I. Introduction

In an attempt to ensure that legal provisions keep pace with medical advances in the field of prevention of unwanted pregnancies, the Fourth Commonwealth Medical Conference (1974) requested the Commonwealth Secretariat to collect information on laws on abortion. The Commonwealth Secretariat circulated a questionnaire to the Member countries of the Commonwealth, and to Associated States and dependencies, to identify their laws and intentions concerning medical termination of pregnancy. The resulting 1977 Survey, published by the Commonwealth Secretariat as a study in Three Studies of Abortion Laws in the Commonwealth analysed the state of the law, as well as evaluations of it and proposals for change in Commonwealth jurisdictions.

The 1977 Survey was presented in that year to Commonwealth Law Ministers' Meeting in Canada and to the Fifth Commonwealth Health Ministers' Meeting in New Zealand. The latter "commended the Secretariat for providing comprehensive background information for governments, and thought that the data should be kept updated on a permanent basis."

The Commonwealth Secretariat has responded to that request by commissioning periodic revisions. Initially a two-year revision was published in the International Digest of Health Legislation, World Health Organisation (W.H.O.) and was reprinted in a monograph by W.H.O. The 1979 Report was based on information that was available as of 1 May 1978. The 1979 Report was distributed to all Commonwealth Ministers of Justice and Health.

This 1982 Report represents the second revision. The Secretariat has again circulated a questionnaire based on information contained in the 1979 Report to Member Jurisdictions to determine the changes that have occurred in the five-year interval since the circulation of the questionnaire for the 1977 Report. This present Report presents the information that was made available and analyses the position as at 1 November 1982 as advised to the Secretariat. The Report is designed to be read as a separate, and self-sufficient document, it does not need to be read in conjunction with previous Reports.

The first 1977 Report was intensively considered by Commonwealth governments Health and Legal representatives at the Medical-Legal Workshops held in Barbados and Malawi and organised by the Medical and Legal Divisions of the Commonwealth Secretariat in 1979. The conclusions of those meetings, contained in Appendix A and B, were presented to the Sixth Commonwealth Health Ministers Meeting in Arusha, Tanzania in November 1980. The conclusions on Medical-Legal Issues were:

MEDICAL-LEGAL ISSUES

General — (a) The Meeting generally endorsed the recommendations contained in the reports of the two medical-legal workshops held in 1979 in Barbados and Malawi. Particular endorsement was given to the following recommendations concerning abortion law and practice.

National — (b) Countries should provide for a jurisdiction to have at least a "developed" law, either by legislation or through an authoritative executive statement of the scope of lawful abortion under existing law.

(c) Laws relating to approved contraceptive measures should be clearly exempted from the scope of laws relating to abortion.

(d) Lawful abortion should include, at the minimum preservation of life and physical and mental health, as determined necessary in good faith by a doctor.

(e) Abortion services should be rendered by adequately qualified personnel.

(f) Consideration should be given to accommodating abortion primarily in laws focusing not upon crime and punishment but upon health and welfare.

(g) Continuing dialogue should be maintained between doctors and lawyers on legislation and medical practice, and on the impact of medical technology upon the relevance and application of laws.

Regional

(h) Regional groups and their secretariats should, within the limits of their resources, support the above activities, taking initiatives as and when appropriate.

Commonwealth Secretariat

(i) The Secretariat should encourage discussion of issues relating to the medical termination of pregnancy at meetings of Health Ministers and of Law Ministers of the Commonwealth.

(j) The Secretariat should continue to disseminate information on the legal and medical aspects of the medical termination of pregnancy, and to support efforts to establish a medical-legal dialogue on the subject.

(k) The Secretariat should, where possible, provide technical assistance to Commonwealth governments requesting help with the development of their laws on the medical termination of pregnancy.

(l) The Secretariat should, within the limits of its resources, provide support in this programme area, taking the initiative as and when appropriate.

Those recommendations, requiring implementation at the national level are discussed in Sections III and IV of this Report. Section III outlines those countries that have at least "developed" their law (recommendation b) or in some cases advanced it since 1978. Table II of this Report outlines the extent to which Commonwealth governments enable medical termination of pregnancy to perserve the life and physical and mental health of the woman (recommendation d). Section IV discussed the extent to which Commonwealth governments have exempted contraceptives from the scope of laws relating to abortion (recommendation c). Section IV analyses how Commonwealth governments have interpreted their laws to enable the use of the newer medical technologies such as menstrual therapies to the benefit of womens' health (recommendation g). Of particular interest is the response of the Sri Lanka Ministry of Justice in recognising the legitimacy of menstrual therapies before pregnancy can be diagnosed:

"It appears that Menstrual Therapies can be performed in Sri Lanka without violating abortion law where a woman is not proven to be with child."

Section IV discusses what Commonwealth governments have done to enable the delivery of abortion services by "adequately qualified personnel" either by court interpretation or statute (recommendation e). Finally the extent to which governments have accommodated "abortion primarily in laws focusing not upon crime and punishment but upon health and welfare" is discussed in Section IV. Many Mamber countries, especially through their respective Commissions on the Status of Women, recognise that women as well as men have right to health care treatment outside the context of crime and punishment. Of particular interest is the following recommendation of the Report of the National Commission of the STatus of Women in Barbados:

"The service should permit abortion on the sole request of women upto the twelfth week of pregnancy."

Indeed, the Barbados Report stressed, as do other similar Commonwealth Reports, that abortion should only be used as a second line of defense against the prevention of unwanted pregnancy behind the more desirable and cost effective first line of defense of contraceptiion and sex education.

With respect to recommendation h, requiring regional implementation, analyses of laws along a regional basis have been prepared. Such work, "Menstrual Therapies in Commonwealth Asian Penal Law" International Journal of Gynaecology and Obstetrics, 20: 273-278 (1982) was thought significant where there was regional differentiation in the law, notably Commonwealth Asia. Further regional study "Abortion Laws in African Commonwealth Countries" Journal of African Law 25: (1982) was thought fruitful where governments take particular interest in regional Commonwealth practice.

Finally, with respect to recommendation i-l, requesting implementation by the Commonwealth Secretariat, this Report is being presented to the 1983 Commonwealth Ministers of Justice Meeting held in Colombo, Sri Lanka, in Ottawa, Canada, October, 1983 and any Ministerial Meeting for Women and Development. The Secretariat continues to disseminate information on medical-legal aspects of abortion through the Commonwealth Law Bulletin and through a newly-initiated series, Commonwealth Developments in Health Law (See Issue I, July 1981). The Secretariat has supported efforts to establish medical-legal dialogues on this subject based on the Barbados and Malawi models at the Regional meetings of the Health Ministers. Finally with respect to recommendations k and 1, the Secrearíat, under the auspices of the Commonwealth Fund for Technical Assistance is able to provide technical assistance to developing Commonwealth countries requesting help on health-related, as on other matters.