opinions from Law Society members and the Bar Council in Hong Kong and members of the Law Society and Bar Council in England and Wales that I can tell you for certain. And in fact after the joint declaration, in the run up to the drafting of the Basic Law, there were many delegations and exchanges of delegation more on a bilateral basis than between the UK and Hong Kong. In fact in the first week I worked at the Law Society of England and Wales (my previous job), I was involved in a joint meeting with the Law Society of Hong Kong and the Bar Association of Hong Kong. Their representatives had come to speak to Parliament here, I think mainly on issues relating to human rights, the rights of the individual, and economic and social rights. They were concerned that these rights should be protected. The CLA in 1987, when it was drafting its first constitution, had a Hong Kong lawyer who was a member of the Commonwealth Lawyers Association council and he made sure that the position of Hong Kong within the Commonwealth Lawyers Association was maintained. Hong Kong is still a full member of the Commonwealth Lawyers Association. Now, nothing happened like that as far as I'm aware in the CMJA. But we still had the Chief Justice of Hong Kong on our mailing lists and he gets information on anything that happens.

SO: So he's got associate status?

KB: We don't have associate status, but we have observer status if you like. The CLA have maintained that link with Hong Kong since then and in fact they held the conference in 2007 in Hong Kong, which was the first time any Commonwealth Association had had a meeting outside the Commonwealth in

a non-Commonwealth country. We have friendly links with Hong Kong. We have been involved with the Hong Kong representative office here. They are involved in any projects we have. We, as I say, we have a mailing link with the Hong Kong chief justice and he can input like anybody else into any of our projects, although he has chosen not to recently.

They are entitled to come to the training or to the conferences. Anybody can come to our conferences as long as they pay the money! But we would not necessarily do any training in Hong Kong. I don't know what would happen if they actually asked us. The legal system is the same as it was for the next 34 years. So I'm not so sure what we would do if we were approached by them. We might be able to do something on a regional level and involve them through Malaysia or Singapore or somewhere like that. But we haven't been approached as such for training.

But the link between Hong Kong and the Commonwealth and Hong Kong and China has meant that a number of delegations in the run up to the Basic Law and in the run up to China's taking over, have meant that the Chinese Law Society or All China Lawyers Association did send delegations to the Commonwealth Law Conferences (CLCs) in New Zealand, Cyprus and Vancouver. They were small delegations but they attended the conferences because of the links with Hong Kong. But after the separation they didn't; after they haven't said anything as far as I'm aware. I haven't seen them at CLCs, I would know because I have kept in contact with the members of the All China Lawyers Association. The last time we had representatives from Hong Kong, it must have been prior to '97. I did my PhD at the Sorbonne, in Paris, on 'The reunification of China and its consequences on the future of Hong Kong and Macau'. The French title is a bit more complicated! I completed it twenty years ago this month, 1993. There's a French version, but they hadn't done it in English unfortunately; I can always let you have the French version!

SO: As my supporting documents. Karen, thank you very much indeed.

[END OF AUDIOFILE]