

# Meeting of Commonwealth Law Ministers and Senior Officials

Gaborone, Botswana: 5 - 8 May 2014

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## FINAL COMMUNIQUÉ

1. Commonwealth Law Ministers met in Gaborone, Botswana from 5 to 8 May 2014. The meeting was attended by Law Ministers and Attorneys General from 28 countries. An opening ceremony was addressed by His Honour the Vice-President of the Republic of Botswana, Dr Ponatshego Kedikilwe, and by the Commonwealth Secretary-General, H E Kamallesh Sharma. In opening the business meetings, the Secretary-General acknowledged the great contribution made by Botswana not only to this Meeting but to advancing the values of the Commonwealth. The Meeting elected the Hon. Dikgagamatso Ndelu Seretse, Minister of Defence, Justice and Security of Botswana as the Chairperson.

## AGENDA

2. As a paper by the Latimer House Working Group was not presented by Senior Officials to Ministers, due to the fact that Senior Officials could not reach a consensus on the paper, it was agreed that, rather than as a separate agenda item, Ministers could raise the Commonwealth (Latimer House) Principles in their discussions throughout the agenda wherever relevant. Ministers later, during the presentation of the report by the Commonwealth Magistrates' and Judges' Association (CMJA), agreed to mandate the Secretariat to prepare a paper on the implementation of the Latimer House Principles in the Commonwealth for consideration at the next Law Ministers' Meeting. In preparing the paper, the Secretariat should consult widely with member countries and with the Latimer House Working Group.

## LEGAL WORK OF THE SECRETARIAT

3. The Meeting received a report on the work undertaken by the Secretariat on the rule of law since the last Meeting of Law Ministers in 2011. The Meeting welcomed Ms Katalaina Sapolu, who joined the Secretariat as Director of the Legal and Constitutional Affairs Division in December 2013. The report mentioned the adoption of the new Strategic Plan for 2013/14 - 2016/17, which aims at focusing the Secretariat's activities in order to reflect its comparative advantages and resources and to ensure more sustainable impacts. The structural changes taking place across the Secretariat,

as well as their impact on the Legal and Constitutional Affairs Division, were explained to Ministers. From 1 July 2014, when the new structure becomes effective, the Division will be called the Rule of Law Division. The Division continued to deliver programmes of a high standard in a wide range of areas. The report was adopted.

## **CONSOLIDATING THE RULE OF LAW AND HUMAN RIGHTS IN THE COMMONWEALTH**

4. Ministers received papers addressing the theme chosen for their Meeting, 'Consolidating the Rule of Law and Human Rights within the Commonwealth'.

### **Historical Overview of Human Rights in the Commonwealth**

5. This paper covered selected aspects of the history, successes and challenges in regard to human rights in the Commonwealth. It underscored the increased focus given to human rights by the Commonwealth Charter, CHOGM Communiqués and the new Strategic Plan of the Secretariat. The paper presented successes, challenges and gaps in the ratification of the nine core international human rights treaties, engagement with the United Nations Universal Periodical Review (UPR) mechanism and the establishment and strengthening of national human rights institutions compliant with the Paris Principles. Ministers were encouraged to utilise the services of the human rights experts and office space available at the Commonwealth Small States Office in Geneva, especially small states who would otherwise not have a presence in Geneva. They were also encouraged to engage with the Secretariat in regard to their technical assistance requirements to prepare for the UPR and to implement accepted UPR recommendations and the establishment and strengthening of national human rights institutions compliant with the Paris Principles. They expressed support for the Secretariat's work in the field of human rights and endorsed the paper.

### **Judicial Independence and Economic Development**

6. Ministers received a paper by the former Chief Justice of Botswana, the Hon. Julian Mukwesu Nganunu, which explored the relationship between the independence of the judiciary as being essential to upholding the rule of law, and economic development. It identified the components of judicial independence and the impact that independent and effective courts can have in ensuring an enabling environment for economic development. In that context, it emphasised the use of the judicial review mechanism and the role of the courts in ensuring equality and combating corruption. Ministers shared information about recent developments in their countries, including improved appointment procedures and the establishment of specialised commercial courts. Ministers acknowledged the importance of an independent judiciary. They also stressed the need for increased judicial accountability in order to ensure judicial integrity, competence and efficiency. Ministers requested the Secretariat to carry out further work on the link between the rule of law, the independence of the judiciary and sustainable economic development. They also supported the Secretariat's role in strengthening judicial systems and the independence, competence and integrity of the judiciary.

### **The Rule of Law and the Post-2015 Development Agenda**

7. The Meeting recalled that, at the Commonwealth Heads of Government Meeting held in November 2013 in Colombo, Sri Lanka, Commonwealth Heads of Government endorsed the intergovernmental process to be launched at the 69th Session of the United Nations General Assembly to develop and agree on a Post-2015 Development

Agenda. Commonwealth Heads of Government also decided to constitute an open-ended High-Level Working Group to identify shared Commonwealth perspectives and recommendations through a Commonwealth Statement on the Post-2015 Development Agenda. The paper presented to Ministers reviewed the global discussions around the Post-2015 Development Agenda and outlined the various facets of the rule of law under the Commonwealth Charter and how they relate to development. Ministers agreed that there is a link between the rule of law and sustainable development, which ought to be strengthened, and that the rule of law should be integrated into the Post-2015 Development Agenda. Ministers mandated the Secretariat to prepare on their behalf a paper setting out a draft contribution to the Commonwealth Statement on the Post-2015 Development Agenda and to circulate it within two weeks of this meeting for their consideration and comments.

## **ENHANCING INTERNATIONAL CIVIL LEGAL COOPERATION IN THE COMMONWEALTH**

8. Ministers recalled their 2011 meeting at which they requested the Secretariat to develop a proposed scheme on international civil cooperation. Further to that mandate, a paper analysing the possibility of establishing such a scheme was presented to Senior Officials at their meeting in September 2013. Ministers received a revised paper and decided that work should not be undertaken to develop a Commonwealth scheme, as most of the matters that might be covered under the scheme were already the subject of the existing Hague Conventions on Service Abroad, on Taking Evidence Abroad and on the Abolition of Legalisation. Ministers agreed to the following recommendations:
  - (a) that Commonwealth member states which were not already parties to the Hague Conventions on Service Abroad, on Taking Evidence Abroad and on the Abolition of Legalisation, be invited to consider taking steps to have possible accession to those Conventions;
  - (b) that their governments consider ensuring that their national law makes adequate provision for taking evidence in response to requests from other states (whether under the Hague Convention on Taking Evidence Abroad or in response to requests outwith that Convention) including, as appropriate, the use of audiovisual technology;
  - (c) that their governments consider ensuring that their courts have the power in appropriate cases to make interim orders in support of proceedings elsewhere;
  - (d) that their governments consider including in their national law provisions on obtaining copies of entries and decisions, security for costs and safe conduct, similar to those in the Hague Convention on International Access to Justice but applied with respect to other Commonwealth states.

## **DRAFT MODEL LAW ON RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE COMMONWEALTH**

9. Ministers considered a draft Model Law on the Recognition and Enforcement of Foreign Judgments. At their meeting in 2005, Ministers had asked the Secretariat to review the intra-Commonwealth arrangements for the recognition and enforcement of foreign judgments. Since then, the Secretariat has undertaken work in pursuance of that mandate, including the drafting of a model law as requested by Senior Officials at their 2010 meeting. The draft model law draws on the work of the Hague Conference on Private International Law and of law reform agencies in a number of Commonwealth countries. It proposes changes to the current intra-Commonwealth

arrangements and could be used by governments as a basis for reform of their legislation in this area. Ministers noted that further discussion was necessary on some provisions of the draft model law. They mandated the Secretariat to take appropriate steps to produce a final draft of the Model Law for consideration at the next meeting of Senior Officials and to consider other ways in which member states might improve the means of recognition and enforcement of judgments of other Commonwealth Member States, including the suitability of the Hague Convention on Choice of Court Agreements.

## **ADDRESSING VIOLENCE AGAINST WOMEN IN THE COMMONWEALTH**

10. Ministers received a paper on addressing violence against women in the Commonwealth, which contained a series of detailed recommendations for their consideration, on, *inter alia*, the content of national legislation, the need for a national strategy for the prevention, prosecution and punishment of violence against women, and relevant training for police, prosecutors and judges. Ministers shared information on the progress made in their jurisdictions in developing national legislation and establishing institutions to address the problem of violence against women. They also highlighted the challenges experienced in enforcing some provisions of their national laws. They recognised that law reform was not sufficient in itself to address violence against women and that a holistic, multisectoral and comprehensive national strategy was essential. In that regard, attention must be given to the importance of national and regional particularities and various historical, cultural and religious backgrounds and taking into account the fundamental values expressed in the Commonwealth Charter.
11. Ministers expressed their support for gender mainstreaming of the law and the need for closer co-operation between Law Ministries, the judiciary, national women's machineries and other agencies. They welcomed the integrated approach adopted within the Secretariat to address issues of violence against women. Ministers accepted the recommendations in the paper and mandated the Secretariat to continue to support member countries in implementing the recommendations within the context of its ongoing technical assistance and capacity-building programmes.

## **INTERNATIONAL JUDICIAL DEVELOPMENT ASSISTANCE**

12. At their 2011 Meeting, Ministers mandated the Secretariat to establish a clearing house to facilitate international judicial development assistance. They received a paper which contained proposals for the establishment of the clearing house and the framework within which it might operate. The paper emphasised that the clearing house would contain details of judicial education programmes designed to benefit judicial officers at all levels. There would be an emphasis on the needs of small jurisdictions. The aim of the clearing house would be to coordinate information on existing judicial development assistance programmes and requests for assistance from Commonwealth countries. The success of the clearing house would depend upon governments publicising the existence of the clearing house amongst their judiciaries and their making good use of it. Ministers reiterated that such a project would be of great assistance to member countries. They agreed to approve the establishment by the Secretariat of the clearing house on the terms proposed in the paper for a trial period of three years, after which an evaluation would be conducted.

## **LEGISLATIVE DRAFTING: A COMMONWEALTH LEGISLATIVE DRAFTING HANDBOOK**

13. At their Edinburgh Meeting in 2008, Ministers had recommended the development of legislative drafting and style manuals and guidelines on the legislation process. A draft Commonwealth Legislative Drafting Handbook, building on regional documents produced for the African and Pacific regions, was presented to Ministers. Ministers welcomed the production of a Handbook as a valuable resource in legislative drafting across the Commonwealth and as a guide in encouraging member countries to devise their own local legislative drafting manuals, guidelines or handbooks. Ministers acknowledged that the Handbook was still in a draft form and that consultations with relevant stakeholders, including the Commonwealth Association of Legislative Counsel, would be carried out. The problem of retention of legislative drafters was also highlighted. Ministers –
- (a) endorsed the idea of having a Commonwealth Legislative Drafting Handbook and mandated the Secretariat to continue with its finalisation;
  - (b) approved that consultations with relevant stakeholders be carried out on the Handbook, that the Handbook be reviewed in the light of comments received and that the revised Handbook be considered by Senior Officials at their next meeting;
  - (c) resolved that local legislative drafting manuals, guidelines or handbooks reflecting their own particular local processes and in-house styles will be devised as soon as possible for use in drafting offices in their respective countries, where these do not already exist.

#### **MODALITIES FOR CIVIL SOCIETY ENGAGEMENT WITH COMMONWEALTH LAW MINISTERS**

14. At the 2011 Meeting in Sydney, Australia, Ministers received a paper which outlined proposals for Civil Society engagement with Law Ministers. No consensus was reached at the 2011 Meeting. In 2012, Senior Officials reached agreement on the principles to be recommended to Ministers and a paper setting out those principles was considered by Senior Officials at their Meeting in 2013. A revised paper, incorporating the amendments suggested by Senior Officials at their meeting on 5 May 2014, was presented to Ministers and adopted.
15. Ministers acknowledged that civil society could have a valuable role in an open and transparent democratic process and, as recognised in the Commonwealth (Latimer House) Principles, a role in the implementation of the Commonwealth's fundamental values. They welcomed the fact that steps were being taken to strengthen the current Commonwealth process for accrediting CSOs. Ministers noted that it was critical that CSOs were transparent as to their sources of funding and influential stakeholders.
16. Ministers agreed on modalities that would govern their own future practice in their engagement with civil society. Under these modalities, the partner organisations of the Secretariat would be able to provide input to the agendas for the Senior Officials' and Law Ministers' Meetings. They could also submit substantive papers on issues to be discussed where invited and appropriate. They would continue to be accredited as observers for the duration of the relevant meeting. They would be permitted to submit a written report and would be allowed to make an oral presentation on their activities in the intervening period as a substantive part of the meeting. Accredited CSOs wishing to attend the Law Ministers' Meeting in respect of a particular item would have to apply to the Secretariat for special permission to do so, giving reasons for their application. The Secretariat, in consultation with Senior Officials, might then invite them to attend the meeting. Accredited CSOs wishing to make written submissions to Law Ministers would similarly apply to the Secretariat, and the Secretariat, in consultation with Senior Officials, might circulate those submissions. Where the Law Ministers' Meeting was of

the view that it would assist its deliberations, it could (a) on its own motion; or (b) upon application by any person or organisation to the Commonwealth Secretariat and with the recommendation of Senior Officials, allow any person or organisation to place written submissions before it and/or make a short intervention at its meeting.

## **INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS**

17. The Secretariat had pursuant to a mandate given by Law Ministers in 2011: (a) developed model legislation to assist member countries on domesticating, if they so wish, provisions of the revised Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth (the Harare Scheme); (b) developed and delivered capacity-building initiatives, in particular on the interception of telecommunications and asset recovery; and (c) formulated a five-point action plan to reinvigorate the Commonwealth Network of Contact Persons (CNCP). The Meeting took note of the Secretariat's report on the delivery of the 2011 mandate. They commended and approved the Secretariat's proposed strategy on international cooperation with its focus on small and more vulnerable member states. Ministers recognised the Commonwealth's long-standing record as well as its comparative advantage in this area. They expressed their appreciation for the assistance given by the Commonwealth Secretariat as they discussed the needs, challenges and expectations in matters of international co-operation.
18. Ministers endorsed the Commonwealth Model Legislation on Mutual Legal Assistance. It was also emphasised that the Model Legislation, like the Harare Scheme itself, was not mandatory and its existence did not in itself provide a legal basis for requesting assistance. Commonwealth countries are at liberty to adopt, modify or disregard any provisions which are incompatible with the domestic policies and laws of member countries. In addition, some parts of the Model Legislation were specifically designated as optional, in particular the provisions relating to the interception of telecommunications and asset recovery. Ministers noted that other parts are either not included in or diverge from the Harare Scheme. These should be clearly identified in notes or guides to the Model Legislation. Ministers also sought clarification in the Model Legislation that the application of the Model Legislation to civil procedures should be related to an underlying criminal matter. This should be clearly identified in an explanatory note to the Model Legislation. Ministers also approved the dissemination of the Commonwealth Manual on international cooperation in criminal matters as well as the Secretariat's proposed programme of work and the five-point action plan on CNCP.

## **CYBERCRIME**

19. Pursuant to a mandate given at the 2011 Meeting of Law Ministers, the Secretariat established a Commonwealth Working Group of Experts on Cybercrime. Ministers received the report of the Working Group which presents the findings of experts and detailed, in relation to cybercrime: its magnitude, current trends, the practical implications of cybercrime, the Commonwealth Cybercrime Initiative (CCI) and the way forward. It was stressed that cybercrime was a global matter and any weak link provided opportunities for criminals. Prevention was of crucial importance. The effort to combat cybercrime required collaboration with a wide range of national, regional and international organisations, and with the private sector and civil society. This would maximise the effectiveness of technical assistance, for which there was a great need, and avoid duplication. Ministers endorsed the recommendations of the report, which included that: (a) every Commonwealth jurisdiction should have up-to-date and comprehensive legal framework; (b) should be encouraged to bring their laws into line

with the Commonwealth Model Law on Computer and Computer-Related Crime and the revised Harare Scheme; and (c) to accede, where practicable, to the Council of Europe Convention on Cybercrime (the Budapest Convention) and/or consider becoming Party to other regional or international cybercrime conventions and participating in other initiatives to ensure co-ordinated action against cybercrime. This would be subject to the availability of funds. The Meeting noted that the CCI governance structure had been strengthened. It endorsed the CCI methodology and agreed that Member States should support it and engage with it.

20. Ministers recognised that the Commonwealth was leading the way in developing mechanisms to combat cybercrime. They approved the report of the Working Group and the Secretariat's programme of work in tackling cybercrime.

## **STRATEGY TO COMBAT CORRUPTION AND RELATED ECONOMIC AND FINANCIAL CRIMES**

21. Ministers had adopted in 2005 in Accra the Commonwealth strategy against corruption at their Meeting and had re-affirmed it in 2008 in Edinburgh. The Meeting welcomed a report of the work of the Secretariat in implementing the strategy. Ministers acknowledged the threat that corruption posed to democracy and expressed their concern at the role of foreign entities in corrupt practices and tax evasion. They shared information on positive developments in their countries, including the implementation of the United Nations Convention against Corruption (UNCAC). The Meeting endorsed the Secretariat's programme of continuing work to: (a) develop and deliver technical assistance and capacity building, in a sustainable manner, to member countries, in particular small and vulnerable jurisdictions, in collaboration with other international and regional organisations with similar mandates; (b) provide, on request, and in collaboration with relevant agencies, mentoring and placements to assist member countries in the implementation of best practice; and (c) conduct needs assessments as necessary to facilitate requests for assistance. Ministers stressed that this programme should be complementary to and not duplicate programmes undertaken by other organisations.

## **VICTIMS OF CRIME IN THE CRIMINAL JUSTICE PROCESS**

22. Ministers received a report on the work of the Secretariat in fulfilment of the mandate given by Ministers in 2011 in respect of good practice in the support and protection of victims/witnesses. Although the mandate was now complete, Ministers reported developments in their jurisdictions and agreed that the issue continued to be important. The Meeting approved action by the Secretariat to continue to promote best practice in witness and victim assistance and protection measures in ongoing technical assistance and capacity-building programmes, where it is relevant and needed. Ministers accepted the recommendations in the report and invited member countries which had yet to do so to take action, within their resources, in terms of national policies and practice, legislation and capacity building to provide assistance, support and protection of victims and witnesses.

## **PROSECUTION DISCLOSURE OBLIGATIONS**

23. At their 2011 meeting, Ministers mandated the Secretariat to continue dissemination of the model legislation and guidance on prosecution disclosure obligations in facilitating capacity building and technical assistance over the following 12 to 18 months. The Meeting noted that prosecution disclosure practice was evolving with fresh statutory provisions or rules of court in some countries. The application of the model legislation

and guidance needed to take account of new developments and local circumstances, and issues had arisen where very large databases contained data that had to be disclosed. Ministers received a report on work undertaken by the Secretariat and noted that this mandate had been completed, but agreed that the Secretariat should continue to promote best disclosure practice in ongoing technical assistance and capacity-building programmes, where it is relevant and needed. The Meeting invited member countries that had, as yet, not addressed this issue, to draw on the model disclosure legislation and guidelines as necessary and appropriate.

#### **THE COUNTER-TERRORISM PROGRAMME**

24. Ministers received a report on the work undertaken by the Secretariat in respect of counter-terrorism, which followed the Commonwealth Plan of Action on Terrorism (CPAT). The Meeting accepted its recommendations that the Secretariat continue to base any counter-terrorism work on the revised CPAT, and that such work be carried out only in instances where the Commonwealth had a comparative advantage and in close collaboration with relevant national, regional and international agencies. Ministers invited the Secretariat to facilitate targeted technical assistance and capacity building in response to regional needs and requests from member countries, in the Secretariat's interconnecting rule of law and justice mandates and programmes.

#### **INTERNATIONAL CRIMINAL JUSTICE AND INTERNATIONAL HUMANITARIAN LAW**

25. Ministers recalled the mandate given to the Secretariat at their 2011 Meeting to develop and implement programmes in member states to promote the revised Commonwealth Model Law to Implement the Rome Statute, which was adopted at that meeting. The Meeting received and approved a report containing recommendations that the Secretariat continue its work in disseminating information and providing assistance upon request in this area. Ministers approved the Secretariat's proposed future work, including activities to develop the knowledge and skills of young lawyers in international criminal justice, and the use of online facilities such as Commonwealth Connects to create networks.

#### **INTERNATIONAL CHILD ABDUCTION**

26. Ministers received a paper updating them on the Hague Conventions on child abduction and child protection, including initiatives such as the International Hague Network of Judges and the Malta Process. The Malta Process aims at addressing the differences between Islamic legal systems and other legal systems. Ministers were also presented with the accompanying report on action taken by the Secretariat. The report proposed future action by the Secretariat in collaboration with other relevant organisations in order to increase participation of Commonwealth judges in the International Hague Network of Judges and the proposed network of judges of Commonwealth and common law jurisdictions. The report also proposed that the Secretariat provide assistance upon request to countries regarding accession to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Ministers agreed to the recommendations and mandated the Secretariat to undertake the proposed programme of work.

#### **INFORMATION PAPERS**

27. The Meeting received and noted three papers presented at the Meeting of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions in September 2013, namely 'Tackling Backlog of Criminal Cases in the Commonwealth', 'Model



Law on Public Integrity and the Code of Conduct for Public Officials’ and ‘Sustainable Law Revision in Small Commonwealth Jurisdictions’.

## **REPORTS RECEIVED**

28. Ministers received and took note of a number of reports. These were reports:
- (a) on the activities of the Gender Section of the Social Transformation Programmes Division of the Secretariat;
  - (b) on the activities of the Human Rights Unit of the Secretariat. Ministers expressed gratitude for the assistance provided by the Human Rights Unit and shared examples of human rights institutions in place in their jurisdictions;
  - (c) on the activities of the Secretariat in the field of maritime boundaries, oceans governance and the extractive industries;
  - (d) on the work of the International Committee of the Red Cross on the promotion and implementation of international humanitarian law;

## **REPORTS FROM PARTNER ORGANISATIONS**

29. Ministers received and noted reports from the Secretariat’s partner organisations:
- (a) the Commonwealth Association of Law Reform Agencies (CALRAs);
  - (b) the Commonwealth Magistrates’ and Judges’ Association (CMJA);
  - (c) the Commonwealth Lawyers Association (CLA);
  - (d) the Commonwealth Judicial Education Institute (CJEI);
  - (e) the Commonwealth Association of Legislative Counsel (CALC);
  - (f) the Commonwealth Legal Education Association (CLEA).