

**ACTIVITIES OF THE COMMONWEALTH AND  
ITS PARTNERS IN THE LEGAL FIELD**

## ACTIVITIES OF THE COMMONWEALTH IN THE LEGAL FIELD

## INTRODUCTION

1. The period since the last meeting of Law Ministers in 1999 has seen significant changes in the priorities of member countries and in the Secretariat. Chief Emeka Anyaoku retired as Secretary-General and was replaced by the Rt. Hon. Don McKinnon of New Zealand in April 2000. The scheduled meeting of Heads of Government had to be postponed following the tragic events of 11 September 2001. The 2002 CHOGM delivered the Coolum Declaration on the "Commonwealth in the 21<sup>st</sup> Century – Continuity and Renewal" which focussed on equality of access to economic opportunities and the need to apply new international standards evenly, equitably and without exception. Heads of Government called for the establishment of an expert group to advise on how democracies might best be supported in combating poverty. They also adopted the report of the High Level Review Group and in so doing committed themselves to forging new opportunities for member countries in trade, investment and in private sector development. To achieve the goals set by Heads of Government, the Secretariat is refocusing its work programmes and readjusting its structures so that it provides a more simplified structure capable of responding more quickly and effectively to country needs.

2. The period since the 1999 Meeting has been a mixture of good and not so good news and has not been entirely without difficulties. The advances in democratisation associated with the return of South Africa, Fiji and Nigeria have been accompanied by ongoing efforts by the Secretary-General to ensure that the Association's fundamental values and principles form the basis of governance in all member countries. In this regard, the Millbrook Commonwealth Action Programme designed to give effect to the commitments contained in the Harare Commonwealth Declaration, has added value to the usefulness of the Harare Commonwealth Declaration as the engine that drives the Commonwealth. The Action Programme includes measures which continue to support processes and institutions needed for the practice of the Harare principles, as well as measures to deal with violations of those principles. The Harare Commonwealth Declaration and principles continue to be a focal point of Secretariat activities, particularly in the field of the promotion of good governance supported by national, regional and pan-Commonwealth capacity building workshops, as well as the provision of technical assistance.

3. The High Level Review Group called upon Commonwealth professional bodies to join with the official Commonwealth to help improve Commonwealth values. The Secretariat was asked to form stronger links and better two-way communication and co-ordination between the official and non-governmental Commonwealth to give Commonwealth activities greater impact and to produce lasting benefit. For LCAD this call presented no new challenges as its links with the legal professional Commonwealth have always been strong. In recent years we have worked with the Commonwealth Lawyers Association, the Commonwealth Magistrates and Judges Association, the Commonwealth Parliamentary Association and the Commonwealth Legal Education Association to develop the Latimer House Guidelines. More recently these groups have agreed to work with the Secretariat in a common forum on a wider range of issues relevant to good governance and the law. Reports from our three partner legal organisations are annexed to this paper.

## GENERAL

4. The staff of the Division has played a full supporting role in the election monitoring activities of the Secretariat. During the period under review, for example, members of staff assisted on the missions to Zimbabwe in May and June 2000, Tanzania in October 2000, the Seychelles in September 2001 and to Lesotho in May 2002.

5. Considerable time and resources were also directed to facilitating discussions between several Commonwealth member countries and the OECD and its member states, in relation to the OECD initiative on harmful tax. This initiative, which carries the threat of very serious sanctions against some member countries had to be dealt with on an urgent basis. The Division was instrumental in identifying important legal issues to be considered in the course of the discussions. This contributed to the significant progress that has now been made in finding an acceptable way forward for all parties in relation to this issue. Work in this area is ongoing.

6. The role played by the now regular meeting of Senior Officials in shaping the direction of the work of the Division continues to gain in significance. Officials met in 2001 to consider a wide range of issues referred to them by Ministers and to deal with some issues identified by the Secretariat as being of possible pan-Commonwealth interest. The achievements of that meeting were significant both in terms of quality and volume and have been reported to member countries.

7. Two meetings where senior Commonwealth Law Officers traditionally discuss matters of special interest to small states and in which professional staff of the Division traditionally play an important role are the regular meetings of Law Officers of Small Commonwealth jurisdictions, now re-titled Meeting of Law Ministers and Attorney General of Small Commonwealth Jurisdictions, and at the regional level, the Pacific Islands Law Officers Meeting.

8. In May 2000 Jersey hosted the seventh pan-Commonwealth Meeting of Law Officers and Attorney General of Small Commonwealth jurisdictions. Meetings of the Pacific Islands Law Officers were held in Papua New Guinea in 1999, the Cook Islands in 2000 and Fiji in 2001. The Secretariat was able to attend each of these meetings but unfortunately was not able to attend the 2002 meeting held in Samoa.

#### ORGANISATION AND STAFFING OF THE DIVISION

9. The former Director of LCAD retired at the end of 1999. His invaluable contribution to the legal Commonwealth in its official sense is much missed. Mr Nzerem's retirement was the first of a number of changes in staffing in the Division. Former Deputy Director Kosi Latu was promoted to another position in what is now the Special Advisory Services Division. He continues his good work in areas such as law of the sea and with trade related legal issues. Mr Latu's position remained vacant for 13 months before a successor was recruited.

10. As Ministers would be aware, the Human Rights Unit became part of the LCAD in 1993. Following a review of the activities of the Secretariat in the human rights area and recommendations on how the broad spectrum of rights issues could be addressed, the decision was taken to create a stand-alone unit to deal with human rights so that the whole subject could be more integrated into the range of Secretariat work in a more holistic way. With the Human Rights Unit went its new Deputy Director, Hanif Vally whose previous role in the Division was to deal, inter alia, with constitutional, electoral and legal advice issues.

11. From September 2002 the Division is reorganised into three sections:

- Criminal Law Section, headed by Kimberly Prost from Canada, which has the same remit as before with the obvious addition of terrorism to the list of subjects it covers;
- Justice Section, headed by Katalaina Sapolu from Samoa, which will cover issues such as access to justice, courts, co-ordination with partner professional organisations as well as various specialist issues relevant to protection and promotion of legal interests;

- Law Development Section, headed by Cheryl Thompson-Barrow from Jamaica, which will deal with the provision of information services of the Division (including the CLB), the development of model legislation in various areas and the section will provide legal input into Secretariat work on trade issues and in other areas relevant to development law.

## PROVISION OF INFORMATION

### *Commonwealth Law Bulletin*

12. The *Commonwealth Law Bulletin (Bulletin)* is central to the Legal and Constitutional Affairs Division's prime function of disseminating information on legal developments around the Commonwealth. Now in its twenty-seventh year of publication, the *Bulletin* continues to be the flagship publication of the Secretariat in the legal field.

13. Although originally a quarterly publication, from 1996 onwards the *Bulletin* has been published bi-annually, in June and December, for reasons of economy, but without any reduction in page content. A serious backlog was effectively eliminated before moving production overseas in late 1998 but problems have continued to beset the timely production of this publication including typesetting and printing problems experienced with publishers overseas used to minimize cost.

14. Annual Indexes for each of the years from 1996-1998 have now been published as has the Cumulative Index covering the period 1995-1999.

15. With a view to bringing the *Bulletin* nearer to a self-financing status, there has been a significant reduction in the number of complimentary copies distributed to Governments. Depending on the size of the jurisdiction, the maximum number of complimentary copies sent is 10 whilst the minimum is two. Since 1998, the complimentary mailing list has contained around 650 entries. Revenue for the financial period 2000/01 was approximately £15,000, making the *Bulletin* the highest earner of revenue from Secretariat publications. The current subscription of £60 per annum will be increased to £75 per annum from 2003, and with proper marketing an increase in revenue is expected.

16. The information provision role played by the *Bulletin* is essential if one of the Commonwealth's major comparative advantages is to be maintained – that of sharing of legal tradition and experience. It fosters development of common approaches to new issues and saves significant time and effort, particularly in small states. But with the advancement of information technology, the issue now is whether there is another way of providing this service, perhaps making it available on-line, but bearing in mind the lack of Internet facilities in many of the smaller jurisdictions, and, where available, the prohibitive costs of access or service disruption caused by lack of a reliable electricity supply, in some cases.

### *Other Legal Information*

17. Within the limits of its resources, the Division continues to provide assistance on a whole range of matters as and when requested but on an *ad hoc* basis, particularly to small states that rely to a greater extent on the *Bulletin* for much of their legal information. Often the assistance provided is in the nature of legislative precedents.

## *Periodic Publications*

18. The Division continued its other publications designed to assist countries by providing up to date information on national and international legal developments. The major publications are *CLAN (Commonwealth Legal Assistance News)* and *Crimewatch*. The Manual on International Cooperation in the Administration of Criminal Justice was also updated.

19. The Criminal Law Section also maintains a database on the laws of member jurisdictions relating to the Commonwealth Schemes on the Rendition of Fugitive Offenders, Mutual Assistance in Criminal Matters and the Transfer of Convicted Offenders, as well as on a broad range of topics such as money laundering, proceeds of crime, corruption and recently, terrorism. Based on its database and information obtained from member countries, the Unit distributes updated versions of a manual entitled *International Co-operation in the Administration of Criminal Justice*, which summarises existing laws in member countries that implement the three Commonwealth Schemes. This document was updated in 2001 and distributed to member countries.

## FUNDAMENTAL POLITICAL VALUES AND GOOD GOVERNANCE

### *Good Governance and the Elimination of Corruption in Economic Management*

20. The Criminal Law Section has been working with other Divisions in the Secretariat to develop a Secretariat-wide strategy to take forward the work of the Commonwealth Expert Group on Good Governance and implement the principles contained in the Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption endorsed by Heads of Government at their 1999 Meeting. As a first step, the Secretariat sought information to identify the present state of anti-corruption strategies and legislation in member countries and to assess what has been done or is being done by member countries to implement the Framework. The results of the survey are in the process of being compiled and will be used in the development of programs for assistance to member countries. The Section also hosted a workshop on seeking the repatriation of proceeds of corruption within the margins of the United Nations ad hoc Committee negotiations of a convention against corruption.

21. The Division also participated at the expert group meeting on the development of the terms of reference for the negotiation of a United Nations Convention against Corruption held in Vienna in July/August 2001 and is now participating in the Convention negotiations. Meetings of Commonwealth countries attending the negotiating sessions are being facilitated by the Division as a means of seeking to achieve the objective that the provisions of the UN Convention will be consistent with the principles contained in the Commonwealth Framework.

22. Details of the judicial colloquium on combating corruption that was organised by the Secretariat are contained in paper LMM(02)18.

### *National Human Rights Institutions: Best Practice*

23. The first Commonwealth conference of national human rights institutions was held at Cambridge University in the UK, in July 2000. Some 58 delegates representing national institutions, governments, the UN Office of the High Commissioner for Human Rights, and international non-governmental organisations attended. The conference considered how national human rights institutions could advance the Commonwealth's promotion and protection of human rights as reflected in the 1991 Harare Commonwealth Declaration. Following this conference, an expert group was convened in London, in March 2001, to develop an authoritative guide to best practice for national human rights institutions, in consultation with the Office of the United Nations High

Commissioner for Human Rights. This Best Practice guide is available to all member countries and Senior Officials.

#### *Rights of the Child*

24. With the aim of promoting the rights of children throughout the Commonwealth, regional workshops were held in Africa, the Caribbean and the Pacific on the Convention on the Rights of the Child over the last two years. The workshops focused on the practical implementation of the children's convention and encouraged member countries to ratify and implement its recent optional protocols and the International Labour Organisation convention on the worst forms of child labour. This programme is intended to result in the development of a Commonwealth Agenda for Children.

#### *Needs Assessment and Capacity-building Missions*

25. Following Cameroon's admission to membership of the Commonwealth association in November 1995 and a needs assessment in March 1998, the Human Rights Unit organised a capacity-building workshop in Yaoundé, in February 2000, to strengthen the national commission on human rights and freedoms of Cameroon. The Human Rights Unit also undertook a needs assessment in the Gambia, in January 2001, in response to the specific requirements identified by that country as necessitating priority assistance and a similar mission was undertaken in Mozambique early in 2002.

#### *Promoting Commonwealth Values amongst Youth*

26. As part of the module of the Commonwealth Youth Programme Diploma in Youth in Development Work, the Division, in collaboration with the Commonwealth Youth Programme, developed materials covering the subjects of Commonwealth Values, Human Rights, Democratic Values and Structures and Citizenship which aim to teach young people to understand their legal rights and obligations as Commonwealth citizens.

27. In July 2001, co-ordinating tutors from 22 institutions across the Commonwealth were trained in Commonwealth values. Their recommendations, following the review of the draft module, have been incorporated, and the module will be finalised shortly. Some 2,000 students are expected to be trained by the co-ordinating tutors in the 22 institutions involved in this programme. Most of these students are youth workers who will be active at grassroots level.

### CRIMINAL LAW SECTION (CLS)

#### *Curriculum Development*

28. A key area of work in relation to the ongoing mandate to assist member countries with respect to combating crime involved the introduction of a course on International Co-operation to Combat Crime for the law schools in the Caribbean, West Africa and Southern Africa regions. The curriculum, developed by the Secretariat, is designed to equip students with general knowledge and practical skills in the area of international co-operation in criminal matters. The course covers such subjects as mutual legal assistance, extradition, and proceeds of crime. The programme is intended to enhance the general legal capacity of countries to combat crime through effective international co-operation. Introductory meetings and "train the trainers" seminars were held in Barbados for the Caribbean region, Ghana for Western Africa and Zambia for Eastern and Southern Africa. The three regional projects are ongoing, with curriculum material having been developed and steps for introduction of the academic course agreed to. Additional work in this area is planned to continue over the next two years.

### *Oxford Conference*

29. As part of a continuing series, in August 2002 the CLS organized a conference at Christ Church in Oxford on the subject of the Changing Face of International Cooperation in Criminal Matters in the 21<sup>st</sup> century, which considered various subjects such as combating terrorism and organized crime, corruption and the pursuit of proceeds of crime. Over 60 countries from within and beyond the Commonwealth participated in the conference.

### *Technology and the Law*

30. In accordance with the mandate of Law Ministers, expert working group meetings were convened to develop model legislation on computer and computer related crime and on evidence. The results of this work are before Ministers at this meeting.

### *Implementing International Obligations*

31. The Criminal Law Section also continued to assist member countries, small states in particular, and to represent Commonwealth interests in the context of international negotiations including those relating to the United Nations Convention against Transnational Organised Crime and its protocols and the proposed comprehensive convention on terrorism.

32. Several projects were run aimed at assisting member countries to implement international treaty obligations. Workshops were held in the Caribbean, Eastern and Southern Africa and the Pacific on implementing the Rome Statute of the International Criminal Court. As well a seminar on implementation of the Transnational Organized Crime Convention was held for the Asian region. Most recently assistance has been provided to member countries with respect to implementation of the Security Council resolution on terrorism and the international conventions in that subject area.

### *Extradition and Mutual Legal Assistance*

33. Work, independently and with other international organisations such as UNDCP, UNCICP, OAU and the Council of Europe on enhancing the effectiveness of the tools of international cooperation, in particular extradition and mutual legal assistance, is ongoing.

## OTHER ACTIVITIES

### *Legal Aspects of Establishing a Bare Boat Register*

34. In mid-2000, an in-house expert was provided for a two-month period to the Government of Samoa by the Legal and Constitutional Affairs Division to assist with the legal aspects of establishing a Bare Boat Register under the Samoan Shipping Act. The CFTC provided seed funding to cover the travel costs of the in-house expert, while the main project funding, administered by the General Technical Assistance Services Division, was devoted to the commercial aspects of the project.

### *Biodiversity and the Protection of Traditional Knowledge*

35. Other issues of great importance have been the protection of biodiversity and the protection of traditional knowledge. The concern relating to the use of biotechnology in the development of genetically modified organisms has also been the focus of the Division's activities. In the area of international trade law, LCAD followed up a series of regional workshops with the development of WTO resource materials for government officials, and conducted joint technical assistance missions to member countries on WTO issues. For example, a joint WTO/Com-Sec mission to Malawi in May 2000 recommended the need for a legal expert to be placed with the Ministry of Commerce in

Malawi to provide advice on WTO issues. In many of the Division's activities there has been close collaboration with other relevant international and regional organisations, including, for example, the WTO, the World Bank and UNEP.

#### *Implementation of the Montreal Protocol on Biosafety*

36. A regional seminar on the implementation of the Montreal Protocol on Biosafety was organised jointly with the Science and Technology Division in March 2001, in Samoa.

#### *Implementation of the WTO Agreements*

37. In support of a joint EIDD/FAO Pacific Roundtable on WTO issues and developments held in New Zealand, in April 2001, the Division provided a resource person to make inputs with respect to the legal considerations.

#### *Internal Secretariat work*

38. In addition to their Commonwealth-wide responsibilities, the Division performs a wide range of duties in carrying out its mandate as the in-house legal adviser to the Secretary-General and the Secretariat, including the CFTC that has contractual and other obligations arising from its Commonwealth-wide operations. These and the Secretariat's other needs take up a considerable proportion of the time of the professional staff of the Division.

39. By way of illustration, recently a number of matters arising from the establishment of a Commonwealth Secretariat Arbitral Tribunal have taken and are expected to continue to take a fair amount of the time of the professional staff of the Legal and Constitutional Affairs Division. The Tribunal has now ruled in four cases with a decision expected in the fifth case shortly. In each of these LCAD staff has represented the Secretariat's legal interests. In two cases applicants have sought, so far without success, intervention by the courts of the United Kingdom to review the decisions of the Secretariat's Tribunal. Examples of other matters which illustrate the range of issues the Division is called upon to deal with are the review of some of the operational agreements of the Commonwealth Youth Programme, revision of the Staff Regulations and Rules and significant advice on a range of contracts and memoranda of understanding entered into by the Secretariat.

### INTERNATIONAL LEGAL ACTIVITIES

#### *Hague Convention on Private International Law*

40. In accordance with the decision by Commonwealth Law Ministers in 1977, that rather than develop their own competence in intra-Commonwealth private international law, they would work with the Hague Conference, the Division continues to monitor developments and was represented at the Special Commission on the Child Abduction Convention in March 2001, and at the Nineteenth Diplomatic Session on Jurisdiction and Foreign Judgments in Civil and Commercial Matters in June 2001. A commissioned report on the latest developments was provided to Senior Officials at their 2001 meeting and is contained in the papers of that meeting that have been circulated to Governments.

### TECHNICAL ASSISTANCE IN THE LEGAL FIELD

41. The Economic and Legal Section (ELS) of the Special Advisory Services Division is an in-house consulting unit of the Commonwealth Secretariat. ELS responds to requests from Governments in areas of activity which have been identified by Commonwealth Governments as developmental priorities. ELS staff comprises specialists in economics, commercial and contract law

and international law. In cases requiring highly specialised services, ELS augments its services with the support of external technical consultants. ELS lawyers work closely with the Section's economists to provide an integrated advisory service covering both economic and legal aspects of the projects undertaken by ELS, including the review and revision of legislation, preparation of new legislation, agreements, contractual documents including fiscal terms and dealing with legal issues relating to the execution and implementation of projects.

42. Over the period under review, ELS has continued to receive requests for its services in its traditional programme activities of terrestrial and marine resources development and other areas of economic management such as private sector development, promotion of foreign investment and development of domestic capital markets.

43. In the area of foreign investment, ELS is assisting Ghana in a diagnostic study with a view to improving the enabling investment environment. ELS has assisted the Gambia on Competition Policy and is assisting in the preparation of a new Competition Law. ELS has also advised Grenada on its electricity sector arrangements. With respect to the development of capital markets, ELS has provided assistance to the Governments of Maldives, Sierra Leone, and Uganda in establishing or strengthening their regulatory frameworks for securities trading and stock exchanges. ELS has also advised the Government of Uganda on the development of a regulatory framework for the establishment and operation of Collective Investment Schemes.

44. ELS continues to provide specialist legal and economic policy advice and assistance in the establishment and maintenance of a legal and economic framework conducive to foreign investment in the mining and petroleum sectors. Over the past two years, it has undertaken numerous projects throughout the Commonwealth which have potential for attracting considerable risk capital in several member countries.

45. For example, ELS has been particularly active in Namibia, which received assistance with the second and third petroleum licensing rounds as well as with the negotiation of major diamond and copper mining agreements. ELS has also been assisting other countries such as Barbados, Dominica, Ghana, Seychelles, Tanzania in the petroleum and gas sectors. This assistance includes the review of model contracts and preparation of new contracts, the promotion of the hydrocarbon sector and participation in negotiations with multinational companies. In Tanzania, ELS has been assisting in the country's deep sea petroleum licensing rounds. In the mining sector, Swaziland and Kenya have received ELS legal, economic or policy advice in respect of development of mineral resources. In the context of natural resources development, it is to be noted that ELS advice includes the consideration of environmental issues as they relate to petroleum and mining activities and the inclusion of suitable provisions in agreements and legislation.

46. ELS runs a programme of assistance for Commonwealth states, particularly small island states seeking to maximise their maritime areas and to benefit from the sovereign rights accorded to them over the resources they contain. It covers the preparation of hydrographic and technical reports, the updating of legislation in conformity with the United Nations Convention on the Law of the Sea, the preparation of negotiating briefs and assistance with negotiation of maritime boundary agreements. It also involves capacity building of senior officials involved in the negotiation of national maritime boundaries. The Governments of Grenada, Guyana, Samoa, Mauritius and Seychelles have received assistance under this programme in the last two years. Grenada has been assisted with the actual maritime boundary delimitation negotiations with a neighbouring State, and the other four Governments with preparations for such negotiations.

47. ELS is also assisting a number Governments in implementing legislation in respect of WTO obligations.

## RIGHTS OF WOMEN AND THE GIRL-CHILD

48. Promoting the human rights of women and the girl-child is a critical area identified by the 1995 Commonwealth Plan of Action on Gender and Development. In the period since the last Law Ministers Meeting (LMM) held in 1999, the Gender Section of the Social Transformation Programmes Division (STPD) has continued to promote its work on gender and human rights, and an integrated approach to combating gender-based violence through a number of approaches. The Gender Section assists governments in implementing international agreements on the elimination of all forms of discrimination against women.

The Social Transformation Programmes Division:

- has provided in-depth training on the Secretariat's model framework for an integrated approach for combating violence against women to 14 countries in East and Southern Africa, in collaboration with Secretariat Division, GIDD, and various SADC member governments. To-date, four regional facilitators and 26 national trainers have been trained, and 11 African countries have prepared national plans of action on violence against women. This series of activities has been implemented within the SADC/ECA framework and programme of action on violence against women.
- introduced the model framework to senior officials at the Asian Regional Workshop on Mitigating Violence Against Women held in Malaysia in 2002, in collaboration with UNIFEM. STPD and partners will continue to provide capacity building and technical support for national efforts to combat violence against women in Asia. Best practices and policy recommendations for improving the responses of governments from the African and Asian processes will soon be introduced in the Pacific region in 2003.
- continues to produce relevant and resource materials for policy makers. Publications include:
  - (a) A training manual on *Promoting an Integrated Approach to Combat Gender Based Violence*, April 2002;
  - (b) *Gender Mainstreaming in Legal and Constitutional Affairs: A Reference Manual for Governments and Other Stakeholders*, June 2001;
  - (c) The third edition of *Assessing the State of Women: A Guide to Reporting Under the Convention on the Elimination of All Forms of Discrimination Against Women*;
  - (d) A compilation of case laws on the human rights of women in the Commonwealth is being published by Cavendish Press.

## THE GOVERNANCE AND INSTITUTIONAL DEVELOPMENT DIVISION

49. The principal vehicle through which technical assistance is provided to governments is the Governance and Institutional Development Division (GIDD) which, together with other Secretariat Divisions, administers funds provided by the CFTC. In response to member countries priority needs conveyed through the local CFTC point(s) of contact in each country, GIDD primarily provides long term (6 months to 2 years) technical assistance in the form of advisers or operational experts under CFTC funding.

50. The purpose of technical assistance provided by the GIDD is to meet the government's immediate skills gaps and in the long run to develop national institutional capacity by transfer of skills through counterpart and staff training. Accordingly, technical assistance can only be provided

for a finite period to meet specific needs and is not intended, of course, to go on indefinitely although in some cases, extensions have been sought successfully where these have been accorded very high priority and where a key work programme remains to be completed.

51. Based on mandates provided by Commonwealth Heads of Government and Law Ministers Meetings and in response to government requests, CFTC(GIDD) continues to provide the services of legal advisers and legislative drafters, legal assistance on international treaties and conventions, democracy, good governance and human rights. This also includes assistance provided by electoral and constitutional advisers, legal counsel to Ombudsman's office, and experts in law revision.

52. Occasionally also, as and when requested, the Division assists governments, outside CFTC technical assistance arrangements, in recruiting professional staff into their legal establishments or in finding in-service training placements for the professional staff of Justice Ministries or the Attorney General's Chambers.

PUBLICATIONS OF THE LEGAL AND CONSTITUTIONAL AFFAIRS DIVISION

**General**

Commonwealth Law Bulletin, Volumes 24, 25 and 26 and Indexes

Meeting of Law Ministers, Trinidad and Tobago, May 1999 (3 volumes)

Meeting of Law Ministers and Attorney General of Small Commonwealth Jurisdictions, May 2000

Meeting of Senior Officials of Law Ministries, November 2001 (2 volumes)

Commonwealth (Africa) Workshop on the Use of and the Enforcement of the Criminal Law in the Prevention of Environmental Crime, 1999

Report of the Expert Group on Evidence, January 2001

Law in Cyber Space, October 2001

**Human Rights**

Preparing the Ground for the Ombudsman's Office of Belize 1999

Protecting Human Rights – The Role of National Institutions 2000

National Human Rights Institutions – Best Practice 2001

**International Co-operation in Criminal Matters**

International Co-operation in Criminal Matters: Balancing the Protection of Human Rights with the Needs of Law Enforcement, Papers from the Oxford Conference, August 1998

Commonwealth Legal Assistance News, Issues 28 – 45

Commonwealth Crimewatch, Issues 27 – 44

International Co-operation in the Administration of Criminal Justice: Laws of Commonwealth Countries and Jurisdictions on the subjects of Extradition and Rendition of Fugitive Offenders, Mutual Assistance in Criminal Matters and Transfer of Convicted Offenders. Revised Edition September 2001

## **International Criminal Law**

Report of the Workshop on Implementation of the Rome Statute on the International Criminal Court, Trinidad and Tobago, February 2001

Report of the Expert Working Group on Legislative and Administrative Measures to Combat Terrorism, February 2002

Report of the Workshop on Implementation of the Rome Statute of the International Criminal Court, Dar Es Salaam, Tanzania, February 2002

Report of the Workshop on Implementation of the Rome Statute of the International Criminal Court, Apia, Samoa, March 2002

Model Legislative Provisions on Measures to Combat Terrorism, September 2002

## THE COMMONWEALTH LEGAL EDUCATION ASSOCIATION (CLEA)

1. Founded in December 1971 the Commonwealth Legal Education Association has as its broad objects:

- fostering high standards of legal education and research in Commonwealth countries;
- building up contacts between interested individuals and organisations;
- disseminating information and literature concerning legal education and research.

2. In his inaugural address in 1994, the then President of the CLEA, Professor N.R. Madhava Menon of the National Law School of India University emphasised:

*"... the need to make legal education socially relevant and professionally useful; for law schools to prepare themselves for the demands of the profession in the context of the information revolution and other global challenges and to support continuing legal education and distance learning programmes".*

He also drew attention to the need for a fresh look at law curricula and teaching methods.

3. Based on this, the Association has developed of a six point Programme of Action designed to achieve sustainable improvement in legal education throughout the Commonwealth:

- A. Developing human resources**
  - Training of law teachers; and
  - Development of and support for research.
- B. Developing non-human resources**
  - Improving library facilities; and
  - Developing the use of electronically produced data.
- C. Curriculum development**
  - Identification and development of new areas for the provision of courses relevant to Commonwealth countries, such as human rights law and law and development; and
  - Exchanging information and experiences on the development of courses incorporating a comparative law approach.
- D. Professional training**
  - Strengthening links between law schools and vocational training institutions; and
  - Addressing the needs of vocational training institutions.
- E. Strengthening links between Commonwealth law schools**
  - Facilitating exchange of faculty members;
  - Facilitating research collaboration; and
  - Encouraging the exchange of information.
- F. Strengthening clinical legal education and law clinics in the Commonwealth**

4. In carrying out this Programme of Action, the Association undertakes a wide range of activities that are detailed below. Of particular importance is the issue of curriculum development.

## CURRICULUM DEVELOPMENT

5. The Association is committed to developing and encouraging the development of new law courses that reflect both the importance of Commonwealth jurisprudence and the need for Commonwealth law schools to equip their students to meet the demands of the 21<sup>st</sup> century lawyer. The Association also recognises the importance of supporting continuing legal education programmes.

6. There remain two major hurdles to effective curriculum development:

- (i) Lack of access to relevant materials
- (ii) Lack of expertise on these new and developing areas of the law and practice amongst some law teachers themselves

7. The CLEA seeks to address these issues as follows:

### A. *Assisting with course development*

The Association has identified the following subject areas where assistance with course development is particularly needed:

- Human Rights for the Commonwealth
- Transnational crime/Anti-terrorism law
- Environmental Justice
- International Trade Law
- Law and Development

8. In respect of the first two areas, the Association works closely with the Commonwealth Secretariat.

#### (i) Human Rights

The Association was commissioned by the Commonwealth Secretariat Human Rights Unit to produce a model human rights curriculum for Commonwealth law schools and for other faculties interested in offering a course on human rights law to their undergraduate students. The model pays particular attention to, and includes a significant amount of material on, the contribution made by the Commonwealth and Commonwealth countries to the protection and promotion of human rights. In developing the model curriculum, the CLEA remains extremely aware of the need to make such materials readily available, especially to the most impoverished law schools. Thus relevant human rights materials in both hard and electronic form accompany the curriculum. The materials are regularly updated and disseminated through *Commonwealth Legal Education* the Association's thrice yearly Newsletter that is sent, free of charge, to every known law school and law library in the Commonwealth. The CLEA web site, ([www.clea.org.uk](http://www.clea.org.uk)) also provides relevant information updates. Copies of the current CD ROM will be available for inspection at the Law Ministers Meeting.

#### (ii) Transnational Crime

The CLEA in partnership with the Commonwealth Secretariat Criminal Law Unit is developing a course and materials on international co-operation to combat crime. It covers the subjects of extradition, mutual assistance in criminal matters, proceeds of crime and money laundering.

## B. *Developing local expertise*

9. As part of the work with the Commonwealth Secretariat Criminal Law Unit, the Association has helped organise three “training the trainer” sessions for law teachers in the area of international cooperation in criminal matters. On the basis of course material developed by the partners, notes/materials are provided. Participants are then expected to incorporate their own local materials into the materials and then seek to develop the course as part of the curriculum in their own law schools. To date training sessions have been held for law teachers in the Caribbean, West Africa, East and Southern Africa and these will be extended to South Asia and Australasia in due course.

## OTHER CLEA ACTIVITIES

### 10. Publications and Research

- *Commonwealth Legal Education* is published three times a year and contains news and views about legal education developments in the Commonwealth
- *Journal of Commonwealth Law and Legal Education* (published twice per year)
- *Directory of Commonwealth Law Schools* (published biennially)
- A variety of books on law and legal education in the Commonwealth
- The Association's web site ([www.clea.org.uk](http://www.clea.org.uk)) provides access to a wide range of Commonwealth legal materials, model curricula and some publications

### 11. 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

### 12. Commonwealth Law Lecture Series

This is a unique series that take place on a Commonwealth-wide basis. Lectures are given by leading legal academics and judges. The collected lectures will be published in 2002.

### 13. Strengthening law schools

- Assisting in the distribution of law books to Commonwealth law schools
- Establishing the Commonwealth Legal Education Research Centre in Cameroon

### 14. Strengthening the Harare Commonwealth Principles

- The Association works with the Commonwealth and three other Commonwealth professional organisations, Commonwealth Magistrates' and Judges Association, Commonwealth Lawyers' Association and 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

15. Activities for law students

- The Commonwealth Law Students' Mooting Competition. This is held biennially with the last three competitions being held in, Sri Lanka, Malaysia and, Canada
- Commonwealth Students' Essay Competition - held biennially.

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

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## THE COMMONWEALTH MAGISTRATES' AND JUDGES' ASSOCIATION (CMJA)

1. The Association was founded in 1970, and its aims are:
  - to promote the independence of the judiciaries in the Commonwealth;
  - to advance education in the law, the administration of justice, the treatment of offenders and the prevention of crime in the Commonwealth;
  - to disseminate information and literature on all matters of interest concerning the legal process within the various countries comprising the Commonwealth.
2. The CMJA is in a unique position being the only international judicial organisation bringing together judicial officers of all ranks and from all parts of the Commonwealth representing the judicial arm of government. We provide a forum for promoting the highest judicial standards at all levels.
3. The importance of an independent Judiciary as an essential element for safeguarding fundamental liberties and human rights is expressed in Article 10 of the Universal Declaration of Human Rights which states:

*"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal"*

### Promoting and Protecting Judicial Independence

4. The CMJA plays a role within the international judicial community in promoting the UN Basic Principles on the Independence of the Judiciary and international instruments which safeguard this independence. We have also made representations to the Working Group on the Independence of the Judiciary set up by the Commonwealth in 1996. We have been central in the formulation of the Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and the Independence of the Judiciary and in their continued development. In a submission to the High Level Review of the Commonwealth, the CMJA stressed the importance of a strong, independent and impartial judiciary in strengthening good governance throughout the Commonwealth.
5. Despite the fact that Commonwealth countries have agreed to the principles contained in the Harare Declaration and Millbrook Plan of Action, in the last eighteen months, the CMJA has been increasingly called upon by Members in order to assist with the defence of these principles.
6. The CMJA has expressed its concern on a number of occasions on the erosion of the independence of the judiciary in a number of jurisdictions around the Commonwealth. We therefore welcomed the Commonwealth Heads of Government's decision at their meeting in Coolumb, Australia, in March this year to agree to an expansion of the mandate of the Commonwealth Ministerial Action Group.

### Judicial Education and Training

7. The Commonwealth, as distinct from the general community of nations across the globe, is an organisation particularly suited to mutual co-operation in the judicial sphere as virtually all its membership consist of countries sharing a basic common legal and judicial system. The role of an independent Judiciary at all levels is a cornerstone of democracy, human rights and good governance. As such the quality of a country's Judiciary is an important element not only of the fundamental well being of the people but also of the stability of the society and its economic development. The

CMJA's judicial network promotes the highest standards of judicial behaviour and can provide guidance and support to those members of the Judiciary who may be vulnerable.

8. The educational element of the CMJA's work is central to its purposes. We promote the provision of judicial education and where this is difficult to provide, by invitation from the host Judiciary, can call upon our judicial network to assist in the provision of judicial education programmes.

9. The CMJA promotes judicial training through its Director of Studies, a Circuit Judge from the UK who is given partial release from his other judicial duties by the UK authorities to carry out this function. His responsibilities include the continued promotion and development of our training programme, the devising and supervision of training courses for judicial officers where required, and assistance with the programming of regional conferences. He has co-ordinated the education programme for regional conferences in the Caribbean and has been a facilitator at Regional Conferences in the Pacific and East Africa.

10. We aim to provide a framework where judicial officers may discuss problems of mutual concern, and by doing so raise judicial awareness and knowledge. Many examples can be given where this can be of direct benefit; these include domestic violence, gender equality, and the rights of people suffering from HIV/AIDS (the CMJA, together with the CLA, is currently undertaking a survey on the impact of HIV/AIDS on human resources and human rights awareness within the Commonwealth's legal and judicial professions). From the beginning the Association has concerned itself with the rights of women. In 1994, we issued a Declaration on the Rights of Women. A number of colloquia on the rights of women and the girl-child have been held in conjunction with the Gender and Youth Division of the Commonwealth Secretariat and we set up a Women's Section. The CMJA is also accredited to the United Nations in this area.

11. All Commonwealth countries are affected by economic globalisation and there is a need for more international co-operation between judiciaries to deal with the many problems which arise as a result. "*Human Rights and Human Needs*" is to be the theme of the CMJA's 13<sup>th</sup> Triennial Conference, being held in Malawi from 24-29 August 2002 and will focus on the role of judicial officers in maintaining and developing a vibrant human rights environment in particular in the area of economic and social rights.

12. The CMJA collaborated with the Legal and Constitutional Affairs Division of the Commonwealth Secretariat on the Anti-Corruption Colloquium held in Limassol, Cyprus in June 2002 and held a follow up session at the Jubilee Conference it held in London from 23-26 September 2002 on ways of combating corruption around the Commonwealth. Since 1998 the CMJA has acted as the repository for Codes of Conduct and Ethics within the Commonwealth which serve as models in the drafting of codes in jurisdictions where they do not as yet exist.

13. Cross border disputes are an increasing aspect of the modern world and, again, communication between judicial officers in respect of the problems which arise over such disputes is vital. This has particularly been demonstrated in the area of child law and the operation of the Hague Convention. The CMJA co-operated with Reunite, the International Child Abduction Centre on an awareness programme within the SADC region which ran from 2001-2002.

#### **Participatory role of the CMJA in the implementation of Commonwealth ideals**

14. Just as the Commonwealth Parliamentary Association represents the Parliaments of the Commonwealth, so the CMJA represents the third branch of power within the Commonwealth, the Judiciary. However, the Commonwealth has not always considered the importance of the Judiciary as leaders who are able to influence civil society

15. Promotion of education and training is all well and good but sometimes there are more fundamental problems such as delays in the administration of justice and lack of basic facilities. The provision of adequate funding for the Judiciary must be a very high priority in order to uphold the rule of law, ensure that good governance and democracy is sustained and to provide for the effective and efficient administration of Justice.

16. The CMJA is a valuable network for our members who often face similar problems and great pressures, albeit under widely varying personal circumstances. The network is maintained and developed through our regional, triennial and other conferences and through the Commonwealth Judicial Journal, our regular newsletter and the promotion of email and other forms of electronic communication. The CMJA has also been called upon to assist the Commonwealth Secretariat, the United Nations and other international bodies seeking judicial officers to assist with projects and programmes in different parts of the Commonwealth.

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## THE COMMONWEALTH LAWYERS' ASSOCIATION (CLA)

### THE PURPOSE OF THE CLA

1. The CLA'S purpose is to maintain and promote the rule of law throughout the Commonwealth, by ensuring that an independent and efficient legal profession serves the people of the Commonwealth. It does this by:

- strengthening professional links among members of the legal profession;
- promoting the honour and integrity of the profession and uniformity in standards of professional ethics;
- supporting improved standards of education and promoting exchanges of lawyers and students; and
- fostering a common bond of Commonwealth.

### THE VALUE OF THE CLA

2. The Report of the Commonwealth High Level Review Group and the Coolum Declaration, requires the Commonwealth Secretariat to work with Commonwealth professional associations "in building closer Commonwealth family links and strengthening consultation and collaboration". The CLA is one of a number of Commonwealth professional associations specifically designed for that purpose.

3. The CLA is a Pan-Commonwealth association linking lawyers in every branch of the practising legal profession, and in both the public and private sectors. It is unique among international associations of lawyers in that it has direct access to the official Commonwealth. This is a point of access that local Commonwealth law societies and Bar associations do not have through their other affiliations. Their relationship with the CLA supports their capacity to further their goals of serving justice internationally.

4. There is an urgent need for accessible information on the legal fraternity, cooperation between practising lawyers, and mutual support in dealing with threats to the independence of the profession and other problems as they arise. The CLA promotes and co-ordinates the links between practising lawyers of the Commonwealth and works for their practical benefit.

### THE CLA'S MEMBERSHIP AND ORGANISATION

5. The CLA's primary income derives from the subscriptions it receives from its individual members and its institutional members the Bar Associations and Law Societies of the Commonwealth.

6. It employs its own Executive Secretary and will have its own premises in London from June 2003. Its Secretariat provides administrative services to members, represents the CLA externally, develops projects, services the CLA's elected Council and promotes and supports the Commonwealth Law Conference. Much of the Secretariat's work is involved in responding to daily inquiries from members and affiliated institutions.

7. The President and Council are elected by the Association in General Meeting held at the Conference and they hold office until the next Conference. CLA Council Members attend an annual meeting in London. There is an Executive Committee which meets quarterly in London.

## THE ACTIVITIES OF THE CLA

8. The CLA's activities include:

- facilitating the flow of information between law societies and Bar associations on developments relevant to the organisation and servicing of the legal profession;
- ensuring the holding of regular Commonwealth Law Conferences;
- responding to requests for information;
- supporting the work of the Commonwealth Legal Education Association ("CLEA"), Commonwealth Magistrates and Judges Association ("CMJA") and other Commonwealth legal associations;
- generally furthering the interests of the legal profession throughout the Commonwealth with a view to improving the legal services available to and provided for the public; and
- finding ways to carry out the benefits conveyed by the Conference during the period before the next Conference.

## THE COMMONWEALTH LAW CONFERENCE

9. The best known activity of the CLA is the Commonwealth Law Conference. The Conferences began in 1955. They were organised by an informal body called the Commonwealth Legal Bureau which included a member of the Secretariat and a number of prominent Commonwealth lawyers. Later, the Secretariat ceased to play a part and delegated organisation of the Conferences to the Law Associations of the host countries.

10. During the Conference there is a meeting of the Presidents, Officers and Executive Secretaries of Commonwealth Bar Associations and Law Societies. There are also meetings of Commonwealth Chief Justices, Commonwealth Attorneys General and specialist Commonwealth legal groups, such as the Parliamentary Draftsmen, Military Lawyers and Public Sector Lawyers.

## THE CLA'S WORK IN THE OFFICIAL COMMONWEALTH

11. The CLA:

- sends delegations to the Commonwealth Heads of Government Meetings ("CHOGM"). Its representations on Nigeria contributed to Nigeria's suspension at the CHOGM's in New Zealand and Edinburgh;
- sends an official observer to Commonwealth Law Ministers' meetings. The CLA sent an observer in 1999 and is represented at the current meeting;
- sends an official observer to Meetings of Senior Officials of Commonwealth Law Ministries. It made oral representations on the *Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence*, to the Meeting in November 2001;
- made submissions to the High Level Review Group on the Commonwealth (HLRG) on the expansion of the role of CMAG;
- works regularly with the Legal and Constitutional Division of the Commonwealth Secretariat ("LCAD") on matters of mutual interest and concern. The Director and Deputy Director of the LCAD are *ex officio* members of the CLA Council and attend CLA Council meetings.

## THE CLA'S WORK IN THE "UNOFFICIAL COMMONWEALTH"

12. The CLA works closely with the CMJA, the CLEA, and other Commonwealth professional associations.

## COMMITTEES

### 13. The CLA:

- is a Founder and Trustee of the Commonwealth Human Rights Initiative (CHRI). and is represented on the Advisory Commission of the CHRI;
- is an *ad hoc consultant* to Book Aid International;
- meets regularly with the Director of the LCAD and representatives of the CPA, CMJA and CLEA as part of a Working Party for the promotion of the *Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence*. The Working Party is also developing a funded project for the monitoring of breaches of judicial accountability within the Commonwealth;
- meets with international Bar associations at half yearly Meetings of Heads of International and Regional Bar Associations sponsored by the IBA with a view to co-ordinating the efforts of law associations worldwide;
- nominates candidates for the Commonwealth Understanding Fellowship Scheme; and
- is a member of the Para 55 Group in the fight against HIV/AIDS and its impact on the legal profession. The CLA is currently undertaking a joint project with the CMJA to explore the impact of HIV/AIDS on the civil, social and economic rights of individuals.

## INTERVENTIONS AND MISSIONS

### 14. The CLA:

- has sent letters of intervention to governments and law societies in defence of lawyers who have been prevented from performing their duties through governmental pressure. These include Nigeria in 1993 and 1996; Malaysia in the late 80's and 90's and Zimbabwe in 2000 and 2002;
- sent a representative to Malaysia in April 1999 as part of a Joint Mission with the IBA, ICJ and UIA into issues relating to the independence of the judiciary there. The Report of the Mission was launched on 5 April 2000;
- participated in an international fact-finding mission in Sierre Leone;
- participated with the IBA in a joint mission in Islamabad at the time of the dismissal of the judges in 2000;
- participated in the first meeting of the International Legal Assistance Consortium in Stockholm in December 2000;
- sent an Observer to the trial in Malaysia of Karpal Singh in 2001-2; and
- made representations to the State Board of Pardons and Paroles, Atlanta, Georgia on behalf of Tracy Housel, a British citizen, who was on death row in the United States (March 2002).

## MEETINGS AND RECEPTIONS

### 15. The CLA holds an Open Meeting in London in June each year to coincide with its annual Council Meeting. Recent meetings have included:

- Edinburgh: CHOGM in 1999 entitled *The Legal and Political Situation in Nigeria*;
- Durban: CHOGM in 1999 on *The Latimer House Guidelines* and on *Fostering Access to Justice: The Role of the Legal Profession*;
- London: a meeting and reception co-hosted with the CMJA addressed by the Chief Justice of Malaysia, the Rt. Hon. YAA Sri HJ Mohamed Dzaidin Abdullah (September 2001); and

- London: a meeting on *Immigration* addressed by Hon. Phillip Ruddock MP, Australian Federal Minister for Immigration on 22 April 2002.
- the CLA hosts a reception for Commonwealth law students at the CLEA Annual Commonwealth Conference in London.

#### CONFERENCES AND WORKSHOPS

16. The CLA has:

- co-sponsored with the Northern Ireland Human Rights Commission a seminar in Belfast on *Emergency Powers and Human Rights* (June 2000);
- co-sponsored and provided a speaker at the Cayman Islands Human Rights Conference (2001); and
- held a Seminar and Workshop on Judicial Accountability in Kuala Lumpur in April 2002.

#### PUBLICATIONS

17. The CLA's publications are distributed three times a year and mailed free to members.

18. The CLA's journal, *The Commonwealth Lawyer*, provides a topical and provocative forum for discussion of issues relating to the legal profession. A wide range of Commonwealth views and developments is reflected in in-depth articles, case reports, short notes and book reviews.

19. The CLA's newsletter, *The Clarion*, provides information on current issues and the CLA's activities.

20. The CLA publishes jointly with the Legal Division of the Commonwealth Secretariat a Directory of Members, listing all individual and institutional members of the Association. A new edition will be published before the Melbourne Conference.

21. The CLA is currently up-dating its survey on *The Admission of Commonwealth Lawyers (A Technical Survey)*, a study of the mobility of lawyers in the Commonwealth.

#### THE CLA'S WEBSITE

22. The CLA's website is at [www.commonwealthlawyers.com](http://www.commonwealthlawyers.com). It is currently being re-developed to include links to important Commonwealth legal issues. The CLA has a database of all Commonwealth Law Societies and Bar Associations

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## LIST OF COMMONWEALTH LAW CONFERENCES

### The Commonwealth and Empire Law Conference

1955	1st	22-27 July	United Kingdom	London
1960	2nd	14-21 September	Canada	Ottawa
1965	3rd	25 August -1 September	Australia	Sydney
1971	4th	16-13 January	India	New Delhi

### The Commonwealth Law Conference

1977	5th	24-29 July	Scotland	Edinburgh
1980	6th	17-23 August	Nigeria	Lagos
1983	7th	18-23 September	Hong Kong	
1986	8th	7-13 September	Jamaica	Ocho Rios
1990	9th	17-20 April	New Zealand	Auckland
1993	10th	3-7 May	Cyprus	Nicosia
1996	11th	24-30 August	Canada	Vancouver
1999	12th	13-18 September	Malaysia	Kuala Lumpur
2003	13th	13-17 April	Australia	Melbourne