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Commonwealth Latimer House Principles on the Three Branches of Government

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20 YEARS OF THE COMMONWEALTH LATIMER HOUSE PRINCIPLES ON THE SEPARATION OF POWERS

The Commonwealth Parliamentary Association (CPA) played a key role in the establishment of the Commonwealth Latimer House Principles on the separation of powers. The Commonwealth Latimer House Principles (*officially titled: Commonwealth (Latimer House) Principles on the Three Branches of Government*) highlight the importance of the separation of powers between the Legislature, the Executive and the Judiciary to ensure effective governance and democracy. The Latimer House Principles provide guidance on the role of the separation of powers in the Commonwealth, its effectiveness in providing democratic governance and the role of civil society.

First drafted in 1988/1989, the Commonwealth Latimer House Principles were officially published and agreed in 2003, and they were further updated with an action plan in 2008/2009. The Commonwealth Parliamentary Association (CPA) was a partner in the establishment of the Commonwealth Latimer House Principles together with partners: The Commonwealth Secretariat, the Commonwealth Magistrates and Judges Association (CMJA), the Commonwealth Lawyers Association and the Commonwealth Legal Education Association.



**Commonwealth
Lawyers Association**



COMMONWEALTH LEGAL EDUCATION ASSOCIATION



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COMMONWEALTH (LATIMER HOUSE) PRINCIPLES ON THE THREE BRANCHES OF GOVERNMENT, November 2003

PREAMBLE

Commonwealth Heads of Government warmly welcome the contribution made by the Commonwealth Parliamentary Association and the legal profession of the Commonwealth represented by the Commonwealth Magistrates' and Judges' Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association to further the Commonwealth Harare Principles.

They acknowledge the value of the work of these Associations to develop the Latimer House Guidelines and resolve, in the spirit of those Guidelines, to adopt the Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government.

OBJECTIVE

The objective of these Principles is to provide, in accordance with the laws and customs of each Commonwealth country, an effective framework for the implementation by governments, Parliaments and judiciaries of the Commonwealth's fundamental values.

I) The Three Branches of Government

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.

II) Parliament and the Judiciary

(a) Relations between Parliament and the judiciary should be governed by respect for Parliament's primary responsibility for law making on the one hand and for the judiciary's responsibility for the interpretation and application of the law on the other hand.

(b) Judiciaries and Parliaments should fulfill their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.

III) Independence of Parliamentarians

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

(b) Criminal and defamation laws should not be used to restrict legitimate criticism of Parliament; the offence of contempt of Parliament should be narrowly drawn and reporting of the proceedings of Parliament should not be unduly restricted by narrow application of the defence of qualified privilege.

IV) Independence of the Judiciary

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country. To secure these aims:

(a) Judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process. The process should ensure:

- equality of opportunity for all who are eligible for judicial office;
- appointment on merit; and
- that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination;

(b) Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place;

(c) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;

(d) Interaction, if any, between the executive and the judiciary should not compromise judicial independence.

Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties. Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner. An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.

V) Public Office Holders

(a) Merit and proven integrity, should be the criteria of eligibility for appointment to public office;

(b) Subject to (a), 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.

VI) Ethical Governance

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.

VII) Accountability Mechanisms

(a) Executive Accountability to Parliament

Parliaments and governments should maintain high standards of accountability, transparency and responsibility in the conduct of all public business.

Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the Executive to Parliament.

(b) Judicial Accountability

Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible government relies.

In addition to providing proper procedures for the removal of judges on grounds of incapacity or misbehaviour that are required to support the principle of independence of the judiciary, any disciplinary procedures should be fairly and objectively administered. Disciplinary proceedings which might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness. The criminal law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions.

(c) Judicial review

Best democratic principles require that the actions of governments are open to scrutiny by the courts, to ensure that decisions taken comply with the Constitution, with relevant statutes and other law, including the law relating to the principles of natural justice.

VIII) The law-making process

In order to enhance the effectiveness of law making as an essential element of the good governance agenda:

- There should be adequate parliamentary examination of proposed legislation;
- Where appropriate, opportunity should be given for public input into the legislative process;
- Parliaments should, where relevant, be given the opportunity to consider international instruments or regional conventions agreed to by governments.

IX) Oversight of Government

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. Steps which may be taken to encourage public sector accountability include:

(a) The establishment of scrutiny bodies and mechanisms to oversee Government, enhances public confidence in the integrity and acceptability of government's activities. Independent bodies such as Public Accounts Committees, Ombudsmen, Human Rights Commissions, Auditors-General, Anti-corruption commissions, Information Commissioners and similar oversight institutions can play a key role in enhancing public awareness of good governance and rule of law issues. Governments are encouraged to establish or enhance appropriate oversight bodies in accordance with national circumstances.

(b) 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.

X) 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.

ANNEX: PARLIAMENTARY SUPREMACY AND JUDICIAL INDEPENDENCE - Latimer House Guidelines for the Commonwealth, 19 June 1998.

Guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles.

PREAMBLE

RECALLING the renewed commitment at the 1997 Commonwealth Heads of Government Meeting at Edinburgh to the Harare Principles and the Millbrook Commonwealth Action Programme and, in particular, the pledge in paragraph 9 of the Harare Declaration to work for the protection and promotion of the fundamental political values of the Commonwealth:

- Democracy;
- Democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary;
- Just and honest government;
- Fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief, and
- Equality for women, so that they may exercise their full and equal rights.

Representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates' and Judges' Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association meeting at Latimer House in the United Kingdom from 15 to 19 June 1998:

HAVE RESOLVED to adopt the following Principles and Guidelines and propose them for consideration by the Commonwealth Heads of Government Meeting and for effective implementation by member countries of the Commonwealth.

PRINCIPLES

The successful implementation of these Guidelines calls for a commitment, made in the utmost good faith, of the relevant national institutions, in particular the Executive, Parliament and the Judiciary, to the essential principles of good governance, fundamental human rights and the rule of law, including the independence of the judiciary, so that the legitimate aspirations of all the peoples of the Commonwealth should be met.

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 discharge of constitutional functions by the other institutions.

It is recognised that the special circumstances of small and/or under-resourced jurisdictions may require adaptation of these Guidelines.

It is recognised that redress of gender imbalance is essential to accomplish full and equal rights in society and to achieve true human rights. Merit and the capacity to perform public office regardless of disability should be the criteria of eligibility for appointment or election.

GUIDELINES

1) Parliament and the Judiciary

1. The legislative function is the primary responsibility of Parliament as the elected body representing the people. Judges may be constructive and purposive in the interpretation of legislation, but must not usurp Parliament's legislative function. Courts should have the power to declare legislation to be unconstitutional and of no legal effect. However, there may be circumstances where the appropriate remedy would be for the court to declare the incompatibility of a statute with the Constitution, leaving it to the legislature to take remedial legislative measures.

2. Commonwealth Parliaments should take speedy and effective steps to implement their countries' international human rights obligations by enacting appropriate human rights legislation. Special legislation (such as equal opportunity laws) is required to extend the protection of fundamental rights to the private sphere. Where domestic incorporation has not occurred, international instruments should be applied to aid interpretation.

3. Judges should adopt a generous and purposive approach in interpreting a Bill of Rights. This is particularly important in countries which are in the process of building democratic traditions. Judges have a vital part to play in developing and maintaining a vibrant human rights environment throughout the Commonwealth.

4. International law and, in particular, human rights jurisprudence can greatly assist domestic courts in interpreting a Bill of Rights. It also can help expand the scope of a Bill of Rights making it more meaningful and effective.

5. While dialogue between the judiciary and the government may be desirable or appropriate, in no circumstances should such dialogue compromise judicial independence.

6. People should have easy and unhindered access to courts, particularly to enforce their fundamental rights. Any existing procedural obstacles to access to justice should be removed.

7. People should also be made aware of, and have access to, other important fora for human rights dispute resolution, particularly Human Rights Commissions, Offices of the Ombudsman and mechanisms for alternative dispute resolution.

8. Everyone, especially judges, Parliamentarians and lawyers, should have access to human rights education.

II) Preserving Judicial Independence

1. Judicial appointments

Jurisdictions should have an appropriate independent process in place for judicial appointments. Where no independent system already exists, appointments should be made by a judicial services commission (established by the Constitution or by statute) or by an appropriate officer of state acting on the recommendation of such a commission.

The appointment process, whether or not involving an appropriately constituted and representative judicial services commission, should be designed to guarantee the quality and independence of mind of those selected for appointment at all levels of the judiciary.

Judicial appointments to all levels of the judiciary should be made on merit with appropriate provision for the progressive removal of gender imbalance and of other historic factors of discrimination.

Judicial appointments should normally be permanent; whilst in some jurisdictions, contract appointments may be inevitable, such appointments should be subject to appropriate security of tenure. Judicial vacancies should be advertised.

2. Funding

Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards. Such funds, once voted for the judiciary by the legislature, should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control over the judiciary.

Appropriate salaries and benefits, supporting staff, resources and equipment are essential to the proper functioning of the judiciary. As a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained.

3. Training

A culture of judicial education should be developed. Training should be organised, systematic and ongoing and under the control of an adequately funded judicial body.

Judicial training should include the teaching of the law, judicial skills and the social context including ethnic and gender issues.

The curriculum should be controlled by judicial officers who should have the assistance of lay specialists.

For jurisdictions without adequate training facilities, access to facilities in other jurisdictions should be provided.

Courses in judicial education should be offered to practising lawyers as part of their ongoing professional development training.

III) Preserving the Independence of Parliamentarians

1. Article 9 of the Bill of Rights 1688 is re-affirmed. This article provides:

“That the Freedom of Speech and Debates or Proceedings in Parlyement ought not to be impeached or questioned in any court or place out of Parlyement.”

2. Security of Members during their parliamentary term is fundamental to parliamentary independence and therefore:

(a) the expulsion of Members from Parliament as a penalty for leaving their parties (floor-crossing) should be viewed as a possible infringement of Members’ independence; anti-defection measures may be necessary in some jurisdictions to deal with corrupt practices;

(b) laws allowing for the recall of Members during their elected term should be viewed with caution, as a potential threat to the independence of Members;

(c) the cessation of membership of a political party of itself should not lead to the loss of a Member’s seat.

3. In the discharge of their functions, Members should be free from improper pressures and accordingly:

(a) the criminal law and the use of defamation proceedings are not appropriate mechanisms for restricting legitimate criticism of the government or the Parliament;

(b) the defence of qualified privilege with respect to reports of parliamentary proceedings should be drawn as broadly as possible to permit full public reporting and discussion of public affairs;

(c) the offence of contempt of Parliament should be drawn as narrowly as possible.

IV) Women in Parliament

1. To improve the numbers of women Members in Commonwealth Parliaments, the role of women within political parties should be enhanced, including the appointment of more women to executive roles within political parties.

2. Proactive searches for potential candidates should be undertaken by political parties.

3. Political parties in nations with proportional representation should be required to ensure an adequate gender balance on their respective lists of candidates for election. Women, where relevant, should be included in the top part of the candidates lists of political parties. Parties should be called upon publicly to declare the degree of representation of women on their lists and to defend any failure to maintain adequate representation.

4. Where there is no proportional representation, candidate search and/or selection committees of political parties should be gender-balanced as should representation at political conventions and this should be facilitated by political parties by way of amendment to party constitutions; women should be put forward for safe seats.

5. Women should be elected to Parliament through regular electoral processes. The provision of reservations for women in national constitutions, whilst useful, tends to be insufficient for securing adequate and long-term representation by women.

6. Men should work in partnership with women to redress constraints on women entering Parliament. True gender balance requires the oppositional element of the inclusion of men in the process of dialogue and remedial action to address the necessary inclusion of both genders in all aspects of public life.

V) Judicial and Parliamentary Ethics

1. Judicial Ethics

- (a) A Code of Ethics and Conduct should be developed and adopted by each judiciary as a means of ensuring the accountability of judges;
- (b) The Commonwealth Magistrates' and Judges' Association should be encouraged to complete its Model Code of Judicial Conduct now in development;
- (c) The Association should also serve as a repository of codes of judicial conduct developed by Commonwealth judiciaries, which will serve as a resource for other jurisdictions.

2. Parliamentary Ethics

- (a) Conflict of interest guidelines and codes of conduct should require full disclosure by Ministers and Members of their financial and business interests;
- (b) Members of Parliament should have privileged access to advice from statutorily-established Ethics Advisors;
- (c) Whilst responsive to the needs of society and recognising minority views in society, Members of Parliament should avoid excessive influence of lobbyists and special interest groups.

VI) Accountability Mechanisms

1. Judicial Accountability

(a) Discipline:

- (i) In cases where a judge is at risk of removal, the judge must have the right to be fully informed of the charges, to be represented at a hearing, to make a full defence and to be judged by an independent and impartial tribunal. Grounds for removal of a judge should be limited to: (A) inability to perform judicial duties and (B) serious misconduct.
- (ii) In all other matters, the process should be conducted by the chief judge of the courts;
- (iii) Disciplinary procedures should not include the public admonition of judges. Any admonitions should be delivered in private, by the chief judge.

(b) Public Criticism:

- (i) Legitimate public criticism of judicial performance is a means of ensuring accountability;
- (ii) The criminal law and contempt proceedings are not appropriate mechanisms for restricting legitimate criticism of the courts.

2. Executive Accountability

(a) Accountability of the Executive to Parliament

Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the Executive to Parliament. These should include:

- (i) a Committee structure appropriate to the size of Parliament, adequately resourced and with the power to summon witnesses, including Ministers. Governments should be required to announce publicly, within a defined time period, their responses to Committee reports;
- (ii) Standing Orders should provide appropriate opportunities for Members to question Ministers and full debate on legislative proposals;
- (iii) the public accounts should be independently audited by the Auditor General who is responsible to and must report directly to Parliament;
- (iv) the Chair of the Public Accounts Committee should normally be an opposition Member;
- (v) offices of the Ombudsman, Human Rights Commissions and Access to Information Commissioners should report regularly to Parliament.

(b) Judicial Review

Commonwealth Governments should endorse and implement the principles of judicial review enshrined in the Lusaka Statement on Government under the Law.

VII) The Law-Making Process

1. Women should be involved in the work of national law commissions in the lawmaking process. Ongoing assessment of legislation is essential so as to create a more gender-balanced society. Gender-neutral language should be used in the drafting and use of legislation.
2. Procedures for the preliminary examination of issues in proposed legislation should be adopted and published so that:
 - (a) there is public exposure of issues, papers and consultation on major reforms including, where possible, a draft Bill;
 - (b) Standing Orders provide a delay of some days between introduction and debate to enable public comment unless suspended by consent or a significantly high percentage vote of the chamber, and
 - (c) major legislation can be referred to a Select Committee allowing for the detailed examination of such legislation and the taking of evidence from members of the public.
3. Model Standing Orders protecting Members' rights and privileges and permitting the incorporation of variations, to take local circumstances into account, should be drafted and published.
4. Parliament should be serviced by a professional staff independent of the regular public service.
5. Adequate resources to government and non-government backbenchers should be provided to improve parliamentary input and should include provision for:
 - (a) training of new Members;
 - (b) secretarial, office, library and research facilities;
 - (c) drafting assistance including Private Members' Bills.
6. An all-party Committee of Members of Parliament should review and administer Parliament's budget which should not be subject to amendment by the Executive.
7. Appropriate legislation should incorporate international human rights instruments to assist in interpretation and to ensure that ministers certify compliance with such instruments, on introduction of the legislation.
8. It is recommended that 'sunset' legislation (for the expiry of all subordinate legislation not renewed) should be enacted subject to power to extend the life of such legislation.

VIII) The role of Non-Judicial and Non-Parliamentary Institutions

1. The Commonwealth Statement on Freedom of Expression provides essential guarantees to which all Commonwealth countries should subscribe.
2. The Executive must refrain from all measures directed at inhibiting the freedom of the press, including indirect methods such as the misuse of official advertising.
3. An independent, organised legal profession is an essential component in the protection of the rule of law.
4. Adequate legal aid schemes should be provided for poor and disadvantaged litigants, including public interest advocates.
5. Legal professional organisations should assist in the provision, through pro bono schemes, of access to justice for the impecunious.
6. The Executive must refrain from obstructing the functioning of an independent legal profession by such means as withholding licensing of professional bodies.
7. Human Rights Commissions, Offices of the Ombudsman and Access to Information Commissioners can play a key role in enhancing public awareness of good governance and rule of law issues, and adequate funding and resources should be made available to enable them to discharge these functions. Parliament should accept responsibility in this regard.

Such institutions should be empowered to provide access to alternative dispute resolution mechanisms.

IX) Measures for Implementation and Monitoring Compliance

These guidelines should be forwarded to the Commonwealth Secretariat for consideration by Law Ministers and Heads of Government.

If these Guidelines are adopted, an effective monitoring procedure, which might include a Standing Committee, should be devised under which all Commonwealth jurisdictions accept an obligation to report on their compliance with these Guidelines.

Consideration of these reports should form a regular part of the Meetings of Law Ministers and of Heads of Government.



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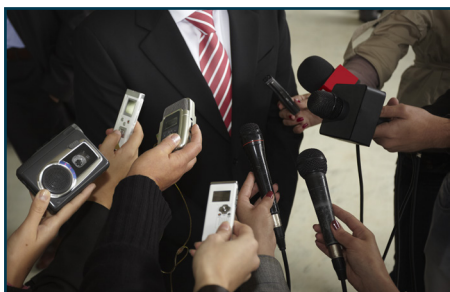


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