The Universal Declaration on Democracy adopted by the Universal Parliamentary Union defines democracy as ‘a universally recognised ideal as well as a goal, which is based on common values shared by peoples throughout the world community irrespective of cultural, political, social and economic differences … it is thus a basic right of citizenship to be exercised under conditions of freedom, equality, transparency and responsibility, with due respect for the plurality of views, and in the interest of the polity’. Article 9 of the declaration states: ‘Democracy is based on the existence of well-structured and well-functioning institutions, as well as on a body of standards and rules and on the will of society as a whole, fully conversant with its rights and responsibilities.’ The first Declaration of Commonwealth Principles issued by Heads of Government in Singapore in 1971 affirmed the ‘inalienable right of all citizens to participate by means of free and democratic political processes in framing the society in which they live’. In the Harare Declaration of 1991, Heads of Government committed themselves to the protection and promotion of the fundamental political values of the Commonwealth, including democracy, democratic processes and institutions which reflect national circumstances, the rule of law, judicial independence, and just and honest government.

In the words of Deputy Chief Justice of South Africa, Justice Moseneke: ‘The principles of the rule of law, the separation of powers and judicial independence, underscored by international law, are indispensable cornerstones of our constitutional democracy.’ Parliament is expected to make the laws, government to enforce them and the judiciary to adjudicate on conflicts that arise when the law is unclear or deemed to have been broken. The due exercise of each authority should not be hindered by the agencies responsible for the other two. The relations between the different organs of state are more complex in a Commonwealth where different legal systems and constitutional orders coexist side by side. An independent judiciary, however, is universally recognised as the most important aspect of the separation of powers. In 1996, Commonwealth Law Ministers recognised the importance of the role played by an independent and impartial judiciary in ‘healthy democracy’ as did Heads of Government from 18 Commonwealth African countries who met to evaluate the state of democracy in Africa in 1997.

It was against this background that in 1998, a group of eminent members of four Commonwealth Associations – the Commonwealth Lawyers’ Association (CLA), Commonwealth Legal Education Association (CLEA), Commonwealth Magistrates’ and Judges’ Association (CMJA) and the Commonwealth Parliamentary Association (CPA) – met at Latimer House to promote a dialogue and draft guidelines on good governance and best practice in the enhancement of good relations between the executive, parliament and judiciary in the context of the Harare Declaration of 1991 and Millbrook Programme of Action (1995). The Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence, which resulted from their deliberations, were, in the true spirit of the Commonwealth, a consensus document. The group recognised that it was impossible to draft a document of this kind which would meet the unconditional endorsement of all stakeholders, be they governments, judicial officers, lawyers, parliamentarians or non-governmental organisations. However, the document produced commanded broad acceptance in all sectors and was referred to with approval throughout the Commonwealth.

Commonwealth Law Ministers considered the guidelines in 1999. In 2002, a working group composed of Law Ministers and representatives of the four associations met to draw up a set of ten principles based on the guidelines. This was the first time that ministers and Commonwealth accredited associations had participated together in an exercise of this kind. Its outcome: The Commonwealth (Latimer House) Principles on the Accountability and Relationship Between the Three Branches of Government. These principles were approved by Law Ministers in 2003 and endorsed by the Commonwealth Heads of Government Meeting (CHOGM) in 2003.

The principles provide Commonwealth countries with a set of minimum standards and a roadmap for democracy and good governance by outlining practical ways of implementing the fundamental values of the Commonwealth and enhancing mutual respect between the executive, legislature and judiciary. Article 1 provides that each institution is ‘the guarantor in their respective spheres of the rule of law, the promotion and protection of human rights and the entrenchment of good governance based on the highest standards of honesty, probity and
accountability'. In more direct terms, the guidelines emphasised that 'each institution must exercise responsibility and restrain 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'.

The 2005 CHOGM recognised the principles as 'an integral part of the Commonwealth’s fundamental political values as set out in the Harare Declaration'. Earlier that year the Commonwealth Secretariat with the four Commonwealth associations mentioned above had organised a Pan African Forum in Nairobi, Kenya. A Plan of Action for Africa on the Implementation of the Principles, the Nairobi Plan of Action, was agreed by all as the way to implement the principles in Africa. A colloquium of ministers, parliamentarians, judges, lawyers and legal academics, held in the wings of the Law Ministers Meeting in Edinburgh in 2008, produced the Edinburgh Plan of Action on the Development and Implementation of the Principles which further enlarged the plan to roll out the principles across the Commonwealth.

In closing the colloquium the Commonwealth Secretary-General, Kamaheshr Sharma, said of the principles: ‘They recognise the complex and interlocking network of the relations between the legislature, the executive, and the judiciary. They acknowledge the need for oversight mechanisms through which officers may be held responsible for their actions.’ He added: ‘These principles are designed to help the business of fair, efficient, transparent, responsive government – government for the people. The confidence, belief and trust that people have in their government – that is the ultimate litmus test.’

Events in the Commonwealth since the adoption of the Latimer House guidelines 15 years ago and the principles ten years ago have continued to underline the need to enhance an effective means of implementing the principles. Their violation has resulted in political and governance challenges in many Commonwealth countries and diminished the confidence of their citizens in state institutions. In his book, Lawless World: Making and Breaking Global Rules, Professor Philippe Sands QC pointed to a world that was moving backwards when it came to respect for international norms and principles. The Commonwealth has not been immune to this. The United Kingdom Foreign Affairs Committee report on the future of the Commonwealth, published earlier this year, says that they ‘heard disturbing evidence that the badge of respectability has become tarnished and that the Commonwealth’s best years as a promoter of democracy and human rights in its own member states are behind us’.

The guidelines called for an effective monitoring procedure to be devised to assess the good and bad practice in the Commonwealth, and the CPSU and Electoral Reform International Services report on democracy in the Commonwealth recommended a mechanism and process for regular health checks of the condition of democracy in each member state. In addition, the Eminent Persons Group recommended the creation of a Commissioner for Democracy, the Rule of Law and Human Rights. Whilst international organisations such as the UN, OECD, Transparency International, the World Bank and UNDP have developed monitoring systems in particular sectors no co-ordinated attempt has been made to assess the implementation by respective Commonwealth governments of their commitments to promote democracy and good governance, human rights and the rule of law.

The Latimer House Working Group – consisting of representatives of the CLA, CLEA, CMJA and CPA as well as representatives of the Commonwealth Secretariat’s Legal and Constitutional Affairs Division (LCAD) – meets regularly to consider evidence of breaches of the fundamental values in Commonwealth jurisdictions. The failure of some member states to implement the principles they endorsed in 2003 continues to cause long-term damage to good governance in their jurisdictions and to the standing of the Commonwealth internationally and within member states.

The Commonwealth Charter, which was signed by the Queen in March 2013, specifically acknowledges the importance of the relationship between the organs of state. Article VI states: ‘We recognise the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary. These are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance.’ Whilst constitutions provide a structure for the relationship between the three branches of government, including limitations on their powers, it is crucial to ensure that their citizens are protected from the misuse and abuse of power. In the words of Chief Justice Bhagwati: ‘There are a few institutions which are vital to the maintenance of democracy and the rule of law. They constitute the life breath of the democratic way of life and the supremacy of law. Drain away this life breath and democracy will perish, the rule of law will end.’

Whilst some jurisdictions have made efforts to separate the roles of the legislature, executive and judiciary, to date only one jurisdiction in the Commonwealth has progressed any implementation of the principles. In 2008 the Australian Capital Territory Legislature instigated an inquiry into the implementation of the principles throughout its territory. The Latimer House Working Group were consulted and made a formal written submission to the legislature. The Standing Committee on Administration and Procedures issued a report in August 2009. Following the appointment of a consultant to examine practical ways of implementing the principles in the territory a report was published in November 2011 recommending action to improve good governance in the territory in line with the principles. The Latimer House Working Group considers...
the procedure used by the ACT legislature as a model that can and should be adopted for implementation across the Commonwealth to ensure good governance.

Recently the Commonwealth Secretariat commissioned the CLA, CMJA, CLEA and CPA as members of the Latimer House Working Group to develop a training and education toolkit with the aim of promoting dialogue and enhancing the respect between the three branches of power. It is hoped that the toolkit will help member states to implement the principles and increase awareness of their provisions.

The CMJA, which is the only association bringing together judicial officers at all levels to improve standards and strengthen judicial independence, acts as the secretariat for the Latimer House Working Group. An independent judiciary is a cornerstone of democracy, human rights and good governance, and it is the right of every citizen in the Commonwealth. As such, the quality of a country’s Judiciary is paramount not only to the fundamental well being of the people but also to the stability of society and economic development. In 2013, the United Nations Human Rights Council (UNHRC) passed a resolution calling on ‘all states to guarantee the independence of judges and lawyers and the objectivity and impartiality of prosecutors, as well as their ability to perform their functions accordingly, including by taking effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional functions without interference, harassment, threats or intimidation of any kind’. However, far too often the judiciary is seen as a department of state to be treated and compared with other departments and not as a separate branch of government with equal responsibilities and duties to those given to parliament or the executive to protect the rule of law. An independent judiciary free from political or other interference is not a privilege of a judge or magistrate but the right of every citizen of the Commonwealth.

Given the existing threats to good governance in the Commonwealth, it is essential that the Commonwealth Charter be not relegated to the status of an aspirational document of merely historical interest. The charter must be seen as a commitment to the core Commonwealth values including the Commonwealth (Latimer House) principles and as a benchmark against which the performance of all Commonwealth countries should be judged.

References

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7 Chapter XI
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