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1. The Latimer House Working Group (LHWG) warmly welcomes the initiative of the ACT Legislative Assembly in endorsing and adopting the Commonwealth (Latimer House) Principles (CLHP) and in establishing an inquiry into appropriate mechanisms to coordinate and evaluate the implementation of the LHP in the governance of the ACT.
2. The adoption of the Edinburgh Plan of Action (EPoA), building on the Nairobi Plan of Action for Africa, [both attached in the supporting document], was designed to facilitate the establishment of effective mechanisms for assessing both good and bad practice and to make better provision for implementation and assessment of the CLHP in each Commonwealth jurisdiction.
3. With respect to the particulars of the ACT, it is important to note that all Commonwealth jurisdictions built on the Westminster model have different modes of governance reflecting their traditions, constitutions, and local characteristics. While diversity provides strength to the Commonwealth, respect for the independence of each branch of government is fundamental to the democratic process. The CLHP strives to ensure that the rights and freedoms of each branch of government are respected to better serve the citizens of the Commonwealth. As Commonwealth Heads of Government stated in their November 2003 communiqué on the Commonwealth (Latimer House) Principles (reproduced in section 1.1 of the EPoA):

“Each Commonwealth country’s Parliaments, Executives, and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.”
4. The EPoA envisaged the partner organisations (the Commonwealth Lawyers Association, Commonwealth Magistrates’ & Judges’ Association, Commonwealth Legal Education Association and Commonwealth Parliamentary Association) would assist the Commonwealth Secretariat by establishing a Standing Committee for the purpose of gathering relevant information, reporting on implementation of the Principles, best practice and areas of concern.
5. The establishment of this Standing Committee awaits the procurement of adequate funding. However, the LHWG is keen to gather information on CLHP practice as indicated, and therefore it is hoped that the ACT initiative can be developed so as to provide a model for the discharge of the implementation and assessment function in other jurisdictions.

6. While the LHWG is only able to make the most tentative suggestions, the ACT Standing Committee on Administration and Procedure might consider the establishment as a mechanism of a standing subcommittee charged with the responsibility of monitoring and evaluating the implementation of the CLHP. Presumably, such a body could take evidence from the various stakeholders in government, including the administration and the judiciary, and outside government from the legal profession and other civil society groups in the media and elsewhere. The terms of reference of such a sub-committee might include:

Analysis of the constitutional and legal framework within which the relationship and role of the executive, parliament and judiciary is set out and the practical application of this framework.

Steps to be taken to familiarise the stakeholders referred to above with the content of the CLHP and their relevance in to each stakeholder's sphere of activity; specific training programmes may be required

Assessment of the existing relationship between the three branches of government in terms of channels of communication and of any areas of potential conflict or difficulty. It might assist in this regard, for the sub-committee to have informal discussions with representatives of the Executive and the Judiciary, in order in the words of the EPoA "to promote better understanding of each roles".

A review of the existing measures for the securing of the independence of Parliamentarians in terms of remuneration, resources, training, and identification of areas where better compliance might be assured

A review of the capacity of government officers to carry out their duties; provision of appropriate professional training including ethics.

A review of existing measures for:

- (a) the protection of the independence of the judiciary in terms of transparent appointment and disciplinary processes, security of tenure of judges and magistrates and training and funding of court services and
- (b) assuring the accountability of the judiciary for the proper discharge of the judicial function; identification of best practice and areas where practice might be improved
- (c) The ability of the judiciary to provide fair and equal treatment under the law for all citizens; The freedom and ability of the judiciary to objectively critique legislation including the constitutionality of proposed or existing legislation; Conflict of interest and/or abuse of power; Security of tenure and procedures for appointment and removal from office

An assessment of measures for the effective oversight of executive and administrative processes by:

- (a) the Legislative Assembly through a Public Accounts Committee and select committees;
- (b) the ACT Human Rights Commission, given that it's mandate includes the promotion of, and compliance with, human rights and anti discrimination legislation;
- (c) ombudsman-type institutions to which the aggrieved citizen may have resort;
- (d) an independent legal profession;
- (e) the existence and operation of a free media unencumbered by restrictions placed upon it by the government

An assessment of measures to ensure the maintenance of standards in public life; these might include the development of codes of conduct for members of all branches of government. The CLHP attach particular importance to the promotion of zero tolerance of corruption and the establishment of effective scrutiny bodies.

The EPoA reflected continuing concern that Commonwealth countries are yet to achieve its target of having women in at least 30% of political and decision-making positions (EPoA section 1.4) The CLHP also reflect the need to ensure that where possible the holders of public office should reflect the composition of the community in terms of gender, ethnicity and social and religious groups. The Committee should consider what active steps have or need to be taken to procure these objectives.

The Principles require wide dissemination outside the confines of the government stakeholders. The Committee might consider programmes for the study of the CLHP and the other fundamental values of the Commonwealth in universities, colleges and schools as mentioned in section 4 of the EPoA.

If the ACT Standing Committee on Administration and Procedure felt able to adopt a process along the lines set out above, the LHWG would derive great assistance from the ACT's experience and would hope that, while bearing in mind the diversity in paragraph 3 above, it might prove a template for comparable initiatives in other jurisdictions.

The Standing Committee might also derive further assistance from the Governance Assessment Portal (UNDP) for practical ways of measuring governance: www.gaportal.org

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Commonwealth (Latimer House) Principles

on the Three Branches of
Government



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FOREWORD

The Commonwealth is an organisation of values, and the values – or Principles – of Latimer House are irreversibly embedded in the canon and the creed of this organisation. They were debated and adopted by Heads of Government in Abuja in 2003, and – in being so – they greatly strengthened the existing body of beliefs and goals of this organisation, as set down in Singapore in 1971, Harare in 1991, and Millbrook in 1995.

The 'Separation of Powers' may look well on paper and sound well in speeches. As a concept, it is as old as Montesquieu, who is believed to be the first to have articulated it, in his great work *De L'Esprit des Loix* (On the Spirit of the Laws), published in 1748.

On numberless occasions – on podiums such as these – we have spoken about the primacy of 'the accountability of, and the relationship between, the three branches of government', and stressed the independence of those bodies: the Executive, the Legislature, and the Judiciary. And what is the origin of these cherished Principles, as adopted by our leaders? Who initiated them? You did: Commonwealth partner organisations, Commonwealth Law Ministers, senior officials, and the Commonwealth legal community. Because the rule of law sits alongside democracy and human rights as the key beliefs of this organisation – just as another threesome – governments, business and civil society – are its main actors.

But every Commonwealth member must continuously pose itself the question: how well does it observe the separation of powers? Do our Executives respect the freedom of the Legislature and the Judiciary to discharge their responsibilities? Theirs, of course is the greatest temptation to jettison these Principles – and there was a time, perhaps a generation ago, when many Legislatures and Judiciaries wilfully complied with over-reaching Executives. In other words, they didn't properly believe in their own independence and power, as a key element of the sharing of power.

For *all* of us, from time immemorial, power has been difficult to separate, and thereby to control. All are complicit, and in being so make ourselves dangerously vulnerable to poor governance, corruption and instability.

You all know that there is a continuing gulf between the rhetoric and the reality. You are continuing a process that began some twelve years ago in Kuala Lumpur, when Commonwealth Law Ministers first examined the role played by judges and lawyers in a healthy democracy.

Ten years ago – cajoled, inspired and actively assisted by four exceptional Commonwealth organisations – we produced the first Guidelines, at Latimer House in Buckinghamshire.

Here, I pay tribute to our Commonwealth Lawyers Association, our Legal Education Association, our Magistrates and Judges Association, and our Parliamentary Association, for their part in this great enterprise.

Those first guidelines focused on just one of the three 'branches': that of Parliament.

Then six years ago in St Vincent and the Grenadines, Law Ministers both widened them, and refined them.

Five years ago at the Heads of Government Meeting in Abuja, the 'Guidelines' were officially adopted, and became 'Principles'. There followed a summit in Africa in early 2005, where we set out what we called the Nairobi Action Plan.

The final step in the establishment of the Latimer House Principles by the Commonwealth came three years ago, at our Heads of Government Meeting in Malta.

I draw your attention to Paragraph 8 of its Communique, which established the Principles as integral to the Commonwealth's fundamental political values.

But look further – at Paragraph 12 just below it, which states (with regard to Pakistan at that time, but it could have been to any member state...) 'that the holding by the same person of the offices of Head of State and Chief of Army Staff is incompatible with the basic principles of democracy and the spirit of... Commonwealth principles'.

My point is: this has taken time and will take more time – but it has been and remains an investment to which we are deeply committed. We should go further: our next task is to focus on adherence to the Principles, and to enhance accountability. That will take time. For now, we acknowledge how far we have come and take encouragement from it.

Also, let us acknowledge the virtues of our pragmatism.

It is one of the key strengths of the Principles that they go beyond the "pure doctrine" of the separation of powers, and into the grey areas.

They recognise the complex and interlocking network of the relations between the legislature, the executive, and the judiciary. They acknowledge the need for oversight mechanisms through which officers may be held responsible for their actions.

We recognise, for instance, that while the Judiciary is independent of the Executive, it is dependent on it financially.

Further, let us acknowledge the value of our capacity to prioritise our concerns – on issues like accountability and gender equality. I very much welcome civil society's involvement.

I end where I began, with the primacy of principle – in this case, the Latimer House Principles. This is our strength.

And I pose a simple question – what, or who, is the Commonwealth for? I would answer that it is for Governments and Peoples.

These Latimer House Principles are designed to help the business of fair, efficient, transparent, responsive government – government for the people. The confidence, belief and trust that people have in their government is the ultimate litmus test.

Let us not forget that we are not just splitting hairs about status here – we are trying to ensure a system of government whereby citizens have a voice, a role, a future, and that they live in the confidence that they are under the rule of law.

So in looking back ten years today, we also look forward to the time – whenever it may be – when there will be another gathering like this, where our successors will take stock, record further progress, and identify further work to do.

We need these gatherings to maintain the momentum and achievement. Thank you for contributing to this important cause.

Mr Kamallesh Sharma
Commonwealth Secretary-General
July 2008

(Adapted from the closing remarks made at the Colloquium, July 2009)

INTRODUCTION

By the Commonwealth Lawyers' Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates' and Judges' Association and the Commonwealth Parliamentary Association

In their Communiqué of December 2003, Commonwealth Heads of Government re-affirmed their commitment to the fundamental principles of the Commonwealth and "endorsed the recommendations of their Law Ministers on Commonwealth Principles on the accountability of and relationship between the three branches of Government. They acknowledged that judicial independence and delivery of efficient justice services were important for maintaining the balance of power between the Executive, Legislature and Judiciary". Their endorsement confirms the value of co-operation between the Commonwealth professional organisations, the Commonwealth Secretariat and Commonwealth Law Ministers in the promotion of the fundamental political values of the Commonwealth.

In June 1998 a group of distinguished Parliamentarians, judges, lawyers and legal academics joined together at Latimer House in Buckinghamshire, United Kingdom, at a Colloquium on Parliamentary Sovereignty and Judicial Independence within the Commonwealth. The Colloquium was sponsored by, the Commonwealth Lawyers' Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates' and Judges' Association and the Commonwealth Parliamentary Association with the support of the Commonwealth Foundation, the Commonwealth Secretariat and the United Kingdom Foreign and Commonwealth Office.

The gathering was inspired by the formal recognition by Commonwealth Law Ministers in 1996 of the importance of the role played by judges and lawyers in "healthy democracy" and by a meeting in February 1997 of the Heads of Government of 18 Commonwealth African countries which sought to evaluate the state of democracy in Africa. The object of the Colloquium was to draft guidelines which would provide an operational manual of good practice with regard to the commitments contained in the Harare Declaration and Millbrook Plan of Action and which would be implemented in every Commonwealth country.

The product of the Colloquium, The Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence, were placed before Commonwealth Law Ministers at their meeting in Port of Spain in May 1999. They asked Senior Officials to study The Guidelines and report to the next Law Ministers Meeting. Events in the Commonwealth following the publication of The Guidelines confirmed the need to analyse the core issues at stake in protecting judicial and parliamentary

independence, in scrutinising the delicate relationship between the branches of Government and in recognizing the part to be played in civil society by non-governmental organizations in achieving those ends.

The Guidelines were approved by the CLEA members at their 1998 Conference in Ocho Rios and were supported at later CLEA meetings held in Malaysia, South Africa, Sri Lanka and the United Kingdom.

In September 1999, the principles underlying The Guidelines were debated by judges and lawyers at a session on judicial independence held at the Commonwealth Law Conference in Kuala Lumpur. In September 2000, a meeting of Commonwealth Chief Justices commended them for consideration by Heads of Government in a statement issued at the Triennial Conference of the Commonwealth Magistrates' and Judges' Association, held in Edinburgh. The statement was subsequently endorsed by Chief Justices from 31 Commonwealth countries. In February 2001, the Pacific Island Chief Justices endorsed the Edinburgh statement and expressed support for the efforts of the sponsoring organizations.

In November 2001, Senior Officials meeting in London "noted that the principles of good governance and judicial independence had been clearly endorsed by Commonwealth Heads of Government and welcomed the general thrust of the declaration of those principles in The Guidelines". Subject to refinement of the text in a number of respects including those in relation to judicial appointments, they agreed that the Guidelines would be laid before Law Ministers at their next meeting.

At their Meeting in St Vincent and the Grenadines in November 2002, Law Ministers gave detailed consideration to The Guidelines, which had been refined by a working group consisting of the sponsoring associations and the Commonwealth Secretariat. Ministers fully endorsed the importance of the issues involved in the document and "hoped that it would be possible for Commonwealth Heads of Government to agree a statement of principles which could assist reflection on these issues". They invited the Commonwealth Secretary-General to convene a small group of Law Ministers to work with the Commonwealth Secretariat in order to refine and develop principles based on The Guidelines for submission to Heads of Government.

The resulting text was approved by Law Ministers and placed on the agenda of the 2003 Heads of Government Meeting in Abuja. The Principles were endorsed in paragraph 8 of the Abuja Communiqué. Thus Heads of Government have recognised the valuable work undertaken by the Commonwealth parliamentary, legal and judicial associations to further the commitments made in the Harare Declaration and

Millbrook Plan of Action in the promotion of good governance, fundamental human rights, the rule of law and the independence of the judiciary.

In 2005, the Commonwealth Heads of Government "noting that the Commonwealth Principles on the Accountability of and Relationship Between the Three Branches of Government 2003 which recognise the importance of a balance of power between the Executive, Legislative and Judiciary, constitute an integral part of the Commonwealth fundamental political values as set out in the Harare Commonwealth Declaration". (*Paragraph eight of the Communique*)

In 2005, at a Pan African Forum held in Nairobi, Kenya, organised by the Commonwealth Secretariat in conjunction with the four sponsoring organisations, the Plan of Action for Africa on the Implementation of the Commonwealth (Latimer House) Principles, was agreed and in 2008, a Colloquium meeting in Edinburgh, produced the Edinburgh Plan of Action on the Development and Implementation of the Commonwealth (Latimer House) Principles."

In the view of our associations, the implementation of the Principles is essential for the realisation of the legitimate aspirations of all the peoples of the Commonwealth.

Mr Ron Heinrich
President
Commonwealth Lawyers' Association

Prof. David McQuoid-Mason
President
Commonwealth Legal Education Association

Sir Henry Brooke
Executive Vice-President
Commonwealth Magistrates' and Judges' Association

Dr William F. Shija
Secretary-General
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July 2008

**COMMONWEALTH (LATIMER HOUSE)
PRINCIPLES ON THE THREE BRANCHES OF
GOVERNMENT**

NOVEMBER 2003

Commonwealth Heads of Government warmly welcome the contribution made by the Commonwealth Parliamentary Association and the legal profession of the Commonwealth represented by the Commonwealth Magistrates' and Judges' Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association to further the Commonwealth Harare Principles.

They acknowledge the value of the work of these Associations to develop the Latimer House Guidelines and resolve, in the spirit of those Guidelines, to adopt the Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government.

OBJECTIVE

The objective of these Principles is to provide, in accordance with the laws and customs of each Commonwealth country, an effective framework for the implementation by governments, parliaments and judiciaries of the Commonwealth's fundamental values.

I) The Three Branches of Government

Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.

II) Parliament and the Judiciary

(a) Relations between parliament and the judiciary should be governed by respect for parliament's primary responsibility for law making on the one hand and for the judiciary's responsibility for the interpretation and application of the law on the other hand.

(b) Judiciaries and parliaments should fulfill their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.

III) Independence of Parliamentarians

(a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

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

IV) Independence of the Judiciary

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.

To secure these aims:

(a) Judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process. The process should ensure:

equality of opportunity for all who are eligible for judicial office;

appointment on merit; and

that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination;

(b) Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place;

(c) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;

(d) Interaction, if any, between the executive and the judiciary should not compromise judicial independence.

Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties. Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner.

An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.

V) Public Office Holders

(a) Merit and proven integrity, should be the criteria of eligibility for appointment to public office;

(b) Subject to (a), measures may be taken, where possible and appropriate, to ensure that the holders of all public offices generally reflect the composition of the community in terms of gender, ethnicity, social and religious groups and regional balance.

VI) Ethical Governance

Ministers, Members of Parliament, judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence.

VII) Accountability Mechanisms

(a) Executive Accountability to Parliament

Parliaments and governments should maintain high standards of accountability, transparency and responsibility in the conduct of all public business.

Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the executive to Parliament.

(b) Judicial Accountability

Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible government relies.

In addition to providing proper procedures for the removal of judges on grounds of incapacity or misbehaviour that are required to support the principle of independence of the judiciary, any disciplinary procedures should be fairly and objectively administered. Disciplinary proceedings which might lead to the

removal of a judicial officer should include appropriate safeguards to ensure fairness.

The criminal law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions.

(c) Judicial review

Best democratic principles require that the actions of governments are open to scrutiny by the courts, to ensure that decisions taken comply with the Constitution, with relevant statutes and other law, including the law relating to the principles of natural justice.

VIII) The law-making process

In order to enhance the effectiveness of law making as an essential element of the good governance agenda:

There should be adequate parliamentary examination of proposed legislation;

Where appropriate, opportunity should be given for public input into the legislative process;

Parliaments should, where relevant, be given the opportunity to consider international instruments or regional conventions agreed to by governments.

IX) Oversight of Government

The promotion of zero-tolerance for corruption is vital to good governance. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process.

Steps which may be taken to encourage public sector accountability include:

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

(b) Government's transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs.

X) Civil Society

Parliaments and governments should recognise the role that civil society plays in the implementation of the Commonwealth's fundamental values and should strive for a constructive relationship with civil society to ensure that there is broader opportunity for lawful participation in the democratic process.

ANNEX

PARLIAMENTARY SUPREMACY

JUDICIAL INDEPENDENCE

LATIMER HOUSE GUIDELINES FOR THE COMMONWEALTH

19 JUNE 1998

Guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles.

PREAMBLE

RECALLING the renewed commitment at the 1997 Commonwealth Heads of Government Meeting at Edinburgh to the Harare Principles and the Millbrook Commonwealth Action Programme and, in particular, the pledge in paragraph 9 of the Harare Declaration to work for the protection and promotion of the fundamental political values of the Commonwealth:

- Democracy;
- Democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary;
- Just and honest government;
- Fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief, and
- Equality for women, so that they may exercise their full and equal rights.

Representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates' and Judges' Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association meeting at Latimer House in the United Kingdom from 15 to 19 June 1998:

HAVE RESOLVED to adopt the following Principles and Guidelines and propose them for consideration by the Commonwealth Heads of Government Meeting and for effective implementation by member countries of the Commonwealth.

PRINCIPLES

The successful implementation of these Guidelines calls for a commitment, made in the utmost good faith, of the relevant national institutions, in particular the executive, parliament and the judiciary, to the essential principles of good governance, fundamental human rights and the rule of law, including the independence of the judiciary, so that the legitimate aspirations of all the peoples of the Commonwealth should be met.

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

It is recognised that the special circumstances of small and/or under-resourced jurisdictions may require adaptation of these Guidelines.

It is recognised that redress of gender imbalance is essential to accomplish full and equal rights in society and to achieve true human rights.¹ Merit and the capacity to perform public office regardless of disability should be the criteria of eligibility for appointment or election.

GUIDELINES

1) PARLIAMENT AND THE JUDICIARY

1. The legislative function is the primary responsibility of parliament as the elected body representing the people. Judges may² be constructive and purposive in the interpretation of legislation, but must not usurp Parliament's legislative function. Courts should have the power to declare legislation to be unconstitutional and of no legal effect. However, there may be circumstances where the appropriate remedy would be for the court to declare the incompatibility of a statute with the Constitution, leaving it to the legislature to take remedial legislative measures.

2. Commonwealth parliaments should take speedy and effective steps to implement their countries' international human rights obligations by enacting appropriate human rights legislation. Special legislation (such as equal opportunity laws) is required to extend the protection of fundamental rights to the private sphere. Where domestic incorporation has not occurred, international instruments should be applied to aid interpretation.

3. Judges should adopt a generous and purposive approach in interpreting a Bill of Rights. This is particularly important in countries which are in the process of building democratic traditions. Judges have a vital part to play in developing and maintaining a vibrant human rights environment throughout the Commonwealth.

4. International law and, in particular, human rights jurisprudence can greatly assist domestic courts in interpreting a Bill of Rights. It also can help expand the scope of a Bill of Rights making it more meaningful and effective.

5. While dialogue between the judiciary and the government may be desirable or appropriate, in no circumstances should such dialogue compromise judicial independence.

6. People should have easy and unhindered access to courts, particularly to enforce their fundamental rights. Any existing procedural obstacles to access to justice should be removed.

7. People should also be made aware of, and have access to, other important fora for human rights dispute resolution, particularly Human Rights Commissions, Offices of the Ombudsman and mechanisms for alternative dispute resolution.

8. Everyone, especially judges, Parliamentarians and lawyers, should have access to human rights education.

II) PRESERVING JUDICIAL INDEPENDENCE

1. Judicial appointments

Jurisdictions should have an appropriate independent process in place for judicial appointments. Where no independent system already exists, appointments should be made by a judicial services commission (established by the Constitution or by statute) or by an appropriate officer of state acting on the recommendation of such a commission.³

The appointment process, whether or not involving an appropriately constituted and representative judicial services commission, should be designed to guarantee the quality and independence of mind of those selected for appointment at all levels of the judiciary.

Judicial appointments to all levels of the judiciary should be made on merit with appropriate provision for the progressive removal of gender imbalance and of other historic factors of discrimination.

Judicial appointments should normally be permanent; whilst in some jurisdictions, contract appointments may be inevitable, such appointments should be subject to appropriate security of tenure.⁴

Judicial vacancies should be advertised.

2. Funding

Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards. Such funds, once voted for the judiciary by the legislature, should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control over the judiciary.⁵

Appropriate salaries and benefits, supporting staff, resources and equipment are essential to the proper functioning of the judiciary.

As a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained.

3. Training⁶

A culture of judicial education should be developed.

Training should be organised, systematic and ongoing and under the control of an adequately funded judicial body.

Judicial training should include the teaching of the law, judicial skills and the social context including ethnic and gender issues.

The curriculum should be controlled by judicial officers who should have the assistance of lay specialists.

For jurisdictions without adequate training facilities, access to facilities in other jurisdictions should be provided.

Courses in judicial education should be offered to practising lawyers as part of their ongoing professional development training.⁷

III) PRESERVING THE INDEPENDENCE OF PARLIAMENTARIANS⁸

I. Article 9 of the Bill of Rights 1688 is re-affirmed. This article provides:

"That the Freedom of Speech and Debates or Proceedings in Parlyement ought not to be impeached or questioned in any court or place out of Parlyement."

2. Security of members during their parliamentary term is fundamental to parliamentary independence and therefore:

- (a) the expulsion of members from parliament as a penalty for leaving their parties (floor-crossing) should be viewed as a possible infringement of members' independence; anti-defection measures may be necessary in some jurisdictions to deal with corrupt practices⁹;
- (b) laws allowing for the recall of members during their elected term should be viewed with caution, as a potential threat to the independence of members;
- (c) the cessation of membership of a political party of itself should not lead to the loss of a member's seat.

3. In the discharge of their functions, members should be free from improper pressures and accordingly:

- (a) the criminal law and the use of defamation proceedings are not appropriate mechanisms for restricting legitimate criticism of the government or the parliament;
- (b) the defence of qualified privilege with respect to reports of parliamentary proceedings should be drawn as broadly as possible to permit full public reporting and discussion of public affairs;
- (c) the offence of contempt of parliament should be drawn as narrowly as possible.

IV) WOMEN IN PARLIAMENT¹⁰

1. To improve the numbers of women members in Commonwealth parliaments, the role of women within political parties should be enhanced, including the appointment of more women to executive roles within political parties.

2. Pro-active searches for potential candidates should be undertaken by political parties.

3. Political parties in nations with proportional representation should be required to ensure an adequate gender balance on their respective lists of candidates for election. Women, where relevant, should be included in the top part of the candidates lists of political parties. Parties should be called upon publicly to declare the degree of representation of women on their lists and to defend any failure to maintain adequate representation.

4. Where there is no proportional representation, candidate search and/or selection committees of political parties should be gender-balanced as should representation at political conventions and this should be facilitated by political parties by way of amendment to party constitutions; women should be put forward for safe seats.

5. Women should be elected to parliament through regular electoral processes. The provision of reservations for women in national constitutions, whilst useful, tends to be insufficient for securing adequate and long-term representation by women.

6. Men should work in partnership with women to redress constraints on women entering parliament. True gender balance requires the oppositional element of the inclusion of men in the process of dialogue and remedial action to address the necessary inclusion of both genders in all aspects of public life.

V) JUDICIAL AND PARLIAMENTARY ETHICS

1. Judicial Ethics

- (a) A Code of Ethics and Conduct should be developed and adopted by each judiciary as a means of ensuring the accountability of judges;
- (b) the Commonwealth Magistrates' and Judges' Association should be encouraged to complete its Model Code of Judicial Conduct now in development¹¹;
- (c) the Association should also serve as a repository of codes of judicial conduct developed by Commonwealth judiciaries, which will serve as a resource for other jurisdictions.

2. Parliamentary Ethics

- (a) Conflict of interest guidelines and codes of conduct should require full disclosure by ministers and members of their financial and business interests;
- (b) members of parliament should have privileged access to advice from statutorily-established Ethics Advisors;
- (c) whilst responsive to the needs of society and recognising minority views in society, members of parliament should avoid excessive influence of lobbyists and special interest groups.

VI) ACCOUNTABILITY MECHANISMS

1. Judicial Accountability

- (a) Discipline:
 - (i) In cases where a judge is at risk of removal, the judge must have the right to

be fully informed of the charges, to be represented at a hearing, to make a full defence and to be judged by an independent and impartial tribunal.

Grounds for removal of a judge should be limited to:

- (A) inability to perform judicial duties and
- (B) serious misconduct.
- (ii) In all other matters, the process should be conducted by the chief judge of the courts;
- (iii) Disciplinary procedures should not include the public admonition of judges. Any admonitions should be delivered in private, by the chief judge.

(b) Public Criticism¹²:

- (i) Legitimate public criticism of judicial performance is a means of ensuring accountability;
- (ii) The criminal law and contempt proceedings are not appropriate mechanisms for restricting legitimate criticism of the courts.

2. Executive Accountability

(a) Accountability of the Executive to Parliament

Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the executive to parliament. These should include:

- (i) a committee structure appropriate to the size of parliament, adequately resourced and with the power to summon witnesses, including ministers. Governments should be required to announce publicly, within a defined time period, their responses to committee reports;
- (ii) standing orders should provide appropriate opportunities for members to question ministers and full debate on legislative proposals;
- (iii) the public accounts should be independently audited by the Auditor General who is responsible to and must report directly to parliament;
- (iv) the chair of the Public Accounts Committee should normally be an opposition member;
- (v) offices of the Ombudsman, Human Rights Commissions and Access to Information Commissioners should report regularly to parliament.

(b) Judicial Review

Commonwealth governments should endorse and implement the principles of judicial review enshrined in the Lusaka Statement on Government under the Law.

VII) THE LAW-MAKING PROCESS

1. Women should be involved in the work of national law commissions in the law-making process. Ongoing assessment of legislation is essential so as to create a more gender-balanced society. Gender-neutral language should be used in the drafting and use of legislation.

2. Procedures for the preliminary examination of issues in proposed legislation should be adopted and published so that:

- (a) there is public exposure of issues, papers and consultation on major reforms including, where possible, a draft bill;
- (b) standing orders provide a delay of some days between introduction and debate to enable public comment unless suspended by consent or a significantly high percentage vote of the chamber; and
- (c) major legislation can be referred to a select committee allowing for the detailed examination of such legislation and the taking of evidence from members of the public.

3. Model standing orders protecting members' rights and privileges and permitting the incorporation of variations, to take local circumstances into account, should be drafted and published.

4. Parliament should be serviced by a professional staff independent of the regular public service.

5. Adequate resources to government and non-government backbenchers should be provided to improve parliamentary input and should include provision for:

- (a) training of new members;
- (b) secretarial, office, library and research facilities;
- (c) drafting assistance including private members' bills.

6. An all-party committee of members of parliament should review and administer parliament's budget which should not be subject to amendment by the executive.

7. Appropriate legislation should incorporate international human rights instruments to assist in interpretation and to ensure that ministers certify compliance with such instruments, on introduction of the legislation.

8. It is recommended that "sunset" legislation (for the expiry of all subordinate legislation not renewed) should be enacted subject to power to extend the life of such legislation.

VIII) THE ROLE OF NON-JUDICIAL AND NON-PARLIAMENTARY INSTITUTIONS

1. The Commonwealth Statement on Freedom of Expression¹³ provides essential guarantees to which all Commonwealth countries should subscribe.
2. The Executive must refrain from all measures directed at inhibiting the freedom of the press, including indirect methods such as the misuse of official advertising.
3. An independent, organised legal profession is an essential component in the protection of the rule of law.
4. Adequate legal aid schemes should be provided for poor and disadvantaged litigants, including public interest advocates.
5. Legal professional organisations should assist in the provision, through pro bono schemes, of access to justice for the impecunious.
6. The executive must refrain from obstructing the functioning of an independent legal profession by such means as withholding licensing of professional bodies.
7. Human Rights Commissions, Offices of the Ombudsman and Access to Information Commissioners can play a key role in enhancing public awareness of good governance and rule of law issues, and adequate funding and resources should be made available to enable them to discharge these functions. Parliament should accept responsibility in this regard.

Such institutions should be empowered to provide access to alternative dispute resolution mechanisms.

IX) MEASURES FOR IMPLEMENTATION AND MONITORING COMPLIANCE

These guidelines should be forwarded to the Commonwealth Secretariat for consideration by Law Ministers and Heads of Government.¹⁴

If these Guidelines are adopted, an effective monitoring procedure, which might include a Standing Committee, should be devised under which all Commonwealth jurisdictions accept an obligation to report on their compliance with these Guidelines.

Consideration of these reports should form a regular part of the Meetings of Law Ministers and of Heads of Government.

End Notes

1. The final paragraph does not refer expressly to other forms of discrimination, e.g. on ethnic or religious grounds. There are a number of approaches to the redress of existing imbalances, such as selection based on "merit with bias", i.e. where, for example, if two applicants are of equal merit, the bias should be to appoint a woman where there exists gender imbalance.
2. It has been suggested that judges "shall" have a duty to adopt a constructive and purposive approach to the interpretation of legislation, particularly in a human rights context, as indicated in paragraph 3.
3. The Guidelines clearly recognise that, in certain jurisdictions, appropriate mechanisms for judicial appointments not involving a judicial service commission are in place. However, such commissions exist in many jurisdictions, though their composition differs. There are arguments for and against a majority of senior judges and in favour of strong representation of other branches of the legal profession, members of parliament and of civil society in general.
4. The making of non-permanent judicial appointments by the executive without security of tenure remains controversial in a number of jurisdictions.
5. The provision of adequate funding for the judiciary must be a very high priority in order to uphold the rule of law, to ensure that good governance and democracy are sustained and to provide for the effective and efficient administration of justice. However, it is acknowledged that a shortfall in anticipated national income might lead to budgetary constraints. Finance ministries are urged to engage in appropriate consultations in order to set realistic and sustainable budgets which parliaments should approve to ensure adequate funds are available.
6. This is an area where the sponsoring associations can play a cost-effective role in co-operation with the Commonwealth Secretariat. Resources need to be provided in order to support the judiciary in the promotion of the rule of law and good governance.
7. The drafters of the Guidelines did not wish by this provision to impinge on either the independence of the judiciary or the independence of the legal profession. However, in many jurisdictions throughout the Commonwealth, magistrates and judges are given no formal training on commencement of their duties. It was felt that appointees to the bench would benefit from some training prior to appointment in order to make them more aware of the duties and obligations of judicial officers and aid their passage to the bench.
8. It has been observed that the Guidelines are silent about the elected composition of the popular chamber. In a number of jurisdictions, nominated members may have a decisive influence on the outcome of a vote. If properly used, however, the power of nomination may be used to redress, for example, gender imbalance and to ensure representation of ethnic or religious minorities. The role of non-elected senates or upper chambers must also be considered in this context.
9. There remains controversy about the balance to be struck between anti-floor-crossing measures as a barrier against corruption and the potential threat to the independence of MPs.
10. The emphasis on gender balance is not intended to imply that there are not other issues of equity in representation which need to be considered. Parliament should reflect the composition of the community which it represents in terms of ethnicity, social and religious groups and regional balance. Some countries have experimented with regulation of national political parties to ensure, for example, that their support is not confined to one regional or ethnic group, a notion which would be profoundly hostile to the political culture in other jurisdictions.
11. Following discussion of the Guidelines, it has been accepted by the Working Group that a "uniform" Model Code of Judicial Conduct is inappropriate. Judicial Officers in each country should develop, adopt and periodically review codes of ethics and conduct appropriate to their jurisdiction. The CMJA will promote that process in its programmes and will serve as a repository for such codes when adopted.
12. In certain jurisdictions, the corruption of the judiciary is acknowledged as a real problem. The recommendations contained in the Guidelines are entirely consistent with the Framework for Commonwealth Principles in Promoting Good Governance and Combating Corruption approved by CHOGM in Durban in 1999. There is some support for the creation of a Judicial Ombudsman who may receive complaints from the public regarding the conduct of judges.
13. Since the Guidelines were drafted, the draft Statement on Freedom of Expression has been subject to further consideration and the reference should take account of the new developments. The Commonwealth Heads of Government, in the Cookham Declaration of 5 March 2002, included a commitment to freedom of expression: "We stand united in: our commitment to democracy, the rule of law, good governance, freedom of expression and the protection of human rights...."
14. Under active consideration is the creation of a monitoring procedure outside official Commonwealth processes. This initially may involve an "annual report" on the implementation of the Guidelines in all Commonwealth jurisdictions, noting "good" and "bad" practice.

PLAN OF ACTION FOR AFRICA

APRIL 2005

I INTRODUCTION

In June 1998, a group of distinguished Parliamentarians, judges, lawyers and legal academics joined together at Latimer House, Buckinghamshire, United Kingdom, at a Colloquium on Parliamentary Sovereignty and Judicial Independence within the Commonwealth. The Colloquium was sponsored by the Commonwealth Lawyers' Association, The Commonwealth Legal Education Association, The Commonwealth Parliamentary Association and The Commonwealth Magistrates' and Judges' Association with the support of the Commonwealth Foundation, the Commonwealth Secretariat and the United Kingdom Foreign and Commonwealth Office. The product of the Colloquium, The Latimer House Guidelines on Parliamentary and Judicial Independence were initially placed before Commonwealth Law Ministers at their meeting in Port of Spain in May 1999 and again at their meeting in St Vincent and the Grenadines in November 2002.

In November 2002, Law Ministers gave detailed consideration to the Guidelines which had been refined by a working group consisting of the sponsoring associations and the Commonwealth Secretariat and invited the Commonwealth Secretary General to convene a small group of Law Ministers to work with the Commonwealth Secretariat in order to refine and develop principles based on the Guidelines for submission to Heads of Government.

The resulting text was approved by Law Ministers and subsequently endorsed by Commonwealth Heads of Government at their meeting in Abuja, Nigeria in December 2003.

Leaders from the Executive, the Judiciary, the Legislature, Commonwealth partner organizations and representatives of civil society from all the 18 Commonwealth countries in Africa met in Nairobi from 4-6 April 2005. The Forum was organized by the Commonwealth Secretariat and hosted by the Government of Kenya. The Forum was convened to consider ways and means of promoting and advancing the Commonwealth (Latimer House) Principles following their adoption by Commonwealth Heads of Government in Abuja in December 2003. This document represents a draft blue print prepared by the Commonwealth Secretariat and the Partner organisations for such action plan.

2. PLAN OF ACTION

2.1 Relationship between the three branches of Government

Historically the concentration of powers has rested in the hands of the executive arm of government. The Principles specify that each institution must exercise responsibility and restraint in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate power vested constitutionally on the other institutions. It was affirmed that Commonwealth Africa needed to pay particular attention to processes of democratisation that meet the needs of Africa's historical, cultural and economic peculiarities and in a manner which is consistent with the Principles.

2.1.1 Interaction between the Judiciary and the Executive

It was affirmed that Commonwealth Africa should devote more attention to establishing and maintaining processes of democratisation that meet the needs of Africa's historical, cultural and economic realities but always in accordance with the letter and spirit of the Principles. This relationship should be governed by the principle of cooperative governance, with each branch fulfilling their respective critical role in a constitutional, complementary and constructive manner.

Proposed actions

Governments and Judiciaries are encouraged to:

- *establish effective mechanisms of communication between the Executive and the Judiciary so as to strengthen mutual understanding of their respective functions.*

2.1.2 Independence of Parliamentarians

Parliamentarians should be able to carry out their legislative and constitutional duties in accordance with the constitution free from unlawful interference.

Proposed actions

Governments are encouraged to:

- *ensure that members of Parliaments are free from undue pressure or interference;*

Parliaments should:

- *attempt to clarify the issue of floor crossing with some degree of certainty in their jurisdictions;*

Political parties should:

- ensure an adequate gender balance in their nominations of candidates for elections;

The Commonwealth Secretariat and the Commonwealth Parliamentary Association should:

- continue to provide support through capacity building through the Political Affairs Division.

2.1.3 Legislative role of Parliament

The capacity of national legislatures should be enhanced to enable them adequately to scrutinize legislation, international instruments and other proposed measures.

Proposed actions

Parliaments and Governments are encouraged to:

- provide necessary resources to members of parliament to enable them fulfil their functions;
- engage civil society as partners in order that they play a more proactive role in legislative processes.

2.1.4 The role of Gender in Governance

In the past decade, women's visibility and representation in governance has improved. Mainstreaming gender as an institutional and cultural process will facilitate the elimination of gender biases in development. Bearing in mind that Commonwealth target requiring that by 2005 at least 30 per cent of those in political and decision-making positions should be women has not been achieved, the three branches of governments should treat women in public positions on an equal footing with men in all circumstances, to help avoid tokenism that is prevailing at the moment.

Proposed actions

Governments are encouraged to:

- involve women in governance at all levels including local government level and to undertake reforms of their electoral system as a mechanism for increasing representation of women in governance at all levels;
- to implement the Commonwealth Gender and Equality Plan of Action;

The Commonwealth Secretariat to:

- *continue its work on assisting governments, National Women's Ministries, political parties, civil society and other partners achieve the target of 30 per cent of women's representation in the political, public and private sectors;*
- *support legislative reviews, policies and programmes including women-specific measures that guarantee equal opportunities and treatment to women and men in all sectors and at all levels;*
- *continue to provide support and assistance in accordance with the Commonwealth Plan of Action for Gender Equality 2005-2015.*

2.2 Good Governance and Accountability

The Commonwealth (Latimer House) Principles require that the three branches of government should maintain high standards of accountability, transparency and responsibility in the conduct of all public business.

2.2.1 Parliamentary oversight and the role of Public Accounts Committees

Public Accounts Committees (PACs) in Commonwealth Africa need to strengthen their role as oversight bodies and Parliaments should improve the functioning of these committees to make them more effective.

Proposed actions

Parliaments are encouraged to:

- *reinforce the role of PACs by constituting them into Standing Committees of Parliament and to ensure that membership of the PACs are as diverse as possible free from party interference and not be dominated by the majority party;*
- *provide adequate and efficient staffing for the Offices of the Auditor-General and the PAC;*

The Commonwealth Secretariat and the Commonwealth Parliamentary Association should:

- *encourage and facilitate the drafting of model rules on the functioning, powers and procedures of PACs to be adopted by Commonwealth Parliaments.*

2.2.2 Judicial accountability and confidence building

The independence of the Judiciary is a vital guarantee of a democratic society, and is built on the foundation of public confidence. As such, it was essential that there be adequate observance of principles of accountability in its processes, professional ethics and

conduct among the judicial officers as well as court officials. The institution of peer review mechanisms by members of the profession, appropriate criticism through the media, legislative reversal of judicial precedent and case law should be considered. For accountability to be effective there must be judicial independence and security of tenure. The Judiciary should be well resourced and there must be an effective system for the dissemination and evaluation of judicial decisions. There is a particular need to provide security of tenure for judicial officers serving in the lower courts as provided for in the Principles in order to build public confidence in the judicial system

Proposed actions

Judiciaries are encouraged to:

- *adopt Codes of Ethics and Conduct for judicial officers;*
- *embark on judicial outreach programmes to communicate to the general public the role and functions of the Judiciary.*

2.2.3 Accountability, Transparency and Procurement Guidelines

To achieve transparency in public procurement, government procurement officials must comply with international standards and best practices in procurement matters.

Proposed actions

Governments are encouraged to:

- *publicly advertise tenders and business opportunities in an adequate and timely fashion, and where possible, on the websites of the procuring entities;*
- *ensure that procurement opportunities are made available publicly and consistently and the evaluation criteria for any particular procurement should clearly identify the relative importance of all relevant factors and provide a sound basis for a procurement decision;*

The Commonwealth Secretariat to:

- *build on existing work being undertaken and provide support and information on suitable procurement guidelines.*

2.3 Mechanisms for safeguarding Ethical Governance and Accountability

Each branch of government should, in accordance with its constitutional role and responsibilities, strive to ensure that effective laws, mechanisms, methods, systems and rules of

checks and balances are in place to strengthen the observance, promotion and protection of Human Rights including the rights of the disadvantaged to prevent the abuse of power.

2.3.1 National Institutions and Civil Society

In ensuring that principles of good governance under the rule of law are properly and effectively addressed, effective mechanisms should be put in place. These should include the development of effective methods and systems of oversight, accountability, confidence building and for the inculcation of a culture of transparency, openness and judicious use of public resources in African member states.

The diminishing role of the State in the provision of public services is a concern. The increasing role of civil society organizations in enhancing processes of democracy and development. Accordingly governments should embrace the new role of civil society in advancing the principles.

Proposed actions

Governments are encouraged to:

- *establish, if they do not already exist, independent oversight institutions such as offices of Human Rights Commissions, the Ombudsman, Public Accounts Committees, Auditors-General Offices, Anti-Corruption Commissions, and Access to Information Commissions and ensure that appointments to these bodies are done through a transparent process.*

The Commonwealth Secretariat to:

- *continue to strengthen its technical assistance in sustaining oversight institutions.*

2.3.2 Mechanisms for ethical conduct for the Administration of Justice

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

Proposed actions

Judiciaries are encouraged to:

- *adopt, if not in place, codes of conduct for judicial officers and judicial personnel and review these codes regularly;*

The Commonwealth Secretariat and the Commonwealth Magistrates and Judges Association:

- *provide guidance on codes of conduct for judicial officers and court personnel;*
- *should continue, with other relevant institutions, to further develop training programmes within a structure whereby judicial officers can strengthen ethical standards, revisit codes of conduct and exchange information.*

2.3.3 Maintaining an independent Judiciary: Judicial training

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

Proposed action

Governments to:

- *recognise the importance of judicial-driven training and education in maintaining the independence of the judiciary and to make judicial continuing education an integral part of the administration of justice and provide adequate funding for this;*

Judiciaries are encouraged to:

- *identify and prioritise areas for judicial training;*
- *form a core group of judicial officers to become trainers to ensure that judicial training programmes can be sustained;*

The Commonwealth Secretariat and the Commonwealth Magistrates and Judges Association to:

- *continue to develop with the creation of opportunities for trainers to be trained;*
- *facilitate judicial training programmes.*

2.3.4 An independent legal profession

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

Proposed actions

The Commonwealth Secretariat, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association and any other relevant institution should:

- *provide support to legal professional associations and may have regard to the Basic Principles on the Role of Lawyers adopted by the United Nations Congress 1990;*

Law Societies and Bar Associations are encouraged to:

- *establish programmes for continuing legal education and to seek where appropriate the assistance and advice of the Commonwealth Lawyers' Association in partnership with the Commonwealth Legal Education Association;*
- *develop appropriate codes of ethics for legal practitioners;*

Governments are encouraged to:

- *provide a suitable legal framework for enable law societies and bar associations to carry out their functions independently.*

2.3.5 Role of the Media

The media plays a vital role in promoting the Commonwealth (Latimer House) Principles. In particular, the media should contribute to democratic and accountable governance through accurate and responsible reporting. There is a need for the media to work effectively within systems of regulation that are in accordance with democratic principles and practices.

Proposed actions

Governments are encouraged to:

- *enable the media to function in accordance with democratic principles and practices and to ensure that the media functions in the public interest and is not used for propaganda broadcasting;*

The Commonwealth Secretariat to:

- encourage the existing cooperation between Commonwealth partner organisation namely; The Commonwealth Broadcasting Association, The Commonwealth Press Union and the Commonwealth Journalists Association in the promotion of the Commonwealth (Latimer House) Principles.

2.3.6 Freedom of Information

Freedom of information is recognized as a human right which is guaranteed under international, regional and national laws. There is a trend in Commonwealth Africa towards the adoption of freedom of information laws and the call to adhere to the key elements of the Commonwealth Freedom of Information guidelines was supported. Hope was expressed that the emergence of new regional governance structures such as NEPAD and the African Peer Review Mechanism would enhance freedom of information legislation and its implementation in Africa as a whole.

Proposed actions

Governments are encouraged to:

- enact legislation to provide access to information;
- adopt the declaration of Principles of Freedom of Expression of the African Union;

The Commonwealth Secretariat to:

- continue with existing programmes in providing technical assistance to develop policy, best practice, codes of conduct or draft freedom of information legislation for member states;
- cooperate with the Commonwealth Parliamentary Association/ Commonwealth Human Rights Initiative and other relevant institutions working on Freedom of Information.

2.3.7 Access to Justice

The formal structures of justice, high costs, and the culture of delays, and physical distances from courts limit the effective participation of the people, especially the poor in accessing justice. In the context of the need for alternatives to formal procedures, Commonwealth Africa needs to construct new ways of pursuing a human rights vision of justice due to the failure of the old formal approach to guarantee effective access to justice. There was a need to incorporate procedures and institutions into the mainstream judicial system that guarantee better access to justice.

Proposed actions

Governments are encouraged to:

- *provide legal aid to enhance access to justice;*
- *strengthen the formal and traditional court system to improve justice;*

Governments and the Commonwealth Secretariat should:

- *support the establishment of alternative mechanisms for dispute resolution which avail the speedy delivery of justice.*

2.4 Combating Corruption

Corruption, which undermines development, is generally an outcome and a symptom of poor governance. In accordance with the Framework for Commonwealth Principles on Promoting Good Governance and Combating corruption, a policy of "zero tolerance" must permeate national political cultures, governance, legal systems and administration. Legislators should therefore enact more effective laws to fight corruption decisively.

2.4.1 Proper Exercise of Executive Power

In many Commonwealth African countries, the proper exercise of executive power means a radical departure from prevailing attitudes, whether official or unofficial, which appear to condone abuse of power and reward corruption in public administration. It was recognised that there was the need to tackle issues of corruption in the political context. It was also recognized that the media and the oversight institutions can play an important role in the exercise of executive power. The Executive is called upon to exercise its powers in accordance with the rule of law and constitution at all times.

Proposed actions

Governments are encouraged to:

- *establish codes of conduct for holders of public office;*
- *establish offices such as an Inspector General to investigate, report and even prosecute on corruption;*
- *provide support to institutions such as independent anti-corruption commissions, public accounts committees, human rights commissions, freedom of information commissions, offices of the ombudsman and other oversight institutions;*

The Commonwealth Secretariat:

- *to provide assistance in the drafting of codes of conduct for holders of public office.*

2.4.2 Combating Corruption in the Judiciary

Corruption is common and can be found in almost all jurisdictions throughout the Commonwealth. The fight against corruption in the judiciary should be spearheaded by Chief Justices and an adopted plan premised on the following actions: better conditions of service and security of tenure, strengthening the independence of the judiciary and upholding the dignity of the judiciary.

Proposed actions

Governments are encouraged to:

- set in place clearly defined criteria and a publicly declared process for judicial appointments;
- review and establish adequate terms and conditions of service for the judiciaries to minimise their vulnerability to corrupt influences;

Heads of judiciaries are encouraged to:

- spearhead the fight against corruption in the judiciary;
- ensure that court operations are transparent, and open to the public through awareness programmes;
- engage in appropriate interaction with the media;
- prepare annual reports on the work of the Courts and the Judiciary;
- support Chief Justices in Commonwealth Africa to network and meet regularly for the purpose of exchanging experiences, learning from one another, promoting best practices and developing strategies to improve relationships with other arms of government;
- where constitutional provisions are silent to put in place internal investigative mechanisms in the form of integrity, ethics or peer committees charged with the responsibility for investigating all complaints against judicial officers.

2.4.3 Combating Corruption in Parliament

Parliaments play a prominent role in fighting corruption since Parliament establishes democratic accountability and transparency and instils public confidence in government.

Proposed actions

Governments and Parliaments should:

- enact legislation to punish corruption and ensure the recovery of embezzled funds and forfeiture of assets;
- ensure that penal codes should allow the prosecution for wealth and earnings in excess of known sources of income;

- to pass financial disclosure laws and codes of conduct requiring declaration of income, assets and liabilities;
- disqualify Parliamentarians who have been convicted of criminal (except civil and traffic) and electoral offences from contesting elections for an appropriate period;

The Commonwealth Secretariat and the Commonwealth Parliamentary Association:

- to cooperate in providing technical assistance in the fight against corruption;
- to provide assistance in the drafting of codes of conduct for parliamentarians and officials.

2.4.4 Tracing, Recovery and Repatriation of Illegally Acquired Wealth

Corruption contributes significantly to underdevelopment and economic stagnation by depleting national resources. It is important that plundered assets be returned to their countries of origin.

Proposed actions

Governments are encouraged to:

- enact appropriate domestic legislation against money laundering and organized crime;
- sign, ratify and, where appropriate, domesticate the UN Convention Against Corruption;
- take immediate actions to incorporate relevant international and regional conventions, such as the AU Convention on Preventing and Combating Corruption and the SADC Protocol Against Corruption in legislation;
- introduce civil and criminal forfeiture mechanisms into domestic legislation;
- ensure that a waiver of immunity from prosecution, currently enjoyed by some members of the executive arm, be withdrawn when dealing with cases of corruption;
- support the extension of the jurisdiction of the International Criminal Court to include cases of grand corruption;

The Commonwealth Secretariat should:

- provide relevant technical assistance in developing model legislation on the recovery of illegally acquired wealth.

2.4.5 Human Rights Education

Human rights provisions are entrenched in Constitutions. To enhance awareness, there is a need for mainstreaming human rights education at the secondary and tertiary level. There is also a need for effective implementation of international human rights norms to which all the three branches of governments should be sensitized.

Proposed action

The Commonwealth Secretariat should:

- *continue its regional programme of human rights training;*

The Commonwealth Secretariat and the Commonwealth Legal Education Association to:

- *develop and disseminate a model Human Rights curriculum for secondary and tertiary education institutions.*

3 IMPLEMENTING THE PLAN OF ACTION

- 3.1** This Plan of Action should provide the framework for the three branches of governments to devise and develop strategies to implement the Commonwealth (Latimer House) Principles.
- 3.2** Governments are urged to establish mechanisms to monitor and evaluate the implementation of the Plan of Action in their respective jurisdictions.
- 3.3** Governments should accept the responsibility to provide the resources required to enable Parliaments, judiciaries and oversight institutions and bodies to properly discharge their functions.
- 3.4** The Secretariat is committed to coordinate and streamline the implementation of the Plan of Action.
- 3.5** The Secretariat, together with Governments and partner organizations will facilitate monitoring of the implementation of the Plan of Action.
- 3.6** The Secretariat will continue to facilitate capacity building programmes and to develop and integrate the Commonwealth (Latimer House) Principles into its programmes.
- 3.7** The Secretary-General of the Commonwealth Secretariat will report on the implementation of the Plan of Action to Heads of Governments, appropriate Ministers, and to meetings of senior officials.

EDINBURGH PLAN OF ACTION

JULY 2008

PREAMBLE

REAFFIRMING the importance of implementation of the Plan of Action for Africa adopted at Nairobi in 2005 not only in Africa but in the wider Commonwealth and recognising the special circumstances of smaller and under resourced jurisdictions,

NOTING that,

- (1) while good practice in implementation of the Principles has developed in several jurisdictions, there have been a number of cases of the violation of the fundamental principle that:

"Each Commonwealth Country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability." (CLHP - 1)

- (2) it has not proved possible to establish, either within or outside official Commonwealth channels, an effective and systematic procedure for assessing both good and bad practice in terms of compliance with the Principles;
- (3) while the Principles have been widely circulated and discussed at numerous Commonwealth gatherings there remains ignorance of their importance among government officers, Parliamentarians, lawyers, judicial officers and members of civil society;
- (4) each new generation of government officers, Parliamentarians, lawyers, judicial officers and members of civil society has to be alert to the imperatives of, and balance between, the independence and accountability of the judiciary, Parliament and the executive;
- (5) there is a need to make better provision for the continuing implementation and assessment of the Principles across the Commonwealth.

Representatives of the Commonwealth Lawyers' Association (CLA), Commonwealth Legal Education Association (CLEA), the Commonwealth Magistrates' and Judges' Association (CMJA) and the Commonwealth Parliamentary Association (CPA) and Law Officers, meeting at the Scottish Parliament in Edinburgh on 6 & 7 July 2008:

HAVE RESOLVED TO ADOPT the following provisions for implementation and assessment of the Principles:

I. Relationship Between the Three Branches of Government

I.1 General

The Principles specify that "Each Commonwealth Country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability." (CLHP - I)

ACTION:

The partner organisations (CLA, CLEA, CMJA and CPA) should assist the Commonwealth Secretariat by the establishment of a Standing Committee for the purpose of gathering relevant information, reporting on implementation of the Principles, best practice and areas of concern to inform the deliberations of the Commonwealth and the Commonwealth Ministerial Action Group. Other civil society organisations should be encouraged to assist the Standing Committee in gathering relevant information.

Governments should be encouraged to provide reports on the implementation of the Principles in their jurisdictions at each Heads of Government Meeting, with particular emphasis on best practice and challenges faced, as part of the rule of law mandate of the Commonwealth.

The Commonwealth Secretariat should:

- collate information on the implementation of the Principles on an ongoing basis;
- provide regular reports to Commonwealth Law Ministers, Senior Officials, Heads of Judiciary and Speakers of Parliament; and
- promote peer review of compliance with the Principles on a regional basis.

All Parliamentarians, judicial officers and public servants, on election or appointment, should be given awareness training on basic constitutional principles and their primary roles in the constitutional process.

Meetings between representatives of the three branches of Government should be organised on a regular basis, in their respective jurisdictions, in order to promote better understanding of each other's roles.

The Commonwealth Secretariat should assist in facilitating these exchanges.

The CPA should continue its seminars for newly elected Parliamentarians.

The CMJA should expand its existing programmes to newly appointed judicial officers with specific emphasis on the Principles.

The Commonwealth Secretariat should assist in facilitating similar programmes for the public service.

1.2 Independence of Parliamentarians

"Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference." (CLHP - III)

ACTION:

Remuneration packages for parliamentarians should be determined by an independent process.

Parliamentarians should have equitable access to resources commensurate with their responsibilities.

Parliaments should have control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances.

1.3 Independence of the Judiciary

"Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought." (CLHP - IV.3)

ACTION:

The allocation of resources by Parliament, for the judiciary and the running of the courts, should be made following consultation between the Head of the Judiciary and the relevant minister.

Appropriate dispute resolution mechanisms should be put in place to deal with any disputes arising in relation to the allocation of resources.

There remain jurisdictions where adequate resources have not been made available for judicial training, including training on basic constitutional issues. Such resources should be made available and programmes established for judicial training under the control of the Head of the Judiciary.

1.4 Gender and Diversity in Governance

"Merit and proven integrity should be the criteria for eligibility for appointment to public office" AND "Measures may be taken where possible and appropriate, to ensure that the holders of all public offices generally reflect the composition of the community in terms of gender, ethnicity, social and religious groups and regional balance." (CLHP - V.a and V.b)

ACTION:

Bearing these criteria in mind and also that the Commonwealth has not yet achieved its target of having women in at least 30 per cent of political and decision-making positions, the respective branches of government should strive to improve the representation and participation of women and increase diversity in the public sphere in line with Commonwealth standards on gender and diversity. In particular:

1. Those responsible for recommending judicial appointments, should, through public information programmes, broad advertising of judicial vacancies, and by adapting judicial working conditions where, appropriate, encourage women and those from diverse backgrounds to apply for judicial appointments;
2. Parliaments should engage in disseminating better quality information about the role of Parliamentarians and should develop practices that encourage women to stand for Parliament and to become candidates for leadership roles in Parliament;
3. Parliaments should adopt codes of conduct and standing orders which outline clearly the importance of the respect for the dignity of all Parliamentarians and regulate the behaviour of parliamentarians towards each other. Speakers should provide clear rulings as to acceptable behaviour in the legislature;
4. Governments should work with civil society to encourage gender balance and diversity at all levels.

2. Good Governance and Accountability

The Commonwealth (Latimer House) Principles state that "Parliaments and Governments should maintain high standards of accountability, transparency and responsibility in the conduct of all public business". (CLHP - VII.a)

ACTION:

2.1 Elections:

Bearing in mind the importance of the proper conduct of the electoral process to the realisation of the Principles:

All branches of Government have responsibility for lawful and timely conduct of that process.

The Executive must ensure that there is an independent and autonomous electoral commission with powers and security of tenure guaranteed by statute. All Commissioners should be fully conversant with the Commonwealth's fundamental values, including the Principles. In observing elections, the Commonwealth Secretariat should continue to ensure that the members of the Observer Missions are fully aware of the Principles and actively apply them in their observations.

All candidates for election should be fully aware of the Principles.

Judicial processes should be given appropriate expedition when hearing and determining cases relating to elections in order to guarantee the legitimacy of the election process. Determinations should be scrupulously respected.

2.2 Parliamentary Oversight and the Role of the Public Accounts Committees (PACs)

ACTION:

PACs need to strengthen their role as oversight bodies and Parliaments should improve the effective functioning of these committees.

The role of PACs should be reinforced by constituting them into Standing Committees of Parliament, where this is not already the case. Membership of the PACs should be as diverse as possible, free from party interference and, where possible, not dominated by any party. Adequate and appropriate material and human resources should be provided to them.

Model rules on the functioning, powers and procedures of PACs should be developed by the Commonwealth Secretariat and the CPA for use by Commonwealth Parliaments.

2.3 Judicial accountability and confidence building

"Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity." (CLHP - VII.b)

ACTION:

The Heads of the Judiciary should submit regular reviews to Parliaments on the financing and administration of the courts.

The judiciary should continue to develop and review their codes of conduct/ethics on a regular basis.

Information on the complaints and disciplinary procedures in relation to judicial misconduct should be publicly available.

2.4 Civil Society

"Parliaments and Governments should recognise the role that civil society plays in the implementation of the Commonwealth's fundamental values and should strive for a constructive relationship with civil society to ensure that there is broader opportunity for law-ful participation in the democratic process." (CLHP - X)

ACTION:

Bearing in mind that mutual trust is an essential ingredient if meaningful engagement of civil society in governance is to be realised:

1. Positive steps should be taken to ensure the involvement of civil society in informing decision-making processes at community, national, regional and international level;
2. Civil society organisations should be engaged to proactively promote the Principles;
3. Governments should not inhibit civil society organisations' ability to access funding both nationally and internationally.

2.5 An Independent Legal Profession

"An independent, effective and competent legal profession is fundamental to the uphold- ing of the rule of law and the independence of the judiciary." (CLHP - IV.d)

ACTION:

Bearing in mind that the legal profession is a key partner in the promotion of democ- racy and governments should see them in that role, the legal profession should:

1. Maintain and promote the highest standards of excellence and integrity;
2. Support the legislature by participating fully in consultative processes;
3. Promote and assert the independence of the courts;
4. Speak out against improper administrative action or lack of action; and
5. Help to create public awareness of legal issues, particularly relating to ethics and human rights.

In all these matters, the profession should have regard to its social responsibility and avoid being used as a tool of partisan politics.

The CLA should facilitate programmes for the legal profession designed to enhance awareness of the Principles.

2.6 Role of the Media

"Government's transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs." (CLHP - IX.b)

ACTION:

Legislation should provide mechanisms to ensure equitable access to electronic and print media for all election candidates at all levels.

Transparency and accountability is dependent upon freedom of information. Governments should abide by the Commonwealth principles on freedom of information and should introduce appropriate enabling legislation where this has not already been done. Governments should also provide adequate resources and systems to make information accessible.

Heads of Judiciary should be encouraged to liaise with the media and inform them on the affairs of the judiciary and the principles of judicial independence.

3. Combating Corruption

"The promotion of zero tolerance for corruption is vital to good governance. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process." (CLHP - IX)

"Ministers, Members of Parliament, judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence." (CLHP - VII)

ACTION:

3.1 Proper exercise of executive power

Governments should be encouraged to establish independent anti-corruption processes for all aspects of public administration and facilitate their independent and effective operation.

3.2 Combating corruption in the judiciary

"An independent, impartial, honest and competent judiciary is integral to the upholding the rule of law, engendering public confidence and dispensing justice." (CLHP - IV)

The Commonwealth Secretariat is encouraged to re-issue and actively promote the Conclusions of the Commonwealth Judicial Colloquium on Combating Corruption within the Judiciary (Limassol Conclusions) in conjunction with the CMJA.

3.3 Combating corruption in Parliament

Parliaments should enact financial disclosure legislation and develop and implement codes of conduct requiring declaration of income, assets and liabilities.

4. Promotion of the Principles

ACTION:

A study of the Commonwealth's fundamental values should be included in civic education courses in schools. The Commonwealth Secretariat, in conjunction with the partner organisations, should sponsor the production of a version of the Principles which is accessible to the young.

Universities and law schools should be encouraged to include the study of the Commonwealth's fundamental values, and in particular the Principles, in their curricula for political and legal studies. The CLEA should assist universities and law schools in devising appropriate curricula.

The four partner organisations should ensure the wide dissemination throughout the Commonwealth of the Principles, the Guidelines, the Nairobi Plan of Action, and this document in user-friendly formats.

5. Implementation of the Plan

The Nairobi Plan of Action for Africa states:

"Governments are urged to establish mechanisms to monitor and evaluate the implementation of the Plan of Action in their respective jurisdictions.

Governments should accept the responsibility to provide the resources required to enable Parliaments, judiciaries and oversight institutions and bodies to properly discharge their functions.

The Secretariat is committed to co-ordinate and streamline the implementation of the Plan of Action.

The Secretariat, together with Governments and partner organisations will facilitate monitoring of the implementation of the Plan of Action.

The Secretariat will continue to facilitate capacity building programmes and to develop and integrate the Commonwealth (Latimer House) Principles into its programmes.

The Secretary-General of the Commonwealth Secretariat will report on the implementation of the Plan of Action to Heads of Governments, appropriate Ministers, and to meetings of senior officials."

ACTION:

These commitments should be extended to the rest of the Commonwealth pursuant to the proposals contained in Section 1.1 of this document.

End Notes

'CLHP = Commonwealth (Latimer House) Principles on the Accountability of and Relationship Between the Three Branches of Governments

Organisations' Websites

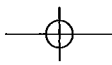
Commonwealth Parliamentary Association
www.cpahq.org

Commonwealth Lawyers' Association
www.commonwealthlawyers.com

Commonwealth Magistrates' and Judges Association
www.cmja.org

Commonwealth Legal Education Association
www.cleaonline.org

Commonwealth Secretariat
www.thecommonwealth.org



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