

Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions

Marlborough House, London, 6-7 October 2016

OUTCOME STATEMENT

1. Law Ministers and Attorneys General from small Commonwealth jurisdictions met at Marlborough House, London, from 6 to 7 October 2016. Twenty-three jurisdictions were represented at the meeting which was opened on behalf of the Commonwealth Secretary General, The Rt. Hon Patricia Scotland QC, by the Commonwealth Deputy Secretary-General (Political), Dr Josephine Ojiambo.
2. The Deputy Secretary General welcomed Law Ministers and Attorneys General to Marlborough House. This was their thirteenth meeting since 1983. The theme of the meeting was the Rule of Law and Sustainable Development, with emphasis on the rule of law as both a development end and an enabler in the achievement of the Sustainable Development Goals (SDGs). She thanked the Director of the Rule of Law Division, Ms Katalaina Sapolu and her team and the Conference Section for their organisation of the meeting; the partner organisations for their work in support of the Secretariat; and delegates for attending the meeting. A video recorded message from the Commonwealth Secretary General was played to the meeting.
3. The meeting elected The Hon. Levi Peter, Attorney General of Dominica to the chair in the meeting. The provisional agenda was formally adopted.

LEGAL WORK OF THE COMMONWEALTH SECRETARIAT

4. Law Ministers and Attorneys General received a comprehensive report on the legal work undertaken since their last meeting by the Secretariat in particular its Rule of Law Division. The rule of law work had been undertaken in the context of the SDGs of the 2030 Agenda for Sustainable Development. Law Ministers and Attorneys General noted the leadership of the Secretariat in developing model laws and agreed on the need for better coordination with in-country legislative drafting experts and collaboration across the three branches of government to ensure that the models developed are utilised as compendiums of legislative approaches which might be adapted by member countries, taking into account their unique legislative landscapes, constitutional provisions and national circumstances.

MANDATE SETTING AT THE COMMONWEALTH SECRETARIAT

5. The meeting received a paper on programme coherence and mandate setting at the Secretariat based upon a need to streamline work. The Meeting noted that the Secretariat's Strategic Plan for 2013/14 - 2016/17 had introduced a shift from mandate setting at ministerial meetings to the building of a consensus on global issues which would provide common policy positions for Commonwealth global advocacy. Law Ministers and Attorneys General agreed that the promotion of democracy and the rule of law as a goal of the current Strategic Plan required focus on the needs of small jurisdictions having regard to their particular vulnerabilities. The rule of law and the needs of small states should be a focus of global advocacy. Subject to consideration of cost implications, Law Ministers and Attorneys General further agreed to the recommendation of the Secretariat that they should meet every two years in order to align with the meetings of Commonwealth Heads of Government.

ADVANCING THE SUSTAINABLE DEVELOPMENT GOALS

6. Law Ministers and Attorneys General discussed a paper prepared by the Secretariat on the relationship between the rule of law and sustainable development. Law Ministers and Attorneys General recognised the rule of law as a development end, as contained in Sustainable Development Goal 16, as well as a means to the realisation of other development goals. In this respect, Law Ministers and Attorneys General noted that their role intersected with the portfolios of other line ministries in a cross-cutting manner, having regard to their horizontal authority for rule of law across government.
7. Law Ministers and Attorneys General discussed the nature of global indicators used to measure SDG Target 16.3, and highlighted the importance of evidence-based interventions for strengthening the rule of law. Some countries noted that the current global indicators for Target 16.3 could be supplemented - for example, time spent in custody prior to conviction -in order to increase their utility for Small Commonwealth Jurisdictions. Law Ministers and Attorneys General encouraged the Secretariat to continue in its work as a neutral interlocutor in supporting dialogue at the national level between law reform bodies, national parliaments, and key stakeholders on linkages between legal frameworks and the SDGs.
8. Law Ministers and Attorneys General concluded that the 'end' and 'means' aspects of the rule of law as regards development were mutually reinforcing. They endorsed the conclusions and recommendations of the paper, including as regards rule of law mapping, data collection, national dialogue, and pan-Commonwealth research on legal frameworks and sustainable development.

DISASTER RESPONSE LAWS

9. The meeting discussed a paper prepared by the Secretariat on disaster response laws. Law Ministers and Attorneys General highlighted that Small Commonwealth Jurisdictions increasingly faced disasters associated with climate change and extreme weather, causing significant adverse impact. Law Ministers and Attorneys

General expressed solidarity with those countries presently experiencing or at severe risk of such events.

10. Law Ministers and Attorneys General recognised the need for effective legal frameworks, including for disaster preparedness, risk reduction, response, and disaster management and recovery. They welcomed the sharing of legal knowledge and the availability of technical assistance from the Secretariat in this area, to be provided in cooperation with other international organisations, including the International Federation of Red Cross and Red Crescent Societies (IFRC), and the British Red Cross.
11. Law Ministers and Attorneys General highlighted the important link between disaster response laws and climate change. The relationship between disaster response law and climate change adaptation was noted, including as regards country readiness for the purposes of accessing global climate finance. In this regard, Law Ministers and Attorneys General welcomed the work of the Commonwealth Climate Finance Access Hub, recently opened in Mauritius. Law Ministers and Attorneys General called upon the Secretariat to support small Commonwealth jurisdictions in facilitating access to finance that could also assist disaster management and risk reduction.

CLIMATE CHANGE AND NATIONAL LAW

12. The meeting considered a paper prepared by the Secretariat on climate change and national laws. The paper investigated the breadth of national laws of Commonwealth countries as they 'intersect' with climate change.
13. Law Ministers and Attorneys General agreed that climate change represented a significant cross-cutting challenge and that the widest range of mitigation and adaptation measures should be reflected across national laws. Law Ministers and Attorneys General highlighted that effective implementation of climate change measures in law should benefit from technical assistance and access to global climate finance.
14. Law Ministers and Attorneys General noted a number of emerging legal issues that may be associated with the consequences of climate change. At the international level, these included the impact on rights over territorial waters in the case of disappearance of state land mass, as well as the rights of persons displaced due to climate change, and the responsibilities of neighbouring and receiving countries. Law Ministers and Attorneys General also observed that population movements may have consequences at the national, transnational, regional and international level. The meeting requested the Secretariat to take such issues into account in work on a toolkit on law and climate change that provides for various national contexts, and to undertake a research paper to be submitted to the next Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions.

CYBERCRIME

15. Law Ministers and Attorneys General were presented with a paper highlighting common trends in cybercrime and cyber security in small Commonwealth jurisdictions. The trends reflected common issues identified in the course of needs assessments undertaken by the Commonwealth Cybercrime Initiative in five Caribbean jurisdictions. The meeting expressed its appreciation for the work of the Secretariat in this area.
16. Law Ministers and Attorneys General discussed the main threats and challenges that their jurisdictions face in regard to cybercrime, including international cooperation, in bringing offenders to justice. Law Ministers and Attorneys General, while noting that the common trends identified reflected the main areas of concern in their own jurisdictions, expressed the wish that a similar assessment be conducted in other Commonwealth regions. They agreed to work with the Secretariat to identify and address priority issues necessary to prevent and minimise cyber threats. They also noted that real time cooperation was required to address the transnational mode of offending and committed themselves to an informal cooperation mechanism of the Secretariat (Commonwealth Network of Contact Persons) in providing real-time cooperation pending a formal request for mutual legal assistance. Further, Law Ministers and Attorneys General recognised the desirability of enacting legislation in their jurisdictions requiring the preservation of data pending the receipt of a formal request for mutual legal assistance. They welcomed the work of the Commonwealth Cybercrime Initiative and the assistance the Secretariat could offer.

PROSECUTION INDEPENDENCE AND ACCOUNTABILITY

17. Prosecution agencies, and prosecutors individually, are essential in the criminal justice administration of any society under the rule of law. As representatives of the state in the conduct of criminal prosecutions and related matters, the public expects them to act lawfully, ethically, honestly, professionally, independently and accountably in the execution of their duties. This role will not be well performed if the integrity of the office is compromised by reason of lack of independence to exercise prosecutorial decision-making powers and/or the improper use of discretion.
18. Law Ministers and Attorneys General considered the paper on 'Prosecution Independence and Accountability: Principles, Challenges and Recommendations' and agreed that there should be legal, institutionalised practical safeguards to ensure the independence of the prosecution agencies and administrative framework that will enable prosecutorial agencies and prosecutors to discharge the functions of their office effectively and at the same time hold them fully accountable for their actions.
19. Law Ministers and Attorneys General noted that in a number of jurisdictions the constitutional independence of the Attorney General meant that the establishment of a separate office of Director of Public Prosecutions was unnecessary.
20. Law Ministers and Attorneys General requested the Secretariat to consider providing legislative and technical assistance to them in reflecting the necessary legislative provisions relevant to the independence and accountability of the office of Director of Public Prosecutions. The Meeting requested the Secretariat to provide a paper on

the role of the attorney general in small Commonwealth jurisdictions. The Secretariat indicated that a similar paper on the independence of the attorney general had been prepared for a previous meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions and agreed to circulate it. Law Ministers and Attorneys General also requested the Secretariat to consider working with other better-resourced member countries to provide pro bono specialist prosecutors to assist small Commonwealth jurisdictions in the prosecution of complex cases.

THE ARMS TRADE TREATY

21. Law Ministers and Attorneys General recalled the leadership role of Commonwealth states in the entry into force of the Arms Trade Treaty and noted that at their meeting in November 2015 in Malta, the Commonwealth Heads of Government (CHOGM) had both invited member countries who 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 had 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.
22. Law Ministers and Attorneys General recognised the efforts made by Small Commonwealth Jurisdictions in ratifying the Arms Trade Treaty and hosting the Secretariat of the Arms Trade Treaty. They discussed the benefits for small jurisdictions of being party to the Treaty and the main challenges in their meeting their obligations under the Treaty. Law Ministers and Attorneys General agreed that the Secretariat could provide assistance to draft legislation in relation to the implementation of the Treaty.
23. Law Ministers and Attorneys General discussed the critical humanitarian, human rights and rule of law implications of taking measures to combat the illicit arms trade. Having regard to the situation in some jurisdictions, which has reached crisis proportions, the Meeting requested technical assistance from the Secretariat regarding policy and legislative options to be adopted by affected jurisdictions in response to the said humanitarian, human rights and rule of law challenges, including on trans-shipment and tracking, as well as on matters of search, preventative detention, bail, additional police powers, and sentencing options and guidelines.
24. Law Ministers and Attorneys General discussed the particular challenges of small jurisdictions, which are not manufacturers or exporters of small arms, but suffer acutely from the consequences. They highlighted the significant adverse impact firearm violence has on development and human rights in their jurisdictions, and the need for manufacturing and exporting countries to uphold their obligations under articles 6 and 7 of the Treaty.
25. Law Ministers and Attorneys General noted that the issue of the Arms Trade Treaty would go before Law Ministers at their next meeting. The Arms Trade Treaty had been on the CHOGM agenda previously and the Secretariat would endeavour to

ensure that the Treaty with particular emphasis on the impact of illicit arms trade in small jurisdictions remained before heads.

REPORTS FROM PARTNER ORGANISATIONS

26. The meeting received and noted with appreciation 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 Parliamentary Association (CPA). The meeting also received an update on international humanitarian law in the Commonwealth from the International Committee of the Red Cross (ICRC). A presentation was given by the Commonwealth Businesswomen Network.
27. Condolences were expressed to Nauru upon the recent passing of Chief Justice Ratu Joni Madraiwiwi.
28. The partner organisations were requested to provide supplementary reports setting out activities undertaken in the period since the drafting of their main reports.

RESTORATIVE JUSTICE

29. Law Ministers and Attorneys General discussed the potential benefits of restorative justice in the criminal justice system. They agreed that it could contribute to the reduction of the reoffending rate and acknowledged that it could bring a greater sense of justice being done to victims, particularly in smaller jurisdictions.
30. Law Ministers and Attorneys General discussed the feasibility of implementing a restorative justice programme, particularly in jurisdictions where resources were limited. The Meeting heard from Law Ministers and Attorneys General who had experience of restorative justice in their criminal justice system and discussed both the positive experiences and the challenges. The Meeting requested the Secretariat to explore the impact of restorative justice in relation to rape victims. They agreed that the Secretariat could facilitate the exchange of best practice on restorative justice and complementarity among small Commonwealth jurisdictions.

ROUNDTABLE DISCUSSION

31. During a round table discussion Law Ministers and Attorneys General considered a paper on recovering the proceeds of crime in which the utility of assets forfeiture was underlined as one of the strongest strategies against corruption. The paper underscored the need to develop robust assets forfeiture regime, which provided for both conviction and non-conviction based recovery of proceeds of crime to enable profit to be taken out of crime. It outlined the requirements of civil or a non-conviction based confiscation as an action in rem, against the property and based on the civil standard of proof (on the balance of probabilities). It also highlighted the constitutionality of the non-conviction based forfeiture and argued that it was not in conflict with the right to quiet enjoyment of property, as no constitution would support the protection against forfeiture of property that had been unlawfully obtained. The Meeting noted the real possibility of constitutional challenges in some

contexts in the case of non-conviction based civil forfeiture having regard to written constitutional provisions in some jurisdictions. Law Ministers and Attorneys General reflected on the merits of a non-conviction based forfeiture regime in the national legislation including what might be the applicable burden of proof and what might be the constitutional status of its provisions.