

GOOD GOVERNANCE AND HUMAN RIGHTS

HUMAN RIGHTS

INTRODUCTION

1. Senior Officials of Law Ministries considered, at their November 2001 meeting, a number of issues relevant to the legal protection of human rights. They recommend for consideration by Ministers, three specific issues.

HUMAN RIGHTS IMPACT ASSESSMENT

2. At their last meeting Law Ministers considered the concept of a Human Rights Impact Assessment as a technique that would aid the entrenchment of the Commonwealth's fundamental values for the benefit of the citizens and urged the Secretariat to further refine the concept for consideration by Senior Officials.

3. Senior Officials considered the issue and have noted a number of different techniques used in Commonwealth countries to ensure compliance with human rights norms. In some countries, Human Rights Commissions have been established and empowered to investigate and report on the observance of human rights. Some Ombudsmen also have specific responsibilities in respect of human rights. The relationship between proposed legislation and national Bills of Rights or international human rights instruments is also dealt with through a variety of mechanisms. In some countries the courts (or a special Constitutional Court) can rule on the compatibility of legislation with such human rights norms; in others, the matter is the subject of specific report to Parliament by the sponsoring Minister, or is a particular concern of a scrutiny committee of Parliament.

4. They recognised that the notion of a human rights impact assessment could be broadened, to encompass a holistic consideration of good governance issues, but the meeting considered that a specific focus on human rights norms was desirable. They further noted that there are a number of cost effective means by which scrutiny of proposals can be carried out and that it is for each country to determine which method best suites its circumstances. They commend to Law Ministers the introduction of appropriate national mechanisms to ensure that legislative and policy proposals by government do not derogate from the fundamental human rights of citizens.

VICTIMS RIGHTS

5. Senior Officials also considered the question of the rights, and hence the protections, which should be accorded to the victims of crime. They noted that victims of crime can be subjected to unjust loss, damage or injury and that in addition they may suffer hardship when assisting in the prosecution of offenders. They welcomed this issue being addressed. They recognised that in some cases the rights of victims may not be justiciable, however, they considered that the interests of victims were very important and that it was appropriate that Law Ministers give consideration to the issue of how best to afford justice to the victims of crime and the abuse of power.

6. Senior Officials recommend for the consideration of Law Ministers the draft statement contained in the *Annex* to this paper.

FREEDOM OF ASSEMBLY AND ASSOCIATION

7. Senior Officials recognised that the issues of freedom of assembly and association were of central importance to the creation and continuation of vibrant democracies and were relevant to

democratic governance, particularly in the area of preserving the place of opposition parties in Parliaments. The said issues have become prominent in recent times with the subject of globalisation becoming a catalyst for demonstrations en masse. An appropriate balance between the right to assemble and the public interest in the maintenance of a safe and secure environment for citizens therefore required consideration.

8. Senior Officials recommend for the consideration of Law Ministers that each member country should, if necessary and where appropriate:-

- Constitutional review
review its Constitution or other paramount laws to ensure that they in no way inhibit freedom of assembly, association and other fundamental human rights and that such review involve all stakeholders, and not just parliament.
- Legislation
review of all legislation to ensure that it is in accordance with international human rights standards and any derogation therefrom is reasonable and necessary in a democratic society.
- Opposition parties
recognise Opposition Parties as an integral part of democratic governance and allow them fair access to any public financial subsidies and publicly funded media.
- Trade unions and NGOs
While it may be necessary or desirable to enact legislation dealing with trade unions and NGOs, countries should ensure that such laws should not restrict fundamental freedoms. There must be recognition that civil society enhances democracy.
- Law and order
Whilst it is the responsibility of governments to promulgate laws to maintain law and order, these laws must not be used to stifle political opposition.
- Demonstrations
Give consideration to the laws, police practices and other public regulatory regimes dealing with public meetings and demonstrations to ensure that there is an appropriate balance between the right to demonstrate and the maintenance of public order. In particular they may wish to consider whether this process should include an assessment of the adequacy of:-
 - *constitutional guarantees*
 - *legal frameworks*
 - *notification provisions*
 - *constraints*
 - *the capacity to appeal against constraints imposed by authorities; and*
 - *mechanisms for liaison between police and stewards provided by organisers*

9. Following the meeting of Senior Officials a Commonwealth Expert Group Meeting was also convened in June 2002 to Develop Guidelines of Best Practice to Promote Freedom of Expression, Assembly and Association. The Expert Group, set out minimum guidelines and standards on Freedom of Assembly and Association which would recognise:-

- the right of peaceful assembly including the right to peacefully demonstrate. No restrictions may be placed on the exercise of this right other than those imposed by law

and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others;

- the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes. No restrictions may be placed on the exercise of this right other than those imposed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or the protection of the rights and freedoms of others.

FREEDOM OF EXPRESSION

10. In relation to Freedom of Expression, the Expert Group suggested as the minimum standards that:-

- Everyone shall have the right to hold opinions without interference.
- Everyone shall have the right to freedom of expression. This right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice.
- The exercise of the aforesaid rights may be subject to certain restrictions as provided by law and are necessary in a democratic society.

POSSIBLE ACTION BY LAW MINISTERS

11. Law Ministers may wish:-

- (a) to consider the Draft Commonwealth Statement on Victims Rights which is *annexed* to this paper and to express any views they may have and advise any amendments they would wish to be reflected in the Statement;
- (b) endorse the views expressed by Senior Officials in paragraph 8 of this paper; and/or
- (c) consider whether they wish to issue a statement on the fundamental democratic values enshrined in the concept of freedom of assembly and association and freedom of speech.

VICTIMS RIGHTS

DRAFT COMMONWEALTH STATEMENT FOR CONSIDERATION
BY LAW MINISTERS

Commonwealth Law Ministers recall the adoption by the United Nations General Assembly of Resolution 40/34 which recognised “that the victims of crime and the victims of abuse of power, and also frequently their families, and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders” and the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the Basic Principles).

To express their commitment to the Basic Principles, Ministers agree that member countries would give consideration to the national implementation of measures designed to give practical effect to these Principles. They believe that:-

1. **Guidelines and training programmes should be developed to ensure that Police:-**
 - are sensitive to the needs of victims; and
 - are informed, knowledgeable, and supportive of existing social services and programmes for victims;
 - establish procedures in association with prosecuting authorities for the prompt return of property to victims. Alternative methods of procuring evidence such as the taking of photographs to be used as evidence should be determined; and
 - establish procedures to ensure that victims of crime are periodically informed of the status of investigations.

2. **Prosecutors, in the exercise of their powers and duties as officers of the court:-**
 - should be sensitised to the fact that public interest should specifically take into consideration the views of victims;
 - have the ultimate responsibility for informing victims of the status of a case from the time of the initial court appearance to the conclusion of the case;
 - have an obligation to bring to the attention of the court the views of victims of violent crime on bail decisions, postponements, plea bargains, dismissal of cases and restitution;
 - should charge and pursue defendants who harass, threaten, injure or otherwise attempt to intimidate or retaliate against victims or witnesses;
 - should use a victim and witness on-call system, where practicable, to ensure that victims do not waste time unnecessarily in court;
 - establish procedures to ensure the prompt return of victim’s property, and in so far as is possible, do away with the need for the actual physical evidence to be produced in court;
 - establish and maintain liaison with victim support structures;
 - be sensitised to the trauma and well being of victims of serious crimes.

3. **Parole Boards, in the performance of their functions, should give consideration to:-**
 - notifying victims of crime and their families in advance of parole hearings as far as is practicable;

- allowing victims of crime, their families, or their representatives to attend parole hearings and make known the effect of the offenders crime on them; and
- taking whatever steps are necessary to ensure that parolees charged with a crime whilst on parole are immediately returned to custody and kept there until the case is adjudicated.

4. Law Ministers also commend for the consideration of the Chief Justice and other members of the Judiciary the following suggestions that they believe will assist in the achievement of national adherence to the Basic Principles:-

- participation in a training programme addressing the needs and legal interest of victims of crime;
- allowing victims and witnesses to be on-call for court proceedings;
- in so far as possible, ensuring that their court officials establish separate waiting rooms for prosecution and defence witnesses;
- means by which members of the judiciary can bear their share of responsibility for reducing court congestion by ensuring that all participants fully and responsibly utilise court time;
- allowing a victim to make representations at bail hearings, postponements, plea bargains, dismissal of cases, sentencing and restitution;
- ordering restitution to the victims in all cases in which the victim has suffered material loss or physical or mental harm, unless they state compelling reasons for a contrary ruling on the record;
- allowing the victim and a member of the victims family to attend the trial, even if identified as witnesses, unless there is a compelling need to the contrary; and
- giving substantial weight to the victim's interest in the speedy return of property before trial in ruling on the admissibility of photographs of that property as being sufficient evidence.

5. Ministers also agree that they should give consideration to the passage, where necessary or appropriate, of legislation that will assist in the realisation of adherence to the Basic Principles. To this end they recognise that national legislation and practise should be reviewed to:-

- ensure that it does not inhibit the ability of courts and justice authorities to allow the views to victims of violent crime to be considered on bail decision, postponements, plea bargains, dismissal of cases and restitution.
- facilitate the receipt by courts of victim impact statements prior to sentencing; and
- require consideration of restitution in all cases;
- provide guidance on the fair treatment of victims of crime and witnesses.

They further agreed that national consideration should be given to the development of appropriate mechanisms designed to provide assistance to the victims. They recognise that the precise form that such mechanisms could take must remain a matter for national decision taking into account economic, social and cultural norms of each member country.