

## **REPORT BY IJLS**

### **Workshop on Sentencing for Judiciary organised by IJLS and Office of the Judiciary**

The Office of the Judiciary in collaboration with the Institute of Judicial and Legal Studies and the Mauritius Magistrates Association organized a 2 days “Workshop on Sentencing for the judiciary in Mauritius” at the Maritim Hotel, Balaclava on the 23<sup>rd</sup> and 24<sup>th</sup> August 2018.

The workshop was attended by the Honourable Maneesh Gobin, Attorney General of the Republic of Mauritius, His Lordship Marc France Eddy Balancy, the Acting Chief Justice, Mrs Ah Foon Chui Yew Cheong, Chairperson of the IJLS, Puisne Judges of the Supreme Court and other judicial officers including the Honourable Master and Registrar, the Honourable Deputy Master and Registrar and Magistrates of Intermediate, Industrial and District Courts including Rodrigues District Court. The keynote speaker and facilitator of the workshop was Professor Nicola Padfield, Professor of Criminal and Penal Justice and Master of Fitzwilliam College, University of Cambridge, UK. A few Judicial Research Assistants and personnel of the IJLS attended the workshop as legal rapporteurs and coordinators.

The workshop started with the introductory speech of Her Honour, the Deputy Master and Registrar, Mrs Renuka Devi Dabee. She spoke about judicial discretion that is exercised during the sentencing process and how it should be equitable and proportional to bring in uniformity in sentencing. She explained that s. 4 of IJLS Act specifies that the IJLS has a crucial role to play in promoting transparency and consistency in the sentencing of offenders, and the award of civil damages, by making recommendations to the Chief Justice for the issue of guidelines, and this workshop organized in collaboration with IJLS and Office of the Judiciary responds to this need of the hour.

The Chairperson of the IJLS addressed the gathering and stated that passing an appropriate sentence is a very complex exercise and is sometimes more difficult than adjudicating on the guilt of an accused. A wide range of consideration have to be taken into account, such as the nature and circumstances of the offence and aggravating and mitigating factors. She acknowledged the importance of judicial training and stressed that it was important for judicial officers to come together to share their knowledge and views, which was the purpose of this workshop. Mrs Cheong thanked the Chief Justice and the Master and Registrar for their interest and support on the issue of sentencing and the organization of this workshop, whose preparations had started months ago. She also thanked Professor Nicola Padfield, expert on sentencing and Master of Fitzwilliam College, University of Cambridge for her keynote address, and facilitating the workshop on sentencing with the magistrates. She also thanked all the Magistrates present who have taken their time out to attend the workshop. On a concluding note, she wished a fruitful learning experience and enjoyable time to everyone present.

His Lordship Mr Marc France Eddy Balancy, Acting Chief Justice welcomed all the members present. He started by saying that there is a real need for judicial officers to put their minds together to ensure that they have the required knowledge to carry out the sentencing exercise efficiently. He referred to a book titled 'Judge for yourself: A Guide to Sentencing in Australia' and quoted the following: "The sentencing process is at the very core of the criminal justice system. Every community needs to devote a good deal of time and energy to producing a justice system that is as logical, rational, sensible and effective as possible." He went on to say that a new approach to legal process is by updating the system. He also pointed out that the sentencing exercise is a difficult one in as much as there is no 'Ecole de la Magistrature' in Mauritius.

He recommended that judicial officers should meet in workshops to discuss their experiences and various aspects of sentencing and to increase their knowledge on sentencing techniques. The main complaints are insufficient severity and lack of consistency. In order to avoid these issues, judicial officers should master the principles of sentencing and be capable of explaining the application of sentencing in a convincing manner. Finally, he pointed out that the uniformity of approach in sentencing should be the target. He went on to thank the IJLS for engaging in this very praiseworthy endeavour in carrying out all the objectives as defined in Section 4 of the IJLS Act.

The Attorney General, in his address to the magistrates, started his speech by asking what ought to be the response of the Judiciary when faced with national crises such as drug trafficking, fatal road accident and domestic violence. He stated that the legislature, as one of the three branches of government, is passing new and tougher laws and regulations. The magistrates have an enhanced role to see that justice should be done, especially as they are in a privileged position to set correct standards and perspective. He concluded by saying that the judiciary has an important role to play in society and exhorted them to do so.

Professor Padfield in her keynote speech, gave the history of sentencing in UK. She explained that initially there was the Sentencing Advisory Panel which was set up in the UK in 1998. Subsequently, the Sentencing Guidelines Council was created in 2003 to give guidance which a Judge has to consider. It has now been replaced by the Sentencing Council with wider powers and which issues sentencing guidelines that have to be followed. Professor Padfield stressed that UK legislation provides that when sentencing Defendants for offences committed after 6 April 2010, every Court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case unless it would be contrary in the interest of justice to do so. Professor Padfield also gave examples of some guidelines used in the UK and referred to numerous cases of the Court of Appeal that give guidance. She then touched on issues affecting

prisons in the UK. Lastly Professor Padfield debated on Judicial Training in the UK and explained the Judicial College's roles and the approaches adopted in different countries such as the UK and Spain.

There was a plenary panel discussion with 3 magistrates presenting various points of view on sentencing and judicial discretion. This panel on the limits of judicial discretion and uniformity in sentencing was chaired by His Honour Mr Raj Seebaluck, the President of the Mauritius Magistrates Association. H. H. Mrs Meenakshi Gayan-Jaulimsing gave a talk on "what are the limits of judicial discretion?" whereas H.H Kevin Moorghen raised the issue of whether "is it time for uniformity in sentencing?" On her part, H.H Mrs Najiyah Jeewa-Dauharry talked about "the appeal procedure at the level of the DPP" on sentencing. The panel discussion raised a lot of interest as seen by the questions asked by the audience.

On the second day of the workshop, the Magistrates in groups of 7-8 accompanied by a mentor judge of the Supreme Court made presentations on the sentencing pattern and analysis of various offences: drugs, sex, aggravated assaults, wounds and blows, domestic violence, larceny, dishonesty, white collar crimes, road traffic offences, sentencing of children and alternatives to imprisonment. This was an opportunity to discuss in the open about the sentencing in various domains by various courts and how can there be more uniformity, while retaining judicial discretion. The issues of sentencing grids and sentencing guidelines which would be wide enough to give enough judicial discretion were debated.

Professor Padfield facilitated sentencing exercises held amongst Magistrates. The magistrates had prepared case scenarios on different issues like road traffic, etc and they debated on various sentences which could be given and the rationale behind them. This was a very interactive and challenging part of the workshop which was facilitated with dexterity by Professor Padfield, who thus gave an excellent platform for magistrates to discuss on the issues of sentencing and its practical difficulties.

The workshop drew to an end around 4.00 pm. In her closing address and vote of thanks, Mrs Cheong, the Chairperson of the ILS thanked the magistrates and judges for their active participation and in particular, Professor Nicola Padfield, and ended by reminding us all that the journey of a thousand miles begins with one step and that this workshop was just the first step towards the journey of recommendations of sentencing guidelines in Mauritius.