

Commonwealth Legal Education

Newsletter of the Commonwealth
Legal Education Association

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Welcome

In this issue, we focus particular attention on recent events in Edinburgh: the Edinburgh Colloquium and the Commonwealth Law Ministers' Meeting. As Peter Slinn explains below, in his report on the Colloquium:

"This year marks both the 10th anniversary of the Latimer House Colloquium from which emerged the *Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence* and the 5th anniversary of the adoption by the Abuja CHOGM of the *Commonwealth (Latimer House) Principles on the Accountability of and Relationship between the Three Branches of Government*. The sponsoring organisations (CLA, CMJA, CPA and ourselves) therefore thought it appropriate to convene another colloquium of invited participants to review progress in the implementation and application of the Principles and to consider recommendations for assessing compliance, extending and strengthening the Principles and promoting wider understanding of their vital importance to the good governance agenda."

The resultant *Edinburgh Plan of Action for the Commonwealth* (see below) represents a further significant step in the process started at Latimer House. Of particular importance is the mandate given to the Association to encourage universities and law schools "to include the study of the Commonwealth's fundamental values, and in particular the Principles, in their curricula for political and legal studies and to universities and law schools in devising appropriate curricula". In helping us to fulfil this mandate, I would encourage you to give the Plan, and indeed the whole Latimer House process, the widest publicity.

Following the Edinburgh Colloquium, Selina Goulbourne and Peter Slinn represented the Association at the triennial Commonwealth Law Ministers' Meeting. The importance of the meeting was summed up by the Commonwealth Secretary-General Kamalesh Sharma at the opening ceremony:

"Our Law Ministers' meetings are crucial in shaping Commonwealth legal policy and setting standards to which all Commonwealth countries can aspire. This year's theme, 'The Developing Role of the Justice Minister in the light of Challenges Facing the Rule of Law in the Commonwealth', is of vital importance to all Commonwealth citizens, not only because the Rule of Law is one of the fundamental values of this organisation, but because of the crucial role of the Justice system and the Justice Minister in ensuring that people have access to affordable justice."

The Association laid before Law Ministers its Activity Report 2006-2008. This is reproduced below for your information.

For Commonwealth law teachers, the Edinburgh Communiqué (see below) highlights the wide range of cutting edge issues that currently concern Commonwealth law ministers and, which should be influencing us in the development of our law courses.

At their Meeting, Commonwealth Law Ministers also had a special session on the rule of law. The outcome was the *Edinburgh Statement on Enhancing the Rule of*

Law in the Commonwealth (see below) in which Law Ministers recognised the need to implement the commitments enshrined in the Statement. Whilst important in itself, the Statement also expressly acknowledges the influence of the Latimer House process. In doing so, it demonstrates once again the very real contribution that the CLEA and its partner organisations have had, and continue to have, in seeking to support the Commonwealth's fundamental principles.

Elsewhere in this issue, you will find details of other recent CLEA activities which encompass South Asia, southern Africa and the majority of the UK Overseas Territories.

Looking ahead, the CLEA Hong Kong conference from 31 March – 2 April 2009 promises to be an exciting event. With its theme being “*Teaching Law in the Modern Global Environment*”, it is designed to facilitate scholarly discussion and exchange of ideas on legal education in the Commonwealth with particular emphasis on those areas where the modern revolution in global business has most impact on law teaching and practice. You will find a Call for Papers in this issue of the Newsletter and I very much hope that you will be able to join us in Hong Kong.

Finally it is good to report that the CLEA's own refereed publication *Journal of Commonwealth Law and Legal Education* continues to develop really well. In future issues, we look forward to including some of the key papers from the Commonwealth Law Ministers' Meeting and, looking further ahead, to papers from the CLEA Hong Kong conference. However the invitation remains open to all who wish to submit articles, case and statute notes to our unique law journal. These should be sent to Aurora Voiculescu (e-mail: a.voiculescu@open.ac.uk).

Greg Covington

In September 2008 Greg retired as Printing Manager at the Commonwealth Secretariat. He made an enormous contribution to the work of the Association over many years, particularly in the production of numerous issues of the Newsletter. It was always a great pleasure to work with him and he will be greatly missed! On behalf of the Association, I would like to wish him well in his retirement but hope that he may be persuaded to continue to exercise his talents on our behalf.

John Hatchard
Vice-President, CLEA



COMMONWEALTH LEGAL EDUCATION ASSOCIATION 2009 CONFERENCE

**SPONSORED BY CITY UNIVERSITY OF HONG KONG
31 March - 2 April 2009**

TEACHING LAW IN THE MODERN GLOBAL BUSINESS ENVIRONMENT

CALL FOR PAPERS

The Conference, which immediately precedes the Commonwealth Law Conference from 4 to 8 April, will provide an opportunity for law lecturers and others interested in legal education from around the Commonwealth to meet and share their experiences.

We welcome conference papers on any area of law while we actively encourage papers relating to the objective of the conference, which is “to facilitate scholarly discussion and exchange of ideas on legal education in the Commonwealth with particular emphasis on those areas where the modern revolution in global business has most impact on law teaching and practice”.

Suggested themes include:

- law and integrity in both government and corporate sectors
- the regulatory regime of international trade
- the legal challenges presented by the global environmental crisis
- gender and employment issues
- the impact of Islamic law and practice on global business and
- the impact of Global Business on Human Rights

Papers will be eligible for consideration for publication in the *Journal of Commonwealth Law and Legal Education* or the *Asia Pacific Law Review*.

City University of Hong Kong will provide a limited number of financial grants to cover registration fee and accommodation to participants whose papers have been accepted for publication.

More details will be available on our dedicated conference website.

For further information please contact Professor Anton Cooray, City University of Hong Kong at lwcooray@cityu.edu.hk.

LATIMER HOUSE MOVES ON: THE EDINBURGH COLLOQUIUM AND THE PLAN OF ACTION FOR THE COMMONWEALTH

Peter Slinn
Vice-President, CLEA

This year marks both the 10th anniversary of the Latimer House Colloquium from which emerged the *Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence* and the 5th anniversary of the adoption by the Abuja CHOGM of the *Commonwealth (Latimer House) Principles on the Accountability of and Relationship between the Three Branches of Government*. The sponsoring organisations (CLA, CMJA, CPA and ourselves) therefore thought it appropriate to convene another colloquium of invited participants to review progress in the implementation and application of the Principles and to consider recommendations for assessing compliance, extending and strengthening the Principles and promoting wider understanding of their vital importance to the good governance agenda. The gathering was held in the splendid modern surroundings of the Scottish Parliament building in Edinburgh on Sunday 6th¹ and Monday 7 July 2008, timed to precede the Commonwealth Law Ministers' meeting, which your General Secretary and I attended as observers on behalf of the CLEA.

The Edinburgh colloquium, like its predecessor at Latimer House, had a clearly defined objective –to adopt a

Plan of Action for the Commonwealth, building on that adopted for Africa at Nairobi in 2005. The drafting process engendered two days of lively debate amongst a group broadly representative of the Commonwealth as a whole (some 21 Commonwealth jurisdictions plus Zimbabwe which we all hope will return soon) and of all the various stakeholders in the Latimer House process – judges, legal academics and practitioners, parliamentarians, Attorneys General and senior officials, including representatives of the Commonwealth Secretariat. The CLEA was represented, in addition to your General Secretary and Vice President, by Acting Justice Ronnie Boodoosingh (Hugh Wooding Law School, West Indies), Dr Hamid Ghani (University of the West Indies), Professor Chris Himsworth (University of Edinburgh), Ms Catherine Jenkins (School of Oriental and African Studies, University of London), Professor David McClean (University of Sheffield), Dr Tunde Ogowewo (King's College, London) and Professor Max du Plessis (University of KwaZulu-Natal, South Africa).

The discussion were carried forward in three workshops, dealing respectively with *Accountability Mechanisms, Institutional Integrity and Autonomy and Diversity, Gender Equality, Transparency and Civil Society*. All three workshops were asked to consider the dissemination and implementation of the Principles. The document which emerged is set out below as *The Edinburgh Plan of Action for the Commonwealth for the Development, Promotion an*

¹ As Hon. Fielakepa, an MP from Tonga, observed, by working on a Sunday he was in breach of Tonga's Constitution! (Article 6 of the Constitution of Tonga states "The Sabbath Day shall be kept holy in Tonga and no person shall practise his trade or profession or conduct any commercial undertaking on the Sabbath Day except according to law; and any agreement made or witnessed on that day shall be null and void and of no legal effect.")

Implementation of the Commonwealth (Latimer House) Principles on the Accountability of and Relationship Between the Three Branches of Government – not exactly a snappy title but will normally be abbreviated to the Edinburgh Plan of Action (EPOA). The EPOA balances the aspiration of the sponsoring organisations to create effective mechanisms for monitoring compliance with the Principles with the accommodation of the sensitivity of governments to anything which might smack of enforcing compliance and thus trespassing upon the jealously-guarded exercise of their sovereign power.

However, the Plan does mandate the partner sponsoring organisations to assist the Commonwealth Secretariat by establishing a Standing Committee to gather information about best practice and ‘areas of concern’ to inform the deliberations of the Commonwealth Ministerial Action Group (paragraph 1.1). It is to be hoped that members of our Association will play a prominent part in this information-gathering process. The Plan contains specific recommendations about ensuring the proper conduct of the electoral process, not included in the original Guidelines but, as experience has shown, vital to the integrity of the political process. There is also a renewed emphasis on the importance of the roles of civil society, the legal profession and the media and of combating corruption (paragraphs 2.4, 2.5, 2.6 and 3). Of particular importance for our organisation is paragraph 4 which deals with the promotion of the Principles and provides that

‘Universities and law schools should be encouraged to include the study of the Commonwealth’s fundamental

values, and in particular the Principles, in their curricula for political and legal studies. ***The CLEA should assist universities and law schools in devising appropriate curricula.***

The four partner organisations should ensure the wide dissemination throughout the Commonwealth of the Principles, the Guidelines, the Nairobi Plan of Action and this document in user-friendly formats.’

This gives us a mandate to obtain funding to carry forward our existing programme of curriculum development and to devise ways of promoting the Principles in our institutions and in the wider community.

The EPOA was laid before Law Ministers, who took note of the document. There is much work to be done in carrying forward the process which has gained fresh impetus in Edinburgh and it is gratifying that our Association has played and will continue to play a pivotal role. I sought to reflect our concerns in my remarks made on behalf of the Association at the beginning of the Colloquium when I said:

‘As a veteran of the Latimer House process from the very beginning, I take great pleasure in taking part, with some of my fellow veterans and many welcome new faces, in this gathering on the tenth anniversary of the original colloquium in 1998.

My purpose now is to emphasise two salient features of the process.

Firstly, one of most remarkable aspects of Latimer House has been the close cooperation between our professional bodies, the Commonwealth Secretariat and law ministers and officials. This was evidenced in particular by the discussions which led to the refinement of the Guidelines in the form adopted as the Commonwealth (Latimer House) Principles at the Abuja CHOGM in 2003. Ministers and officials often regard with suspicion the efforts of 'civil society' groups to insert themselves into decision-making processes. We see the Latimer House process as emblematic of a fruitful partnership in pursuit of a common goal –the strengthening and promotion of the Commonwealth's fundamental values.

Secondly, while the Principles are widely accepted as, in the words of Lord Phillips, a 'yardstick' or even, in words just used by Sir Henry Brooke, a 'bible', such texts are not there only to be read, but to be observed in practice by all those who profess loyalty to the norms of good governance enshrined therein. It is only too easy to accuse the Commonwealth of being better at standard setting than in securing respect for those standards. The Plan of Action for Africa adopted in Nairobi in 2005 called for a number of practical steps to be taken by governments, the Commonwealth Secretariat and the partner organisations to secure the implementation of

the Principles. Sadly, subsequent events in a number of Commonwealth countries have demonstrated lack of adherence to the Principles. Greater efforts by all the stakeholders are required to put in place effective mechanisms to secure implementation, while respecting the sensitivities of governments in regard to any attempt to establish some form of monitoring of compliance. We seek therefore as an outcome of this meeting the adoption of a Plan of Action for the Commonwealth as a whole, clarifying key practical steps which the stakeholders should take to implement the Principles. It is to be hoped that all participants will emerge from this colloquium charged with enthusiasm for this task.

I will conclude by recording my organisation's pride in its role in the Latimer House process and its continuing commitment to doing everything that we can to promote the Principles in our own sphere – particularly through our on-going programmes of curriculum development in the fields of human rights, combating corruption and promoting integrity and transparency in public life. These programmes are designed for the benefit not only for the current and next generation of lawyers but also for the wider community.'

I look forward to reporting on further developments in a future edition of the *Newsletter*. I also look forward to addressing the CLEA conference and the Commonwealth Law Conference on the subject in Hong Kong next year.

THE EDINBURGH PLAN OF ACTION FOR THE COMMONWEALTH FOR THE DEVELOPMENT, PROMOTION, AND IMPLEMENTATION OF THE COMMONWEALTH (LATIMER HOUSE) PRINCIPLES ON THE ACCOUNTABILITY OF AND RELATIONSHIP BETWEEN THE THREE BRANCHES OF GOVERNMENT

PREAMBLE

REAFFIRMING the Commonwealth (Latimer House) Principles endorsed by Commonwealth Heads of Government at Abuja in 2003, and

REAFFIRMING the importance of implementation of the Plan of Action for Africa adopted at Nairobi in 2005 not only in Africa but in the wider Commonwealth and recognising the special circumstances of smaller and under resourced jurisdictions,

NOTING that,

(1) while good practice in implementation of the Principles has developed in several jurisdictions, there have been a number of cases of the violation of the fundamental principle that:

‘Each Commonwealth Country’s Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability’ (CLHP-I²);

(2) it has not proved possible to establish, either within or outside official Commonwealth channels, an effective and systematic procedure for assessing both good and bad practice in terms of compliance with the Principles;

(3) while the Principles have been widely circulated and discussed at numerous Commonwealth gatherings there remains ignorance of their importance among government officers, parliamentarians, lawyers, judicial officers and members of civil society;

(4) each new generation of government officers, parliamentarians, lawyers, judicial officers and members of civil society has to be alert to the imperatives of, and balance between, the independence and accountability of the judiciary, parliament and the executive;

(5) there is a need to make better provision for the continuing implementation and assessment of the Principles across the Commonwealth,

representatives of the Commonwealth Lawyers’ Association (CLA), Commonwealth Legal Education Association (CLEA), the Commonwealth Magistrates’ and Judges’ Association (CMJA) and the Commonwealth Parliamentary Association (CPA) and Law Officers, meeting at the Scottish Parliament in Edinburgh on 6 & 7 July 2008:

HAVE RESOLVED TO ADOPT the following provisions for implementation and assessment of the Principles:

1. Relationship Between the Three Branches of Government

² CHLP = Commonwealth (Latimer House) Principles on the Accountability of and Relationship Between the Three Branches of Governments

1.1 General

The Principles specify that "Each Commonwealth Country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability." (CLHP- I)

ACTION:

The partner organisations (CLA, CLEA, CMJA and CPA) should assist the Commonwealth Secretariat by the establishment of a Standing Committee for the purpose of gathering relevant information, reporting on implementation of the Principles, best practice and areas of concern to inform the deliberations of the Commonwealth Ministerial Action Group. Other civil society organisations should be encouraged to assist the Standing Committee in gathering relevant information.

Governments should be encouraged to provide reports on the implementation of the Principles in their jurisdictions at each Heads of Government Meeting, with particular emphasis on best practice and challenges faced, as part of the rule of law mandate of the Commonwealth.

The Commonwealth Secretariat should:

- **collate information on the implementation of the Principles on an ongoing basis;**
- **provide regular reports to Commonwealth Law Ministers, Senior Officials, Heads of Judiciary and Speakers of Parliament; and**
- **promote peer review of compliance with the Principles on a regional basis.**

All parliamentarians, judicial officers and public servants, on election or appointment, should be given awareness training on basic constitutional principles and their primary roles in the constitutional process.

Meetings between representatives of the three branches of government should be organised on a regular basis, in their respective jurisdictions, in order to promote better understanding of each other's roles.

- **The Commonwealth Secretariat should assist in facilitating these exchanges.**
- **The CPA should continue its seminars for newly elected parliamentarians.**
- **The CMJA should expand its existing programmes to newly appointed judicial officers with specific emphasis on the Principles.**
- **The Commonwealth Secretariat should assist in facilitating similar programmes for the public service.**

1.2 Independence of Parliamentarians

"Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference"
(CLHP - III)

ACTION:

Remuneration packages for parliamentarians should be determined by an independent process.

Parliamentarians should have equitable access to resources commensurate with their responsibilities.

Parliaments should have control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances.

1.3 Independence of the Judiciary

"Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought." (CLHP -IV.3)

ACTION:

The allocation of resources by Parliament, for the judiciary and the running of the courts, should be made following consultation between the Head of the Judiciary and the relevant minister.

Appropriate dispute resolution mechanisms should be put in place to deal with any disputes arising in relation to the allocation of resources.

There remain jurisdictions where adequate resources have not been made available for judicial training, including training on basic constitutional issues. Such resources should be made available and programmes established for judicial training under the control of the Head of the Judiciary.

1.4 Gender and Diversity in Governance

"Merit and proven integrity should be the criteria for eligibility for appointment to public office" AND "Measures may be taken where possible and appropriate, to ensure that the holders of all public offices generally reflect the composition of the community in terms of gender, ethnicity, social and religious groups and regional balance." (CLHP- V.a and V.b)

ACTION:

Bearing these criteria in mind and also that the Commonwealth has not yet achieved its target of having women in at least 30% of political and decision-making positions, the respective branches of government should strive to improve the representation and participation of women and increase diversity in the public sphere in line with Commonwealth standards on gender and diversity. In particular:

- (1) Those responsible for recommending judicial appointments, should, through public information programmes, broad advertising of judicial vacancies, and by adapting judicial working conditions where, appropriate, encourage women and those from diverse backgrounds to apply for judicial appointments;**
- (2) Parliaments should engage in disseminating better quality information about the role of parliamentarians and should develop practices that encourage women to stand for Parliament and to become candidates for leadership roles in Parliament;**

- (3) Parliaments should adopt codes of conduct and standing orders which outline clearly the importance of the respect for the dignity of all parliamentarians and regulate the behaviour of parliamentarians towards each other. Speakers should provide clear rulings as to acceptable behaviour in the legislature;**
- (4) Governments should work with civil society to encourage gender balance and diversity at all levels.**

2. Good governance and accountability

The Commonwealth (Latimer House) Principles state that "Parliaments and governments should maintain high standards of accountability, transparency and responsibility in the conduct of all public business." (CLHP-VII.a)

ACTION:

2.1 Elections:

Bearing in mind the importance of the proper conduct of the electoral process to the realisation of the Principles:

- All branches of government have responsibility for lawful and timely conduct of that process.**
- The Executive must ensure that there is an independent and autonomous electoral commission with powers and security of tenure guaranteed by statute. All Commissioners should be fully conversant with the Commonwealth's fundamental values, including the Principles. In observing elections, the Commonwealth Secretariat should continue to ensure that the members of the Observer Missions are fully aware of the Principles and actively apply them in their observations.**
- All candidates for election should be fully aware of the Principles.**
- Judicial processes should be given appropriate expedition when hearing and determining cases relating to elections in order to guarantee the legitimacy of the election process.**
- Determinations should be scrupulously respected.**

2.2 Parliamentary Oversight and the Role of the Public Accounts Committees ("PACs")

ACTION:

PACs need to strengthen their role as oversight bodies and Parliaments should improve the effective functioning of these committees.

The role of PACs should be reinforced by constituting them into Standing Committees of Parliament, where this is not already the case. Membership of the PACs should be as diverse as possible, free from party interference and, where possible, not dominated by any party.

Adequate and appropriate material and human resources should be provided to them.

Model rules on the functioning, powers and procedures of PACs should be developed by the Commonwealth Secretariat and the CPA for use by Commonwealth parliaments.

2.3 Judicial accountability and confidence building

“Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity.” (CLHP VII-b)

ACTION:

The Heads of the Judiciary should submit regular reviews to Parliaments on the financing and administration of the courts.

The judiciary should continue to develop and review their codes of conduct/ethics on a regular basis.

Information on the complaints and disciplinary procedures in relation to judicial misconduct should be publicly available.

2.4 Civil Society

“Parliaments and governments should recognise the role that civil society plays in the implementation of the Commonwealth’s fundamental values and should strive for a constructive relationship with civil society to ensure that there is broader opportunity for lawful participation in the democratic process.” (CLHP-X)

ACTION:

Bearing in mind that mutual trust is an essential ingredient if meaningful engagement of civil society in governance is to be realised:

- 1. Positive steps should be taken to ensure the involvement of civil society in informing decision-making processes at community, national, regional and international level;**
- 2. Civil society organisations should be engaged to proactively promote the Principles;**
- 3. Governments should not inhibit civil society organisations’ ability to access funding both nationally and internationally.**

2.5 An Independent Legal Profession

“An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.” (CLHP - IV-d)

ACTION:

Bearing in mind that the legal profession is a key partner in the promotion of democracy and governments should see them in that role, the legal profession should:

- 1. maintain and promote the highest standards of excellence and integrity;**
- 2. support the legislature by participating fully in consultative processes;**
- 3. promote and assert the independence of the courts;**
- 4. speak out against improper administrative action or lack of action; and**
- 5. help to create public awareness of legal issues, particularly relating to ethics and human rights.**

In all these matters, the profession should have regard to its social responsibility and avoid being used as a tool of partisan politics.

The CLA should facilitate programmes for the legal profession designed to enhance awareness of the Principles.

2.6 Role of the Media

“Government’s transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs.” (CLHP -IX b)

ACTION:

Legislation should provide mechanisms to ensure equitable access to electronic and print media for all election candidates at all levels.

Transparency and accountability is dependent upon freedom of information. Governments should abide by the Commonwealth principles on freedom of information and should introduce appropriate enabling legislation where this has not already been done. Governments should also provide adequate resources and systems to make information accessible.

Heads of Judiciary should be encouraged to liaise with the media and inform them on the affairs of the judiciary and the principles of judicial independence.

3. Combating Corruption

“The promotion of zero tolerance for corruption is vital to good governance. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process” (CLHP IX)

“Ministers, Members of Parliament, judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence.” (CLHP VII)

ACTION:

3.1 Proper exercise of executive power

Governments should be encouraged to establish independent anti-corruption processes for all aspects of public administration and facilitate their independent and effective operation.

3.2 Combating corruption in the judiciary

“An independent, impartial, honest and competent judiciary is integral to the upholding the rule of law, engendering public confidence and dispensing justice.” (CLHP IV)

The Commonwealth Secretariat is encouraged to re-issue and actively promote the Conclusions of the Commonwealth Judicial Colloquium on Combating Corruption within the Judiciary (“Limassol Conclusions”) in conjunction with the CMJA.

3.3 Combating corruption in Parliament

Parliaments should enact financial disclosure legislation and develop and implement codes of conduct requiring declaration of income, assets and liabilities.

4. Promotion of the Principles

ACTION:

A study of the Commonwealth's fundamental values should be included in civic education courses in schools. The Commonwealth Secretariat, in conjunction with the partner organisations, should sponsor the production of a version of the Principles which is accessible to the young.

Universities and law schools should be encouraged to include the study of the Commonwealth's fundamental values, and in particular the Principles, in their curricula for political and legal studies. The CLEA should assist universities and law schools in devising appropriate curricula.

The four partner organisations should ensure the wide dissemination throughout the Commonwealth of the Principles, the Guidelines, the Nairobi Plan of Action, and this document in user-friendly formats.

5. Implementation of the Plan

The Nairobi Plan of Action for Africa states:

“Governments are urged to establish mechanisms to monitor and evaluate the implementation of the Plan of Action in their respective jurisdictions.

Governments should accept the responsibility to provide the resources required to enable Parliaments, Judiciaries and oversight institutions and bodies to properly discharge their functions.

The Secretariat is committed to coordinate and streamline the implementation of the Plan of Action.

The Secretariat, together with Governments and partner organisations will facilitate monitoring of the implementation of the Plan of Action.

The Secretariat will continue to facilitate capacity building programmes and to develop and integrate the Commonwealth (Latimer House) Principles into its programmes.

The Secretary-General of the Commonwealth Secretariat will report on the implementation of the Plan of Action to Heads of Governments, appropriate Ministers, and to meetings of senior officials.”

ACTION:

These commitments should be extended to the rest of the Commonwealth pursuant to the proposals contained in Section 1.1 of this document.

*Scottish Parliament, Edinburgh
7 July 2008*

The CLEA presented the following report to the Meeting of Commonwealth Law Ministers.

COMMONWEALTH LEGAL EDUCATION ASSOCIATION

Activity Report 2006-2008

Founded in 1971 the CLEA has as its broad objectives

- fostering and promoting high standards of legal education in the Commonwealth;
- strengthening links between legal educators;
- disseminating information and literature concerning legal education and research;
- publishing and supporting the publishing of legal materials, particularly for the benefit of law schools in developing Commonwealth countries.

The Association is a Commonwealth-wide body with regional and national Chapters in South Asia, Southern Africa, West Africa, the Caribbean, India, Pakistan, Nigeria, Sri Lanka and the UK. Membership is open to individuals, law schools and other institutions concerned with legal education and research.

The affairs of the Association are managed by an Executive Committee that is broadly representative of the Commonwealth. A list of current EC members is provided at the end of this section. The administration of the Association is undertaken by the General Secretary, Selina Goulbourne who took over from John Hatchard in September 2007.

The Association has a six point *Programme of Action* designed to achieve sustainable improvement in legal education throughout the Commonwealth:

A. Developing human resources

- Training of law teachers
- Development of and support for research

B. Developing non-human resources

- Improving law library facilities
- Developing the use of electronically produced information

C. Curriculum Development

- Developing new law courses in areas relevant to Commonwealth countries
- Exchanging information and experiences on the development of new and existing law courses

D. Professional training

- Strengthening links between law schools and vocational training institutions
- Addressing the needs of vocational training institutions

E. Strengthening links between Commonwealth law schools

In carrying out this Programme of Action, the Association undertakes a wide range of activities.

PROGRAMMES 2006-8

Projects

The British Overseas Territories Human Rights Capacity Building Project

In 2007 the CLEA commenced work on this four-year collaborative project with the Commonwealth Foundation and the Commonwealth Human Rights Initiative. Funded by the United Kingdom Department for Foreign and International Development (DFID), the project seeks to enhance the observance of human rights in the British Overseas Territories on the Caribbean, Pacific and South Atlantic in a manner consistent with international standards. The CLEA has now completed the interim report on the Legal Framework within the British Overseas Territories, which is currently being disseminated to stakeholders in the overseas territories.

Publications

The Association publishes a range of books and periodicals. These include three regular publications:

- *Commonwealth Legal Education*. This is published three times a year and contains news and articles about law and legal education developments in the Commonwealth. It is sent free of charge to members and to all known law schools and law libraries in the Commonwealth. It is also available on-line from the CLEA web site www.cleaonline.org. Copies will be available for inspection by Law Ministers.
- *Journal of Commonwealth Law and Legal Education*. Launched in 2002 and published twice a year, this is the Association's own fully refereed journal. It is edited by Aurora Voiculescu and Gary Slapper of The Open University and published by Taylor & Francis. Copies will be available for inspection by Law Ministers.
- *Directory of Commonwealth Law Schools*. This contains details of over 800 Commonwealth law schools and research institutions as well as the texts of all major Commonwealth declarations. The 4th edition, edited by John Hatchard, was published by the CLEA in November 2007. Copies will be available for inspection by Law Ministers.

www.cleaonline.org

In 2007 the CLEA website moved to a new home on the Commonwealth Legal Information website. This will enable it to be developed further and be in a central location which facilitates ready access to law materials relating to the Commonwealth.

Conferences/Seminars

The Association organises/co-sponsors a wide range of conferences and seminars. These cover topics such as Administrative law and justice; Law and Development; Human Rights; and Just and Honest Government as well as on a range of legal education issues.

Recognising that legal education needs and interests vary around the Commonwealth, the Association has launched a series of regional conferences/meetings designed to enable academics and practitioners from a particular region to meet regularly to discuss matters of common concern.

The 2007 CLEA conference was held at the Kenya Law School, Nairobi on the theme “Developing Legal Education in the Commonwealth: Current Issues”. Participants from all the CLEA regions benefited from the collegial setting and from the participation of a large number of students from the Kenya Law School.

The 2006 South Asia Regional Conference was held in Quetta, Pakistan. The next regional conference will be held in Sri Lanka in June 2008 on the theme “Legal Education towards a value-based system of Law”.

In 2008 the CLEA Southern African Chapter hosted, jointly with the CLEA South Asia (India) Chapter and the Faculty of Law, University of KwaZulu-Natal, an Indo-South African Social Justice Symposium attended by 16 senior judges from India, 6 from South Africa and a number of senior barristers and legal academics from both countries.

Curriculum Development Project

The Association continues to work on developing new law curricula that reflect both the importance of Commonwealth jurisprudence and the need for law teachers to equip their students to meet the demands of the 21st century lawyer.

- *Model Human Rights Curriculum for Commonwealth Law Schools*: This was revised and updated in 2006. This is available on the CLEA website.
- *Combating Transnational Crime: International Cooperation in Criminal Matters*: This was revised and updated in 2007. This is available on the CLEA website.
- *Corruption and Misuse of Public Office*: This is currently being developed.
- *Islamic Law*: This project was initiated at the 2005 CLEA conference in Greenwich. The project moved to a new phase in 2006 with the first international workshop funded by the Commonwealth Foundation and hosted jointly by CLEA and the UKCLE at the University of Warwick. The 2007 CLEA conference in Nairobi provided an opportunity to involve Commonwealth academics from India, Malaysia, Nigeria and Tanzania. The project now has a bank of well-trying and tested materials from Commonwealth regions, which will form the basis of a comparative curriculum.

Developing activities for students studying law

The Association places considerable emphasis on involving those studying law in Commonwealth activities. Its flagship projects are:

- Commonwealth Law Moot. This is held biennially with the 2007 competition being held in Kenya. The competition is particularly noteworthy in that it brings together teams from around the Commonwealth to deal with a problem of particular contemporary importance to Commonwealth states.
- A South Asia CLEA Moot competition is also organised regularly. In 2007 it was held in India whilst the 2008 event will be held in Sri Lanka.
- An important new initiative was the holding of the 1st CLEA Law Students Conference in Kerala, India in 2006. This was organised by the CLEA (India) Chapter. On the topic “Global Legal Education: Issues and Challenges”, this brought together law students from Bangladesh, India, Pakistan and Sri Lanka. In June 2008, Sri Lanka hosted the conference on the theme “Legal Education towards a value-based system of Law”. These events have proved an ideal opportunity for faculty and students in the region to explore avenues by which values can be integrated into the legal education curriculum in a diverse and challenging global legal environment.

- Commonwealth Student's Essay Competition. This is held biennially and is open to any student studying law at the undergraduate level. The 2007 competition was won by a student from the Sri Lanka Law College

Strengthening the Harare Commonwealth Principles

The Association continues to work with the Commonwealth Secretariat and three other Commonwealth professional organisations, the Commonwealth Magistrates' and Judges' Association, Commonwealth Lawyers Association and Commonwealth Parliamentary Association on the development of the *Latimer House Guidelines* and the *Commonwealth Principles on the Accountability of and Relationship between the Three Branches of Government*.

Working with the Commonwealth Secretariat

The Association continues to work closely with the Commonwealth Secretariat in a mutually beneficial relationship. It also greatly appreciates the support and assistance that it receives, particularly from the Legal and Constitutional Affairs Division and the Commonwealth Foundation.

Other activities

- The CLEA continues to contribute cases and other materials to *Cases and Materials relating to Corruption*. This is a project run by Tiri, an international civil society organisation. This project has led to the publication of a unique collection of cases, many of which are otherwise inaccessible. The series is available on the CLEA website: www.cleaonline.org
- The CLEA works closely with the Commonwealth Human Rights Initiative and participated in its 20th Anniversary Conference 'Human Rights and Human Wrongs' in September 2007.

CLEA Executive Committee (as at 1 June 2008)

President: David McQuoid-Mason (South Africa)

Vice-Presidents: Jo Silva (Sri Lanka); Peter Slinn (UK); Seth Bimpong-Buta (Ghana); John Hatchard

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MEETING OF COMMONWEALTH LAW MINISTERS

EDINBURGH, 7 – 10 JULY 2008

COMMUNIQUÉ

1. Commonwealth Law Ministers met in Edinburgh, from 7 to 10 July 2008. The Meeting was opened at a ceremony in the Scottish Parliament on 7 July 2008, at which the speakers were the Presiding Officer, Mr Alex Fergusson MSP; the Deputy First Minister of Scotland and Cabinet Minister for Health and Wellbeing, Ms. Nicola Sturgeon MSP; the Attorney-General, the Rt. Hon the Baroness Scotland of Asthal, QC; and the Commonwealth Secretary-General, H. E. Mr Kamallesh Sharma.

2. The plenary sessions of the Meeting were held at the Sheraton Hotel, Edinburgh, and chaired by the Lord Advocate, the Rt. Hon. Elish Angiolini. Ministers expressed their sincere appreciation to the United Kingdom, and the Scottish Ministers and team, for the hospitality accorded to them and for the excellent arrangements made for the Meeting by their hosts and the Commonwealth Secretariat.

SPECIAL SESSION ON THE RULE OF LAW

3. A High Level Panel, consisting of a broad cross-section of Commonwealth Law Ministers and Attorneys-General, was convened to draw on its individual and collective experience to discuss, in a Special Session, the theme of this Meeting: The Developing Role of the Justice Minister in the Light of Challenges Facing the Rule of Law in the Commonwealth.

4. The Special Session received two papers, one on enhancing and further developing Commonwealth support for the rule of law, and the other on the developing role of the Justice Minister in the light of challenges facing the rule of law in the Commonwealth. The former paper made reference to developments in the promotion of the rule of law on the international plane and underscored the need to further refine the principles underpinning the rule of law programme of the Commonwealth Secretariat, with a view to continuing to strengthen outcomes and results. In the context of the two inter-related objectives of the Commonwealth Secretariat's current strategic plan, namely the promotion of democracy and development, there was a need to prioritise the Secretariat's rule of law activities in the light of scarce resources.

5. In their deliberations, Ministers emphasised the importance of the following topics: the relationship between the rule of law and the benefits it secures to the people through good governance; enhancing the independence of the judiciary; strengthening prosecuting authorities; police and prisons reforms; strengthening the legal profession; access to justice; law reform and combating corruption.

6. Law Ministers agreed that, following appropriate consultation, an Expert Group should be constituted to consider how the Commonwealth Secretariat's assistance activities on the rule of law could continue to remain relevant, co-ordinated and effective.

7. The latter paper provided the basis for the High Level Panel deliberations, which covered many important contemporary issues relating to the diverse challenges

facing the rule of law, including the central role of the Justice Minister in defending the independence of the judiciary, facilitating international cooperation in the light of differing legal regimes and governmental structures, and strengthening the interaction of Law Ministries with other stakeholders in the development and implementation of legal policy.

8. The Meeting adopted the Edinburgh Statement on Enhancing the Rule of Law in the Commonwealth (annexed) which commits Member States to enhancing the rule of law, having regard to the individual circumstances of each Member State.

ACTIVITIES OF THE COMMONWEALTH SECRETARIAT IN THE LEGAL FIELD

9. Ministers received a comprehensive report reviewing the work of the Legal and Constitutional Affairs Division and its sister divisions within the Commonwealth Secretariat over the last three years. Ministers expressed appreciation for the report and all the work done to meet requests by Member States for assistance in meeting their particular needs in the legal field.

LEGISLATIVE DRAFTING

10. Law Ministers considered the perennial problem of the shortage, recruitment and retention of legal drafters and acknowledged that it was not enough to focus on training alone. This problem required a more sustainable approach based on the adoption of different strategies under broad headings which included: institutional strengthening, recruitment and retention of drafters and capacity building.

11. Law Ministers however recognised that the implementation of these strategies depended on the legal and administrative circumstances and priorities of each Member State.

12. Law Ministers welcomed the Legislative Drafting Manual for the Africa region and the Model Legislation Guidelines for Pacific States which were placed before them, and approved them for reference, adaptation or adoption in Member States as they deemed appropriate.

JUVENILE JUSTICE

13. At their Meeting in Ghana in 2005, Law Ministers had asked the Secretariat to further examine good practice in juvenile justice and to bring forward recommendations which could be implemented in Commonwealth Member States. Pursuant to this request, Ministers received a paper outlining a basic framework for establishing and implementing a functional juvenile justice system for Commonwealth Member States. A number of countries had recently enacted, or were in the process of enacting, juvenile justice legislation, and Law Ministers exchanged information about this and other recent developments in their countries.

14. Law Ministers emphasised the need for flexibility, in light of resource and other constraints, concerning the separation of juveniles from adults in detention and reiterated that the best interests of the child shall be a primary consideration.

15. The Meeting encouraged the Commonwealth Secretariat to continue to support Member States in their obligations towards the United Nations Convention on the Rights of the Child, which all Commonwealth Member States had signed, and

recommended the Basic Framework for the Implementation of a Functional Juvenile Justice System for implementation.

ADMINISTRATION OF JUSTICE

16. Ministers acknowledged that mechanisms to improve court administration, including training and innovation, played an important role in enhancing the efficiency of the justice system. Law Ministers were able to offer insights from the experience of their own countries on measures which had been taken to improve case-flow management and courtroom administration.

17. The Meeting welcomed the work already undertaken by the Commonwealth Secretariat in this area and approved the Model Court Handbook which could be adapted to meet the needs of particular legal systems, as a guide towards developing better qualified court personnel.

HARARE SCHEME

18. The Meeting reaffirmed the importance of the Harare Scheme on Mutual Assistance in Criminal Matters as a voluntary arrangement which facilitates Mutual Legal Assistance between Member States in the Commonwealth. The Meeting considered the possible amendment or replacement of the Harare Scheme on the basis of a paper prepared by the Secretariat, which outlined the relative advantages and disadvantages of a Convention and an updated Scheme.

19. While Ministers were not convinced that the Harare Scheme should be replaced by a Convention, they recognised that the Scheme would benefit from a comprehensive review in the light of developments on international cooperation. Ministers requested the Commonwealth Secretariat to undertake such a review, the outcome of which was to be presented to Senior Officials at their next meeting.

20. Law Ministers underscored the continued importance of political will on the part of Commonwealth Member States to implement the provisions of the Harare Scheme and encouraged Member States that had not yet done so to pass the necessary domestic legislation. To facilitate this implementation process, Law Ministers requested the Secretariat to provide assistance to Member States by developing model legislation on Mutual Legal Assistance.

INTERCEPTION OF COMMUNICATIONS

21. Ministers received a paper on the work of the Commonwealth Secretariat in the area of interception of communications, which provided a report on four regional meetings and one consultation held by the Secretariat in the course of 2006-2007, and from which a number of key recommendations emerged. Ministers took note of these recommendations relating to, *inter alia*, the production of general and specific guides and training. The Secretariat indicated that no further work in this area was, at present, contemplated, but any specific requests for assistance on the topic would be addressed.

STRATEGIES TO COMBAT CORRUPTION

22. Law Ministers reaffirmed their commitment to root out systemic corruption, including extortion and bribery. They expressed appreciation for the work of the Expert Working Group, which was convened in London in 2006 to draft a legislative

and technical guide to the United Nations Convention Against Corruption (UNCAC), focusing on the particular needs of Commonwealth Member States.

23. The Meeting approved the legislative and technical guide on UNCAC to be made available to Commonwealth Member States for implementation in accordance with their constitutions and the fundamental principles of their legal systems. Law Ministers agreed that the Guide should be subject to periodical review to ensure that it remains current.

ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM

24. Law Ministers received a paper outlining the work of the Secretariat on anti-money laundering and countering the financing of terrorism (AML/CFT) and approved the programme of future work contained therein, which included: supporting national, regional and sub-regional AML/CFT initiatives; assisting in the upgrading/enactment of AML/CFT laws in compliance with the 40+9 recommendations of the Financial Action Task Force; facilitating the development of and support for Financial Intelligence Units (FIUs) in Member States; and providing training in this area.

MODEL LEGISLATIVE PROVISIONS ON “WHISTLEBLOWING”

25. As part of the Commonwealth Secretariat’s work on combating corruption, a set of model legislative provisions on “whistleblowing” was prepared and presented to Law Ministers. The provisions sought to provide a framework of protection for persons who report, in good faith and on reasonable grounds, corruption and other wrongdoing. Law Ministers were informed that the Commonwealth Secretariat worked closely with a number of Commonwealth States and liaised with the United Nations Office on Drugs and Crime (UNODC) in developing these Model Legislative Provisions on “Whistleblowing”, and expressed their support for the adoption of these provisions.

INTELLECTUAL PROPERTY RIGHTS

26. In the context of developing appropriate responses to piracy and counterfeiting, Ministers considered a draft Revised Commonwealth Framework of Co-operation on the Enforcement of Intellectual Property Rights (IPRs). They also received an information paper from the World Intellectual Property Organisation.

27. Law Ministers recognised the importance of these issues and exchanged information about the experience and legislative provisions in their countries. They noted that, while the Revised Commonwealth Framework did not create any new rights or obligations, it contained some practical measures for cooperation in this area and allowed room for sufficient flexibility. Ministers agreed to adopt the Revised Commonwealth Framework.

COMMONWEALTH ACTION IN PRIVATE INTERNATIONAL LAW

28. A paper outlining Commonwealth practice in the recognition of foreign judgments was presented to Law Ministers pursuant to their request, made at their Meeting in Accra in 2005, for the Commonwealth Secretariat to review the intra-Commonwealth arrangements for the recognition and enforcement of money-judgments.

29. Ministers agreed to extend the mandate given at their Meeting in 2005 and requested the Commonwealth Secretariat to undertake further work which would explore these complex issues and take account of the work recently undertaken in Commonwealth Member States and in other international fora. The Secretariat was requested to bring forward recommendations to the next meeting of Senior Officials.

PROVISION OF LEGAL AID AND ASSISTANCE

30. Ministers recognised the importance of ensuring access to justice for all members of society and the critical role played by the provision of legal aid and assistance, including pro bono services, to those who cannot afford legal services. The enhanced provision of legal assistance was the subject of current legislation in a number of Member States.

31. The Meeting reaffirmed the key role played by Law Ministers in providing leadership and coordination in this area, as well as strengthening and encouraging Law Societies and Bar Associations to offer, on a sustainable basis, legal aid and assistance to those who require it, including pro bono services.

32. The Meeting heard of a number of other initiatives, taken by the legal profession, universities, public advocates and voluntary sector organisations in Commonwealth Member States, to encourage the provision of legal aid and assistance, and requested the Commonwealth Secretariat to engage with Law Societies and Bar Associations through the relevant authorities to build their capacity in making such services more widely available. The Law Ministers committed themselves to promote pro bono activities in their own country.

OVERCROWDING AND DETENTION IN PRISONS

33. Law Ministers received a paper examining the issues of overcrowding in prisons and the excessive use of pre-trial detention in many countries, which elaborated an integrated strategy to address these issues, taking into account the role of the prison services, the police, the courts and other stakeholders.

34. In their discussions, Law Ministers shared the experience of their own countries in tackling these issues and made reference to the increasing pressure from the public and the media for the use of pre-trial detention, longer sentences and stricter bail and parole provisions. They also noted that reforms in this area had to be considered in light of competing demands for financial resources in other areas, such as health and education.

35. Law Ministers acknowledged that the Meeting of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions, held in 2007, had given a mandate to the Commonwealth Secretariat to develop initiatives promoting alternative sentencing. Law Ministers took note of this mandate and requested the Commonwealth Secretariat to work with Commonwealth Member States to formulate a strategy towards reducing the overall number of prisoners held in detention, with due regard to legitimate concerns of victims of crime, for consideration by Senior Officials at their next meeting.

ACCESS TO FINANCE

36. The Preliminary Draft Model Law on Leasing, drafted by the International Institute for the Unification of Private Law (UNIDROIT), was brought to the attention

of Law Ministers in the context of providing access to finance through leasing arrangements. Ministers agreed that leasing provided an attractive alternative to other forms of access to finance for entrepreneurs, as it allowed for more flexibility in the acquisition of equipment and other capital assets. They requested the Commonwealth Secretariat to continue collaborating with UNIDROIT in developing the Model Law and promoting it in Commonwealth Member States. This collaboration should take into account initiatives in other international fora, the existing infrastructural arrangements for micro-credit and the particular priorities and circumstances of Member States.

MODEL FISCAL RESPONSIBILITY FRAMEWORK

37. Law Ministers recognised the importance of developing a regulatory fiscal framework for effective debt management in Member States, based on transparent and robust fiscal policies. They agreed that such a framework must leave room for flexibility and take account of the particular circumstances of Member States, and developments in international fora in this area. Law Ministers recognised that they had a contribution to make to work in this area but took the view that the matter was primarily one for Commonwealth Finance Ministers.

ENGAGEMENT WITH JUSTICE AGENCIES

38. The Meeting received a paper from the Commonwealth Secretariat on engaging with justice sector agencies, including Social Welfare agencies, Police, Prosecution agencies, Judiciary and Prison authorities, in the context of strengthening criminal justice systems. Law Ministers acknowledged the desirability of a holistic approach, which promoted co-ordination between such agencies. Ministers drew insights from the experience of their own countries, where such policies had been implemented, and recognised that such a methodology ensured the most efficient use of resources in criminal justice systems. They also heard a presentation by the Commonwealth Human Rights Initiative.

39. Law Ministers requested the Commonwealth Secretariat to work with Member States to enhance the holistic and cross-sector approach in criminal justice systems. They further requested the Secretariat to undertake a comparative study of best practices in the criminal justice systems of Member States, with an emphasis on police and prison reform, for consideration by Senior Officials at their next meeting.

REVIEW OF THE COUNTER-TERRORISM PROGRAMME

40. The Meeting expressed appreciation for the breadth of work carried out by the Commonwealth Secretariat in assisting Commonwealth Member States to implement United Nations Security Council Resolution 1373, and in organising regional Training of Trainers and Specialists (TOTS) Workshops. Law Ministers received a paper which identified a range of future activities which could be undertaken, including a further TOTS Workshop for the Pacific region and support for National Training Programmes. They encouraged the development of the work of the Commonwealth Secretariat and its collaboration with regional and international organisations. Ministers reported on the development in their countries of legislation and strategies to combat the spread of extremist ideologies, radicalisation and recruitment to terrorism.

41. Law Ministers acknowledged that the work undertaken by the Secretariat was based on the Commonwealth Plan of Action on Terrorism (CPAT), which had been

recommended by the Commonwealth Committee on Counter-Terrorism (CCT), and which had last been reviewed in 2003. They recognised that since this review, a number of CPAT's objectives had been partially or fully achieved and that the global security landscape had changed significantly, notably with regard to cyber-terrorism and other developments. Moreover, a number of new initiatives had emerged in the area of counter-terrorism, including the UN Global Strategy on Counter-Terrorism, which was launched in September 2006.

42. Ministers noted that Commonwealth Heads of Government in 2007 had welcomed the offer made by Sri Lanka to host a ministerial meeting on counter-terrorism. Having recognised the need for the CCT to be reconvened with a view to updating CPAT, Law Ministers expressed their appreciation to Sri Lanka for the offer it made at this Meeting to host the CCT at a time to be agreed.

PROLIFERATION OF SMALL ARMS AND LIGHT WEAPONS

43. Law Ministers recalled that Commonwealth Heads of Government in November 2005 expressed their deep concern over the illicit production, illegal trade and uncontrolled availability of small arms and light weapons (SALW). Ministers reiterated their concern over the proliferation of such weapons, which had a direct and destabilising effect on law and order, and which undermined national, regional and global peace and security by prolonging conflicts and hindering development.

44. Law Ministers requested the Commonwealth Secretariat to continue providing assistance to Commonwealth Member States in relation to the implementation of the United Nations Programme of Action on SALW and to the ongoing Arms Trade Treaty negotiations.

HUMAN TRAFFICKING

45. The Meeting heard a presentation on legal issues relating to human trafficking, both transnational and internal, which focused on the need for effective national and international strategies to address this heinous crime. The strategies would be based on the three pillars of prevention; protection of victims; and prosecution of traffickers.

46. Law Ministers provided an account of legislation criminalising human trafficking in their countries and outlined the measures that had been taken for the recovery of the proceeds of trafficking. They underscored the key role of regional and international cooperation in this area and welcomed the fact that most Member States had become parties to the United Nations Convention against Transnational Organised Crime and its Protocols against Trafficking in Persons and Migrant Smuggling.

47. They requested the Commonwealth Secretariat to develop a Commonwealth Plan of Action to Combat Human Trafficking, for future consideration by Senior Officials, which would take into account the work of other regional and international organisations.

PROSECUTION DISCLOSURE OBLIGATIONS

48. Law Ministers received a paper on prosecution disclosure obligations which identified a range of disclosure practices in criminal proceedings in the Commonwealth and beyond. In their deliberations, Ministers provided an account of the disclosure rules in their jurisdictions and stressed the importance of striking a

balance between prosecution disclosure obligations, and other critical considerations, such as witness protection, defence disclosure and the wider interests of justice. The Meeting approved the Commonwealth Secretariat's programme of work, including the undertaking of a comparative study of the approach to disclosure in criminal proceedings in Commonwealth Member States.

CIVIL SOCIETY ENGAGEMENT

49. The Meeting took note of a paper prepared by Commonwealth Civil Society Organisations with the assistance of the Commonwealth Foundation, which sets out proposals for expanding and enhancing civil society engagement with the Commonwealth Law Ministers. Ministers recognised the important contributions that CSOs can make to their work towards promoting democracy and good governance. Noting the diversity of CSOs, Law Ministers requested the Commonwealth Secretariat to prepare for the next meeting of Senior Officials proposals for modalities enabling Ministers to engage CSOs in their future meetings.

INFORMATION PAPERS

50. The Meeting had the opportunity to note a range of other issues, on the basis of information papers, which included the following topics:

a. International Humanitarian Law

The Meeting noted an information paper from the International Committee of the Red Cross which presented information as to ratification and implementation of the more important International Humanitarian Law (IHL) treaties by Commonwealth Member States and gave information about its model laws and the Second Commonwealth Red Cross and Red Crescent Conference on IHL. Information was also presented on International Disaster Response laws rules and principles.

b. Review of CARICOM Model Legislation on Gender Equality

The Gender Section of the Commonwealth Secretariat highlighted the value of model laws in influencing specific areas of gender equality. In calling attention to the review and Expert Group meeting, it was noted that Law Ministers may wish to consider further work in the areas of family maintenance, sexual harassment and sexual offences. The paper emphasised the need for clear definition of issues, accompanying model regulations and consideration of the socio-economic context. The Secretariat's work on gender culture and the law was elaborated and key points highlighted.

c. Dissemination of Legal Information: the Commonwealth Law Bulletin and Related Activities Report

The Meeting received a report on the strategy of the Commonwealth Secretariat to disseminate legal information in the Commonwealth. The report made reference to the work of the Secretariat in continuing to make the Commonwealth Law Bulletin more relevant and accessible to its readers. Ministers commended the Secretariat's activities in relation to holding a series of regional seminars on emergent international law issues, as a means to enhance the dissemination of legal information.

d. The Honourable Society of the Middle Temple

The Meeting took note of a paper presented by the Honourable Society of the Middle Temple outlining the educational and training standards, both for the legal profession and the judiciary, that the Honourable Society could provide in its contribution in sustaining the rule of law in the Commonwealth and making recommendations to strengthen and develop useful connections between the Honourable Society and the Commonwealth.

e. LexisNexis Global Initiatives in the Promotion of the Rule of Law

Law Ministers noted the work of LexisNexis towards publishing and developing primary sources of law, namely legislation and case law reports. The paper outlined the company's activities in this respect.

f. The "Venice Commission"

The Meeting took note of a paper from the "Venice Commission", which is a Council of Europe body of independent experts in constitutional matters, inviting Commonwealth Member States to participate in a Conference on Constitutional Justice to be held in January 2009.

STRATEGIES FOR FUTURE LAW MINISTERS MEETINGS

51. Ministers discussed the future direction for Commonwealth Law Ministers Meetings in the light of a strategy paper developed in response to their request, made at their Meeting in Trinidad and Tobago in 1999, that their Meetings should be clearly focused and should balance the tradition of sharing national experiences with the need to ensure time for adequate debate on emerging issues of importance.

52. Law Ministers expressed satisfaction with the format of the agenda where there is a Special Session based on a theme that is pertinent to Commonwealth Member States; a section which deals with recommendations from Senior Officials meetings; new topics, and information papers. Law Ministers emphasised the desirability for the meetings, and work between meetings, to focus on practical outcomes such as the preparation of model laws, implementation kits and action plans.

53. In relation to the periodicity of the meetings, Law Ministers expressed their views as to whether the Meetings of Commonwealth Law Ministers should be biennial or triennial. It was noted that the momentum in legal matters is continually accelerating and it was important that Law Ministers and their Senior Officials continue to be in a position to consider such matters in a timely manner.

54. Law Ministers requested the Commonwealth Secretariat to consult internally on the periodicity of other Commonwealth ministerial meetings, including on their format and impact on human and financial resources of the Secretariat, and to bring forward the matter for consideration by Senior Officials.

HUMAN RIGHTS

55. The Meeting noted the report by the Human Rights Unit (HRU) of the Commonwealth Secretariat on its activities to support the attainment of the Commonwealth's strategic goal of strengthening democracy and respect for human rights in Commonwealth Member States. These activities included assistance in the process of ratification and implementation of major United Nations human rights

conventions; strengthening National Human Rights Institutions; assisting Member States in preparing for Universal Periodic Review processes of the Human Rights Council; and training and awareness-raising activities. The Meeting reaffirmed the importance of such activities in the promotion and strengthening of human rights and encouraged the HRU to continue pursuing its work in this area.

REPORTS FROM PARTNER ORGANISATIONS

56. Ministers received written and oral reports from the Secretariat's partners in the legal field on their activities over the last three years: the Commonwealth Legal Education Association (CLEA), the Commonwealth Magistrates and Judges Association (CMJA), the Commonwealth Human Rights Initiative (CHRI), the Commonwealth Lawyers Association (CLA), the Commonwealth Parliamentary Association (CPA) and the Commonwealth Association of Law Reform Agencies (CALRAs).

57. Ministers were informed of the Commonwealth (Latimer House) Principles Colloquium, which was organised, in the ambit of this Meeting, at the Scottish Parliament, on 6 and 7 July 2008, by the CLA, CMJA, CLEA and the CPA with the support of the Commonwealth Secretariat, the Commonwealth Foundation and the host country, and which had formulated a final draft of an Edinburgh Plan of Action for the Development, Promotion and Implementation of the Principles.

ANY OTHER BUSINESS

58. The Commonwealth Secretariat noted the proposal by Kenya that the Secretariat should prepare a study on the effectiveness and independence of Commonwealth Election Observer Groups.

ANNEX

EDINBURGH STATEMENT ON ENHANCING THE RULE OF LAW IN THE COMMONWEALTH

The Law Ministers of the Commonwealth, at their Meeting in Edinburgh, Scotland in 2008:

RECALL:

that at Harare in 1991, the Commonwealth Heads of Government pledged to work for the protection and promotion of the fundamental values of the Commonwealth, namely democracy, democratic processes and institutions that reflect national circumstances, fundamental human rights, the Rule of Law and the independence of the judiciary, and just and honest government;

that at Abuja in 2003, the Heads of Government adopted the "The Commonwealth (Latimer House) Principles on the Accountability of and the Relationship Between the Three Branches of Government" (The Latimer House Principles), whose objectives are to provide in accordance with the laws and customs of each Commonwealth country an effective framework for the implementation by governments, parliaments and judiciaries of the Commonwealth's fundamental values.

REITERATE:

1. that “each Commonwealth country’s Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the Rule of Law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability” (Latimer House Principles). Therefore, in informing themselves of these principles, NOW STATE that in matters of good governance it is emphasised that the Rule of Law is to be looked at holistically in relation to all three Branches of Government without over-emphasising or under-emphasising any aspect thereof. In this manner the Rule of Law is enhanced and supported by effective, transparent and ethical governance through the actions of governments and their citizens and the provision of adequate and appropriate resources.
2. that the Judiciary requires adequate budgetary resources to fulfil its functions as contemplated in the Latimer House Principles.
3. that whilst upholding the independence of the Judiciary, best international and Commonwealth practices allow for appropriate mechanisms of accountability in respect of the Judiciary, including as regards issues of ethical conduct, disciplinary procedures, and the performance and effectiveness of courts.
4. that in those States in which a Minister of Justice or equivalent position has been established, such person can play a pivotal and balancing role within the Executive and Legislative structures relating to issues of the Judiciary, and when and where appropriate to represent or defend the Judiciary in the public arena from attacks on its integrity and independence.
5. that in recognising that there are different models of prosecutorial authority in the Commonwealth, agreed that the prosecutorial authority is responsible for the institution, continuation and termination of prosecutions in accordance with the letter and spirit of the Constitution and laws under which it operates. In States where another authority is granted the power to intervene or amend the decision of the prosecutorial authorities to prosecute or not, such power should be exercised in accordance with the law.
6. that access to justice is fundamental to the Rule of Law in protecting the rights of individual citizens.
7. that there are many aspects of access to justice. These include effective and efficient justice systems that are able to deliver outcomes for those who seek access to justice, the availability of adequate legal services for citizens provided by the State, and a legal profession that is encouraged to assist in the process of providing legal services to those unable to afford them.
8. that in the promotion of the ongoing and interlinked goals of achieving democracy and development, member countries should be supported –
 - (a) in preventing or resolving conflicts, strengthening democratic practices and the Rule of Law, and achieving greater respect for human rights; and
 - (b) in the formulation and implementation of legal activities and programmes for pro-poor policies for economic growth and sustainable development.

IN CONCLUSION:

The Law Ministers recognised that these commitments must be implemented having regard to the individual circumstances of each Member State and that there is a need for the Law Ministers to meet regularly to discuss matters

affecting their work, to exchange ideas and to set plans of action that will enhance the Rule of Law within the Commonwealth.

CLEA NEWS

THE COMMONWEALTH LAW MOOT

Hong Kong, 4th - 9th April 2009

The Commonwealth Law Moot is a biennial competition organised by the Commonwealth Legal Education Association. Teams invited to the Commonwealth Law Moot represent their regions – South Pacific, New Zealand, Australia, South East Asia, South Asia (India), South Asia (Sri Lanka, Bangladesh and Pakistan), Caribbean, South Africa, East Africa, West Africa, Canada and Europe.

The Commonwealth Moot 2007 was held at the High Court in Nairobi, Kenya, from 10th-12th September 2007. It was won by the Australian team from Macquarie University, Sydney which defeated the South African team from the University of KwaZulu-Natal in the Final, before a bench comprising Lady Justice Mary Arden of the Court of Appeal of England and Wales and Justices Kimaru and Kentish from Kenya.

The next Commonwealth Moot will be held in Hong Kong from 4th-9th April 2009 in conjunction with the Commonwealth Law Conference. The teams come from the regions of the Commonwealth and are selected either through a special competition or through a recognised mooting competition of breadth and quality.

Selection of teams –

- Australia: highest placed team in the Australasian Law Students Association (ALSA) Moot;
- New Zealand : highest placed New Zealand team in the ALSA Moot;
- South Pacific: highest placed Pacific team in the Pan-Pacific Moot;
- South East Asia (Malaysia, Singapore): contact the CLEA regional representative – Professor Kumaralingam Amirthalingam lawka@nus.edu.sg
- South Asia (India): contact the CLEA regional representative – Professor Siva Sivakumar cleaasia@yahoo.co.in
- South Asia (Pakistan, Bangladesh, Sri Lanka): contact the CLEA regional representative – Professor Mir Aurangzeb miraurangzeb@yahoo.com
- Caribbean: contact the CLEA regional representative – Ronnie Boodoosingh ronnieboodoosingh@yahoo.com
- South Africa; the highest placed South African law school team in the All Africa Moot.
- East Africa: the highest placed team from a Commonwealth East African country in the All Africa Moot;
- West Africa: the highest placed team from a Commonwealth West African

- country in the All Africa Moot;
- North America: the winning team in the Gale Moot
- Europe: the winning team from the English-Speaking Union Moot.

If you have any questions about the 2009 Commonwealth Moot please contact Ros Macdonald at r.macdonald@qut.edu.au.

CLEA SOUTH ASIAN CONFERENCE 2008

“Towards Value Based Legal Education”

The South Asian Regional Conference of CLEA was held in magnificent style in Colombo, Sri Lanka from 26th to the 28th of June 2008. Along with the main conference, a students' conference was also held in parallel as has been the practice since the first CLEA South Asian Regional conference in Trivandrum, India in 2002.

The venue for the conference was the Grand Oriental Hotel in the heart of the commercial area in the city overlooking the picturesque Colombo harbour. The Conference was well attended with representatives from all the constituent countries of the two South Asian chapters consisting of Bangladesh, India, Pakistan and the host Sri Lanka. There was also a delegate from South Africa. Indeed South African law academics have been taking a keen interest in the activities in the Region and have regularly taken part in all the CLEA conferences held in South Asia. Dr. Joe Silva, a Vice-President of the CLEA represented the Executive Committee.

The opening session took place on the 26th evening in the presence of a large number of distinguished invitees and the delegates. The Chief Guest was Hon. Sarath N Silva, Chief Justice of Sri Lanka and the Guest of Honour was Hon. C. R. de Silva, Attorney General who is also the Chairman and member respectively of the Council of Legal Education in Sri Lanka. Dr. W. D. Rodrigo, Principal, Sri Lanka Law College and President of the CLEA Sri Lanka Branch, also gave a welcome address. Dr. Joe Silva in his address conveyed the best wishes of the Executive Committee for the success of the conference and thanked the hosts namely CLEA Sri Lanka branch for the excellent arrangements and the publication of the conference papers as a book in an exquisite format including pictures of former conferences held in Sri Lanka, India and Pakistan. The Hon. Chief Justice traced the history of CLEA in Sri Lanka and the benefits the law teaching institutions and students received through CLEA membership. He also commended on the conference theme on incorporation of values into legal education. He cited the famous Latin maxim *Quis custodiet, ipsos custodes?* namely Who will guard the guards? He emphasised the vital role of the lawyers and judges in safeguarding fundamental values and liberties from abuse of power. The Hon. Attorney General too spoke on the role of CLEA in promoting high standards in legal education in the Commonwealth and the importance of conferences of this nature which serve as forum for interaction among law teachers and students, exchange of ideas and resources. The opening session concluded with a Sri Lanka cultural show performed by the dance troupe of the Sri Lanka army. Delegates enjoyed the variety entertainment that gave them an opportunity to have a glimpse of the rich cultural heritage of Sri Lanka.

The following two days were an extremely busy period for the delegates as it consisted of tight schedules of work from morning till evening. The topics under discussion ranged from Legal Education, Human Rights, Environment Law, Jurisprudence and Commercial Law. The presentations were well researched, incisive and thought provoking. At the end of each session there was an open forum where an opportunity was afforded to the participants to seek clarifications, present their views and interact with the fellow delegates.

It was not all work and no play as the delegates had the opportunity to attend sumptuous lunches and dinners hosted by the organisers and visit places of interest in and around Colombo. I am confident that the delegates were able to enrich their knowledge and experience and take back with them pleasant memories of Sri Lanka and her people.

A special word of thanks goes to the hosts; Dr. Rodrigo and his team for the excellent conference arrangements, the editor of the Conference book Mr. M. R. Rajmohan for that unique piece of work and their sponsors; Hatton National Bank, Sri Lanka Telecom, and the UNDP for their patronage that went a long way in making the conference a grand success.

It is hoped that some of the presentations will be published in future issues of the Newsletter.

Joe Silva
Vice-President, CLEA

CLEA SYMPOSIUM OF JUDGES FROM INDIA AND SOUTH AFRICA IN DURBAN DISCUSSES SOCIAL JUSTICE ISSUES

David McQuoid-Mason

The Faculty of Law, University of KwaZuluNatal, Durban, co-hosted with the Commonwealth Legal Association (Indian and South African Chapters), a symposium between judges from India and South Africa to discuss social justice issues on 31 May and 1 June 2008. The symposium was unique as it hosted the largest number of Indian judges ever to have visited South Africa for a single academic event.

The Indian delegation, led by the Chief Justice of India, the Hon Mr Justice KG Balakrishnan, consisted of five Supreme Court judges, four Chief Justices of state High Courts, six High Court judges, the Solicitor-General of India and a prominent Indian Senior Counsel. The South African judges were represented by Deputy-Chief Justice Dikgang Moseneke, Constitutional Court Justice Zac Yacoob, the Judge President of KwaZulu-Natal Mr Justice Vuka Tshabalala, five High Court judges from KwaZulu-Natal and one from the Western Cape. The meeting was also attended by eminent Senior Counsel, and other advocates, attorneys and academics from KwaZulu-Natal.

Chief Justice Balakrishnan opened the symposium by reminding participants that Durban was the place where the father of the Indian nation, Mahatma Gandhi, had spent two decades of his life before returning to India to liberate his country from British colonial rule. He also mentioned that India was first country to break off diplomatic relations with the apartheid regime. Recently India and South Africa have worked very closely on issues involving the World Trade Organisation, and matters affecting economic and commercial activities. Despite these developments there had been very little interaction between the legal fraternity in India and South Africa. Chief Justice Balakrishnan hoped that the social justice symposium would lead to more exchanges between the Supreme Court of India and the Constitutional Court of South Africa, as well as between the High Courts and law faculties of the two countries.

In his opening remarks, Deputy-Chief Justice Moseneke said that India and South Africa had a common history in a number of respects and faced similar developmental challenges. He suggested that the defining principle for social justice should be to provide a good and virtuous life for all the inhabitants of the country through 'ubuntu' and the affirmation of the humanity of everyone. Although the Constitution had made socio-economic rights justiciable and enforceable by the courts, the Constitutional Court had only been faced with five such cases in the past 14 years. Deputy-Chief Justice Moseneke thought that South Africa could learn from the Indian experience where public interest litigation is highly developed.

The participants then spent two days discussing such topics as the role of the South African Constitutional Court and the Indian Supreme Court in achieving substantive equality in South Africa and India; the role of the judiciary in a constitutional democracy dominated by a single political party; progressively realizing socio-economic rights in South Africa and India; and the role of the judiciary in realizing gender equality in South Africa and India.

Issues that raised considerable interest for the South African participants were the Indian practice of direct access to the Indian Supreme Court (equivalent to the South African Constitutional Court) and the use of structural interdicts. The Indian Supreme Court allows direct access to the court by members of the public in public interest matters that involve the rights of large numbers of people (e.g., by writing a letter to the Chief Justice who then appoints lawyers to investigate). The Indian courts also issue 'structural interdicts' whereby they order public officials to carry out certain tasks, regularly monitor their progress, and go as far as imprisoning them if they fail to carry out their duties in terms of such interdicts.

Probably one of the most contentious issues raised was the recent decision of the Indian Supreme Court concerning affirmative action. The Indian Constitution seeks to correct the injustices of the past by allocating quotas for government jobs and university places to scheduled castes, scheduled tribes and other backward classes. The Supreme Court however has now held that when such beneficiaries of affirmative action reach the 'creamy layer' they should no longer benefit from such privileges. Previously disadvantaged persons are regarded as having reached the 'creamy layer' if they and their families have managed to improve their socio-economic status so that they can compete equally with ordinary advantaged members of society.

The Indian delegation ended their visit to KwaZulu-Natal by making a pilgrimage to Pietermaritzburg station where Mahatma Gandhi was ejected from the train in June 1893 and to the Phoenix Settlement where he lived and worked for many years before his return to India.

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BUILDING HUMAN RIGHTS CAPACITY IN THE UK OVERSEAS TERRITORIES

This project, which started in 2007, covers the UK Overseas Territories in the Caribbean, Pacific and South Atlantic. The project's overall goal is to enhance the understanding and observance of individual rights found in the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and the Convention on the Elimination of All Forms of Discrimination against Women in the Caribbean, Pacific and South Atlantic Overseas Territories.

In May 2008 the first major milestone was reached with the publication of the Preliminary Report setting out the laws protecting human rights in Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Pitcairn, Turks and Caicos Islands, St Helena and its Dependencies (Tristan da Cunha and Ascension).

The report is being disseminated to Governors, Chief Ministers, Attorneys General and other Ministers with an interest in human rights, senior public servants, National Human Rights Institutions, including Human Rights Commissions, Complaints Commissions and Ombudsman, Constitutional Review Bodies, and civil society organisations. Their views will be reflected in the final report which will then provide the basis for the further development of the project.

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