

aimed at improving the system include the hiring of 1,237 other professionals at the AG's chambers, from the current figure of 660.

Nigerian Women Protest Lack of Representation

Nigerian women stopped traffic for almost forty minutes at the Abuja Federal Secretariat to register protesting the low representation of women at the National Political Reforms Conference where less than 30 women were nominated as delegates. Prior to the conference, President Olusegun Obasanjo advocated an electoral reform whereby all registered parties in the country would set aside a quarter of their candidate allocations for women. However, only seven per cent of conference delegates nominated were women. The protestors included former Vice Chancellor of Lagos State University, Professor Jadesola Akande, Mrs. Sadatu Mahdi of Women Rights Advancement and Protection Alternative and Peoples Democratic Party Women Leader Josephine Anenih.

UK Anti-Terrorism Bill under fire

The Prevention of Terrorism Bill is causing controversy across the UK. The Bill stems from a ruling by the House of Lords in December 2004, which found that the existing provisions for internment of foreign terrorist suspects were not compatible with the European Convention on Human Rights (ECHR), because they discriminated between UK and foreign suspects.

The proposed legislation allows the Home Secretary to impose "control orders" short of house arrest – which could include restrictions on the right to liberty and privacy, and freedom of expression and association—on the basis of a mere suspicion of involvement in terrorism based on secret evidence. Subsequent review by the courts would be limited to narrow points of law and preclude reconsideration of the evidence. Breach of an order would be a criminal offence. The scheme has been criticized for failing to include due process safeguards to guarantee the right to a fair trial. The bill also contemplates the use of house arrest without a fair trial. This would require the UK again to suspend part of its obligations under the ECHR. House arrest control orders could be imposed on the basis of secret evidence subject to only a "reasonable grounds for suspicion" as the standard of evidence, below that required for a criminal conviction.

The Home Secretary conceded to public pressure by modifying its original proposal, which provided that a politician could issue orders to confine people suspected but not convicted of terrorist offences. Now, a judge is required to do so. Controversy surrounds the powers of judges in hearings on applications for the lesser control orders - which can impose restrictions short of house arrest. Lawyers in the Commons argued that their powers would be limited to scrutinising whether the home secretary was acting within the law, rather than on the merits of the case.

At the time of press, the Parliamentary Houses were locked in a struggle to determine the fate of the bill and to answer the unanswerable question of where the line should be drawn between upholding human rights and combating the threat of terrorism.

Zim legal system receives failing grade

Bar leaders, including the chair of the Bar of England and Wales Stephen Irwin QC, and representatives from Ireland, Scotland, South Africa, Hong Kong, Australia and New Zealand, visited Zimbabwe in April 2004 to produce a report on the state of the country's legal system. The report, published on 9 December 2004, depicts a culture of violence, arrest and intimidation against Zimbabwean judges and lawyers.

The team interviewed lawyers, academics, retired judges and students. The report says that the Chief Justice of Zimbabwe Godfrey Chidyausiku was appointed to his role directly from the High Court bench ahead of many Supreme Court justices. Chidyausiku CJ and other judges are also said to be beneficiaries of the controversial scheme to 'reallocate' farms in the ownership of

whites to black Zimbabweans.

The President of the Zimbabwe Law Society Joseph James and the Zimbabwean Bar Council both reviewed and approved the report.

Canadian Law to Extend Civil marriage to Same Sex Couples

On 1 February 2005, Minister of Justice and Attorney General of Canada Irwin Cotler introduced in the House of Commons the Civil Marriage Act. The Act will extend legal capacity for Civil Marriage to same-sex couples while respecting religious freedom. It is based on the proposed legislation referred to the Supreme Court of Canada Marriage Reference and includes consequential amendments to eight other federal statutes.

By way of background, in 2003, the Federal government proposed legislation to redefine marriage as a union "between two persons" and to protect religious freedom. It then referred the legislation to the Supreme Court of Canada for constitutional clarification by asking the court three questions. In January 2004, the government added a fourth question: whether the Charter of Rights and Freedoms requires that marriage be redefined. The court refused to answer the fourth question, but it held that the Government's proposed approach was constitutional and flowed from the equality rights protection of the Canadian Charter of Rights and Freedoms

"We understand that some Canadians are still struggling with this issue. But Canada is a land built on a tradition of tolerance and respect, rooted in a Charter that protects the equality rights of all Canadians," stated Minister Cotler. "Extending civil marriage to same-sex couples does not take away the rights of any others, nor does it relate to religious marriage. I would urge Members of Parliament and all Canadians to consider and support this important legislation."



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As I write this, I can already feel the buzz of pre-Commonwealth Law Conference (CLC) energy. The venue has been selected. Registrations have begun. The speakers have been designated. Melbourne 2003 was my first CLC and from the first moment I entered the conference rooms, I knew that it would not be my last. In our busy professional lives, the Commonwealth can have little daily relevance and Malaysia and St Lucia seem very far away from London. As a Canadian living in London, I can assure you that the Atlantic feels very wide indeed most days. What the CLC offers is an opportunity for an active dialogue with our colleagues from around the globe. To my mind, dialogue is the key to understanding – and understanding is the key to tolerance.

The past few months have seen the celebration of two important annual events on the human rights calendar. International Human Rights Day (IHRD) on 10 December commemorates the signing of the Universal Declaration of Human Rights. International Women's Day (IWD) on 8 March, marking the date on which the Prussian king had promised the vote for women. Although he did not keep that promise, by 1911 more than one million women and men attended rallies on that day in support of the right to vote and to hold public office. They demanded women's rights to work, to vocational training and to an end to discrimination on the job. IHRD marks a day when nations stood together to pronounce on the inalienable and inviolable rights of all members of the human family. IWD captures the ability of ordinary people to bring about extraordinary change. It is important to remember these days so that we do not forget how far we have come, nor how far we still need to go. Continued action is required to attain, maintain and develop the goals of these early pioneers and protect them through the rule of law. The CLC is an optimal environment to facilitate such action.

So please mark your calendars for the CLC to be held on 11-15 September 2005. What struck me most when I entered the conference rooms that first day in Melbourne was a feeling that I was part of something. Below, you will read about past conference highlights from two of CLAs own Council Members. We hope that their reflections will encourage you to create some of your own in London. I look forward to seeing you there!

Lisa Tomas –Editor, Clarion

Commonwealth Law Conference 2005: A firsthand perspective

The first Commonwealth and Empire Law Conference was held in London in 1955. Now, for the first time in 50 years, the Conference returns to London, as a combined conference of the Commonwealth Lawyers Association and the Law Society of England and Wales. The conference theme is "Developing Law and Justice". The draft programme has five streams, which encompass commercial and corporate law; human rights; criminal law and constitutional law; family law and the child; the legal profession and its future; and the judicial officer and the law of small states. The CLC will be held at the Queen Elizabeth II Conference Centre and Central Hall Westminster.

As excitement is starting to build, Clarion took the opportunity to speak to two longstanding supporters of the event – Colin Nicholls, current President of the CLA and Graeme Mew, honorary

Secretary of the CLA. London will mark the 8th Conference for Mr Nicholls and the 5th outing for Mr Mew.

When pressed to name their most unforgettable conference speakers of days past, both immediately named Justice Albie Sachs. Other favourite speeches include H.E.Sir Sridath Ramphal, Commonwealth Secretary General opening the Hong Kong Conference in 1983 and Anthony Gubbay, formerly Chief Justice of Zimbabwe, speaking at the Kuala Lumpur conference in 1999.

Mr Mew fondly reflected back on an inspirational moment from the CLC in Cyprus in 1993 where delegates spontaneously passed a "resolution" of support for lawyers acting in human rights cases and censure of the governments of Commonwealth countries who were persecuting them. The motion was proposed from the floor by the late Mr. Justice Deschenes from Quebec, Canada and although it was non-binding, received enthusiastic endorsement from all.

He then went to share a rather more delicate story where he asked a well known Chief Justice what he did for a living. It is truly a rare opportunity where one can call out "Chief Justice" and a majority of heads in the room turn.

Having been put to the challenge of summing up in a sentence or two why CLA members should attend the CLC 2005, the gentlemen had no difficulty in providing the following compelling summary:

"The Commonwealth Law Conferences are simply the best legal conferences out there. The quality and diversity of the speakers and of the delegates is outstanding. The people whose cases you read about will be there. The atmosphere is congenial. The opportunity to share your experiences with lawyers and jurists from all around the Commonwealth is invaluable. You will be energised by the experience. And, of course, London is alive and thriving and a great place to be in early September."

Calling all Aspiring Young Writers: 2005 Essay Competition

With the CLC just around the corner, the CLA has announced its traditional Legal Writing Competition for Young Lawyers in The Commonwealth Lawyer. As ever, this year's prize-winner will receive full sponsorship to attend the CLC in London, UK in September 2005. In addition, the winning essay will appear in the Commonwealth Lawyer.

This year's topic may inspire flashbacks of Public International Law classes, but it is one that is extremely topical and highly relevant in the current international climate. The question that Young Lawyers must answer is: "Is International Law really Law?" The judging panel will consist of a distinguished group of academics and practitioners.

To qualify as a young lawyer, individuals must be called to the bar or admitted to practice after 1 September 2000 and be under the age of 35. Entries must be no more than 2000 words and must be unpublished, original work and must be received by the CLA Office in London by 1 June 2005. For further information contact cla@sas.ac.uk with the Re line: ESSAY CONTEST.

continued on page 2

Loss of Human Rights Pioneer: Peter Benenson 1921-2005

Peter Benenson, the founder of Amnesty International who died in Oxford, England, on February 25, 2005. Mr Benenson was one of the founders of the modern human rights movement. His one-year Appeal for Amnesty was launched on 28 May 1961, inspired by an article about the arrest and imprisonment of two students in a café in Lisbon, Portugal, who had drunk a toast to liberty.

Mr Benenson was known for his belief in the power of ordinary people to do extraordinary things. His movement was founded in the belief that lawyers were not able sufficiently to influence the course of justice in undemocratic countries. It was necessary “to think of a larger group which harnessed the enthusiasm of people all over the world who were anxious to see a wider respect for human rights”.

In the first few years of Amnesty International’s existence, Mr Benenson funded much of the work and undertook missions himself. Mr Benenson went on to work with orphans from the Spanish Civil War, bringing Jews who had fled Hitler’s Germany to Britain, observing trials as a member of the Society of Labour Lawyers, helping to set up the organisation “Justice” and establishing a society for people with coeliac disease.

CLA hosts Panel on HIV/AIDS, and Asylum

On 20 January 2005, the CLA together with Para 55 HIV/AIDS Action Group hosted a panel discussion chaired by Mr Stephen Knafler of Two Garden Court Chambers. The meeting focused on HIV and the Commonwealth, and in particular considering HIV asylum seekers as a Human Rights issue. The Commonwealth Club served as backdrop to a panel that included: Dr Anton Pozniak (Consultant Physician & Honorary Senior Lecturer St. Stephen’s Centre, Chelsea & Westminster NHS Trust), Professor Alan Whiteside (Director Health Economics & HIV/AIDS Research Division (HEARD) University of Natal), Dr. Mandep Dhaliwal (Head: Care & Impact Mitigation Team, International HIV/AIDS Alliance). The evening was well attended by lawyers, medical practitioners, and activists. Hearty thanks must be extended to Claire Martin of the CLA for her tremendous organizational efforts.

Commonwealth Ministers meet on Eve of Beijing+10 Review

Between 28 February and 11 March 2005, the 49th session of the UN Commission on the Status of Women undertook a review and appraisal of the Beijing Declaration and Beijing Platform for Action and the 2000 Outcome Document (Beijing+10). The decade since the Fourth UN World Conference on Women has seen significant progress in the area of women’s human rights. Acts of violence against women, including rape, have been recognized as gross violations or abuses of international human rights and humanitarian law and as international crimes. The Declaration adopted by the 49th session has already been criticised as being too modest in scope and failing to do more than reaffirming commitments made ten years ago.

On the eve of the UN Beijing+10 Review, in New York, Commonwealth Ministers and officers from fifty countries met to take forward the implementation of the Commonwealth Plan of Action for Gender Equality 2005-2015. Hon Asenaca Caucau, Minister for Women, Poverty and Social Welfare, Fiji Islands, chaired the meeting. The Commonwealth Plan of Action for Gender Equality focuses on critical areas as democracy, peace and conflict, human rights, the rule of law, poverty eradication, economic empowerment, and HIV/AIDS. Ms Rachel Mayanja, UN Special Adviser on Gender Issues and Advancement of Women, spoke on the Beijing+10 Review and role of the Commonwealth Plan of Action.

CMJA to host Summer Conference in Ghana

With the theme of “Judicial Reforms Within The Commonwealth: - Impact, Driving Force And The Future”, the Magistrates and Judges of Ghana will be hosting its 2005 Conference from 31st July to 4th August 2005 at La Palm Royal Beach Hotel, Accra – Ghana.

Programme Highlights include Judicial Reforms in the Commonwealth, Evaluation and Challenges to Judiciaries in the Commonwealth, Techniques in Minimising Delays in Court Proceedings and Continuing Judicial Education and Judicial Reform. For further details see www.cmja.org or contact the CLA.

Back to Work: Is Swazi Judicial Saga Over?

In October 2000 approximately 200 people were rounded up by security forces and left in a field without food or shelter for refusing to recognise the authority of King Mswati’s older brother, Prince Maguga Dlamini, who assumed the chieftdom of the area. In 2002 the Swazi Court of Appeal ordered the government to return the evictees to their homes. The government refused, sparking the resignation of the entire Court of Appeal, consisting of six South African judges. The judges agreed to resume work in November 2002 on condition that their two-year-old ruling was executed. However, the Court failed to sit as planned after being informed that Chief Madeli Fakudze had been blocked by the police from returning to his home at Macetjeni in September 2004. Following the very night Fakudze returned to his home under watch by police, the Court resumed its activities. Judge President of the Court of Appeal, J P Leon recently stated that he and other judges were pleased to note that since their return Swaziland has been respecting the rule of law and the administration of justice. The Law Society of Swaziland expressed scepticism.

Canadian Takes over editorship of Commonwealth Law Bulletin

Gavin Murphy recently assumed the editorial reins at the Commonwealth Law Bulletin. Mr Murphy was previously legal counsel with the International Cooperation Group of the Department of Justice in Ottawa, Canada. He also worked at the UK’s Office of Fair Trading. A graduate of Ottawa’s Carleton University and the University of Ottawa Law School, Mr Murphy also holds a Masters of Law degree in International and European Legal Studies from the University of Durham.

Mr Murphy is the author of three books on the law and has written numerous scholarly articles for legal journals in Canada, England and Ukraine. He is a frequent guest lecturer at law schools and is an associate teaching member of the Durham European Law Institute.

Commonwealth Secretariat takes preventative measures to Combat Terrorism in South East Asia

South East Asian Commonwealth countries participated in the ‘Capacity-Building Seminar on Combating Terrorism’ in Kuala Lumpur, Malaysia, held on 22-26 November 2004 organised by the Commonwealth Secretariat’s Legal and Constitutional Affairs Division and South-East Asian Regional Centre on Counter-Terrorism. Its main objective was to enhance the skills of law enforcement officers and prosecutors in preventing, investigating and prosecuting terrorist acts and financing. It also aimed to promote international co-operation in the fight against terrorism. Around 40 participants from Bangladesh, Cyprus, Indonesia, Malaysia, Maldives, Malta, Nepal, Pakistan, the Philippines and Sri Lanka attended the workshop.

Three Years Later: Justice eludes victims of Gujarat violence in India

Three years after at least 2,000 people died at the hands of right wing mobs, there have been virtually no convictions. The remaining victims must live amongst those who raped and burned women, killed babies and children and men, targeting the Muslim community.

A report released by Amnesty International on 27 January 2005 describes the failure of the state of Gujarat to exercise due diligence to protect members of the minority community. The Report records that during the attacks, police stood by or joined in the violence and failed to record and investigate survivors’ complaints. Amnesty notes that there were few convictions because of the bias of public prosecutors and judges together with deficiencies in the law relating to rape and the absence of a witness protection program.

In August 2004, the Supreme Court of India ordered that over 2,000 complaints closed by police and some 200 cases which ended in acquittals of the accused be reviewed with a view to possible remedial action.

State of Emergency Declared in Nepal: Human Rights under Threat

A state of emergency was declared by King Gyanendra on 1 February 2005 after dismissing the government. Several provisions of the Constitution that protect fundamental human rights and freedoms have been suspended, including the right to privacy and freedoms of expression, press, assembly and association. Political leaders, students, human rights activists, journalists and trade unionists have been arrested and many remain in detention at time of press. Media censorship is being enforced by the army. Many human rights activists and journalists have fled the country.

Sindhunath Pyakurel, former chairman of the Nepal Bar Association was arrested on 1 February by security forces personnel at his office in Kathmandu and reportedly held incommunicado for nine days at the Kakani army barracks, an Armed Police and then in the Bhaktapur police station. On 9 February, after a habeas corpus petition (requiring him to be brought before a court or judge) was filed on his behalf, the Supreme Court ordered the security forces to bring Sindhunath Pyakurel before the Court within three days. Mr Pyakurel was released on the morning of 14 February after spending two weeks in detention.

There has been a significant increase in human rights abuses since the breakdown of a ceasefire between the government and the Communist Party of Nepal-Maoist in August 2003, including torture, detention, “disappearances”, displacement, abductions, and unlawful killings. More than 400 cases of “disappearance” have been reported since August 2003.

Juvenile Death Penalty Reintroduced in Pakistan

On 6 December 2004, a full bench of the Lahore High Court ruled that the Juvenile Justice System Ordinance (JJSO) be revoked so that children can be sentenced to death. The revocation was ordered based on findings by the Court that the Ordinance was “unreasonable, unconstitutional and impracticable”. The effect of the decision is the abolishment of juvenile courts meaning children will be tried in the same system as adults and can be sentenced to death.

On 1 July 2000 President Pervez Musharraf promulgated the JJSO which prescribes trials of juveniles separate from adult accused and prohibits the imposition of the death penalty on anyone who

has not attained the age of 18 years at the time of the alleged offence. In December 2001, President Musharraf commuted the death penalty of all those juveniles who had been sentenced to death before July 2000.

The judgement of the Lahore High Court arose from the petition filed by Farooq Naqvi, whose son had been sodomized and burned alive by a group of young men including a juvenile who was sentenced to life imprisonment. Farooq Naqvi believed that the juvenile should have been sentenced to death as well and had been unduly protected by the JJSO.

The Lahore High Court judgment stated that legal provisions existing before the promulgation of the JJSO were adequate to protect juveniles and that the courts existing sensitivity to the needs of juvenile offenders rendered the JJSO superfluous. It also stated that the ban on the death penalty had led to adults instigating juveniles to carry out capital offences on their behalf in the knowledge that they would be treated leniently under the JJSO. The judgment further challenged the definition of a juvenile as a person below 18 years, saying this was arbitrary and in any case the conditions in Pakistan accelerated maturity. Perhaps most astonishingly, the judgement held that the preferential treatment of juveniles violates the constitutional guarantee of equality before the law and equal protection of the law. It justified its decision on the basis that “what is relevant is the capacity of an accused person to understand the nature and consequence of his conduct and if an accused is found of sufficient understanding then no special treatment is warranted by the law”(with files from AI – for more information see www.amnesty.org)

Zimbabweans return to the polls on 31 March

On 31 March 2005, Zimbabwe’s third election since the political crisis that started in 2000. The ruling ZANU PF party will face opposition from the Movement for Democratic Change and tribal-based ZANU (Ndonga). The government is under pressure from the opposition to implement electoral guidelines agreed to under the Southern African Development Community (SADC) Mauritius Protocol on free and fair elections.

The Mauritius Protocol provides for access to the public media by the opposition. This has not been satisfied by the government. However, the government has agreed to single-day voting, the use of translucent ballot boxes and it has established an independent electoral commission.

The government was obliged to invite foreign observers at least 90 days before elections. Invitations were only sent to 32 selected observer missions less than 40 days before the election. South Africa’s ruling African National Congress is among the observers which include twenty three Africans and one European representative. Observers are being charged US\$100 each, and journalists US\$150 each to attend.

There are concerns that countries and organisations which did not declare the 2002 presidential elections to be free and fair appear have been excluded from the observers’ list. Criticism has also been lodged against the government for the extremely short period to rule on the legitimacy of the election. The pre-election period has not so far been characterised by violence as was the case in 2000 and 2002.

Kenya to step up Criminal Justice System

One hundred and fifty professional prosecutors are to be hired, together with an equal number of lay prosecutors as part of radical reforms in the judicial system. The changes are aimed at phasing out police prosecutors. Currently, police officers carry out most prosecutions under delegated authority from the AG’s office. The goal is to facilitate independent prosecution by the AG and independent adjudication by the judiciary. Other measures

continued on page 4