

## **Justice and Good Governance Issues**

## COMMONWEALTH PRINCIPLES ON THE ACCOUNTABILITY OF AND THE RELATIONSHIP BETWEEN THE THREE BRANCHES OF GOVERNMENT

Paper by the Commonwealth Secretariat

### Introduction

1. At their meeting in St Vincent and the Grenadines 2002, Commonwealth Law Ministers gave detailed discussion to the Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence which was first discussed by them in Port of Spain in 1999. The Guidelines were on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights.
2. Law Ministers considered that the text required further work before an agreed statement of principles is submitted to the next Commonwealth Heads of Government Meeting (CHOGM). They then invited the Commonwealth Secretary-General to convene a small group of Law Ministers to work with the Commonwealth Secretariat to review and develop principles based on the Latimer House Guidelines and taking into account the discussions at the Law Ministers' Meeting.
3. The resulting text from the Ministerial Group was circulated to all Law Ministers before it was submitted to the CHOGM held in Abuja in December, 2003.
4. Heads of Government welcomed the contribution made by the Commonwealth Parliamentary Association (CPA), the Commonwealth Magistrates and Judges Association (CMJA), the Commonwealth Lawyers' Association (CLA) and the Commonwealth Legal Education Association (CLEA) to further the Commonwealth Harare Principles and adopted the Commonwealth Principles of the Accountability of and the Relationship Between the Three Branches of Government. (Annex).
5. The Commonwealth (Latimer House) Principles on the Accountability of and the Relationship Between the Three Branches of Government were launched at a ceremony held at Marlborough House, London, in May 2004.

### Dissemination of the Principles

6. The Commonwealth Secretariat commenced its programme on disseminating the Principles by holding a Pan-African Forum in Nairobi, Kenya in April 2005. Participants comprised of representatives from the Executive, Legislative, Judiciary, the Opposition and civil society from Commonwealth African countries.
7. The Forum considered a wide range of issues including the relationship between the Judiciary and the Executive and their appropriate interaction; the independence of Parliamentarians; the proper exercise of Executive power; the role of national institutions and civil society; code of conduct for parliamentarians, and mechanisms for ethical conduct for the administration of justice; fighting corruption in the judiciary and parliament and the role of the media and freedom of information.
8. It was resolved by the Forum that their deliberations should provide guidelines and a framework for the development of action plans to implement the Principles in Africa.
9. The Principles will be disseminated in similar forums in the Asia, Caribbean and Pacific regions.

**COMMONWEALTH PRINCIPLES ON THE ACCOUNTABILITY OF AND  
THE RELATIONSHIP BETWEEN THE THREE BRANCHES OF  
GOVERNMENT**

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

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

**Objective**

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

**I. The Three Branches of Government**

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

**II. Parliament and the Judiciary**

- (a) Relations between parliament and the judiciary should be governed by respect for parliament's primary responsibility for law making on the one hand and for the judiciary's responsibility for the interpretation and application of the law on the other hand.
- (b) Judiciaries and parliaments should fulfil their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.

**III. Independence of Parliamentarians**

- (a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.
- (b) Criminal and defamation laws should not be used to restrict legitimate criticism of parliament; the offence of contempt of parliament should be narrowly drawn and reporting of the proceedings of parliament should not be unduly restricted by narrow application of the defence of qualified privilege.

**IV. Independence of the Judiciary**

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret

and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.

To secure these aims:

- (a) judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process. The process should ensure:
  - equality of opportunity for all who are eligible for judicial office;
  - appointment on merit; and
  - that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination;
- (b) arrangements for appropriate security of tenure and protection of levels of remuneration must be in place;
- (c) adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;
- (d) interaction, if any, between the executive and the judiciary should not compromise judicial independence.

Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties.

Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner.

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

## **V. Public Office Holders**

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

## **VI. Ethical Governance**

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

## **VII. Accountability Mechanisms**

### **(a) Executive Accountability to Parliament**

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

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

**(b) Judicial Accountability**

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

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

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

**(c) Judicial review**

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

**VIII. The law making process**

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

- there should be adequate parliamentary examination of proposed legislation;
- where appropriate, opportunity should be given for public input into the legislative process;
- parliaments should, where relevant, be given the opportunity to consider international instruments or regional conventions agreed to by governments.

**IX. Oversight of Government**

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

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

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

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

## **X. Civil Society**

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