

Strengthening Good Governance and the Law



Helping member countries improve the quality of their legal and judicial systems through, for example, judicial colloquia which have been valuable for the development of human rights jurisprudence

The rule of law, and just and honest government are the strongest underpinnings of democracy. The main thrust of the Secretariat's activities in the legal field have been in four complementary directions: assisting governments to strengthen their constitutions and constitutional instruments (see Chapter 1); helping member countries improve the quality of their legal and judicial systems; promoting greater awareness and compliance with human rights conventions and associated agree-

ments; and facilitating member country participation in global co-operation to combat serious crime.

The series of judicial colloquia launched in 1988 in conjunction with Interights, the London-based International Centre for Human Rights, to promote the domestic application of international human rights norms, has been valuable for promoting a better understanding of human rights and contributing to the development of human rights jurisprudence. The eighth in the series was held in Bangalore, India, in December 1998.

Administrative law and access to justice workshops have complemented the judicial colloquia and their objective has been to sensitise public officials to the important role played by administrative law in facilitating good government through the judicial review of administrative action. At the heart of the exercise is the need for all executive power to be exercised in accordance with the law. Since the 1992 Lusaka Statement on Government Under the Law, workshops on administrative law and access to justice have been held in all regions – in the period under review, workshops were held in India and Jamaica. The outcome has been an increase in awareness of the need for transparency and accountability in government.

The Secretariat, with the assistance of the Attorney-General's Department of Australia, is developing a database on the independence of the judiciary which will



Opening the Commonwealth Law Ministers' Conference in 1999 (*from left*), Mr Ramesh Maharaj, Attorney-General of Trinidad and Tobago, the Commonwealth Secretary-General and Prime Minister Basdeo Panday

include information on the terms and conditions of service and every aspect of the status of the judiciary.

Corruption and Good Governance

The impact of corruption on economic management and public life is of deep concern. Following statements by Commonwealth Law and

Finance Ministers, the Secretary-General appointed an Expert Group to study how to tackle the problem. This Group produced a draft framework which could be used as a basis for a document containing Commonwealth Principles on Promoting Good Governance and Combating Corruption. These principles would help the development of a culture of 'zero tolerance' against corruption and will be considered by Heads of Government when they meet in November 1999 (*see Chapter 4*).

Global Rules on Trade

Many members do not have the human resources to comply with various World Trade Organisation (WTO) Agreements, especially those on Trade-Related Aspects of Intellectual Property Rights (TRIPs). And yet compliance could bring trading benefits and non-compliance severe penalties, including trading sanctions. It is in governments' interests, therefore, to ensure understand-

An Agenda for Children

A Commonwealth regional workshop for Asia, hosted by the Government of Bangladesh, launched A Commonwealth Agenda for Children: The Asian Chapter in May 1998. This Agenda will be further developed by drawing on contributions from other regions of the Commonwealth and early in the new millennium a Commonwealth-wide Agenda for Children is expected to be ready.

The Agenda and the Commonwealth Programme on the Rights of the Child seek to assist member governments in their implementation of the UN Convention on the Rights of the Child (1989) through:

- ❖ the review and reform of legislation concerning child rights;
- ❖ the development of child-centred institutions; and

- ❖ the dissemination of good practice as regards child-centred policies, strategies and programmes.

In its present form, the Agenda asks, among other things, that:

- ❖ National policies on children should be formulated in accordance with the Convention on the Rights of the Child and based upon child-adult participatory processes.
- ❖ National policies on children should make sufficient budgetary allocations for all children including the girl-child, children with disabilities, rural children and children living and working on the streets.
- ❖ An annual Children's Budget should be introduced in Parliament to enable the full implementation of national policies on children.



The Commonwealth Agenda for Children seeks to ensure that national policies are in accordance with the Convention on the Rights of the Child



The Secretary-General and the UN Commissioner for Human Rights, Mrs Mary Robinson, signed a Memorandum of Understanding in December 1998 on joint planning and implementation of activities, exchange of information and materials, and sharing skills and experience

ing of, as well as compliance with, these rules.

The Secretariat has accordingly organised a series of regional workshops focusing on legal implementation of the WTO Agreements in Wellington, New Zealand, for the Pacific (1997); in Port of Spain, Trinidad and Tobago, for the Caribbean (1997); in Sri Lanka for Asia (1998); and in Arusha, Tanzania,

for Africa (1998). The Secretariat is now following up by developing legal resource and training materials. For example, a draft guide/manual for government legal advisers on implementation tasks concerning the WTO Agreements is being finalised. A pool of Commonwealth WTO legal experts and government legal officers has been identified to consider specific areas for further assistance.

Human Rights

The Secretariat seeks to promote human rights in an integrated manner in all its programmes. As part of its review of the progress made in 50 years since the Universal Declaration of Human Rights, it organised a pan-Commonwealth workshop on Advancing Economic, Social and Cultural Rights in Accra, Ghana, in December 1998 to focus attention on the advancement of these rights in tandem with civil and political rights.

Open Government and the Right to Know

A Commonwealth Expert Group on the Right to Know has developed a set of principles and guidelines to assist member governments who wish to introduce legislation on the Right to Know which would guarantee citizens the right of access to certain types of government-held information.

In May 1999, Commonwealth Law Ministers considered the Group's recommendations and recommended the following Commonwealth Freedom of Information Principles for endorsement by Heads of Government:

- ❖ Member countries should be encouraged to regard freedom of information as a legal and enforceable right.

- ❖ There should be a presumption in favour of disclosure and governments should promote a culture of openness.
- ❖ The right of access to information may be subject to limited exemptions but these should be narrowly drawn.

- ❖ Governments should maintain and preserve records.
- ❖ In principle, decisions to refuse access to records and information should be subject to independent review.

Citizens should have access to certain types of government-held information



In working with the UN and other relevant international, regional and national agencies, the Secretariat has developed strategies for the promotion of human rights through:

- ❖ information exchange and human rights education and training;
- ❖ strengthening relevant national institutional structures and capacity-building;
- ❖ targeted action as regards the Advancement of Economic, Social and Cultural Rights, National Implementation of the Convention on the Rights of the Child, and the Right to Information.

At the request of governments, the Secretariat has organised training of trainers workshops in Cameroon and in Mozambique. In Cameroon, an intensive training course was conducted for senior prison officers and a training manual was produced as a contribution towards capacity-building for the National Training School of Penitentiary Administration. In Mozambique, the focus was on strengthening the non-governmental sector as an important partner in the promotion of human rights.

Following the 1995 Commonwealth Oxford Declaration on Human Rights Education and the recommendations of the Commonwealth Values in Education project, a framework curriculum for learning human rights in schools and model curricula for the teaching of human rights in law schools were developed in 1998.

Regional and national workshops aimed at strengthening national human rights institutions and oversight bodies such as Human Rights Commissions, Ombudsman offices, and Permanent Commissions of Inquiry have been held in

Tanzania, Uganda as well as in Asia and in the Caribbean.

Work has been done on promoting the right of political participation and the right to information within the broader objective of entrenching democracy. Before the elections in Lesotho in May 1998 the linkages between the promotion of democracy and human rights were examined. The importance of the Right to Know in achieving open and accountable government is widely recognised and a Commonwealth Expert Group has developed Commonwealth Principles and Guidelines on the Right to Know.



Cameroon Minister Mr Antar Gassagay closes a training course for senior prisons officers

The Commonwealth has placed special emphasis on the rights of women and children. The Asian members of the Commonwealth have launched a Commonwealth Agenda for Children which is a plan for the effective implementation of the Convention on the Rights of the Child. A recent study is seeking to identify special measures to protect women and children from commercial sexual exploitation. Another study seeks to document good practice in law and the implementation of programmes to protect children from different types of exploitation.

Transnational Crime and Mutual Legal Co-operation

The Secretariat has continued to work in the areas of mutual assistance in criminal matters including extradition, drug trafficking, money laundering, computer and computer-related crime, and other issues relating to international and transnational crime and international co-operation to combat serious crime.

It provides information regarding new national laws on mutual assistance in criminal matters and money laundering. This is distributed in the form of supplements to the loose-leaf publications entitled *Mutual Assistance in Criminal Matters: Guide to National Practice and Procedure*, and *Combating Money Laundering: Guide to National Laws*. It also publishes two newsletters, *Commonwealth Legal Assistance News* and *Commonwealth Crimewatch*. A computerised index of holdings of laws on subjects relating to



Combating computer and computer-related crime

criminal justice and business regulation is maintained. The collection currently stands at approximately 500 indexed statutes and 100 treaties.

Transnational Organised Crime

Modern information technology and the ease of travel make the task of investigating and prosecuting serious crime complicated and costly. The problem is more grave for small states, who must also find the human and financial resources to deter, detect and deal with transborder crime.

The Secretariat seeks to strengthen the capacity of member countries to deal with these issues by providing government legal practitioners with relevant information and skills. Periodicals containing information on legal developments in the fields of extradition, mutual assistance in criminal matters, the transfer of convicted offenders and other forms of international co-operation to combat crime are produced. They also deal with issues relating to

money laundering, drug trafficking, corruption and the confiscation of the proceeds of crime. Where appropriate, the Secretariat also combines with other inter-governmental organisations, including the UN, to address common problems.

Subjects of particular relevance to Commonwealth countries are also dealt with in specialist manuals and in publications giving information on national laws enacted to implement the Commonwealth Schemes in the area of international co-operation to combat crime.

The balance between the protection of human rights and the needs of law enforcement when countries seek to co-operate to combat crime was addressed in the 1998 Oxford Conference on International Co-operation in Criminal Matters. More than 100 participants from 36

countries identified those fundamental rights which should influence all actions taken in support of international co-operation to combat crime. Commonwealth Law Ministers asked their Senior Officials to consider the feasibility of adopting recommendations concerning, among other issues, the possible amendment of the Extradition Scheme so that a requested state would be required to refuse extradition if there were substantial risk that the return of a fugitive would result in serious violation of a human rights treaty to which the requested state is a party, or to an obligation under customary international law.

Crimes using sophisticated information technology have been identified as presenting a particular threat to small Commonwealth jurisdictions and the laundering of the proceeds of crime using emerging

Upon request, information has been provided to countries seeking assistance with the development of laws to combat money laundering and the modernisation of laws relevant to international co-operation. The Commonwealth model law for the prohibition of money laundering has been drawn upon by a number of member countries in the development of national laws. In response to a specific request from Mauritius, the Secretariat was able to assist in the drafting of a comprehensive law to combat money laundering and establish an economic crime division.

In June 1998, the Secretariat convened a joint meeting of Senior Officials of Law and Finance Ministries to consider establishing national co-ordinating bodies to work on countering money laundering, money laundering in the cash and parallel economies, and the establishment of regional anti-money laundering groups.

The Secretariat participates in meetings of the Financial Action Task Force and in the co-ordination meetings of international and regional organisations concerned with combating money laundering. One of the major activities of the international co-ordination group is the development of a global database, to be made available to governments on the Internet, of information on national laws and procedures for dealing with money laundering. The Secretariat is co-operating with the UN to establish this collection.

International Co-operation on Human Rights and Combating Crime

Governments recognise that transnational crime is increasing as well as becoming increasingly complex. They are concerned that, in their present form, arrangements for mutual assistance in the administration of justice may not be sufficient. It is not only a matter of strengthen-

ing international co-operation, the rule of law and the rule of international law to secure the safety of nations and their citizens and to protect them from the effects of criminal activity, but also of concern is the protection of the fundamental rights of the individual. The appropriate balance between the two was the subject of discussion at a conference in Oxford organised by the Secretariat in August 1998.

cyber-technology as one of the most insidious of these crimes. A workshop to consider this issue and make recommendations for action by member countries was held with the Caribbean Financial Action Task Force. Substantially supported by the United States, the workshop sought to familiarise participants with developments in technology, explain the methodologies used by money launderers and identify problems and potential solutions.



Senior law practitioners from the Commonwealth discuss the balance between the protection of human rights and the needs of law enforcement at Oxford