

# THE COMMONWEALTH LAWYERS' ASSOCIATION (CLA)

## Activity Report July 2006 - August 2007

The Commonwealth Lawyers' Association (CLA) exists to maintain and promote the rule of law throughout the Commonwealth, by ensuring that the people of the Commonwealth are served by an independent and efficient legal profession.

The CLA's objectives, as enshrined in its Constitution, are to maintain and promote the rule of law in the Commonwealth. This is achieved by: -

- ensuring that the common bond of Commonwealth is preserved and fostered;
- strengthening professional links between members of the legal profession;
- maintaining the honour and integrity of the profession, and the promotion of uniformity in the standards of professional ethics; and
- encouraging improved standards of education and the promotion of exchanges of lawyers and students.

### ***Projects & Activities:***

#### ***Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government***

1. In June 1998, a group of distinguished parliamentarians, judges, lawyers and legal academics drafted guidelines which would provide an operational manual of good practice with regard to the fundamental values of the Commonwealth and the commitments contained in the Harare Commonwealth Declaration and Millbrook Commonwealth Action Programme. The guidelines were further refined and endorsed by Commonwealth Heads of Government in November 2003 as the *Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government* (the Principles).
2. The Principles provide an effective framework for the implementation of the Commonwealth's fundamental values of democracy, good governance, human rights and the rule of law and became an integral part of these values following agreement by the Commonwealth Heads of Government at their last meeting in Malta in November 2005.
3. The CLA has been actively engaged in the promotion and implementation of the Principles, most notably through the Nairobi Plan of Action for Africa, but has also developed a joint project that aims to build on this work, in addition to further strengthening and developing the Principles. An initial concept note was submitted to the Global Governance and Transparency Fund of the UK Department for International Development (DFID) and the CLA and Commonwealth Magistrates and Judges Association (CMJA) were subsequently invited to submit a full proposal. The deadline for receipt of the full proposal is 28<sup>th</sup> September 2007. Further details of the proposed project are listed below.
4. Article 3. 7 of the Nairobi Plan of Action for Africa on the Principles provides that: "*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.*" In order to assist the Secretary General in his reporting, the CLA, Commonwealth Legal Education Association (CLEA) and CMJA made a submission outlining the issues that have arisen in the legal and judicial sphere in relation to the implementation (or lack of it) of the Principles across the Commonwealth. The Secretary General of the Commonwealth will report at the Commonwealth Heads of Government Meeting in Kampala, Uganda in November 2007.

***UK Department for International Development (DFID) - Global Governance and Transparency Fund (GTF)***

5. The UK Department for International Development (DFID) established a £10 million fund for Global Governance and Transparency (GTF). Organisations were invited to submit concept notes on proposed projects in June 2007.
6. It is recognised that good governance is fundamental to alleviating poverty and that the executive, parliament and judiciary should be independent, unhindered by corruption and held accountable. Accordingly, the CLA and CMJA developed a joint project in harmony with their respective mandates and submitted a concept note to the GTF.
7. The primary goal of the proposed project is to better inform the public of the building blocks of democracy and good governance in order to enable them to assess their Government's performance and hold them to account. The project seeks to establish how well Commonwealth countries are exercising good governance, upholding the separation of powers and the rule of law and develop simple indicators to assess this. This project will adopt a number of approaches in educating the public, conducting and compiling the research, and will both be an example of, and encourage, participatory democracy. The CLA and CMJA will work closely with their local partners, national and regional civil society and Commonwealth organisations in the implementation of the project.
8. The concept note was approved in July 2007 and that CLA and CMJA were invited to submit a full proposal. The deadline for submission of the proposal is 28<sup>th</sup> September 2007.

***Submission on Deferral of Call to General Council of the Bar of England & Wales***

9. The CLA made a submission to the Bar Standards Board of the General Council of the Bar of England & Wales on the issue of deferral of call. Proposals were made which, if implemented, would end the current practice whereby individuals can be called to the Bar of England and Wales and, hence, acquire the title of 'barrister at law' upon completion of the Bar Vocational Course, but without completing a pupillage.
10. The CLA raised concerns about the potential impact of such proposals on the wider profession throughout the Commonwealth.
11. Following the consultation, the Bar Council decided that the proposed changes to deferral of call were a disproportionate response to the risk of public detriment caused by the present rules. As a result, they will introduce an online register for all barristers who hold a current practising certificate and all barristers undergoing a pupillage will have the title 'pupil barrister' until they are called to the bar.

***Pakistan***

12. On 14 March 2007, the CLA issued a statement expressing grave concern at the circumstances surrounding the removal from office of Chief Justice Iftikhar Mohammad Chaudhary in the absence of any public details of the allegations said to have warranted his removal.
13. It was noted in particular that the existence of an independent and impartial judiciary is one of the cardinal features of any country governed by the rule of law. By virtue of its membership of the Commonwealth, the Islamic Republic of Pakistan is committed to the shared fundamental values and principles of the Commonwealth, at the core of which is a shared belief in, and adherence to, democratic principles including an independent and impartial judiciary.
14. The CLA liaised closely with the Political Affairs and Legal & Constitutional Affairs divisions of the Commonwealth Secretariat, in addition to facilitating the flow of information into, and out of, Pakistan to both CLA members and other related organisations.

15. On 20<sup>th</sup> July, the Supreme Court annulled the President's order and all charges against the Chief Justice were dismissed and he was re-instated to office.

## *Fiji*

### *16. Statement on Fiji- 14 December 2006*

On the 14<sup>th</sup> December 2006, the CLA issued a statement expressing concern about events in the Republic of Fiji which resulted in the overthrow of the democratically elected government and the assumption of executive control by the military.

17. It was noted that by virtue of its membership of the Commonwealth, the Republic of Fiji is committed to the shared fundamental values and principles of the Commonwealth, at the core of which is a shared belief in, and adherence to, democratic principles. The CLA urged Fiji to restore the democratically elected government as soon as possible.

### *18. Opinion*

In March 2007, the CLA commissioned an Opinion on the removal of the Chief Justice and the subsequent proceedings of the Judicial Services Commission (JSC). James Dingemans QC and James Hawkins wrote the Opinion and Clifford Chance provided pro bono assistance.

19. In their opinion, there are very limited circumstances in which a meeting of the JSC can be chaired by a member of the JSC other than the Chief Justice and these did not exist at the time of the meeting on 15<sup>th</sup> January 2007. Although the JSC was meeting to recommend the appointment of an Acting Chief justice, the office of Chief Justice was not vacant; the Chief Justice was not absent from duty or Fiji or unable to perform the functions of his office within the meaning of the Constitution. They argued that the meeting of the JSC was not properly constituted and that the doctrine of necessity, the exact scope of which is controversial, did not extend to make legitimate the purported appointment of the Acting Chief Justice made by the JSC.

20. The Advice was widely circulated and received some press coverage in Fiji. The Fiji Law Society has since instituted legal proceedings challenging the appointment of the Acting Chief Justice by the JSC.

### *21. Travel Ban – Mr Graham Leung - 11 July 2007*

Mr. Graham Leung, former President of the Fiji Law Society, and CLA Council member, has been harassed by the Fijian Government and was recently subjected to an arbitrary travel ban. The CLA wrote to the relevant authorities noting that Mr. Leung had not been informed of the reasons why he could not travel outside Fiji. He was given no prior notice that his freedom of movement would be so restricted and was not given an opportunity to make representations to the relevant authorities as to why his name should not be included on the list. Furthermore, the procedure to remove names from the list was unclear.

22. The practical effect of restricting Mr. Leung's freedom of movement was also to limit his freedom of speech and these restrictions would have impacted negatively upon Mr. Leung's ability to fulfil commitments to participate in and speak at international meetings and events, such as the 15<sup>th</sup> Commonwealth Law Conference and LAWASIA conference.

23. The CLA called upon the Fijian Government to honour its stated obligations to fundamental freedoms and to rescind the travel restrictions placed on Mr. Leung. Furthermore, the CLA requested information as to the process and criteria taken into consideration by the government in determining whether or not to impose travel restrictions on a particular individual. Additional information as to the procedure to seek review or removal of a name from the list was also requested.

24. Although the CLA did not receive any acknowledgment or formal response from the Fijian Government, the travel ban was lifted.

## **Zimbabwe**

### *25. Trial Observation*

The CLA and the Bar Human Rights Committee of England and Wales (BHRC) secured funding through the Edinburgh Trust Fund to send a trial observer to Zimbabwe in order to monitor the trial of the Trustees of the Voice of the People (VOP) radio originally scheduled to occur on the 25<sup>th</sup> of August 2006. Arnold Tsunga (Acting Secretary- Law Society of Zimbabwe, Executive Director- Zimbabwe Lawyers for Human Rights and National Chairman- Zimbabwe Human Rights Association [Zimrights] and Lawrence Chibwe, amongst others, were charged with broadcasting without a license, a criminal offence.

26. The VOP was established in 2000 and produces educational programmes on issues such as HIV/AIDS and human rights. The VOP had applied for a broadcast permit in compliance with the Broadcasting Services Act of Zimbabwe 2001, but the application for such a permit was denied. Individuals affiliated with the VOP have been routinely harassed and the offices of the program were bombed and demolished in 2002. The VOP is broadcasted on shortwave radio from Radio Netherlands based in Madagascar; though the government of Zimbabwe blocks the VOP's radio signal.

27. The CLA's interest in the trial arose from the unprocedural, unlawful, and unconstitutional manner in which the defendants were treated. The trial, however, never took place as the magistrate refused the request by the state for a third postponement of the trial and the defendant's were acquitted thereafter.

### *28. Statement - 14 March 2007*

The CLA issued a statement on 14<sup>th</sup> March 2007 conveying alarm over the visible mistreatment of opposition party members and civil society activists brought to the High Court in Harare after their arrest at a Save Zimbabwe Campaign prayer meeting. The CLA noted reports that Officers in Charge were obstructive in relation to the provision of legal representation to the detainees and that, if correct, this would be in violation of Article 18 of the Constitution of the Republic of Zimbabwe and internationally accepted standards of treatment of untried prisoners.

29. The CLA urged the Government of the Republic of Zimbabwe to respect the role of lawyers as detailed in the United Nations Basic Principles on the Role of Lawyers (adopted in 1990) and ensure that lawyers are able to access their clients without any hindrance and freely discharge their duties in the interest of effective administration of justice.

### *30. Statement on Zimbabwe – 9 May 2007*

The CLA, the Solicitors' International Human Rights Group (SIHRG) and the Bar Human Rights Committee (BHRC) issued a joint statement expressing concern about reports of the violent break up, assault and subsequent dispersal of lawyers and officers of the court participating in a peaceful march, by members of the Zimbabwe Republic Police on 8<sup>th</sup> May 2007.

31. Notification of the peaceful march had been given in accordance with the terms of Section 24 of the Public Order and Security Act. The march had been sparked by the recent unlawful arrest of lawyers Alec Muchadehama and Andrew Makoni and was against the ongoing harassment of legal practitioners in the course of their duties. It was intended to present a petition to the Minister of Justice, Legal and Parliamentary Affairs and the Commissioner of Police.

32. The CLA, SIHRG and BHRC noted in particular that a number of lawyers were forced into a truck, assaulted and later dumped several kilometres away.

33. The CLA, SIHRG and BHRC renewed earlier calls upon the Government of the Republic of Zimbabwe to respect the role of lawyers, as detailed in the United Nations Basic Principles on the Role of Lawyers (adopted in 1990) and the United Nations Declaration on Human Rights Defenders (adopted in 1998), and to ensure that lawyers are able to access their clients without any hindrance and freely discharge their duties in the interest of effective administration of justice.
34. *Arrest – Mr. Tinoziva Bere & Colleagues 15 May 2007*  
The CLA provided assistance and mobilised various organisations following the arrest, without charge, of Mr. Tinoziva Bere and nine other lawyers in Mutare on 15 May 2007. Mr. Bere is a Council member of the Law Society of Zimbabwe and the CLA.
35. The lawyers were participating in a peaceful march against the ongoing harassment of legal practitioners in the course of their duties when they were bundled into a police truck and taken to Mutare Central Police Station. Notification of the march had been given in accordance with the terms of Section 24 of the Public Order and Security Act.
36. The lawyers were released unharmed several hours later and Mr. Bere succeeded in delivering a copy of the same petition from members of the Law Society of Zimbabwe that his colleagues had attempted to deliver in Harare one week earlier.

#### ***Interventions***

37. The CLA has continued to build on its earlier successful role in the landmark case of *Rasul v Bush* where, in 2004, the US Supreme Court held that habeas corpus jurisdiction extended to Guantanamo Bay.
38. *US Supreme Court – Salim Ahmed Hamdan v Donald Rumsfeld et al*  
Together with the Bar Human Rights Committee of England & Wales, the CLA submitted an Amicus brief in the US Supreme Court Appeal in *Salim Ahmed Hamdan v Donald H Rumsfeld et al* relating to issues of habeas corpus on 6<sup>th</sup> January 2006. The Appeal was heard in March and judgement in favour of the brief was delivered in July 2007.
39. The authors of the brief were Peter Carter QC, Timothy Otty, Mark Muller and Stephen J Pollak.
40. *US Supreme Court - Boumediene v. Bush and Al Odah v. United States*  
On 29<sup>th</sup> June 2007, the US Supreme Court granted certiorari in *Boumediene v. Bush* and *Al Odah v. United States*. The consolidated cases address, amongst other issues, whether the provisions of the Military Commissions Act of 2006 that bar Guantanamo detainees from pursuing habeas corpus petitions violate the Suspension Clause of the U.S. Constitution, and whether the detainees are entitled to pursue habeas claims in federal court.
41. The CLA submitted an amicus brief on 24<sup>th</sup> August 2007. The authors of the brief were Sir Sydney Kentridge QC, Colin Nicholls QC, Timothy Otty QC and John Townsend Rich.

#### ***Death Penalty - Statement in the case of Mirza Tahir Hussain***

42. In October 2006, the CLA issued a statement urging the Government of Pakistan not to carry out the death sentence imposed on Mr. Mirza Tahir Hussain. Mr Hussain, a United Kingdom and Pakistan citizen.
43. Mr. Hussain was tried and convicted of murder and had been in detention for the offence for eighteen years. The CLA noted that his conviction by the Federal Shariat Court followed his acquittal by the Lahore High Court and serious concerns had been raised as to the fairness of the trial, sentencing and re-conviction. Furthermore, the sentence of death was based on a

split two to one judgment with the dissenting judge strongly recommending his acquittal. Execution eighteen years following arrest amounted to cruel and unusual punishment.

44. The CLA was able to facilitate a visit to Mr. Hussain in prison by Mr. Mohammed Akram Sheikh, Senior Advocate and Council member of the CLA. Mr. Sheikh concluded that, in the event that the President of Pakistan did not authorise a commutation of the death sentence, or grant clemency, there remained viable legal remedies that could prevent Mr. Hussain's execution. He received instructions to act for Mr. Hussain in the event that his petition for mercy was not granted. Had the diplomatic efforts to save Mr. Hussain failed, Mr. Sheikh was ready to file a fresh petition and bring such proceedings as were appropriate.
45. On 16<sup>th</sup> November 2006, the death sentence was commuted to life imprisonment. Mr. Hussain was subsequently freed and has since returned to the United Kingdom.
46. Copies of all briefs, interventions and statements issued by the CLA can be downloaded from [www.commonwealthlawyers.com](http://www.commonwealthlawyers.com)

#### ***'Official' Commonwealth***

47. The CLA continues to work closely with the Political Affairs and Legal and Constitutional Affairs divisions of the Commonwealth Secretariat. The Secretary General attended a number of civil society consultations organised by the Commonwealth Foundation.
48. In October 2006, the CLA, CMJA and CLEA made a joint submission to the Commonwealth Consultation on Membership. The major emphasis of the submission was the need to ensure that potential members are actively engaged in implementation of the Commonwealth's fundamental values of democracy, good governance, human rights and the rule of law including the Commonwealth (Latimer House) Principles.
49. The Commonwealth Membership Taskforce will report to Commonwealth Heads of Government at their meeting in Kampala, Uganda in November 2007.

#### ***Seminars, Workshops & Meetings:***

50. *Opening of the Legal Year*  
The President, Graeme Mew, represented the CLA at the official Opening of the Legal Year and other related events in October 2006.
51. *The Tenth Commonwealth Lecture – 15 May 2007*  
Mr Colin Nicholls QC represented the CLA at the annual Commonwealth Lecture which was delivered by Dr. Ali Mazrui. The lecture focused on the power of language and the politics of religion in the Commonwealth and was followed by a reception.
52. *Commonwealth Day Celebrations – 12<sup>th</sup> March 2007*  
The Secretary General attended the Multi Faith Observance of Commonwealth Day at Westminster Abbey in London. The Observance was attended by HM The Queen and HRH Duke of Edinburgh. Colin Nicholls QC represented the CLA at the evening reception hosted by the Secretary General of the Commonwealth, the Rt. Hon Don McKinnon, which was held at Marlborough House, the headquarters of the Commonwealth Secretariat.
53. *Joint Meeting CLA & Law Council of Australia – 18 July 2007*  
On 18<sup>th</sup> July 2007, the CLA and the Law Council of Australia held a joint meeting at which Mr Gordon Hughes delivered an address on the current situation and rule of law in Fiji. The meeting was kindly hosted by Tresscox Lawyers LLP and was particularly well attended.
54. *Annual General Meeting Commonwealth Law Conference Foundation Limited – 20 July 2007*  
Ron Heinrich represented the CLA at the Annual General Meeting of the Commonwealth Law Conference Foundation Limited that was held in Hong Kong in July 2007.

### **Commonwealth Law Conference (CLC):**

55. The best known activity of the CLA is the Commonwealth Law Conference (CLC). The 15<sup>th</sup> Commonwealth Law Conference will take place in Nairobi, Kenya from 9<sup>th</sup> – 13<sup>th</sup> September 2007. The theme of the conference is '*Globalisation, Governance & the Law in the Commonwealth*' and over 1000 delegates are registered to attend.
56. *CLC 2007*  
The CLA was particularly involved in all aspects of the organisation of the conference, and has worked closely with the Law Society of Kenya (LSK) and Liberty (conference organisers).
57. The CLA organised a legal writing competition in the run up to the conference. The prize is fully funded attendance at the CLC. The competition was widened to include young lawyers and law students and entrants were invited to submit papers of no more than 2000 words on the following topic - '*Assess the impact of globalisation on the legal profession in the Commonwealth*'.
58. A distinguished panel consisting of Boma Ozobia (Nigeria), Dr. Peter Slinn (England & Wales) and Sir Michael Wood KPMG (England & Wales) judged the entries. The overall winner was Sarah Pidgeon (New Zealand) and there were two runners up (Trinidad & Tobago). Sarah Pidgeon will be attending the conference in Nairobi and her essay will be published in the December issue of '*The Commonwealth Lawyer*'.
59. The CLA assisted with the identification and invitation of judges for the Commonwealth Moot Competition. The CLA has also provided prizes and certificates for the participants and winners of the moot.
60. The CLA assisted with the organisation of a number of satellite events that are due to take place in the wings of the conference. These include the following:  
  
Commonwealth Association of Law Reform Agencies (CALRAS)  
Commonwealth Association of Legislative Council (CALC)  
CLEAR Christian Lawyers for Justice
61. The CLA will have an exhibition stand for the duration of the conference. This will provide an opportunity to learn more about the ongoing work of the organisation. Free publications will be disseminated including copies of *The Commonwealth Lawyer* and *Clarion*, the Commonwealth (Latimer House) Principles and the Gender and Human Rights Toolkit. The CLA will share the stand with the CMJA and will also provide space for materials from the CLEA and CALRAS.
62. *CLC 2009*  
Preparations for the 16<sup>th</sup> Commonwealth Law Conference have begun and the CLA has assisted with the provision of the conference reports from Melbourne and London, in addition to responding to initial queries.
63. The CLA has also assisted in facilitating the promotion of the CLC 2009 at the 15<sup>th</sup> Commonwealth Law Conference.

### **Membership:**

64. The CLA has been heavily involved in the implementation of the changes to the membership structure and fees that were approved by the General Meeting in September 2005.

65. The membership restructuring has been concluded. The 6-month bridging membership period and one full cycle of the annual membership have been completed. The changes have simplified the application procedure for members, general administration and accounting.
66. Every two years, the CLA publishes a directory of members. There were a number of problems with this directory in that it was effectively 'out of date' almost as soon as it was published and, as a hard copy, it was of limited value to the members. It was suggested that it might be more cost effective and efficient to create an online directory of members.
67. In order to create the online directory, it has been necessary to standardise information as to professional expertise and areas of interest for every member. A standard list of expertise was drafted and circulated to members for completion and return. Simultaneously, the membership database was amended to accommodate these changes and simplify the data entry. The information has been updated upon receipt and will be utilised in creating the online members database.
68. Members were given the choice of opting out of the online directory and it will only be available to CLA members in the first instance.

**Website:**

69. The website was overhauled and updated in July 2007.
70. The website will continue to be improved with the inclusion of a member's only section, online member's directory, and, amongst other things, podcasts of keynote speeches delivered at the previous conferences.

**Publications:**

71. *The Commonwealth Lawyer*  
The Commonwealth Lawyer is produced and disseminated three times per year in April, August and December.
72. A commercial publisher, Tottel, has agreed to meet the cost of publication which has reduced the overall production costs of the journal by approximately one third. The CLA continues to meet the costs of dissemination.
73. Copies of the journal will be included in the delegate bags for the 15<sup>th</sup> Commonwealth Law Conference and particular articles have been added as highlights on the publications page of the website.
74. *Clarion*  
The Editor of the Clarion, Lisa Tomas, resigned in 2006. Elizabeth Cruikshank, Editor of the Association of Women Solicitors magazine, agreed to act as an interim Editor for two issues.
75. The Secretary General assisted the Editor in identifying suitable content for the issue and also worked closely with the web team in relation to the design and final production of the newsletter in e-format for distribution to the membership via email.
76. The timing of the publication of Clarion has been amended to June, October and January in order to increase the frequency with which the CLA is in touch with the members.
77. The Clarion continues to be available to download off the website in pdf format.
78. *Bulletin*  
The Secretary General is Editor of the Bulletin which is circulated to members three times a year. The Bulletin is a new publication aimed at updating the members on a regular basis about specific CLA activities. It is different to the Clarion which contains legal news and

information on particular cases or developments in different jurisdictions across the Commonwealth.

79. To date, three issues of the Bulletin have been produced and disseminated to the members. The timing of the issues is again set in order to facilitate increased contact with members.

80. *Guide to Common Law Qualification*

James Tumbridge has updated the 'Survey on the Mobility of Commonwealth Lawyers', now renamed the 'Guide to Common Law Qualification in the Commonwealth' and this was published by the CLA in August 2007.

81. The book will be launched at the 15<sup>th</sup> Commonwealth Law Conference in Nairobi in September 2007.

**Other:**

82. *Commonwealth Human Rights Initiative (CHRI)*

The CLA is a Founder and Trustee of the Commonwealth Human Rights Initiative (CHRI) and is also represented on the Advisory Commission of the CHRI. The Secretary General and Colin Nicholls QC have continued to attend the Trustee Committee meetings of the CHRI.

83. There has been significant restructuring of the organisation over the last few months and the Trustee Committee has effectively been disbanded. An Executive Committee for a new office of CHRI focusing on Europe, the Caribbean and North Americas, has been established. The office is based in London.

84. The Secretary General became a Director of the new office for the duration of the transition.

85. *Para 55*

The CLA is a member of the Para 55 Group in the fight against HIV/AIDS and regularly attends meetings of the group, as well as participating in their activities.

86. *Commonwealth Legal Forum*

The CLA initiated and established the Commonwealth Legal Forum (the Forum) in October 2007. The Forum is a group of Commonwealth legal associations (including the Legal and Constitutional Affairs Division of the Commonwealth Secretariat and the British Institute of International and Comparative Law) that meets on a quarterly basis to discuss ongoing activities and areas of mutual interest.

**Collaboration:**

87. The CLA has continued to work closely with and improve existing linkages with its institutional members, the Political Affairs and Legal & Constitutional Affairs divisions of the Commonwealth Secretariat, the CLEA, CMJA, CAPSL, the Commonwealth Association of Legislative Counsel, the Commonwealth Association of Law Reform Agencies, the Commonwealth Human Rights Initiative, the British Institute of International & Comparative Law, the East Africa Law Society, the SADC Lawyers Association, and LAWASIA.

Claire Martin  
Secretary General  
5 September 2007