

THE COMMONWEALTH LAWYERS' ASSOCIATION (CLA)

Activity Report July 2005 – April 2007

Senior Officials of Law Ministries and Commonwealth Law Ministers Edinburgh, Scotland – 7th – 10th July 2008

The Commonwealth Lawyers' Association (CLA) is a professional association of lawyers across the Commonwealth. Its objects are to promote the rule of law and to ensure that the people of the Commonwealth are served by an independent and efficient legal profession. Commonwealth lawyers share a common heritage and much can be gained by strengthening the links between them. The CLA undertakes a wide range of activities in both the official and unofficial Commonwealth and is represented at events accompanying Meetings of the Commonwealth Heads of Government and participates as an observer at Meetings of Commonwealth Law Ministers and Senior Officials. The CLA is an official partner of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat and also works closely with the Political Affairs Division where appropriate. In addition, the CLA undertakes advocacy and research projects and provides services to its members. It publishes *The Commonwealth Lawyer* and the *Clarion* three times a year and is responsible for the organisation of the biennial Commonwealth Law Conferences.

Rule of Law

The CLA has been particularly active in upholding respect for the rule of law across the Commonwealth whose fundamental values are to promote democracy and good governance, human rights and the rule of law. Some of these activities are listed as follows:

Fiji:

- 14th December 2006 – CLA issued a statement denouncing the overthrow of the democratically elected government and assumption of executive control by the military. The CLA urged Fiji to restore the democratically elected government as soon as possible.
- March 2007 - CLA commissioned an Opinion on the removal of the Chief Justice and the subsequent proceedings of the Judicial Services Commission (JSC). The opinion holds that there are very limited circumstances in which a member of the JSC other than the Chief Justice can chair a meeting of the JSC and these did not exist at the time of the meeting on 15th January 2007.
- 18th July 2007 - CLA and the Law Council of Australia held a joint meeting at which Mr. Gordon Hughes delivered an address on the current situation and rule of law in Fiji.
- 13th September 2007 - CLA adopted a resolution at the 15th Commonwealth Law Conference expressing concern at the continued erosion of the independence of the judiciary in Fiji and calling on the government to respect the independence of the legal profession and the right of lawyers to exercise freedom of political opinion and conscience.

Kenya:

- 24th January 2008 - CLA issued a statement addressing the civil unrest following the election results of 27 December 2007 in Kenya. The CLA urgently called upon the government to resolve the issues relating to the disputed elections in accordance with the provisions of the Constitution and to bring an end to the current violence.

Pakistan:

- 14th March 2007 - CLA issued a statement expressing grave concern over the circumstances surrounding the removal from office of the Chief Justice Iftikhar Chaudhary and that the removal violated the Commonwealth's fundamental values and, in particular, the Commonwealth (Latimer House) Principles.
- 13th September 2007 - CLA adopted a resolution at the 15th Commonwealth Law Conference commending the action of legal fraternity in Pakistan during the judicial crisis that followed the suspension of the Chief Justice which resulted in his reinstatement on 20th July 2007. The resolution also encouraged General Musharraf to separate his dual office of

the Chief of Army Staff and the President of Pakistan, along with ensuring the upcoming scheduled election is free and fair and held in accordance with the basic principles of democracy and good governance, human rights and the rule of law.

- CLA has been in regular contact with the Political Affairs and Legal and Constitutional Affairs Divisions of the Commonwealth Secretariat, providing information on developments in Pakistan, in addition to making a number of submissions to the meetings of the Commonwealth Ministerial Action Group (CMAG).

Zimbabwe:

Although Zimbabwe is no longer a member of the Commonwealth, the CLA has continued to allow the Law Society of Zimbabwe (LSZ) and individual members from Zimbabwe to participate in the activities of the association. The CLA has been able to mobilise support from different law societies and bar associations across the Commonwealth for the LSZ in their efforts to maintain the rule of law and to promote democracy, good governance and human rights.

- December 2005 - CLA issued a joint statement expressing concern at the travel ban imposed upon critics of the Zimbabwe Government.
- February 2006 - CLA wrote to the Attorney General of Zimbabwe expressing concern about reports of the prolonged detention of women activists from Women of Zimbabwe Arise (WOZA) who were arrested during peaceful protests on 14 February 2006. He called for their immediate release and urged the Government of Zimbabwe to conform to the provisions of the 1998 UN Declaration on Human Rights Defenders.
- September 2006 - CLA and the Bar of Human Rights of England & Wales secured funding to send a trial observer to Zimbabwe in order to monitor the trial of the Trustees of the Voice of the People (VOP). The CLA and Bar Human Rights Committee were concerned about the matter because it had been pursued to date in a manner which was unprocedural, unlawful and unconstitutional.
- 13th March 2007 - CLA, Bar Human Rights Committee of England & Wales (BHRC), the International Bar Association (IBA) and the Solicitors' International Human Rights Group (SIHRG) sent a joint letter to H.E. the President of Zimbabwe expressing concerns about reports of arrests and serious mistreatment of detainees, including the leader of the opposition MDC, Morgan Tsvangirai, and called on the Minister of Justice and Attorney General to give assurances that the government would respect the rights of the detainees.
- 14th March 2007 - CLA issued a statement expressing concern about the arrests of numerous opposition parties and civil society activists on Sunday 11th March 2007 and about reports that the detainees were mistreated while in custody. The CLA also expressed concern over allegations that police officials had obstructed the ability of detainees to obtain legal representation. CLA urged the government to respect the role of lawyers as detailed in the United Nations Basic Principles on the Role of Lawyers (1990), and to ensure that, in the interests of the effective administration of justice, detainees had unobstructed access to their lawyers.
- 9th May 2007 - CLA, SIHRG and BHRC issued a joint statement expressing concern about reports of the violent break up, assault and subsequent dispersal of lawyers and officers of the court participating in a peaceful march, by members of the Zimbabwe Republic Police on 8th May 2007. They renewed earlier calls upon the government to respect the provisions of the United Nations Basic Principles on the Role of Lawyers (1990) and the United Nations Declaration on the Human Rights Defenders (1998).
- 15th May 2007 - CLA provided assistance and mobilised various organisations following the arrest, without charge, of lawyers participating in a peaceful march against the ongoing harassment of legal practitioners in the course of their duties.
- 13th September 2007 – CLA adopted a resolution at the 15th Commonwealth Law Conference condemning the continued harassment, direct and indirect attacks by the government on lawyers in Zimbabwe. It renewed previous calls upon the government to respect the independence of the legal profession and the role of lawyers and encouraged the LSZ to continue to play an important role in promoting the rule of law.

Copies of all statements and resolutions are available at www.commonwealthlawyers.com

Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government:

The *Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government* (the Principles) provide a roadmap for democracy and good governance. They emphasise the importance of the separation of powers between the three branches of government as guarantors of the rule of law, promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability. The maintenance of an independent and efficient judiciary, coupled with the ability of citizens to hold their governments to account, serves to reduce the prevalence of corruption and has a significant impact on overall transparency and improved governance.

- The CLA has developed a joint project with the Commonwealth Magistrates & Judges Association (CMJA) to establish how well Commonwealth countries are exercising good governance, upholding the separation of powers and the rule of law and to develop simple indicators to assess their performance. This project will adopt a number of approaches in sensitising the public, conducting and compiling the research. It will both encourage and facilitate participatory democracy thereby better enabling citizens to hold their governments to account. The CLA and CMJA are currently seeking funding for the project.
- The CLA, together with the CMJA, Commonwealth Legal Education Association (CLEA) and the Commonwealth Parliamentary Association (CPA) has organised a Latimer House Colloquium which will take place on 6th & 7th July 2008. The colloquium is being held ten years after the drafting of the Principles, and five years after their adoption. Implementation of the Principles since 2003 has been variable and this has limited the success of democracies in a number of Commonwealth countries. Recent challenges to democracy, respect for the rule of law and the separation of powers highlights the importance of developing tools to assess and monitor the commitment of governments to the Principles and the fundamental values of the Commonwealth. The colloquium will monitor and assess commitment to the Principles and will build upon the Nairobi Plan of Action for Africa, which set out practical measures required to implement the Principles in the African context and specific activities in relation to the adoption of the Principles through such mechanisms as activities undertaken in order to strengthen the capacity and independence of the legal and judicial professions. This will be utilised in establishing a comprehensive pan-Commonwealth action plan over the next 5 years.

Legal Profession

Bar Standards Board Submission

- November 2006 - CLA made a submission to the Bar Standards Board of the General Council of the Bar of England & Wales on the issue of deferral of call. Proposals to end the current practice whereby individuals can be called to the Bar of England and Wales and acquire the title of 'barrister at law' upon completion of the Bar Vocational Course, but without completing a pupillage. The CLA raised concerns about the potential impact of such proposals on the wider profession throughout the Commonwealth.

Solicitors Regulation Authority Submission

- April 2008 - CLA made a submission to the consultation and review of qualified lawyers transfers requirements by the Solicitors Regulation Authority. These included proposals to amend the existing regulations in order to address fears relating to declining professional standards. The CLA raised concerns about the potential impact of such proposals on the wider profession throughout the Commonwealth.

Guide to Common Law Qualification

- August 2007 – CLA published the 'Guide to Common Law Qualification in the Commonwealth'. The Guide contains information on qualification and transfer

requirements for legal practitioners in every Commonwealth and a number of other common law jurisdictions.

Malaysia:

- October 2008 - CLA monitored allegations of fixing judicial appointments that had been made against a lawyer in Malaysia as a result of mobile phone footage purportedly recording the conversation. A Royal Commission of Inquiry was established by the Malaysian government to inquire into the authenticity of the video clip. The CLA made arrangements to send an independent observer to attend the hearings although it subsequently became clear that this would not be possible.
The CLA also contacted the Malaysian Bar Council making reference to the *United Nations Basic Principles on the Role of Lawyers* (1990) which require that lawyers shall at all times maintain the honour and dignity of their profession and shall act freely and diligently in accordance with the law and recognised standards and ethics of the legal profession. The CLA expressed its concern that the alleged conduct of the lawyer in question was in breach of these principles and requested information as to the action taken by the Malaysian Bar Council as a result of the allegations.

Terrorism

The CLA has continued to build on its earlier successful role in the landmark case of *Rasul v Bush* where, in 2004, the US Supreme Court held that habeas corpus jurisdiction extended to Guantanamo Bay.

- **October 2005 Intervention – House of Lords Use Evidence Obtained by Torture**
CLA was permitted to intervene on behalf of the Home Department in the House of Lords in the case of *A & Others v. Secretary of State*. The intervention was a joint petition, together with the Human Rights Institute of the International Bar Association (IBA) and the International Commission of Jurists (ICJ). The case concerned two issues related to terrorism- the use of evidence obtained by a foreign state through means of torture, as well as indefinite incarceration without charges, legal resources, or a hearing.
- **January 2006 Amicus Brief – United States Supreme Court - Habeas Corpus**
CLA and BHRC submitted a joint amicus brief in the U.S. Supreme Court Appeal in *Salim Ahmed Hamdan v. Rumsfeld et al* relating to issues of habeas corpus. The appeal was heard in March 2006 and the court held that military commissions must comply with the ordinary laws of the U.S. and the laws of war.
- **August 2007 Amicus Brief – United States Supreme Court - Violation of Rule of Law**
CLA submitted an amicus brief drafted by Sir Sydney Kentridge QC, Colin Nicholls QC, Timothy Otty QC and John Townsend Rich in the case *Boumediene v Bush & Al Odah v. United States*. The consolidated cases addressed, amongst other issues, whether the provisions of the Military Commissions Act of 2006 that bar Guantanamo detainees from pursuing habeas corpus petitions violate the Suspension Clause of the U.S. Constitution, and whether the detainees are entitled to pursue habeas claims in federal court.
- **January 2008 Amicus Brief – United States Supreme Court - Child Prisoners of War**
CLA was party to an amicus brief submitted to the U.S. Supreme Court in the case of *U.S. v. Omar Ahmed Khadr*. The amicus holds that the detention was wrong because Khadr was a child soldier and, historically, these children have been protected from imprisonment. Children have limitations on their ability to consent to recruitment and participation in armed conflict, allowing their protection. The amicus relied on the protection granted to child soldiers in the Geneva Convention.

Copies of all briefs are available at www.commonwealthlawyers.com

Commonwealth Law Conferences (CLC)

- **14th Commonwealth Law Conference - London, UK 11th to 15th September 2005**

The jubilee conference celebrated 50 years of Commonwealth Law Conferences. The theme of the conference was *Developing Law & Justice* and delegates from forty-three Commonwealth countries, and nine non-Commonwealth countries, attended the event. The CLA organised a legal writing competition in the run up to the conference and also assisted with the organisation of the Commonwealth Moot Competition and various satellite meetings. Keynote speakers included Sir Sridath Ramphal and the Rt. Hon Lord Bingham of Cornhill.

- **15th Commonwealth Law Conference – Nairobi, Kenya 9th to 13th September 2007**

This was the first CLC to be held in Africa since 1980. The theme of the conference was *‘Governance, Globalisation and the Commonwealth’* and 1200 delegates from every region of the Commonwealth attended the event. The CLA organised a legal writing competition in the run up to the conference and also assisted with the organisation of the Commonwealth Moot Competition and various satellite meetings. Keynote speakers included Mr. Stephen Lewis, former UN Secretary General’s special envoy for HIV/AIDS in Africa (2001-2006) and Nobel Laureate Hon Prof Wangari Maathai.

In addition to the statements about Fiji, Pakistan and Zimbabwe, a number of other resolutions were adopted at the conference. These include:

- *Resolution on HIV/AIDS*: CLA encouraged Commonwealth countries to make available access to new therapies for those infected and to work on prevention strategies.
- *Resolution on Religious Freedom*: CLA expressed concern about the decision in the *Lina Joy* case and cited the need for all Commonwealth countries to have laws which reflect the right of all citizens to manifest and practice any or no religion, as their conscience requires.
- *Resolution on the Atrocities Committed against Women in the Eastern Region of the Democratic Republic of Congo (DRC)*: CLA encouraged greater support, through an external presence in the Eastern Region of the DRC, to eliminate sexual violence against women, along with an International Criminal Court investigation and prosecution of the offenders committing crimes against humanity (i.e. sexual violence against women).

Miscellaneous Activities

Commonwealth Consultation on Membership:

- July 2007 - CLA made a joint submission with the Commonwealth legal Forum (CLF) to the Commonwealth consultation on membership. The submission addressed the issues relating to the criteria for full membership and new categories of membership (e.g. associate).

Death Penalty:

- October 2006 - Statement in the case of Mirza Tahir Hussain
CLA issued a statement urging the Government of Pakistan not to carry out the death sentence imposed on Mirza Tahir Hussain. CLA noted that his conviction by the Federal Shariat Court followed his acquittal by the Lahore High Court and serious concerns had been raised as to the fairness of the trial, sentencing and re-conviction. Furthermore, the sentence of death was based on a split two to one judgment with the dissenting judge strongly recommending his acquittal. Execution eighteen years following arrest amounted to cruel and unusual punishment.

Collaboration:

- October 2006 to date - Commonwealth Legal Forum

CLA initiated the Commonwealth Legal Forum (the Forum), a group of Commonwealth legal associations that meets on a quarterly basis to discuss ongoing activities and areas of mutual interest. Members include, amongst others, the Legal and Constitutional Affairs Division of the Commonwealth Secretariat, CMJA, CLEA, Commonwealth association of Law Reform Agencies (CALRAS) and the British Institute of International and Comparative Law (BIICL).

Commonwealth Lawyers' Association (CLA)
30th April 2008