

# Strengthening the rule of law



A robust legal system is critical to development and essential for democracy. It underpins economic growth and is a vital component of work in myriad areas, from conflict resolution to encouraging trade, investment and poverty reduction.

The Commonwealth Secretariat has a broad range of programmes aimed at enhancing the rule of law and strengthening the justice systems within the Commonwealth. These programmes are diverse and multi-faceted, covering both today's pressing issues and emerging topics for tomorrow, and include essential work with member countries on fundamental questions related to legal structures and constitutional reform. They also encompass policy development and programmes aimed at the adoption of modern and effective laws, strengthening justice institutions and processes, and enhancing capacity to combat crime, both domestic and international.

## Trade, investment and competition

A solid framework of business laws is needed for countries to improve trade opportunities and attract investment. Of growing importance within that framework are laws that govern competition. Their enactment in developing countries is a relatively recent phenomenon. Arising from a request made by Law Ministers of Small Commonwealth Jurisdictions, work has been carried out on the development of a Commonwealth Model Law on Competition. On the basis of recommendations made by Commonwealth Law Ministers at their meeting in Kingstown, St Vincent and the Grenadines, in November 2002, work continues on the elaboration of a model law that will take into consideration not only traditional competition laws within developed countries and the policies of the WTO, but also the experiences of developing countries. In particular, this model law seeks to accommodate those countries in which a section of the community has in the past been systematically excluded from areas of commercial activity. The matter will be considered again by Law Ministers when they next meet.

## New technologies

The remarkable technological advances of recent years pose challenges that affect all

Commonwealth countries, which need to seize the opportunities of e-commerce and e-governance while preventing the abuse and misuse of technology. At their 2002 meeting, Law Ministers endorsed a series of model laws on these subjects, the culmination of work carried out by the Secretariat over the previous few years. These model legislative provisions are tools for member countries to adapt into their own domestic law. Recognising the fast pace of change inherent in this field, Law Ministers have requested that these model laws be kept under review and that the work of the Secretariat in this important field continue.

Model laws developed by the Commonwealth in a number of areas, along with Commonwealth schemes and other documents of interest, are now posted on the website of the Secretariat ([www.thecommonwealth.org/law](http://www.thecommonwealth.org/law)).

## Land and development

Land, the direct source of livelihood for vast numbers of people in the Commonwealth, is strongly linked to development and poverty reduction.

Land policy, reform and tenure, within the appropriate legislative framework, contribute to poverty reduction, the achievement of the Millennium Development Goals and the fulfilment of the Secretariat's mandate on democracy and development through, among other things:

- sustainable economic growth;
- equitable distribution of land;
- secure land rights; and
- environmental sustainability.

The Secretariat's programme on Land and Development focuses on rendering assistance in the review and where necessary development of land policy; capacity-building; formulating reforms; and establishing appropriate legislative frameworks.

In the Kingstown Declaration on Land and Development of November 2002, Commonwealth Law Ministers echoed the

### Above:

Development and democracy demand an independent judiciary

### Opposite (top):

Australian Foreign Minister Alexander Downer (right) and the Secretary-General address the media following a meeting of the Commonwealth Committee on Terrorism

### Opposite (bottom):

A CFTC expert (standing) provides assistance on legislative drafting in St Kitts and Nevis

Coolum Declaration by Heads of Government: both declarations recognise the links between democracy and good governance on the one hand, and poverty, conflict and poor development on the other.

### **Freedom of information and privacy**

The Commonwealth Freedom of Information Principles endorsed by Law Ministers and noted by Heads of Government recognise the importance of public access to official information, both in promoting transparency and accountable governance and in encouraging the full participation of citizens in the democratic process. The Secretariat has developed a model law on freedom of information intended to assist member countries in adopting these principles in practice within their own domestic context. At the same time, a related model law on privacy has been prepared, designed to ensure that personal information is collected only for appropriate purposes and by appropriate means and to prevent its improper disclosure. Law Ministers have commended both these model laws as useful tools which could be adapted to meet the constitutional and legal positions of their individual countries. They acknowledged that the implementation of these laws had to take into account the resources available in each country.

### **Combating crime and terrorism**

Crime, especially transnational crime, constitutes a major threat to democracy. The Secretariat continues to work intensively with member countries to enhance capacity to deal with contemporary problems in the criminal law and to strengthen international co-operation.

Terrorism is not new to the Commonwealth, which has consistently condemned it in all its forms. Following the terrorist attacks of 11 September 2001, Commonwealth Heads of Government committed themselves to strengthening their joint efforts to combat terrorism. A Commonwealth Plan of Action against terrorism was endorsed at Coolum and a ministerial committee oversees its implementation. Recent terrorist incidents around the world, a number of which have taken place in Commonwealth countries, have further underscored the need for urgent action.

The Secretariat has delivered an intensive pan-Commonwealth programme of legislative measures to combat terrorism and to assist in implementing international obligations such as those contained in UN



Security Council Resolution 1373. This work has included the elaboration of model legislative provisions; the development and distribution of implementation 'kits' for existing counter terrorism conventions; and the organisation of regional workshops.

Corruption is another area of significant and cross-cutting concern. Efforts continue on the development of measures for its prevention, building on the Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption. A key component of the programme has been the Secretariat's work with Commonwealth judges, in partnership with the Commonwealth Magistrates' and Judges' Association, to strengthen the judiciary and enhance capability to eliminate corruption. The Secretariat has also played a key co-ordinating role in the United Nations negotiations on a comprehensive Convention against corruption.

In relation to the gravest crimes – crimes against humanity, war crimes and genocide – work continues to assist member countries that are States Parties in implementing the Rome Statute of the International Criminal Court. The aim is to further international efforts to end impunity and ensure that those accused of the most heinous of crimes are brought to justice.

### **Final appellate/regional courts**

The move by some member countries of the Commonwealth to de-link from the Judicial

Committee of the Privy Council (JCPC) was discussed at the 2002 Law Ministers Meeting. The Law Ministers agreed that in the process of removing jurisdiction from the JCPC, member countries should ensure that the traditional Commonwealth standards are maintained and that the transition process should be as smooth as possible.

To examine these issues, an Expert Group meeting was convened in London in June 2003 with representatives from the judiciary and senior government officials from across the Commonwealth. The meeting provided the opportunity for an open exchange of ideas and experiences which should be of great benefit to those member countries of the Commonwealth embarking on this process.

