

Commonwealth Legal Education

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Legal Education Association

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Contents

❖ Regulars

- 5** Welcome

- 7** Special Feature

- 15** CLEA Activities

- 17** CLEA News

- 27** Commonwealth Legal Databases

- 30** About the Commonwealth Legal Education Association

- 32** Benefits of CLEA Membership

- 33** CLEA Executive Committee Members

WELCOME

From Selina Goulbourne
General Secretary

Newsletter 106 highlights the very successful CLEA biannual conference 2009 ‘Teaching Law in the Modern Global Business Environment’ hosted by the School of Law, City University of Hong Kong. On behalf of CLEA executive I would like to thank Professor Anton Cooray of City University for his massive contribution to the success of the conference. Professor Cooray devised an ambitious programme of speakers on a range of topics and ensured that all sessions were chaired professionally and ran to time. The facilities were excellent including a multimedia lecture theatre, seminar rooms with IT support and very generous refreshment breaks. The administrative team, headed by Emily Chow, worked endlessly and with great patience to ensure that registration ran smoothly and that papers were available in advance of the sessions. The Inauguration Ceremony set the tone of the conference. The choice of speakers demonstrated the commitment of the organisers to a high profile and memorable conference. The Guest of Honour, Mr Justice Geoffrey MA, Chief Judge of the High Court delivered an inspiring overview of the challenges facing the judiciary in the unique legal system in Hong Kong. The opening speeches were delivered by Professor Wang Gui Guo, Dean of Law City University of Hong Kong and Professor David Mcquiod-Mason, President CLEA. The conference was declared open by Professor Richard Ho, Provost of City University of Hong Kong.

Participants enjoyed the culinary delights of Hong Kong at lunch time and lavish dinners throughout and were sent off with wonderful gifts.

Dr Clare Chambers, Executive Member of CLEA, for whom Hong Kong was the first of CLEA conferences described her experiences.

I had never been to Asia and so it was with excitement I boarded the plane at Heathrow. Twelve hours later I arrived. My excitement and expectations would not be disappointed.

After my first day in Asia, we headed back to the hotel for the conference dinner where we would meet with everyone else. The atmosphere was friendly, opening and accepting. I was to present a paper at the conference with a colleague and although we have never presented a paper at CLEA before, this did not seem to matter and we were welcomed like long lost friends. The conference dinner was full of anecdotes interesting people, and lots of laughter.

On the first day of the conference, we moved to City University, about ten minutes drive from the hotel. Everything was organised in a proficient manner and this ranged from the student helpers to the academics who came and met with us during

the conference. The student helpers and the university were spectacular. They were amazing and catered for every need and anticipated what we required.

I am very proud to be associated with CLEA and will continue to be involved in the association. I have met some fascinating and interesting people and have stayed in contact with them since. The conference, CLEA and City University organised surpassed all expectations I had when I boarded that plane in Heathrow.

CLEA would like to acknowledge the very generous financial support of City University of Hong Kong which enabled a number of speakers to attend the conference and provided for the lavish gastronomic delights on campus and at Hong Kong's prime eating venues in addition to the venue and excellent administrative support.

On behalf of CLEA I would like to congratulate City University on the calibre of the law students who hosted the delegates. We wish them all the very best in their legal careers and would encourage them to join the CLEA law students association which was launched in Hong Kong by the moot teams 2009.

A selection of conference papers will be published in the next issue of JCCLE and Asia Pacific Law Review.

SPECIAL FEATURE

THE CLEA'S ROLE IN THE PROMOTION OF HUMAN RIGHTS AND GOOD GOVERNANCE IN THE COMMONWEALTH*

Peter Slinn
Vice-President, CLEA

It has been my privilege to be associated with the CLEA for over twenty years. I had the pleasure of attending the CLEA's conference held in Hong Kong in 1992, when our host was the then President Professor Yash Ghai and Dr Jill Cottrell, the then Secretary, who were both on the staff of Hong Kong University. This of course was the period of the 'interregnum' between the conclusion of the Joint Declaration and the restoration of the exercise of Chinese sovereignty over Hong Kong in 1997. On returning from a short lecture tour in the PRC in time for the CLEA Conference, I was greeted at Hong Kong airport (Kai Tak of blessed memory) by the news of the unexpected election victory of John Major's conservative UK government. This was to have momentous consequences for Hong Kong, as the Conservative losses in terms of seats included that of Chris Patten's seat in Bath. He was then appointed to the governorship of Hong Kong –and the rest, as they say, is history.

My purpose in this talk is to draw attention to the CLEA's work as an organisation in the promotion of human rights and good governance in the Commonwealth. I stress the work of the CLEA as an organisation, because obviously I will not be able to survey the work in this field of the many individual academics and law

schools in the Commonwealth. It would not be inappropriate, however, to mention the work of our President, Professor David Macquoid-Mason, in the promotion of access to justice of the disadvantaged in society through street law programmes and our of immediate past General Secretary, Professor John Hatchard, in sustaining the work of national human rights institutions in the Commonwealth and advancing the fight against corruption. As we shall see much of their work informs the CLEA's activities.

In this context, I hope that I shall be forgiven for mentioning with due humility my own work as Joint General Editor of the Law Reports of the Commonwealth, the unique series which reports cases from jurisdictions throughout the Commonwealth. The largest body of cases in each volume is devoted to human rights and constitutional issues appertaining for example to the separation of powers. In my work as editor since 1985, truly a labour of love, I have been granted a special insight into what my fellow Editor, Professor James Read, Chairman of this Association 1977-1983, has described as 'the new common law of the Commonwealth', its burgeoning jurisprudence in the field of human rights.¹ The 100th

* Keynote address delivered at the CLEA biannual conference Hong Kong 2009.

volume of the series is about to go to press and Michael Kirby, that most distinguished of Commonwealth (in both senses) Judges, has kindly written a preface. It is appropriate on his retirement to acknowledge his remarkable contribution to human rights jurisprudence in the Commonwealth- particularly in seeking to persuade the Australian High Court that modern international human rights standard are not irrelevant to the interpretation of even such a venerable instrument as the Constitution of the Commonwealth of Australia.

I propose to concentrate on five themes

- the Latimer House process;
- other co-operative work with our partner organisations through the Commonwealth Legal Forum and with the CHRI and Commonwealth Secretariat;
- curriculum development, particularly in the fields of human rights and transnational crime
- the UK overseas territories human rights capacity building project;
- the Association's publications including the Directory of Commonwealth Law Schools the Journal of Commonwealth Law and Legal Education;
- some concluding reflections on the future role of the CLEA and some of the 'challenges' as today's euphemism has it, particularly in terms of resource constraints which the Association faces in fulfilling its mandate in the fields of human rights and good governance.

The Latimer House Process

¹ J. S. Read, 'The New Common Law of the Commonwealth: The Judicial Response to Bills of Rights', (1999) 25 *Commonwealth law Bulletin* 31.

Members of the Association will be familiar with the Latimer House process from my reports in the *Newsletter*.² Your Association, through your Vice-Presidents John Hatchard (who was General Secretary of the Association for most of the life of the process) and Peter Slinn, has from the beginning, been one of the driving forces behind what one of the leading students of Commonwealth affairs, Richard Bourne, founding Chair of the Commonwealth Human Rights Initiative (CHRI) and first Director of the Commonwealth Policy Studies Unit (CPU) has described as 'a spectacular example of the impact of Commonwealth Associations on inter-governmental policy'.³ Last year, veterans of the process celebrated the tenth anniversary of the Colloquium in 1998 which drafted the original Latimer House *Guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles*. A quarter of the participants represented your Association, including our host Professor Anton Cooray and Professor Read. The plenary session which adopted the Guidelines was co-chaired by Peter Slinn and the published proceedings were edited by John Hatchard and Peter Slinn.⁴ Unusually for gatherings of this kind, the legacy of Latimer House was a set operational guideline, setting

² E.g. 'The New Commonwealth Principles: from Latimer House to Abuja', *Commonwealth Legal Education* 1 Vol 96 June 2004, p 05 and 'Latimer House moves on: the Edinburgh Colloquium and the Plan of Action for the Commonwealth. Vol 104 2008, pp7-9.

³ R. Bourne 'The Commonwealth and Civil Society', in James Mayall (Ed), *The Commonwealth at 60*, (OUP, forthcoming, 2009).

⁴ *Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach*, London, Cavendish, 1999.

standards the proper relationship between the three branches of government so vital to the securing of good governance, human rights and the law of law. Even more unusually, the Guidelines were not left merely to add to the mounds of worthy pronouncements on such subjects. To quote Richard Bourne again, the sponsoring organisations – the CLEA, the Commonwealth Lawyers Association, the Commonwealth Magistrates and Judges Association and the Commonwealth Parliamentary Association – advocated the Latimer House Guidelines at every opportunity. They came to be cited in a number of high profile contexts so that for example judicial notice was taken of them in a leading Scottish case concerning separation of powers and security of tenure of judicial officers.⁵ By a remarkable development, the Guidelines were transformed by a committee of law ministers into the ‘Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government’. The representatives of the partner organisations (Slinn was the CLEA representative), although formally observers, sat round the table with ministers and played an active part in the drafting process. The Principles were endorsed by Law Ministers. At the Abuja CHOGM in 2003, Heads of Government endorsed the Principles, acknowledging the contribution made by the CPA and legal profession of the Commonwealth, represented by the CLEA, the CLA and the CMJA, in furthering the Harare Principles. The Malta CHOGM in 2005 went further and constituted the Principles as ‘an integral part of the Commonwealth’s fundamental political values as set out in the Harare Declaration’. The CLEA can thus claim to have played a major

role in shaping the Commonwealth’s fundamental values.

Even more formidable tasks lay ahead- the securing of effective means of monitoring Commonwealth practice in the application of the Principles and of establishing some process to ensure compliance. As I recounted in my latest contribution to the Newsletter, at Nairobi in 2005, the Commonwealth Secretariat convened a Pan-African Forum which adopted a detailed ‘Plan of Action for Africa. In July, 2008, on the tenth anniversary of the adoption of the original Guidelines, the sponsoring organisation convened another Colloquium which adopted the Edinburgh Plan of Action for the Commonwealth. Your Association was well presented at the gathering by your General Secretary (Selina Goulbourne) and Vice-President (Slinn) and seven other academics from the West Indies, Africa and the UK. Of great significance for us today is the mandate conferred on the CLEA to ‘assist Universities and law schools in devising appropriate curricula in order 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’. The four partner organisations are enjoined to ensure ‘the wide dissemination throughout the Commonwealth’ of the Principles, the Guidelines, the Nairobi and the Edinburgh Plan of Action in ‘user friendly formats’. The partner organisation have published those documents in a new ‘compendium’

Our organisation ought to give careful thought to the discharge of this mandate which offers a good opportunity for project fund-raising. The model human rights curriculum discussed below may be expanded to demonstrate the importance of the

⁵ *Starrs and Another v Procurator Fiscal (Linlithgow)* [2000] 1 LRC 719 at 737 and 765.

principles in realising the human rights values incorporated in the Harare Declaration. A 'user-friendly format' might follow the model of the cartoon version of the South African Bill of Rights.

Compliance issues raise delicate sensitivities for governments, as you representatives have witnessed in formal and informal discussions with law ministers. A confidential brief on compliance issues was submitted to the last Commonwealth Secretary General for the Kampala CHOGM.

Other co-operative endeavours with partner organisations

Co-operation with the Commonwealth Secretariat has not been confined to the Latimer House process. The CLEA has observer status as a partner organisations and meetings of Law Ministers and Senior Officials organised by the LCAD. This access has enabled the CLEA to play a useful role in supporting deliberations on governance issues. For example, the CLEA presented two papers to the Senior Officials meeting in London in October, 2004, one on *Constitutional developments in the Commonwealth* and the other on *Access to Justice in the Commonwealth*. The communiqué noted that the first paper 'prompted an exchange of information on current issues of constitutional reform and good governance'.⁶

Under the leadership of John Hatchard, the CLEA has been able assist the LCAD and the Human Rights Unit of the Commonwealth Secretariat in a number of other ways. Assistance has been given in the establishment, expansion and strengthening of the office of ombudsman and human rights commissions ('national institutions'), a process which is an essential part of

⁶ The papers and the communiqué are reproduced in *Commonwealth Legal Education*, vols 98 and 99.

the good governance agenda.⁷ The development of model curricula in the fields of human rights and transnational crime is discussed below. These has been accompanied in the field of transnational crime, in association with the criminal law unit of the Secretariat, with training programmes involving workshops in the Caribbean, West African, Southern and Eastern African and Asia-Pacific regions of the Commonwealth.

The CLEA was one of the founders of the Commonwealth Human Rights Initiative which was set up in 1987 in order to provide an independent forum from which to promote human rights and human rights standards. Representatives of CLEA have, since CHRI's inception sat on its Advisory Commission, Trustee Committee and Executive Committee in London. In 1993, the Headquarters was transferred to New Delhi. From modest beginnings, CHRI has grown into a formidable campaigning organisation with a staff of over 60, based in New Delhi, Accra and London.⁸ His honour Judge (retired) Austen Davis, one of our longest serving members, represents the CLEA on the London Executive Committee. Its list of donors makes interesting reading. The CHRI is one of CLEA's partners in the Overseas Territories project, of which more below.

The CLEA is a founding member of the Commonwealth Legal Forum, which provides a sounding board in London for the Commonwealth's legal associations and the Commonwealth Secretariat. I have written a short note

⁷ John Hatchard's involvement in this work goes back well into the last century: see 'Some Reflections on the role of the Commonwealth in the development of National Institutions', (1999) 25 CLB 64.

⁸ The range of CHRI activities can be gauged from its website www.humanrightsinitiative.org.

about the Forum in the latest CLEA newsletter.

Curriculum Development

As mentioned, one of the most important fruits of collaboration with the Commonwealth Secretariat has been the development of model curricula in the fields of human rights and transnational crime. The CLEA was commissioned by the Human Rights Unit of the Secretariat to produce a model human rights curriculum for the Commonwealth, again the work of John Hatchard in 1999. In 2004, the Association was again commissioned to produce a revised and updated version, the work of Max du Plessis and Jolyon Ford. The curriculum emphasises the important role of the Commonwealth and of Commonwealth courts in the development of human rights law and practice. It is also designed to reach beyond law schools to provide training for teachers, civil servants and members of civil society organisations in order to enhance human rights awareness in society generally.⁹

On the Association's work in the field of curriculum development and in the field of transnational crime and corruption in public office, I need only whet your appetites for John Hatchard's paper tomorrow afternoon. I might merely emphasise the importance of the place of this topic in modern law teaching programmes. It is a vital corollary to the teaching of human rights and ethical governance. As the Latimer House Principles state:

‘The promotion of zero tolerance of corruption is vital to good governance’.

It is an area where the responsibility of public officers is engaged with that of

⁹ The 2004 Report appears in *Commonwealth Legal Education*, vol 98.

the private corporate sector, particularly the international sector. The bribery flows from the private to the public sector, often in the context of international transactions involving developed country suppliers. In the United Kingdom we are only too familiar with this problem in the context of the aborted investigation into BA Systems dealings with Saudi Arabia.

The role of the CLEA in these spheres is well recognised in Commonwealth government circles, for example Law Ministers in 2005 commended the Association on a ‘thoughtful paper’ and welcomed the CLEA’s work on curriculum development, notably in subjects such as human rights in the Commonwealth and transnational crime.¹⁰

There have been CLEA initiatives in other related fields of curriculum development such as Islamic law and Environmental Law, which have a strong bearing on human rights and good governance agendas. However, these have not yet been brought to fruition. Initiatives from chapters of the Association and from individual members would be welcomed.

The United Kingdom Overseas Territories Project

This project for ‘Building Human Rights Capacity of the British Overseas of the Caribbean and the South Atlantic is funded for £1 million over four years by the UK Department for International Development. The CLEA is working with the Commonwealth Foundation as ‘lead partner’ and with the CHRI. This ambitious project is designed to enable the British Overseas Territories (OTs) to observe human rights obligations in a way which is consistent with

¹⁰ Paragraph 8 of Communiqué reproduced in *Directory of Commonwealth Law Schools* (4th ed), p 88.

international standards and to benefit both government and civil society. It is by far the largest project in terms of funding in which the Association has been involved. The lead CLEA person is Selina Goulbourne, our General Secretary. It has made huge demands on her time, in particular in producing a preliminary report on the laws protecting human rights in the territories concerned. Future tasks include human rights training programmes improving treaty compliance through monitoring and reports, developing appropriate legislation and strengthening national institutions. The CLEA's role is crucial to the success of the project. It provides an opportunity to mobilise its networks in assembling the relevant expertise. If proof were needed of the needs of the peoples of the OTs in the area of good governance and human rights, this has been provided by the recent suspension of those parts of the Constitution of the Turks and Caicos Islands providing for representative government in order to 'restore good governance' after a report by a senior British judge had found abundant evidence of systematic corruption and serious dishonesty, clear signs of political amorality and of general administrative incompetence.¹¹

Publications programme

Over the years, CLEA as an Association and its officers in a personal capacity have made a substantial contribution to the literature of human rights, good governance and access to justice in the Commonwealth. I have referred to the Association's newsletter, *Commonwealth Legal Education*, which has, inter alia, provided a record over the years of the Association's written contributions to

¹¹ Ministerial Statement by Gillian Merron, Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs, 16 March, 2009.

the work of Law Ministers and the Commonwealth Secretariat. A most welcome addition in 2001 was provided by the launch of the *Journal of Commonwealth Law and Legal Education* as a 'crucible for the forging of new ideas, policies and principles which will inform the laws and systems that constitute the social governance of Commonwealth countries'. That first issue contained an article by Lord Lester of Herne Hill reviewing the 'Judicial Protection of Human Rights in the Commonwealth', thus signalling the journal's commitment to the advancement of the Commonwealth's human rights values.¹² I am delighted to see the current editors, Professor Gary Slapper and Dr Aurora Voiculescu, present at this Conference. They will I am sure warmly welcome contributions to the Journal.

For documentation on the Commonwealth principles of human rights and good governance, section 2 of the *Directory of Commonwealth Law Schools*, the 4th edition of which was edited by John Hatchard in 2004, provides an invaluable source.

I have mentioned the various publications generated by the Latimer House process. It would be invidious to pick out publications by individual officers, but they have helped to keep the CLEA in the forefront of the ongoing debate.

Conclusions

The CLEA is desperately under-resourced in human and material terms in carrying forward and the initiatives and projects described above. As my narrative reveals, we have relied very heavily on the work of our Vice-President, John Hatchard, during his tenure of office as General

¹² JCLLE, vol 1, no 1, 2001 at pp 1 and 3.

Secretary. Our present General-Secretary is putting a great deal of effort into the UKOTs project. Obviously, the key to capacity building is funding, which can only be secured through projects which attract major donors - government agencies (of which the OTs project is an example) or private funders such as Ford and Soros. The UKOTs' project has for the first time given the CLEA the opportunity to lay claim to a substantial share of a major project fund. It is to be hoped that, if this project is carried forward to a successful conclusion, it will give us a track record in respect of future applications. Such projects often appeal more to donors if they are originated in developing countries, so I would urge members from around the Commonwealth to consider ideas which might bear fruit in this regard. I hope this paper has shown that we have achieved much in assisting the development and implementation of the Commonwealth's human rights and good governance agendas, but we need to mobilise the support of all members in carrying the task forward.

CLEA ACTIVITIES

CLEA CONTINUES TO PLAY A DEFINING ROLE IN THE HUMAN RIGHTS CAPACITY BUILDING PROJECT IN THE BRITISH OVERSEAS TERRITORIES

The Overseas Territories Human Rights Capacity Building Project has entered into a new phase. The first stage of the activities in the territories will commence in Pitcairn. The human rights awareness training will be delivered by trainers from CHRI and CLEA. The project is now set to deliver the first trench of training until March 2010.

BIANNUAL CONFERENCE

The next CLEA biannual conference will be held in Bangalore in 2011. The theme of the conference will be “Global Values in Legal Education: Teaching Law in an ethical framework”

Please contact Professor Siva Sivakumar, CLEA Executive Member for South Asia (email: drssivakumar@sify.com; cleaasia@yahoo.co.in) for further details.

The Bangalore conference will be preceded by a regional conference in Dhaka, Bangladesh in 2010.

TURNING POINT

(the story of a law teacher)

MEMOIRS
of
Padamshree Prof.(Dr.) N.R. Madhava Menon

Recorded in conversation with
Dr. S. Surya Prakash

A TRIBUTE TO PROFESSOR MADHAVA MENON

In September this year Professor Madhava Menon celebrates his 75 birthday and 50 years as a law teacher and administrator.

I took over the Presidency of CLEA from Professor Menon in 1997, and although it is over ten years since he relinquished his Presidency Professor Menon's influence is still strongly felt. In his 1994 inaugural address Professor Menon had suggested that CLEA needed: (a) to make legal education socially relevant and professionally useful; (b) to encourage law schools to prepare themselves for the demands of the profession in the context of the information revolution and other global challenges; (c) to support continuing legal education and distance learning programmes; and (d) encourage law schools to look at their law curricula and teaching methods.

The plan of action suggested by Professor Menon continues to guide the activities of CLEA. The result is that today CLEA focuses on: (a) the training of law teachers; (b) the development of and support for research; (c) improving law library facilities; (d) developing the use of electronically produced data; (e) curriculum development; (f) professional training; (g) strengthening links between Commonwealth law schools; and (h) strengthening clinical legal education and law clinics in the Commonwealth.

Professor Menon has 'retired' on several occasions only to be recalled to establish new and exciting initiatives in Indian legal education – many of which were originally conceived by him. It is difficult to believe that he will be celebrating his 75th birthday this year. He has the intellectual agility and energy of a person twenty years younger.

CLEA wishes Professor Menon a very happy 75th birthday and hopes that he will enjoy many more 'retirements'!

Professor David McQuoid-Mason, *President, Commonwealth Legal Education Association; Co-Vice-Chair International Bar Association Academic and Professional Development Committee; Acting Director Centre for Socio-Legal Studies, University of KwaZulu-Natal, Durban, South Africa [email:mcquoidm@ukzn.ac.za]*

CLEA NEWS

INTERNATIONAL CONFERENCE OF JURISTS FOR JUDICIAL REFORMS

The conference held in London from 13 June to 15 June, 2009 hosted by the International Council of Jurists and the Honourable Society of Lincoln's Inn was attended by CLEA 's Dr Joe Silva and Professor Siva Sivakumar.

The theme of Dr Silva's paper was 'Justice Education: A critical legal education approach to the study of law.'

Professor Sivakumar spoke about recent developments in legal education in India in the context of the debate relating to the proposed requirement of professional legal qualifications.

COMMONWEALTH LAW MOOT 2009

After a very efficient competition organised by Dr Ros MacDonald who was able as usual to bring together a range of teams and excellent judges on the day.

The successful teams were:

University of Pretoria, South Africa (First)

Hong Kong University (Second)

PRESS RELEASE

COMMONWEALTH SECRETARIAT & GHANA SCHOOL OF LAW SHORT COURSE ON LEGISLATIVE DRAFTING FOURTH COURSE

27 JULY - 16 OCTOBER 2009

George A Sarpong

Finding a sustainable solution to address the perennial shortage of Legislative Drafters and Drafting skill in Africa necessitated a decision at the Commonwealth Secretariat Workshop on Legislative Drafting held at the Novotel Hotel, Accra in June 2005 to introduce a short Course on Legislative Drafting.

The Course is thus an actualisation of a decision of the Commonwealth Law Ministers to address the question of the shortage of Parliamentary Counsel in most Commonwealth African Countries. Since then, three Courses have been organised under the auspices of the Commonwealth Secretariat and the Government of Ghana. This is the 4th in the series of these Courses organised since 2006. The first Course was organised by the Ghana School of Law but the second and third Courses were organised by the Attorney-General's Department.

This Course is being organised by the Ghana School of Law which was originally chosen and charged with the responsibility for the running of the Course after a series of inspection by the Commonwealth Secretariat.

The course will be inaugurated by the Chief Justice of Ghana, Rt. Hon. Chief Justice, Mrs. Georgina Theodora Wood, the Hon. Attorney-General and Minister for Justice, Mrs. Betty Mould-Iddrisu and a representative from the Commonwealth Secretariat, Mr. Mark Guthrie, Legal Advisor, Legal and Constitutional Affairs Division. The venue for the Course is the Ghana Bar Association Secretariat.

A total of 25 Participants from 15 Commonwealth African Countries will take part in the Course. They are from Botswana, Ghana, Cameroon, Gambia, Kenya, Lesotho, Malawi, Mozambique, Mauritius, Nigeria, Seychelles, South Africa, Swaziland, Uganda, and Zambia.

The Course will be under the overall direction of Professor Justice VCRAC Crabbe, an internationally renowned expert in Legislative Drafting and a team of experts, including Mrs. Estelle Appiah, Director of Drafting, office of the Attorney-General and Minister for Justice and Mrs. Sabina Ofori Boateng, a consultant in Drafting. The Coordinator for the Course is Mr. George A. Sarpong, Director of Legal Education, and Ghana.

The curriculum covers introductory issues, the drafting process, drafting constraints, legislative process, legislative syntax, legislative style, legislative structure and arrangement, drafting preliminary and final provisions, substantive provisions, drafting subsidiary legislation and other miscellaneous subjects. The Course comprises three elements: Lectures, Discussions, Exercises and Tutorials.

Various tours and trips will be organised for the Participants to places of historical and geographical interest in and outside Accra.

**OPENING CEREMONY OF THE COMMONWEALTH LEGISLATIVE DRAFTING
COURSE AT THE GHANA BAR ASSOCIATION SECRETARIAT
ON MONDAY 27TH JULY 2009**

Remarks by Her Ladyship The Right Hon. Georgina Theodora Wood

I thank the organisers of this programme for the kind invitation extended to me to participate in the opening ceremony of this fourth Commonwealth Legislative Drafting Course as the distinguished guest of honour. Let me also join the previous speakers in extending to Mr. Guthrie and distinguished participants from outside Ghana, my hearty welcome to Ghana.

Legislative Drafting is a very important feature of the democratic system of governance. Legislation is the means through which governance is carried out. Indeed so critical is legislation to democratic governance that irrespective of its shape and form, no government could survive without the power to make laws for the good order and governance of its country.

Legislation and government are thus two bed fellows. Modern government and legislation, however, are complex businesses. An Act of Parliament is enacted not primarily for the legislature, but for all the people in a given country. In other words, laws are intended to guide and regulate the affairs and conduct of those to whom it is addressed. Its contents therefore ought to take into account the socio-cultural, political and economic circumstances of the society in which it is intended to operate.

Legislation thus should be in a language which is clear, lucid and free from ambiguity. That is the task of a draftsman.

Rather unfortunately, especially in commonwealth Africa, the avenues for the training of draftsmen are limited. Indeed, for many a young draft person in the law offices of Commonwealth Africa countries, mastering the skills of draftsmanship has been by way of on-the-job training in the various chambers of the Attorney-General's Department. This is because as a subject in the legal curriculum, very few Law Schools teach the subject. It is thus not surprising that in virtually all jurisdictions in Africa, there is scarcity of draftsmen in the Attorney-General's Departments.

It is in the light of this that the Commonwealth Secretariat and the Ministry of Justice of the Republic of Ghana must be congratulated for filling the void in the legislative process through the organisation of this course.

Participants must therefore count themselves extremely lucky to have this unique opportunity to participate in the Course being organised under no less a distinguished and internationally renowned legal expert in drafting in the person of Professor Justice VCRAC Crabbe and his team of distinguished experts in this important area of the law.

Take maximum advantage of the rare opportunity afforded you to participate in the programme to sharpen your skills so that at the end of the programme, you will leave Ghana better off.

Whiles here, do also take advantage to sample the proverbial Ghanaian hospitality, not only through the tours and visits organised for you, but in your spare time as well.

Let me conclude by commending the Ghana School of Law for organising this Course for and on behalf of the Commonwealth Secretariat and the Ministry of Justice.

OPENING REMARKS

LEGISLATIVE DRAFTING COURSE: 28 JULY 2009

**Mark Guthrie, Legal Adviser
Legal and Constitutional Affairs Division
Commonwealth secretariat**

Mrs Chief Justice, Mrs Attorney, Mr Justice Crabbe, Mr Sarpong, Mrs Appiah, Distinguished guests, ladies and gentlemen,

First may I convey to you the warmest greetings of the Secretary General of the Commonwealth, Mr Kamallesh Sharma on the occasion of the opening of this legislative drafting course.

This is the fourth Legislative Drafting Course for legislative drafters from the seventeen African member states of the Commonwealth. It is being held in partnership between the Commonwealth Secretariat and the Government of Ghana and being implemented by the Ghana Law School.

The Ghana Law School is able to offer a wealth of experience and expertise in the field of legislative drafting. During the twelve week course participants will benefit from instruction by amongst others Course Director Mr Justice Crabbe, the Course Coordinator and Director of Legal Education and Director of the Law School, Mr George Sarpong, Mrs Appiah, Director of Legislative Drafting in the Attorney-General's office and Mrs Sabina Ofori-Boateng.

Ladies and gentlemen, the importance of legislative drafting cannot be underestimated. Each of you here is not just a drafter but a crafts person.

Mrs Attorney, as a politician I hope you will forgive me for saying that the role of the politician to formulate and pronounce on policy is relatively easy by comparison to the skills and tasks demanded of a legislative drafter.

The legislative drafter is required to have the skills of a surgeon.

In drafting legislation the drafter must be able to identify with clarity what issue or issues any proposed legislation is intended to address.

Therefore it is the drafter's responsibility to have an excellent understanding of the policies of the political parties.

But in framing the legislation to give effect to these policies, the drafter must always have in mind the national constitution and also any international human rights instruments which her/his country has ratified. I have in mind the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights.

These constitute the framework within which the drafter will craft legislation.

Like a surgeon the drafter must be able to practise her/his skill with precision. By the careful choice of words and construction of sentences the drafter must be able to communicate with any ambiguity or doubt the intention of parliament.

Part and parcel of the work of the drafter is to reflect upon the wide range of eventualities that any piece of legislation is likely to be required to cover. This demands that the drafter knows the issue which the legislation is intended to cover and to be imaginative about how the law is likely to be applied in practice. Therefore the drafter must have not only technical knowledge but must also possess a practical approach.

The consequences of a legislative drafter not meeting these high standards can be severe. Whilst all legislation is subject to interpretation by the courts, legislation which is not tightly drafted but is vague or unfocussed will present the courts with an undue challenge. Laxity in drafting can of course be corrected by subsequent legislative amendments, but this can be costly and in the mean time injustice may result.

Ladies and gentlemen, in summary the burden upon the legislative drafter is a heavy one. The skills of the drafter may not necessarily be widely appreciated by the public at large, but each and every citizen is affected by the exercise of those skills.

I am sure that each and every one of the participants in this course equipped with the knowledge and skills which it will impart will acquit themselves to a very high standard and will shoulder the burden extremely well.

I wish you well for the next twelve weeks and for upon your return to your home countries.

DEVELOPING CAPACITY IN THE FIELD OF COMPARATIVE LAW AND PRIVATE INTERNATIONAL LAW AT THE UNIVERSITY OF PRETORIA

1. Introduction

The Faculty of Law of the University of Pretoria has set itself the task of developing advanced capacity in the field of Comparative Law and Private International Law (Conflict of Laws) that will enable it to play the role of an African-based peer to centres specializing in these fields across world.

This will entail building on the well-established capabilities and networks of the Faculty, especially in respect of the law of Africa, establishing new capacities and ensuring maximum synergies between the current and the new.

Legal education at the University of Pretoria started just over a century ago. Over the last few decades the University established itself as one of the main research universities in South Africa. At the same time the Faculty of Law assumed an unparalleled position at the centre of a vast network of African lawyers and legal institutions. The Faculty already houses experts in the field of Public International Law – for example John Dugard who has served on the International Court of Justice and Albert Hoffmann, a judge of the Law of the Sea Tribunal – and the Faculty is widely considered to be a leader in respect of Human Rights research on the international as well as the regional and national levels.

2. The need for a centre of excellence in the field of Comparative Law and Private International Law in Africa

Africa needs its own capacity not only in the fields of Public International Law and Human Rights Law, but also of Comparative Law and Private International Law. It needs a repository where knowledge and material on the national legal systems of African countries and conflicts between these legal systems are available, as well as a base from which the legal systems of countries in other parts of the world can be accessed. Currently comparative legal research into the laws of African countries as well as into conflicts of law – to the extent that this is done – is confined largely to the major research institutions of the North. However, these institutions have limited access to African material and are often ill-equipped in terms of expertise for the conducting of such research. As a result, Africa is in practice marginalised in relation to research into comparative law and conflicts of law.

More importantly, African countries, in the process of legal reform and of modernisation, need to be able to draw on and benefit from their own and each other's experience, and from the experience in the rest of the world. Since only a few countries on the continent have the resources to establish and sustain advanced capacity of this nature, whilst the outside world often does not have access to the primary sources of African law, there is a clear need for at least one world class facility on African soil that focuses on comparative law and conflicts of law in Africa.

The practical implications of having access to advanced capacity in the

field of Comparative Law and Private International Law are far-reaching. Individual countries constantly need expertise in various aspects of legislative reform and the enforcement and recognition of foreign judgments; international organisations have the same need when they engage in drafting model legislation or international instruments; and researchers worldwide often need expertise when they want to determine what the positive law of the countries of the world is – more than a quarter of which are in Africa.

In short, the quest for Africa's self-sufficiency and self-reliance entails that it will also have to develop its own capacity on the advanced level in the field of legal research, and in particular comparative legal research and Private International Law. The current initiative is aimed at filling that gap.

3. Current initiatives with a focus on Africa

The African focus and network of the Faculty of Law of the University of Pretoria are evidenced by a number of initiatives:

- The Law of Africa Collection and the Pretoria University Law Press (PULP) are unique features of the Faculty. The Law of Africa Collection is a special collection of primary legal materials from African countries, housed in the Oliver R Tambo Law Library in the Faculty. It is probably the most comprehensive and current collection of legal materials of African countries under one roof in the world today, and as such the obvious starting point for any serious comparative research of the law of Africa. A major World Bank grant to the

government of South Africa is now supporting the expansion of this Collection. PULP publishes African legal textbooks, law reports and law journals, and the same World Bank grant is currently supporting the production of a comprehensive series of monographs dealing with cutting-edge issues of African law, covering most of the countries of the continent.

- The Faculty recently established an International Development Law Unit, led by Prof Danny Bradlow, whose expertise is in the field of International Economic Law. This unit focuses in particular on Africa. The areas of expertise include telecommunications law and NEPAD.
- Some of the leading texts in the world on issues of South African and African law are written by members of the Faculty and published by international publishers such as Oxford University Press, Cambridge University Press, Brill and others.
- The Faculty's role in Africa was first established through the African Human Rights Moot Court Competition. Now in its eighteenth year, this annual competition has brought together the law faculties of 125 of the approximately 140 law faculties on the African continent, representing 45 of the 53 countries of Africa.
- In the wake of the Moot followed the Masters programme in Human Rights

and Democratisation in Africa. Now in its tenth year, this programme which is presented by nine African law faculties has produced 258 graduates from 35 African countries. The Moot and the Masters programme were specifically cited when the Centre for Human Rights won the prestigious UNESCO Award for Human Rights Education in 2006.

- A second Masters programme, on Trade and Investment in Africa, also for students from African countries, was established a few years later.
- The Faculty initiated and houses the *African Human Rights Law Journal* as well as the *African Human Rights Law Reports*. It also drives the very successful coverage of the African continent by the *Oxford Reports on International Law in Domestic Courts (ILDC Online)*.

For several years, a number of the members of the Faculty of Law have been working with institutions such as the African Union, including the Pan-African Parliament, on the drafting of treaties and initiatives such as the development of model legislation. Another example is the model legislation in respect of HIV/AIDS that was recently adopted by the SADC Parliamentary Forum, based on a submission prepared by members of the Faculty.

4. Emerging initiatives

In addition to the above, the Faculty is currently engaging in the implementation of the following projects and programmes:

- The Faculty has received the necessary funding from the University to establish a full-time doctoral programme covering all fields of law that will eventually accommodate 30 students – including 10 from countries in Africa other than South Africa. The first intake will be in 2009.
- A leading South African Intellectual Property Law firm has donated a significant amount of money to the Faculty to establish a chair and a centre in Intellectual Property Law, which will have a focus, amongst others, on Africa.
- Building on the UNESCO prize mentioned above, the Faculty has been nominated for a UNESCO Chair in Education Law, and for the LLM network of universities to be recognised as a UNESCO UNITWIN network.

5. The Institute of International and Comparative Law in Africa

The most ambitious project of the Faculty will no doubt be to establish a fully-fledged Institute of International and Comparative Law in Africa. The University has identified land for this purpose, and has agreed to make half of the building costs available, on the condition that the rest be raised from the outside.

The Institute, with a dual focus on International (both Public and Private) and Comparative Law, will serve to a large extent as a point of convergence and as a catalyst for the initiatives described above. In addition, it will function as a platform from which to launch new initiatives and to engage

with partners in other African countries and abroad.

The Institute will have an international law as well as a comparative law component, and it is foreseen that two directors will be appointed, one who specialises in each of these areas. The heart of the 35-office building will be the newly expanded Law of Africa Collection.

6. The current opportunity and need for expertise in Comparative Law and Private International Law

The evolving picture as set out above illustrates some of the huge opportunities currently offered by the Faculty for an expert or experts in the field of Comparative Law and Private International Law to become involved in shaping the emerging capacity in these fields within the Faculty. For all its experience and expertise in respect of African law, it should be admitted that the Faculty has limited formal expertise in Comparative Law or Private International Law as substantial fields of study. To a large extent the initiatives described above are driven by people who are experts in their respective areas of the law, but who have little training in Comparative Law or Private International Law as such.

There is a need for (a) leading or upcoming international expert(s) in the fields of Comparative Law and Private International Law who will spend substantial time – six months to two years – in the Faculty in order to serve as in-house advisor(s), while the Faculty is establishing itself as a globally competitive player in the field of Comparative Law and Private International Law, with a special focus on the law of Africa.

Such (an) expert(s) will assist with conceptualising the emerging capacity located in the Faculty in Pretoria and its partners throughout Africa in the field of Comparative Law and Private International Law. This will involve the planning and shaping of the Institute, as well as ensuring that the synergies between the current and future initiatives are maximised. It will also entail involvement in ensuring that the PULP series outlined above are based on solid principles of the respective areas of law in question; assistance with maximising the opportunities offered by the Law of Africa Collection; and bringing a solid substantive perspective to the studies of those students on the doctoral programme whose work entails comparative or private international law elements.

The expert involved will also render assistance with developing general capacity among the staff of the Pretoria Faculty, as well as its partners in the field of Comparative Law and Private International Law. This can be facilitated, for example, through short courses and by commenting on ongoing research activities. An important aspect of the expert's work will also be to advise the faculties involved on developing courses in Comparative Law and Private International Law and to include components of these fields in existing courses. At the University of Pretoria this will, for example, involve advice on rejuvenating the elective course in Comparative Law in the undergraduate LLB programme, and the introduction of a module in Comparative Law and Private International Law in the LLM programme. It will also entail involvement in introducing Comparative Law in the research methodology components of the post-graduate programmes.

7. Proposal

It is proposed that (an) international expert(s) or emerging expert(s) in Comparative Law and Private International Law be found to play the roles described above. This could be done by contacting established experts in the field who, if not in a position to undertake this task themselves on a full-time basis, may be aware of others who fit the bill.

The ideal candidate(s) will have advanced expertise and experience in the field of Comparative Law and Private International Law, ideally on a theoretical as well as a practical level; will have a good understanding of the Common Law as well as Civil Law traditions; will have an interest in Comparative Law and Conflicts of Law in Africa; in addition to English ideally be proficient in French and other languages used in Africa; have a solid research record; and have some experience of university teaching and systems. He or she should be able to work with people and preferably have knowledge of the African continent.

The financing of such a post can be done in a number of ways. One possibility is that the incumbent is on a paid sabbatical from his or her home institution, and supplementary funding is provided by the University of Pretoria. In a number of cases the home country may have funding

programmes in place for academics who go abroad – for example, the Fulbright programme in the case of researchers from the USA, or Humboldt in the case of researchers from Germany. Alternatively, funding opportunities made available by institutions such as the Commonwealth or the Association of African Universities may be used. The University of Pretoria also makes funding available to visitors under its post-graduate and senior research programmes, which can be used to sponsor such a visit, in addition to whatever *ad hoc* funding the Faculty or the University may be able to provide.

The Faculty will be able to provide a modern office and computer with internet facilities, as well as the services of a research assistant. Visiting academics are integrated into the Faculty and participate in research discussions, may be requested to present guest lectures, and have the opportunity to participate in all social functions.

In short, an opportunity is offered for a suitably qualified person to engage in one of the most exciting Comparative Law projects in the world today.

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For more information on the Faculty, see www.up.ac.za/law

COMMONWEALTH LEGAL DATABASES

Commonwealth research has been expanded by a little known group of data bases known as the 'Legal Information Institution'. Since 2002 researchers have been collecting legal information and placing it on databases which are free to access and use. The databases contain law reports and journals which can be used by anyone anywhere in the world. There is a declaration on this free access of law which reads:

Declaration on Free Access to Law

Legal information institutes of the world, meeting in Montreal 2007, declare that:

- Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximising access to this information promotes justice and the rule of law;
- Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge;
- Organisations such as legal information institutes have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published by other parties.

Public legal information means legal information produced by public bodies that have a duty to produce law and make it public. It includes primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry. It also includes legal documents created as a result of public funding.

Publicly funded secondary (interpretative) legal materials should be accessible for free but permission to republish is not always appropriate or possible. In particular free access to legal scholarship may be provided by legal scholarship repositories, legal information institutes or other means.

Legal information institutes:

- Publish via the internet public legal information originating from more than one public body;
- Provide free and anonymous public access to that information;
- Do not impede others from obtaining public legal information from its sources and publishing it; and
- Support the objectives set out in this Declaration.

All legal information institutes are encouraged to participate in regional or global free access to law networks.

Therefore, the legal information institutes agree:

- To promote and support free access to public legal information throughout the world, principally via the Internet;

- To recognise the primary role of local initiatives in free access publishing of their own national legal information;
- To cooperate in order to achieve these goals and, in particular, to assist organisations in developing countries to achieve these goals, recognising the reciprocal advantages that all obtain from access to each other's law;
- To help each other and to support, within their means, other organisations that share these goals with respect to:
 - Promotion, to governments and other organisations, of public policy conducive to the accessibility of public legal information;
 - Technical assistance, advice and training;
 - Development of open technical standards;
 - Academic exchange of research results.
- To meet at least annually, and to invite other organisations who are legal information institutes to subscribe to this declaration and join those meetings, according to procedures to be established by the parties to this Declaration;
- To provide to the end users of public legal information clear information concerning any conditions of re-use of that information, where this is feasible;

This declaration was made by legal information institutes meeting in Montreal in 2002, as amended at meetings in Sydney (2003), Paris (2004) and Montreal (2007). (<http://www.worldlii.org/worldlii/declaration/>)

List of some of the main databases

If you use the glin.org site this is the gateway for all the other resources in the world. These are just a selection of the many that are present on the site.

Commonwealth Legal Information Institute
<http://www.commonlii.org/>

Hong Kong Legal Information Institute
<http://www.hklii.org/>

British and Irish Legal Information Institute
<http://www.bailii.org/>

World Legal Information Institute
<http://www.worldlii.org/>

Australasian Legal Information Institute
<http://www.austlii.edu.au/>

New Zealand Legal Information Institute
<http://www.nzlii.org/>

Asian
<http://www.asianlii.org/>

Canadian
<http://www.canlii.org/en/index.php>

Cyprus source of legal information

<http://www.cylaw.org/>

Italian National Legal Research

<http://www.ittig.cnr.it/IndexEng.htm>

JuriBurkina

<http://www.juriburkina.org/juriburkina/>

Cornell Law School

<http://www.law.cornell.edu/>

Pacific Island Legal Information Institute

<http://www.paclii.org/>

Southern African

<http://www.saflii.org/>

Global Legal Information Network

<http://www.glin.gov/search.action> *** can access all data bases from this site.

Irish Legal Information Network

<http://www.ucc.ie/law/irlii/>

JuriNiger

<http://juriniger.lexum.umontreal.ca/juriniger/>

Juristisches Internetprojekt Saarbrücken

<http://www.jura.uni-saarland.de/>

Kenyan Law Reports

<http://www.kenyalaw.org/update/>

Philippian Laws and jurisprudence database

<http://www.lawphil.net/>

About the Commonwealth Legal Education Association

The CLEA fosters and promotes high standards of legal education in the Commonwealth. Founded in 1971, it is a Commonwealth-wide body with regional Chapters and Committees in South Asia, Southern Africa, West Africa, the Caribbean and the UK.

Membership is open to individuals, schools of law and other institutions concerned with legal education and research.

The Association's Programme of Action is based on the need to make legal education socially relevant and professionally useful, particularly through:

- the development of law curricula and teaching methodology;
- assisting law schools to prepare themselves for the demands of the profession in the context of the information revolution and other global challenges; and
- supporting continuing legal education and distance learning programmes.

Publications and research

- Journal of Commonwealth Law and Legal Education is published twice a year and contains news and views about law and legal education developments in the Commonwealth.
- A variety of books on law and legal education in the Commonwealth is also published.

The Association's website provides access to a wide range of Commonwealth legal materials, model curricula and some publications.

Conferences

The Association organises regular international and regional conferences and seminars. Recently, it has organised/co-sponsored conferences on topics such as law and development, human rights and just and honest government, as well as on legal education. Venues have included Australia, Nigeria, Cayman Islands, UK, Jamaica, Sri Lanka, Malaysia, South Africa, Canada and Kenya.

Commonwealth Law Lecture Series

This is a unique series that takes place on a Commonwealth-wide basis. Lectures are given by leading legal academics and judges.

Curriculum development

The Association is committed to developing new curricula that reflect both the importance of Commonwealth jurisprudence and the need for law schools in the Commonwealth (and beyond) to equip their students to meet the demands of the 21st century lawyer. Subjects include:

- human rights for the Commonwealth;
- transnational crime/anti-terrorism law;
- environmental justice (in preparation);
- international trade law (in preparation).

Strengthening law schools

- Providing training and materials for the teaching of a transnational crime course.
- Assisting in the distribution of law books to Commonwealth law schools.
- Establishing the Commonwealth Legal Education Research Centre in Cameroon.

Strengthening the Harare Commonwealth Principles

The Association works with the Commonwealth and three other Commonwealth professional organisations: the Commonwealth Magistrates' and Judges Association, the Commonwealth Lawyers' Association and the Commonwealth Parliamentary Association, on the development of the Latimer House Guidelines for the Commonwealth.

The Association supports the work of the Commonwealth Human Rights Initiative.

Activities for law students

The Commonwealth Moot Competition is held biennially, with the last three competitions being held in Malaysia, United Kingdom and Kenya.

The Commonwealth Students' Essay Competition is also held biennially

For further information on the work of the Association and details of membership, please contact:

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Benefits of CLEA Membership

The benefits of a one-year institutional subscription include:

- Copy of the CLEA's Journal of Commonwealth Law and Legal Education.
- Copy of the CLEA's Newsletter Commonwealth Legal Education.
- Priority booking for all CLEA events.

The benefits of a three-year institutional subscription include:

- Those for a one-year subscription plus.
- Significant discount of membership rate.
- Significant discount on all CLEA publications.

MEMBERSHIP APPLICATION FORM

Please tick

- Individual membership (one year) (US\$80; £50) Individual membership (three years) (US\$190; £120)
 Institutional membership (one year) (US\$240; £150) Institutional membership (three years)(US\$600; £400)

Title: First name: Surname:

Institution:

Address:

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e-mail: Fax:

Signature: Date:

Please make cheques payable to CLEA and return the completed form and cheque to:

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