

Government and the Rule of Law

MONEY LAUNDERING

Money laundering continues to undermine the financial and legal systems of many countries. The Secretariat helps countries to understand the problem and to establish relevant legal frameworks. Workshops have been complemented by the production of the Secretariat's guide to national laws and practices which is updated regularly. Together with the UN and other international organisations, including the Financial Action Task Force, the Secretariat is developing a global database on this subject. It will contain information on both the problem and potential solutions.

Since 1995, a number of Commonwealth countries have enacted laws against money laundering, many based on the Model Money Laundering Bill developed by the Secretariat, and established financial investigation units charged with analysing suspicious financial transactions. Senior government officials who met in London in June 1996 felt, however, that many countries needed to take further steps, including involving non-bank financial institutions. They also said that parallel economies of a significant size could be used to launder money.

Guidance notes on strategies to combat money laundering have been prepared.

The Millbrook Action Programme emphasised good government, the rule of law and independence of the judiciary, constitutional and legal structures which underpin democracy, respect for human rights, and sound institutions relevant to all these, as being among measures central to the upholding of Commonwealth fundamental values. Secretariat legal and related programmes and activities are designed to assist member countries in establishing or strengthening existing frameworks in these areas and enabling them to adapt to the challenges of more open and accountable government.

The Secretariat therefore ensures that information concerning best practice in constitutional, judicial, administrative and regulatory matters, as well as human rights issues, is made available to governments; and that national systems benefit from international arrangements designed to combat international crime, especially commercial crime and money laundering. The needs of small states in this regard are of special concern (*see page 85*).

Priority has been given to assist countries in improving their capacities in critical areas which help entrench and advance democracy in general and the rule of law and accountable government in particular. Assistance has also been extended to governments in the review and strengthening of their constitutions and constitutional instruments.

The series of judicial colloquia on the domestic application of international human rights norms, which the Secretariat has since 1988 organised in collaboration with Interights, the London-based International Centre for the Legal Protection of Human Rights, has produced a computerised digest of judicial decisions on human rights which have constitutional implications and through which judges around the Commonwealth are able to learn from the experiences of their colleagues in other countries. These judgments, fashioned out of the application of international norms to local circumstances, have sometimes led to constitutional reform.

Public Officials and the Judiciary

Administrative law workshops were initiated in 1992 and held at regional or national level in Barbados, Botswana, British Virgin Islands, Lesotho, Samoa and Papua New Guinea for public officials, especially those whose actions and decisions directly affect individual rights. Drawing on discussions at these workshops, a handbook on good government and administrative law has been produced to help public officials respect the law when exercising their public duties.

In recognition of the importance of an independent judiciary to the maintenance of the rule of law, Commonwealth Law Ministers, at their April 1996 meeting in Kuala Lumpur, Malaysia, established a working group of senior officials to examine the terms and conditions of service



of judges with a view to securing their independence. This group, which is serviced by the Secretariat, is to report back to the Ministers who will then make recommendations to their governments.

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Human Rights

The Secretariat encourages and helps members to establish or strengthen mechanisms for the promotion of human rights, and to include special training in this area in existing training programmes. It also encourages wider accession to international human rights instruments and the implementation in an integrated manner of international human rights standards at the national level.

In September 1995, the Secretariat organised a pan-Commonwealth Conference on Human Rights Education and Training at Oxford in Britain. The Conference adopted a Commonwealth Plan of Action within which member countries could develop activities in line with the UN Decade on Human Rights Education 1995-2004. The conference was followed by a Regional Human Rights Workshop for the Pacific in Vanuatu in June 1996.

With a view to identifying ways of forging an integrated approach to promoting democracy, human rights and development, the Secretariat organised a high-level pan-Commonwealth workshop on advancing civil, economic and social rights in London in July 1996, which focused particularly on learning from successful development experience. Two regional training workshops on reporting under the international and regional instruments – in Zambia in July 1995 for the Southern African region and in Jamaica in October/November 1996 for the Caribbean – were held.

The implementation of international human rights standards and their application at the domestic level is encouraged including through colloquia. Two colloquia for judges on the domestic application of international human rights norms were held, in Georgetown, Guyana, in September 1996 for the Caribbean, and in Lesotho in February 1997 for Lesotho, Malawi and South Africa.



The Chief Minister of West Bengal, Mr Jyoti Basu, speaking at the opening of the Commonwealth workshop on managing human rights institutions in Calcutta, India, in June 1997

Training manuals which take into account the rights of women and other gender perspectives have also been produced for law enforcement, prison and Foreign Service officials as well as for judicial officers. These were used at a regional workshop for law enforcement officials in the Africa region, held in South Africa in March 1997. Trainers of trainers in human rights also attended a workshop in Kampala, Uganda, in April 1997, and in May 1997, a workshop was held in Calcutta, India, to improve efficiency in the management of oversight bodies.

Legislative Drafting and Legal Assistance

Governments recognise that a sound legal infrastructure must be serviced by an equally sound and dedicated legislative drafting establishment. They continue to turn to the Secretariat for assistance in obtaining the services of experts in this highly specialised field, where their own skills need upgrading and skilled drafters are in short supply.

In the two years since 1995, drafters funded by the CFTC have been provided to the governments of Dominica, Grenada, Guyana, Lesotho, Kenya, Namibia, St Kitts and Nevis, Trinidad and Tobago, and Uganda as well as to Niue, and a Course Director in Drafting Training to the University of the South Pacific. The CFTC also continues to sponsor students nominated by their governments for training in this field at the University of the West Indies.

The programme for distance training in legislative drafting, officially launched in September 1995 in collaboration with the Commonwealth of Learning (COL), also with funding provided by the CFTC, is now in progress but its full development has been affected by the delay in the establishment of the regional delivery centres in the Caribbean and the Pacific.

Commercial Crime

The commitment of the Commonwealth to the supremacy of the rule of law and of international law lies at the heart of action by member coun-



Awards ceremony at the conclusion of a workshop in Cyprus in 1995 on human rights training for law enforcement officials

tries to co-operate to combat serious crime and to ensure that criminals are not permitted to distort economies and societies by using the profits of their crimes to destabilise nations.

At the request of Commonwealth Law Ministers the Secretariat has begun a study on the major causes of corruption with a view to formulating codes of conduct for public officials. This study will also help countries to combat drug trafficking, implement the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and ensure that laws prohibiting money laundering can be effectively enforced.

The Secretariat is also working to ensure that the Commonwealth Schemes covering extradition, mutual assistance in criminal matters, transfer of convicted offenders and mutual assistance between business regulatory agencies are capable of responding both to the changing needs of member countries and to the changing *modus operandi* of criminals.

Manuals and other legal materials describing relevant global developments are produced and training courses organised in specialised subjects such as evidence laws and money laundering.

Legal Co-operation

In the general area of Commonwealth mutual legal co-operation, the 11th triennial Commonwealth Law Conference was hosted by the Canadian Bar Association in Vancouver in 1996 and attended by more than 1,500 lawyers from all over the Commonwealth. In the same general thrust of the exchange of experiences in the administration of justice, Commonwealth correctional administrators held their fourth triennial meeting in Brisbane, Australia, in November 1996 and focused on topical and current issues in the management of prisons and co-operation in building capacity in this field.

Gender Integration

Issues relating specifically to women are, as a matter of practice, mainstreamed into all legal programmes and activities, which are continually reviewed to ensure a gender balance. In 1996, Law Ministers acknowledged the continued existence of legal constraints which disadvantage women and in particular the continuing need to address the problem of violence against women. They agreed that their respective statute books and legal practices needed to be revised to remove these constraints and deal with this problem.

TRIPS AND TRADE

One of the agreements adopted under the Uruguay Round of multilateral trade negotiations was the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which laid down uniform standards for the protection of these rights. All World Trade Organisation (WTO) member countries are required to adopt national legislation and regulations to implement the obligations imposed under this agreement.

Concern for the legal implications of the Uruguay Round multilateral agreements and particularly the difficulties involved in complying with the complex and detailed TRIPS obligations led law officers of small Commonwealth jurisdictions meeting in Windhoek, Namibia, in September 1995 and the Law Ministers meeting in 1996 to request Secretariat assistance to enable members to assess the implication of becoming parties and to effectively implement their obligations.

In line with this mandate, the Secretariat is holding a series of regional workshops, the first of which was undertaken in collaboration with the African Regional Intellectual Property Organisation, the WTO and the International Development Law Institute in Zambia in December 1996. The objective was to assist ministry and legal officials responsible for the implementation of the TRIPS agreement to identify key issues in implementation and develop strategies to overcome problems.



Countries are required to adopt new legislation on aspects of intellectual property rights, to cover sale of music and in other areas, under the Uruguay Round agreements.