

# COMMONWEALTH LEGAL EDUCATION

## Access to Justice in the Commonwealth

Some Current Trends

### In Brief

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Curriculum:  
Indian Developments**

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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](http://www.clea.org.uk)

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# Welcome

**From John Hatchard**

General Secretary

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## **SOMETHING TO REMEMBER!**

Don't forget the CLEA Conference 2005 to be held at the University of Greenwich between 9-10 September 2005. The registration fee is a very modest £75 and includes a one year individual membership of the CLEA. (Compare this to the Commonwealth Law Conference full conference rate of £975 + VAT at 17.5% and you will realise that our conference is a real bargain!)

The next General Meeting of the Association will take place at the University of Greenwich on 10th September 2005. If any member wishes to place an item on the agenda, please inform the General Secretary as soon as possible. The CLEA Executive Committee meeting will take place on 9th September 2005. There are several EC posts available (see below). Keith Sobion our EC member for the Caribbean and a CLEA Vice-President is retiring from office. The Association is very grateful to him for his contribution over a number of years, particularly his work in organising the excellent CLEA conference held in Ocho Rios in December 1999.

The past few months has seen the Association involved in a series of high-profile events. In April the Association was a partner with the Commonwealth Secretariat in organising the Pan-African Forum on the Commonwealth (Latimer House) Principles on the Accountability of and the

Relationship between the Three Branches of Government. Held in Nairobi, this was the first in a series of planned conferences to examine ways of promoting and advancing the Commonwealth Principles. The Forum was opened by the President of Kenya and brought together a wide-range of eminent jurists, politicians and academics from around Commonwealth Africa. Human rights education was the subject of one full session and the views of the participants are set out in paragraph 35 of the Communiqué:

*35. Delegates endorsed the need for mainstreaming human rights education in law schools within a holistic approach. However, it is essential that such education should begin in schools. Delegates appreciated that human rights provisions are entrenched in our constitutions. However, there was still the need for effective implementation of international human rights norms to which judges and all the three branches of governments should be sensitized. Participants recommended that the Commonwealth Secretariat should expand a regional programme of human rights training for judges, state attorneys, advocates and civil society organizations.*

Given the ongoing work of the Association in this regard (see especially our project in India, noted below), this was a timely boost for our work.

A note on the Forum and the Communiqué appear below. In a related development, shortly after the Nairobi meeting, the Association issued a Statement (which was widely reported in the local media) expressing its concern over proposed South African legislation on judicial training and the administration of the courts that was seemingly in

conflict with the Latimer House Guidelines. The Statement appears below.

In March, the Association co-sponsored a major international workshop on administrative law held at the University of Cape Town. Gary Slapper attended the workshop on behalf of the Association and delivered a co-authored paper with John Hatchard on *The Role of the Commonwealth and Commonwealth Associations in Strengthening Administrative Law and Justice*. This can be found on our web site: [www.cleaonline.org](http://www.cleaonline.org). Thanks to the generous financial assistance from the Commonwealth Foundation we were able to bring several law teachers from developing countries to the event. A Report on the Meeting appears below.

Our programmes in South Asia continue to expand. In April, the Commonwealth South Asia Moot Court Competition took place in Hyderabad, India. Two teams were selected to go to the Commonwealth Law Moot to be held in London in September 2005. A report on the event appears below. The Association is most grateful to Dr. S. Sivakumar, the President of CLEA (India) and Ms. Sagee G. Sasikumar, the Organising Secretary for organising the whole event so successfully.

In May, there was major progress in our human rights curriculum programme. A workshop in Nashik, India saw the finalisation of India-specific human rights courses which will be introduced at the University of Pune, University of Punjab, the SNDT Women's University and the YCM Open University. The first of these, for police officers, will be offered in July. The Association is particularly grateful to Jo Ford for his sustained work on the project and to the Human Rights Unit of the Commonwealth Secretariat for funding the project. A report on the workshop appears below. I am also pleased to report that the Association has also been invited to work with the YCM Open University on the possible development of a distance law programme. Anyone interested in being involved in this project is invited to contact the General Secretary.

Looking ahead, the coming months will also provide new challenges for the Association. Our main activity is the CLEA conference from 9-10 September 2005 on the theme "Comparing Commonwealth Laws: Challenges for Law Teachers". Please support this important conference that is set in the wonderful grounds of the University of Greenwich at its historic Maritime Campus.

The Commonwealth Law Moot competition will be contested in London as part of the Commonwealth Law Conference and we are expecting a full complement of 12 teams from around the Commonwealth. Further details are available on the CLEA website: [www.cleaonline.org](http://www.cleaonline.org). As ever, the Association is indebted to Ros Macdonald, the CLEA moot coordinator, for her work on this project.

In October, the Association has been invited to present a paper on strengthening legal education in the Commonwealth at the Meeting of Commonwealth Law Ministers to be held in Accra, Ghana. This is a unique opportunity for law teachers to present their views to Law Ministers and Attorneys-General on the state of legal education and to make suggestions for further improvement. The CLEA regional conference on "Strengthening Law School in Commonwealth Africa" will be held in Accra at the same time (see details below).

I am pleased to report that the CLEA Directory of Commonwealth Law Schools 2006-7 will be published to coincide with the CLEA September conference. Participants will all receive a copy.

Don't forget: Our Website [www.cleaonline.org](http://www.cleaonline.org) contains full information about all our activities.

Finally, a cautionary note for law students. Research reported in the *Law Society Gazette* (17 March 2005) says that lawyers were amongst the unhappiest workers in the UK and that some 49% would consider changing career. The survey found that only 5% of lawyers were happy in their job, with stress and feelings of being under-valued, undermined and underpaid cited as the main reasons for discontent. Some felt they were not suited to their role and 28% said they sometimes regretted their choice of career. Who are top of the happiness league? The answer appears after the "On-line" section below.

**Alexis Goh**

It is with great sadness that the Association has learnt of the death of Alexis Goh, one of our Executive Committee members. We send our heartfelt condolences to her family.

*John Hatchard*  
 General Secretary, CLEA  
 Marlborough House June 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

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**See our website:** [www.cleonline.org](http://www.cleonline.org) for more information and updates

# CLEA News

www.cleaonline.org

## Notice of CLEA General Meeting

The Commonwealth Legal Education will hold its next General Meeting on 10th September at the University of Greenwich

### AGENDA

1. Apologies for absence
2. Approval of the Minutes of the last General Meeting held on 14th June 2003 at the University of Windsor
3. Matters arising
4. Membership of the Executive Committee
5. Financial position
6. Consideration of the Annual Report of the Association
7. Appointment of auditor
8. Any other business

Any member wishing to place additional items on the agenda should contact the General Secretary as soon as possible.

## CLEA Executive Committee

The CLEA Executive Committee will meet on 9th September 2004 at the University of Greenwich. Several EC positions will become vacant. These are as follows: 1. Australasia; 2. South-East Asia; 3. South Asia; 4. The Caribbean; 5. Europe; 6. North America. In addition, the term of office of our two ad hoc members expires.

The relevant provisions of the CLEA Constitution relating to elections to the EC are as follows:

### 5. Executive Committee

- 1 *The affairs of the Association shall be managed by an Executive Committee. Subject to the general directions of a General Meeting, the Executive Committee may take any action on behalf of the Association which, in its opinion, will further the objects of the Association.*

- 2 *The members of the Executive Committee shall be elected at the General Meeting of the Association... The Committee shall, so far as is practicable, be broadly representative of the Commonwealth as a whole and shall consist of not less than six and not more than ten persons.*
- 3 *Election to the Executive Committee shall be for four years but members shall be eligible for re-election.*
- 4 *In addition to the members so elected, the Executive Committee may co-opt up to three further members being full members of the Association whether individuals or representative or a combination of both who shall serve until the conclusion of the next General Meeting after individual co-option PROVIDED THAT the number of the co-opted members shall not exceed one-third of the total membership of the Executive Committee at the time of co-option. Co-opted members shall be entitled to vote at meetings of the Executive Committee... (General Secretary); Peter Slinn (Vice-President), Selina Goulbourne (EC member for Europe) and Jo Ford.*

For those contemplating standing for election, the duties of EC members are as follows:

- i. *Represent the CLEA at relevant conferences in their region.*
- ii. *Provide information to the General Secretary on developments in legal education and related matters in their region three times a year for inclusion in the CLEA Newsletter.*
- iii. *Seek to recruit individual and institutional members in their region.*
- iv. *Seek to maintain links with existing members and encourage their involvement in the work of the Association.*
- v. *Disseminate information about the CLEA through national associations of law teachers and other relevant bodies in their region.*

- vi *Hold regular CLEA activities in their region which seek to further the Plan of Action.*
- vii *Cooperate with the organisers of the Commonwealth Law Students' Mooting Competition (and any other such CLEA competitions) in identifying suitable teams.*
- viii *Send a report annually to the General Secretary on CLEA activities in their region for inclusion in the Annual Report of the Association.*
- ix *Provide a written or oral report to each EC committee meeting on CLEA activities in their region.*
- x *When so requested, provide timeously to the officers of the Association relevant information relating to ongoing CLEA projects in their region.*

Those interested in standing for election should contact the General Secretary as soon as possible.

## **The Pan-African Forum on the Commonwealth (Latimer House) Principles on the Accountability of and the Relationship Between the Three Branches of Government**

The first in a series of conferences to consider ways and means of promoting and advancing the Commonwealth (Latimer House) Principles was held in Nairobi, Kenya between 4-6 April 2005. This was organised by the Commonwealth Secretariat in association with the CLEA and its other partner bodies, the Commonwealth Lawyers' Association, Commonwealth Magistrates' and Judges' Association and the Commonwealth Parliamentary Association.

The CLEA was represented by Peter Slinn, one of our Vice-Presidents. The Association presented a paper entitled "Human Rights Education: Some Recent Commonwealth Developments". This is available on the CLEA web site: [www.cleonline.org](http://www.cleonline.org)

### **Communiqué**

1. Eminent personalities from the Executive, the Judiciary, the Legislature, Commonwealth partner organizations and representatives of civil society from

all the 18 Commonwealth countries in Africa met in Nairobi from 4-6 April 2005. The Forum was organized by the Commonwealth Secretariat and hosted by the Government of Kenya. The Forum was opened by His Excellency President Mwai Kibaki, President of the Republic of Kenya, and addressed by the Rt. Honourable Don McKinnon, the Secretary-General of the Commonwealth.

2. The Forum was convened to consider ways and means of promoting and advancing the Commonwealth (Latimer House) Principles following their adoption by Commonwealth Heads of Government in Abuja in December 2003.
3. The objectives of the Forum were
  - (a) to raise awareness amongst parliamentarians, government ministers and officials, judges and magistrates, lawyers, non-governmental organisations, civil society, and oversight institutions on the Principles in Commonwealth Africa;
  - (b) to facilitate the exchange of ideas and sharing of experiences in order to enhance practices of accountable, ethical and effective governance;
  - (c) to examine and exchange ideas on ways of strengthening the independence and relative role of parliamentarians, the executive and the judiciary;
  - (d) to examine ways of strengthening and reforming institutions in the fight against corruption;
  - (e) to encourage and explore new ideas for sustaining governance in order to reduce poverty, and promote human rights and gender equality;
  - (f) to encourage strategic partnerships between government and non-governmental organisations and civil society in promoting and protecting ethical governance, accountability and the rule of law.
4. The Forum examined four thematic areas being the relationship and accountability between the three branches of government, good governance and accountability, mechanisms for safeguarding ethical governance and strengthening the Rule of Law. The Forum addressed the above under the following specific issues:

- (a) The Relationship between the Judiciary and the Executive and their appropriate interaction;
  - (b) The Independence of Parliamentarians;
  - (c) Enhancing the Independence of Parliamentarians and the Judiciary;
  - (d) The Legislative role of Parliament;
  - (e) Constitutional interpretation and judicial review;
  - (f) The proper exercise of executive power;
  - (g) The role of gender in good governance;
  - (h) Parliamentary oversight and the Role of Public Accounts Committees;
  - (i) Judicial Accountability and Confidence Building;
  - (j) Accountability, Transparency and Procurement Guidelines;
  - (k) The role of national institutions and civil society;
  - (l) The importance of a code of conduct for parliamentarians, mechanisms for ethical conduct for the administration of justice, the role of an independent legal profession, maintaining an independent judiciary, judicial training;
  - (m) The right to know, the role of the media and freedom of information, fighting corruption in the judiciary and parliament;
  - (n) Tracing, recovery and repatriation of illegally acquired wealth, working together to deliver access to justice and human rights education.
5. In its deliberations on the relationship between the three branches of government, the Forum noted the historical concentration of powers in the hands of the Executive arm of government. The Principles specify that each institution must exercise responsibility and restraint in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate power vested constitutionally on the other institutions. It was affirmed that Commonwealth Africa needed to pay particular attention to processes of democratization that meet the needs of Africa's historical, cultural and economic peculiarities and in a manner which is consistent with the Principles.
  6. The Forum noted that the effective implementation of the Principles calls for commitment, made in utmost good faith, of the relevant national institutions, in particular the Executive, the Parliament and the Judiciary, to the essential principles of good governance, fundamental human rights, and the rule of law, so that the legitimate aspirations of African citizenry can be satisfied.
  7. On the issue of good governance and accountability, the Forum emphasized the accountability by all three branches of government and urged them to rededicate themselves to eliminating corruption which would in turn reduce poverty and promote human rights and gender equality. Delegates reaffirmed that democratic processes and institutions are the basis for the successful implementation of policies for poverty reduction and for the promotion of human rights and gender equality.
  8. The Forum noted that there was inadequate time to discuss issues fundamental to good governance such as electoral reform, how to build effective government systems needed to support economic reform programmes, strategies to make democracy work for pro-poor development, meeting the challenges of globalization and making poverty history for Commonwealth Africa peoples.
  9. The Forum particularly noted the need for strategies by which governments could undertake to support the role of civil society in the promotion of the Commonwealth fundamental values. They further noted that each branch of government should, in accordance with its constitutional role and responsibilities, strive to ensure that effective laws, mechanisms, methods, systems and rules are in place to give effect to the above stated guarantees in their day-to-day functioning.
  10. Delegates noted that a culture of participatory democracy is essential in Commonwealth Africa to ensure that issues of gender, race, ethnicity, exclusion and other forms of historical biases and discriminations are properly addressed. The Forum further noted that various United Nations instruments such as the International Covenant on Civil and Political and Cultural Rights and the International Covenant

Covenant on Economic, Social and Cultural Rights have proscribed these practices and therefore urged member states to do likewise for the benefit of their peoples.

### **The Appropriate Interaction between the Judiciary and the Executive**

11. It was affirmed that Commonwealth Africa should devote more attention to establishing and maintaining processes of democratization that meet the needs of Africa's historical, cultural and economic realities but always in accordance with the letter and spirit of the Principles. Delegates emphasized that this relationship should be governed by the principle of cooperative governance, with each branch fulfilling their respective critical role in a constitutional, complementary and constructive manner. The respective branches should pay due deference and respect to each other during their interactions, especially in public or at times of disagreement. In this context, it was stressed, on the one hand, that the executive must respect, uphold and implement orders of court properly arrived at, and, on the other hand, that the judiciary needs to pay due diligence so that their judicial functions do not intrude on the proper constitutional mandate of the executive, especially in the area of policy-making.
12. Delegates noted that, as is to be expected, the executive is the main decision-maker on policy issues and the major driving force of most governments, and in some instances, all powerful. It is in this context that delegates raised the concern that the role and proper constitutional mandate of the executive is not handled in depth in the Principles. The caution was expressed that this may hinder positive developments in the accountability of and relationship between the three branches of government in Commonwealth member states, as the more practical task of translating the Principles into a programme of action is embarked upon. Delegates recommended that this issue should be critically examined.

### **Independence of Parliamentarians**

13. The Forum recommended that the security of tenure of members during their parliamentary term is

fundamental to ensuring the independence of parliamentary processes. In the discharge of their functions, members should be free from undue pressures. Political parties should be encouraged to ensure an adequate gender balance in their nominations of candidates for election. Consistent with the doctrine of separation of powers, ministers and members of parliament must develop healthy work ethics. The practice of floor crossing by members of parliament raised issues relating to the independence of legislators, on the one hand, and the sovereignty of the electorate on the other. The Forum recognized that this matter should be properly clarified in each jurisdiction with some degree of certainty.

### **Legislative Role of Parliament**

14. The Forum also took the view that the capacity of national legislatures should be enhanced to enable them adequately to scrutinize legislation, international instruments and other proposed measures. The delegates were of the view that legislators should, in particular, enact more effective laws to fight corruption decisively. Support should be given to institutions such as anti-corruption commissions, public accounts committees, human rights commissions, freedom of information commissions, offices of the ombudsman and other oversight institutions. Delegates also examined issues of human resource development, capacity building for both members of parliament and the institutions of parliament. Technical support should be provided to members of parliament to enable them to undertake research into policy issues. The delegates recommended that civil society should be engaged as partners in order that they play a more proactive role in legislative processes.

### **Proper Exercise of Executive Power**

15. The Forum took the view that in many Commonwealth African countries, the proper exercise of executive power means a radical departure from prevailing attitudes, whether official or unofficial, which appear to condone abuse of power and reward corruption in public administration. It was recognized that there was the need to tackle issues of corruption in the political context. They recognized

the vital role the media can play and the role of oversight institutions in the exercise of executive power. The Forum called on the executive to exercise its powers in accordance with the rule of law and constitution at all times.

### **The Role of Gender in Governance**

16. The Forum recognized that in the past decade, the visibility and representation of women in governance has improved. Mainstreaming gender as an institutional and cultural process will facilitate the elimination of gender biases in development. Delegates agreed that when appointing women to public positions they should be considered and treated on an equal footing with men in all circumstances; this will help to avoid tokenism that is prevailing at the moment. The advocacy role of relevant civil societies must be sustained to improve representation and participation. Women should be involved in governance at all levels including the local government level. The Forum recommended that Commonwealth African States should undertake a reform of their electoral systems as a mechanism for increasing representation of women in governance at all levels. It was further recommended that vertical as well as horizontal gender equality is a necessary tool for Africa's development. Education of women is key to their empowerment and communities should be sensitized to gender issues so that they realize that women's rights are no more and no less than human rights.

### **Enhancing the Independence of Parliamentarians and the Judiciary**

17. The Forum resolved that in jurisdictions that already have an appropriate independent process for judicial appointments, such appointments should be made on merit on the basis of clearly defined criteria by a Judicial Service Commission or by an appropriate officer of State acting on the advice of such Commission. The Forum recalled that the Commonwealth (Latimer House) Principles provide specific guidelines on the independence of the Judiciary. Delegates concluded that all relevant institutions must take the necessary steps to implement the guidelines.

### **Good Governance and Accountability**

18. Delegates agreed that effective monitoring and controlling of the use of power should be done in a way that is not detrimental to the efficacy of the decision-making process. The executive should provide quality leadership while recognizing the limitations on the exercise of executive powers. Commonwealth African governments should strive for decentralized local governments with a focus on strengthened financial accountability, poverty reduction and improvement in the quality of the lives of their people. In this regard, the reform of the electoral process is necessary as an additional layer of protection against abuse of public authority.

### **Parliamentary Oversight and the Role of Public Accounts Committees**

19. Delegates recommended that Public Accounts Committees (PACs) in Commonwealth Africa need to strengthen their role as oversight bodies and that Parliament should improve the functioning of these committees to make them more effective. The view was taken that the role of PACs could be reinforced by constituting them into Standing Committees of Parliament. Membership of the PACs should be as diverse as possible, be free from party interference and should not be dominated by the majority party. The Forum suggested that parliament should provide adequate and efficient staffing for the Offices of the Auditor-General and the PAC. In addition, the Commonwealth Parliamentary Association should encourage and facilitate the drafting of model rules on the functioning, powers and procedures of PACs to be adopted by Commonwealth Parliaments.

### **Judicial Accountability and Confidence Building**

20. While the independence of the Judiciary is a vital guarantee of a democratic society, the Forum recognized that it is built on the foundation of public confidence. As such, it was essential that there be adequate observance of principles of accountability in its processes, professional ethics and conduct among the judicial officers as well as court officials. Discussions touched on questions of the institution of peer review mechanisms by members of the profession, appropriate criticism through the media, legislative reversal of judicial precedent and case law.

For accountability to be effective there must be judicial independence and security of tenure. The Judiciary should also be well resourced and there must be an effective system for the dissemination and evaluation of judicial decision. Issues relating to the security of tenure of judicial officers especially for those serving in the lower courts as provided for in the Principles were discussed. To this end, the adoption of Codes of Ethics and Conduct were recommended for judicial officers.

### **Accountability, Transparency and Procurement Guidelines**

21. In order to achieve transparency in public procurement, the Forum was of the view that government procurement officials must comply with international standards and best practices in procurement matters. They should publicly advertise business opportunities in an adequate and timely fashion, and where possible, on the websites of the procuring entities. Procurement opportunities must be available publicly and consistently; the evaluation criteria for any particular procurement should clearly identify the relative importance of all relevant factors and provide a sound basis for a procurement decision; both the private and public agencies should evaluate each offer by applying only the evaluation criteria and methodology notified to bidders; and also bidders are provided with reasonable opportunity to meet any prequalification requirements for participants.

### **Mechanisms for Safeguarding Ethical Governance and Accountability**

22. The Forum agreed that mechanisms for safeguarding ethical governance in member states must be strengthened through the observance, promotion and protection of human rights, including the rights of the disadvantaged. Delegates advocated robust checks and balance mechanisms in the governance process in order to prevent the emergence of autocratic rule. The Forum reaffirmed that development and democracy are two sides of the same coin and are essential ingredients of ethical governance. The Forum endorsed the SADC Election Guidelines and the ECOWAS Protocol on Governance and Accountability and urged the African Union to put into operation the

African Court of Human and Peoples' Rights and the African Court of Justice.

### **National Institutions and Civil Society**

23. The Forum expressed concern at the diminishing role of the State in the provision of public services. It acknowledged the increasing role of civil society organizations in enhancing processes of democracy and development. Accordingly, the Forum called for government to be broadened to include the new role of civil society in advancing the principles. In ensuring that principles of good governance under the rule of law are properly and effectively addressed, effective mechanism should be put in place. These should include the development of effective methods and systems of oversight, accountability, confidence building and for the inculcation of a culture of transparency, openness and judicious use of public resources in African member states. The Forum also noted that offices of Human Rights Commissions, the Ombudsman, and other independent bodies such as Public Accounts Committees, Auditors-General Offices, Anti-Corruption Commissions, and Access to Information Commissions can play a key role in enhancing public awareness of good governance and rule of law issues.

### **The Importance of a Code of Conduct for Parliamentarians**

24. The delegates supported the view that code of conduct for parliamentarians should be effective and should aim at instilling discipline in parliamentarians. This will promote the smooth functioning of parliamentary processes and strengthen public confidence in legislative arm of government. The Forum was of the view that a clearly agreed upon code of conduct and ethics would enhance the role of parliament in serving as guarantors of good governance. Delegates therefore called for the support of Commonwealth Parliaments and the Commonwealth Secretariat in the developing of a code of conduct and ethics for parliamentarians.

### **Mechanisms for Ethical Conduct for the Administration of Justice**

25. Delegates emphasized the vital importance of adequate training of judicial officers and other relevant group of actors in ethical conduct. It was

essential that judicial officers had a sense of ownership of codes which regulate their conduct. Such codes should take into account the provisions of the Limassol Conclusions. The issue of ethical conduct had to be seen in the context of the provision of adequate conditions of service and funding, the need for a holistic approach, regardless of the status of a particular judicial officer and appropriate mechanisms for dealing with complaints by the public which do not prejudice the independence of the judiciary.

### **The Role of an Independent Legal Profession**

26. The Forum considered the legal profession to be a key partner in the promotion of democracy and that governments should see it in that role. The Forum called upon the legal profession to maintain and promote the highest standards of excellence and integrity; support the legislature by providing advice; support the judiciary by pressing for entrenched independence of the courts; speak out against administrative action and inaction; and help to create public awareness of legal issues, particularly relating to ethics and human rights. In all these matters, the Forum considered the profession should have regard to its social responsibility and avoid being used as an instrument of party politics.

### **Maintaining an Independent Judiciary:**

#### **Judicial Training**

27. The Forum emphasized the need for a judiciary driven training to target not only judicial officers but also all personnel of the judicial and para-judicial staff. The objective should be to sensitise them more particularly on the issues of court service to the community, citizen's rights and how the legal system should be used and improved in pursuit of these rights.

#### **Role of the Media**

28. The Forum welcomed the clear role of the media in promoting the Commonwealth (Latimer House) Principles. In particular, the media should contribute to democratic and accountable governance through accurate and responsible reporting. The Forum further recognized the need for the media to work effectively within systems of regulation that

are in accordance with democratic principles and practices.

### **Freedom of Information**

29. Delegates affirmed that freedom of information is recognized as a human right and guaranteed under international, regional and national laws. They agreed that there was a trend in Commonwealth Africa towards the adoption of freedom of information laws and supported the call to adhere to the key elements of the Commonwealth Freedom of Information guidelines. They urged governments to adopt the declaration of Principles of Freedom of Expression of the Africa Union. The Delegates hoped that emergence of new regional governance structures such as NEPAD and the African Peer Review Mechanism would enhance freedom of information legislation and its implementation in Africa as a whole. They recommended a sustained public awareness campaign and called for technical assistance to develop, draft and advocate for freedom of information legislation for member states. They urged member states to repeal laws that prevent effective access to information.

### **Access to Justice**

30. The delegates recognised that the formal structures of justice, high costs, the culture of delays and physical distances from courts limited effective participation of the people, especially the poor in accessing justice. Delegates welcomed wholeheartedly alternatives to formal procedures and agreed that Commonwealth Africa needs to construct new ways of pursuing a human vision of justice due to the failure of the old formal approach to guarantee effective access to justice. They suggested the need to incorporate procedures and institutions into the mainstream judicial system that guarantee better access to justice. Delegates proposed that legal aid should be broadened to enhance access to justice, and that the traditional court system can be strengthened to improve justice.

31. The issue of cost and delay of justice within the formal legal system was addressed by the Forum. It was suggested that courts which use simple,

informal and speedy procedures should be established to reduce delays and costs. In view of the fact that court fees are a major obstacle to access to justice in many jurisdictions, it was suggested that provision should be made to ensure that indigent or poor people are able to submit their grievances to adjudication without hindrance. Delegates also recognised the need for intensive public education and information of their rights to demystify the legal system.

### **Fighting Corruption in the Judiciary**

32. The Forum took the view that corruption is common in that it can be found in almost all jurisdictions throughout the Commonwealth. Delegates suggested that the fight against corruption should be spearheaded by Chief Justices and adopted a plan premised on the following actions; better conditions of service and security of tenure, strengthening independence of the judiciary and upholding the dignity of the judiciary. The Forum endorsed the idea that judiciaries may put in place Internal Investigative Mechanism in the form of Integrity, Ethics or Peer Committees charged with the responsibility for investigating all complaints against judges. It was also suggested that Chief Justices should ensure that court operations are transparent, and open to the public through awareness programmes, appropriate interaction with the media, preparation of annual reports accessible to the public, and regular meetings with members of the Bench and Bar. In order to sustain the fight against corruption in the judiciary, the Forum recommended that Chief Justices in Commonwealth Africa should be encouraged to forge a union and meet annually for the purpose of exchanging experiences, learning from one another, promoting best practices and developing strategies to improve relationships with other arms of government.

### **Fighting Corruption in Parliament**

33. The Forum noted that corruption is an issue affecting good governance, peace and stability in Africa and that it impedes economic, social, and political development. The delegates noted that the importance of Parliaments in fighting corruption since Parliament establishes democratic accountability,

transparency and instils public confidence in government. The Forum recommended that the Executive must seek parliamentary approval for its budgetary spending and enjoined Parliaments to pass legislation to punish corruption and ensure the recovery of embezzled funds and forfeiture of assets. It was suggested that penal codes should allow the prosecution for wealth and earnings in excess of known sources of income.

34. The Forum further recommended that in order to deter officials from amassing wealth from corruption, Parliaments should institute financial disclosure laws and codes of conduct requiring declaration of income, assets and liabilities. It was also recommended that Parliamentarians who have been convicted of criminal (except civil and traffic) and electoral offences are not allowed to contest elections for a period of time. The Forum further noted that Parliaments need to be accountable to electorates and at the same time be able to hold the executive accountable through oversight mechanisms.

### **Human Rights Education**

35. Delegates endorsed the need for mainstreaming human rights education in law schools within a holistic approach. However, it is essential that such education should begin in schools. Delegates appreciated that human rights provisions are entrenched in our constitutions. However, there was still the need for effective implementation of international human rights norms to which judges and all the three branches of governments should be sensitized. Participants recommended that the Commonwealth Secretariat should expand a regional programme of human rights training for judges, state attorneys, advocates and civil society organizations.

### **Tracing, Recovery and Repatriation of Illegally Acquired Wealth**

36. The Group recommended that Commonwealth countries should ensure that they enact appropriate domestic legislation to covering, inter alia, money laundering and organized crime. In this regard, the Forum called on the Commonwealth Secretariat to give relevant technical assistance in developing model legislations on recovery of illegal acquired wealth and to see to the early conclusion of the work

of the Commonwealth Working Group on Recovery of Assets. The Forum encouraged Commonwealth African States to sign, ratify and, where appropriate, domesticate the UN Convention Against Corruption. It was also suggested that Commonwealth African States should take immediate actions to incorporate relevant international and regional conventions, such as the AU Convention on Preventing and Combating Corruption and the SADC Protocol Against Corruption. The Forum further recommended that that civil and criminal forfeiture mechanisms should be integrated into domestic legislation and that the waiver of immunity from prosecution currently enjoyed by some members of the executive arm should be withdrawn when dealing with cases of corruption. It was also agreed that the jurisdiction of the International Criminal Court should be extended to include cases of grand corruption.

### General Conclusions

37. In its general discussions, the Forum noted that African governments should accept the responsibility to provide the resources required to enable the above institutions and bodies to properly discharge their functions. The Forum also proposed that Parliament should ensure that access to alternative dispute resolution mechanisms is possible in appropriate cases.

38. The Forum urged Ministers, Members of Parliament, Judges and Officials holding public office in each jurisdiction as a matter of urgency, to respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address issues of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence. The Forum called for codes of ethics and conduct to be developed and adopted for each judiciary as a means of ensuring accountability of judges; the CMJA was identified to serve as a repository of codes of judicial conduct developed by Commonwealth judiciaries to serve as resource for other jurisdictions; conflict of interest guidelines or codes of conduct for ministers that require full disclosure of their financial and business interests; members of parliament were advised to have privileged access to advice from statutorily-established

Ethics Advisors; members of parliament were to avoid excessive influence of lobbyists and special interest groups, whilst being responsive to the needs of society and recognising that ethnic, gender and minority views should be mainstreamed in society; members of Parliament need to be provided with resources commensurate with tasks expected from them.

39. The Commonwealth Secretariat was urged to provide the necessary technical assistance to member countries to enable the three branches of government develop these codes of conduct within the shortest possible time. The Forum resolved that their deliberations should provide the framework for regional, national and partner organizations in developing action plans to implement the Principles. Delegates also recommended that each country should organize a National Forum bringing together all the three branches of government to bring forward the Forum deliberations.
40. The Forum urged that the Commonwealth (Latimer House) Principles be seen as a fundamental Commonwealth Document complementary to and in amplification of the Harare Declaration of 1991. It therefore recommended that His Excellency, President Mwai Kibaki, President of the Republic of Kenya, should, through his good offices, convey the outcomes of the Forum to Commonwealth Heads of Government at its next meeting in Malta in November 2005.
41. Delegates extended their sincere appreciation to the Kenyan Government for the excellent facilities and the exemplary hospitality extended to them throughout the period of the Forum. The Forum commended the excellent role of the Kenyan Organising Committee, the officials from the Kenyan Ministry of Justice and Constitutional Affairs and the generous hospitality accorded participants by the Chief Justice, The Speaker of Parliament and the Ministry of Foreign Affairs. The Forum also commended officials of the Commonwealth Secretariat for their commitment and outstanding role in ensuring the success of the Forum.

Nairobi 6 April 2005

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# CLEA Human Rights Curriculum: Indian Developments

*Report by Jo Ford*

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The CLEA has been active in model curriculum development in human rights in an ongoing collaboration with the Human Rights Unit of the Commonwealth Secretariat. May 2005 saw the launch, in Mumbai, of India-specific model courses developed through the participation of Indian human rights and legal educators. The model human rights courses are orientation, certificate, diploma and degree-component courses, designed not only for university or law students, but for a wide variety of adult education scenarios. Together with an accompanying teachers' manual, they are designed to be adaptable to other jurisdictions (with appropriate content modification). At the launch, four Indian universities committed to running some or all of these courses.

The various model courses were developed on the back of a model human rights curriculum for Commonwealth law schools first developed and circulated by CLEA in 1999 for those undergraduates studying law either as a major or minor subject. The idea was to produce a model law course that drew upon the unique contributions of Commonwealth country courts to human rights jurisprudence. It was hoped that the availability of such an educational resource would encourage and assist tertiary educators in Commonwealth law schools to devise their own courses on human rights. The original draft of the curriculum was given wide publicity being published in *Commonwealth Legal Education*. It was also the subject of a workshop at the CLEA Conference in Ocho Rios, Jamaica in December 1998. One significance of the original project was the inclusion of a significant amount of documentation reflecting the enormous contribution made by the Commonwealth and its member countries to

the development of human rights, much of which is not readily available elsewhere.

In 2004 the Human Rights Unit requested that CLEA further develop the 1999 model human rights law course. The CLEA engaged Jolyon Ford, at that time Lecturer, Australian National University and Associate Lecturer, University of Sydney Faculty of Law, to produce a revised course (with assistance from Max du Plessis, Senior Lecturer, Howard College School of Law, University of Natal, Durban). This revision was done in June and July 2004.

The result of the 2004 revision was a very comprehensive, fully web linked teaching resource that comprised a model curriculum for a notional undergraduate law course, along with teaching ideas and suggestions for the use of the teacher planning and conducting such a course. India was selected as the venue for a pilot

programme in developing region-specific courses on human rights based upon the core Commonwealth model courses. A number of workshops were held by the Secretariat at which it was decided that the core undergraduate course would become a number of different level courses. The other major development was that the courses would explicitly be directed towards encouraging understanding of a rights-based approach to development. It was felt appropriate to produce course curricula for human rights learning outside of the formal tertiary legal education context (even if the universities run these courses), and to produce a range of courses on human rights, in order to maximise the student audience. The idea was to produce core model curricula appropriate and adaptable to the entire Commonwealth.

CLEA has also assisted in "training the trainer" workshops (commencing with the pilot programme in India in May 2005) with the aim of assisting teachers (and other community educators) to develop stimulating, challenging, innovative teaching and learning practices in human rights. The result is has been the production by CLEA of a teacher's manual dealing with teaching methodologies in human rights in India.

The CLEA will present a further training of trainers workshop, using the finalised teachers manual, in Mumbai in August 2005, to be attended by a range of educators and officials from universities and colleges other than the four already committed to running courses.

## **Statement on Judicial Independence in South Africa by the Commonwealth Legal Education Association**

The Commonwealth Legal Education Association (CLEA) notes with concern the contents of the proposed draft legislation on judicial training and the administration of the courts proposed by the South African Ministry of Justice. While CLEA supports the objectives of the Ministry to transform the judiciary and provide judicial training in order to break with South Africa's apartheid past it does not support measures that threaten the independence of the judiciary and undermine democracy.

It is axiomatic that the independence of the judiciary is a fundamental principle of democracy, and this principle is enshrined in the South African Constitution, the

Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, the Commonwealth Harare Declaration and the Latimer House Guidelines for the Commonwealth ratified by the Commonwealth Heads of Government, including South Africa. Democracy is dependent upon a distinct separation of powers between the legislature, the executive and the judiciary, and this principle is clearly stated in the Latimer House Guidelines:

*"Each institution must exercise responsibility and restraint in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate discharge of constitutional functions by the other institutions".*

Any attempt by the executive to educate and train judges or to micro-manage the daily administration of the courts is a fundamental breach of this principle.

### **Judicial education and training**

The Latimer House Guidelines are clear on who should provide judicial education and training:

*"Training should be organised, systematic and ongoing and under the control of an adequately funded judicial body. The curriculum should be controlled judicial officers who should have the assistance of lay specialists".*

A Justice Training College that continues the apartheid tradition of control by the executive is singularly inappropriate in a democratic state that enshrines the independence of the judiciary in its Constitution. Independence of the judiciary, including the magistracy, can only be achieved if any proposed judicial training institution is a statutory body independent of the executive and controlled by the judiciary.

## **Administration of the courts**

The proposal that the South African Constitution be amended to enable the executive to administer the courts is a fundamental breach of the Latimer House principle that the different institutions under the separation of powers doctrine should not 'encroach on the legitimate discharge of constitutional functions by the other institutions'. Draft legislation of this nature has no place in a democratic state and poses a serious threat to the independence of the judiciary. Judges should not be told by the executive what to do in their courts, and should not be subject to manipulation by the executive using resource allocation as a means of controlling their conduct. The judiciary should administer their own courts - not the Ministry of Justice – and should be given sufficient resources to do so by Parliament.

CLEA urges the Minister of Justice to ensure that the above principles are observed in future discussions with the judiciary, and trusts that the matter will be satisfactorily resolved before the Commonwealth Lawyers Association Conference, (which includes parallel meetings of the Commonwealth Magistrates and Judges Association), in London, and the International Bar Association Conference in Prague, in September 2005.

*Professor David McQuoid-Mason*

*President, Commonwealth Legal Education Association*

[CLEA represents over 600 law schools in 35 Commonwealth countries]

## **Commonwealth South Asia Moot Court Competition**

The Commonwealth South Asian Region Moot Court Competition was concluded successfully on 24th April, 2005. The event was organised by the Commonwealth Legal Education Association (India) and NALSAR University, Hyderabad at the university premises. 16 teams from India and other countries in the South Asian Region participated in the competition. The Competition commenced with the inaugural ceremony on 22nd April officiated by Hon. Shri Justice Bilal Nazki, Acting Chief Justice of A.P. and President of NALSAR.

The 23rd and 24th April saw the best mooting brains in the South Asian Region competing with each other. The Competition was judged by eminent panellists including

academicians and legal practitioners. The National University of Juridical Sciences, Kolkata stood first in the Indian Selection Rounds. The team consisted of Shashwat Tewary and P Suhrith. Second place went to the team from Amity Law School, Delhi consisting of Jayant Bhatt and Animesh Sinha. Shashwat Tewary was adjudged Best Speaker.

The teams from Sri Lanka won the first and second place in the other South Asian Region Selection round. The winning team consists of Ruwanthika Gunaratne and Manohara Jayasinghe. The runners up team consist of Neshan Gunasekera and Chathurangi Mahawaduge. Manohara Jayasinghe was adjudged Best Speaker.

Prizes and trophies were distributed during the valedictory function on 24th April by Hon. Shri Justice B.P. Jeevan Reddy, former Judge, Supreme Court of India. Prof. Ranbir Singh, Director, NALSAR University, Hyderabad and Dr. S. Sivakumar, President of the CLEA (India) Chapter addressed the valedictory function.

## **Comparative Administrative Justice Workshop**

*20th - 22nd March 2005, Faculty of Law, University of Cape Town*

### **Report on the Workshop**

The area of administrative justice in South African law has undergone great changes over the past decade. There has been substantial comparative influence during the process of law reform, chiefly from other countries in the Commonwealth, with which South Africa shares a common legal heritage. The Faculty of Law at UCT has played a leading role in this process of reform, hosting three significant events, the products of which have contributed directly to the law-reform initiative. These events were the Breakwater Conference of February 1993 (the proceedings of which were published as the 1993 volume of *Acta Juridica*); a workshop on "Administrative Justice in Southern Africa", held in March 1996, the proceedings of which were published later that year under the workshop title, edited by Hugh Corder and Tiyanjana Maluwa; and a workshop on "Realising Administrative Justice", held in February 2001, the proceedings of which were published in 2002 under the same title, edited by Hugh Corder and Linda van de Vijver.

Over the past three years, considerable interest has been generated on the subject of comparative administrative law within the Commonwealth, drawing in leading academic administrative lawyers from Canada, Australia, the UK, New Zealand and South Africa. With the exceptional growth of executive power in government over the last fifty years, national systems of law and regulation have responded in varied ways, and there is much that can be learned from each other, given the opportunity for contact and the pooling of resources.

For all these reasons, it was decided to hold a fourth workshop that would focus on constructive comparisons between the various countries of the Commonwealth. The holding of the workshop was also made possible through the generous support of the Commonwealth Legal Education Association and UCT's Research Office. This workshop was held from 20 to 22 March 2005 and was attended by some of the best-known administrative lawyers from a range of Commonwealth countries: India, Pakistan, Australia, New Zealand, Canada, the United Kingdom, Uganda, South Africa, Hong Kong and Malaysia. Most of the 35 participants were academic lawyers, although there were also practitioners and judges present.

The opening session of the workshop was chaired by Judge Albie Sachs of the Constitutional Court, and the opening address was delivered by Prof Jeffrey Jowell. Over the following two days, the workshop explored numerous themes, including "South Africa, then and now"; "Country studies" (two sessions); "Deference"; "Administrative Review and Justification"; "Procedural aspects" and "Legal Education and Administrative Law". Two or three papers were presented in each session, and there was sufficient time for valuable general discussion thereafter. The workshop concluded with an excellent report on the proceedings by Prof Cheryl Saunders.

This was the first time that such a significant number of experts in the area of administrative law had been brought together, a fact that was frequently remarked upon. Furthermore, the comparative aspect of the workshop proved to be an exceptionally valuable one for all participants, many of whom noted how much they had learnt about other jurisdictions, and stated that they hoped to maintain the contact.

The papers will be published as the 2006 volume of *Acta Juridica*. We have asked all participants to submit the final versions of their papers by 31 August 2005, and reviewers have also been approached. We hope to produce this volume early in 2006 and are also looking into the possibility of a joint publication with an overseas publisher to facilitate distribution.

Another result of the workshop is a quarterly "Newsletter". All participants have undertaken to provide the Faculty of Law, UCT with information about recent administrative law developments in his or her country. This information (with relevant links etc) will be circulated to all participants every three months.

## The 2005 Schofield Lecture

In April, the Association sponsored a number of Kenyan law students to attend the 2005 Schofield Lecture given by Colin Nicolls QC, the President of the Commonwealth Lawyers' Association in Nairobi. This is the second occasion that the Association has supported this lecture and it is hoped that it will become an annual event.

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# Access to Justice in the Commonwealth: Some Current Trends

*Paper prepared on behalf of the Commonwealth Secretariat by the CLEA for the Meeting of Senior Officials of Commonwealth Law Ministries, 18-20 October 2004*

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## Introduction

1. Over the years, the topic of Access to Justice has appeared on the agenda of a number of Meetings of Commonwealth Law Ministers and Senior Officials. Its importance remains undiminished for it partly reflects the well-established constitutional right of access to an independent and impartial tribunal or forum within a reasonable time.
2. However, problems of access to justice remain commonplace and it is the purpose of this paper to look at some current initiatives from around the Commonwealth aimed at improving the situation. In doing so, it does not purport to be a comprehensive document but is designed to stimulate some ideas for further debate and action.

## Why Problems of Access to Justice?

### (i) Cost to individuals

3. The cost to individuals of bringing themselves into the formal legal system is frequently prohibitive. Whilst the right to legal representation in criminal cases is almost invariably a constitutional right, even this often is limited by the phrase "at their own expense". Fees too have to be paid for various processes filed in the courts. Where the fees are too high, people are often denied access to the courts.

### (ii) Cost to the state

4. Many Commonwealth countries have Constitutions and Criminal Procedure Codes that entitle an accused person to legal representation from the moment of their arrest. Yet very few developing countries can

afford to put in place sophisticated legal aid schemes and funding varies considerably. The UK has one of the world's best funded legal aid schemes and spends about US\$60 per head on legal aid. Canada spends about \$30. South Africa probably has the best-funded legal aid scheme on the African continent and spends about \$1 a head – although with this it is still able to provide a highly organised network of justice centres that employ public defenders. Nigeria probably spends less than \$0.02 per head on legal aid. It means that Commonwealth countries need to develop creative and cost-effective ways of providing access to justice.

### (iii) Delays

5. Delays in the determination of cases can occur for a variety of reasons:
  - the sheer number of cases to be processed
  - a limited number of courts and/or judges/magistrates
  - limited access to lawyers, especially for those in rural areas
  - an inefficient court administrative system

Whatever the reason, undue delays can lead to the denial of rights.

### (iv) Accessibility problems

6. In terms of place, the distance between the litigants and the court may be considerable. In terms of time, particularly for working people in urban areas, the

courts are inaccessible because they sit during office hours. Some Commonwealth countries have introduced small claims courts that sit after hours and are staffed gratuitously by legal practitioners.

**(v) Procedural difficulties**

7. The law and the rules of evidence and procedure practised in formal courts are often incomprehensible or misunderstood by many people. Further, the case is heard in a language that is foreign to many. It is even arguable that a person ignorant of court procedure or unable to speak the language of the court can never have a fair trial – if such a person is unrepresented and sentenced to a term of imprisonment it is likely to be violation of their constitutional rights.
8. Here the development of local/small claims courts that dispense with formal rules of evidence and with legal representation merit attention.

**(vii) Ignorance of the law**

9. Many people do not know what their legal rights are and do not know when they have a remedy for breaches of the constitutional and other rights. They often do not even know that they can ask for a lawyer to represent them from the moment of their arrest and, as is the case in most Commonwealth jurisdictions, that they have a right to silence.

**(viii) Quality of legal aid offered**

10. Even when legal aid is available, there may be concern about maintaining the quality of the service. Whilst some Commonwealth countries have sophisticated quality control mechanisms in place, much needs to be to address this issue.
11. It is not surprising that in many Commonwealth countries, people may prefer to use the traditional justice systems to resolve their legal problems. Yet these may have their own shortcomings and there are times when resort to traditional methods of justice is inappropriate or not available.
12. The development and delivery of legal aid services depends upon a number of factors, including (i) the structure of the legal profession, (ii) the nature of the criminal justice system, (iii) the constitutional imperatives, (iv) the national legal aid structures, and

(v) the model of delivery used. It also hinges on knowledge of the law and the courage to administer it fairly. What is more, it presumes that where there are weaknesses frustrating the administration of the law, new ways are found to make delivery of justice not only satisfactory to the practitioners but also convincing to the stakeholders. Access to justice therefore involves systems of justice delivery, the practitioners and the end users or the stakeholders. Some of the current mechanisms for improving access to justice can now be considered.

**Legal Aid Schemes**

13. Statutory legal aid and advice schemes exist in some form in most Commonwealth states. In some cases this is enshrined in the constitution. For example, section 35 of the 1996 Constitution of South Africa provides that:
  - "(2) Everyone who is detained, including every sentenced prisoner, has the right ...
  - (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly....
  - (3) Every accused person has a right to a fair trial, which includes the right ...
  - (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly."
14. A common problem with statutory legal aid schemes is financial sustainability. A major portion of financial support for legal aid programmes comes from government. Yet these schemes have often proved extremely expensive to operate and are thus often limited in at least two important respects. Firstly, they are means tested. Secondly, legal aid is often restricted to a limited list of cases, for example, serious criminal offences.
15. In some countries financial pressures have even led to the scope of "traditional" legal aid being significantly reduced in civil matters. This emphasises the need is to find creative ways maintain legal assistance. For example, a new legal aid regime was introduced in England and Wales by the Access to

Justice Act 1999. This excluded a range of civil cases from legal aid, for example most personal injury actions. However, it introduced a new scheme that:

- allows conditional fee agreements (no-win, no-fee agreements) to be used in all except family and criminal cases;
- transfers to conditional fees most money and damages claims currently supported by legal aid;
- ensures that medical negligence cases are to be conducted only by practitioners who are experienced in this field of litigation; and
- establishes a limited transitional fund which provides support in cases where there are high investigative costs of establishing the merits of a case or where the costs of carrying the case are very high.

16. A range of models designed to support the legal aid system therefore merit attention. These can be divided into the following types:

- (a) Legal aid funded judicare;
- (b) Legal aid funded public defenders;
- (c) Legal aid funded law clinics;
- (d) Legal aid funded justice centres;
- (e) Legal aid funded law interns in rural law firms
- (f) Public interest law firms;
- (g) University law clinics;
- (h) Mobile legal aid clinics;
- (i) Community-Based Legal Advice and Aid bodies.

#### **(a) Legal Aid Funded Judicare**

17. Judicare involves the state-funded legal aid scheme referring cases to private lawyers. This is the method that is probably most widely used in the Commonwealth. It works reasonably well where the legal aid body does not have to deal with too many cases but if large numbers of cases are handled it becomes very expensive and complicated to manage. The experience in South Africa and elsewhere (such as the US) is that in such cases

salaried lawyers (e.g. public defenders) employed by the legal body are much more cost effective (sometimes costing as little as half what judicare lawyers cost) than private lawyers.

#### **(b) Legal Aid Funded Public Defenders**

18. Public defenders are salaried lawyers employed primarily to defend criminal cases but they also sometimes do civil matters. A few Commonwealth countries such as Canada and South Africa employ public defenders. South Africa conducted a two year pilot project before it decided to move towards a public defender system which when incorporated into the justice centres has resulted in huge savings compared with the previous judicare system. The Legal Aid Board is now able to defend many more criminal accused than it was able to do under the judicare system.

#### **(c) Legal Aid Funded Law Clinics**

19. Legal aid funded law clinics involve the setting up and funding of law clinics by the national legal aid body as a cost effective method of delivering services, particularly in respect of criminal defences. At the same time it provides practical training and access to the legal profession for aspiring young lawyers.

20. In South Africa, for example, candidate attorneys with the necessary legal qualifications can obtain practical experience by undertaking community service rather than serving articles in an attorney's office. Such service may be done at law clinics accredited by provincial law societies, including clinics funded by the Legal Aid Board. The clinics are required to employ a principal, (an attorney with sufficient practical experience), to supervise law graduates in the community service programme. The candidate attorneys appear in the district courts and the principals in the regional and high courts. Interns who have been articulated for more than a year may also appear in the regional courts. This has proved a cheaper system than the traditional legal aid system.

21. The community service programme provides extended legal services at a moderate cost to needy members of the public, and at the same time develops fields of expertise, practical experience and

career opportunities for aspiring lawyers. It is a useful model for ensuring the gainful employment of young law graduates who are required to render community service to their country. The South African experience has been that the standard of service of the Legal Aid Board clinic candidate attorneys in the lower courts is often better than that of qualified attorneys or privately employed candidate attorneys because the interns obtain specialist knowledge in the conducting of criminal and property law cases.

22. It has recently been suggested that the Nigerian Legal Aid Council might consider setting up a similar programme using law graduates in the National Youth Service Corps members as public defenders.

#### **(d) Legal Aid Funded Justice Centres**

23. A most effective legal aid services model for consumers is one that provides them with a “one stop shop” instead of being sent from place to place to obtain assistance.
24. The South African legal aid funded justice centres are similar to legal aid specialist law firms that have developed elsewhere (for example in the United States) except that in South Africa they are fully state-funded and staffed by persons in the employ of the Legal Aid Board.
25. The South African Legal Aid Board has set up legal aid or justice centres which provide a “one stop” service for legal aid clients by bringing together the different constituents of the present legal aid scheme under one roof: legal aid officers, public defenders, law clinic interns, professional assistants, supervising attorneys, paralegals, administrative assistants and administration clerks. Public defenders deal with criminal cases in the regional courts and high courts. Candidate attorney interns do both civil and criminal work in the district courts. Professional assistants appear in the regional courts. Supervising attorneys appear in the high courts and the regional courts. Paralegals assist with the initial screening of clients. Administrative assistants and clerks provide the necessary administrative back up.
26. The justice centres provide a full range of legal and para-legal services to indigent clients. They work well in the larger cities and towns, but not in the rural

areas where there is insufficient work to justify their expense. In such circumstances, another model, such as cooperative agreements between the Legal Aid Board and bodies such as rural law firms, the independent law clinics, public interest law firms and para-legal advice offices may be more feasible.

#### **(e) Legal Aid Funded Law Interns in Rural Law Firms**

27. In rural areas where there is no legal aid body presence it may be feasible for the legal aid scheme to place a law intern at a local lawyer’s office to carry out legal aid work funded by the state. For example, in South Africa interns have been employed by the Legal Aid Board and placed in rural law firms. The agreement between the Board and the firm is that the intern must undertake 10 new criminal cases a month, and spend one day a week receiving legal aid clients. The rest of the time the intern is required to do the work of the private law firm. Provided the intern is not exploited by the law firm the scheme works well and is very cost-effective.

#### **(f) Public Interest Law Firms**

28. Public interest law firms can play a valuable role in the delivery of civil legal aid services to indigent people. They exist in several Commonwealth countries.
29. One example of a private specialist law firm is the Legal Resources Centre (LRC) that has six centres in South Africa. The LRC has assisted millions of disadvantaged South Africans either as individuals or as groups or communities who share a common problem. Since 1994 the LRC has reassessed its position and is now focussing on constitutional rights and land, housing and development. The constitutional rights programme deals with access to justice, gender equality, children’s rights, the enforcement of socio-economic rights such as health care, education, housing and water, and a constitutional reform programme. The land, housing and development programme includes rural and urban restitution and redistribution of land, urban and rural land tenure security, housing, land law reform and urban and rural land development.

30. An important part of the LRC programme is the training of paralegals and lawyers from disadvantaged communities. It employs 12 to 15 young law graduates each year and trains interns from elsewhere in Commonwealth Africa and the developing world.
31. The LRC charges no fees and receives no State funds. It is financed by the Legal Resources Trust which receives money from overseas and local donors. Recently the LRC, together with the Association of University Legal Aid Institutions, has taken the lead in encouraging the Legal Aid Board to enter into cooperative agreements with independently funded organisations to extend legal services to previously marginalised parts of the country.
32. Public interest law bodies like the LRC can provide legal aid services in civil cases for the poor and marginalised in their countries. They owe their success to their highly professional staff and strong foreign and local donor-based financial and other support. They often receive support from leading lawyers in their countries as well as the judiciary and enjoy a high national and international reputation.

**(g) University Law Centres/Clinics**

33. Legal aid clinics supply free legal advice to indigent persons. They are usually, but not exclusively, based at universities and enable law students to give advice and assistance under the supervision of qualified legal practitioners. Most law clinic models either require law students to work in a university law clinic or assign the students to an outside partnership organisation where they can provide legal services under supervision. In recent years such clinics have become a Commonwealth-wide phenomenon.
34. A useful example comes from the University of Victoria, Faculty of Law in Canada. Here law students are trained and supervised by lawyers who are members of the Law Faculty to provide free legal representation to clients who qualify for legal assistance on a range of legal issues, both criminal and civil. One unusual aspect of the work is that law students regularly visit two local prisons to give advice to prisoners with civil, criminal or correctional legal problems. The Law Centre provides its services at no cost to the clients.

35. In India law clinics have been creatively used by involving them in the *lok adalats* where the law students assist with the functioning of such courts during week-ends or public holidays. The *lok adalats* try to settle disputes sent to them by the courts for resolution by negotiation, arbitration or conciliation. The law students do all the preparatory work of interviewing the parties in order to obtain a negotiated settlement, but if this does not work the parties attend the *lok adalat* presided over by a panel consisting of a district court judge or magistrate, a lawyer and a social worker. The proceedings are conducted informally and the parties, (and their lawyers if they are represented), appear before the panel in an attempt to reach a solution
36. Overall, university law clinics can play a useful role in assisting legal aid. Major constraints are funding and restrictions on the use of law students under the rules of the law societies. The funding problem can be overcome if universities recognise the educational value of clinics and mainstream the staff and structure of the clinics. It can also be resolved if national legal aid bodies recognise the contribution that clinics make to legal aid services and enter into compensatory cooperation agreements with them. The constraints on the use of law students can be overcome if law societies accredit the law clinics and ensure that they are properly supervised by qualified practitioners.

**(h) Mobile Legal Aid Clinics**

37. One strategy for addressing the problem of providing access to justice for those in rural areas lies in the development of mobile legal aid clinics.
38. A mobile law clinic train has been used in some rural areas in South Africa. During mid-1998 the *Legal i train*, a joint project between *Legal i*, the Automobile Association and SpoorNet made its first journey to local communities in the different provinces. The train is a fully equipped law clinic that operates as an office and offers free legal advice to people from local communities. *Legal i* is a community-based legal services programme established by lawyers' associations.

39. Mobile legal aid clinics have the advantage of using either road or rail transport to reach people in the rural areas. Where the clinic involves the use of mobile road vehicles such as vans or minibuses the model is more expensive than if it can “piggy back” on another project such as a community health project using a train. In the latter case the mobile law clinic can consist of a coach or part of a coach on a community health train and the costs could be shared between the law clinic and the health programme.

**(i) Community-based legal advice and aid bodies**

40. In most Commonwealth jurisdictions non-government organisations (NGOs) offer legal aid and advice to indigents. A good example is the work of the Federation of Women Lawyers that operates in many Commonwealth states.

41. Another example is that of the Citizens Advice Bureau. In the UK this offers free, confidential, impartial and independent advice to clients. Advisers, who are all volunteers, can help fill out forms, write letters, negotiate with creditors and represent clients at court or at a tribunal.

42. Paralegals are widely recognised as being key players in providing legal advice and assistance, particularly for those in rural areas. Many operate from local advice centres. Community-based paralegal workers can be involved in educating their communities about constitutional and legal rights, assisting individual and communities to solve their legal problems, particularly through the use of alternative dispute resolution mechanisms and mobilising their communities to act when their rights are being abused. Sierra Leone has just started using paralegals under the supervision of a university law clinic to provide legal assistance and advice in rural areas.

43. The development of appropriate training programmes for paralegals also merits attention. In some countries, this has become institutionalised for some years. For example, in the UK the National Association of Paralegals, which was established in 1987 offers a qualification as a paralegal to be obtained by examination and to promote paralegals and give them a professional status. Comprehensive

training courses for community-based paralegal workers are now offered in several Commonwealth countries. Some of these are available in the form of distance education although this is normally linked with in-house training and short residential courses.

## Conclusions

**44. The following conclusions can be drawn regarding the delivery of legal aid services:**

- The size and structure of the legal profession, the demands of the criminal justice system, their relevant constitutional imperatives, and the availability of adequate financial resources will determine the most appropriate methods of delivering legal services.
- A holistic approach using a combination of methods is probably the most effective way of delivering legal aid services. Depending on the size of the demand for legal aid services neither the judicare nor the public defender model can be directly transplanted from developed countries.
- Given the shortage of legal aid lawyers and financial resources in many Commonwealth countries, law students should be seen as a potentially valuable and inexpensive resource available to national legal aid structures.
- National legal aid structures could enter into cooperative legal aid arrangements with independent providers of legal services such as non-governmental public interest law firms and university law clinics.

- National legal aid structures could work closely with paralegal advice offices as these are where people often first go for legal advice.
  - The issue of quality control must be addressed.
45. Overall, it may be helpful for Senior Officials to consider whether the Secretariat should be involved in:
- (i) developing research on the scope and effectiveness of legal aid support mechanisms;
  - (ii) supporting pilot projects for developing public defender offices, exploring the use of law students in supporting access to justice and the like;
  - (iii) making provision for the better exchange of experiences and information about legal aid schemes between Commonwealth states.

### **Pro Bono Legal Services**

46. There is no universally accepted definition of the term 'pro bono'. Most definitions focus on legal assistance provided by legal practitioners in the for-profit sector to disadvantaged clients or clients who cannot afford ordinary market rates, or to clients whose case raises a wider issue of public interest.
47. Today there are other ways in which private law firms undertake pro bono work to increase access to justice, including:
- providing outreach services, where lawyers from the firm provide free legal advice and assistance at outreach locations, usually at the premises of a community organisation;
  - arranging secondments to community legal organisations;
  - assisting with the creation (or substantially supporting the creation) of specialist services, for example, a shopfront youth legal service;
  - legal volunteering, most commonly at law firms enhance and encourage the provision of pro bono legal services. The manual grew out of a recommendation of the National Pro Bono Task Force to develop a 'how to' handbook that would provide detailed practical advice to law firms and legal practitioners on topics ranging from promoting a pro bono culture within a firm to budgeting, accounting, taxation and record keeping.

### **Pro Bono Law Students' Organisations**

53. Law students are increasingly becoming involved in pro bono work as Commonwealth law schools come to recognise that public service is a critical component of legal education.
54. One example is the Pro Bono Students of Canada (PBSC) programme. This is a national programme founded in 1996 at the University of Toronto. Now established in seventeen law schools across Canada, the placement programme matches volunteer law students with national and local public interest organisations, government agencies, and lawyers doing pro bono work. Over a thousand law students each year work with 300 PBSC partners on specific projects.
55. A wide range of organisations participate in the programme, covering issues such as HIV/AIDS advocacy, telecommunications law, disability rights, family law and human rights issues. Agencies typically involved in Pro Bono Students Canada include public interest and non-profit organisations, tribunals, legal clinics and lawyers working pro bono on a particular case.
56. PBSC provides students with an opportunity to apply newly learned skills to communities in need, develop practical legal skills, and establish connections in the public interest and legal spheres. Tasks include public legal education, legal and policy research, drafting and presentation of reports to government committees, and preparation of client manuals and internal policies for community groups. Other programmes include the PBSC Court Program-Family Law Project, which trains upper year students and places them in courthouses to assist unrepresented family law litigants under the

supervision of duty counsel. In collaboration with the Woman's Human Rights Resource Program at the University of Toronto, PBSC matches law students across Canada with women's rights organisations around the world that require assistance, which they provide over the internet.

57. Such schemes offer considerable mutual benefits. For law students it:

- instils a pro bono ethic;
- assists them in assessing viable career options in public interest law;
- gives them practical legal experience

**For community organisations it:**

- provides under-represented and disadvantaged communities with pro bono legal services;
- gives public interest organisations and agencies access to highly skilled and committed volunteers

58. Overall, *pro bono* work is a potentially important adjunct to a publicly funded legal aid and advice scheme(s). Concern has been expressed that the provision of pro bono services in core areas of legal aid will allow governments to renege on their funding commitment. However pro bono cannot and should not be a substitute for publicly funded legal services (such as legal aid services, community legal centres and indigenous legal services).

59. Senior Officials may wish to make recommendations to Law Ministers on the following issues:

- (i) how Commonwealth states might develop pro bono work more systematically;
- (ii) how Commonwealth states might be supported in developing their pro bono capacity;
- (iii) what training and other materials on pro bono work might be developed.

**Public Interest Litigation**

60. Public Interest Litigation (PIL) is a well-established aspect of the work of the Indian courts and has

had a significant impact in promoting access to constitutional justice for the most impoverished of society.

61. An analysis of this well-known form of redress is beyond the scope of this paper. However, it is worth mentioning several basic characteristics:

- An epistolary jurisdiction. Letters written by citizens to the courts are converted into writ petitions;
- The court deals with group rights, especially those of the most impoverished members of society;
- The collection of evidence and social data concerning the plight of the groups is undertaken by court-appointed investigators;
- Compensation and rehabilitation of victims deprived of their rights constitutes a constitution right in itself;
- In some cases the court monitors state compliance with its orders.

To what extent other Commonwealth states may wish to follow this approach remains unclear but with the inclusion of socio-economic rights in many of the newer Commonwealth constitutions it may be useful to examine whether PIL could be developed elsewhere.

**Alternative Dispute Resolution Initiatives**

62. There are a range of other well-known ADR initiatives in the Commonwealth, not least the traditional forms of dispute resolution. Space precludes any discussion of these here. However, one important development in the Commonwealth that merits attention relates to the potential offered by national human rights institutions.

**(i) National Human Rights Institutions**

63. Offices of the ombudsman have long served a useful function of providing complainants with access to administrative justice. More recently human rights commissions and issue-specific institutions such as

anti-discrimination commissions are now becoming increasingly common. These also provide important access to justice mechanisms. As the 2001 Commonwealth Best Practice Guidelines for National Human Rights Institutions state:

*"A national human rights institution should have power to use conciliation, mediation and other alternative dispute resolution mechanisms, where appropriate, to resolve complaints" (para 3.6).*

64. There is no one model institution for the Commonwealth, although the Best Practice Guidelines provide important and constructive advice on the basic structure of such bodies. In practice, the powers and jurisdiction of individual NHRIs vary considerably. However, they are increasingly being seen as an attractive alternative to resolving at least some of the access to justice problems noted earlier. In particular:

- there is no charge for making a complaint;
- in some countries, steps have been taken to make such institutions readily accessible to all citizens. For example, in Ghana, the Constitution obliges the Commission on Human Rights and Administrative Justice to establish regional and district branches. This has ensured that the Commission has been able to establish a virtually nationwide presence;
- complaints can be lodged informally, often orally and in the language of the complainant's choice
- complaints are generally dealt with expeditiously;
- an investigation can go beyond the strict terms of the complaint and deal with underlying issues;
- problems can be considered holistically. For example, commissions in Australia and Uganda have held their own public inquiries into issues such as homeless children and rights of the disabled.

65. With the exception of the Uganda Human Rights Commission, seemingly no national human rights institution in the Commonwealth has the power to

enforce its decisions. Even so, increasingly procedures are being developed to assist complainants enforce their rights.

66. Overall, Senior Officials may wish to make recommendations to Law Ministers on:

- (i) the effectiveness of national human rights institutions in providing access to justice;
- (ii) the impact of the Commonwealth Best Practice Guidelines on the organisation and work Commonwealth national human rights institutions
- (iii) Providing training in ADR

67. Ghana provides a useful example of the development of training opportunities in dispute resolution. For example, donor funding has helped in the development of training the trainer programmes. The main beneficiary has been members of the Ghana Association of Chartered Mediators and Arbitrators (GHACMA) who become a focal point of ADR practice especially for educating the poor, civil society (including chiefs and opinion leaders) and also practicing ADR alongside other bodies. Further, GHACMA has been able to train some chiefs and opinion leaders in many parts of Ghana (including the Liberian Refugee Community) in dispute resolution techniques.

#### **Access to Justice for Victims of Crime**

68. A variety of initiatives have developed throughout the Commonwealth in this area, particularly in the Pacific region. These involve programmes such as victim-offender mediation, victim assistance and restitution. The *Commonwealth Guidelines for the Treatment of Victims of Crime* published in 2003 make an important contribution by providing models for Commonwealth states wishing to develop or refine their restorative justice programmes.

69. Thus there may be useful lessons to be learned from a comparative study of Commonwealth initiatives on providing access to justice for victims of crime and the impact of the *Commonwealth Guidelines*.

### The Use of Technology in Improving

70. The use of technology can help improve Access to Justice. For example, the Federal Magistrates Court of Australia can use video or audio conferencing to ensure that parties in remote locations have an opportunity to participate without necessarily having to travel long distances to court. Further, in both Australia and Canada, complaints can be lodged with the human rights commissions by email or on-line.

71. Whilst the use of such technology is not available in all Commonwealth states, there may well be merit in examining further the opportunities provided by technology in improving access to justice.

### Overview

72. The problems of access to justice noted at the beginning of this paper continue to limit the extent to which Commonwealth citizens can enjoy their constitutional and legal rights.

73. Even so, this paper has demonstrated that there are a number of significant initiatives being undertaken in the Commonwealth in an effort to address these problems. It has also sought to highlight areas in which Senior Officials may wish to consider recommending further work to be undertaken by the Secretariat on developing "good practice" with regard to access to justice. This might include:

- undertaking a needs analysis, particularly in respect of developing Commonwealth countries followed by the development of suitable pilot projects;
- developing a research project(s) on "good practice" with regard to access to justice
- developing a mechanism for the regular exchange of information and ideas between Commonwealth countries on access to justice issues.

In undertaking such work, it may be helpful to seek the assistance of the appropriate Commonwealth associations and, in particular, the Commonwealth Legal Education Association and Commonwealth Lawyers' Association.

**COMMONWEALTH LEGAL EDUCATION ASSOCIATION**  
In association with the Ghana School of Law

*Will hold a conference on the theme*

**Networking Between Law  
Schools in Commonwealth Africa:  
Problems and Prospects**

*Venue: Ghana School of Law, Accra, Ghana  
20-22 October 2005*

**Aims of the Conference**

- To identify key problems facing Commonwealth African Law Schools in the delivery of high quality legal education, research and publications
- To explore mechanisms for strengthening links between Commonwealth African Law Schools and beyond
- To develop strategic partnerships with law publishers
- To develop strategic partnerships with governments and the private sector
- To develop a Practical Plan of Action designed to strengthen law teaching and legal research and writing in Commonwealth Africa.

**Who Should Attend?**

- Deans of Law Faculties/Heads of Law Schools/Directors of Professional Legal Training Institutions from Commonwealth African countries
- Law Publishers
- Representative of Ministries of Justice
- Representatives of the private sector

**For further information, please contact:**

Mr. Kwaku Ansa-Asare, Director of Legal Education/Director, Ghana School of Law,  
P.O. Box 179, Accra, Ghana.

E-mail: kwakuansa@yahoo.co.uk

Tel: 233 21 664822/664775 Cell: 233 0244- 630805; 0244-0243-530375

## Call for Papers

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### **COMMONWEALTH LEGAL EDUCATION ASSOCIATION**

Invites participants to submit papers on any aspect of the theme for the Conference.

Persons wishing to present Papers at the conference should submit the Abstracts of their papers to reach any of the following before June 30, 2005:

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Prof. Justice A.K.P Kludze, Ghana School of Law, P.O. Box 179, Accra

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Prof. Justice S.K. Date-Bah, Supreme Court, P.O. Box 119, Accra

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Dr. K.O. Adinkrah, or Mr. Ace Ankomah,  
both at the Ghana School of Law, P.O. Box 179, Accra

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An Abstract in double spacing should not be longer than one and a half pages of A4 paper.

Participants whose proposed Papers are accepted will be notified as soon as possible and, in any case, not later than 31 July, 2005.

Final versions of Papers may not exceed 20 pages of A4 Paper in double spacing. They must be submitted in a presentable form, not later than September 30, 2005.

**Further inquiries about Papers should be addressed to:**

Prof. Justice A.K.P Kludze, Ghana School of Law, P.O. Box 179,  
Accra, Ghana

Tel: 233-21-664822, 664775, 661805 or 233-20-8183810  
e-mail: kwakuansa@yahoo.co.uk

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# News from Commonwealth Law Schools

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## International Conference and Workshop on Constitutional Renewal in the Pacific Islands

The University of the South Pacific Emalus Campus, Port Vila, Vanuatu, 26th - 28th August, 2005

It is now several decades since most Pacific Island countries attained independence or self-determination. Given the considerably changed environment - the end of the cold war, the rapid spread of globalizing tendencies and consequent impact on national sovereignty, the rising awareness of the complex interplay between state and market, and the new significance of civil society - it is timely to inquire into how well Pacific constitutions are faring. Across the Pacific, individual states are engaged in constitutional dialogue in their own unique circumstances: in post-conflict circumstances Bougainville has written a constitution to establish its unique status within Papua New Guinea; Solomon Islands is deliberating on a federal model much mooted ever since independence in 1978; the constitutional status of Tokelau and Niue is under discussion; a parliamentary committee is inquiring into the Constitution of the Republic of Fiji; a Constitutional Committee is considering revisions to the Constitution of the Republic of Nauru; and amendments to the Constitution of Vanuatu have been enacted and are awaiting approval by a referendum before coming into effect.

In the context of such current constitutional dialogue the University of the South Pacific is convening a conference in 2005 to consider the state of Pacific Island Constitutions and Constitutionalism: is the promise of constitutionalism delivering on its ideals of protecting individual rights and adequately restraining and ordering the use of public power? How well are the "modified Westminster" constitutions performing? What is driving the current programs of constitutional revision? Why have so few previous constitutional revision exercises led to so little thorough-going revision? How do national constitutions relate to Pacific Island Country's ever-expanding regional and international commitments? Do the Pacific constitutions give adequate attention to

constitutional desires of local communities? Do the Pacific constitutions give adequate attention to traditional customary values and practices? What interrelationships are there between constitutional provisions, political stability, economic performance, and governance?

To register your interest in presenting a paper or in facilitating a workshop, contact: Graham Hassall, Pacific Institute of Advanced Studies in Development and Governance, The University of the South Pacific, Suva, Fiji Islands ([graham.hassall@usp.ac.fj](mailto:graham.hassall@usp.ac.fj)).

## "Law revamp could hit coffers"

The Law Society of England and Wales is proposing a radical reorganisation of legal education that could see the end of popular - and, for universities, highly lucrative - law courses. The future of the obligatory vocational Legal Practice Course (LPC) and even the qualifying law degree, the LLB, is uncertain under proposals from the Law Society, which regulates legal training.

The proposals, to go to the Law Society's council will introduce a tough new assessment to judge students' knowledge and skills. This will be taken as a final qualifying exam. There will be no set route to this qualification, no prescribed courses such as the LPC, although students will have to do a period of work-based training to acquire the necessary skills.

The proposals have been met with howls of protest from universities. Twenty law schools have signed a petition saying that they have not been consulted. Two members of the Law Society's training framework review group, which drew up the proposals over a three-year period, filed a minority report saying that the proposals will undermine standards. Phil Knott, of Nottingham Law School and one of the authors of the minority report, said: "I would prefer to keep the current system as a benchmark and then allow flexibility around it."

Alan Paterson, president of the Society of Legal Scholars, said: "We welcome the Law Society's commitment to diversity and flexibility but have concerns about other aspects, in particular whether there is sufficient quality assurance in what is proposed." He said that there was a

danger that students would be put through "crammers".

This week, Janet Paraskeva, the Law Society's chief executive, launched a strong defence of the proposals. "There has been a lot of misrepresentation as to what all this is about," she said. She added that the current system was so expensive and prescriptive that potentially good solicitors were facing too many hurdles. She described it as "outmoded, expensive and possibly discriminatory". In particular, she described the LPC, which can cost students up to £9,000, as a "straightjacket" and the society's "key concern". She said that the "outcomes-based" approach would guarantee quality. "We need to test students on their skills, not on whether they have completed a particular course," she said.

According to Ms Paraskeva, the current approach, which involves an academic stage (a degree), a vocational stage (the LPC) and a training contract, could remain the norm for most students. She said that detailed arrangements for assessing students and trainees still had to be hammered out, acknowledging that the work-based requirements would put a strain on employers who already could not provide enough training contracts. The Law Society intends to consult on these proposals over the next two months.

In all, just under 15,000 students enrolled on law degrees this academic year, making it one of the most popular undergraduate degrees. About 9,000 students take the LPC.

Source: Times Higher Education Supplement, 4 February 2005

## CLEA Continues to Assist in Anti-Corruption Efforts

Since 2003 the Association has been involved in a project now headed by *Tiri* bringing together the most recent case law and other materials relating to corruption from around the Commonwealth in the form of a regular publication *Cases and Materials Relating to Corruption*. The objectives of the *Bulletin* are two-fold. Firstly, to provide practical assistance to the reform efforts now under way in Nigeria, and in particular to the Independent Commission Against Corruption and Related Offences, and to judges designated to hear corruption cases. Secondly, it is to provide a global audience of judges, legal practitioners and law enforcement agencies with access to the emerging Commonwealth jurisprudence concerning corruption. This is in recognition of the fact

that in recent years, many Commonwealth countries have enacted wide-ranging anti-corruption laws that have introduced new offences and provided significant new powers for the investigation and prosecution of corruption cases, especially through the establishment of anti-corruption commissions. These developments are giving rise to constitutional and other legal challenges and this means that those working in this area need swift and ready access to the emerging jurisprudence.

In particular, the Association have been contributing cases to the publication. To date two complete volumes have been published. These are available online (free of charge) at [www.tiri.org/implementation/case-law-project/complete-issues.html](http://www.tiri.org/implementation/case-law-project/complete-issues.html)

The project has been funded by the BMZ Trust Fund for the United Nations Development Programme for Accountability and Transparency. This funding has now come to an end but it is hoped that further funds will become available to enable this very useful project to continue.

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## On Line

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### PacLII: Now it's the PITS

With so much emphasis on the strengthening of the legal and justice sector and transparency in international relations throughout Pacific region, the services of the Pacific Islands Legal Information Institute ("PacLII") have become more important than ever. Continuing to provide its free online service, PacLII is expanding rapidly since its launch in 2003, and recently published its 60,000th document online. The website includes legislation and case law materials from 15 Pacific island countries.

PacLII has just launched a new facet of the overall project, the Pacific Islands Treaty Series (PITS) which focuses on publishing, in both French and English, the bilateral and multilateral treaties and conventions that 21 Pacific Island states have entered into, in a wide-range of categories. The project also identifies the ratification (domesticating) legislation passed by those countries. PITS displays the international rights and obligations of the Pacific Island states from the late 19th century to date, thus showing the evolving priorities and commitments at international level of each Pacific Island state. You can access all of PacLII's free services at [www.pacii.org](http://www.pacii.org) and specifically the Pacific Islands Treaty Series at [www.pacii.org/pits](http://www.pacii.org/pits)

## Unleashing the full force of the law

A major new agreement will digitise thousands of core legal judgments and law reports and for the first time make these freely and openly available electronically. JISC (Joint Information Systems Committee) and BAILII (British and Irish Legal Information Institute) have announced the Open Law project which has the potential to transform the delivery of legal teaching and public access to legal materials in the UK.

Access to case reports and legislation are central to the teaching of law and the development of legal skills. Open Law will therefore focus on the core needs of staff and students on law courses at all levels. It will include around 200 of the most cited judgments in each of the core areas of the law course syllabus. Other non-core areas will also be covered, so that staff and students dealing with legal issues on non-law courses such as accounting and business, environmental management, planning and social work, will also benefit. The digitisation of these judgments and other reports means that the project will digitise a total over 40,000 pages.

The heavy use of standard legal resources in both print and online form, the restriction of certain materials to reference libraries and their cost have meant that the availability of key materials has always been a challenge for law departments across the country. JISC's and BAILII's commitment to open access principles in this project will mean that the general public will also be able to access the most important legal materials for free.

The 36 month project will also work closely with the legal profession, law schools, librarians, and special interest groups such as the Committee of Heads of Law Schools, the Society of Legal Scholars and the Association of Law Teachers to identify these judgment and reports as well shaping the future development of this resource.

**For further information:** Philip Pothen (JISC)  
p.pothen@jisc.ac.uk or Philip Leith (BAILII)  
p.leith@qub.ac.uk.

**Note:** the Joint Information Systems Committee is a joint committee of the UK further and higher education funding bodies (HEFCE), and is responsible for supporting the innovative use of information and communication technology to support learning, teaching, and research. Its services and programmes can be found at [www.jisc.ac.uk/](http://www.jisc.ac.uk/)

## New Zealand Constitutional Reform website

The web site [www.constitutional.parliament.govt.nz](http://www.constitutional.parliament.govt.nz) has been set up to support the work of the New Zealand Constitutional Arrangements Committee, which is conducting an enquiry into New Zealand's existing constitutional arrangements.

It contains the committee's draft papers on the history and status of what makes up New Zealand's constitutional arrangements, includes some comparative materials and looks at how other countries have gone about changing their constitutions.

## Anti-money laundering online forum

The IBA's section on Business Law has set up a comprehensive online guide to anti-money laundering legislation and regulations worldwide.

The website: [www.anti-moneylaundering.org](http://www.anti-moneylaundering.org) provides access to:

- the most current versions of EU member state's laws and regulations dealing with lawyer's responsibilities in connection with anti-money laundering legislation;
- national and international anti-money laundering agencies, financial intelligence units and professional associations;
- an electronic meeting place to discuss current issues relating to all aspects of anti-money laundering laws and regulations.

## Top of the happiness league?

Hairdressers; with the clergy second, then chefs, beauticians and plumbers.

According to the survey, architects were the most miserable workers.

# 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**

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# About the Commonwealth Legal Education Association

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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 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.

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## 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 c/o 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

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**Membership application  
see reverse >>**

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# Membership

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## 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

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## ::: Membership application form

Please tick ✓

Individual membership (one year) (US\$80; £50)

Individual membership (three years) (US\$190; £120)

Institutional membership (one year) (US\$240; £150)

Institutional membership (three years) (US\$600; £400)

Title: \_\_\_\_\_ First name: \_\_\_\_\_ Surname: \_\_\_\_\_

Institution: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Country: \_\_\_\_\_

e-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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  
Tel: +44 (0)20 7747 6415 Fax: +44 (0)20 7747 6406 e-mail clea@commonwealth.int

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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.”*

**Prizes are as follows:**

1st: £750

2nd: £200

3rd: £50

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

### 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.
2. Students of both full-time and part-time degree programmes are eligible.
4. Closing date: 1 December 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.

**Send all entries to:**

Dr Joe Silva Sri Lanka Law College, 244 Hulftsdorp Street, Colombo 12, Sri Lanka

Fax: (94) 1 436040, e-mail: locwal@slc.lk