COMMONWEALTH LEGAL EDUCATION

Newsletter of the Commonwealth Legal Education Association

FEATURE ARTICLE:
Recent Developments in the Law of Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth

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The Commonwealth Legal Education Association fosters and promotes high standards of legal education in the Commonwealth

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Details of the CLEA Executive Committee members can be found at the end of the Newsletter.

WELCOME

From John Hatchard

General-Secretary

News about two major CLEA publications takes pride of place in this issue. Firstly, the 4th edition of the CLEA's *Directory of Commonwealth Law Schools* has just been published. This has been extensively revised and updated and many thanks to all those who assisted in providing the information, and in particular, the CLEA Executive Committee members. It provides details on more than 800 law schools in the Commonwealth, plus listings of research centres attached to Commonwealth law schools and subject-specific law journals. It also includes relevant Commonwealth documentation in the legal field as well as full information about the Association and its activities. It is available free of charge to all CLEA members and costs £45 (or £15 as a CD) for non-members. **This alone is a perfect reason to join the Association!**

Secondly, the official journal of CLEA, the *Journal of Commonwealth Law and Legal Education* has a new publisher and a new look. Our previous publisher, Cavendish Publishing, has joined with Routledge Publishing and the journal will now be published under the imprint of Taylor & Francis. The Association is most grateful to Sonny Leong, the former MD of Cavendish, for all his support in the formative years of the journal. We look forward to the new-look journal further developing its readership and market. **A copy of the Journal is also part of the CLEA membership package and is another excellent reason to join the Association.** You can find a CLEA membership form at the back of this Newsletter or it is accessible on our web site: www.cleaonline.org.

In this issue you will find details of forthcoming CLEA conferences. The Indian Law Institute is hosting the 2006 CLEA Regional (South Asia) Conference between 28-30 July under the theme "Access to Justice: A Shift from the Letter of the Law to the Spirit of the Law". Full details below. At the same time, the CLEA South Asia Regional Students' Conference is being held on the topic "Socially Committed Lawyering: Is Re-emphasis Needed?" This is another excellent opportunity for law students from around the South Asia region (and beyond) to meet together and discuss issues of importance. Professor Sivakumar is the Organising Secretary and can be contacted on drssivakumar@sify.com.

Another date for your diary is September 26 when the Open University, Centre for Law, is hosting a joint one day workshop with the CLEA on "Combating Corruption and Misuse of Public Office: Implications for Law Teachers". This is part of the CLEA new curriculum development project, full details of which appear in the main article in this issue. Further information on the workshop is available from Mandy Winter (m.t.winter@open.ac.uk). Another benefit of CLEA membership is that the workshop is free to CLEA members!!!

There are two important developments in our curriculum development programme to bring to your attention. Firstly, I am pleased to announce that the Association has secured funding from the Commonwealth Foundation to assist it in holding a workshop on the development of a model curriculum and course on Islamic Law. This project is being overseen by Selina Goulbourne in association with Shaheen Ali from the University of Warwick. If you are interested in becoming involved with the project, please contact Selina: s.goulbourne@gre.ac.uk.

Secondly, the Association is developing a model course and curriculum on "Combating Corruption and the Misuse of Public Office". Full details below.

Over the past few months, we have welcomed several new members to the Executive Committee and short biopics of some of them appear below. We now have a full EC and with lots of "new blood" we look forward to strengthening our work around the Commonwealth.

Finally, I'd like to share with you a notice that appeared in the "Deaths" section of a newspaper recently. Obviously a tragic incident at the time, but 150 years on it is not without it amusing side:

> "Deaths, 1864 *John Sedgwick*, Union General in the American Civil War, whose last words were 'They couldn't hit an elephant from that distance', killed by a sniper in Spotsylvania, Virginia".

Marlborough House, June 2006

CLEA NEWS

New CLEA Executive Committee members

Kumaralingam Amirthalingam is the new CLEA member for South-East Asia. He is an Associate Professor at the Faculty of Law, National University of Singapore. He holds a doctorate in law from the Australian National University, where he began his academic career in 1994. Kumar's teaching commitments are mainly in criminal law and torts. His research is focused on the tort of negligence, criminal law and multiculturalism.

Kumar is actively involved in international legal education; he was the International Student Adviser at the ANU Law Faculty and is presently the Director, International Programmes at the NUS Law Faculty.

Kumar can be contacted at: lawka@nus.edu.sg

Gladys Boss Shollei is the new CLEA EC member for East Africa. She is currently the Editor and Chief Executive Officer of the National Council for Law Reporting, Kenya. The National Council for Law Reporting is a semi-autonomous state corporation established by an Act of Parliament.

Gladys holds a Master of Laws degree from the University of Cape Town; a Bachelor of Laws degree from the University of Nairobi; a Diploma in Law from the Kenya School of Law and is also an Advocate of the High Court of Kenya. She taught full time at the Faculty of Law, University of Nairobi, since 1997, until taking up her current appointment. She has also held the position of International Waters Consultant at the United Nations Environment Programme (UNEP) and has undertaken extensive research for a number of international and inter-governmental organisations.

Gladys can be contacted at: gbosssholleI@kenyalawreports.or.ke

New Office Bearers for the CLEA Sri Lanka Chapter

The new Office Bearers for the Sri Lanka Chapter are as follows:

PRESIDENT (ex officio) Mr. W. D. Rodrigo, Principal, Sri Lanka Law College

ADVISOR: Dr. H. J. F. Silva, former Principal, Sri Lanka Law College

VICE PRESIDENTS
Mr. Palitha Fernando, Deputy Solicitor General
Mr. Thusantha Wijemanne, Attorney-at-Law

SECRETARY: Mrs. F. R. C. Thalayasingham, Attorney-at-Law

ASST SECRETARY: Ms. Vyjyanthi Senaratne

TREASURER: Mr. S. Ratnasingham

ASST. TREASURER: Mr. K. Ganeshayogan

EDITOR: Mr. A. H. G. Ameen

The President can be contacted at: locwal@slt.lk

CLEA South Asia Regional Conference and Law Student Conference

The CLEA South Asia Conference will be held in New Delhi, India from 28 to 30 July 2006. The theme will be "Access to Justice: A Shift from Letter of Law to Spirit of Law".

The aim of the Conference is to "discuss parameters in the stride towards global legal education. The very aim of legal education should be 'justice oriented'. When the aim becomes attaining justice, the change should be reflected in the pedagogy of law as well as the legal process. Therefore every law school should come forward to shape legal teaching, skill training, and practical aspects in such a way that justice should become the sole aim of legal education. Thus the shift should be from the letter of law to the spirit of law".

The registration fee is US$25. For those from Sri Lanka, Bangladesh, Pakistan and India it is Indian Rs.1000. The fee includes conference lunches, tea, dinner, conference Papers, and participation in all conference sessions.

Those interested in presenting papers may send the abstract (on a single A4 sheet) of their presentations to the Secretary, Organising Committee, as soon as possible.

Running parallel to the Regional conference will be a Students' Conference on the theme "Socially Committed Lawyering: Is Re-emphasis needed?" The students shall pay Indian Rs.500.
Further details may be obtained from Prof. (Dr) S. Sivakumar, Indian Law Institute (Deemed University), Bhagwandas Road, New Delhi - 110 001, India. Tel: +91 11 23388849; Residence: +91 11 22755761; Fax: +91 11 23782140. E-mail: drssivakumar@sify.com

Workshop on Combating Corruption and Misuse of Public Office: Implications for Law Teachers

A one day CLEA workshop in association with the Open University, Centre for Law, will be held in Milton Keynes on 26 September 2006. Details from Mandy Winter (m.t.winter@open.ac.uk).

Publication of the CLEA *Directory of Commonwealth Law Schools*

The 4th edition of the *Directory* has just been published and a copy will be sent to all CLEA members. It is also available to non-CLEA members at £45 for the book and £15 for the CD (£15 and £5 respectively for developing Commonwealth countries).

One striking feature in the book is the expansion of legal education and research in the Commonwealth. There are now well in excess of 800 law schools operating the Commonwealth, with some 600 alone in India. There are also a significant number of new research centres and law journals. With increasing numbers of law schools having access to the internet, it is very encouraging to note the amount of legal information and number of journals accessible electronically free of charge. This all emphasises again the vibrancy of legal education in the Commonwealth and the challenge for the Association in continuing to support and promote high standards in this respect. The Introduction to the *Directory* is as follows:

INTRODUCTION

The publication of the 4th edition of the *Directory* is another step towards the Association's goal of developing the definitive work on Commonwealth legal education and legal studies.

For some the 'Commonwealth' retains negative connotations: not least because its roots in Britain's imperial past; its seeming ineffectiveness in dealing with modern day political problems within and between its Member States; and the importance of other international and regional bodies. It is probably fair to say that it is most unlikely that such a body would exist without the accident of history. However, much of the criticism is misplaced and is largely the result of a misunderstanding (and, dare one say, ignorance) of the nature of the organisation and its work. Such negativity has also affected the legal profession with many law teachers and legal practitioners seemingly regarding the Commonwealth and Commonwealth legal studies as having little or no merit or interest.

In this they are quite wrong. As this book hopefully demonstrates, the use of Commonwealth jurisprudence and reference to legal initiatives undertaken by the Commonwealth (all of which is in English) is intellectually stimulating as well as being of considerable practical value. It also provides law students with an added comparative dimension to their legal studies that can only be of benefit to them. If proof is needed of the vibrancy and significance of Commonwealth jurisprudence, it is to be found in the judgments of apex courts around the Commonwealth (and beyond) in which comparative Commonwealth jurisprudence is regularly cited and applied.

The book is divided into five sections:

- Section 1 provides full details on the CLEA and its range of activities
- Section 2 provides a background to the Commonwealth and brings together Commonwealth documentation that is of most interest and relevance to law teachers and legal practitioners

- Section 3 contains the Directory of Commonwealth Law Schools. Each individual country entry provides readers with an overview of legal education in that country together with details of every law school (know to the Association). As legal education in the Caribbean and South Pacific is undertaken on a regional basis, a combined entry is provided. Whilst no longer part of the Commonwealth, the entries for Hong Kong and Zimbabwe are retained as both retain close Commonwealth links. Indeed it is hoped that Zimbabwe will be in a position to resume its membership in the not too distant future.
- Section 4 provides a listing of (a) research centres attached to Commonwealth law schools, and (b) specialist law journals published by, or on behalf of, Commonwealth law schools. The Section is designed to assist Commonwealth law teachers enhance their links with those of like interest elsewhere and to find new avenues for pursuing research and publications.

In compiling this Directory, I would like to thank in particular all members of the CLEA Executive Committee who provided considerable assistance.

John Hatchard
CLEA, *May 2006*

New look for the *Journal of Commonwealth Law and Legal Education*

The *Journal of Commonwealth Law and Legal Education* is the official journal of the Commonwealth Legal Education Association. Its formative years were overseen by Cavendish Publishing but it has now become the responsibility of Taylor & Francis. The journal, which is fully refereed, will be getting a new look and enhanced marketing. Contact details for the submission of articles and other material remains the same: v.skelton@open.ac.uk. The editorial and contents from Vol 3(2) are as follows.

Law and War
Gary Slapper

In the aftermath of the war in Iraq, questions arise about the effectiveness of certain parts of international law.

The city-states of ancient Greece distinguished between a law of the Hellenes and a law that applied to the rest of mankind. Nonetheless, in war certain conduct was categorically forbidden: sacred places, for example, were inviolable. The term “international law” was invented in 1780 by Jeremy Bentham, who said he hoped it was an “intelligible” phrase. The challenges it has faced since were later identified by John Austin, who defined law as a “command made by a sovereign power”. He therefore refused to acknowledge “international law” as proper law because its rules did not emanate from a supranational power and were not enforceable in the same way as ordinary domestic laws. Today, the attitude of many national governments and many politicians across the world, is, absent the expression of certain pieties, essentially Austinian.

Leading up to the war in Iraq, the vocabulary of law pervaded many speeches in legislatures and debating chambers around the world. Politicians, militarists and peace campaigners often disagreed in their analyses but virtually all shared the same belief that the legality of a war was the key issue. The legal status of the war itself is of great importance for many reasons. Some of them would be perfectly sensible to non-lawyers but might cause wincing in some legal quarters. For example, if the war was illegal, would soldiers have a right to sue their governments or military chiefs? In offering answers to questions like these it is, of course, important to recognise that the law purportedly governing nations is no less ambiguous or disputable than the law governing ordinary people. Just as there are in domestic law so often different legal interpretations of the law on employment law or constructive trusts (the reason why the law courts are full every day), so also the precise meaning of many parts of international law are highly contestable.

If countries take a legal stance that indirectly affronts fellow nations then there is little that can be done by using remedies of law. Saddam Hussein could not be removed simply for being a tyrant, nor can North Korea be sued for apparently reneging on its promise not to develop a nuclear military capacity. After fighting in Afghanistan, the United States developed the novel legal category of "unlawful combatant" for those it wanted to interrogate in Guantanamo Bay. As such suspects were neither within the criminal justice system nor classified as captured soldiers, they were, respectively, entitled neither to "due process" nor to be treated within the terms of the Geneva Conventions. There was nothing other countries could do other than make political representations. America's consideration of the doctrine of "odious debt" for a post-Saddam regime in Iraq was also the source of some international disquiet. The doctrine, developed in the US in 1898 in relation to Cuba's debt to Spain, says that the new incoming regime does not have to honour debts incurred to other nations by a previous despotic regime if the borrowings were not in the interest of the population. In post-war Iraq, that jeopardised the repayment of over US$50bn to France and Russia.

The limitations of a legalistic approach to war were expressed arrestingly in a letter to a British newspaper from Phillip Allott, a former Legal Counsellor at the British Foreign and Commonwealth Office:

> Your editorial obsession with the question of the legality of the invasion of Iraq in 2003 is peculiar. War is the mass murder of human beings and the mass destruction of property in the public interest – that is to say, a very great human evil. How could such a thing ever be lawful?
>
> A show of hands in a meeting-room in New York could not possibly determine that question. The United Nations system, like the League of Nations system, was an attempt to multilaterise the temptation of governments to indulge in such behaviour. The Security Council is a sort of Warmakers Anonymous.
>
> It took us, the people, a very long time to get governments to behave decently as the government of a nation. Until we cure all governments of that age-old addiction to the use of armed force internationally, the correct questions to ask, relentlessly and lucidly, are the casuistic moral question and the utilitarian practical question. Can

the evil of such behaviour possibly be mitigated, on a particular occasion, by a reasonable degree of certainty that some great good might flow from it, more or less as a side-effect?

The Charter of the United Nations was brought into force on 24 October 1945. Its opening passages declare an aim "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind". There has not been a single day of world peace since that statement was published and, at the time of writing, the clash of arms blights many parts of the world. Thus, in one view, the UN does not satisfy its *raison d'etre*. That, however, does not mean that things would not have been far worse without the UN, nor does it mean that world peace is eternally impossible. Laws with global application are gaining progressive acceptable in governing behaviours such as internet libel, pollution and passenger safety. The more we become globally integrated the more possible it will become for rules to be applied internationally.

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Back to Basics? The Scope of Legal Education in a Human Rights Context (R Smith)
Case note and Book Reviews

CLEA at the Commonwealth People's Forum

On 10 May 2006 the General Secretary represented the Association at the meeting of the "Commonwealth People's Forum: Review and Plan from Valletta to Kampala". Organised by the Commonwealth Foundation, the meeting was designed to strengthen the input of civil society at Commonwealth Heads of Government Meetings (CHOGM).

The objectives of the Commonwealth Peoples' Forum (CPF) include:

- ensuring that civil society across the Commonwealth can express their views to Heads of Government and influence the decisions made at CHOGM;
- monitoring and commenting upon implementation of CHOGM decisions and Commonwealth goals;
- providing civil society in the host country with a legacy that will strengthen its capacity to achieve Commonwealth goals.

The next CPF will be held in Kampala in November 2007 and it is expected that the Association will play an active part.

RECENT DEVELOPMENTS IN THE LAW ON CORRUPTION AND THE REGULATION OF CONDUCT IN PUBLIC LIFE: IMPLICATIONS FOR LAW TEACHERS AND LEGAL RESEARCH IN THE COMMONWEALTH

John Hatchard
Secretary General, Commonwealth Legal Education Association

The UN Convention Against Corruption (UNCAC) came into force on 14 December 2005 and is the first global instrument designed to tackle corruption in both the private and public sectors. It builds on a number of regional anti-corruption initiatives:

- **Europe**: Council of Europe (Criminal Law Convention on Corruption, Civil Law Convention on Corruption) and the European Union (e.g. Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union).
- **Africa**: e.g. African Union Convention on Preventing and Combating Corruption.
- **Americas**: e.g. Organisation of American States Inter-American Convention Against Corruption.

In addition the Organisation for Economic Cooperation and Development (OECD) has been extremely active in tackling corruption particularly through the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Note should also be made of the ongoing work of the Commonwealth which has developed the important Commonwealth Principles on Promoting Good Governance and Combating Corruption (the Framework Principles).

As of 3 May 2006, UNCAC has 140 signatories and 50 ratifications. 12 Commonwealth member states have ratified it: Australia, Cameroon, Kenya, Mauritius, Namibia, Nigeria, Seychelles, Sierra Leone, South Africa, Uganda, United Kingdom and United Republic of Tanzania. Commonwealth Heads of Government at their Meeting in Malta in 2005 urged all member states to become party to the convention and it is expected that a significant additional number of Commonwealth members will ratify it over the coming months.

UNCAC and the related initiatives provide exciting teaching and research opportunities for Commonwealth law teachers in a (surprisingly) wide range of subject areas. In recognition of this, the CLEA is developing a new model course entitled “Combating Corruption and the Misuse of Public Office”. After a brief overview of the provisions of UNCAC, this paper will note the implications of UNCAC and other anti-corruption initiatives for Commonwealth law teachers and then provide a brief background on, and description of, the new model course and curriculum.

MAIN FEATURES OF THE UN CONVENTION AGAINST CORRUPTION

In common with several other regional anti-corruption instruments, UNCAC addresses four main areas: 1. Prevention; 2. Criminalisation; 3. International Cooperation; and 4. Asset Recovery.

1. *Prevention*

The Convention mandates State Parties to develop a coordinated approach to preventing corruption. These include ensuring the existence of an independent anti-corruption body or bodies designed to oversee and coordinate the State's anti-corruption policies; addressing probity in the public service (e.g. through developing codes of conduct); and enhancing transparency in public procurement and public finances. The Convention also requires States to take measures to prevent corruption involving the private sector. In particular it emphasises the duty of States to have appropriate accounting and auditing standards and to disallow the tax deductibility of expenses that constitute bribes (and other expenses incurred in furtherance of corrupt conduct).

A key part of the prevention agenda is the development of appropriate anti-corruption education and training programmes.

2. *Criminalisation*

The Convention requires State Parties to criminalise active and passive bribery, both in relation to of national and foreign public officials as well as officials of international organisations. The criminalisation of money laundering is also required. The Convention includes several discretionary offences: particularly important here are those relating to trading in influence and illicit enrichment (i.e. where there is a "significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her income").

Detailed provisions regarding the investigation and prosecution of corruption offences are included. For example, State Parties are required to have in place a law enforcement body or bodies specialised in combating corruption; to ensure that bank secrecy laws do not obstruct the investigation and prosecution of corruption offences; and to encourage whistleblowing.

3. *International Cooperation*

The transnational nature of corruption means that effective international cooperation is crucial. State Parties are required to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to convention offences. They are also required to ensure that all convention offences are extraditable in terms of their domestic law.

4. *Asset Recovery*

A fundamental principle of the Convention is the return of the proceeds of corruption and State Parties are required to afford each other the widest measure of cooperation and assistance to "find, freeze and forfeit" those proceeds. In recognition of the importance of civil recovery in this area (i.e. a

non-criminal forfeiture system), State Parties must consider assisting each other in relation to investigations and proceedings of a non-criminal nature.

Overall, State Parties undertake to take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of their domestic law, to ensure the implementation of their obligations under the Convention. This has the effect of placing new responsibilities upon State Parties as well as requiring them to strengthen existing laws and institutions.

SO WHAT'S IN IT FOR ME? IMPLICATIONS FOR LAW TEACHERS AND LEGAL RESEARCH

UNCAC and the other anti-corruption instruments and initiatives affect a significant number of subject areas in law programmes and it is important that law teachers reflect these in their teaching and research. This section contains a list of some of the major subject areas and the "anti-corruption" topics that can be included. This is a preliminary listing and readers are invited to suggest further categories and topics.

Law of Agency

- Liability of corporations for bribery by their agents/representatives
- Remedies against agents involved in bribery
- Arbitration awards when the contract of the agent is allegedly tainted by bribery

Banking law

- Responsibilities of financial and non-financial institutions under anti-money laundering laws
- Work of the Financial Action Task Force and the 40 Recommendations
- Tackling the laundering of proceeds of corruption through the use of alternative remittance systems

Company law

Tackling private sector corruption is a cornerstone of UNCAC. Issues for discussion in company law courses include:

(i) Corporate codes of conduct to combat bribery
(ii) Corporate internal controls to combat bribery
(iii) Reporting of corruption/whistleblowing
(iv) Use/abuse of agents, intermediaries and representatives
(v) Non tax-deductibility for bribes
(vi) Combating the bribery of foreign public officials

International standard-setting: e.g. Procurement guidelines (World Bank)

Developing appropriate accounting standards

(i) Role and responsibilities of accountants
(ii) Role and responsibilities of auditors
(iii) Reporting by tax authorities

Constitutional/Public Law

- Balancing constitutional immunity from prosecution with effective investigation and prosecution of "politically exposed persons" and recovery of assets looted by heads of state
- Maintaining standards in public life: e.g.
    - Codes of conduct for parliamentarians, judges and ministers
    - Liability of parliamentarians for offences of bribery and corruption
    - Maintaining standards in local and provincial government

Contract

- Illegal contracts (effect on contracts obtained through corruption)
- Arbitration awards when the contract of an agent is tainted by bribery

Criminal Law

- Scope of existing common law corruption offences (including misconduct in a public office)
- Scope of penal code or statutory corruption offences
- Scope of UNCAC offences
- Offences relating to the bribery of foreign public officials
- Scope of money laundering offences
- Corporate criminal liability (including liability of corporations for bribery by their foreign subsidiaries and agents)

Criminal Justice and Evidence

- Jurisdiction in relation to corruption cases
- Special provisions relating to the investigation and prosecution of corruption offences
- The use of integrity testing
- Protecting victims of corruption (e.g. giving effective protection to witnesses etc)
- Providing effective "whistleblowing" provisions
- Developing effective international cooperation mechanisms for investigating and prosecuting corruption
- Admissibility of evidence obtained from other jurisdictions
- Burden of proof issues (e.g. placing the burden of proof on the accused in illicit enrichment cases)

EU Law

The EU has made the fight against corruption one of its priorities. There are a series of relevant EU instruments here including the Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the EU. Added to this are the significant developments concerning international cooperation between EU members through the work on "strengthening the European Union as an area of freedom, security and justice".

Human rights

- Right to a fair trial versus special investigative techniques in corruption cases
- Right to property versus confiscation of assets
- Constitutionality of placing the burden of proof on persons accused of corruption offences

Insurance law

- Protecting the insurance sector from use in the laundering of proceeds of corruption
- Role of the Financial Action Task Force

International law

- Jurisidiction in corruption cases
- Making the international and regional anti-corruption instruments effective: e.g. the work of the Council of Europe's Group of States Against Corruption (GRECO) and the Financial Action Task Force
- Corruption laws and the liability of officials of international organisations

International trade law

- Arbitration issues (e.g. arising from international contracts tainted by corruption)
- OECD work on combating the bribery of foreign public officials
- Money laundering and asset recovery

Labour law

- Whistleblowing and protection of whistleblowers within the workplace
- Role and responsibilities of trade unions in deterring and reporting corporate corruption

Trusts

- Use of trusts for the purposes of laundering the proceeds of corruption
- "Flee" trusts (to protect the proceeds of corruption)

Tort

- Civil liability
    a. Bribery and secret profits
    b. Misfeasance in public office
- Civil remedies/restitution
- International arbitration and corruption
- Civil recovery: pursuing the proceeds of corruption
    a. Freezing orders and tracing
    b. Mutual legal assistance
    c. Recovery of proceeds of corruption

DEVELOPING A MODEL COURSE AND CURRICULUM ON COMBATING CORRUPTION AND THE MISUSE OF PUBLIC OFFICE

Background and curriculum design

There is a considerable amount of teaching material on anti-corruption issues already available, for example the Transparency International *Corruption Fighters' Toolkits* and the UN Office on Drugs and Crime *Anti-Corruption Toolkit*. However this model course and curriculum goes further in that it systematically covers the law and practice relating to corruption and misuse of public office not only from an international and regional and Commonwealth perspective but allows for the development of country specific courses.

The proposed resultant course/materials can be used in a variety of ways:

- To develop a discrete stand-alone module for law and business courses
- To incorporate relevant sections or topics into existing law and business courses
- To develop short certificate/diploma courses for specific target groups (e.g. corporations, bankers, accountants, legal practitioners, law enforcement agencies, prosecuting authorities)
- To develop the course as part of a postgraduate law or business programme

In addition, the course could also be developed for use by students in secondary education.

Methodology

Given the various potential target groups, the methodology for the preparation and delivery of courses will vary.

However, in the first instance the CLEA proposes to develop the course based on the approach adopted for the Model Curriculum on International Cooperation in Criminal Matters (ICCM), a project pioneered by the Commonwealth Legal Education Association and Commonwealth Secretariat. Courses on ICCM are currently running at law schools in several Commonwealth countries whilst the materials have been incorporated into a variety of other courses at law schools around the Commonwealth (for full details see "Incorporating Transnational Crime Issues in to the Law Curriculum: The Commonwealth Approach" *Journal of Commonwealth Law and Legal Education* vol 2(2) 89).

The development of this model course and curriculum will proceed as follows:

1. Collection of materials on general, international, Commonwealth and regional issues relating to corruption and misuse of public office, including the relevant international and regional materials.
2. The holding of a series of training the trainer workshops around the Commonwealth. Here law teachers from around the region will:
   (a) Work through and refine the materials
   (b) Develop courses for their own jurisdictions/regions by adding country specific materials to the general materials.

3. The provision of ongoing support and advice (and a periodic updating of materials) by the CLEA.

The Course Materials

The course materials will be developed based primarily on the book *Corruption and the Misuse of Public Office* by Colin Nicholls, Tim Daniel, Martin Polaine and John Hatchard (Oxford University Press, 2006). In addition, the curriculum will include incorporate the wealth of cases and materials from around the Commonwealth from the series *The Corruption Case Law Reporter* (available from www.tiri.org).

Target audience

The model course/curriculum is designed for use in law schools, professional legal training institutions, business schools, banking courses and the like. It can also be adapted for use by law enforcement agencies, prosecuting authorities and others concerned with the criminal justice system. Given the high-profile nature of the subject, such a course is also likely to attract interest from civil society organisations as well as individuals. It could also be adapted for use in secondary and other tertiary education institutions.

The course is capable of being adapted to meet the needs of common law jurisdictions worldwide.

The potential market is enormous. For example there are currently over eight hundred law schools and law colleges in the Commonwealth which offer undergraduate law degrees. In addition the study of law also forms a key part of many other degree, diploma and certificate programmes, for example, accountancy, banking and business studies, as well as in combined degree programmes. Thus there are many thousands of students studying law at Commonwealth institutions of higher learning at any one time. Arguably, all should have access to the issues covered in this curriculum. However, in many places, time, staffing and logistical constraints often make it difficult to develop appropriate courses.

COURSE OUTLINE

The course/curriculum will provide an overview of the major topics and relevant international and regional materials.

At all relevant stages, provision is made for the incorporation of local materials, so as to ensure that the curriculum is made country/region specific.

1. MEANING AND SCOPE OF CORRUPTION

(i) Definition
(ii) Grand and petty corruption
(iii) Systemic corruption
(iv) Prevalence of corruption

2. INTERNATIONAL AND REGIONAL INITIATIVES

International and regional instruments

(i) United Nations Convention Against Corruption
(ii) Council of Europe initiatives
  - Criminal Law Convention on Corruption

- Civil Law Convention on Corruption
- Model Code of Conduct for Public Officials
- Follow up mechanisms

(iii) European Union initiatives

(iv) EU Convention on the Protection of the Financial Interests of the Communities and Protocols
- Framework Decision on Combating Corruption in the Private Sector

(v) Organisation for Economic Cooperation and Development (OECD)
a. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
b. Guidelines for Multinational Enterprises

(vi) Organisation of American States initiatives

(vii) Africa initiatives

(viii) Asia-Pacific initiatives

International initiatives

(i) UN

(ii) The Commonwealth
a. Harare Commonwealth Declaration
b. Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption

(iii) International Chamber of Commerce

(iv) World Bank

(v) International Monetary Fund

(vi) International Chamber of Commerce

(vii) Civil Society Organisations

3. DEVELOPING APPROPRIATE PREVENTIVE MEASURES

(i) Developing education and training programmes

(ii) Maintaining standards in public life

(iii) Transparency in the funding of political parties

(iv) Establishing anti-corruption agencies

4. COMMON LAW OFFENCES

(i) Bribery

(ii) Misuse of a public office

5. STATUTORY/PENAL CODE CORRUPTION OFFENCES

(i) Criminalisation under the international/regional anti-corruption instruments

(ii) Local criminal laws/regulations on e.g.
a. corruption and bribery
b. illicit enrichment
c. bribery of foreign public officials
d. anti-money laundering laws

(iii) Adequacy of existing corruption laws

6. INVESTIGATION AND PROSECUTION OF CORRUPTION

(i) Investigating and prosecuting corruption: general principles

(ii) Special investigative bodies: e.g. anti-corruption agencies, serious fraud offices
(iii) The local position
(iv) Jurisdiction over corruption offences
(v) International cooperation
    a. Mutual legal assistance
    b. Extradition
    c. Making international cooperation effective
    d. Local laws and procedures regarding mutual legal assistance
    e. Local laws and procedures regarding extradition

7. COMBATING BRIBERY AND CORRUPTION IN THE BUSINESS ENVIRONMENT

Prevention

(i) Corporate social responsibility
(ii) Developing corporate codes of conduct
(iii) Developing corporate internal controls
(iv) The reporting of corruption/Whistleblowing
(v) Use/abuse of agents, intermediaries and representatives/"red flags"
(vi) Non tax-deductibility for bribes

International standard-setting: e.g. Procurement guidelines (World Bank)
Developing appropriate accounting standards
(i) Role and responsibilities of accountants
(ii) Role and responsibilities of auditors
(iii) Reporting by tax authorities

Criminalisation

(i) Corporate criminal liability
(ii) Combating the bribery of foreign public officials
    a. OECD Convention
    b. The Lesotho Highlands Water Project cases
(iii) Liability of local corporate bodies for offences committed by their overseas intermediaries
(iv) Avoidance of liability through corporate restructuring
(v) Position of unincorporated bodies

8. LAUNDERING THE PROCEEDS OF CORRUPTION

(i) Overview of money laundering techniques
(ii) Use/abuse of corporate entities
(iii) Use and abuse of trusts
(iv) Dealing with "politically exposed persons"
(v) The Financial Action Task Force and the Forty Recommendations
    a. Criminalising money laundering
    b. Responsibilities of financial institutions and non-financial businesses and professions
    c. Alternative remittance systems
    d. Money laundering through the insurance sector
    e. Ensuring transparency of legal persons
    f. International cooperation (mutual legal assistance/extradition)

(vi) EU initiatives
   a. Money Laundering Directives
(vii) Role of other international bodies: e.g. OECD; International Organisation of Securities Organisations (IOSCO); Offshore Group of Banking Supervisors (OGBS)
(viii) The local regulatory regime

9. RECOVERING THE PROCEEDS OF CORRUPTION

(i) Finding and freezing the proceeds
(ii) Recovery and repatriation of proceeds of corruption
(iii) Role and responsibilities of financial institutions
(iv) Local laws

10. CIVIL LAW

(i) Introduction
(ii) Civil liability
   (a) Bribery and Secret profits
   (b) Misfeasance in public office
(iii) Civil remedies/restitution
(iv) International arbitration and corruption
(v) Corruption, illegal contracts and public policy
(vi) Civil recovery: pursuing the proceeds of corruption
   (a) Freezing orders and tracing
   (b) Mutual legal assistance
   (c) Recovery of proceeds of corruption

11. STANDARDS IN PUBLIC LIFE

(i) Introduction
(ii) The Legislature
   a. scope of parliamentary privilege in bribery cases
   b. codes of conduct
   c. registers of members' interests and declaration of assets
(iii) The Executive
   a. codes of conduct
   b. procedures for investigating allegations of misconduct
   c. register of ministers' assets and interests
(iv) The Public Service
   a. developing appropriate recruitment procedures
   b. codes of conduct for public officials
   c. facilitating whistleblowing
   d. membership of political parties/political activities
(v) Local/Regional Government
   a. codes of conduct
(vi) The Judiciary
   a. The Bangalore Principles of Judicial Conduct
   b. development of codes of judicial conduct

THE NEXT STEPS

Tackling corruption and misuse of public office is now high on the international agenda. For law teachers throughout the Commonwealth, this has a significant impact and needs to be reflected in both their teaching and research. It is hoped that the pioneering work of the CLEA will assist law teachers to gain easy access to relevant information and materials and assist them develop effective and authoritative courses for their own students. In addition, a range of significant research areas have been opened up.

The Association looks forward to hearing from Commonwealth law teachers who wish to get involved with this project.

NEWS FROM COMMONWEALTH LAW SCHOOLS

New law school in Cyprus

In September 2005 the Law Department of Intercollege became the first and to-date the only college in Cyprus to receive accreditation from SEKAP, the accrediting authority of the country's Ministry of Education, for its 4-year Bachelor of Laws (LLB (Hons)) degree programme. This is the first time prospective lawyers can fully study for a Bachelor of Laws degree in Cyprus. Contact details as follows:
Intercollege, Department of Law, School of Humanities, Social Sciences & Law, 46 Makedonitissas Avenue, P.O. Box 24005, 1700 Nicosia – Cyprus.
Website: www.intercollege.ac.cy; e-mail: admission-nic@intercollege.ac.cy

Forensic Medicine, Medical Law and Ethics in East Africa

In April 2005, Professor David McQuoid-Mason of the University of KwaZulu-Natal, Dr Mahomed Dada, an Honorary Associate Professor at the Universities of KwaZulu-Natal and Cape Town, and Dr Alex Olumbe, a Senior Medical Officer in Queensland, Australia ran a three day Authors' Workshop in Dar-Es-Salaam, Tanzania, to develop a forensic medicine and medical law text for East Africa. The Workshop was convened by the Independent Medico-Legal Unit (IMLU), Kenya. Its aim was to develop a framework for a manual entitled *Forensic Medicine, Medical Law and Ethics in East Africa*

David McQuoid-Mason arranged the programme so that teams of East African doctors and lawyers would be required to draft an outline for an East African manual on forensic medicine, medical law and ethics, based on the original South African IMLU text entitled *Guide to Forensic Medicine and Medical Law* (2001) by himself and Dr Dada, and the subsequent Kenyan version entitled *Handbook of Forensic Medicine and Medical Law in Kenya* (2002). The doctors and lawyers were from Kenya, Uganda and Tanzania. The doctors represented a number of specialities including forensic pathology, while the lawyers were mainly practitioners. The lawyers were required to bring the relevant health statutes from their respective countries.

David McQuoid-Mason set out the purpose of the workshop, and then introduced the doctors and lawyers to the Kenyan text, the format of the proposed new manual, and some basic writing rules. The doctors and lawyers were then divided into three main groups with representatives from all three countries in each group. The first group consisted of lawyers, the second of clinicians and the third of pathologists. Each group was required to analyse the Kenyan text and to construct an outline for the chapters covering their topics that would reflect the practices in Kenya, Uganda and Tanzania.

After the groups had completed the outlines for their topics they presented them to their colleagues who then discussed them and made suggestions for changes. Afterwards the groups revised their outlines and presented the new versions to the other participants. Once the outlines had been approved the

groups reconvened to begin amending and rewriting the Kenyan text, page by page, to reflect the legal and medical practices of all three countries. As the lawyers had the relevant statutes of Kenya, Uganda and Tanzania with them they were able to rewrite the text much faster than their medical colleagues. The latter spent their time identifying the changes that needed to be made and deciding who would rewrite which section. The manual would be primarily based on the Kenyan text but teams were also required to identify any new sections that had to be included.

On the last day of the Workshop the writing teams and contributors were identified. They were given three months to complete their work. The arrangement was that they had to send one third of their work to the IMLU coordinators of the project at the end of each month. It was agreed that if any contributor failed to deliver on time he or she could be replaced by another writer. As and when the chapters were completed they were to be sent by the coordinators to David McQuoid-Mason, Mahomed Dada and Alex Olumbe. They were also to be sent to the local editor, Professor William Lore, the Editor-in-Chief of the East African Medical Journal, and Marguerite Garling of the British FCO which funded the project. The IMLU coordinators were Dr Ahmed Kalebi who played an invaluable role in anchoring the project and Ms Carol Ndindi.

The project went according to plan, largely due to the unstinting efforts of Dr Kalebi, and the book was formerly launched in Nairobi in early November 2005, seven months after the original workshop. Some 10,000 copies of the book were published. The book made history as the first book to be published on forensic medicine, medical law and ethics for East Africa. It probably also made publishing history as one of the quickest publishing achievements for a regional medico-legal book.

The project showed what can be achieved by regional cooperation, dedication and strong leadership by members of the medical and legal profession in Commonwealth countries. CLEA stands ready to assist other regions in the Commonwealth that may be interested in developing such materials.

David McQuoid-Mason
University of KwaZulu-Natal, President, CLEA

Clinical Legal Education Training in Africa

The Open Society Institute Justice Initiative (OSI JI) has been sponsoring the development of law clinics and clinical legal education (CLE) in Africa since 2003. Two colloquiums on legal education have been held (the first in Durban, South Africa, in 2003 and the second in Abuja, Nigeria, in 2004), and four training sessions (the first in Durban, in 2004 and the others in 2005) in partnership with the University of KwaZulu-Natal (UKZN), Durban. Professors David McQuoid-Mason and Robin Palmer have been the lead trainers in the African law clinicians training programme which has been held in association with the Institute for Professional Legal Training (IPLT) at UKZN.

The training programme begins with an introduction to interactive teaching methods and lesson plans. Thereafter participants are exposed to model lessons on how to teach interviewing and counselling skills, general and specific writing skills, an introduction to negotiation and mediation skills, and case analysis and trial preparation. The participants are divided into teams of two or three people. At the end of each lesson demonstration the teams are required to devise a lesson plan that would enable them to teach a lesson on the topic concerned. On the final day the participants choose which lesson they would like to teach and are then required to teach the lesson to their colleagues. Each lesson is then double-debriefed, first by the participants as learners and then as law teachers.

During 2005 three CLE training sessions were held for African law teachers. The first was held in Abuja from 2-5 February 2005, immediately after the Second All African Clinical Legal Education Colloquium. The course was run by David McQuoid-Mason and Robin Palmer, with assistance from some of the Nigerian law teachers who had been present at the 2004 All African Law Clinicians Training Programme in Durban .Thirty law teachers from Nigerian universities and law schools participated in the four day training programme. On the final day 10 teams of three law teachers each presented a 30 minute interactive lesson that was debriefed by their colleagues and the instructors.

From 18 to 22 May 2005, the First East African Clinical Legal Education Training Programme was held in Entebbe, Uganda. It was hosted by the Law Development Centre in Kampala. The course was again run by David McQuoid-Mason and Robin Palmer assisted by East African colleagues who had participated in the first All African Law Clinicians Training Programme in Durban. The participants in the Entebbe programme came from Uganda, Kenya, Rwanda, Ethiopia, Zambia and Mozambique. On the final day teams of two presented lessons for debriefing by their colleagues and the instructors.

During 11 to 15 October 2005, the Second All African Law Clinicians Training Programme was hosted in Durban by the IPLT at the UKZN. The lead instructors were David McQuoid-Mason and Robin Palmer. The programme was attended by African participants from Sierra Leone, Nigeria, Uganda, Mozambique and Namibia, as well as participants from Cambodia, Mexico and Moldova. The lessons were presented in teams of two.

The evaluations by the participants at all three CLE training programmes indicated that they found the team work and learning-by-doing approach very empowering. Without exception, they were all confident that they could put into practice at their universities and law schools what they had learned on the course.

The OSI JI together with the IPLT at the University of KwaZulu-Natal hopes to hold further more advanced CLE training programmes for African law teachers.

David McQuoid-Mason
University of KwaZulu-Natal, President, CLEA

Launch of new law journal

The Australia and New Zealand Maritime Law Journal (A&NZ Mar LJ) is the online incarnation of the Maritime Law Association of Australia and New Zealand Journal (MLAANZ Journal). It can be found at: https://maritimejournal.murdoch.edu.au/index.php/maritimejournal

Like its predecessor, A&NZ Mar LJ aims to publish significant and original works of scholarship that make new contributions to different fields of maritime law and commerce.

Unlike its predecessor, A&NZ Mar LJ is edited by selected students from Murdoch University, Western Australia as part of their studies. They are under the supervision of Senior Lecturer and General Editor Kate Lewins. A&NZ Mar L J also has an editorial board consisting of eminent judges, academics and practitioners in Australia and New Zealand. From 2007, A&NZ Mar LJ will be published online, freely accessible to all who wish to visit the site. Users who register at the site will be automatically notified when a new journal issue is available.

The 2006 edition of the journal will be a single "bumper" edition, published in September. Thereafter, the journal will be published in two volumes per year.

All enquiries to the Kate Lewins, General Editor, School of Law, Murdoch University, Western Australia 6150. E-mail: K.Lewins@murdoch.edu.au

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