

**THE PAN-AFRICAN FORUM
ON THE
COMMONWEALTH (LATIMER HOUSE) PRINCIPLES
ON THE
ACCOUNTABILITY OF AND THE RELATIONSHIP
BETWEEN THE
THREE BRANCHES OF GOVERNMENT**

Nairobi, Kenya, 4-6 April 2005

COMMUNIQUE

1. Eminent personalities 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 opened by His Excellency President Mwai Kibaki, President of the Republic of Kenya, and addressed by the Rt Honourable Don McKinnon, the Secretary-General of the Commonwealth.

2. 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.

3. The objectives of the Forum were

- (a) to raise awareness amongst parliamentarians, government ministers and officials, judges and magistrates, lawyers, non-governmental organisations,

civil society, and oversight institutions on the Principles in Commonwealth Africa;

- (b) to facilitate the exchange of ideas and sharing of experiences in order to enhance practices of accountable, ethical and effective governance;
- (c) to examine and exchange ideas on ways of strengthening the independence and relative role of parliamentarians, the executive and the judiciary;
- (d) to examine ways of strengthening and reforming institutions in the fight against corruption;
- (e) to encourage and explore new ideas for sustaining governance in order to reduce poverty, and promote human rights and gender equality;
- (f) to encourage strategic partnerships between government and non-governmental organisations and civil society in promoting and protecting ethical governance, accountability and the rule of law.

4. The Forum examined four thematic areas being the relationship and accountability between the three branches of government, good governance and accountability, mechanisms for safeguarding ethical governance and strengthening the Rule of Law. The Forum addressed the above under the following specific issues:

- (a) The Relationship between the Judiciary and the Executive and their appropriate interaction;
- (b) The Independence of Parliamentarians;
- (c) Enhancing the Independence of Parliamentarians and the Judiciary;
- (d) The Legislative role of Parliament;
- (e) Constitutional interpretation and judicial review;
- (f) The proper exercise of executive power;

- (g) The role of gender in good governance;
- (h) Parliamentary oversight and the Role of Public Accounts Committees;
- (i) Judicial Accountability and Confidence Building;
- (i) Accountability, Transparency and Procurement Guidelines;
- (i) The role of national institutions and civil society;
- (k) The importance of a code of conduct for parliamentarians, mechanisms for ethical conduct for the administration of justice, the role of an independent legal profession, maintaining an independent judiciary, judicial training;
- (l) The right to know, the role of the media and freedom of information, fighting corruption in the judiciary and parliament;
- (m) Tracing, recovery and repatriation of illegally acquired wealth, working together to deliver access to justice and human rights education.

5. In its deliberations on the relationship between the three branches of government, the Forum noted the historical concentration of powers 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 democratization that meet the needs of Africa's historical, cultural and economic peculiarities and in a manner which is consistent with the Principles.

6. The Forum noted that the effective implementation of the Principles calls for commitment, made in utmost good faith, of the relevant national institutions, in particular the Executive, the Parliament

and the Judiciary, to the essential principles of good governance, fundamental human rights, and the rule of law, so that the legitimate aspirations of African citizenry can be satisfied.

7 On the issue of good governance and accountability, the Forum emphasized the accountability by all three branches of government and urged them to rededicate themselves to eliminating corruption which would in turn reduce poverty and promote human rights and gender equality. Delegates reaffirmed that democratic processes and institutions are the basis for the successful implementation of policies for poverty reduction and for the promotion of human rights and gender equality.

8 The Forum noted that there was inadequate time to discuss issues fundamental to good governance such as electoral reform, how to build effective government systems needed to support economic reform programmes, strategies to make democracy work for pro-poor development, meeting the challenges of globalization and making poverty history for Commonwealth Africa peoples.

9 The Forum particularly noted the need for strategies by which governments could undertake to support the role of civil society in the promotion of the Commonwealth fundamental values. They further noted that each branch of government should, in accordance with its constitutional role and responsibilities strive to ensure that effective laws, mechanisms, methods, systems and rules are in place to give effect to the above stated guarantees in their day-to-day functioning.

10 Delegates noted that a culture of participatory democracy is essential in Commonwealth Africa to ensure that issues of gender, race, ethnicity, exclusion and other forms of historical biases and discriminations are properly addressed. The Forum further noted that

various United Nations instruments such as the Covenant on Civil and Political and Cultural Rights, the Covenant on Economic and Social Cultural Rights have proscribed these practices and therefore urged member states to do likewise for the benefit of their peoples.

The appropriate interaction between the Judiciary and the Executive

11. It was affirmed that Commonwealth Africa should devote more attention to establishing and maintaining processes of democratization that meet the needs of Africa's historical, cultural and economic realities but always in accordance with the letter and spirit of the Principles. Delegates emphasized that this relationship should be governed by the principle of cooperative governance, with each branch fulfilling their respective critical roles in a constitutional, complementary and constructive manner. The respective branches should pay due deference and respect to each other during their interactions, especially in public or at times of disagreement. In this context, it was stressed, on the one hand, that the executive must respect, uphold and implement orders of court properly arrived at, and, on the other hand, the judiciary needs to pay due diligence so that their judicial functions do not intrude on the proper constitutional mandate of the executive, especially in the area of policy-making.

12. Delegates noted that, as is to be expected, the executive is the main decision-maker on policy issues and the major driving force of most governments, and in some instances, all powerful. It is in this context that delegates raised the concern that the role and proper constitutional mandate of the executive is not handled in depth in the Principles. The caution was expressed that this may hinder positive developments in the accountability of and relationship between the three branches of government in Commonwealth member states, as the more practical task

of translating the Principles into a program of action is embarked upon. Delegates recommended that this issue should be critically examined.

Independence of Parliamentarians

13. The Forum recommended that the security of tenure of members during their parliamentary term is fundamental to ensuring the independence of parliamentary processes. In the discharge of their functions, members should be free from undue pressures. Political parties should be encouraged to ensure an adequate gender balance in their nominations of candidates for election. Consistent with the doctrine of separation of powers, ministers and members of parliament must develop healthy work ethics. The practice of floor crossing by members of parliament raised issues relating to the independence of legislators, on the one hand, and the sovereignty of the electorate on the other. The Forum recognized that this matter should be properly clarified in each jurisdiction with some degree of certainty.

Legislative Role of Parliament

14. The Forum also took the view that the capacity of national legislatures should be enhanced to enable them adequately scrutinize legislation, international instruments and other proposed measures. The delegates were of the view that legislators should, in particular, enact more effective laws to decisively fight corruption. Support should be given to institutions such as the anticorruption commissions, public accounts committees, human rights commissions, freedom of information commissions, the ombudsperson and other oversight institutions. Delegates also examined issues of human resource development, capacity building for both members of parliament and the institutions of parliament. Technical support should be provided to members of parliament to enable them undertake research into policy issues. The delegates recommended that civil society should be engaged

as partners in order that they play a more proactive role in legislative processes.

Proper Exercise of Executive Power

15. The Forum took the view that 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. They recognized the vital role the media can play and the role of oversight institutions in the exercise of executive power. The Forum called on the executive to exercise its powers in accordance with the rule of law and constitution at all times.

The Role of Gender in Governance

16. The Forum recognized that 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. Delegates agreed that when appointing women to public positions they should be considered and treated on equal footing with men on all circumstances; this will help to avoid tokenism that is prevailing at the moment. The advocacy role of relevant civil societies must be sustained to improve representation and participation. Women should be involved in governance at all levels including the local government level. The Forum recommended that Commonwealth African States should undertake a reform of their electoral system as a mechanism for increasing representation of women in governance at all levels. It was further recommended that vertical as well as horizontal gender equality is a necessary tool for Africa's development. Education of women is key to their empowerment and

communities should be sensitized to gender issues so that they realize that women's rights are no more and no less than human rights.

Enhancing the Independence of Parliamentarians and the Judiciary

17. The Forum resolved that in jurisdictions that already have an appropriate independent process for judicial appointments, such appointments should be made on merit on the basis of clearly defined criteria by a Judicial Service Commission or by appropriate officer of State acting on advice of such Commission. The Forum recalled that the Commonwealth (Latimer House) Principles provide specific guidelines on the independence of the Judiciary. Delegates concluded that all relevant institutions must take the necessary steps to implement the guidelines.

Good governance and accountability

18. Delegates agreed that effective monitoring and controlling of the use of power should be done in a way that is not detrimental to the efficacy of the decision-making process. The executive should provide quality leadership while recognizing the limitations on the exercise of executive powers. Commonwealth African governments should strive for decentralized local governments with a focus on strengthened financial accountability, poverty reduction and improvement in the quality of the lives of their people. In this regard, the reform of the electoral process is necessary as an additional layer of protection against abuse of public authority.

Parliamentary Oversight and the Role of Public Accounts Committees

19. Delegates recommended that Public Accounts Committees (PACs) in Commonwealth Africa need to strengthen their role as oversight bodies and that Parliament should improve the functioning of these committees to make them more effective. The view was taken that the role of PAC's

could be reinforced by constituting them into Standing Committees of Parliament. Membership of the PAC's should be as diverse as possible, be free from party interference and should not be dominated by the majority party. The Forum suggested that parliament should provide adequate and efficient staffing for the Offices of the Auditor-General and the PAC. In addition, 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.

Judicial Accountability and Confidence Building

20. While the independence of the Judiciary is a vital guarantee of a democratic society, the Forum recognized that it 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. Discussions touched on questions of the institution of peer review mechanisms by members of the profession, appropriate criticism through the media, legislative reversal of judicial precedent and case law. For accountability to be effective there must be judicial independence and security of tenure. The Judiciary should also be well resourced and there must be an effective system for the dissemination and evaluation of decision of judges. Issues relating to the security of tenure of judicial officers especially for those serving in the lower courts as provided for in the Principles were discussed. To this end, the adoption of Codes of Ethics and Conduct were recommended for judicial officers.

Accountability, Transparency and Procurement Guidelines

21. In order to achieve transparency in public procurement, the Forum was of the view that government procurement officials must comply with

international standards and best practices in procurement matters. They should publicly advertise business opportunities in an adequate and timely fashion, and where possible, in the websites of the procuring entities. Procurement opportunities must be available publicly and consistently; 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; both the private and public agencies should evaluate each offer by applying only the evaluation criteria and methodology notified to bidders; and also bidders are provided with reasonable opportunity to meet any prequalification requirements for participants.

Mechanisms for Safeguarding Ethical Governance and Accountability

22. The Forum agreed that mechanisms for safeguarding ethical governance in member states must be strengthened through the observance, promotion and protection of human rights, including the rights of the disadvantaged. Delegates advocated robust checks and balance mechanisms in the governance process in order to prevent the emergence of autocratic rule. The Forum reaffirmed that development and democracy are two sides of the same coin and are essential ingredients of ethical governance. The Forum endorsed SADC Election Guidelines, ECOWAS Protocol on Governance and Accountability and urged the Africa Union to put into operation the African Court of Human and Peoples Rights and the African Court of Justice.

National Institutions and Civil Society

23. The Forum expressed concern at the diminishing role of the State in the provision of public services. It acknowledged the increasing role of civil society organizations in enhancing processes of democracy and development. Accordingly, the Forum called for government to be

broadened to include the new role of civil society in advancing the principles. In ensuring that principles of good governance under the rule of law are properly and effectively addressed, effective mechanism should be put in place. These should include - effective mechanisms identified should include development of 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 Forum also noted that offices of Human Rights Commissions, the Ombudsman, and other independent bodies such as Public Accounts Committees, Auditors-General Offices, Anti-Corruption Commissions, and Access to Information Commissions can play a key role in enhancing public awareness of good governance and rule of law issues.

The Importance of a Code of Conduct for Parliamentarians

24. The delegates supported the view that code of conduct for parliamentarians should be effective and should aim at instilling discipline in parliamentarians. This will promote the smooth functioning of parliamentary processes and strengthen public confidence in legislative arm of government. The Forum was of the view that a clearly agreed upon code of conduct and ethics would enhance the role of parliament in serving as guarantors of good governance. Delegates therefore called for the support of Commonwealth Parliaments and the Commonwealth Secretariat in the developing of a code of conduct and ethics for parliamentarians.

Mechanisms for Ethical Conduct for the Administration of Justice

25. Delegates emphasized the vital importance of adequate training of judicial officers and other relevant group of actors in ethical conduct. 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.

The Role of an Independent legal profession

26. The Forum considered the legal profession to be a key partner in the promotion of democracy and that governments should see it in that role. The Forum called upon the legal profession 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 Forum considered the profession should have regard to its social responsibility and avoid being used as an instrument of party politics.

Maintaining an independent Judiciary: Judicial Training

27. The Forum emphasized the need for a judiciary driven training to 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, citizen's rights and how the legal system should be used and improved in pursuit of these rights.

Role of the Media

28. The Forum welcomed the clear role of the media in promoting the Commonwealth (Latimer House) Principles. In particular, the media should contribute to democratic and accountable governance through

accurate and responsible reporting. The Forum further recognized the need for the media to work effectively within systems of regulation that are in accordance with democratic principles and practices

Freedom of Information

29. Delegates affirmed that freedom of information is recognized as a human right and guaranteed under international, regional and national laws. They agreed that there was a trend in Commonwealth Africa towards the adoption of freedom of information laws and supported the call to adhere to the key elements of the Commonwealth Freedom of Information guidelines. They urged governments to adopt the declaration of Principles of Freedom of Expression of the Africa Union. The Delegates hoped 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. They recommended a sustained public awareness campaign and called for technical assistance to develop, draft and advocate for freedom of information legislation for member states. They urged member states to repeal laws that prevent effective access to information.

Access to Justice

30. The delegates recognised that the formal structures of justice, high costs, and the culture of delays, physical distances of courts limited effective participation of the people, especially the poor in accessing justice. Delegates welcomed wholeheartedly alternatives to formal procedures and agreed that Commonwealth Africa needs to construct new ways of pursuing a human vision of justice due to the failure of the old formal approach to guarantee effective access to justice. They suggested the need to incorporate procedures and institutions into the mainstream judicial system that guarantees better access to justice. Delegates proposed that legal aid should be broadened to enhance access

to justice, and that the traditional court system can be strengthened to improve justice.

31. The issue of cost and delay of justice within the formal legal system was addressed by the Forum. It was suggested that courts which use simple, informal and speedy procedures should be established to reduce delays and costs. In view of the fact that court fees are a major obstacle to access to justice in many jurisdictions, it was suggested that provisions should be made to insure that indigent or poor people are able to submit their grievances to adjudication without hindrance. Delegates also recognised the need for intensive public education and information of their rights to demystify the legal system.

Fighting Corruption in Judiciary

32. The Forum took the view that corruption is common in that it can be found in almost all jurisdictions throughout the Commonwealth. Delegates suggested that the fight against corruption should be spearheaded by the Chief Justices and adopted a plan premised on the following actions; better conditions of service and security of tenure, strengthening independence of the judiciary and upholding the dignity of the judiciary. The Forum endorsed the idea that judiciaries may put in place Internal Investigative Mechanism in the form of Integrity, Ethics or Peer Committees charged with the responsibility for investigating all complaints against judges. It was also suggested that Chief Justices should ensure that court operations are transparent, and open to the public through awareness programmes, appropriate interaction with the media, preparation of annual reports accessible to the public, and regular meetings with members of the Bench and Bar. In order to sustain the fight against corruption in the judiciary, the Forum recommended that Chief Justices in Commonwealth Africa should be encouraged to forge a union and meet annually for the purpose of exchanging

experiences, learning from one another, promoting best practices and developing strategies to improve relationships with other arms of government.

Fighting corruption in Parliament

33. The Forum noted that corruption is an issue affecting good governance, peace and stability in Africa and that it impedes economic, social, and political development. The delegates noted that the importance of Parliaments in fighting corruption since Parliament establishes democratic accountability, transparency and instils public confidence in government. The Forum recommended that the Executive must seek parliamentary approval for its budgetary spending and enjoined Parliaments to pass legislations to punish corruption and ensures the recovery of embezzled funds and forfeiture of assets. It was suggested that penal codes should allow the prosecution for wealth and earnings in excess of known sources of income.

34. The Forum further recommended that in order to deter officials from amassing wealth from corruption, Parliaments should institute financial disclosure laws and codes of conduct requiring declaration of income, assets and liabilities. It was also recommended that Parliamentarians who have been convicted of criminal (Except civil and traffic) and electoral offences are not allowed to contest elections for a period of time. The Forum further noted that Parliaments need to be accountable to electorates and at the same time be able to hold the executive accountable through oversight mechanisms.

Human Rights Education

35. Delegates endorsed the need for mainstreaming human rights education in law schools within a holistic approach. However, it is essential that such education should begin in schools. Delegates

appreciated that human rights provisions are entrenched in our constitutions. However, there was still the need for effective implementation of international human rights norms to which judges and all the three branches of governments should be sensitized. Participants recommended that the Commonwealth Secretariat should expand a regional programme of human rights training for judges, state attorneys, advocates and civil society organizations.

Tracing, Recovery and Repatriation of Illegally Acquired Wealth

36. The Group recommended that Commonwealth countries should ensure that they enact appropriate domestic legislation to covering, *inter alia*, money laundering and organized crimes. In this regard, the Forum called on the Commonwealth Secretariat to give relevant technical assistance in developing model legislations on recovery of illegal acquired wealth and to see to the early conclusion of the work of the Commonwealth Working Group on Recovery of Assets. The Forum encouraged Commonwealth Africa States to sign, ratify and, where appropriate, domesticate the UN Convention Against Corruption. It was also suggested that Commonwealth African states should 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. The Forum further recommended that that civil and criminal forfeiture mechanisms should be integrated into domestic legislation and that the waiver of immunity from prosecution currently enjoyed by some members of the executive arm should be withdrawn when dealing with cases of corruption. It was also agreed that the jurisdiction of the International Criminal Court should be extended to include cases of grand corruption.

General Conclusions

37. In its general discussions, the Forum noted that African governments should accept the responsibility to provide the resources required to enable the above institutions and bodies to properly discharge their functions. The Forum also proposed that Parliament should ensure that access to alternative dispute resolution mechanisms is possible in appropriate cases.

38. The Forum urged Ministers, Members of Parliament, Judges and Officials holding public office in each jurisdiction as a matter of urgency, to respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address issues of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence. The Forum called for codes of ethics and conduct to be developed and adopted for each judiciary as a means of ensuring accountability of judges; the CMJA was identified to serve as a repository of codes of judicial conduct developed by Commonwealth judiciaries to serve as resource for other jurisdictions; conflict of interest guidelines or codes of conduct for ministers that require full disclosure of their financial and business interests; members of parliament were advised to have privileged access to advice from statutorily-established Ethics Advisors; members of parliament were to avoid excessive influence of lobbyists and special interest groups, whilst being responsive to the needs of society and recognising that ethnic, gender and minority views should be mainstreamed in society; members of Parliament need to be provided with resources commensurate with tasks expected from them.

39. The Commonwealth Secretariat was urged to provide the necessary technical assistance to member countries to enable the three branches of government develop these codes of conduct within the shortest possible

time. The Forum resolved that their deliberations should provide the framework for regional, national and partner organizations in developing action plans to implement the Principles. Delegates also recommended that each country should organize a National Forum bringing together all the three branches of government to bring forward the Forum deliberations.

40. The Forum urged that the Commonwealth (Latimer House) Principles be seen as a fundamental Commonwealth Document complementary to and in amplification of the Harare Declaration of 1991. It therefore recommended that His Excellency, President Mwai Kibaki, President of the Republic of Kenya, should, through his good offices, convey the outcomes of the Forum to Commonwealth Heads of Government at its next meeting in Malta in November 2005.

41. Delegates extended their sincere appreciation to the Kenyan Government for the excellent facilities and the exemplary hospitality extended to them throughout the period of the Forum. The Forum commended the excellent role of the Kenyan Organising Committee, the officials from the Kenyan Ministry of Justice and Constitutional Affairs and the generous hospitality accorded participants by the Chief Justice, The Speaker of Parliament and the Ministry of Foreign Affairs. The Forum also commended officials of the Commonwealth Secretariat for their commitment and outstanding role in ensuring the success of the Forum.

Nairobi

6 April 2005
