

VOLUNTEER LAWYERS: THE UNTAPPED POTENTIAL

A Report by CAMPBELL MCLACHLAN LL.B (Hons.) (V.U.W.),
Barrister and Solicitor (New Zealand),
Diploma cum laude (Hague Academy of International Law)

A. The need for legal services and the use of volunteers

1. This report grew out of a belief that the use of lawyers on a voluntary basis was a response to the legal needs of many Commonwealth countries which had been largely neglected and unexplored, and which deserved further attention. It seemed to be largely a matter of requesting governments, volunteer organisations and potential volunteers failing to join forces. Governments had not considered lawyers as a volunteer group, nor had they considered the use of volunteers as a way of meeting their legal needs. This report, then, examines the ways in which lawyers could serve Commonwealth governments. It provides, in Part B, a select directory of organisations which have had some experience with selecting lawyer volunteers or which have indicated their willingness to help in the future. Part C suggests some decisions which Commonwealth Law Ministers may wish to take.

2. The background to this initiative is the undeniable and continuing pressing need for legal services, especially in small Commonwealth jurisdictions. The reports prepared in 1979-80 for the Secretariat by Dr. G.P. Barton (Some Pacific Jurisdictions), Professor K.W. Patchett (Bermuda and the Caribbean) and Mr. G.C. Thornton (East, Central and Southern Africa, Mauritius and Seychelles) indicate the frequency with which similar needs are identified in small states in all parts of the Commonwealth. While these studies lay great stress on improving self-reliance, there is a considerable amount of work which calls for assistance from other countries, both in the short-term with the direct provision of legal services, and in the long-term with the establishment of new programmes and the training of local people.

3. Basic domestic legal needs which are often still unmet include:

- (i) Legislative Drafting
- (ii) Law Reporting
- (iii) Law Reform (including specialised and technical subject areas)
- (iv) Law Revision (the preparation of consolidated reprints of the statute book and the reform of outdated laws)

4. A second area of equal, if not more compelling urgency is in the international arena. Political independence has brought to the small states of the developing Commonwealth a number of international responsibilities and the need to negotiate with highly sophisticated outside interests. The following areas merit special mention:

- (i) Treaty succession: the need to determine exactly which international obligations a state has already undertaken by virtue of succession to international treaties entered into on their behalf when they were dependencies.

- (ii) International Organisations: membership of several key international organisations such as the United Nations and the International Monetary Fund is essential and entails sophisticated legal advice.
- (iii) Treaty Negotiation: many modern treaties vitally affect the economic and other interests of small states and require legal assistance in the formulation of policy at the negotiation, ratification and implementation stages. The U.N. Convention on the Law of the Sea is a case in point.
- (iv) International Commerce: legal skills are a vital component in the negotiation of international contracts. Countries with a high degree of external economic dependence are vulnerable to exploitation by foreign governments and companies if they lack the requisite legal expertise. This consideration also applies to the litigation or arbitration of disputes. It is equally important for para-statal corporations as for the government itself.
- (v) A modern commercial law: the domestic law of a state can have a major bearing on international commercial negotiations, if antiquated it can both discourage potential investors and encourage the unscrupulous.

5. A third critical area is the provision of legal resources to the impoverished members of society. This may take a number of forms:

- (i) Legal Aid: the provision of legal advice and representation in court both as defence counsel in criminal matters and in civil matters.
- (ii) Community Legal Education
- (iii) Empowerment of local groups: the establishment of rural cooperative societies for the production and marketing of produce and the management of resources.

6. In all these areas it cannot be emphasised too strongly that law provides an essential infrastructure and tool for economic and social development. For too long insufficient attention has been given to it as a priority in the allocation of resources, both at the domestic level and at the level of international cooperation. The development of legal resources must be seen as a priority. The scarcity of funds makes the use of volunteers an attractive option.

7. In his comprehensive report for the 1983 Meeting of Commonwealth Law Ministers, Professor Keith Patchett examined the options for assistance to small states to meet their legal needs. Amongst other things, he suggested (para.25) that volunteer programmes merited closer attention, especially as a way of covering the responsibilities of local legal personnel when released for training or of providing a legal input to fledgling non-government activities.

The Survey

8. The writer of the present report therefore set out to gauge the existing level of use of lawyers on a voluntary basis and the possibilities for expansion. The three interested groups are Commonwealth Governments, Volunteer Organisations and Commonwealth Lawyers who may potentially serve as volunteers.

9. A letter was sent to the Attorneys-General of 30 Commonwealth countries which seemed likely to have a shortage of legal manpower. Replies indicated relatively little experience with this type of assistance. Of the 17 States which replied only 4 reported any previous volunteer legal assistance (Kiribati, Malawi, Solomon Islands and Western Samoa). However several states expressed a keen interest in the potential of this kind of assistance (Belize, Papua New Guinea, Tuvalu, Cook Islands, Virgin Islands).

10. The second group surveyed were the volunteer organisations. Attention was directed to organisations from Commonwealth countries, as well as a few from the United States and those of a clearly international orientation. A questionnaire was sent to 33 such organisations and replies received from 23. Nine of those organisations indicated some previous experience with lawyers in Commonwealth countries over the period 1980-1985. An analysis of the types of assignments is instructive:

- (i) Overseas Service Bureau (Australia) - 1 Practitioner for a two year assignment (1984 - 1986) as legal adviser for the Provincial Government of New Ireland, Papua New Guinea.
- (ii) United States Peace Corps - 4 Recent Graduates and 4 Practitioners for periods of two years service each (1983 - 1987) as legal advisers to the Provincial Governments of the Solomon Islands.
- (iii) Volunteer Service Overseas (United Kingdom) - Provision of a series of practitioners to fill the posts of Social Welfare Solicitor, Solomon Islands and Peoples' Lawyer and Legal Assistant, Kiribati.
- (iv) United Nations Volunteer Programme - One lawyer to Grenada (1979-1981) to undertake a comprehensive law revision project and one to Lesotho (1980-1982) to provide legal assistance to LDCs in customs union, trade agreements and policy planning. In 1985, UNV is supplying a legal volunteer to Papua New Guinea and two legal draftspeople to Dominica for law revision.
- (v) Canadian Crossroads International - 4 assignments involving 2 law students and 2 recent graduates in the Gambia (preparing contracts, developing a copyright standard for the Ministry of Education) and in St Vincent (1985), and Sri Lanka (1984).
- (vi) Volunteer Service Abroad (New Zealand) - Provision of a legal officer in the Central Administrative Department of Niue (1979-81); establishment of the People's Lawyer in Kiribati (1980-81); and three posts in the Solomon Islands as Social Welfare Solicitor, Public Solicitor and legal adviser to a Provincial Government. Currently recruiting for a further three positions in the Solomons.
- (vii) Canadian Executive Service Overseas - One retired lawyer to produce the first series of law reports in Western Samoa.
- (viii) CUSO (Canada) - One practitioner placed in Papua New Guinea.
- (ix) British Executive Service Overseas - A Legal Draftsman to draft legislation to establish a National Park in Antigua; a review of the regulations in Zimbabwe governing hire purchase and leasing; reform of the statute and regulations governing the Electricity Authority of Cyprus and the supply and distribution of electricity; a complete revision of the laws of the Cayman Islands; training and advice in commercial negotiation for the National Development Corporation of Lesotho. Two projects currently under

consideration are the drafting of new Supreme Court Rules for Fiji and a legal librarian to reorganise the High Court library in Papua New Guinea.

11. These examples illustrate the wide range of assignments to which volunteer lawyers can usefully be applied. Two innovative projects deserve particular mention. The first is the development of Government grass-roots legal aid services in the Solomon Islands (the 'Social Welfare Solicitor', later the 'Public Solicitor') and Kiribati (the 'Peoples' Lawyer'). The Solomon Islands scheme began with volunteer assistance in 1974 and has now developed into a fully-fledged (and Constitutionally protected) office, staffed partly by salaried employees and partly by volunteers. The office exists to provide legal advice and representation in court to all persons unable to afford a lawyer. Not only has the office increased the ability of the ordinary Solomon Islander to defend criminal charges and take civil claims, but it has also dramatically improved the standards of criminal prosecution. In addition to its professional functions, the office has also participated in a number of educational projects: training magistrates, prosecutors, government officials and general community legal education. A similar scheme was established, also with volunteer assistance, in Kiribati in 1982.

12. The second project which deserves highlighting is a recent initiative by the University of Toronto Law School which provided a research team of senior law students, assisted by members of staff, to work with the Government of St. Kitts-Nevis on specially requested briefs dealing with such subjects as international financial agreements, tax treaties, development finance and arrangements with the United Nations. The project was warmly received by the St. Kitts Attorney-General, and the Law School sees further possibilities for the same kind of project in other countries.

13. Volunteer organisations were invited to comment on the suitability of lawyers for voluntary projects. While only 2 organisations reported that they had been unable to meet requests for legal services, 9 organisations said that they had received applications from volunteers with legal training, whom they had been unable to place. Some noted that they had to place lawyers in non-legal positions, because no requests for legal experts were forthcoming. These involved the related areas of administration, conclusion of trade agreements etc. Most organisations were very positive about the experience which they had had with legal volunteers.

14. Potential volunteer lawyers themselves were a more difficult group to survey. What is significant is the number of organisations which reported lawyers on their books whom they had been unable to place. Discussions with Volunteer Service Overseas and British Executive Service Overseas in London suggest that there are large numbers of lawyers prepared to undertake a voluntary project. Interest has been expressed not only by recent graduates, but also by highly qualified and experienced practitioners who are prepared either to take a break from practice or to contribute on retirement. The development in many partnerships of sabbatical leave is giving more practitioners the freedom and flexibility to consider a period as a volunteer. The recently-formed Commonwealth Lawyers' Association, which links the Law Societies and Bar Associations of the Commonwealth, now has over 400 individual members, who are aware of the legal needs of other parts of the Commonwealth. Having surveyed the potential place of volunteers in the provision of legal services in developing Commonwealth countries, it is now possible to provide some details on volunteer organisations especially equipped to deal with lawyer volunteers.

B. Profile of volunteer organisations

15. Agency for Personal Service Overseas
J. W. Jackson (Chief Executive)
29 Lower Baggot St
Dublin 2
Ireland
Tel: 761571

The Agency for Personal Service Overseas (APSO) is the principal Irish volunteer organisation. In 1983 it had some 193 volunteers working in 46 countries. The majority of these volunteers were placed in Commonwealth countries, including large programmes in Kenya, Lesotho, Nigeria, Tanzania, Zambia and Zimbabwe. The Agency has not as yet had any experience with posting volunteers to legal posts.

Its contracts are organised on a two year basis, with APSO providing return airfares, insurance, accommodation, a volunteer allowance and resettlement grant.

16. Australian Executive Service Overseas Programme
R.D. Cheatley (Executive Director)
P.O. Box E14
Queen Victoria Terrace
A.C.T. 2600
Australia
Tel: (062)732311

The Australian Executive Service Overseas Programme (AESOP) was founded in 1981 by the Confederation of Australian Industry and the Australian Development Assistance Bureau. It is one of the growing number of 'executive services' designed to provide short-term high-level assistance by senior professional people. At present AESOP has 40 volunteers working in 10 countries, including the Commonwealth countries of Fiji, Papua New Guinea, Solomon Islands, Tonga, Western Samoa, Kiribati, Malaysia, Nauru, Singapore, and Vanuatu. It has not yet had any experience with providing volunteers to legal posts, but has legally qualified persons on its register.

The organisation provides return air fares, insurance, out of pocket expenses associated with preparing for the project and spouse allowance. The 'client' business, organisation or institution is expected to provide accommodation and a subsistence allowance.

17. British Executive Service Overseas
Gordon Wilson (Director)
London SW1X 8PH
United Kingdom
Tel: (01)2350991

BESO is also an executive service, and has had a growing experience with legal volunteers. It is enthusiastic about the possibilities of this type of work, and the necessity of providing legal resources to promote economic development. BESO assignments are short-term - a maximum of six months - and it draws on a register of retired or serving executives. Working in some 63 countries, BESO undertook a total of 129 assignments in 1983/4.

BESO pays return air travel, insurance, out of pocket expenses, a spouse allowance and a small weekly allowance. The requesting organisation meets the costs of local living expenses and transport during the assignments.

Services are provided to companies, para-statal corporations, governments and other organisations.

18. CUSO
135 Rideau Street
Ottawa, Ontario
Canada K1N 9K7
Tel: (613) 563-1242

A major Canadian volunteer organisation, CUSO had some 800 volunteers working in 36 countries in 1985. Especially large programmes in Commonwealth countries include: Botswana, The Gambia, Ghana, Nigeria, Papua New Guinea, Sierra Leone, Vanuatu and Zambia. Although they have only had one legal placement (in Papua New Guinea), this worked out positively.

CUSO pays air fares to and from the assignment, medical expenses, insurance and settling-in and termination allowances. The host country pays salaries at the local rate and provides accommodation.

19. Canadian Crossroads International
31 Madison Avenue
Toronto, Ontario
Canada M5R 2S2
Tel: (406) 967-0801

Canadian Crossroads International provides overseas volunteers as part of a comprehensive programme which also includes training people from developing countries in Canada and educating Canadians about development issues.

In 1985 it had 160 volunteers working in 31 countries around the world, including many Commonwealth countries. It has had experience with lawyer volunteers.

Canadian Crossroads International demands a three-year commitment from its volunteers for overseas placement. The first six months are spent preparing to go overseas through personal orientation activities and local, regional and national orientation activities. The second half of year one is spent on placement overseas which runs from four to six months. In the following two years, participants are expected to spend at least 200 hours educating Canadians about development and development issues.

CCI provides a return air ticket, housing and food and a basic allowance to cover project related living expenses.

20. Canadian Executive Service Overseas
Suite 200
1867 Young Street
Toronto M4S 1Y5
Canada

CESO, another 'executive service', considers lawyers very suitable for applicable projects, although its experience so far has been limited to one assignment in Western Samoa. During 1984 it had 331 projects in 45 countries, and its roster includes 1800 personnel.

Consultants have their economy flights, medical and accident insurance paid by CESO, and the host client provides accommodation, meals and local transportation.

21. Overseas Service Bureau
71-75 Argyle Street
(P.O. Box 350)
Fitzroy 3665
Australia
Tel: 419-1788

The major Australian volunteer programme, O.S.B. now has 200 volunteers working in 21 countries. Major projects in Commonwealth countries include: Malaysia, Papua New Guinea, Solomon Islands, Tonga, Vanuatu and Western Samoa. The Bureau considers lawyers to be as suitable as any other professional group for inclusion in its programme, although to date they have only sent one lawyer (to Papua New Guinea).

O.S.B. makes appointments for two years, and requires applicants to be at least 20 years old with at least two years work related experience. It provides return air fares, settling-in and resettlement grants and insurance. Once assigned the Volunteer Development Worker works for the overseas employer, who will provide a salary, paid at the same rate as a similarly qualified local person, or a volunteer allowance. Accommodation is also arranged by the employer.

22. Service Civil International
International Secretariat
13 Wincheap
Canterbury
Kent CT1 3TB
United Kingdom
Tel: (227)450318

United Kingdom branch:
International Voluntary Service
Ceresole House
53 Regent Road
Leicester LE1 6YL
United Kingdom
Tel: (0533)541862

Service Civil International is the coordinating office for a number of volunteers working in 50 countries, with major Commonwealth programmes in Bangladesh, Botswana, Ghana, India, Lesotho, Malaysia, Mauritius, Sierra Leone, Sri Lanka, Swaziland and Tanzania. Its United Kingdom branch, International Voluntary Service, works in 3 Commonwealth countries: Botswana, Swaziland and Lesotho. The service has not yet had any experience with lawyer volunteers.

23. Transfer of Knowledge through Expatriate Nationals
Mr Rustam Lalkaka
Co-ordinator, TOKTEN
United Nations Development Programme
1 U.N. Plaza
New York, New York 10017
United States of America
Tel: (212)754-2902

TOKTEN represents a novel form of volunteer scheme. The idea is to tap the knowledge of highly -qualified consultants who are expatriate nationals of developing countries for the benefit of their homelands.

At present TOKTEN has projects in 18 countries, including the following Commonwealth countries: Bangladesh, Dominica, Grenada, Guyana, India, Pakistan, Saint Lucia, Sri Lanka and Trinidad and Tobago. It also has a regional Africa project.

Experts are provided on short-term consultancies. Travel and living expenses are paid through the national U.N. Development Programme indicative planning figure - the amount of assistance UNDP allocates to a country over a five-year planning cycle.

TOKTEN receives the support of the U.N. family of agencies in organising its programmes.

The programme has not as yet had any experience in the legal field.

24. United Nations Volunteer Programme

Palais de Nations
CH-1211 Geneva 10
Switzerland
Tel: 985850

The United Nations Volunteer Programme, founded in 1970, is the major U.N. agency involved in posting volunteers. It now has 1017 volunteers working in 86 countries, including many from the Commonwealth. There are major Commonwealth programmes in Bangladesh, Botswana, Jamaica, Kenya, Lesotho, Tanzania, Uganda, Western Samoa and Zimbabwe. Although it does not include lawyers on its list of professional categories, UNV has sent lawyers on its projects. The organisation comments that the relatively few small number of lawyers sent is because of few requests from developing countries, and some lawyers are channelled into non-legal posts.

A large proportion of the total number of UN Volunteers are themselves nationals of developing countries. This constitutes a concrete expression of the UN policy of technical cooperation among developing countries.

UNV maintains a roster of 1500 candidates - who tend to be young but highly qualified professionals. UNV assignments last for an initial period of two years.

UN volunteers are assigned either to projects initiated directly through the UN system or to domestic governments. They also provide support for such domestic development services as national volunteer services and development youth schemes.

The UNV programme assumes the entire legal and administrative responsibilities for the assignment of a UN volunteer. The contracts are established and signed between the UNV programme and the volunteer concerned.

The costs involved for each volunteer assignment comprise;

- (i) travel to and from the country of assignment
- (ii) health and life insurance
- (iii) settling-in grant
- (iv) monthly living allowance
- (v) free modestly furnished simple housing
- (vi) resettlement allowance.

Funding is derived from the indicative planning figures developed by the UN Development Programme, and the Special Voluntary Fund.

25. United States Peace Corps
806 Connecticut Avenue N.W.
Washington D.C. 20526
United States of America
Tel: (202)655-4000

The Peace Corps is an enormous United States Volunteer Organisation: 5,400 volunteers are currently working in 60 countries around the Commonwealth and the world. The only legal project which they have undertaken in the past five years is with Solomon Islands provincial governments. Previously other work had been undertaken, for example to staff fledgeling law faculties in East Africa.

Peace Corps provides complete health care; transportation to and from the country of service; a living allowance to cover basic expenses of food, housing, clothing, local transportation and three months of pre-service training.

26. Volunteer Service Abroad
31 Pipitea Street
P.O. Box 12-246
Wellington
New Zealand
Tel: 725-759

Volunteer Service Abroad has serviced some innovative projects of a legal nature, with a high level of satisfaction being expressed by both the volunteers and their employing authorities.

VSA works in 13 countries in the Pacific and South-East Asia.

It provides return airfares; insurance; initial, midterm and resettlement allowances. The employing authority provides a standard living allowance or a local salary plus furnished accommodation.

27. Volunteer Service Overseas
9 Belgrave Square
London SW1X 8PW
United Kingdom
Tel: (01)235-5191

VSO is the largest British volunteer organisation working in Commonwealth countries. It had 1000 volunteers overseas in 1983. VSO has undertaken a number of legal projects in the Pacific and is enthusiastic about further development and the possibilities of securing volunteers of high legal calibre.

The organisation meets travel expenses, insurance and small grants at the beginning, mid-term and completion of service. Accommodation and a living allowance are provided by the employer overseas, which are based on the same rate as local people in equivalent jobs.

Volunteers under VSO undertake a minimum of two years' service.

C. Utilisation within the Commonwealth

28. To summarise:

- Developing Commonwealth countries have pressing needs for the provision of legal services
- Legal services need to be given higher priority because law provides the infrastructure and the tools for development
- Overseas assistance will have to play a part in this process, at least until sufficient local people can be trained
- Volunteers provide a source of assistance which has been left largely untapped until now
- The available evidence of past experience with volunteers on legal projects shows that lawyers can and will serve on a voluntary basis just as efficiently and successfully as any other profession
- A number of volunteer organisations have been identified which may be able, through their existing structure and processes, to respond to requests for legal services from member governments of the Commonwealth and, indeed, from other organisations in Commonwealth countries

29. Therefore it is submitted that relevant Commonwealth Law Ministries consider a review of their existing legal services and examine areas in which volunteers may serve a useful function.

30. It is anticipated that member governments will contact the selected volunteer organisation directly when requesting volunteer lawyers. Many organisations maintain field offices in developing Commonwealth countries, but requests may also be made to the head office. Naturally the Legal Division of the Commonwealth Secretariat and the Commonwealth Lawyers' Association will be pleased to act as intermediaries where necessary.

31. A final note - the volunteer organisations included in this survey are committed to supplying volunteers with a high degree of skill and experience and sensitivity to the environment in which they will be working. Volunteers are placed where they can complement and enhance the work of local people (including, in the legal context, the local profession.) However the use of volunteer lawyers from other countries cannot be the total answer. It must fit into a comprehensive pattern of legal development.