

COMMONWEALTH LEGAL EDUCATION

Constitutional Developments in the Commonwealth

Emerging Trends and Implications for
Westminster Style Governance

In Brief

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Curriculum for the
Commonwealth

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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 in South Asia, Southern Africa, West Africa, the Caribbean and the UK.

www.clea.org.uk

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Welcome

From John Hatchard

General Secretary

GOOD NEWS!

www.cleaonline.org is now online! Our new web site hosted by the Queensland University of Technology is now up and running and promises to make an enormous difference to our operations. Please take a few minutes to have a look at the site and let us know how you would like us to develop it. We will be keeping it right up to date: so keep checking it! The Association is indebted to Ros Macdonald and Chris Prosser, the IT guru at QUT, for all their support and assistance.

Detailing the Association's activities means that there is no space in this Issue for some of our other usual features. Apologies for this: but this reassuringly reflects that the CLEA remains a vibrant and important organisation.

Forthcoming Conferences

Pride of place must go to our **CLEA Conference 2005**. This will take place in the magnificent and historic grounds of the University of Greenwich in London from 9-10 September 2005. The theme is *Comparing Commonwealth Laws: Challenges for Law Teachers*. You will find more details below including a Call for Papers. We are expecting participants from around the Commonwealth: so please book early. The modest registration fee of £75 also includes a one year membership of the CLEA.

Comparative Administrative Justice Workshop, Cape Town 20-22 March 2005.

This workshop, which is being co-sponsored by the Association, takes place between 20-22 March 2005 at the University of Cape Town. Participants are drawn from around the Commonwealth (12 countries at present) and it promises to be a major event. Administrative justice lies at the heart of the Commonwealth's Fundamental Principles and it is hoped that the conference will help towards strengthening both teaching and research in this vital area.

South Asia Regional Conference

The terrible events in the South Asia region have caused us to postpone our South Asia Regional Conference until early next year. However, the South Asia regional moot

competition will still go ahead. It is not too late for teams to enter: contact Dr S Sivakumar (sivku98@hotmail.com) as soon as possible.

Conference on Strengthening Links between Law Schools in Commonwealth Africa, Accra, Ghana, October 2005

I am pleased to report that, subject to funding, the Association will be holding an African regional conference at the Ghana Law School in Accra between 20-22 October 2005. This will run in tandem with the Commonwealth Law Ministers' Meeting. Full information will be provided in the next issue of the *Commonwealth Legal Education* and you can also find up to the minute information on our web site.

Curriculum development

Work on our revised model human rights curriculum continues. The curriculum itself will be available on our new web site in early March. However, we are working with the Human Rights Unit at the Commonwealth Secretariat and partner institutions in India to develop a series of human rights courses for non-law students. You will find details below. This is an exciting opportunity for the Association to make a major contribution to human rights education and we are indebted to Jo Ford for taking the lead in this project.

Law Student activities

Commonwealth Law Moot

Preparations are now getting underway for the CLEA Commonwealth Moot Competition to be held in London between 11-15 September 2005. Entry and other details are found in our special CLEA Mooting Notes section below.

Essay competition

Due to demand, the deadline for submission of entries to the Commonwealth Law Students Essay Competition has been extended to 1 December 2005. Full details below. Please support the competition by publicising it as widely as possible.

Publications

The next issue of the *CLEA Directory of Commonwealth Law Schools* is being prepared. Please take time to check the entry for your institution and let me have any updates. There are a limited number of copies of the 2003-4 edition still available on a first come first served basis. Please contact the General Secretary if you would like to receive a copy (free of charge).

Journal of Commonwealth Law and Legal Education

Vol 3(1) of JCCLE is now available and has been sent to all CLEA members. Details of the current issue appear below.

CLEA at the Meeting of Senior Law Officials

The Meeting of Senior Officials of Law Ministries took place in London between 18-20 October 2004 and was followed by the Meeting of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions.

The CLEA was invited to participate in both meetings in as observer capacity. A report on the meetings appears below. You will see that they dealt with many cutting edge legal issues that are of interest and use both in teaching and research. They also emphasise the enormous contribution of the Commonwealth in helping to develop these areas. Also included is a paper prepared for the Meeting by the Association entitled "Constitutional Developments in the Commonwealth -- Emerging Trends and Implications for Westminster-style Governance". A CLEA presence of the Meeting once again emphasised the strong partnership between the Association and the Commonwealth Secretariat. This is further emphasised by the involvement of the Association in the Nairobi meeting in April (noted below) and the Commonwealth Law Ministers' Meeting in October.

John Hatchard
 General Secretary, CLEA
 Marlborough House
 March 2005

COMMONWEALTH LEGAL EDUCATION ASSOCIATION
In association with the University of Greenwich

CLEA CONFERENCE 2005

Comparing Commonwealth Laws: Challenges for Law Teachers

*9-10 September 2005
University of Greenwich
London, UK*

Call for Papers

The Commonwealth Legal Education Association invites you to participate in its 2005 Conference.

The Programme will consist of four themes:

1. Developing the teaching of Islamic Law
2. Human and Family Rights in the Commonwealth
3. Comparative Commonwealth laws: Civil Law, Roman-Dutch law
4. Comparative developments in the Common Law

For further information, please contact:

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See our website: www.cleonline.org for more information and updates

CLEA News

www.cleasonline.org

The Association's new web site is almost ready to go live. keep checking the site.

Commonwealth Moot 2005

The Commonwealth Moot will be held in London from 11 -15 September 2005.

As previously, teams invited to the Commonwealth 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 the United Kingdom.

Please get in touch with your regional representative of the CLEA if you are a coach or an interested law student or group of law students interested in competing in a regional competition so as to become eligible to compete in London.

A number of regions have well-established competitions from which the representative team is chosen.

- **Canada** – the winner of the Gale Cup
- **United Kingdom** – the winner of the English Speaking Union Moot
- **South Africa** – the highest placed team from South African law schools competing in the African Human Rights Moot
- **East Africa** – the highest placed team from a law school in a Commonwealth country in East Africa competing in the African Human rights Moot
- **West Africa** – the highest placed team from a law school in a Commonwealth country in West Africa competing in the African Human Rights Moot
- **Australia** – the highest placed team from an Australian law school competing in the Australian Law Students Association Moot
- **New Zealand** – the highest placed team from a New Zealand law school competing at the Australian Law Students Association Moot

South Asia (India) – India runs a special competition for the Commonwealth Moot. Please contact the regional representative, Dr S Sivakumar at Sivku98@hotmail.com.

South Asia (Sri Lanka, Pakistan and Bangladesh) – please contact the local CLEA representative, Dr Joe Silva at locwal@slt.lk.

The Caribbean - please contact Mr Ronnie Boodoosingh at ronnieboodoosingh@hotmail.com, boodoosinghr@hwls.edu.tt

South East Asia – please contact the regional representative Ros Macdonald at r.macdonald@qut.edu.au.

South Pacific – please contact the regional representative Ros Macdonald at r.macdonald@qut.edu.au

Regions will need to have finished their competitions by the middle of July to be able to send a team to London.

Information about the 2005 Commonwealth Moot is posted on the CLEA website www.cleasonline.org and on the QUT website www.law.qut.edu.au/about/moots/common

If you have any queries about the Commonwealth Moot, please contact Ros Macdonald.

Latimer House Marches On! The Pan-commonwealth Forum On The Commonwealth Principles

Nairobi, Kenya, 4-6 April 2005

The Commonwealth Secretariat and its partner organisations, including the CLEA, are promoting a *Pan African Forum on the Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government* to take place in Nairobi 4-6 April 2005. This is the first of a series of pan-Commonwealth meetings aimed at facilitating the dissemination of the principles and the generation of national plans of action for their implementation.

This high-profile event will be opened by the President of Kenya and the Commonwealth Secretary General. Issues to be discussed include the interaction between judiciary and executive, the independence of parliamentarians, the proper exercise of executive power, mechanisms for safeguarding ethical governance and accountability, the role of an independent legal profession, the battle against corruption and human rights education. Speakers from Africa, including senior members of the judiciary and parliamentarians from both government and opposition, will be joined by experts from outside the continent. The CLEA will be represented by one of our Vice-Presidents, Peter Slinn, who will act as a discussant in the plenary session addressed by the Kenyan Minister of Justice and Constitutional Affairs.

The overall objectives of the Forum are as follows:

- to raise awareness amongst parliamentarians, government ministers and officials, judges, magistrates, lawyers, law teachers and on-governmental organisations and civil society and oversight bodies of the importance of the Principles
- to facilitate the exchange of ideas and sharing of experiences to enhance practices of accountable, ethical and effective governance
- to examine and exchange ideas on ways of strengthening the independence of parliamentarians and the judiciary
- to examine ways of strengthening and reforming institutions in the fight against corruption
- to encourage and explore new ideas for sustaining governance to reduce poverty, promote human rights and gender equality
- to encourage strategic partnerships between government and non-government organisations and civil society in promoting and protecting ethical governance, accountability and the rule of law.

Details of speakers and sessions will appear on the CLEA web site: www.cleonline.org when they have been finalised.

CLEA At The Meeting Of Senior Officials Of Law Ministries

The Meeting of Senior Officials of Law Ministries (SOLM) took place at Marlborough House, London between 18-20 October 2004. This was followed by the Meeting of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions. The Association was invited to participate in both meetings in an observer capacity and the CLEA team comprised: John Hatchard (General Secretary); Peter Slinn (Vice-President), Selina Goulbourne (EC member for Europe) and Jo Ford.

At the request of the Commonwealth Secretariat, the Association prepared two papers for the Senior Officials Meeting. The first on *Constitutional Developments* in the *Commonwealth* is reproduced below. The second entitled *Access to Justice in the Commonwealth: Some Current Trends* will appear in volume 99 of *Commonwealth Legal Education*. In addition, Senior Officials received a paper from the Association on its work and we were invited to discuss this with Senior Officials at a plenary session. Copies of the conference papers will be published in due course by the Commonwealth Secretariat.

Such Meetings are of great significance for law teachers as they involve discussion and work on key legal issues that affect countries around the Commonwealth (and beyond). They also provide excellent materials for research and teaching. The conference Communiqué sets out the wide range of issues covered.

Communiqué

1. Senior Officials of Commonwealth Law Ministries met in Marlborough House, London from 18 to 20 October 2004. Thirty-eight member countries were represented, and the United Kingdom delegation included representatives from two Crown dependencies and two overseas territories. The meeting was able to cover a wide range of issues in three broad areas: criminal law, access to justice, law and development and gender and human rights.

Criminal Law Issues

Criminal assets

2. At their Meeting in St. Vincent and the Grenadines in 2002, Law Ministers asked Senior Officials to develop proposals to enhance the provisions in the Harare Scheme on Mutual Assistance in Criminal Matters on the seizure and forfeiture of criminal assets and to consider how the Scheme could better encourage asset-sharing, with particular emphasis on compensation for the victims of crime and terrorism. Law Ministers had in mind in particular the use of civil forfeiture régimes to supplement existing conviction-based legislation. Senior Officials welcomed the prompt response of the Commonwealth Secretariat to this mandate in the preparation (on the basis of work done by a group of experts in collaboration with the United Nations Office on Drugs and Crime) of a Draft Commonwealth Model Law on the Civil Recovery of Criminal Assets including Terrorist Property, and of related proposals for the amendment of certain parts of the Harare Scheme on Mutual Assistance in Criminal Matters.
3. The meeting heard of the effectiveness of civil forfeiture legislation in those countries which already had it. It was noted that the Model Bill was drafted so as to give a broad scope to the legislative provisions, which could be reduced to meet the particular needs and constitutional obligations of each enacting country. The meeting gave a general

welcome to the drafts, but as a number of delegations had indicated that they had technical amendments to propose it was agreed that the Commonwealth Secretariat would engage in discussions with those delegations with a view to preparing a revised draft for submission to Law Ministers.

Further possible amendments to the Harare Scheme

4. At their Kingstown Meeting, Law Ministers asked Senior Officials to consider other possible amendments to the Harare Scheme. These dealt with the interception of communications and the preservation of computer data. There was wide recognition of the importance of these issues which are further complicated by the rapid convergence of telephone, computer and Internet systems. Strong support was expressed for amendment to the Harare Scheme or the addition of an optional protocol to it dealing with the preservation of computer data, provided that proper account was taken of human rights and protection of privacy issues. Some delegations had greater difficulty with the proposals concerning the interception of the content of communications, which some countries could use only in limited investigative contexts and not to provide admissible evidence.
5. Senior Officials agreed to establish a working group charged with preparing draft proposals for the treatment in the Harare Scheme of the preservation of computer data and with examining in depth the issues surrounding the interception of communications, both in domestic law and in the context of mutual assistance. The working group should pay particular attention to the issue of costs relating to these measures and the need for adequate safeguards. It should take into account work done under the auspices of international organisations such as the G8 and the Council of Europe. The working group has been asked to report to Senior Officials at their meeting immediately before that of Law Ministers in 2005.

6. Senior Officials agreed with the recommendation that proposals for amendments relating to the seizure, forfeiture and sharing of assets should be considered after the Working Group on Asset Repatriation established by the Secretary-General had reported.
7. The meeting discussed the demands the existing Scheme made on the available human resources, especially in small jurisdictions. It was sometimes impossible to meet requests despite a wish to comply fully with the Scheme. Senior Officials asked that the Commonwealth Secretariat consider the development of programmes to assist member countries to enhance capacity to deal efficiently with mutual assistance requests. They supported the Secretariat's efforts to establish a list of Central Authorities under the Harare Scheme and agreed that it was important that all participating member countries submit contact information about their Central Authority to the Secretariat as soon as possible. There was support for the suggestion that consideration be given to amending the Harare Scheme to make provision to encourage requesting countries to supply appropriate feedback to requested countries on the assistance provided in response to a request. Senior Officials saw value in the development of a network, similar in concept to the European Judicial Network but adapted to Commonwealth circumstances, to facilitate the whole mutual assistance process. They asked the Commonwealth Secretariat to develop this proposal, and also to consider model legislation or other material or programmes which could assist with the enhancement of the effectiveness of the Scheme.

The rights of victims of crime

8. The interests of victims of crime were central to a draft Commonwealth Statement presented to Law Ministers in Kingstown and referred by them to Senior Officials for further consideration and refinement. The Commonwealth Secretariat had prepared a number of possible amendments to

the Kingstown draft in response to comments received from member countries. Senior Officials agreed to recommend to Law Ministers a revised Draft Statement.

Law of Evidence

9. Senior Officials from a number of countries expressed their Governments' appreciation of the set of model legislative provisions on various aspects of the Law of Evidence received by Law Ministers at their Kingstown Meeting. Law Ministers asked for further work to be done in this area, and Senior Officials endorsed a number of suggestions as to subjects that could usefully be covered. They included the use and protection of intelligence gathered from informants, and by security and intelligence services especially in terrorism investigations and prosecutions, and the related question of the principles and practice governing the disclosure of material to the defence. Although this latter was not strictly part of the law of evidence, it was seen as central to due process. Issues of legal professional privilege might also be considered. The working group that Senior Officials had already agreed to establish would consider the domestic aspects, including evidence laws, of the interception of communications and electronic surveillance.

Capacity building to combat terrorism

10. In the course of their discussion at Kingstown of the implementation of UN Security Council Resolution 1373, Law Ministers mandated Senior Officials to consider how member countries could be assisted with training and capacity building in anti-terrorist work in contexts such as border control and the prevention of counterfeiting of identity papers and travel documents, and also to consider appropriate measures to prevent the abuse of refugee systems by terrorists and persons planning terrorist activities. Senior Officials recalled the relevant recommendations of the Commonwealth expert group on the implementation of UNSCR 1373 including those

on the abuse of refugee systems and border control but noted that many small and developing countries lacked the means to meet the heightened technological requirements, for example for machine-readable passports.

11. Senior Officials agreed to recommend to Law Ministers that the Commonwealth Secretariat should seek to take initiatives in this field as outlined in the paper, including work to develop programmes for training relevant personnel and best practice guides, and to assist in development of co-operation regionally and sub-regionally on the sharing of information. The importance of ensuring appropriate coordination and avoiding duplication with existing initiatives was also noted.

Access to Justice Issues

Constitutional developments in the Commonwealth

12. The meeting received a paper on constitutional developments in the Commonwealth prepared with the assistance of the Commonwealth Legal Education Association. The paper prompted an exchange of information on current issues in constitutional reform and good governance. The discussion emphasised the importance of the specific history and current circumstances of individual countries: there could be no single Commonwealth model, though all countries could have regard to the *Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government agreed by Law Ministers and endorsed in Abuja by Commonwealth Heads of Government*.
13. Senior Officials asked the Legal and Constitutional Affairs Division to continue to work on the topics covered in the paper. Specific reference was made in the discussion to mechanisms for constitutional reform and amendment, the 'basic structure' doctrine, and the questions surrounding ethnicity and minority rights. Importance was attached to ensuring effective means of disseminating information about current Commonwealth developments.

Access to justice

14. Access to justice issues have a continuing importance as they concern the right guaranteed in many Commonwealth constitutions of access to an independent and impartial tribunal or forum within a reasonable time. Senior Officials received a paper [prepared by the Commonwealth Legal Education Association] examining some current initiatives in different member countries, including legal aid schemes, pro bono work, public interest litigation and alternative dispute resolution initiatives. There was a consensus that consideration should be given to providing for the setting up of appropriate and effective mechanisms to make access to justice practical in assistance programmes for developing countries.

Protection of personal information

15. Senior Officials gave further consideration to the Draft Model Bill on the Protection of Personal Information which had been considered by Law Ministers at their last Meeting. They were greatly assisted by written and oral presentations from the Office of the Information Commissioner in the United Kingdom. Senior Officials noted that the Draft Model Bill was concerned with the private sector, the data protection rules applicable to policing and security agencies being within the Model Bill on Privacy already approved by Law Ministers. It was noted that there were different issues relating to the collection, use and retention of personal data as between the public and private sectors, but that the two Bills could be consolidated in a single instrument if that was desired by an enacting country. As personal data was frequently transferred over national boundaries there was real value in having in place comparable legislation in all countries. Senior Officials therefore agreed to recommend that Law Ministers should adopt the Draft Model Bill at their next Meeting.

Building integrity and combating corruption in Commonwealth judiciaries

16. Senior Officials recalled the report 'Fighting Corruption, Promoting Good Governance' considered by Law Ministers at their 1999 meeting, and the work of the Legal and Constitutional Affairs Division in carrying out their mandate in the field of judicial integrity, notably the Commonwealth Judicial Colloquium held in Limassol in 2002. Senior Officials endorsed the view that the independence and integrity of the judiciary was a right of every Commonwealth citizen.
17. The meeting received a paper prepared by the Commonwealth Magistrates' and Judges' Association on the development of appropriate policies. In the light of the recommendations of the Limassol Colloquium and the suggestions of CMJA, Senior Officials agreed to recommend that Law Ministers should mandate the Commonwealth Secretariat to carry out further work (with the assistance as appropriate of the CMJA) including continuing its programme of assistance to member countries in training and capacity building and reforms in the administration of justice; exploring means whereby it can assist member countries to develop judicial training institutes at the regional or sub-regional level; organising regular pan-Commonwealth judicial colloquia; establishing a judicial code of conduct in member countries which could be based on the values set out in the Bangalore Principles of Judicial Conduct to be placed before Law Ministers with a view to their being commended to judiciaries in the process of establishing such a code; and developing training for and a code of conduct for court administrative staff.

Law and Development Issues

The Hague Conference on Private International Law

18. The meeting had the pleasure of welcoming the Secretary-General of the Hague Conference, Dr Hans van Loon, who presented a paper on the

work of the Conference, drawing attention to conventions of particular interest to Commonwealth countries. He noted that nine Commonwealth member countries were now members of the Conference, hoped for the continuation of the valuable association between the Conference and the Commonwealth Secretariat, and would welcome the revival and extension of the series of 'accession kits' produced by the Commonwealth Secretariat on selected Hague Conventions some years ago. Senior Officials supported this latter suggestion. The meeting heard of a number of regional initiatives designed to assist countries considering accession to one or more of the Hague conventions.

19. Senior Officials also noted and welcomed the current work being undertaken at The Hague on the international recovery of child support and other forms of family maintenance. They agreed to recommend to Law Ministers that the Commonwealth Secretariat should continue its involvement in this project, seeking to develop rules which would provide efficient and cost-effective methods of international co-operation. It was recognised that the existing legislative provision and bilateral agreements within the Commonwealth were no longer adequate, and the Secretariat was asked to report in due course on the implications for Commonwealth countries of the eventual Hague convention.

TRIPS and Public Health

20. The meeting received a paper on the implementation of WTO agreements, notably the 30 August 2003 WTO Council Decision on the Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health. Senior Officials recalled the welcome given by Commonwealth Heads of Government at Aso Rock to the WTO agreement on affordable drugs and their call its interpretation and implementation in a manner that makes appropriate drugs available at

low cost to poor countries. They received a report of a recent workshop which had discussed implementation issues, including the need to ensure that countries applied the same high standards to pharmaceutical exports as to items intended for their domestic market, the regulation of remuneration, and the excessive information requirements in some recent bilateral agreements. Senior Officials welcomed the projects being undertaken to provide technical assistance to Commonwealth member countries in this field.

Corporate Social Responsibility

21. The meeting received a paper on corporate social responsibility, defined for this purpose as “the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large”. It noted the international standards which had been developed, notably the nine principles of the Global Compact. The paper suggested that, rather than continue to focus on voluntary initiatives, national governments should create a regulatory framework compelling corporations to be responsive to the needs of the public, and set out possible components of such legislation.
22. Senior Officials welcomed the work being done by the Commonwealth Secretariat in this field while recognising that there were some concerns whether the regulatory framework proposed in the paper would be effective or appropriate in all member countries, and in this regard encouraged the Secretariat to continue to monitor national and international developments.

Sovereign Debt in Distress

23. The meeting received with appreciation a paper prepared, in response to a request by the Commonwealth HIPC Ministerial Forum, by Caribbean Financial Advisory Services Ltd and Nabarro Nathanson on strategies for dealing with

sovereign debt in distress. The paper addressed both the handling of negotiations with creditors and litigation strategy when negotiations failed or when ‘vulture funds’ sought to recover debts transferred to them, and also contained suggestions as to the possible role of the Commonwealth Secretariat in providing a legal clinic for advice and access to expertise. The paper which was presented to the recently concluded meeting of Commonwealth Finance Ministers and HIPC Finance Ministers in St Kitts and Nevis was commended by Senior Officials.

Human Rights Related Issues

Promotion of International Humanitarian Law within the Commonwealth

24. The meeting welcomed representatives of the International Committee of the Red Cross, the British Red Cross and the UK Foreign and Commonwealth Office. The two latter bodies provided a paper which indicated the level of ratification of the more important International Humanitarian Law treaties by Commonwealth member countries and also reproduced the Declaration of the Commonwealth Red Cross and Red Crescent Conference on International Humanitarian Law held in February 2003. Senior Officials were pleased to note the extensive activities summarised in the paper and were able to report on implementation activities at the regional and national level.
25. Senior Officials encouraged the Commonwealth Secretariat to give appropriate support to the follow-up to the Commonwealth Red Cross and Red Crescent Conference on International Humanitarian Law, and agreed to recommend that the ICRC be invited to participate as an observer in the Commonwealth Law Ministers Meeting in 2005, in order to make a progress report on the ratification and implementation of IHL in each of the Commonwealth member states.

Gender and Human Rights

26. The meeting recognised that gender equality was a fundamental principle of the Commonwealth, reflected in successive Commonwealth Plans of Action. The most recent Plan of Action (for 2005-2015) identifies as the main areas of continuing concern: customary and religious laws and practices, the rapid growth in the trafficking of persons, the plight of indigenous women and the discrimination and disadvantages faced by women at different stages in their life cycle. The paper before the meeting recommended that member countries should recognise, ratify and implement international and regional human rights instruments which promote gender equality; seek to harmonise traditional religious norms with international standards and to that end maintain an active dialogue and engagement between the justice system, religious, cultural, traditional and civil systems of the Commonwealth, at a pan-Commonwealth level, and also at a national level; promote the implementation and enforcement of appropriate laws and policies against trafficking and the commercial sexual exploitation of women and children; use international human rights standards, as well as Commonwealth values, in order to develop national, local and regional programmes of action with indigenous peoples, particularly women; and promote the maintenance of gender-related rights throughout the life cycle, through the fulfilment of commitments made in the Convention on the Rights of the Child and CEDAW, as well as other agreements such as the Madrid International Plan of Action on Ageing (MIPAA).
27. Senior Officials welcomed the inclusion of this issue on the agenda and had a wide-ranging discussion in which they exchanged information on the progress made in their individual countries. They gave a general welcome to the policies outlined in the paper, and to strategies to change mentalities and social attitudes.

Information Issues

28. Senior Officials discussed issues arising from a series of information papers presented by the Secretariat:
- (a) The Working Group on Asset Repatriation**
29. With regard to the report on the work of the Asset Repatriation Working Group, Senior Officials noted the important and difficult issues under consideration by the Group and expressed their support for their work.
- (b) Gender and Property Rights**
30. The challenges surrounding gender and property rights were highlighted in the discussion flowing from the paper on this subject. It was noted that change to eliminate discrimination in property law will require legislative action and effective implementation of those laws, including changes to power structures. It will also necessitate efforts to change attitudes and some social structure. Senior Officials supported continued work by the Commonwealth in this area.
- (c) Draft Model Bill on Competition**
31. Senior Officials noted that the draft Model Bill had been redrafted since the last Law Ministers Meeting and was being considered by regional Expert Groups prior to resubmission to Law Ministers in 2005.
- (d) Legal Development in Protection of Traditional and Cultural Knowledge**
32. The meeting noted the continuing work in this area in which the Commonwealth Secretariat was working with UNCTAD and WIPO.
- (e) Internal Displacement in the Commonwealth**
33. The very difficult issues highlighted in the paper on Internally Displaced Persons generated considerable discussion. The human suffering of persons displaced by armed conflict, violence or disaster makes it an urgent priority matter to pursue recognition and implementation of the

recommendations of the Commonwealth Expert Group and the United Nations guiding principles. Senior Officials encouraged continued work by the Commonwealth Secretariat to this end.

Other Business

Legal Developments including the Legal Work of the Commonwealth Secretariat

34. The paper on the activities of the Legal and Constitutional Affairs Division was considered with Senior Officials commending the Commonwealth Secretariat on the extensive work carried out to assist member countries.
35. There was a lengthy discussion about the difficulties in particular in small jurisdictions with the training and retention of legislative drafters. It was noted that Commonwealth member countries were uniquely placed to render assistance in this area because of the common legal system and shared practices in legislative drafting, Senior Officials from many jurisdictions appealed for the development of programmes to train legislative drafters including training courses, supported assignment of personnel to Attorney Generals' offices and offices of Parliamentary Counsel and taking advantage of the Commonwealth network. In considering the problem of retention, Senior Officials noted that developing countries consider imposing measures to retain the services of legislative drafters who benefit from assistance programmes. One such measure is a requirement to enter into a bond with the relevant Government obliging legislative drafters to serve a minimum time before they can leave the service or to repay the cost of the training they received. The Secretariat described some of the programmes undertaken to date, including the implementation of a 12 weeks curriculum developed by the Secretariat and they invited countries to identify relevant institutions which could utilise the curriculum.
36. Senior Officials noted the problem was not limited to legislative drafters but extended to training and development for prosecutors and civil lawyers. In relation to prosecutors, this was particularly acute as all of the new legislative initiatives in fields such as mutual assistance, extradition, proceeds of crime and computer crime require prosecutors and other officials to take steps to secure their effective implementation.

Co-operation with Partner Organisations

37. The meeting, recognising the important role of the partner organisations was pleased to receive reports on the work of the Commonwealth Legal Education Association, the Commonwealth Magistrates' and Judges' Association, the Commonwealth Broadcasting Association, the Commonwealth Lawyers Association, the Commonwealth Policy Studies Unit and the Commonwealth Association of Public Sector Lawyers.

Next Law Ministers Meeting

38. It was confirmed that the next meeting of Commonwealth Law Ministers would be held at the invitation of the Government of Ghana in Accra from 17 to 20 October 2005.

London

20 October 2004

Constitutional Developments in the Commonwealth

– emerging Trends and Implications for Westminster Style Governance

Paper prepared by the Commonwealth Legal Education Association

The Object of this paper is to identify key issues of constitutional governance for the purpose of providing a future agenda for Commonwealth law ministers, senior officials and LCAD.

In Abuja in 2003, Heads of Government re-affirmed their commitment to the fundamental political values of the Commonwealth set out in the Singapore and Harare Declarations and elaborated in subsequent CHOGM communiqués. Specifically, they adopted the *Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government* (set out in an Appendix hereto) and the *Aso Rock Declaration on Development and Democracy*. The latter identifies key priorities for the promotion of democratic governance, including participatory democracy characterised by free and fair elections and representative legislatures, an independent judiciary, a well-trained public service, a transparent and accountable public accounts system, machinery to protect human rights and active participation of all elements of civil society. It is widely acknowledged that building democracy, in the words of the Aso Rock Declaration is "constantly evolving process".

This process in terms of constitutional reform is in train in countries in many parts of the Commonwealth, both rich and poor, large and small, including those countries with a long-established tradition of constitutional governance and those where the foundations are still being laid. All however can learn from the shared experience of the 53 member states. We are also mindful of the situation in Zimbabwe, which was a central concern of the Abuja meeting and remains a Commonwealth concern in the hope that Zimbabwe's return to membership will not be too long delayed¹.

Most countries of the Commonwealth share in the "Westminster" constitutional tradition although the model exported at the time of de-colonisation has always differed in certain fundamental respects from the original United Kingdom version. The latter has been characterised by a unitary state structure with an unwritten constitution controlled by the conventions of responsible government based on the accountability of the executive to a sovereign parliament. The "export

¹Cf Commonwealth involvement in the transition in South Africa (particularly the Eminent Persons Mission: see Communiqué of Commonwealth Heads of Government Review Meeting, Commonwealth Secretariat, 1986). South Africa was absent from the Commonwealth from 1961 until 1994 but the situation there remained on the CHOGM agenda throughout that period.

model" was based on the supremacy of a written constitution, with an entrenched bill of rights supported by judicial review and express provision for the separation of powers. In a number of countries, the model, following the pattern of Australia and Canada, took a federal form.

The survival rate of the export model has varied sharply across the regions of the Commonwealth. For example, the constitutions of the Caribbean are essentially unchanged since independence whilst most Commonwealth African countries have seen fundamental constitutional, and indeed in some cases unconstitutional, change².

Of particular interest today is extent to which British constitutional reforms, the most far-reaching of their kind since the nineteenth century development of responsible government, are now moving nearer to the export model - away from a unitary state with an unwritten constitution and a sovereign parliament. Thus the "unwritten" constitution is increasingly being reduced to writing. Thus Lord Bingham has counted eighteen statutes of constitutional import since the election of the Labour administration in 1997³; the doctrine of parliamentary supremacy has been modified, some would say undermined, by the supremacy of European Union law in certain matters and by the incorporation of the European Convention on Human Rights into United Kingdom law, with a power of disallowance of incompatible legislation; moves towards the formal separation of executive, legislative and judicial powers are reflected in the prospective replacement of the Judicial Committee of the House of Lords by a supreme court, the removal of judges from legislature and the abolition of the venerable office of Lord Chancellor; the removal of the hereditary element from the upper house of the legislature removes one of the most startling, if equally venerable anomalies in a democratic constitution.

The creation of devolved government for Scotland, Wales and Northern Ireland⁴, particularly the devolution of

exclusive legislative power in devolved matters to a Scottish parliament, while not formally affecting the unitary character of the United Kingdom state, is likely create by convention a system which the sovereign Westminster parliament will be unable to undo in practice⁵. While the position of the Crown remains unchanged, and government is still carried on in the Queen's name by a prime minister and other ministers accountable to parliament, the old fabric of the British constitution has been transformed in the name of a modern perception of democratic governance, bringing government closer to the people and enhancing the transparency and accountability of government.

The Methodology Of Constitutional Change

Since 1990, a significant number of Commonwealth countries have introduced new, autochthonous constitutions. In some cases this has caused, and continues to cause, considerable controversy. For example, in Kenya the Constitutional Review Commission process has proved difficult and is still subject to challenge in the courts.

Thus there may be useful lessons to be learned from a comparative study of the various methodologies adopted for constitutional change.

Devising and adopting a new constitution

Since 1990, constitution-making efforts in many Commonwealth countries have focused on seeking to provide a consultative procedure that gives popular legitimacy to the new document. In many cases this was effected by the establishment of a constitutional commission whose function was to seek the views of the people. In some countries, the commission was then responsible for drafting the new constitution, whilst in others, the matter was left to a popularly elected constitutional/constituent assembly. This has raised several controversial issues.

²Botswana and Mauritius are exceptions to the African pattern. Of course, as noted below, unconstitutional change has not been restricted to Commonwealth Africa.

³An old constitution in a new world", lecture given to the Commonwealth Lawyers' Association, London, 10 June 2004.

⁴In the Northern Irish case, currently in suspense.

⁵Compare the constitutional history of the 'old' Commonwealth: the subordination of the national legislatures of Australia, Canada, New Zealand and South Africa to the "imperial" parliament, expressly asserted by the Colonial Laws Validity Act, 1865, was not formally removed until the Statute of Westminster, 1931. However, long before the 1931 enactment, the convention was well established that the Westminster parliament did not legislate for what became the self-governing dominions without their consent.

- How are commissioners appointed? e.g. by means of a popularly elected commission (e.g. Uganda) or a commission appointed by the head of government (e.g. Zambia)
- To whom is the commission answerable? e.g. should the commission make its report to a popularly elected constitutional assembly that is tasked with drawing up the final document or should it report to the head of government?
- How are the views of the people distilled into the new document?

A recurring problem concerns the incorporation of the views of the "people" into the new constitution. Experience has shown that with thousands of submissions, it is possible to draft a number of versions of a constitution and still find justification in the submissions made to the commission for each one of them. Here there may be merit in considering the South African approach in which consultation took place following the building of a broad consensus between the various political players on the terms of the new constitution.

- Who approves the final document? There are several possible models here: a) the legislature; b) a specially elected constituent assembly; c) the people in a national referendum.

In the United Kingdom, major constitution changes are made by means of an ordinary Act of parliament e.g. Human Rights Act 1998. As regards the process for the current Constitutional Reform Bill (see below), this has followed the traditional parliamentary route of discussion papers published by the relevant government department (of "Constitutional Affairs" itself an interesting innovation in the British ministerial pantheon) leading to a Bill currently subject to select committee scrutiny. It is worth noting, however, that the UK Government has now committed itself to holding a referendum regarding approval of the proposed European Constitution.

Constitutional amendment

Most Commonwealth constitutions contain a special procedure for their own amendment. Typically (and following the Westminster export model) this is the

requirement for a two-thirds parliamentary majority. This procedure can raise concerns particularly when the, not uncommon, situation arises of the ruling party enjoying a two-thirds parliamentary majority. In South Africa, concern about the proposed amendment procedure for the new constitution was expressed by the Association of Law Societies. It noted in a submission to the Constitution Court of 31 May 1996, that the inclusion of a two-thirds majority for constitutional amendment in the draft 1996 Constitution meant the provision left:

"Parliament free the following day (by a mere two-thirds majority) to amend the new Constitution in a way which violated the Constitutional Principles and thus upset the compromises so carefully negotiated".

In the event, adverse comment by the Constitution Court on the proposed constitution amendment provision led to its being significantly strengthened.

Such concerns have to some constitutions imposing additional requirements for amending the constitution. In some cases this is through the requirement for a referendum which, in some cases, has seen the new document rejected (for example, in The Seychelles).

The concern expressed by the Constitutional Court highlights the efforts needed to avoid a situation where a constitution can be "undermined" by means of a series of retrogressive constitutional amendments. Thus it may be useful to examine the various mechanisms employed in Commonwealth constitutions for constitutional amendment. It is also worth noting two other devices used to protect fundamental constitutional provisions against amendment:

- **Making constitutional provisions unalterable**
An unusual provision that appears in the Namibian Constitution expressly excludes any repeal or amendment "in so far as such repeal or amendment diminishes or detracts from" the fundamental rights provisions.
- **The basic structure doctrine**
In India in the 1973 case of *Kesavananda v State of Kerala*⁶, the Indian Supreme Court held that the legislature's power to amend the constitution was impliedly limited. Thus an amendment could not

alter the "basic structure" of the Constitution. A series of cases have approved the doctrine and courts in other Commonwealth countries have acknowledged its importance.

Overall, it may be helpful to consider further work on the following issues:

- The mode of making constitutions in the Commonwealth
- The mode and effectiveness of mechanisms for amending constitutions
- Mechanisms for protecting constitutions against retrogressive amendment.

Special Factors Affecting Constitutional Reform

Ethnicity and communal tensions

To what extent should the constitution accommodate ethnicity or communal rivalries and tensions? This issue has bedeviled the search for a constitutional compromise in a number of Commonwealth countries, particularly where a minority asserts a claim to a distinct identity, as in Cyprus and Sri Lanka. The constitutional arrangements have to seek to strike a balance between maintaining the integrity of the national state and providing an adequate "constitutional space" for the minority community. The Fiji Islands illustrate the problem in a different way, where the indigenous community's fear of Indian "majority rule" led to the breakdown in 1987 of the original constitutional settlement of 1970.

Constitutional breakdown and the restoration of democracy

One of the most difficult problems that Commonwealth countries have had to face is created by the overthrow of the constitutional order itself by intervention of the military or otherwise by force. Beginning with Pakistan in 1958, constitutional breakdown has affected Bangladesh, Cyprus, Fiji Islands, The Gambia, Ghana, Grenada, Lesotho, Nigeria, Seychelles, Sierra Leone, Solomon Islands and Uganda.

The Millbrook process, a remarkable Commonwealth

innovation, was originally created to assist Commonwealth countries particularly in circumstances of an unconstitutional overthrow of a democratic government. Currently the tidal wave of unconstitutional action has receded, but the lesson remains that bad governance provides a breeding ground for such intervention.

There are also useful lessons to be drawn from a comparative study of the manner in which constitutions seek to establish a suitable relationship between the civilian government and the military. This might be based on the view of the ANC in South Africa which declared in its seminal 1992 policy statement *Ready to Govern*, that the security forces should be:

"Bound by the principles of civil supremacy and subject to public scrutiny and open debate...[and] be accountable and answerable to the public through a democratically elected parliament" (at p.71).

Traditional Rulers

It has been often alleged that plural democracy, based on a competitive political culture, is alien to the tradition notions of governance in many Commonwealth countries, particularly in Africa and the Pacific. This argument was used particularly in the 1970s by those seeking to justify the imposition of one-party rule, but it has a long Commonwealth pedigree. Thus the leading practitioners of colonial rule in Africa in the 1930's advocated the nurturing of traditional rulership by a process of "indirect rule" rather than the introduction of parliamentary democracy. Of course constitutional monarchy based on the hereditary principle has a firm place in the Commonwealth constitutional framework but such traditional rulers fulfil a role which does or should not affect the democratic accountability of elected ministers. However, at all levels of government, from the headship of state through representation in the central legislature to local government, there may be tensions between traditional rulership and democratically elected officials. The problem may be particularly acute where traditional leaders assert claims to title to or powers of allocation over land, for example, in Swaziland and South Africa.

⁶AIR 1973 SC 1461

Small states and territories

The Commonwealth contains a high proportion of small states that have full membership of the world community. The problems of small states have therefore been a major focus of Commonwealth concern⁷. In terms of constitutional governance, small states have generally a good record. Yet as events in Fiji Islands, Grenada, Lesotho and the Solomon Islands have shown, they are vulnerable to unconstitutional action and need support in sustaining democratic institutions.

That small states can make a significant contribution to just and honest government has been highlighted by the recent successful criminal prosecutions for corruption brought against several international corporations in Lesotho.

The constitutional position of territories which have not proceeded to full independence is a matter primarily for the territory concerned and the Commonwealth member internationally responsible for that territory. However, it may be that consideration should be given to enhancing the status of such territories in the councils of the Commonwealth and of providing support for the development of appropriate governance institutions.

Governance and poverty

The Commonwealth has long recognised the link between good governance and development. Thus the Harare Declaration and the Millbrook Action Programme link the advancement of Commonwealth fundamental political values with the promotion of sustainable development. The link between development and democracy as mutually reinforcing goals was recognised specifically in the paragraph 6 of the Aso Rock Declaration. Poor countries often lack the resources to sustain the institutions of good governance. A programme of assistance, building on the work already undertaken by the Commonwealth Secretariat and bilateral aid programmes, is called for in this regard.

Substantive issues of Constitutional Reform

The Judiciary

The importance of the independence of the judiciary was recognised expressly in the Harare Declaration and was re-affirmed at Abuja in the context of the endorsement of the Commonwealth Principles. The latter acknowledges that

“An independent, impartial, honest and competent judiciary is integral to upholding the rule of law”

and identifies key factors in the securing of these aims in relation to mode of appointment, security of tenure and of remuneration, adequacy of available resources and appropriate relationships with the executive and parliamentary branches of government (Principle IV). At the same time, the Principles also acknowledge the importance of the accountability of the judiciary in order to ensure public confidence in the judicial system.

(1) The United Kingdom

The most elaborate measure of judicial reform in the Commonwealth is currently taking place in the United Kingdom. Many of the reforms embodied in legislation currently before parliament in July 2004, are designed to remove from the British constitution historical anomalies which, without the buttress of constitutional convention, would appear to bring into question the independence of the judiciary. Thus the Constitutional Reform Bill (CRB)⁸ will abolish the office of Lord Chancellor, thus removing from the constitution an office which, while a thousand years' old office, appears to conflict with the relationship between the three branches of government delineated in the Commonwealth Principles in so far as the office-holder is a member of the government, the judiciary (though the present Lord Chancellor has declined to sit in a judicial capacity) and the legislature.

The major innovation will be the replacement of the Judicial Committee of the House of Lords with a new Supreme Court of the United Kingdom which will be separate from Parliament. The government's rationale for the new body is to "put the relationship between the

⁷The Commonwealth Advisory Group's report *A Future for Small States: Overcoming Vulnerability* Commonwealth Secretariat, 1997, provides a detailed analysis.

⁸This may have become an Act by the time that this paper is considered by senior officials.

executive, the legislature and the judiciary on a modern footing which takes account of people's expectations about the independence and transparency of the judicial system⁹. The Bill makes elaborate statutory provision for the appointment and discipline of the judiciary. In most Commonwealth countries these matters are prescribed in the chapter on the judiciary in the constitution¹⁰.

The salient features of the scheme relating to the new Supreme Court are as follows:

(a) Judicial Independence

The actual independence of the modern British judiciary is not in doubt as is evidenced in recent times by senior judges' public criticisms of the executive where threats to the rule of law are perceived. However, particularly after the incorporation of the European Convention on Human Rights, the perception must be made to coincide with the reality. The protection of judicial independence has traditionally been the role of the Lord Chancellor. Clause 1 of the CRB imposes a statutory duty on the Secretary of State for Constitutional Affairs (SSCA) to have regard to the need to defend the continued independence of the judiciary - a provision which offers little by way of effective safeguard in the event of a real challenge to that independence from an ill-disposed government¹¹.

(b) Separation of Powers

The new Supreme Court (SC) will be entirely separate from Parliament. Holders of full-time judicial office will be excluded from sitting and voting in the House of Lords.

(c) Jurisdiction

The SC will assume the jurisdiction of the House of Lords and also that of the Judicial Committee of the Privy Council in devolution matters. Otherwise the Privy Council will function as before in relation to appeals from certain Commonwealth members, UK Crown dependencies and overseas territories. The SC court is a purely appellate tribunal and there is no provision for original jurisdiction¹². The SC will not have the power of judicial review of legislation, except to the limited extent provided by the Human Rights Act¹³.

(d) Appointment, Discipline and Removal

The existing Lords of Appeal in Ordinary will become judges of the Supreme Court. New appointments thereafter will be made by a process involving the recommendation to the SSCA by an ad hoc commission (representing the existing senior judges of the SC and the judicial appointments bodies of England and Wales, Scotland and Northern Ireland). The bill is likely to provide that the SSCA will receive one nomination which the SSCA must then either submit to the Prime Minister who must in turn recommend appointment to the Queen or seek a second name from the commission. Judges of the SC will continue to hold office during good behaviour until the statutory retirement age of 70, but may be removed on the address of both Houses of Parliament.

The appointment of other members of the higher judiciary of the Supreme Court of England and Wales will be in the hands of the Judicial Appointments Commission, an innovation for the United Kingdom but a familiar feature of other Commonwealth constitutions. The membership of such commissions is an issue of abiding controversy. The CRB contains provisions for appointment by the Crown on the recommendation of the SSCA after an elaborate statutory process of consultation. The Commission of 15 must contain members of the judiciary, the legal profession and at least 6 lay members. In an innovative measure, there is a requirement that one member must be a lay justice.

Complaints about the conduct of the appointments process may be made to a "Judicial Appointments and Conduct Ombudsman". There are also to be elaborate statutory procedures for the disciplining of judges. Complaints about the conduct of these may also be investigated by the Ombudsman.

The senior judge of the SC will be styled "President". The Lord Chief Justice will acquire the additional statutory title of President of the Courts of England and Wales and will, in effect, assume the judiciary-related functions of the Lord Chancellor which are not transferred to the SSCA.

⁹Department of Constitutional Affairs Constitutional Reform: A Supreme Court for the United Kingdom (July 2003).

¹⁰See, for example, Chapter VII of the Constitution of Belize.

¹¹Cf, for example, the entrenched protection of judicial independence in section 165 of the Constitution of South Africa, 1996.

¹²Cf section 167(6) of the South African Constitution, which makes provision for direct access to the Constitutional Court with leave when required in the interests of justice. The positive impact made by this Court might also encourage other Commonwealth states to consider introducing such a body.

¹³Viz. the power of the court to make a declaration of incompatibility in respect of primary legislation in terms of section 4 of the Act

(e) Summary

In general the reforms will bring the United Kingdom closer into line with judicial arrangements in other Commonwealth countries and appear to provide a greater degree of accountability and transparency in the judicial process. Concern has been expressed however at the disappearance of the powerful figure of the Lord Chancellor and his replacement (there never has been a female holder of the office!) in the political role by a relatively junior member of the cabinet who may not be a lawyer. Moreover, the pace of reform has caused consideration by persons previously wedded to the unwritten constitution of more fundamental changes in the constitutional structure of the United Kingdom¹⁴.

The establishment of a Judicial Ombudsman mirrors the approach in some other Commonwealth states and it might be helpful to assess their organisation and effectiveness.

(2) New Zealand

The Supreme Court Act 2003 abolished appeals from New Zealand to the Privy Council in respect of any civil or criminal decision of a New Zealand court made after 31 December 2003 and created in its place a Supreme of New Zealand with effect from 1 January 2004. The new court held its first hearings in July 2004, replacing the Judicial Committee as the second tier appeal court for New Zealand.

The Supreme Court is presided over by the Chief Justice with not fewer than four nor more than five other judges. The Act contains none of the elaborate provisions in relation to appointments contained in the UK Bill. Appointments are made by the Governor-General acting, according to constitutional convention, on the advice of the Attorney General, or, in the case of the Chief Justice, the Prime Minister. In fact, the first court consisted of the existing Chief Justice, Dame Sian Elias and the four most senior judges from the Court of Appeal. On future appointments, the Attorney General will be advised by an ad hoc committee consisting of the Chief Justice, the Solicitor-General and a former Governor-General, pending a future review of the judicial appointments system. As in the case of the UK proposals, the new court will be a purely appellate body.

Given New Zealand's constitutional arrangement, the court will lack the power of judicial review of primary legislation. Indeed, in the light of the United Kingdom's association with the European Union, New Zealand may now be regarded as the bastion in the Commonwealth of the pure doctrine of parliamentary sovereignty. In order to address concerns that the establishment of the new court would disturb the existing balance between the three branches of government, the independence of the judiciary and the Treaty of Waitangi, the Supreme Court Act contains a "purpose clause" (section 3) referring expressly to the resolution of important legal matters, including matters relating to the Treaty of Waitangi, with an understanding of New Zealand conditions, history and traditions and to the improvement of access to justice. The section also affirms that the Act was not intended to affect New Zealand's continuing commitment to the rule of law and the sovereignty of Parliament. Of course, the recording of constitutional conventions in an ordinary act of parliament, as in the United Kingdom case, does not give them the formal protection afforded by inclusion in a constitution which is the supreme law.

(3) The Regional Model: the Caribbean Court of Justice

This Court will replace the Privy Council as the final court of appeal for those Commonwealth Caribbean states that are parties to the agreement establishing the court (as well as having certain functions in relation to the CARICOM Treaty). The creation of the Court has provoked considerable controversy and has been the subject of constitutional challenge in Jamaica. While the creation of a regional court of appeal may appear an attractive option in terms of sharing of judicial resources, there are problems in relation to the appointment of judges to reflect regional balance, the location and funding of the court and the establishment of the authority of the new body.

In this respect it is important to build upon the work of the Law Development section of the Legal and Constitutional Affairs Division in assisting countries to replace the Judicial Committee of the Privy Council.

¹⁴Lord Woolf, the Lord Chief Justice, has expressed his doubts: "What has happened since June last [2003] does raise the issue as to whether or not the time has come when it is necessary at least to consider embarking on the difficult task of establishing a written constitution for the United Kingdom.... I have up until now preferred the flexibility inherent in an unwritten constitution. I no longer see a written constitution containing entrenched provisions ... as not being on the agenda." "Constitutional Reform in the UK: Change for Change's Sake?" *Commonwealth Lawyer*, April 2004, p.21.

The regional option might also be appropriate for the Pacific. In particular, it would enable the creation of a second tier appeal process in respect of jurisdictions where it is currently lacking.

Promoting human rights

The Westminster export model included a bill of rights based on the European Convention of Human Rights (in which the British had played an important role in drafting). This model is retained in many Commonwealth countries, for example in much of the Caribbean as well as in Botswana and Mauritius. In the United Kingdom, the Human Rights Act 1998 incorporated the European Convention into domestic law.

The new wind of change that swept over much of the Commonwealth Africa in the 1990s saw the introduction of wide-ranging and justiciable bills/declarations of Right into the new constitutions. In many cases, in addition to the traditional civil and political rights, these also included for the first time economic, social, cultural and environmental rights. Here the Canadian Charter of Human Rights was influential partly because Canada had a justiciable bill of rights grafted onto an older Westminster model and partly because the Charter served as one of several precedents examined when later constitutions in the Commonwealth Africa were being drafted. This move towards expanding the scope of bill of rights is also in line with the gradual move by Commonwealth countries towards becoming parties to the major international human rights conventions. This significant expansion of the scope of bills of right has also raised significant issues regarding the role of courts in dealing with social policy issues: for example the jurisprudence from the Constitutional Court in South Africa concerning access to retroviral drugs, the right to health and the right to housing and the response of government thereto.

A feature in some countries, such as Uganda, is the inclusion in their constitutions of non-justiciable rights in the form of, in the words of the Ugandan Constitution, "National Objectives and Directive Principles of State Policy". In view of the trend towards making all constitutional rights justiciable, the value of such an approach might be need re-considering.

The importance of comparative Commonwealth jurisprudence in this field is well known and the Commonwealth Secretariat is already involved in its dissemination via the INTERIGHTS' Commonwealth Law Programme and through links with the *Law Reports of the Commonwealth*. It may be useful to examine the effectiveness of this work and how it might be improved and expanded to benefit all member states.

Thus there may be some merit in reviewing the promotion of human rights issues taking into account factors such as:

- The scope of bills of right in the Commonwealth
- Whether or not all rights contained in a constitution should be justiciable
- The role of judges in the development of social policy issues
- Whether improvements are required in the dissemination of comparative Commonwealth jurisprudence
- The extent to which constitutions adequately address issues of gender and minority rights.

Separation of Powers

The earlier discussion has noted the position as it has been considered in relation to constitutional reform in New Zealand and the United Kingdom. The Commonwealth's position in general has been stated in the Commonwealth Principles (see the Appendix).

Issues that might affect the proper balance between the three branches of government include:

- *Effective limitation of executive power*, particularly where there may be excessive accumulation of constitutional and political power in a presidential executive;
- *The securing of judicial independence* on the basis of Part IV of the Commonwealth Principles
- *The strengthening of the role of Parliament* in terms of training, resources and mechanisms for ensuring the accountability of the executive: as referred to in Part VI (2)(a) of the Latimer House Guidelines from which the Principles are derived. Also mechanisms for protecting the independence of parliamentarians (noted below).

Developing oversight bodies

In the Harare Commonwealth Declaration, Commonwealth Heads of Government recognised that developing appropriate "institutional structures which reflect national circumstances" is a key element for promoting and protecting human rights, good governance and the rule of law. Further, Principle XI of the Commonwealth Principles states that steps which may be taken to encourage public sector accountability include:

"The establishment of scrutiny bodies and mechanisms to oversee Government, [as this] enhances public confidence in the integrity and acceptability of government's activities. Independent bodies such as Public Accounts Committees, Ombudsmen, Human Rights Commissions, Auditors-General, Anti-corruption commissions, Information Commissioners and similar oversight institutions can play a key role in enhancing public awareness of good governance and rule of law issues. Governments are encouraged to establish or enhance appropriate oversight bodies in accordance with national circumstances. "

Thus there may be merit in examining the work and effectiveness of oversight bodies.

Offices of the Ombudsman already operate in the majority of Commonwealth countries and are mainly concerned with public sector administrative justice issues. Separate equality and anti-discrimination commissions are also well established.

A more recent trend has seen the establishment of human rights commissions designed to promote and protect human rights in both the private and public sectors. Thus whilst in 1990 only Australia had a fully-fledged human rights commission, today they operate in some fifteen Commonwealth countries, with the latest additions being in Kenya and the Maldives.

Concern about tackling corruption has also encouraged states around the Commonwealth to establish separate anti-corruption commissions e.g. in Australia, Brunei, Jamaica, and Malawi.

There is considerable variety in the oversight institutions established by Commonwealth states. Some have developed a series of single-issue institutions as well as an office of the ombudsman e.g. England and Wales has

an Equality Opportunities Commission, Race Relations Commission and Disability Rights Commission as an ombudsman although there is now a proposal to establish a "one-stop" commission. Other states have established a separate office of the ombudsman and human rights commission (e.g. Uganda) whilst yet others have a single institution that combines the work of an ombudsman, human rights commission and anti-corruption commission, e.g. the Commission for Human Rights and Administrative Justice in Ghana.

The Commonwealth Secretariat has done much to support such institutions. In particular, the development in 2001 of the *Best Practice Principles for National Human Rights Institutions*. Yet there has been little work done on examining the extent to which these are being put into practice.

Thus issues that might require further consideration include:

- What type of oversight bodies exist in the Commonwealth?
- The benefits of establishing/maintaining a single or multiple institution, particular in relation to small states
- The extent to which Commonwealth Best Practice Principles provide a useful template for the organisation, powers and operation of oversight bodies
- Whether states need to re-assess the role and function of their oversight bodies in the light of privatisation and increasing cross-border issues
- To what extent do oversight bodies help promote and protect human rights and administrative justice? What are the factors that, in particular, impact on the effective operation of such institutions?

Democratic entitlements and political parties (1) Preserving the independence of members of parliament

This is an issue that provokes some debate. The Commonwealth Principles make it clear that "Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference" (Principle

III(a). However, there are several factors affecting such independence. These include the following.

(a) Right of recall

Some Commonwealth constitutions provide for the recall of members. For example, article 84 of the Ugandan Constitution provides for the recall of members by the electorate during their elected term on grounds of incapacity, misconduct or "persistent deserting of the electorate without reasonable cause". However, the Latimer House Guidelines (III(2)(b)) suggest that such provisions "should be viewed with caution, as a potential threat to the independence of members".

(b) Floor-crossing

The expulsion of members from parliament as a penalty for leaving their parties (floor crossing) also remains a matter of some controversy. Such behaviour is a hallowed tradition in the House of Commons at Westminster and the right of sitting members to follow their consciences and switch allegiance to another party (or simply to sit as independents) is seen as an integral part of a competitive party system. Not surprisingly, the Westminster export model constitution did not seek to regulate the matter.

However floor-crossing can represent a barrier against the corruption of MPs and thus the Latimer House Guidelines (III(2)(a)) suggest that:

"[T]he expulsion from parliament as a penalty for leaving their parties (floor crossing) should be viewed as a possible infringement of members' independence; anti-defection measures may be necessary in some jurisdictions to deal with corrupt practices."

Of course, an anti-floor crossing provision is seen as a necessary part of any proportional representation electoral system which seeks to provide a quorum of representatives of individual parties as determined by the entire electorate.

(c) Protecting parliamentarians from unwarranted attacks

A traditional mechanism for protecting unwarranted attacks on parliamentarians has been the use of criminal libel laws (see, for example the recent Privy Council decision in *George Worme and Grenada Today Limited v Commissioner of Police*) and contempt laws. However, such provisions have long been viewed with considerable concern. Here Principle III(b) of the Commonwealth Principles seeks to provide a suitable balance:

"Criminal and defamation laws should not be used to restrict legitimate criticism of Parliament; the offence of contempt of parliament should be narrowly drawn and reporting of the proceedings of parliament should not be unduly restricted by narrow application of the defence of qualified privilege."

(2) Political party funding

State funding for political parties is now increasingly viewed as a necessary part of strengthening democracy and helping to create a level political playing field.

Yet enhanced transparency in the financing of election campaigns and political parties is now recognised as being essential to efforts to prevent corrupt practices that can significantly affect the political process (see for example, the provisions of the new United Nations Convention Against Corruption). The strategies being undertaken around the Commonwealth to address this issue may merit attention.

(3) Utilising the experience of Commonwealth election monitors

The numerous election monitoring exercises since 1980 have enabled the Commonwealth to build up considerable experience and expertise on the key requirements for holding free and fair elections, including the development of a series of important codes of conduct. In view of this, there may be scope for refining and disseminating such information on a Commonwealth-wide basis.

(4) Providing for a representative legislature and political system

Note 10 to the Latimer House Guidelines puts the matter succinctly:

"Parliament should reflect the composition of the community which it represents in terms of ethnicity, social and religious groups and regional balance".

Yet the record of Commonwealth states in terms of gender balance is a cause for concern. For example, in November 1996 the Fifth Meeting of the Commonwealth Ministers Responsible for Women's Affairs recommended that member countries be encouraged to achieve a target of not less than 30 per cent of women in decision-making in the political, public and private sectors by the year 2005. This target is unlikely to be met by most, if not all, Commonwealth states.

However, Commonwealth states have developed a variety of approaches that might assist efforts to address this issue. These include:

- Requiring political parties to have national (rather than simply regional) support
- Providing for the election of persons representing special interest groups
- Providing for members nominated by the President (or other state official)
- Providing for regional representatives (often through the use of a bi-cameral legislature)
- Using a variety of electoral systems to encourage greater regional representation in the legislature
- Encouraging the selection of women and persons from ethnic or other minorities as parliamentary candidates (for example, the "merit with bias" approach i.e. where if two applicants are of equal merit, the bias should be to appoint a woman or candidate from an under-represented region or background).

Thus may therefore be some merit in studying the mechanisms used by Commonwealth states to enhance the democratic entitlement of their citizens.

Headship of State

The issue of the move towards a republic in those states which have retained Her Majesty the Queen as Head of State is a matter exclusively for the states concerned. However, issues of fundamental constitutional importance in connection with the role of the head of state require consideration. These include:

1. The expression in a written constitution of the conventions of constitutional monarchy, most recently attempted in the case of Lesotho and currently an issue in Swaziland's constitutional evolution.
2. The relative merits of systems which may be broadly classified as parliamentary or presidential executive.

The parliamentary executive system is derived from the classic Westminster model: i.e. the head of government is separate from the head of state who performs largely

ceremonial functions and may be an hereditary monarch or (usually indirectly elected) president; the head of government (prime minister) and fellow cabinet ministers are responsible to the legislature of which they are normally members. This model remains popular in the Caribbean, Asia and the Pacific and in the "old" Commonwealth (29 countries).

The presidential executive system confers executive power on a (usually popularly elected) president who is both head of state and government and to whom ministers are accountable rather than to the legislature. This model became popular in Africa where it was said that the separation of head of state and government defied local political culture and tradition (24 countries).

A history of abuse of presidential power in presidential executives raises the question of a possible return to the classic "Westminster" division of executive power between a largely ceremonial head of state and a prime minister who is a member of and directly accountable to parliament. In Kenya, the Ghai Commission controversially proposed a return to a prime ministerial system with the president playing the role of guardian of the constitution.

Commonwealth Secretariat Mandate

The Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government and the Aso Rock Declaration on Democracy and Development reflect many of the current constitutional and good governance issues and challenges for the Commonwealth. Thus this paper seeks to identify areas that might merit further attention by the Legal and Constitutional Affairs Division of the Commonwealth Secretariat. These include:

Good Governance

- (a) Building on existing work on the promotion of democratic governance in areas such as elections and the development of effective oversight bodies
- (b) Providing advice and assistance to Commonwealth states to help develop and sustain institutions of good governance
- (c) Monitoring good practice in the implementation of the Commonwealth Principles working in partnership with the Commonwealth Lawyers'

Association, Commonwealth Legal Education Association, Commonwealth Magistrates' and Judges' Association and the Commonwealth Parliamentary Association.

Constitutional Reform

- (a) Providing advice and assistance, particularly for small and poverty-hindered jurisdictions, on capacity building in establishing sound constitutional structures, especially where there is experience of constitutional breakdown or ethnic/communal tensions
- (b) Reviewing bills of right in Commonwealth constitutions
- (c) Providing advice on mechanisms for constitutional reform and amendment
- (d) Monitoring and advising on the development of appellate court structures and systems
- (e) Reviewing the structure, powers and accountability of the executive
- (f) Ensuring that effective means of disseminating information about current Commonwealth developments are in place.

Model Human Rights Curriculum for the Commonwealth

In 1999 the Association was commissioned by the Human Rights Unit of the Commonwealth Secretariat to develop a human rights curriculum for the Commonwealth. A particular feature of the project was its emphasis on the role of the Commonwealth in the protection and promotion of human rights. This project attracted considerable interest and was instrumental in human rights being introduced into the law curriculum at a number of Commonwealth law schools.

In 2004 the Association was commissioned by the Human Rights Unit at the Commonwealth Secretariat to revise and update the model human rights curriculum and the task was undertaken by Max du Plessis from the University of Natal and Jolyon Ford from the Australian National University. Their Report is set out below. The curriculum itself will be available on the CLEA website in early March.

Report on the methodology and approach used in revising the CLEA Human Rights Model Curriculum

General – Background

The stated objective of the existing (1999) curriculum was to provide a guide to law (and other) faculties interested in offering an undergraduate course on human rights. The notable additional particular feature of the Guide was the special reference to Commonwealth countries' rights

jurisprudence (being the various Declarations, etc, on human rights issues, and the contribution of courts in Commonwealth countries to the development of human rights). The existing curriculum was both a model of a human rights course, and a collection of materials and cases in support of the proposed course outline.

In revising the curriculum, the Commonwealth Secretariat wished to have:

- A user-friendly guide for students (law and others) studying at UG tertiary level
- An instructor's guide (law and others) "to accompany the main text"

The background to this request is, as we understood it:

- (1) Furthering human rights education and awareness in the Commonwealth by setting out a useful model curriculum as a teaching resource;
- (2) Assisting by inclusion of consolidated materials not available generally elsewhere in one place; and
- (3) Acknowledging the contribution of national courts in the Commonwealth to the development of human rights jurisprudence.

General – Methodology

- What we have produced is not two separate resources (a user-friendly guide for students/ a guide for teachers). Instead, we have retained the original structure and purpose, which is a model human rights curriculum resource directed to law

teachers that law (and other) teachers can adapt for their particular courses and countries.

- In this sense it is more an instructor's guide than a student resource, although students may also find it useful. Law teachers in different countries can choose what to put into their own course, but the model curriculum has, built into it, these reference sources, URL links, etc (including particular reference to Commonwealth jurisprudence) that they might use in doing so.
- It seemed to us that producing a user-friendly guide for students might amount to producing a very broad text and reference resource on human rights law (something requiring more space, work and effort). Instead, the draft curriculum (while directed to teachers) contains enough of substance to be useful to students, but cannot be considered a one-stop human rights resource.

Otherwise, we would have been undertaking a very big task – this would not have been revision of the existing model curriculum, but the design of a comprehensive Commonwealth human rights resource for student users, followed by an instructors' manual (which would anyway be based on the model curriculum). For one thing, we do not have the technology and skills support needed to make even a basic user friendly web resource – there are so many good human rights electronic resources out there that without us including some interactive, search engines and other facilities (i.e. something to make the site more appealing than simply a stream of information), we would not be adding much to the field at all. See for example www.hrea.org especially www.hrea.org/learn/guides/index.html and Resource Centre - Library – Teachers (Dutch Min Foreign Affairs and Open Society Foundation initiative) for a very well funded, comprehensive resource. The Commonwealth itself maintains a number of these resources, too.

- Thus while the curriculum is now more specifically directed to teachers (“here are some ideas for structuring a class on socio-economic rights”), it does not contain much by way of substantive

commentary on human rights law. This is because we have worked on a model teaching / course design resource (assuming some familiarity of teachers with human rights law), not a resource designed to inform teachers about the actual content of human rights law.

- Related to this is the fact that, once one accepts that what is intended is a model curriculum and teaching resource, the significance of very comprehensive and up-to-date case references recedes somewhat. After all, teaching does not always take place by reference to the most recent case, but to the case that best raises the issues (so it is *Donoghue v Stevenson* (1932) still gets a good run in torts/delict). In many respects, the amount of references might be a distraction rather than a useful resource for someone designing a new human rights course.
- We both nevertheless believe that there is scope for a Commonwealth-specific student-friendly human rights resource, separate from this draft curriculum / instructors manual. If the curriculum / manual was to be in hard copy, it might include less internet references. If the student resource was to be on-line, it would certainly need some IT technical expertise to make it interesting and appealing to students. In our view the model curriculum cannot really double up as a student resource if indeed it is to achieve its stated primary purpose, which is to assist teachers to devise new courses in human rights.

So, we have attempted to:

1. Rationalise and re-write the preface and introductory / background elements, where there was some repetition. Instead, we have included a new section of material on the nature of teaching in human rights ('Considerations').
2. Re-order / structure the model curriculum itself, as appears by comparison of index with the 1999 version.

3. Include useful 'Current Issues' and 'Basic Concepts' elements.
4. Include as much material as is consistent with length considerations, so that the model curriculum is also a more general resource material for the subject, for course-designers to use in modelling particular courses.
5. Speak more directly to teachers on the options available, and introduce each topic by suggesting what issues might be considered for treatment.
6. Suggest and draft optional case studies on Special Topics (either thematic or specific right-based, e.g. on HIV/AIDS and Human Rights). Where possible, these Special Topics are chosen as ones that particularly affect Commonwealth countries.
7. Update Commonwealth and other case resources, and add links to many basic human rights documents.
8. Rationalise and beef up the section dealing with the Commonwealth's human rights activities, institutions and standards.
9. Include more extensive web links and materials references, including in relation to human rights education itself.

Finally, we would be very grateful indeed to get feedback on what we have attempted including feedback directing us to make any changes to the document.

Jolyon Ford and Max du Plessis
August 2004

However, the project goes further in that it is intended that the curriculum is used not only in law schools but is develop for use by a range of other students undertaking diploma and certificate courses. The first stage in this process was the holding of a meeting jointly organised by the Human Rights Unit of the Commonwealth Secretariat and Yashwantrao Chavan Maharashtra Open University in Nashik, India in December 2004. Jo Ford represented the Association Work is now proceeding on the development of the curriculum into specific human rights courses with a focus on "Building Awareness of a Rights-based Approach to Development". Three such courses are being piloted in India over the coming months. These are:

Certificate Course in Human Rights for Commonwealth Countries

Model Length: Up to 4 months.

Course design objective: An adults' certificate-level course designed primarily for teachers, office-holders, community and civil service workers, members of the civil society organisations, students, etc.

Diploma Course in Human Rights for Commonwealth countries

Model Length: Up to 12 months.

Course design objective: An adults' diploma-level course, designed primarily for teachers, office-holders,

community and civil service workers, judges, legal practitioners, in the concepts and vocabulary of human rights, the history and operation of international human rights standards and mechanisms, the role of the Commonwealth, national mechanisms for the protection of universal rights, and developing a rights-based approach to development.

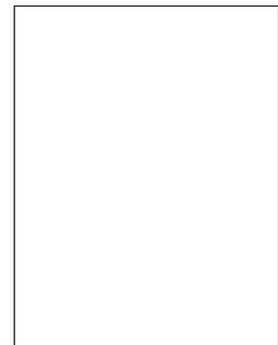
Orientation Course in Human Rights for Commonwealth countries

Model length: Up to 5 Days

Course design objective: A short introductory or foundation course designed for students (at all levels), community and civil service workers, members of civil society organisations, interested individuals, etc. The students would be introduced to the concepts and vocabulary of human rights, the history and operation of international human rights standards and mechanisms, national mechanisms for the protection of universal rights, and the notion of a rights-based approach to development. In particular, the course is intended to equip students to confidently and competently address issues regarding violations of human rights, to engage in spreading awareness of human rights in their community and/or to approach other community or development work on a rights-conscious basis.

Journal of Commonwealth Law and Legal Education

the official journal of the Commonwealth
Legal Education Association



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About the Commonwealth Legal Education Association

Commonwealth Law Students

Great Prizes in our Commonwealth Law Students Essay Competition

The CLEA is pleased to announce the holding of the Third Commonwealth Law Students Essay Competition. On this occasion, the topic is as follows:

“Over the coming years, the Commonwealth Legal Education Association will be assisting Commonwealth law schools to develop the law curriculum.

In the light of your knowledge of the current law school curriculum, what specific proposals for its reform and improvement would you advocate to better equip law students to meet contemporary challenges?

Your proposals can refer to either academic or professional/vocational training.”

The judges will be particularly looking for:

- Originality of ideas
- Feasibility of outcomes
- Depth of research and analysis

The use of comparative Commonwealth materials will also be an advantage.

Prizes are as follows:

1st Prize: **£750**; 2nd Prize: **£200**; 3rd Prize: **£50**

The winning entry will also be published in *Commonwealth Legal Education*.

Further details are available from:

Dr Joe Silva, Sri Lanka Law College, 244 Hulftsdorp Street, Colombo 12, Sri Lanka Fax: (94) 1 436040, e-mail: locwal@slt.lk

Essay competition rules

1. Entries must not exceed 7,500 words. Entries must be in typed or printed form.
2. The competition is open to any of the following students at a Faculty/School of Law or equivalent institution in a Commonwealth country: (i) those undertaking a first degree in law (or a programme that includes a significant number of law courses/modules); or (ii) those undertaking a taught LL.M or equivalent.
3. Students of both full-time and part-time degree programmes are eligible.
4. Closing date: 1 June 2005.
5. All entries must be in English. The essay must be properly presented, with footnotes and references in one of the accepted styles for legal essays and a bibliography.
6. There is no entry form: however each entry must be accompanied by a declaration by the entrant that the essay represents his/her own unaided work. It must also be accompanied by a supporting statement by a teacher or administrator of the law school of which an entrant is a student, to the effect that he or she satisfies the criteria for entry. The statement must be stamped with the institution's stamp.
7. The decision of the judges is final and no correspondence will be entered into.
8. The Association reserves the right to decline to award any or all prizes in the event of a failure of entries to reach an appropriate standard.

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

- The 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.
- The Directory of Commonwealth Law Schools is published biennially.
- 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 and Malaysia.

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. The collected lectures will be published later in 2004.

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 Sri Lanka, Malaysia and Canada.

The Commonwealth Students' Essay Competition is also held biennially

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

please contact: The General Secretary
Commonwealth Legal Education Association co LCAD,
Commonwealth Secretariat, Marlborough House
Pall Mall, London SW1Y 5HX, UK.

Tel: +44 (0)20 7747 6415 Fax: +44 (0)20 7747 6406

e-mail: clea@commonwealth.int

**Membership
application
see reverse >>**

Membership

Benefits of Membership

The benefits of a one-year institutional subscription include:

- Copy of the CLEA's Directory of Commonwealth Law Schools 2003-4
- Copy of the CLEA's Journal Commonwealth Law and Legal Education
- Copy of the CLEA's Newsletter Commonwealth Legal Education
- Copy of Parliamentary Supremacy and Judicial Independence: A commonwealth Model
- Priority booking for all CLEA events

The benefits of three-year institutional subscription include:

- Those for a one year subscription plus
- Significant discount of membership rate
- Copy of Law and Development: Facing Complexity in the 21st Century, edited by John Hatchard and Amanda Perry-Kessaris
- Significant discount on all CLEA publications



::: Membership application form

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Please make cheques payable to CLEA and return the completed form and cheque to: **CLEA**, c/o Legal and Constitutional Affairs Division, Commonwealth Secretariat, Marlborough House, Pall Mall, London SW1Y 5HX, United Kingdom
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:: Essay Competition

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