

Meeting of Commonwealth Law Ministers and Senior Officials

Nassau, The Bahamas, 16-19 October 2017

OUTCOME STATEMENT

1. Commonwealth Law Ministers and Senior Officials met in Nassau, The Bahamas, from 16 to 19 October 2017. The meeting was attended by Law Ministers and Attorneys General from 31 countries and was opened by The Secretary-General of the Commonwealth, The Rt Hon Patricia Scotland QC. In opening the business meetings, the Secretary-General thanked The Bahamas for hosting the meeting and noted that by bringing together experience and expertise from many jurisdictions, best practice can be made even better in the Commonwealth. The Meeting elected Senator Hon. Carl W. Bethel, QC Attorney-General and Minister of Legal Affairs, Commonwealth of The Bahamas, as the Chairperson.

STRENGTHENING THE RULE OF LAW THROUGH TECHNOLOGY

2. Law Ministers discussed the contribution that modern technology could make to good governance, promoting the rule of law, and increasing access to justice. Law Ministers shared experiences from their countries and reported on a number of national initiatives. These focused on the use of technology across the justice process, including in the preparation of legislation; the use of video and teleconference systems in court proceedings; police, prosecution and court case management systems; e-filing and documentation; legal and digital identity; and in enabling more effective communication with and between law enforcement and justice institutions.
3. Law Ministers emphasized that technologies could promote efficiency, accuracy, the quality of services, and long-term cost-effectiveness in many of these areas. Law Ministers recalled, however, that, in addition to their positive transformative effect, new technologies may also introduce new challenges, including threats to privacy and issues of cybersecurity. Law Ministers highlighted that such technologies should always strengthen the rule of law as the overall aim and guiding value.
4. Law Ministers referred to shared challenges in the area of law and technology, including the initial costs of investment in technological solutions. Law Ministers proposed that

small and developing countries may be assisted in this regard by the sharing of best practice and solutions from across the Commonwealth, and by the development of standardized technologies. Some Law Ministers noted that in addition to investment in technology, changes in legislation may be one means by which technological solutions could be promoted. Law Ministers encouraged the Secretariat to explore ways in which it may support member countries in identifying resources and good practices, in order to strengthen the use of technology for promoting the rule of law and access to justice.

LEGAL WORK OF THE COMMONWEALTH SECRETARIAT

5. The Meeting received a comprehensive report on the reforms introduced by the Secretary-General, The Rt Hon Patricia Scotland QC and the work undertaken by the Secretariat on the rule of law since the last Meeting of Law Ministers in 2014, particularly on work done by its Rule of Law Section at the pan-Commonwealth, regional and country levels. The report contained information regarding the new Strategic Plan for 2017/18 - 2020/21 and the new structure in place at the Secretariat since 1 July 2017. Law Ministers were informed of the creation of the Governance and Peace Directorate, headed by Ms Katalaina Sapolu, which includes the Rule of Law Section and the Office of Civil and Criminal Justice Reform. The meeting noted the Secretariat's advocacy work relating to the implementation of the 2030 Agenda for Sustainable Development, particularly Sustainable Development Goal 16. Law Ministers noted the number of activities undertaken across all regions of the Commonwealth, as well as the collaborations with partner organisations, and commended the Secretariat for its work. The report was adopted.

MANDATE SETTING AT THE COMMONWEALTH SECRETARIAT

6. Law Ministers discussed mandate setting at the Secretariat and the role of ministerial meetings. Law Ministers agreed that the primary objective of ministerial meetings had shifted from endorsing mandates for work of the Secretariat to ministerial meetings being an opportunity to develop consensus for Commonwealth positions on key global issues. Law Ministers also agreed on the need to maintain space on their meeting agenda for discussion and decision on issues regarding their responsibility for the operation of the justice system, including relevant policy mandates such as civil and criminal law operation and reform. Law Ministers were informed of the new process adopted by the Secretariat whereby the outcomes of all ministerial meetings are placed before the Commonwealth Heads of Government Meeting (CHOGM), which ensures programme coherence with the Strategic Plan and the appropriate allocation of the budget.
7. In addition to their responsibility for the operation of the justice system, Law Ministers recalled that they and law officers also play an important role as legal advisers to government. In this regard, items considered by Law Ministers may be relevant to issues under consideration by Commonwealth Heads of Government. Law Ministers endorsed the new focus of their meetings to build consensus on global issues, which could provide common policy positions for CHOGM and global advocacy by

Commonwealth member states, supported by the Secretariat. Law Ministers also agreed that while it was important for their meetings to be aligned with those of Commonwealth Heads of Government, this would depend on the availability of financial and other critical resources and suggested that the Secretariat ascertain, with its relevant organs, the effect that the alignment would have on its financial and other resources, and how that would affect the timing of their meetings.

ADVANCING THE SUSTAINABLE DEVELOPMENT GOALS

8. Following their recognition of the link between the rule of law and sustainable development at the previous meeting of Commonwealth Law Ministers, held in Botswana, 2014, Law Ministers warmly welcomed the adoption of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals. Law Ministers highlighted the importance of Goal 16 on peace, justice and strong institutions, and the rule of law as both an end of, and means to, sustainable development.
9. Law Ministers emphasized the importance of integrating the rule of law and access to justice into national development plans, in light of their inclusion in Target 16.3 of Sustainable Development Goal 16. Law Ministers noted the benefit of many parts of government being involved in this respect, including law reform bodies, national parliaments, the judiciary and law ministries. Law Ministers also agreed on the need for enhanced data collection on the rule of law and access to justice in order to measure progress in achieving Target 16.3 of the Sustainable Development Goals.
10. Law Ministers also recalled Target 16.9 of the Sustainable Development Goals concerning the provision of legal identity for all. Law Ministers recognised that legal identity was central to access to services, including health, education, employment and financial services, and noted the importance of a range of legal frameworks to Target 16.9, including laws on birth registration, cybersecurity, national identity systems, privacy, and data protection.

COUNTER TERRORISM: MEASURES AGAINST THE FOREIGN TERRORIST FIGHTERS PHENOMENON AND THE USE OF ICT FOR THE RECRUITMENT OF TERRORISTS

11. Law Ministers considered a paper prepared by the Secretariat on counter terrorism. The paper underscored the alarming and increasing intensity of terrorist acts across the world, which Law Ministers acknowledged threatened global peace and security. Law Ministers agreed that terrorism could have no justification and that acts of terror were the most egregious violation of the human rights of the victims. Law Ministers also considered the increasing use of the internet to groom, radicalise and recruit foreign fighters to conflict areas thereby prolonging and exacerbating terrorism.
12. Law Ministers while noting that combating terrorism requires a whole of government effort, shared experiences of the impact of terrorism in their countries and the measures put in place to address the phenomenon. Law Ministers stressed the importance of community initiatives, noting that the problem cannot be addressed

through legislation alone. Law Ministers highlighted the importance of social media platforms taking stronger suo-moto measures to ensure that these platforms are not misused by terrorists. Efforts to prevent radicalisation and reintegrate returned foreign terrorist fighters to society require outreach to communities and their leaders. Law Ministers discussed various innovative approaches involving communities in the fight against terrorism and discussed options to address the use of the internet for terrorist recruitment.

13. Law Ministers agreed to impress on their respective governments the need to implement strategies and measures, including legislative reforms, developing counter and alternative narratives, working with various stakeholders at the grassroots level and strengthening both non-coercive and law enforcement actions as set out in the paper, in order to address evolving and growing trends of foreign terrorist fighters and terrorism. Law Ministers raised the need for assistance in reviewing their legislation to implement international counter terrorism instruments, and suggested that the Secretariat could prepare model laws to that effect.

COUNTERING VIOLENT EXTREMISM AND PREVENTING RADICALISATION

14. The Meeting received a paper highlighting the changing nature of violence in today's world, with particular reference to radicalisation and violent extremism. The paper provides proposals on how the Commonwealth can assist Member Countries in addressing these issues by building on the work of the Commonwealth Commission on Respect and Understanding and its Civil Paths to Peace report. Law Ministers acknowledged that preventing radicalisation and violent extremism requires a multi-dimensional and multi-sectoral approach that requires robust co-ordination across the whole of government and society. Law Ministers also recognised the key role that Law Ministries can play in supporting the efforts of other branches of government in ensuring that countering violent extremism (CVE) efforts undertaken are compliant with the rule of law and the Principles of the Commonwealth Charter. Law Ministers were informed of the strategic approach being adopted by the Secretariat's newly established CVE Unit, and of the services being provided by the Unit, including a CVE toolkit, which will be made available to member countries.
15. Law Ministers agreed on the need to share across the Commonwealth experiences and perspectives on initiatives that have brought about changes and lessons learned in preventing and countering radicalisation and violent extremism. Law Ministers agreed that a multi-sectoral approach, across government departments, was needed. Law Ministers also agreed that the criminalisation of violent extremism was not sufficient to stop radicalisation. Law Ministers discussed the balance between the right to exercise constitutional rights, on the one hand, and the recognition and respect for plurality of society on the other in the fight against violent extremism. Law Ministers acknowledged the role of ICT in the spread of radical thought, agreeing that the banning of its use was not a complete solution, and emphasized that cooperative engagement with communication service providers was necessary.

IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW

16. Law Ministers received a paper prepared by the International Committee of the Red Cross (ICRC) and the British Red Cross, providing them with an update on some important developments and initiatives relating to international humanitarian law (IHL). At their meeting in October 2016, Senior Officials of Law Ministries received a report on IHL in the Commonwealth from the ICRC. Senior Officials agreed that a discussion of those aspects of IHL for which Law Ministers and Attorneys General are responsible should be placed upon the agenda of the next Law Ministers' Meeting.
17. Law Ministers received information on international humanitarian law obligations and treaties, including the Additional Protocols I and II to the Geneva Conventions of 1949, the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, and the Arms Trade Treaty of 2013, the Montreux Document on Private Military Security Companies, and on the importance of establishing national mechanisms for the repression of serious violations of IHL. Law Ministers reiterated the importance of IHL and considered ways to promote and implement IHL in their countries. Law Ministers shared the experiences of their countries in relation to the ratification of international IHL instruments. Recalling that treaty ratification is not the exclusive responsibility of Law Ministers, they agreed to bring ratification of IHL treaties to the attention of their colleagues in government. Law Ministers requested the Secretariat to continue its work on the promotion and implementation of IHL and provide assistance to member countries in that regard, upon request.

REPORT OF THE COMMONWEALTH WORKING GROUP ON VIRTUAL CURRENCIES

18. Law Ministers considered the report of the Commonwealth Virtual Currencies Working Group which examined emerging trends in the use of virtual currencies in Commonwealth member countries and the risks posed by those trends to the regulatory and law enforcement agencies. The report also highlighted the potential of virtual currencies. Law Ministers noted that other government agencies are also involved in the regulation of virtual currencies. Law Ministers commended the proactive initiative of the Secretariat in this regard and deliberated on the likely challenges posed by the lack of regulation by authorities and potential abuse of virtual currencies, including criminal misuse. Law Ministers encouraged the Working Group to continue its work with a view to developing guidance on a global governance framework on virtual currencies in a timely manner. Law Ministers noted that capacity development assistance may be required to develop appropriate regulatory and law enforcement responses.

THE ARMS TRADE TREATY AND COMMONWEALTH COUNTRIES

19. The Arms Trade Treaty establishes common standards for the international trade of conventional weapons. At their meeting in November 2015 in Malta, the Commonwealth Heads of Government (CHOGM) invited member countries which wished to do so to become parties to the Arms Trade Treaty and urged members who were already states parties to fully implement the Treaty. Heads 'underscored that the illicit trade in conventional weapons, such as small arms and light weapons, contributes to human

rights abuses, violations of international humanitarian law, and breaches of national security by its connection and support to the illicit drugs trade and border encroachment; and leads to conflict and instability, and hinders social and economic development.'

20. Law Ministers considered a paper reviewing the definitions and the scope of the treaty and highlighting the contributions made by Commonwealth member countries. Law Ministers discussed the issues surrounding the ratification and full implementation of the Treaty. Law Ministers stressed the devastating consequences of illegal arms trade on development, violence and human rights in their countries, particularly in small countries which are not arms manufacturers, and requested the Secretariat to conduct further work on such implications. Law Ministers welcomed the Secretariat's offer of technical advice and support in order to implement the treaty obligations and address the wider implications of illegal arms trade, including the impact of the flow of arms on Commonwealth jurisdictions, especially those which are not arms manufacturers.

CLIMATE CHANGE, CLIMATE-RELATED DISASTERS AND NATIONAL LAW

21. Law Ministers recognised the increasing impact of climate change and natural disasters on member countries and expressed solidarity with all Commonwealth member countries affected by natural disasters and extreme weather events in recent months, including in particular those affected by Hurricanes Irma and Maria. Law Ministers noted that addressing these problems requires input from across all areas of government and associated agencies, and clear and effective national laws had an important part to play in climate change mitigation, adaptation, access to climate finance, and in disaster risk management. Law Ministers welcomed the analytical approach of the paper on law and climate change prepared by the Secretariat, and the legislative examples contained therein. Law Ministers acknowledged the wide range of legal areas that intersected with climate change and the need for countries to review and strengthen such laws if so required.
22. Law Ministers stressed the need for practical and technical assistance in dealing with the challenges of climate change that focused on national implementation of the existing global framework for climate change, as contained within the United Nations Framework Convention on Climate Change and the Paris Agreement. The comparative advantage of the Commonwealth in this area lies in knowledge sharing and the identification of good practice from across the Commonwealth in law reform, these areas of work being aligned to core business as mandated by Heads at CHOGM and as set out in the Strategic Plan. Law Ministers referred to the value of assistance received from the Secretariat regarding the review and strengthening of laws related to climate change. Law Ministers noted the desirability for member countries which have not already done so to become party to the United Nations Framework Convention on Climate Change and the Paris Agreement.
23. In the area of disaster risk management laws, Law Ministers highlighted the importance of effective legal frameworks, especially the 2015 Sendai framework of the United Nations for disaster risk reduction, in responding to disasters. Ministers requested the

Secretariat to continue to cooperate with other international organisations, including the International Federation of Red Cross and Red Crescent Societies (IFRC), and the British Red Cross in order to support countries in the review and strengthening of legislation, upon request. Law Ministers recognised the need for development of national and local strategies in furtherance of the Sendai framework of the United Nations. Law Ministers also recognised the importance of regional cooperation amongst Commonwealth countries in dealing with the issues of climate change and disasters.

COMMERCIAL AND COMPANY LAW AND SUSTAINABLE DEVELOPMENT

24. Law Ministers agreed that the promulgation of modern and effective legal frameworks in company and commercial law, including intellectual property law, were critical to the attainment of sustainable development targets. Law Ministers highlighted that it was possible to create a legal environment that encouraged business and industry and that benefited that jurisdiction. Law Ministers recognised that it was important to regularly review and scrutinise legislation in this area, in order to promote investment and increase the ease of doing business.
25. Law Ministers encouraged the Secretariat to assist member countries with strengthening of company law frameworks, in particular with a view to promoting intra-Commonwealth and international trade in goods and services. Law Ministers recommended that future work on commercial law could also include e-commerce, as appropriate legal frameworks are crucial in order to support electronic transactions, including across borders. Law Ministers further highlighted that intellectual property frameworks should balance the interests of indigenous communities and society's economic development.
26. Law Ministers welcomed tools newly made available by the Commonwealth Secretariat, such as the Law Reform Guide and the Legislative Drafting Manual, and commended these as offering significant support to countries in the processes of reviewing and strengthening their legislation in these areas and others.

PREVENTING AND ELIMINATING CHILD, EARLY AND FORCED MARRIAGE

27. Law Ministers welcomed the continuing efforts by member countries and Commonwealth organizations to prevent and eliminate child, early and forced marriage. Law Ministers recognised child, early and forced marriage as one of the barriers to the achievement of sustainable development, the full realisation of the human rights of women and girls, and the elimination of violence against women and girls. Law Ministers endorsed the recommendations in the Secretariat paper and encouraged efforts to prevent and eliminate the harmful practice including through data collection and monitoring; legislation and enforcement; the engagement of traditional, community and religious leaders; and provision of services to survivors.
28. Law Ministers expressed their strong support to preventing and eliminating child early and forced marriage, taking into account religious and customary sensitivities, while

fully respecting the principles and values of the Commonwealth Charter. Law Ministers shared best practices implemented in their countries, which combine legislative efforts with multi-sectoral approaches inclusive of traditional and community leaders and civil society. The best practices also include incentives to keep girls in school; sensitization and capacity building; provision of services and economic empowerment of survivors of child marriage. Law Ministers agreed on the need to compile and share best practices across the Commonwealth. Law Ministers also agreed on the need for their countries to review domestic laws to ensure compliance with international law obligations and Commonwealth values, and to harmonise legislation in order to address, among other things, any disparities in minimum age requirements.

THE COMMONWEALTH (LATIMER HOUSE) PRINCIPLES

29. Law Ministers considered a discussion paper on the Commonwealth (Latimer House) Principles. The paper highlighted issues relating to parliamentary democracy, judicial independence and the participation of citizens in the democratic process through elections. Law Ministers emphasized the independence of the judiciary and judicial accountability. Law Ministers also noted that the Secretariat had produced the Latimer House Principles Toolkit and encouraged its work to promote the Principles.

JUDICIAL INDEPENDENCE

30. Law Ministers considered a comparative study commissioned by the Secretariat which examined the financial and administrative aspects of institutional judicial independence and commended the Secretariat on the work it had done in this area. The study identified various models of how the judicial branch of government was resourced financially and administratively. Law Ministers noted that this was an important aspect of judicial independence as was the issue of accountability of judges.

COMMONWEALTH SECRETARIAT MODEL LAWS

31. Law Ministers considered model laws produced by the Secretariat on judicial service commissions, the enforcement of foreign judgments, and money laundering, terrorist financing, preventive measures and proceeds of crime.
32. The Model Law on Judicial Service Commission provides for the composition of judicial service commissions, the judicial appointments process and judicial discipline. It also includes procedures for the investigation and determination of complaints against judges. The Model Law on Enforcement of Foreign Judgments addresses the process of registration and implementation of foreign judgments. The Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime provide good practice provisions on money laundering, terrorist financing, recovery of proceeds of crime with novel provisions relating to unexplained wealth order.
33. Law Ministers commended the Secretariat's work on the model laws, noting their usefulness for member countries, and agreed that they represent guidelines which

might be adapted by member countries, taking into account their unique constitutional provisions and national circumstances.

34. Law Ministers noted the desirability for member countries which have not already done so to become party to The Hague Convention on Choice of Court Agreements and to participate in the Judgments Projects of The Hague Conference on Private International Law (HCCH).

INFORMATION PAPERS

35. Law Ministers received and noted three information papers, which were presented at the Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions (LMSCJ) in October 2016: ‘Cybercrime: trends identified in small Commonwealth jurisdictions’, ‘Prosecution independence and accountability - Principles, challenges and recommendations’, and ‘Restorative justice - making it work in small Commonwealth jurisdictions’.

REPORTS FROM PARTNER ORGANISATIONS

36. Law Ministers received and noted with appreciation updated reports from the Secretariat’s partner organisations: the Commonwealth Association of Law Reform Agencies (CALRAs), the Commonwealth Magistrates’ and Judges’ Association (CMJA), the Commonwealth Lawyers’ Association (CLA), 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).

ROUNDTABLE DISCUSSION

37. Law Ministers elected to discuss the issue of overrepresentation of vulnerable persons in the justice system. Law Ministers explored the nature of vulnerable populations in Commonwealth member countries, and discussed the challenges encountered by vulnerable persons in the criminal justice system, bearing in mind that there may be different groups of vulnerable victims and perpetrators for different types of crimes. Law Ministers shared best practices and lessons learned in working to reduce overrepresentation of vulnerable persons as both victims and offenders. In this regard, Law Ministers stressed the importance of prevention and addressing underlying issues such as mental health, social issues, domestic violence, and substance abuse. This necessitates engagement and collaboration across multiple governmental departments, and involvement of the community. Law Ministers recommended that further work be conducted on this issue and requested the Secretariat to develop a comprehensive paper, which would highlight best practice across the Commonwealth, and explore the merits of restorative justice. Law Ministers agreed that the issue should be considered as an agenda item for the next meeting of Law Ministers.

CLOSING

38. Law Ministers thanked The Bahamas for hosting a successful Law Ministers' Meeting.