

THE EDINBURGH PLAN OF ACTION FOR THE COMMONWEALTH

**FOR THE DEVELOPMENT, PROMOTION, AND IMPLEMENTATION OF THE COMMONWEALTH (LATIMER HOUSE)
PRINCIPLES ON THE ACCOUNTABILITY OF AND RELATIONSHIP BETWEEN THE THREE BRANCHES OF GOVERNMENT**

PREAMBLE

REAFFIRMING the Commonwealth (Latimer House) Principles endorsed by Commonwealth Heads of Government at Abuja in 2003, and

REAFFIRMING the importance of implementation of the Plan of Action for Africa adopted at Nairobi in 2005 not only in Africa but in the wider Commonwealth and recognising the special circumstances of smaller and under resourced jurisdictions,

NOTING that,

- (1) while good practice in implementation of the Principles has developed in several jurisdictions, there have been a number of cases of the violation of the fundamental principle that: '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'(CLHP¹ 1);
- (2) it has not proved possible to establish, either within or outside official Commonwealth channels, an effective and systematic procedure for assessing both good and bad practice in terms of compliance with the Principles;|
- (3) while the Principles have been widely circulated and discussed at numerous Commonwealth gatherings there remains ignorance of their importance among government officers, parliamentarians, lawyers, judicial officers and members of civil society;
- (4) each new generation of government officers, parliamentarians, lawyers, judicial officers and members of civil society has to be alert to the imperatives of, and balance between, the independence and accountability of the judiciary, parliament and the executive;
- (5) there is a need to make better provision for the continuing implementation and assessment of the Principles across the Commonwealth,

representatives of the Commonwealth Lawyers' Association (CLA), Commonwealth Legal Education Association (CLEA), the Commonwealth Magistrates' and Judges' Association (CMJA) and the Commonwealth Parliamentary Association (CPA) and Law Officers, meeting at the Scottish Parliament in Edinburgh on 6 & 7 July 2008:

HAVE RESOLVED TO ADOPT the following provisions for implementation and assessment of the Principles:

¹ CLHP = Commonwealth (Latimer House) Principles on the Accountability of and Relationship Between the Three Branches of Governments

1. Relationship Between the Three Branches of Government

1.1 General

The Principles specify that "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." (CLHP - I)

ACTION:

The partner organisations (CLA, CLEA, CMJA and CPA) should assist the Commonwealth Secretariat by the establishment of a Standing Committee for the purpose of gathering relevant information, reporting on implementation of the Principles, best practice and areas of concern to inform the deliberations of the Commonwealth Ministerial Action Group. Other civil society organisations should be encouraged to assist the Standing Committee in gathering relevant information.

Governments should be encouraged to provide reports on the implementation of the Principles in their jurisdictions at each Heads of Government Meeting, with particular emphasis on best practice and challenges faced, as part of the rule of law mandate of the Commonwealth.

The Commonwealth Secretariat should:

- **collate information on the implementation of the Principles on an ongoing basis;**
- **provide regular reports to Commonwealth Law Ministers, Senior Officials, Heads of Judiciary and Speakers of Parliament; and**
- **promote peer review of compliance with the Principles on a regional basis.**

All parliamentarians, judicial officers and public servants, on election or appointment, should be given awareness training on basic constitutional principles and their primary roles in the constitutional process.

Meetings between representatives of the three branches of government should be organised on a regular basis, in their respective jurisdictions, in order to promote better understanding of each other's roles.

The Commonwealth Secretariat should assist in facilitating these exchanges.

The CPA should continue its seminars for newly elected parliamentarians.

The CMJA should expand its existing programmes to newly appointed judicial officers with specific emphasis on the Principles.

The Commonwealth Secretariat should assist in facilitating similar programmes for the public service.

1.2 Independence of Parliamentarians

"Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference" (CLHP - III)

ACTION:

Remuneration packages for parliamentarians should be determined by an independent process.

Parliamentarians should have equitable access to resources commensurate with their responsibilities.

Parliaments should have control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances.

1.3 Independence of the Judiciary

"Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought." (CLHP -IV.3)

ACTION:

The allocation of resources by Parliament, for the judiciary and the running of the courts, should be made following consultation between the Head of the Judiciary and the relevant minister.

Appropriate dispute resolution mechanisms should be put in place to deal with any disputes arising in relation to the allocation of resources.

There remain jurisdictions where adequate resources have not been made available for judicial training, including training on basic constitutional issues. Such resources should be made available and programmes established for judicial training under the control of the Head of the Judiciary.

1.4 Gender and Diversity in Governance

"Merit and proven integrity should be the criteria for eligibility for appointment to public office" AND "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." (CLHP- V.a and V.b)

ACTION:

Bearing these criteria in mind and also that the Commonwealth has not yet achieved its target of having women in at least 30% of political and decision-making positions, the respective branches of government should strive to improve the representation and participation of women and increase diversity in the public sphere in line with Commonwealth standards on gender and diversity. In particular:

- 1 Those responsible for recommending judicial appointments, should, through public information programmes, broad advertising of judicial vacancies, and by adapting judicial working conditions where, appropriate, encourage women and those from diverse backgrounds to apply for judicial appointments;**
- 2 parliaments should engage in disseminating better quality information about the role of parliamentarians and should develop practices that encourage women to stand for Parliament and to become candidates for leadership roles in Parliament;**
- 3 parliaments should adopt codes of conduct and standing orders which outline clearly the importance of the respect for the dignity of all parliamentarians and regulate the behaviour of parliamentarians towards each other. Speakers should provide clear rulings as to acceptable behaviour in the legislature;**

4 governments should work with civil society to encourage gender balance and diversity at all levels.

2. Good governance and accountability

The Commonwealth (Latimer House) Principles state that “Parliaments and governments should maintain high standards of accountability, transparency and responsibility in the conduct of all public business.” (CLHP-VII.a)

ACTION:

2.1 Elections:

Bearing in mind the importance of the proper conduct of the electoral process to the realisation of the Principles:

All branches of government have responsibility for lawful and timely conduct of that process.

The Executive must ensure that there is an independent and autonomous electoral commission with powers and security of tenure guaranteed by statute. All Commissioners should be fully conversant with the Commonwealth’s fundamental values, including the Principles. In observing elections, the Commonwealth Secretariat should continue to ensure that the members of the Observer Missions are fully aware of the Principles and actively apply them in their observations.

All candidates for election should be fully aware of the Principles.

Judicial processes should be given appropriate expedition when hearing and determining cases relating to elections in order to guarantee the legitimacy of the election process.

Determinations should be scrupulously respected.

2.2 Parliamentary Oversight and the Role of the Public Accounts Committees (“PACs”)

ACTION:

PACs need to strengthen their role as oversight bodies and Parliaments should improve the effective functioning of these committees.

The role of PACs should be reinforced by constituting them into Standing Committees of Parliament, where this is not already the case. Membership of the PACs should be as diverse as possible, free from party interference and, where possible, not dominated by any party. Adequate and appropriate material and human resources should be provided to them.

Model rules on the functioning, powers and procedures of PACs should be developed by the Commonwealth Secretariat and the CPA for use by Commonwealth parliaments.

2.3 Judicial accountability and confidence building

“Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity.” (CLHP VII-b)

ACTION:

The Heads of the Judiciary should submit regular reviews to Parliaments on the financing and administration of the courts.

The judiciary should continue to develop and review their codes of conduct/ethics on a regular basis.

Information on the complaints and disciplinary procedures in relation to judicial misconduct should be publicly available.

2.4 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.” (CLHP-X)

ACTION:

Bearing in mind that mutual trust is an essential ingredient if meaningful engagement of civil society in governance is to be realised:

- 1. positive steps should be taken to ensure the involvement of civil society in informing decision-making processes at community, national, regional and international level;**
- 2. civil society organisations should be engaged to proactively promote the Principles;**
- 3 governments should not inhibit civil society organisations’ ability to access funding both nationally and internationally.**

2.5 An Independent Legal Profession

“An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.” (CLHP - IV-d)

ACTION:

Bearing in mind that the legal profession is a key partner in the promotion of democracy and governments should see them in that role, the legal profession should:

- 1. maintain and promote the highest standards of excellence and integrity;**
- 2. support the legislature by participating fully in consultative processes;**
- 3. promote and assert the independence of the courts;**
- 4. speak out against improper administrative action or lack of action; and**
- 5. help to create public awareness of legal issues, particularly relating to ethics and human rights.**

In all these matters, the profession should have regard to its social responsibility and avoid being used as a tool of partisan politics.

The CLA should facilitate programmes for the legal profession designed to enhance awareness of the Principles.

2.6 Role of the Media

“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.”
(CLHP -IX b)

ACTION:

Legislation should provide mechanisms to ensure equitable access to electronic and print media for all election candidates at all levels.

Transparency and accountability is dependent upon freedom of information. Governments should abide by the Commonwealth principles on freedom of information and should introduce appropriate enabling legislation where this has not already been done. Governments should also provide adequate resources and systems to make information accessible.

Heads of Judiciary should be encouraged to liaise with the media and inform them on the affairs of the judiciary and the principles of judicial independence.

3. Combating Corruption

“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” (CLHP IX)

“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.” (CLHP VII)

ACTION:

3.1 Proper exercise of executive power

Governments should be encouraged to establish independent anti-corruption processes for all aspects of public administration and facilitate their independent and effective operation.

3.2 Combating corruption in the judiciary

“An independent, impartial, honest and competent judiciary is integral to the upholding the rule of law, engendering public confidence and dispensing justice.” (CLHP IV)

The Commonwealth Secretariat is encouraged to re-issue and actively promote the Conclusions of the Commonwealth Judicial Colloquium on Combating Corruption within the Judiciary (“Limassol Conclusions”) in conjunction with the CMJA.

3.3 Combating corruption in Parliament

Parliaments should enact financial disclosure legislation and develop and implement codes of conduct requiring declaration of income, assets and liabilities.

4. Promotion of the Principles

ACTION:

A study of the Commonwealth’s fundamental values should be included in civic education courses in schools. The Commonwealth Secretariat, in conjunction with the partner organisations, should sponsor the production of a version of the Principles which is accessible to the young.

Universities and law schools should be encouraged to include the study of the Commonwealth’s fundamental values, and in particular the Principles, in their curricula for political and legal studies. The CLEA should assist universities and law schools in devising appropriate curricula.

The four partner organisations should ensure the wide dissemination throughout the Commonwealth of the Principles, the Guidelines, the Nairobi Plan of Action, and this document in user-friendly formats.

5. Implementation of the Plan

The Nairobi Plan of Action for Africa states:

“Governments are urged to establish mechanisms to monitor and evaluate the implementation of the Plan of Action in their respective jurisdictions.

Governments should accept the responsibility to provide the resources required to enable Parliaments, Judiciaries and oversight institutions and bodies to properly discharge their functions.

The Secretariat is committed to coordinate and streamline the implementation of the Plan of Action.

The Secretariat, together with Governments and partner organisations will facilitate monitoring of the implementation of the Plan of Action.

The Secretariat will continue to facilitate capacity building programmes and to develop and integrate the Commonwealth (Latimer House) Principles into its programmes.

The Secretary-General of the Commonwealth Secretariat will report on the implementation of the Plan of Action to Heads of Governments, appropriate Ministers, and to meetings of senior officials.”

ACTION:

These commitments should be extended to the rest of the Commonwealth pursuant to the proposals contained in Section 1.1 of this document.

Scottish Parliament, Edinburgh
7 July 2008