

Meeting of Commonwealth Law Ministers and Senior Officials

Colombo, Sri Lanka, 4-7 November 2019

OUTCOME STATEMENT

1. Law Ministers and Senior Officials from 27 Commonwealth member countries met in Colombo, Sri Lanka, from 4 to 7 November 2019. In opening the meeting, the Secretary-General of the Commonwealth, The Rt Hon Patricia Scotland QC, noted the importance of the theme, ‘Equal access to justice and the rule of law’ for Commonwealth member countries. She recalled that the theme is at the heart of Commonwealth values and that the Commonwealth represents a force for good in improving access to justice in member countries. The Secretary-General thanked Sri Lanka for hosting the meeting and introduced the Chairperson of the meeting, The Hon. Thalatha Atukorale, Minister of Justice and Prison Reforms of Sri Lanka.

EQUAL ACCESS TO JUSTICE AND THE RULE OF LAW

2. The Meeting received the theme paper prepared by Sri Lanka on equal access to justice and the rule of law, which identified barriers to access to justice. Law Ministers thanked Sri Lanka for selecting the theme of the meeting and acknowledged the importance of access to justice, which should remain a priority across the Commonwealth, particularly in light of the Sustainable Development Goals (SDGs), more specifically SDG 16.3. They shared examples of the barriers to access to justice found in their own jurisdictions and of initiatives put in place to address those.
3. Law Ministers agreed on the importance of adopting a broad understanding of access to justice that looks beyond access to dispute resolution only and focuses on equality of outcomes. They acknowledged the importance of assessing their citizens’ perceptions of the justice system, and of collecting data to identify barriers to access to justice. The opportunities provided by technology were also discussed by Law Ministers, who agreed to exchange information and, when possible, support each other, on the adoption of technological methods for providing timely, convenient and equal access to the justice system in a cost-effective and people-friendly manner. They noted the need to ensure new approaches are consistent with well-established principles of the rule of law.

4. Law Ministers also agreed to look for opportunities, where appropriate, to enhance the number and quality of specialised justice services, such as specialised alternative dispute resolution mechanisms and tribunals, specialised court processes in cases that require expertise or protection of vulnerable persons, and problem-solving courts and institutions.

AUTHENTICATION AND ADMISSIBILITY OF ELECTRONIC EVIDENCE

5. Law Ministers were presented with the outcomes of the Expert Working Group on the Revision of the Commonwealth Model Law on Electronic Evidence of 2002. Law Ministers noted the conclusion of the Expert Working Group that the Model Law no longer reflected best practice in Commonwealth countries.
6. Law Ministers welcomed the outcomes of the Meeting of the Expert Working Group and requested that once the review of the topics highlighted by the Expert Working Group has been completed, and where model provisions are found to be necessary and appropriate, the Secretariat prepares new model provisions and associated commentary. They also requested that the Secretariat commence a review of the Commonwealth's 'Model Evidentiary Provisions', and how any new model provisions on electronic evidence could be integrated into that document.
7. Law Ministers agreed to consider undertaking domestic reviews of how the 'authentication' and reliability of evidence is generally addressed in admissibility determinations in criminal cases, and consider sharing any findings with the Commonwealth Secretariat so as to inform future work on model evidentiary provisions.
8. Law Ministers agreed that the Secretariat could prepare guidelines on the use of electronic evidence in criminal proceedings, as well as guidelines on cross-border evidence and the transmission of evidence between countries, to be presented to the next Commonwealth Law Ministers Meeting.

LEGAL WORK OF THE COMMONWEALTH SECRETARIAT

9. The Meeting received a report on the legal work of the Secretariat on the rule of law. They were also informed of the outcomes of the last Commonwealth Heads of Government Meeting (CHOGM), held in London in April 2018, and noted the areas in the rule of law field that had been discussed by Heads. **Law Ministers noted the broad range of work accomplished by the Secretariat, including on virtual currencies, legislative drafting,** conventional arms control, oceans and natural resources, and on the implementation of the Cyber Declaration and the Blue Charter, both adopted at the last CHOGM.
10. Law Ministers noted that their meeting represented the first instance of the new biennial cycle of Commonwealth Law Ministers Meetings. Law Ministers noted the theme of the next CHOGM, to be held in Kigali, Rwanda, in June 2020: 'Delivering A

Common Future: Connecting, Innovating, Transforming'. 'Governance and Rule of Law' will feature among the five sub-themes identified for discussion, providing an entry point for this meeting's outcomes.

11. The Meeting thanked the Secretariat for its report and expressed its gratitude for the work accomplished.

VULNERABLE PERSONS IN THE JUSTICE SYSTEM

12. Law Ministers recalled that the issue of over-representation of vulnerable persons in the justice system was first raised at their last meeting in October 2017 in Nassau, The Bahamas. Following a discussion on the over-representation of vulnerable persons in the justice system in their respective jurisdictions, they had requested the Secretariat to develop a paper which would highlight best practice across the Commonwealth and explore the merits of restorative justice. They had also asked that the over-representation of vulnerable persons in the justice system be added to their agenda for their next meeting.
13. The Meeting was presented with two papers, one examining the over-representation of vulnerable persons in the justice system in the Commonwealth and identifying vulnerable groups, and the other providing an overview of restorative justice, including references to traditional justice systems, in the Commonwealth.
14. Law Ministers presented examples of vulnerable groups identified in their jurisdictions, with some countries noting the particular challenges faced by indigenous people. They also shared examples of initiatives undertaken to address the specific needs of vulnerable persons in contact with the justice system. They agreed to support each other in their efforts to address the over-representation of vulnerable persons through exchange of best practice.
15. Law Ministers highlighted how restorative justice had been integrated in their respective justice systems. They noted how restorative justice could play a role in improving access to justice and providing fair outcomes. They also noted other relevant considerations such as prevention and deterrence of crime.
16. Law Ministers noted the ongoing work of the Secretariat on the issue of the over-representation of vulnerable persons in the justice system. They also recommended that at the next Commonwealth Heads of Government Meeting in June 2020, Heads of Government consider the accessibility of the justice system to vulnerable persons.
17. Law Ministers recommended that the Secretariat conduct a study on restorative justice in the Commonwealth, covering all member countries, including on the relationship between indigenous, traditional and customary justice systems and the rule of law, with particular reference to the protection of vulnerable persons. Law Ministers agreed that based on the conclusions of the study, Commonwealth guidance on good practice in restorative justice could be developed.

DIVERSITY IN JUDICIAL APPOINTMENTS

18. Law Ministers received a paper highlighting good practices and strategies to improve judicial diversity. They noted that judicial diversity represented an important element of access to justice. They expressed strong support for the continuation of the Secretariat's work in this area.
19. They acknowledged that countries in the Commonwealth faced different challenges regarding diversity in their respective judiciaries. Law Ministers recognised the importance of addressing concerns specific to small Commonwealth jurisdictions separately in order to make recommendations on situations such as the reliance on foreign judges.

ROUNDTABLE DISCUSSION

20. Law Ministers discussed the challenge of upholding suppression orders in the digital age. They acknowledged how the internet, which allows information to be quickly and easily published and accessed from anywhere in the world, has affected how suppression orders are issued, complied with, and enforced. Law Ministers also recognised how the challenges of extra-territorial jurisdiction and enforcement make taking action against an individual or entity operating outside of national jurisdictions a difficult process.
21. Law Ministers agreed to explore potential solutions, such as mutual recognition of suppression orders in the Commonwealth. They agreed that the issue should be considered as an agenda item for the next meeting of Law Ministers.

NATIONAL COORDINATION AND INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

22. Law Ministers discussed the ongoing need for international co-operation in criminal matters, as being essential to effective enforcement of criminal laws and combating of transnational crime. Law Ministers recognised the need to structure cooperation in a manner that is efficient and effective in order to address the increasing reliance on the internet for business transactions and social interactions, and the ubiquitous nature of electronic evidence in most criminal cases.
23. The Meeting discussed the challenges faced in requesting and obtaining electronic evidence and highlighted the need for effective, secure and prompt cooperation in the provision of assistance in criminal matters. Law Ministers acknowledged the ongoing work of the Secretariat in improving effective international cooperation through the Commonwealth Network of Contact Persons and the Commonwealth Electronic Evidence Focal Points. Law Ministers acknowledged the capacity constraints encountered in some jurisdictions. They agreed that central authorities in the Commonwealth should interact at a high level and on a regular basis in order to resolve operational challenges in providing or receiving assistance in criminal matters.

24. Law Ministers shared experiences that demonstrated the importance of strengthening international cooperation in criminal matters in the Commonwealth. They endorsed the recommendation to support existing Commonwealth networks by providing focal points and updating nominations in cases of staff changes.

DEVELOPMENTS IN DATA PROTECTION LAW

25. Law Ministers discussed the importance of effective data protection law for promoting trust and growth in the digital economy, as highlighted by the Commonwealth Connectivity Agenda and the Commonwealth Cyber Declaration adopted by Heads of Government at their meeting in 2018. Law Ministers discussed the notions of autonomy, availability, utility, innovation, anonymity, and privacy as concerns the regulation and management of data.
26. Law Ministers acknowledged the need to take into account the evolution of data protection law, and to the desirability of achieving interoperability with international standards, including the OECD Guidelines, Convention 108+, General Data Protection Regulation (EU) 2016/679, the African Union Convention on Cybercrime and Cybersecurity, the APEC Framework and ASEAN Framework. They agreed that it was now timely to consider a review of the Commonwealth Model Privacy Bill (2002) and the Commonwealth Bill on the Protection of Personal Information (2005).
27. Law Ministers welcomed the establishment of the Commonwealth Expert Working Group on Data Protection and noted the outcomes of its meeting held on 20-21 June 2019. Law Ministers agreed with the Expert Working Group's recommendation of new Commonwealth model provisions that would cover data protection rights and obligations across all sectors. They recognised that different national contexts, including different federal and state arrangements, as well as different considerations in respect of processing of personal data by the public and private sectors, meant that there may be some differences in the application of certain model provisions. Law Ministers requested the Secretariat to produce the new model provisions on data protection for their review and approval at the next Law Ministers Meeting. They also asked the Secretariat to assist, where possible, with implementation of the recommendations.

ISSUES IN THE REFORM OF CIVIL PROCEDURE LAW

28. Law Ministers discussed the emerging trends and directions in the reform of civil procedure law.
29. Law Ministers provided examples of initiatives undertaken in their jurisdictions in reforming civil procedure law. They noted that although the diversity found in the Commonwealth meant that reform of civil procedure law should be approached differently according to the countries' specific contexts, a number of themes were applicable across Commonwealth jurisdictions, including active case management; the

use of mediation to resolve disputes; laws of evidence; the disclosure/discovery process; expert evidence; and interlocutory/interim applications and appeals.

30. Law Ministers welcomed the establishment of an expert working group on civil procedure law reform and endorsed the work of the Secretariat. The expert working group will, with the support of the Secretariat, develop a work plan for selected priority areas of civil procedure law and possible solutions, including options for the drafting of guidance, good practice, or model rules of procedures. Law Ministers encouraged the expert working group to report on their work to the next Law Ministers Meeting.

MOBILE COURTS, LEGAL REPRESENTATION, AND ACCESSIBILITY OF JUSTICE

31. The Meeting shared examples of good practice in increasing access to justice, such as mobile courts and free legal aid. Law Ministers noted the important role that technology can play in delivering access to justice for all and highlighted the progress made in digitalising court processes.
32. Law Ministers shared reform efforts that have produced positive impacts in their jurisdictions and asked the Secretariat to disseminate information on access to justice initiatives across the Commonwealth.

INTERNATIONAL COMMERCIAL ARBITRATION IN THE COMMONWEALTH

33. Law Ministers were presented with the 2019 Study on International Commercial Arbitration, which was informed by extensive Commonwealth-wide research, as well as surveys of arbitration stakeholders, including arbitrators, lawyers, judges, governments and chambers of commerce. They noted that the Study is accompanied by a country report for every Commonwealth member country, containing information on the history of arbitration legislation and case law in a given country, and the current arbitration landscape.
34. Law Ministers expressed their appreciation for the comprehensive study, which highlights challenges to establishing and operating effective international commercial arbitration regimes faced by Commonwealth countries. Law Ministers shared experiences from their respective jurisdictions and noted the importance of building national and regional capacity in international commercial arbitration. Law Ministers agreed to recommend, where appropriate, that their countries accede to international instruments, including the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), and adopt modern international commercial arbitration legislation based on the UNCITRAL Model Law on International Commercial Arbitration (2006).
35. Noting the different legal and policy contexts in Commonwealth countries, Law Ministers noted the recommendations contained in the paper. They recognised the

potential for co-operation and knowledge-sharing to promote and strengthen international commercial arbitration throughout the Commonwealth. Law Ministers discussed other potential dispute resolution mechanisms, such as mediation, which can enhance access to justice. In this regard, member countries were encouraged to consider signing and ratifying the UN Convention on International Settlement Agreements Resulting from Mediation.

TECHNICAL ASSISTANCE PROGRAMME - COMMONWEALTH PRO BONO PLACEMENT AND MENTORING PROGRAMME

36. Law Ministers reviewed the Secretariat's rule of law technical assistance programme and the increasing demand for it in the face of the limited resources of the Secretariat. Law Ministers expressed their gratitude for the technical assistance received from the Secretariat in their jurisdictions, and requested additional support, particularly on legislative drafting. They agreed that the Secretariat should be supported in its efforts to continue delivering that assistance and strengthening national institutions for sustainability.
37. Law Ministers discussed the suggestions of more effective and innovative variants of the technical assistance programme to be adopted in parallel and partnership with member countries, including modalities of engagement, the receiving of mentees and trainees in their rule of law institutions, and secondment of experts where approached by the Secretariat for assistance in that regard.
38. Recognising the need and importance of continuing assistance, Law Ministers agreed to actively engage in the provision of pro bono technical assistance, either through the Secretariat or on a bilateral basis, to ensure sustainability of the programme. They noted that the Secretariat will follow up with countries which offered to make their expertise available.

ANTI-CORRUPTION BENCHMARKS

39. Law Ministers recalled that in 2016 the Secretariat convened the 'Tackling Corruption Together' conference, attracting a high level of participation and interest from around the world. Among the outcomes of the conference was a call for the development of a checklist against which progress could be measured. The Meeting welcomed the draft anti-corruption benchmarks to help governments and public sector bodies measure their anti-corruption laws, procedures and actions against international good practice, and implement improvements appropriate to their national circumstances. Law Ministers noted that the draft benchmarks had been reviewed by representatives of Commonwealth Law Ministries, Commonwealth anti-corruption agencies, Commonwealth partner organisations, multilateral development banks, international organisations, academic specialists and technical experts, at a consultative meeting held at Marlborough House on 15 and 16 May 2019.
40. Law Ministers noted the opportunity to provide feedback on the draft benchmarks either through the consultation group, or by contacting the Secretariat directly. Law Ministers commended the Secretariat on the work done in respect of the Benchmarks and cited various developments in their national anti-corruption laws and frameworks.

They noted the importance of supporting countries to meet their anti-corruption obligations under existing international and regional agreements. Law Ministers endorsed the proposal to present the anti-corruption benchmarks package, once finalised, to the Commonwealth Heads of Government at their next meeting in 2020, and requested the Secretariat to provide an update on the benchmarks at the next Law Ministers Meeting.

LAWTECH

41. Law Ministers noted that at the request of Senior Officials at their meeting in October 2018, the Secretariat prepared a paper on emerging technologies and the implications for legal service delivery, access to justice and public administration in the Commonwealth. Law Ministers expressed their strong support for the paper and noted the timeliness and importance of addressing this topic, particularly in relation to increasing access to justice.
42. Law Ministers recognised that this was a fast-moving field and that not all Commonwealth member countries had access to the same level of technology in their justice systems. They acknowledged the need to remain informed of the technological advances and their potential impacts. Law Ministers shared experiences from their jurisdictions and offered to exchange further information with their counterparts. They stressed the need to collaborate in order to increase the scale of knowledge exchange across the Commonwealth in relation to technology. Law Ministers highlighted the importance of considering the ethical framework surrounding the implementation of new technologies in justice delivery.
43. They supported the development of Commonwealth guidelines to underpin the use of algorithmic decision-making in the legal sphere, based on good practice across the Commonwealth, as well as the formulation of guidance to detail when the public ought to be informed that automated data-driven systems are being used to make decisions of legal consequence. Thus Law Ministers requested the Secretariat to examine the practicalities of developing guidelines on ethical issues linked with the use of technology and to report at the next Law Ministers Meeting.

INFORMATION PAPERS

44. Law Ministers received and noted six information papers, which were presented at the Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions (LMSCJ) on 4-5 October 2018: 'Law reform in small states', 'International commercial arbitration for Commonwealth Small States', 'Strengthening legislative drafting in small Commonwealth jurisdictions', 'Legal implications of rising sea levels', 'Conventional Arms Control in Small Commonwealth Jurisdictions', and 'A Principled Approach to Oceans: The Commonwealth Blue Charter and its Implications for Small Commonwealth Jurisdictions'.

REPORTS FROM PARTNER ORGANISATIONS

45. Law Ministers received and noted with appreciation updated written reports from the Secretariat's partner organisations: the Commonwealth Magistrates' and Judges' Association (CMJA), the Commonwealth Association of Law Reform Agencies (CALRAs), the Commonwealth Legal Education Association (CLEA), the Commonwealth Association of Legislative Counsel (CALC), the Commonwealth Judicial Education Institute (CJEI), and the Commonwealth Parliamentary Association (CPA). A verbal update was provided by a representative of the Commonwealth Lawyers' Association (CLA). The Meeting also received a report on the implementation of international humanitarian law in the Commonwealth prepared by and the International Committee of the Red Cross (ICRC) and the British Red Cross (BRC).

ADOPTION OF DECLARATION

46. Law Ministers adopted the Commonwealth Law Ministers Declaration on Equal Access to Justice.

CLOSING

47. Law Ministers thanked Sri Lanka for hosting a successful Law Ministers Meeting.