

## **ROUNDTABLE DISCUSSIONS**

**(Updates on Commonwealth Secretariat Activities)**

## REPORT OF ACTIVITIES OF THE COMMONWEALTH SECRETARIAT IN THE LEGAL FIELD

Paper by the Commonwealth Secretariat

### INTRODUCTION

1. This paper reviews the activities of the Secretariat in the legal field and spans the period from the last Law Ministers Meeting held in St Vincent and the Grenadines in November 2002, to the end of October 2005.

2. At the last Commonwealth Law Ministers Meeting the agenda was largely based on the principles set out by Commonwealth Heads of Government in their 2002 Coolum Declaration. These principles reaffirmed the Commonwealth's commitment to democracy, the rule of law, good governance, and freedom of expression and the protection of human rights. They also condemned in the strongest possible terms, all forms and manifestations of terrorism and re-affirmed the determination to work to promote people-centred sustainable development. The work of the Division very broadly reflects this mandate in terms of its emphasis on terrorism and training in counter-terrorism initiatives and its work on access to justice and keeping countries abreast with the development of international legal norms.

3. The 2003 Commonwealth Expert Group Report on Development and Democracy rightly identified one of the central problems of the stalled processes of democratisation as institutional weakness noting that effective institutions are essential to successful democratisation. Many new and fragile democracies lack the institutional infrastructure necessary to embed democratic practices into a viable reality, capable of promoting the rule of law. It is therefore important to have the human resource capacity, viable institutional mechanisms and appropriate constitutional and legal frameworks to check potential abuses of executive power and challenge corruption. These issues were reflected in the agendas of the 2004 Senior Law Officials and Attorney-Generals of Small Jurisdictions meetings. This year's Law Ministers Meeting sees the addition of the following legal policy issues amongst others for consideration: Developing Legal Education in the Commonwealth; Law Reform Agencies: Their Role and Effectiveness; Juvenile Justice Policy; Control of the Proliferation of Small Arms, Ammunition and Light Weapons in the Commonwealth; Guidelines for an Independent Regulatory Framework for Commonwealth Broadcasting Organisations; and Implementing International Environmental Instruments in Small States.

### GENERAL ISSUES

4. In light of the renewed agreements made by member states at the 2003 Commonwealth Heads of Government Meeting (CHOGM) and the Secretariat's strategic plans, the Legal and Constitutional Affairs Division (LCAD) continues to give priority to the provision of technical assistance and policy advice on strengthening and furthering the capacity of judicial and legal processes and institutions. Particular attention has been paid to the development of model legislative provisions and programmes to support the domestic implementation of legislation, developing stronger legal frameworks and enhancing operational capacity to address issues of security, terrorism, money laundering and asset repatriation. Support was also given to enhancing conducive business and investor regulatory frameworks through regional meetings.

5. The exercise of prioritisation and strategic planning led by the Strategic Planning and Evaluation Division (SPED) of the Secretariat has ensured that LCAD plans its divisional programmes in a more robust manner to make optimum use of resources. LCAD has also been given significant support in some of its strategic programmes by external donors which has enabled the Division to carry out a record number of activities for the period under review as will become apparent from the reports of the work of its three sections below.

6. LCAD continues to provide in-house legal advice to management on a varied number of issues. With the recent implementation of the Commonwealth Secretariat's 2003 Terms and Conditions of Service a substantial amount of time and resources has been devoted to contractual and human resource issues. Additionally, the Division continues to represent the Secretariat when actions are brought before the Commonwealth Secretariat Arbitral Tribunal. The United Kingdom Government passed the International Organisations Act of 2005 on 7 April 2005 to extend immunities to the Arbitral Tribunal Members amongst other things. LCAD also ensures the best possible legal representation where the Secretariat has had suits filed against it before the UK Courts and Employment Tribunals.

## ORGANISATION AND STAFFING OF THE DIVISION

7. The former Director of LCAD, Ms Dianne Stafford from Australia resigned in 2003. Mrs. Betty Mould-Iddrisu from Ghana was appointed in her place and assumed office in November 2003.

8. Ms Kimberly Prost former Head of the Criminal Law Section (CLS) also resigned early in 2005 to take up a position with the UN Office on Drugs and Crime (UNODC) where she continues invaluable global work in criminal law. Ms Arvinder Sambei of the UK assumes office as Head of the CLS in September 2005 and we look forward to the considerable expertise she brings to bear on the Secretariat's cutting edge work in this area.

9. Other staffing changes have taken place and LCAD is in the process of recruiting several other legal staff to replace those whose current contracts have expired or have resigned.

10. LCAD has also enthusiastically embarked on a programme of interns and since 2004 has had interns and legal assistants from the UK, Mozambique, British Virgin Islands, St Lucia, Mauritius and Sri Lanka amongst others; we anticipate continuing with this diversity over the next few years. This programme has enabled LCAD to be enriched with the interns bringing a wealth of diversity to our legal programmes.

## PROVISION OF INFORMATION

### Commonwealth Law Bulletin

11. The *Commonwealth Law Bulletin (Bulletin)* is central to LCAD's prime function of disseminating information on legal developments around the Commonwealth. First published in 1974, this year the *Bulletin* celebrates 30 years of publication and continues to be the flagship publication of the Secretariat in the legal field.

12. Although originally a quarterly publication, from 1996 onwards the *Bulletin* has been published bi-annually, in June and December for economic reasons, but without any reduction in page content. Again for reasons of economy, production was moved overseas in 1998, but problems of time and distance have continued to beset the timely production of this publication.

## CRIMINAL LAW SECTION (CLS)

### Good Governance and the Elimination of Corruption

13. The results of a survey on the status of mechanisms to fight corruption in member countries indicated a gap in the legislative frameworks of many member countries. As a result, a programme was developed by the Criminal Law and Justice Sections to encourage and assist member countries to adopt anti-corruption legislation.

14. In April of 2004 an Expert Group meeting was convened to consider model legislation and guidelines. The Report of the Group is being finalised and will provide drafting instructions for model legal provisions which will then be prepared by a legislative drafter for consideration by Law Ministers at their next meeting.

15. Following the recommendation of the Judicial Colloquium on Corruption (Cyprus, 2002), the CLS has held two regional workshops for the Caribbean (St Lucia, June 2003) and Southern African (Mauritius, 2004) on Anti-Corruption and Integrity in the Judiciary. Details of the programme are contained in SOLM(04)11.

### *Provision of Information*

16. The major publications from the CLS are *Commonwealth Legal Assistance News (CLAN)* and *Crimewatch*.

17. The Money Laundering and Mutual Assistance in Criminal Matters manuals have been updated, the former having been expanded to include legislation relating to the Financing of Terrorism. The CLS will introduce a new manual that contains a collection of the laws of Commonwealth countries on Terrorism and Terrorist Financing.

18. The CLS also maintains a database on the laws of member jurisdictions relating to the London Scheme for Extradition within the Commonwealth and the Harare Schemes on Mutual Assistance in Criminal Matters and the Transfer of Convicted Offenders, as well as on a broad range of topics such as money laundering, proceeds of crime, corruption and recently, terrorism. From its database and information obtained from member countries, the Section distributed updated versions of a manual entitled *International Co-operation in the Administration of Criminal Justice*, which summarises existing laws in member countries that implement the three Commonwealth Schemes. This document is to be updated again this year and distributed to member countries.

### *Asset Repatriation Working Group*

19. At their Meeting in Abuja in December 2003, Commonwealth Heads of Government requested the Secretary-General to establish a Working Group to examine the modalities of co-operation among Commonwealth countries in respect of the repatriation of illegally obtained wealth. The Group which was established, met four times and submitted a comprehensive Report in July 2005, containing various suggestions for consideration by Law Ministers, including proposals to amend the Commonwealth Scheme of Mutual Legal Assistance in Criminal Matters (Harare Scheme), Civil Forfeiture of Assets and Return of assets to the States/victims. This Report is included in the Roundtable discussion information documents for the consideration of Law Ministers.

### *International Criminal Court*

20. The CLS has continued to provide assistance to member countries which are signatories or parties to the Rome Statute of the International Criminal Court with the preparation and introduction

of implementing legislation. Assistance with the development of drafting instructions and drafting implementing legislation has been provided to some countries upon request.

### ***Terrorism***

21. The Counter-Terrorism Project forms a major part of the work of the CLS. At the last SOLM, the CLS reported that it had prepared a model law on Counter-Terrorism following the recommendations of an Expert Working Group set up for that purpose. The model law is intended to assist member countries with implementing their obligations under United Nations Security Council Resolution 1373. The CLS also prepared, with funding received from the Government of Canada, an implementation kit for the existing 12 UN Counter-Terrorism Conventions. Both documents have been distributed to member countries. Regional workshops were then conducted for prosecutors and legislative draftspersons in the following countries: Gaborone, Botswana - November 2002; St John's, Antigua and Barbuda – February, 2003; Banjul, The Gambia - May 2003 and Colombo, Sri Lanka-June 2003. The CLS also supported a programme of legislative drafting and training on the subject carried out by the Forum Secretariat of the Pacific Region. These activities were carried out with the support of the UK Government.

22. The next phase of the project involved the delivery of assistance to individual member countries on the preparation of country reports to the UN Counter-Terrorism Committee, the adaptation and adoption of the model law, and relevant consequential amendments to other legislation. This phase is still ongoing for countries in West Africa and has been completed for Eastern and Southern Africa and the Caribbean regions.

23. Following further generous financial assistance from the UK Government, the CLS has embarked on a third project involving capacity building for prosecutors and investigators to combat Terrorism and Terrorism Financing. This phase involves conducting regional training workshops for police, intelligence officers, prosecutors and trainers at relevant training institutions. Workshops have been held for selected countries in Africa (Namibia, February 2004) and Asia (Singapore May 2004), Nairobi, Kenya (September 2004), Kuala Lumpur, Malaysia (November 2004) and St Kitts and Nevis (February 2005). With the help of a consultant, the CLS is developing a Commonwealth Training Manual on Counter-Terrorism and other training materials for training institutions through which it is intended to mainstream the subject as part of the national training curriculum. This way, it is hoped to have a sustainable programme on terrorism prevention, investigation and prosecution.

24. The CLS has also compiled the laws of Commonwealth countries on counter-terrorism and the Manual is near completion. This manual is designed to help legislative drafters in different countries as a comparative reference/research work from which legal provisions can be adapted to best suit individual member country situations.

### **JUSTICE SECTION (JS)**

25. The work of the Justice Section focuses on judicial reform; administration of and access to justice; constitutional and public law developments including electoral and other good governance issues; policy and law reform in matters relating to freedom of information, privacy, data protection and matters relating to land.

### **Land and Development**

26. Pursuant to the Kingstown Declaration on Land and Development, the Justice Section organised regional workshops in the Pacific, East Africa (for East and West African Commonwealth countries), Asia and the Caribbean. The workshops identified gaps in the land policies of member countries as well as the inadequacy of legislative frameworks to provide for matters such as governance,

enforcement, and gender equality. Follow up to the workshops met with little or no response at all. A number of countries were already receiving assistance from other donor agencies for the implementation of land reforms and supporting legislation.

27. A needs assessment mission was also carried out to determine areas where the Commonwealth Secretariat could assist in land and development issues in the Southern African region. Countries selected for the mission were South Africa and Namibia. It was concluded from this mission that the Secretariat's assistance would be more productive if it was demand driven and country specific.

28. In this financial year, LCAD conducted a workshop for Tuvalu to assist with the development of that country's land policy. The workshop was held in June 2005. Participants examined needed reforms to their land laws and various aspects of reforms to land administration.

### **Judicial and Legal Reform**

29. In Abuja, Heads of Government prioritised the independence of the judiciary. The JS has developed a three-year programme that aims at building capacity and independence of the judiciary, strengthening supporting institutions such as court registries, building capacity of the legal profession, and promoting access to justice. The report contained in the Roundtable discussions outlines this work.

30. The JS also collaborated with the Commonwealth Magistrates and Judges Association (CMJA) and the Commonwealth Lawyers Association (CLA) in conducting a training programme for Pacific judges and lawyers. The output of the programme was a toolkit on Gender and Human Rights that will be used for judicial and legal training in the Commonwealth.

31. The JS has commissioned a study on Access to Justice mechanisms in the Commonwealth which would form the basis of developing practice manuals and toolkits to assist young practitioners and paralegals in dealing with common issues such as land tenure, family disputes, succession, and small claims.

### **Freedom of Information and Privacy**

32. The JS conducted follow-up activity on the model laws on freedom of information, and privacy and participated in a programme in the Caribbean that promoted them. The JS is carrying out regional workshops where model laws on Freedom of information, Privacy and Data Protection are being disseminated and discussed with the aim of helping member countries to develop policy guidelines to draft their own laws. The Workshop for the Asia – Pacific region was held in Kuala Lumpur, Malaysia in December 2004 while the workshop for the West African region was held in The Gambia in July 2005. The Section also participated in the Workshop on Access to Information organised by the World Bank Institute and the Commonwealth Parliamentary Association (CPA) in Ghana.

### **Legislative Drafting**

33. The JS took over the programme for legislative drafting in December 2003. LCAD has responded to the request by Law Ministers for shortened training for legislative drafters to supplement in-house training by developing a curriculum for a short-term course. The course will be established at the Ghana School of Law for the Africa region in January 2006. The establishment of a similar course alongside the Masters programme conducted by the University of the West Indies at its Cave Hill campus is under consideration. The Roundtable discussion papers include an update on the work of the Section in this area.

34. As part of enhancing good governance, requests have been received for assistance both in the constitution-making process and inculcating a culture of constitutionalism around the Commonwealth. LCAD has held a workshop on the constitution-making process for the Southern Africa region which developed guidelines for constitution making to make the process inclusive, accessible, open and transparent. Technical assistance has been given to countries for the drafting of their constitutions

#### **Inter-Divisional Collaboration**

35. The JS collaborates closely with other divisions of the Secretariat on issues relating to promoting the rule of law and the promotion of democratic values. It has made presentations at Steering Committee meetings on areas of work where LCAD can advance HIV/AIDS related issues. It has kept the Gender Section abreast of legal developments in areas where gender related issues arise, e.g. access to land. The JS has collaborated with the Political Affairs Division on a number of issues including constitutional reform in countries such as Swaziland and has participated in the election observing process.

#### **LAW DEVELOPMENT SECTION (LDS)**

36. One of two Sections established in LCAD in 2002, the LDS is charged with keeping a legal “eagle” eye on law development matters of the Commonwealth.

#### ***Provision of Information***

37. In collaboration with the Communications and Public Affairs Division, the LDS has created “*Law Home*” pages on the web site of the Commonwealth Secretariat. These pages provide a useful database which includes the Commonwealth’s Schemes, Reports emanating from various legal activities pursued by LCAD around the Commonwealth and laws of some member countries and give member countries easy access to current legal information.

38. In January 2004 the LDS inaugurated its quarterly newsletter publication – *LAWD* –copies of which are sent to Law Ministers and Attorneys General. *LAWD* seeks to keep member countries up to date with the issues of primary focus of the Section such as Law and Technology; Competition Legislation; International and Regional Tribunals; and Environmental Issues.

#### ***Law and Technology***

39. The LDS conducted four regional workshops around the Commonwealth between 2004 and 2005 focusing on issues of law and technology. The LDS has highlighted the model bills on Electronic Evidence and Electronic Transactions in order to encourage member countries to adopt or adapt these bills and thus enhance their legislative ability to meet the growing challenges of a technological age. As well as deliberating on the provisions of the model laws, the objectives of the workshops were to establish networking, promote harmonisation and encourage the sharing of information between member countries in this area of the law. This effort by the LDS is a collaborative one with the Governance and Institutional Development Division of the Secretariat.

#### ***Competition Legislation***

40. In pursuance of the mandate by Law Ministers in 2002, the LDS has redrafted the Competition Bill which is presented here to Law Ministers for their imprimatur. The LDS garnered comments from Law Ministers and other experts and redrafted the bill to reflect the interests of the vulnerable sectors of developing societies that are systematically disenfranchised, while still complying with the rules of competition.

## *International and Regional Tribunals*

41. As mandated by Law Ministers in 2002, an Expert Group was set up by LDS to examine issues and mechanisms surrounding the removal of the appellate jurisdiction of the Judicial Committee of the Privy Council by member countries of the Commonwealth. The objective of the Group was to ensure that Commonwealth standards would be maintained when jurisdictions such as New Zealand (which has already de-linked from the Council) and the Commonwealth Caribbean countries, carry out their proposals to de-link from the Privy Council. A “*Best Practices*” guide was produced by the Experts. The LDS will continue to liaise with and facilitate information sharing among members. The LDS will take this project to its next phase in February 2006, when there will be a meeting for the sharing of experiences of Justices and Registrars of new and old Commonwealth Courts in New Zealand. It is expected that the Caribbean Court of Justice; the Courts of Justice of COMESA and ECOWAS will be represented as well the Supreme Courts of Canada and New Zealand and the High Court of Australia.

## *Environment*

### *The Law of the Sea*

42. The LDS has commenced the process of sensitising landlocked states to the potential benefits under Part V of the United Nations Convention on the Law of the Sea (UNCLOS). The first part of a series of Seminars was held in June in Swaziland and will continue in December in Lesotho. Landlocked member states are encouraged to accede to the Law of the Sea Convention and thereafter enter into arrangements with their coastal neighbours for access to and benefit sharing of the sea.

### *Biological Diversity*

43. The LDS has worked to assist member countries to adopt a comprehensive approach to enable the various provisions of international environmental conventions to which they are Parties. A core meeting was held in February 2005 represented by delegates from all regions of the Commonwealth and the outcomes of that meeting have indicated the need to hold further regional seminars to better assist member countries.

### *HIPC Countries*

44. The LDS is working collaboratively with the Economic Affairs Division (EAD) to assist Commonwealth HIPC countries which are currently facing litigation, or will do so in the near future, to develop strategies and alternative options for dealing with the implications of sovereign commercial debt in distress, including the provision of legal advice and/or assistance where indicated. The LDS and EAD are in discussions with potential partners so as to secure the necessary funding to establish a legal referral service for HIPC countries in distress.

### *OECD*

45. Collaboratively with the EAD, the LDS as mandated by Law Ministers, continues to assist in OECD activities relating to taxation and the attainment of a level playing field, particularly those relating to small states.

### *Hague Conference on Private International Law*

46. It will be recalled that from 1977, Law Ministers agreed that international co-operation in civil matters (such as international child abduction cases) was best handled through the work of an international agency. The experiences of the past intra-Commonwealth arrangements, such as the Reciprocal Enforcement of Maintenance Orders (REMO) indicated their inadequacy. The Hague

Conference on Private International Law has now resolved to draw up a new Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. A report on this issue is contained in SOLM(04)13.

### **ECONOMIC & LEGAL SECTION (ELS)**

47. The Special Advisory Services Division (SASD) provides technical assistance to member countries in four programme areas. The programmes aim to: (i) enhance the capacity of member countries for sustainable debt management; (ii) build competitiveness in agriculture and enterprise, particularly at the Small and Medium Enterprise (SME) level; (iii) improve export competitiveness; and (iv) provide economic and legal advice on establishing regulatory environments conducive to direct investment, private sector development and growth in trade.

48. It is within the last programme, (iv) above, that the Division's legal expertise resides. The areas in which ELS specialises are natural resources, capital markets, trade law and maritime boundary delimitation.

#### **Natural Resources Development**

49. The SASD, through its ELS, is engaged in providing technical assistance to several Commonwealth governments in the reform of legislation and regulatory arrangements governing the exploitation of mineral and petroleum resources. In June 2005 the Parliament of The Gambia enacted the Mines and Quarries Act, the preparation of which involved substantial advisory inputs from ELS and assistance with drafting. Early this year, ELS completed consultations with the Ministry of Minerals, Energy and Water Resources of Botswana on an official statement of mining policy and was recently requested to carry out a review of Ghanaian mineral sector policies by the Minerals Commission. Preparation of draft mining legislation is in progress in Kenya and Swaziland where antiquated pre-independence mining legislation has hampered efforts to attract investment.

50. ELS also provides support to Commonwealth governments in the licensing of minerals and petroleum operations, in particular by providing assistance to government teams negotiating the terms of agreement with investors on a range of complex legal, economic and financial issues. This assistance includes the review of investor proposals, advice on negotiating strategies and assistance with the formulation of contractual provisions. ELS advisers are presently engaged in assisting the Government of The Gambia to evaluate and negotiate the terms of a pioneering foreign-sponsored mineral sands project. Assistance is also being provided in connection with proposals presented to the Tanzanian Government to develop an integrated gas-to-power project based on shallow water gas deposits.

#### **Capital Markets and Private Sector Development**

##### *Competition policy and regimes*

51. Since 1999 ELS has been assisting the Department of State for Trade, Industry and Employment of the Government of The Gambia in the development of competition policy and law with a view to creating an enabling environment for greater private sector participation and fair competition between market players. It prepared a competition policy and law to ensure the prevalence of fair competition in the Gambian economy and to complement the Government's private sector development and investment strategy. Its assistance also covered the formulation of an appropriate institutional framework to administer the competition regime in The Gambia. The new Competition Bill was enacted by Parliament at the end of 2004.

52. ELS is assisting the Southern African Development Community (SADC) Secretariat with the development of a regional competition policy model and model competition law. The project seeks to

assist SADC with the development of a regional competition policy which will not only address the key components of a national competition regime for the benefit of its members that do not as yet have any competition policy or regime, but will also address regional competition and related issues which arise in cross border activities. ELS co-sponsored (with LCAD) the Commonwealth Expert Group Meeting on the Draft Model Bill on Competition for the Africa Region.

#### *Securities markets and Stock Exchanges*

53. The SASD through ELS is assisting the Government of Sierra Leone with the establishment of a regulatory framework for the development of capital markets in Sierra Leone. The assistance has included an assessment of the feasibility of establishing a stock exchange and comprises the preparation of a new securities law to regulate securities trading and the licensing of market intermediaries and stock exchange and collective investment schemes. In this context assistance is also being provided in the review and updating of companies law and preparation of bankruptcy legislation in order to facilitate the smooth and orderly development of capital markets in Sierra Leone.

54. ELS has also been assisting the Government of Maldives with the establishment of a regulatory framework for the development of a securities market and the licensing of a stock exchange. ELS has prepared an updated companies law, a new securities bill and detailed securities and companies regulations for the Government. ELS is now advising on and preparing legislation to regulate fund management and collective investment schemes such as unit trusts and open/close ended investment companies in Maldives. ELS is also assisting in the preparation of a new codified law of trusts to reinforce and strengthen the administration and functioning of the new collective investment schemes legislation in Maldives.

55. ELS has assisted the Government of Uganda in the preparation of a new collective investment schemes legislation and has been assisting the Capital Markets Authority in its review of the securities law. ELS is assisting in the preparation of a new updated securities law and the related review of companies law which takes into account global trends and developments in the global securities markets, corporate governance and the guiding principles issued by the International Organisation of Securities Commissions (IOSCO) as well as ongoing initiatives of East African Securities Regulators in the development of the regional East African securities markets. ELS is also assisting the Government of Tanzania in a similar review of its securities legislation.

#### *Trade Regulation*

56. This is an area of growing importance to Commonwealth countries and, correspondingly, for ELS. Smaller Commonwealth jurisdictions and least developed countries (LDCs) demonstrate the need for targeted technical assistance providing government officials and stakeholders with an enhanced understanding of rights and obligations derived from the Uruguay Round Agreements, and the means to take advantage of special flexibility measures within the multilateral rules-based framework.<sup>1</sup> ELS's technical assistance programme is focused on the development of appropriate regulatory instruments suitable to the circumstances of countries with limited human resources and

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<sup>1</sup> The WTO Committee on Trade and Development, WT/COMTD/W/77 and Rev.1 and Add. 1-4, has identified 155 separate special and differential (S&D) treatment provisions in the WTO Agreements and Ministerial Decisions, and classified them into six categories: (i) fourteen provisions that aim to increase the trade opportunities of developing country Members; (ii) fifty provisions under which WTO Members should safeguard the interests of developing country Members; (iii) thirty-three provisions that allow flexibility of commitments, of actions, and use of policy instruments by developing countries; (iv) nineteen provisions that allow transitional time periods; (v) fourteen provisions on technical assistance; and (vi) twenty-four provisions relating specifically to LDC Members. Many of these provisions involve technical assistance measures and time-limited exemptions from WTO rules that have largely expired; other provisions address important medium and longer-term policy flexibility options for LDCs and small vulnerable developing countries.

trade volumes with a view to facilitating their successful integration into the multilateral trading system.

57. ELS is providing technical assistance to small states, LDCs and other vulnerable Commonwealth developing countries in sequencing trade and trade-related policy reforms at a pace consistent with their trade, development and financial needs. With the end of a number of transitional periods for implementation of WTO rules, Commonwealth developing countries and LDCs are increasingly being called upon to implement amendments to trade-related legislation. ELS has been assisting with the review and revision of trade-related legislation, and development of appropriate trade policy instruments to facilitate the successful integration of LDCs and smaller Commonwealth countries into the multilateral trading system; a specific niche area concerns countries in the process of accession to the WTO. ELS is providing assistance to the Governments of Samoa and the Kingdom of Tonga in conducting a trade-related legislative review, with a view to their accession to the WTO.

58. The relationship between trade and investment is a significant determinant of growth and development in vulnerable small developing Commonwealth countries: significantly, about one third of world trade is being undertaken within and another third between multinational corporations. A key challenge for small vulnerable developing countries is implementing regulatory systems that promote transparent, stable and predictable conditions for trade and investment to expand, while preserving necessary levels of policy flexibility to safeguard national interests and achieve strategic development goals, consistent with WTO rules. ELS programme of technical assistance addresses several components of the trade and investment challenge, including the review and modernisation of trade-related investment legislation compatible with international standards and conducive to the attraction of investment, economic growth and development. Two projects worthy of particular note in this area concern our work with the Governments of Belize and St Lucia in the review of fiscal incentives and the investment framework.

59. Further extensive programme work is being undertaken in the area of TRIPS and public health as outlined in a separate background paper.

### *Maritime Boundaries*

60. ELS has continued to provide technical assistance to several Commonwealth states, particularly small island developing states (SIDS), seeking to maximise their maritime areas and to benefit from the sovereign rights accorded to them over the resources they contain under international law. Assistance has included the preparation of hydrographic and technical reports; the review and updating of legislation in conformity with the 1982 UNCLOS; building and strengthening the capacity of senior government officials involved in the negotiation of national maritime boundaries; the preparation of negotiating briefs; and some aspects of desktop studies for the extended continental shelf. ELS assistance in this area has enabled member states like Mauritius to enact modern maritime zones legislation, and includes ongoing work with Guyana, Papua New Guinea, Fiji, and Mozambique on the review and updating of their maritime zones legislation. New projects on similar exercises are expected to start with Sierra Leone and Kiribati. ELS has also participated in the negotiations of maritime boundaries in support of some states who have commenced such negotiations with neighbouring states.

61. In line with the Secretariat's Strategic Plan Priorities (2004-2008), ELS identified as part of its strategic work plan, the extended continental shelf as a priority area for assistance to Commonwealth developing and small island states. Efforts have been focused on raising awareness, and building states' capacity to competently prepare and submit their extended continental shelf claims to the UN Commission on the Limits of the Continental Shelf (CLCS) before the 2009 deadline. ELS has undertaken this work at national and regional levels.

62. A key element of this capacity building and assistance is the development of desktop studies in preparation for submissions to the CLCS. At the national level, assistance on the development of a desktop study for Guyana is ongoing, while new projects were commenced with Papua New Guinea, Mozambique and Fiji. New projects are expected to commence shortly following recent requests from the Governments of Sierra Leone and Kiribati. On a regional level, the Secretariat has been collaborating with the United Nations Division on Law of the Sea and Legal Affairs (DOLOS) in a series of capacity-building training workshops to assist member countries in the preparation of their submissions to the CLCS. Two such regional workshops took place in February and May 2005 for the Pacific and Indian Ocean regions respectively. The last two workshops are scheduled for December 2005 and May 2006 for the West African and Caribbean regions respectively.

63. In October 2004, ELS presented a paper to Commonwealth Law Ministers of Small Jurisdictions on the cost implications of the implementation of Article 76 of UNCLOS. As a result of that paper, the Ministers in their Communiqué recommended that:

“The Commonwealth Secretariat should prepare a summary of the rights and obligations in respect of an extended continental shelf under UNCLOS.”

64. Many small member states are legitimately concerned about their financial and technical ability to undertake the necessary work required for preparing submissions. Coupled with this is the concern regarding the consequences that will flow from the failure to submit their claims by the deadline of 2009. These issues are further explored in a separate information paper on the rights and obligations of states in respect of an extended continental shelf.

#### **GOVERNANCE AND INSTITUTIONAL DEVELOPMENT DIVISION (GIDD)**

65. The Commonwealth Secretariat's Governance and Institutional Development Division (GIDD) assists member countries in developing and sustaining institutions that support open and accountable governance, sound administration and a caring, supportive culture to improve the lives of Commonwealth citizens and protect their interests.

66. GIDD has responsibility for the Secretariat's mandate on public sector development through in-house advisory services, training and provision of technical assistance. Its work covers the full spectrum of public sector administration and management, public sector governance, corporate governance and public-private partnerships, promotion of oversight institutions as well as issues relating to civil society and private sector institutions with a public responsibility. GIDD is also responsible for the Commonwealth Service Abroad Programme (CSAP), which is an innovative volunteer-based programme designed to assist in the development and implementation of people-centred, mass-impact projects that contribute to the achievement of the Millennium Development Goals. GIDD's work is primarily demand-driven. All its programmes have been created because member countries have demanded them and because there is an identified need for them. GIDD works in collaboration with LCAD and the Human Rights Unit (HRU) in delivering these activities.

67. Over the years, GIDD expertise and training have been provided for the drafting of constitutions, legal and judicial reforms and administration of justice. GIDD has assisted in mobilising resources to build legal capacity in several countries, to help strengthen the democratic machinery, and to provide assistance in designing and managing elections and electoral systems. GIDD is helping Commonwealth countries make regular use of legal experts provided by GIDD in the operation of their legal systems and in law revision and reform. Experts help reform or update statute books, or introduce new areas of intervention such as with Information Communications Technology (ICT) – and in promoting measures to combat domestic violence or child abuse.

68. Many of the lawyers preparing legislation in the Commonwealth today are graduates of the long-established courses in parliamentary drafting supported by GIDD. However, critical shortages still occur, and GIDD continues to provide long-term legislative drafters. GIDD has also assisted in setting up election infrastructures, with advice on legislation and electoral machinery, and providing experienced management in such thorny areas as constituency demarcation and voter registration.

69. Currently there is an average of 30 long-term experts in the field under GIDD's projects supporting different aspects of legal development. In Africa and the India Ocean, experts include legal drafters, State Prosecuting Counsels, prosecutors for criminal cases on fraud and corruption and some nine judges for High Courts on criminal cases. In the Caribbean and the North Atlantic legal experts include legislative drafters, parliamentary counsels, Directors of Public Prosecution, Solicitor Generals and Attorneys-at-Law. Europe and the Mediterranean also benefit from the skills of legislative drafters, Registrars of High Court, and advisers on money laundering/proceeds and asset forfeiture.

70. A breakdown of Technical Experts provided in the field and supported by GIDD as at 30 June 2004, together with details of regional and pan-Commonwealth training activities is provided at Annex 1.

## **SOCIAL TRANSFORMATION PROGRAMMES DIVISION (STPD)**

### ***Gender and the Law Issues***

71. The Gender Section of the STPD presented the Commonwealth Plan of Action for Gender Equality 2005-2015 (PoA) to the meeting of Ministers Responsible for Women Affairs (7WAMM) in Fiji in June 2004.

72. The PoA focuses on four critical areas for Commonwealth action: Gender, Democracy, Peace and Conflict; Gender, Human Rights and Law; Gender, Poverty Eradication and Economic Empowerment; and Gender and HIV/AIDS. The PoA was presented on behalf of the Commonwealth to the United Nations Beijing+10 Review held in New York, March 2005.

73. At a meeting of Commonwealth Ministers Responsible for Women's Affairs held in New York on 27 February 2005, the Denarau Statement issued at the Fiji meeting was recalled in which Ministers had noted the progress made by member countries in the development of national action plans on gender. The Denarau Statement further noted the actions taken by member countries in advancing *de jure* equality through the institutionalisation of constitutional or legislative reforms for the claiming of women's rights. Fifty Commonwealth countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and 15 countries have also ratified the Optional Protocol.

74. The PoA acknowledges the challenges presented by persistent gender inequalities and inequities. These include the widespread prevalence of gender-based violence and violations of women's human rights, the exacerbation of feminisation of poverty, lack of women's full participation in leadership and decision-making, and women's continued unequal access to economic and social resources and justice.

75. The PoA recognises that because customary and religious laws, practices and traditions are often significant and meaningful to people, it is therefore critical to promote active dialogue among members of the judiciary, religious, cultural and civil institutions and communities to address the realisation of women's human rights.

76. The critical areas identified by the PoA under 'Gender, human rights and law' include gender-based violations, trafficking in women and girls, the rights of marginalised peoples including

indigenous communities and women's land and property rights. The Gender Section is working with national women's machineries, key legal and judicial institutions, human rights bodies and women's and other civil society organisations to address these critical issues.

77. In partnership with LCAD, the Section is soon to publish a case law book on women's human rights. It will offer legal practitioners, academics and civil society groups' useful information and resources to address the realisation of women's human rights from the standpoint of legal provisions.

## HIV/AIDS

78. At the Commonwealth Health Ministers Meeting in Geneva in May 2005, Ministers acknowledged the continuing importance and urgency of addressing HIV/AIDS. It is now recognised that HIV-related stigma and discrimination remains an enormous barrier to effectively fighting the HIV and AIDS epidemic. Fear of discrimination often prevents people from seeking treatment for AIDS or from admitting their HIV status publicly. People with, or suspected of having, HIV may be turned away from healthcare services and employment and may be refused entry to a foreign country. In some cases, they may be evicted from home by their families and rejected by their friends and colleagues. The stigma attached to HIV/AIDS can extend into the next generation, placing an emotional burden on those left behind.

79. Denial goes hand in hand with discrimination, with many people continuing to deny that HIV exists in their communities. Today, HIV/AIDS threatens the welfare and well being of people throughout the world. At the end of the year 2004, 39.4 million people were living with HIV or AIDS and during the year 3.1 million died from AIDS-related illness. Combating the stigma and discrimination against people who are affected by HIV/AIDS is as important as developing medical cures in the process of preventing and controlling the global epidemic.

80. A certain amount can be achieved through the legal process. In some countries people who are living with HIV or AIDS lack knowledge of their rights in society. They need to be educated, so that they are able to challenge the discrimination, stigma and denial that they meet in society.

81. Institutional and other monitoring mechanisms can enforce the rights of people living with HIV and AIDS and provide powerful means of mitigating the worst effects of discrimination and stigma. No policy or law can alone combat HIV/AIDS related discrimination but they may be some of the many actions to take.

82. The fear and prejudice that lies at the core of HIV/AIDS discrimination needs to be tackled at the community and national levels. A more enabling environment needs to be created to increase the visibility of people with HIV/AIDS as a 'normal' part of any society.

83. It is also important to confront the fear based messages and biased social attitudes, in order to reduce the discrimination and stigma against people who are living with HIV or AIDS.

**LEGAL AND CONSTITUTIONAL AFFAIRS DIVISION  
LIST OF PUBLICATIONS (2002-2005)**

1. Law Development Issues of the Commonwealth (LAWD)
2. Commonwealth Law Bulletin (CLB), Volumes 27, 28 and 29 and Indexes
3. Report of the Expert Group Meeting on the Removal of Appellate Jurisdiction from the Judicial Committee of the Privy Council by Member Countries (2003)
4. Report of the Workshop on Curriculum Development for the Training of Legislative Drafters (2003)
5. Law and Technology Workshop for the Caribbean Region (2003)
6. Law and Technology Workshop for the Asia Region (July 2004)
7. Law and Technology Workshop for Pacific Region (November 2004)
8. Law and Technology Workshop for the Africa Region (March 2005)
9. Report of the Expert Group Meeting on the Commonwealth Model Bill on Competition for the Pacific Region (May 2004)
10. Report of the Expert Group Meeting on the Commonwealth Model Bill for the Pacific Region (November 2004)
11. Report of the Expert Group Meeting on the Commonwealth Model Bill for the Caribbean Region (December 2004)
12. Report of the Expert Group Meeting of the Commonwealth Model Bill for the African Region (April 2005)
13. Report on the Commonwealth Seminar on the Implementation of International Environmental Instruments and Policy Development (May 2005)
14. Report on the Commonwealth Seminar on Landlocked States for Africa (June 2005)
15. Report of the Commonwealth Pacific Regional Workshop on Land and Development, Apia, Samoa 9 – 12 March 2003
16. Report of the Commonwealth Workshop on Land and Development, Nairobi, Kenya 8 – 10 July 2003
17. Report of the Commonwealth Workshop on Land and Development, Bridgetown, Barbados, 10-12 November 2003
18. Report of the Commonwealth Workshop on Curriculum Development for the Training of Legislative Drafters, Christ Church, Barbados, 10 -12 November 2003
19. Report of the Commonwealth Workshop on Access to Information for the Asia and Pacific Region, Kuala Lumpur 8 – 10 December 2004
20. Report of the Commonwealth National Capacity Regional Workshop on Land and Development, Funafuti, Tuvalu 15 -17 June 2005
21. Report on the Workshop for Curriculum Development and Legislative Drafting Training (Africa Region), Accra, Ghana June 2005
22. Report on Workshop on Constitution Making Process, Livingstone, Zambia July 2005
23. Commonwealth West Regional Workshop on Legal Aspects of Access to Information and Data Protection, Banjul, The Gambia, Corinthia Atlantic Hotel, July 20 -23, 2005
24. Mutual Assistance in Criminal Matters: Guide to National Practice and Procedure (Parts 1 & 2)
25. Mutual Assistance in Criminal Matters Updates (July 2004)
26. Combating Money Laundering: Guide to National Laws (Parts 1, 2 & 3)
27. International Co-operation in the Administration of Criminal Justice: Laws of Commonwealth Countries and Jurisdictions on the subjects of:

- Extradition and Rendition of Fugitive Offenders;
- Mutual Assistance in Criminal Matters;
- Transfer of Convicted Offenders.

28. Changing Face of International Co-operation in Criminal Matters in the 21<sup>st</sup> century Papers from the Oxford Conference, August 2002
29. Commonwealth Legal Assistance News Issues
30. Commonwealth Crime Watch Issues
31. Implementation Kits for the International Counter-Terrorism Conventions
32. Report of Expert Working Group on Legislative and Administrative Measures to Combat Terrorism
33. Model Legislative Provisions on Measures to Combat Terrorism
34. Workshop documents and Report of the Workshop on Legislative Measures to Combat Terrorism: Gaborone, Botswana, 4-8 November 2002
35. Workshop documents and Report of the Workshop on Legislative Measures to Combat Terrorism: St John's, Antigua and Barbuda, 10-14 February 2003
36. Workshop documents and Report of the Workshop on Legislative Measures to Combat Terrorism: Colombo, Sri Lanka, 31 March-1 April 2003;
37. Workshop documents and Report of the Workshop on Legislative Measures to Combat Terrorism: Banjul, The Gambia, 12-16 May 2003
38. Report of the Workshop on the Implementation of the Rome Statute of the International Criminal Court: Port of Spain, Trinidad and Tobago, 14-16 February 2001
39. Report of the Workshop on the Implementation of the Rome Statute of the International Criminal Court: Dar es Salaam, Tanzania, 4-6 February 2002
40. Report of the Workshop on the Implementation of the Rome Statute of the International Criminal Court: Apia, Samoa, 25 – 28 March 2002
41. Report of the Workshop on the Implementation of the United Nations Convention Against Transnational Organised Crime (Palermo Convention), Kuala Lumpur, Malaysia, 6-7 June 2002
42. Report of Expert Working Group on Evidence
43. Law in Cyber Space
44. International Co-operation in Criminal Matters: Balancing the Protection of Human Rights with the Needs of Law Enforcement, Oxford, August 1999
45. The 2002 Commonwealth Secretariat Oxford Conference on the Changing Face of International Co-operation in Criminal Matters in the 21st Century, Oxford
46. Curriculum Development Course Notes and Case Book
47. Report of the Workshop on Capacity Building in Combating Terrorism, Windhoek, Namibia, 2-6 February 2004.
48. Report of the Workshop on Capacity Building in Combating Terrorism, Nairobi, Kenya, 20-24 September 2004.
49. Report of the Workshop on Capacity Building in Combating Terrorism, Singapore, 10-14 May 2004.
50. Report of the Commonwealth Expert Group on Implementing Legislation for the Rome Statute of the International Criminal Court, Marlborough House, London 7-9 July 2004.
51. Model Law to Implement the Rome Statute of the International Criminal Court (including the Report of the Commonwealth Expert Group on Implementing Legislation for the Rome Statute of the International Criminal Court) March 2005.
52. The Prosecution of International Crimes: A Practical Guide to Prosecuting ICC Crimes in Commonwealth States. Edited by Ben Brandon and Max du Plessis
53. Meeting of Law Ministers, Saint Vincent and the Grenadines, November 2002 (1 volume: Minutes and Memoranda)
54. Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions, October 2004
55. Meeting of Senior Officials of Law Ministries, October 2004 (1 volume)
56. Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government

**PUBLICATIONS BY THE HUMAN RIGHTS UNIT  
(2002 – 2004 FINANCIAL YEARS)**

1. Commonwealth Human Rights Law Digest
2. African Human Rights Law Reports
3. Commonwealth Guidelines for the Treatment of Victims of Crime
4. Report of the Expert Group on Strategies for Combating the Trafficking of Women and Children
5. Freedom of Expression, Association and Assembly
6. Internally Displaced Persons in the Commonwealth: Rights, Common Themes and Best Practice Guidelines (Report of an Expert Group Meeting, London, 19-21 May 2003)
7. Commonwealth Workshop for Human Rights Defender (Asia Region), Colombo, Sri Lanka 21-23 October 2003
8. Compilation of International and Regional Instruments for the Protection of Human Rights Defenders, January 2004
9. Report of Mainstreaming Human Rights in the Secretariat (First Phase), April 2004
10. Tackling the Unconstitutional Overthrow of Democracies – Emerging Trends in the Commonwealth
11. An Introduction to Law and Human Rights for Young People in the Commonwealth
12. Introduction to Citizenship for Young People in the Commonwealth, 2004
13. Compilation of International and Regional Instruments for the Protection of Human Rights Defenders
14. *Paper on “Small Island States in the Face of Climatic Change: The End of the Line in International Environmental Responsibility”*
15. *Newsletter – “The Human Rights Update – Issues 1-5”*

**Breakdown of Technical Experts provided in the field and supported by GIDD as at 30 August 2005:**

- **Grenada** – 1 Solicitor General assisted the Attorney General’s Chambers in civil litigation and provision of legal advice.
- **Antigua** – Two legal Draftspersons are due to commence assignments with the Government of Antigua from December 2005.
- **Bahamas** – a Legal Draftsperson is providing support to the Government of Bahamas.
- **Bermuda** – Two Parliamentary Counsels are providing short-term assistance to the Attorney-General’s Chambers, Hamilton, Bermuda.
- **Papua New Guinea** – In-Country Roundtable on Legal Framework For E-Governance, Waigani, Papua New Guinea.
- **Sierra Leone** – GIDD is collaborating with the Department of International Development to help clear up the serious backlog of cases, especially cases related to corruption. Three judges are attached to the High Court of Sierra Leone and on the Appeals Court. Two CFTC-prosecutors are attached to the Anti-Corruption Commission as part of this support. The programme also involves training of counterparts involved in the administration of justice in Sierra Leone.
- **The Gambia** – Through a Legal Capacity Building Project, GIDD is also collaborating with the UK Department for International Development to provide the services of five judges and a prosecutor, as well as training of counterparts, as part of the effort to improve the administration of justice in that country.
- **Botswana** – A legal drafter is assisting in the Attorney General’s office to help alleviate the acute shortage of drafters in that country. The expert is assisting in preparing draft legislation, statutory instruments as well as training junior counsels.
- **Solomon Islands** – 1 Constitutional lawyer helped to prepare drafting instructions for a new federal constitution as part of the UNDP-supported project on constitutional reform. The draft constitution was submitted in November 2003. A Registrar of the High Court continues to be attached to the Ministry of Justice and the services of a Puisne Judge are being provided up to November 2006.
- **Tuvalu** – 1 Adviser to the Attorney General to the Tuvalu Government, assisting in providing institutional support and advice to the Office of the Attorney General in Tuvalu.
- **Vanuatu** – (a). 1 Technical Adviser on land valuation - setting up a land valuation framework through the drafting of land valuation legislation and relevant legal instruments. The Adviser has already reviewed the legislative frameworks for land valuation and drafted a Land Valuation Act in consultation with the state law office. The Act has since been gazetted. (b) 1 senior judge for the administration of justice and the preparation and implementation of courts civil procedures rules.
- **Fiji** – Two CFTC funded experts, a Law Revision Commissioner and a Parliamentary Counsel are assisting the Attorney General’s Office.
- **Asia-Pacific Group** – 1 Consultant on anti-money laundering, assisting the Asia-Pacific group to address the needs of member states on issues of anti-money laundering. The Consultant is based in Australia and is co-ordinating technical assistance and training programmes for the Asia-Pacific region.
- **Forum Secretariat** – 1 Consultant on anti-money laundering, assisting Pacific Island states to combat the laundering of the proceeds of crime in the region. The Consultant is based in Fiji and is working with anti-money laundering units in Fiji, Cook Islands, Samoa, Nauru and Vanuatu.

- **Organisation of Eastern Caribbean States (OECS) Secretariat** – (a). 1 Legal drafter to assist with family law and domestic violence legislation reform in the Eastern Caribbean. (b). A two person advisory Consultancy team is ensuring that the legislative and constitutional framework at national levels are supportive of the proposed economic union of OECS member states

**Regional and Pan-Commonwealth Training Activities:**

- Provision of CFTC awards have enabled personnel from the civil services of Jamaica, Belize, St Lucia and Antigua to pursue post-graduate studies in legislative drafting at the University of the West Indies (UWI), Barbados.
- Three 1-week Training Workshops for Ombudsman offices in the Caribbean, and Africa (73 participants).
- When the citizens complain: 2 weeks study programme for Ombudsman, Human Relations and Complaints Handling offices; London, UK (22 participants).
- Managing Change – Managers in Government: 2 weeks study programme for Government lawyers and Legal Advisers, London UK (10 participants from around the Commonwealth).
- ‘Trust in Government’ – Promoting Ethics, Integrity and Professional standards in Public Services, London UK (18 participants).
- 3 months Anti-Corruption Training, Australian National University, Canberra, Australia (12 participants).
- West Africa Regional Workshop on Ethics and Integrity (in collaboration with ECOWAS), Abuja, Nigeria (31 participants).
- Officials from the legal establishment including the police and the Solicitor General participated in a one week National Workshop in The Gambia on ‘*Ethics and Accountability in Public Services*’.
- Law and Technology workshops, (Pan-Commonwealth series) conducted for the Caribbean and Asia/Pacific regions in collaboration with LCAD.
- Pan-Commonwealth Corporate Governance Programme (series of training seminars and workshops) in Africa, Asia, Caribbean, and the Pacific for Company Directors and Senior Officials (over 200 officials already trained).
- In collaboration with the Economic Affairs Division, GIDD sponsored two one-week sub-regional workshops in May and August 2005 respectively. These workshops were geared to building capacities of countries in the Eastern and Southern Africa region involved in developing and finalising Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) national strategies within the first year of implementation of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) strategic Plan.
- Individual CFTC awards have enabled senior government officials from African countries, such as The Gambia, to pursue post-graduate studies in Law.
- A CFTC award is also assisting a Judge from Cameroon to participate in judicial training in Canada.