

**PLAN OF ACTION FOR AFRICA
ON THE COMMONWEALTH (LATIMER HOUSE)
PRINCIPLES ON THE ACCOUNTABILITY OF AND
THE RELATIONSHIP BETWEEN THE THREE
BRANCHES OF GOVERNMENT**

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1 INTRODUCTION

In June 1998, a group of distinguished Parliamentarians, judges, lawyers and legal academics joined together at Latimer House, Buckinghamshire, United Kingdom, at a Colloquium on Parliamentary Sovereignty and Judicial Independence within the Commonwealth. The Colloquium was sponsored by the Commonwealth Lawyers' Association, The Commonwealth Legal Education Association, The Commonwealth Parliamentary Association and The Commonwealth Magistrates' and Judges' Association with the support of the Commonwealth Foundation, the Commonwealth Secretariat and the United Kingdom Foreign and Commonwealth Office. The product of the Colloquium, The Latimer House Guidelines on Parliamentary and Judicial Independence were initially placed before Commonwealth Law Ministers at their meeting in Port of Spain in May 1999 and again at their meeting in St Vincent and the Grenadines in November 2002.

In November 2002, Law Ministers gave detailed consideration to the Guidelines which had been refined by a working group consisting of the sponsoring associations and the Commonwealth Secretariat and invited the Commonwealth Secretary General to convene a small group of Law Ministers to work with the Commonwealth Secretariat in order to refine and develop principles based on the Guidelines for submission to Heads of Government.

The resulting text was approved by Law Ministers and subsequently endorsed by Commonwealth Heads of Government at their meeting in Abuja, Nigeria in December 2003.

Leaders from the Executive, the Judiciary, the Legislature, Commonwealth partner organizations and representatives of civil society from all the 18 Commonwealth countries in Africa met in Nairobi from 4-6 April 2005. The Forum was organized by the Commonwealth Secretariat and hosted by the Government of Kenya. The Forum was convened to consider ways and means of promoting and advancing the Commonwealth (Latimer House) Principles following their adoption by Commonwealth Heads of Government in Abuja in December 2003. This document represents a draft blue print prepared by the Commonwealth Secretariat and the Partner organisations for such action plan.

2. PLAN OF ACTION

2.1 Relationship between the three branches of Government

Historically the concentration of powers has rested in the hands of the executive arm of government. The Principles specify that each institution must exercise responsibility and restraint in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate power vested constitutionally on the other institutions. It was affirmed that Commonwealth Africa needed to pay particular attention to processes of democratisation that meet the needs of Africa's historical, cultural and economic peculiarities and in a manner which is consistent with the Principles.

2.1.1 Interaction between the Judiciary and the Executive

It was affirmed that Commonwealth Africa should devote more attention to establishing and maintaining processes of democratisation that meet the needs of Africa's historical, cultural and economic realities but always in accordance with the letter and spirit of the Principles. This relationship should be governed by the principle of cooperative governance, with each branch fulfilling their respective critical role in a constitutional, complementary and constructive manner.

Comment [11]:

Proposed actions

Governments and Judiciaries are encouraged to:

- *establish effective mechanisms of communication between the Executive and the Judiciary so as to strengthen mutual understanding of their respective functions.*

2.1.2 Independence of Parliamentarians

Parliamentarians should be able to carry out their legislative and constitutional duties in accordance with the constitution free from unlawful interference.

Proposed actions

Governments are encouraged to:

- *ensure that members of Parliaments are free from undue pressure or interference;*

Parliaments should:

- *attempt to clarify the issue of floor crossing with some degree of certainty in their jurisdictions;*

Political parties should:

- *ensure an adequate gender balance in their nominations of candidates for elections;*

The Commonwealth Secretariat and the Commonwealth Parliamentary Association should:

- *continue to provide support through capacity building through the Political Affairs Division.*

2.1.3 Legislative role of Parliament

The capacity of national legislatures should be enhanced to enable them adequately to scrutinize legislation, international instruments and other proposed measures.

Proposed actions

Parliaments and Governments are encouraged to:

- *provide necessary resources to members of parliament to enable them fulfil their functions;*
- *engage civil society as partners in order that they play a more proactive role in legislative processes.*

2.1.4 The role of Gender in Governance

In the past decade, women's visibility and representation in governance has improved. Mainstreaming gender as an institutional and cultural process will facilitate the elimination of gender biases in development. Bearing in mind that Commonwealth target requiring that by 2005 at least 30 per cent of those in political and decision-making positions should be women has not been achieved, the three branches of governments should treat women in public positions on

an equal footing with men in all circumstances to help avoid tokenism that is prevailing at the moment.

Proposed actions

Governments are encouraged to:

- *involve women in governance at all levels including local government level and to undertake reforms of their electoral system as a mechanism for increasing representation of women in governance at all levels;*
- *to implement the Commonwealth Gender and Equality Plan of Action;*

The Commonwealth Secretariat to:

- *continue its work on assisting governments, National Women's Ministries, political parties, civil society and other partners achieve the target of 30 per cent of women's representation in the political, public and private sectors;*
- *support legislative reviews, policies and programmes including women-specific measures that guarantee equal opportunities and treatment to women and men in all sectors and at all levels;*
- *continue to provide support and assistance in accordance with the Commonwealth Plan of Action for Gender Equality 2005-2015.*

2.2 Good Governance and Accountability

The Commonwealth (Latimer House) Principles require that the three branches of government should maintain high standards of accountability, transparency and responsibility in the conduct of all public business.

2.2.1 Parliamentary oversight and the role of Public Accounts Committees

Public Accounts Committees (PACs) in Commonwealth Africa need to strengthen their role as oversight bodies and Parliaments should improve the functioning of these committees to make them more effective.

Proposed actions

Parliaments are encouraged to:

- *reinforce the role of PACs by constituting them into Standing Committees of Parliament and to ensure that membership of the PACs are as diverse as possible free from party interference and not be dominated by the majority party;*
- *provide adequate and efficient staffing for the Offices of the Auditor-General and the PAC;*

The Commonwealth Secretariat and the Commonwealth Parliamentary Association should:

- *encourage and facilitate the drafting of model rules on the functioning, powers and procedures of PACs to be adopted by Commonwealth Parliaments.*

2.2.2 Judicial accountability and confidence building

The independence of the Judiciary is a vital guarantee of a democratic society, and is built on the foundation of public confidence. As such, it was essential that there be adequate observance of principles of accountability in its processes, professional ethics and conduct among the judicial officers as well as court officials. The institution of peer review mechanisms by members of the profession, appropriate criticism through the media, legislative reversal of judicial precedent and case law should be considered. For accountability to be effective there must be judicial independence and security of tenure. The Judiciary should be well resourced and there must be an effective system for the dissemination and evaluation of judicial decisions. There is a particular need to provide security of tenure for judicial officers serving in the lower courts as provided for in the Principles in order to build public confidence in the judicial system

Proposed actions

Judiciaries are encouraged to:

- *adopt Codes of Ethics and Conduct for judicial officers;*
- *embark on judicial outreach programmes to communicate to the general public the role and functions of the Judiciary.*

2.2.3 Accountability, Transparency and Procurement Guidelines

To achieve transparency in public procurement, government procurement officials must comply with international standards and best practices in procurement matters.

Proposed actions

Governments are encouraged to:

- *publicly advertise tenders and business opportunities in an adequate and timely fashion, and where possible, on the websites of the procuring entities;*
- *ensure that procurement opportunities are made available publicly and consistently and the evaluation criteria for any particular procurement should clearly identify the relative importance of all relevant factors and provide a sound basis for a procurement decision;*

The Commonwealth Secretariat to:

- *build on existing work being undertaken and provide support and information on suitable procurement guidelines.*

2.3 Mechanisms for safeguarding Ethical Governance and Accountability

Each branch of government should, in accordance with its constitutional role and responsibilities, strive to ensure that effective laws, mechanisms, methods, systems and rules of checks and balances are in place to strengthen the observance, promotion and protection of Human Rights including the rights of the disadvantaged to prevent the abuse of power.

2.3.1 National Institutions and Civil Society

In ensuring that principles of good governance under the rule of law are properly and effectively addressed, effective mechanisms should be put in place. These should include the development of effective methods and systems of oversight, accountability, confidence building and for the inculcation of a culture of transparency, openness and judicious use of public resources in African member states.

The diminishing role of the State in the provision of public services is a concern. The increasing role of civil society organizations in enhancing processes of democracy and development. Accordingly governments should embrace the new role of civil society in advancing the principles.

Proposed actions

Governments are encouraged to:

- *establish, if they do not already exist, independent oversight institutions such as offices of Human Rights Commissions, the Ombudsman, Public Accounts Committees, Auditors-General Offices, Anti-Corruption Commissions, and Access to Information Commissions and ensure that appointments to these bodies are done through a transparent process.*

The Commonwealth Secretariat to:

- *continue to strengthen its technical assistance in sustaining oversight institutions.*

2.3.2 Mechanisms for ethical conduct for the Administration of Justice

The vital importance of adequate training of judicial officers and other relevant group of actors in ethical conduct was emphasised. It was essential that judicial officers had a sense of ownership of codes which regulate their conduct. Such codes should take into account the provisions of the Limassol Conclusions. The issue of ethical conduct had to be seen in the context of the provision of adequate conditions of service and funding, the need for a holistic approach, regardless of the status of a particular judicial officer and appropriate mechanisms for dealing with complaints by the public which do not prejudice the independence of the judiciary.

Proposed actions

Judiciaries are encouraged to:

- *adopt, if not in place, codes of conduct for judicial officers and judicial personnel and review these codes regularly;*

The Commonwealth Secretariat and the Commonwealth Magistrates and Judges Association:

- *provide guidance on codes of conduct for judicial officers and court personnel;*
- *should continue, with other relevant institutions, to further develop training programmes within a structure whereby judicial officers can strengthen ethical standards, revisit codes of conduct and exchange information.*

2.3.3 Maintaining an independent Judiciary: Judicial training

The need for judiciary-driven training should target not only judicial officers but also all personnel of the judicial and para-judicial staff. The objective should be to sensitise them more particularly on the issues of court service to the community, citizens' rights and how the legal system should be used and improved in pursuit of these rights.

Proposed action

Governments to:

- *recognise the importance of judicial-driven training and education in maintaining the independence of the judiciary and to make judicial continuing education an integral part of the administration of justice and provide adequate funding for this;*

Judiciaries are encouraged to:

- *identify and prioritise areas for judicial training;*
- *form a core group of judicial officers to become trainers to ensure that judicial training programmes can be sustained;*

The Commonwealth Secretariat and the Commonwealth Magistrates and Judges Association to:

- *continue to develop with the creation of opportunities for trainers to be trained;*
- *facilitate judicial training programmes.*

2.3.4 An independent legal profession

The legal profession is a key partner in the promotion of democracy and that governments should see them in that role. The legal profession was called upon to maintain and promote the highest standards of excellence and integrity; support the legislature by providing advice; support the judiciary by pressing for entrenched independence of the courts; speak out against administrative action and inaction; and 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 an instrument of party politics.

Proposed actions

The Commonwealth Secretariat, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association and any other relevant institution should:

- *provide support to legal professional associations and may have regard to the Basic Principles on the Role of Lawyers adopted by the United Nations Congress 1990;*

Law Societies and Bar Associations are encouraged to:

- *establish programmes for continuing legal education and to seek where appropriate the assistance and advice of the Commonwealth Lawyers' Association in partnership with the Commonwealth Legal Education Association;*
- *develop appropriate codes of ethics for legal practitioners;*

Governments are encouraged to:

- *provide a suitable legal framework for enable law societies and bar associations to carry out their functions independently.*

2.3.5 Role of the Media

The media plays a vital role in promoting the Commonwealth (Latimer House) Principles. In particular, the media should contribute to democratic and accountable governance through accurate and responsible reporting. There is a need for the media to work effectively within systems of regulation that are in accordance with democratic principles and practices.

Proposed actions

Governments are encouraged to:

- *enable the media to function in accordance with democratic principles and practises and to ensure that the media functions in the public interest and is not used for propaganda broadcasting;*

The Commonwealth Secretariat to:

- *encourage the existing cooperation between Commonwealth partner organisation namely; The Commonwealth Broadcasting Association, The Commonwealth Press Union and the Commonwealth Journalists Association in the promotion of the Commonwealth (Latimer House) Principles.*

2.3.6 Freedom of Information

Freedom of information is recognized as a human right which is guaranteed under international, regional and national laws. There is a trend in Commonwealth Africa towards the adoption of freedom of information laws and the call to adhere to the key elements of the Commonwealth Freedom of Information guidelines was supported. Hope was expressed that the emergence of new regional governance structures such as NEPAD and the African Peer Review Mechanism would enhance freedom of information legislation and its implementation in Africa as a whole.

Proposed actions

Governments are encouraged to:

- *enact legislation to provide access to information;*
- *adopt the declaration of Principles of Freedom of Expression of the African Union;*

The Commonwealth Secretariat to:

- *continue with existing programmes in providing technical assistance to develop policy, best practice, codes of conduct or draft freedom of information legislation for member states;*
- *cooperate with the Commonwealth Parliamentary Association/ Commonwealth Human Rights Initiative and other relevant institutions working on Freedom of Information.*

2.3.7 Access to Justice

The formal structures of justice, high costs, and the culture of delays, and physical distances from courts limit the effective participation of the people, especially the poor in accessing justice. In the context of the need for alternatives to formal procedures, Commonwealth Africa needs to construct new ways of pursuing a human rights vision of justice due to the failure of the old formal approach to guarantee effective access to justice. There was a need to incorporate procedures and institutions into the mainstream judicial system that guarantee better access to justice.

Proposed actions

Governments are encouraged to:

- *provide legal aid to enhance access to justice;*
- *strengthen the formal and traditional court system to improve justice;*

Governments and the Commonwealth Secretariat should:

- *support the establishment of alternative mechanisms for dispute resolution which avail the speedy delivery of justice.*

2.4 Combating Corruption

Corruption, which undermines development, is generally an outcome and a symptom of poor governance. In accordance with the Framework for Commonwealth Principles on Promoting Good Governance and Combating corruption, a policy of “zero tolerance” must permeate national political cultures, governance, legal systems and administration. Legislators should therefore enact more effective laws to fight corruption decisively.

2.4.1 Proper Exercise of Executive Power

In many Commonwealth African countries, the proper exercise of executive power means a radical departure from prevailing attitudes, whether official or unofficial, which appear to condone abuse of power and reward corruption in public administration. It was recognized that there was the need to tackle issues of corruption in the political context. It was also recognized that the media and the oversight institutions can play an important role in the exercise of executive power. The Executive is called upon to exercise its powers in accordance with the rule of law and constitution at all times.

Proposed actions

Governments are encouraged to:

- *establish codes of conduct for holders of public office;*
- *establish offices such as an Inspector General to investigate, report and even prosecute on corruption;*
- *provide support to institutions such as independent anti-corruption commissions, public accounts committees, human rights commissions, freedom of information commissions, offices of the ombudsman and other oversight institutions;*

The Commonwealth Secretariat:

- *to provide assistance in the drafting of codes of conduct for holders of public office.*

2.4.2 Combating Corruption in the Judiciary

Corruption is common and can be found in almost all jurisdictions throughout the Commonwealth. The fight against corruption in the judiciary should be spearheaded by Chief Justices and an adopted plan premised on the following actions: better conditions of service and security of tenure, strengthening the independence of the judiciary and upholding the dignity of the judiciary.

Proposed actions

Governments are encouraged to:

- *set in place clearly defined criteria and a publicly declared process for judicial appointments;*
- *review and establish adequate terms and conditions of service for the Judiciaries to minimise their vulnerability to corrupt influences;*

Heads of Judiciaries are encouraged to:

- *spearhead the fight against corruption in the Judiciary;*
- *ensure that court operations are transparent, and open to the public through awareness programmes;*
- *engage in appropriate interaction with the media;*
- *prepare annual reports on the work of the Courts and the Judiciary;*
- *support Chief Justices in Commonwealth Africa to network and meet regularly for the purpose of exchanging experiences, learning from one another, promoting best practices and developing strategies to improve relationships with other arms of government;*
- *where constitutional provisions are silent to put in place internal investigative mechanisms in the form of integrity, ethics or peer committees charged with the responsibility for investigating all complaints against-judicial officers.*

2.4.3 Combating Corruption in Parliament

Parliaments play a prominent role in fighting corruption since Parliament establishes democratic accountability and transparency and instils public confidence in government.

Proposed actions

Governments and Parliaments should:

- *enact legislation to punish corruption and ensure the recovery of embezzled funds and forfeiture of assets;*
- *ensure that penal codes should allow the prosecution for wealth and earnings in excess of known sources of income;*
- *to pass financial disclosure laws and codes of conduct requiring declaration of income, assets and liabilities;*
- *disqualify Parliamentarians who have been convicted of criminal (except civil and traffic) and electoral offences from contesting elections for an appropriate period;*

The Commonwealth Secretariat and the Commonwealth Parliamentary Association:

- to cooperate in providing technical assistance in the fight against corruption;
- to provide assistance in the drafting of codes of conduct for parliamentarians and officials.

2.4.4 Tracing, Recovery and Repatriation of Illegally Acquired Wealth

Corruption contributes significantly to underdevelopment and economic stagnation by depleting national resources. It is important that plundered assets be returned to their countries of origin.

Proposed actions

Governments are encouraged to:

- enact appropriate domestic legislation against money laundering and organized crime;
- sign, ratify and, where appropriate, domesticate the UN Convention Against Corruption;
- take immediate actions to incorporate relevant international and regional conventions, such as the AU Convention on Preventing and Combating Corruption and the SADC Protocol Against Corruption in legislation;
- introduce civil and criminal forfeiture mechanisms into domestic legislation;
- ensure that the waiver of immunity from prosecution, currently enjoyed by some members of the executive arm, be withdrawn when dealing with cases of corruption;
- support the extension of the jurisdiction of the International Criminal Court to include cases of grand corruption;

The Commonwealth Secretariat should:

- provide relevant technical assistance in developing model legislation on the recovery of illegally acquired wealth.

2.4.5 Human Rights Education

Human rights provisions are entrenched in Constitutions. To enhance awareness, there is a need for mainstreaming human rights education at the secondary and tertiary level. There is also a need for effective implementation of international human rights norms to which all the three branches of governments should be sensitised.

Proposed action

The Commonwealth Secretariat should:

- continue its regional programme of human rights training;

The Commonwealth Secretariat and the Commonwealth Legal Education Association to:

- develop and disseminate a model Human Rights curriculum for secondary and tertiary education institutions.

3 IMPLEMENTING THE PLAN OF ACTION

- 3.1** This Plan of Action should provide the framework for the three branches of governments to devise and develop strategies to implement the Commonwealth (Latimer House) Principles.
- 3.2** Governments are urged to establish mechanisms to monitor and evaluate the implementation of the Plan of Action in their respective jurisdictions.
- 3.3** Governments should accept the responsibility to provide the resources required to enable Parliaments, Judiciaries and oversight institutions and bodies to properly discharge their functions.
- 3.4** The Secretariat is committed to coordinate and streamline the implementation of the Plan of Action.
- 3.5** The Secretariat, together with Governments and partner organisations will facilitate monitoring of the implementation of the Plan of Action.
- 3.6** The Secretariat will continue to facilitate capacity building programmes and to develop and integrate the Commonwealth (Latimer House) Principles into its programmes.
- 3.7** 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.