

Meeting of Commonwealth Law Ministers and Senior Officials

Balaclava, Mauritius, 22 - 25 November 2022

OUTCOME STATEMENT

1. Commonwealth Law Ministers, Attorneys General, and Senior Officials from 31 member countries met in Balaclava, Mauritius from 22 - 25 November 2022. The Secretary General noted the importance of the theme of the meeting, 'Strengthening international cooperation through the rule of law and the protection of human rights.' The Secretary General stressed the importance of justice innovation and transformation, which is at the heart of the work of the Secretariat. The Secretary General exhorted members to embrace the goal of justice transformation in the Commonwealth. The Secretary General expressed gratitude to the Republic of Mauritius for graciously hosting the 2022 Commonwealth Law Ministers Meeting, the first in-person meeting since the COVID-19 Pandemic, and introduced the Chairperson of the meeting Hon. Maneesh Gobin, Attorney General of Mauritius.

THEME PAPERS

2. Law Ministers received and discussed the theme papers from Mauritius. The first paper explored the relationship between the rule of law and international cooperation in human rights, humanitarian law, climate change, cybercrime, mutual legal assistance and extradition. The paper explained that strengthening the rule of law through effective legal frameworks, law, policy and strong institutions, and commitment to the principles of equality, justice and human rights helps member countries to achieve cooperation in a wide range of areas.
3. The second paper addressed law, climate change and food security. The Chairperson noted that food security should be a matter of concern for nations, particularly, due to the impact of climate change. The Chairperson recognised Law Ministers as agents of change and urged Law Ministers to prioritise and mainstream the question of food security and climate change in their laws and policies.
4. Law Ministers recognised the importance of international cooperation as a catalyst for the advancement of the rule of law and the protection of human rights. Law Ministers

also noted that solving social and economic challenges should be a priority in order to combat root causes of crime.

PLAN OF ACTION ON THE DECLARATION ON EQUAL ACCESS TO JUSTICE

5. The Secretary General addressed Law Ministers on the Plan of Action on Equal Access to Justice, which was endorsed by Commonwealth Heads of Government in Kigali in June 2022. The Secretary General highlighted the work that the Secretariat would undertake to fulfil the United Nations Sustainable Development Goals (SDG) 16, promoting equal access to justice for all by 2030. This Plan includes the development of an access to justice toolkit and a small claims court app, the Commonwealth legal knowledge exchange portal, the implementation of people centred justice projects, the development of the 100-day toolkit for Justice Ministers, the integrated family court project and model contracts in investment, energy and extractives.
6. Law Ministers shared their experiences in delivering broad access to justice in their jurisdictions including the implementation of various schemes such as conciliation; court annexed mediation; small claims courts; legal aid schemes in criminal and civil matters; victim protection schemes; use of specialised courts including customary courts; family and children's courts; and access to justice bureaus.
7. Law Ministers noted some challenges in the delivery of access to justice for example, strained resources, the need for adequate training, and the need to harness technological innovation in the early stages of dispute resolution. Law Ministers also recognised the importance of according priority, as appropriate, to women and youth in delivery of access to justice. Law Ministers also noted the fact that some countries have moved from physical to online mechanisms for cost and time efficiency in ensuring access to justice.
8. Law Ministers noted the Plan of Action on Equal Access to Justice and endorsed the programmes proposed by the Commonwealth Secretariat to implement the Plan towards realising the SDG 16, promoting equal access to justice for all by 2030.

PEOPLE CENTRED JUSTICE

9. The Meeting received a paper on people centred justice programming. Law Ministers were informed that citizens and justice practitioners are increasingly demanding that justice systems deliver more and deliver for everyone.

10. Law Ministers recognised that there is an urgent need to deliver justice to as many people as possible in a sustainable manner, requiring a shift to more evidence-based, data-driven justice solutions. Law Ministers encouraged the Secretariat to work in collaboration and cooperation with relevant institutions to find and implement community-based targeted justice solutions. This can include both formal and informal modes of prevention and dispute resolution. Examples of such justice solutions beyond courts are justice centres, user friendly contracts, one-stop shop tribunals, and online legal information services and advice. Law Ministers recognised the need for simple, user-friendly systems for justice delivery.

COURTS OF THE FUTURE AND DIGITISATION

11. This presentation advocated for a paradigm shift. Law Ministers were urged to consider justice delivery as a service. It was acknowledged that the COVID-19 pandemic forced justice systems to adapt to online delivery of justice. It was emphasised that Law Ministers should consider new approaches to justice delivery including asynchronized hearings, online legal information services, and extension of court services through public-private partnerships.
12. Law Ministers also recognised the opportunities presented by technology and the importance of ensuring that new technologies respect, safeguard the independence of the judiciary, and the importance of developing ethical principles, which take into consideration the risks involved in the application of such technology.
13. Law Ministers appreciated the work of the Secretariat, noting the initiatives taken regionally in employing artificial intelligence for a variety of purposes within the justice sector. Law Ministers mandated the Secretariat to adopt a holistic approach to artificial intelligence in the sector. In particular, the Secretariat should scope emerging practices on the use of artificial intelligence across the Commonwealth and consider developing principles which align to Commonwealth values and principles.

MUTUAL LEGAL ASSISTANCE SCHEMES

14. Law Ministers received a paper discussing the Secretariat's support of member countries in building and maintaining effective international cooperation frameworks on criminal matters, including through the Commonwealth Network of Contact Persons (CNCP) and Commonwealth Electronic Evidence Focal Points (CEEFP) systems.
15. Law Ministers endorsed the Secretariat's on-going research on the use of mutual legal assistance schemes in the Commonwealth. Law Ministers also endorsed the establishment of a Working Group on Mutual Legal Assistance and offered nominations

of contact persons to the Network. Law Ministers committed to provide responses to the Commonwealth Secretariat's Survey on International Cooperation in Criminal Matters.

TOOLKITS AND PRACTICE GUIDES

16. Law Ministers received several toolkits and practice guides namely: (a) a resource on environmental, social and economic development provisions in investment contracts; (b) the Law and Climate Change Toolkit; (c) the Anti-Corruption Benchmarks; and (d) Cyber Security for Elections: A Commonwealth Guide on Best Practice.
17. Law Ministers noted with appreciation the legal resources developed by the Secretariat and its partners as important tools for government lawyers, noting that the toolkits are useful resources which assist officials across the justice sector. Law Ministers were encouraged to familiarise themselves with the knowledge products.
18. Law Ministers directed the Secretariat to continue its work on model contracts in the areas of energy, extractives, and infrastructure.

MODEL LAWS

19. At their meeting in November 2019, Law Ministers agreed with the Expert Working Group's recommendation to develop new Commonwealth model provisions that would cover data protection rights and obligations across all sectors. They requested that the model provisions be presented for review and approval at the next Law Ministers meeting. The model provisions were presented to Senior Officials at their meeting in February 2021.
20. At their meeting in November 2022, Law Ministers received the Commonwealth Model Provisions on Data Protection agreed by the Expert Working Group ('Model Provisions'). Law Ministers adopted the Model Provisions as a Commonwealth model law and resolved to request the Secretariat to review the Model Provisions in two years.

REGULATION OF DIGITAL ASSETS IN THE COMMONWEALTH

21. Heads of Government, at their meeting in Kigali in June 2022, highlighted the urgent need to accelerate the transition to sustainable markets through laws and policies that incentivise sustainable and inclusive economic development, including through the adoption of digital solutions.
22. Law Ministers were presented with a paper on Commonwealth legal and regulatory

frameworks for the Digital Economy. Law Ministers agreed that the Commonwealth Secretariat should commence work to scope a potential framework model law on digital assets aligned with Commonwealth values. The Secretariat will consult widely, including with Finance Ministers, and adopt an evidence-based approach on this rapidly evolving subject which is of utmost importance to all members, particularly small and vulnerable states.

COMMONWEALTH PRINCIPLES ON FREEDOM OF EXPRESSION AND THE ROLE OF THE MEDIA IN GOOD GOVERNANCE

23. At their February 2021 meeting, Senior Officials from Commonwealth Law Ministries recommended that the Secretariat establishes an Expert Working Group to consider the 'Commonwealth Principles on Freedom of Expression and the Role of the Media in Good Governance' that were drafted by several Commonwealth Accredited Organisations and to make recommendations to Law Ministers.
24. At their meeting in November 2022, Law Ministers received the report of the Expert Working Group on Media Principles and a draft set of principles on freedom of expression and the role of the media in good governance. Law Ministers agreed to recommend the Media Principles for consideration at the next Heads of Government meeting.

REPORT ON THE LEGAL WORK OF THE SECRETARIAT

25. The Meeting received a report on the legal work of the Secretariat on the rule of law. It was also informed of the outcomes of the last Commonwealth Heads of Government Meeting (CHOGM), held in Kigali in June 2022, and noted the areas in the rule of law field that had been discussed by Heads.
26. Law Ministers noted the high-level assistance across a broad range of work accomplished by the Secretariat. This includes the adoption of the equal access to justice plan, legal knowledge dissemination through webinars and journals and other knowledge products. The Secretariat also worked on consensus building through meetings of senior official and Law Ministers and a broad cross section of technical assistance work across the Commonwealth. Member countries discussed various technical assistance programmes in their jurisdictions including deployment of judges, training on election cybersecurity, anti-corruption and support in legislative drafting.
27. The Meeting thanked the Secretariat for its report and expressed its gratitude for the work accomplished particularly in light of the exceptional challenges posed by the COVID-19 Pandemic. The Secretariat was urged to continue to take gender, human rights and diversity into consideration in all future initiatives to help ensure that the

results are responsive, inclusive and reflective of diverse experiences and realities to address inequities and barriers.

LAW MINISTERS ACTION GROUP

28. At the 2021 meeting of Senior Officials of Law Ministries, it was agreed that Law Ministers establish a Commonwealth Law Ministers Action Group (LMAG) whose mandate would be to provide guidance and advice to the Secretary-General of the Commonwealth on strategies to strengthen the rule of law and equal access to justice as outlined under the United Nations Sustainable Development Goal (SDG) 16 and the Law Ministers Declaration on Equal Access to Justice (adopted in Colombo, Sri Lanka, November 2019).
29. Law Ministers received information requested by Senior Officials on modalities for a Law Ministers Action Group and noted that the group would have no executive functions and would be advisory in nature. Member countries were invited to submit written interventions on the terms of reference to the Secretariat. It was agreed that the Terms of Reference (ToR) will be amended by the Secretariat once comments are received from Member Countries. The Secretariat will submit the amended ToR to the Senior Officials for approval prior to the first meeting of the LMAG.
30. Law Ministers adopted the proposal for the establishment of the Law Ministers Action Group and agreed that the following member governments should serve on LMAG: United Republic of Tanzania, Namibia, Mauritius, Malaysia, Samoa, Bangladesh, Jamaica, St Kitts and Nevis, Malta (for one year followed by the United Kingdom for another year) and *ex officio*, the Chair-in-Office, (currently Rwanda).

FACILITATING OFFICIAL TRAVEL WITHIN THE COMMONWEALTH BY SECRETARIAT STAFF

31. Law Ministers also discussed easing the pressures and costs created by the visa process on officials travelling on Commonwealth business within the Commonwealth and enquired as to the potential of visa exceptions. Law Ministers invited the Secretariat to raise this complex issue before the appropriate fora.

ALTERNATIVE DISPUTE RESOLUTION

32. The paper noted that the use of arbitration had grown significantly in some countries while others had only recently begun to encourage the use of arbitration to solve domestic and international disputes.

33. Law Ministers agreed to support the establishment of an action-oriented Commonwealth Taskforce on Arbitration. It will promote the adoption of arbitration throughout the Commonwealth, work with key stakeholders to advance the use of International Commercial Arbitration and modernise arbitral law in member countries.

THE SINGAPORE CONVENTION ON MEDIATION

34. The Meeting also received a paper on the United Nations Convention on International Settlement Agreements Resulting from Mediation ('Singapore Convention') which entered into force on 12 September 2020. Law Ministers recalled the benefits of acceding to the Singapore Convention on mediation including reduced costs, delays, and complexity associated with international commercial dispute resolution. It was noted that the Singapore Convention may be relevant to the objective of increasing intra-Commonwealth trade to USD2 trillion by 2030.
35. Having recognised the advantages of member countries ratifying and implementing the Singapore Convention, Law Ministers agreed to request training, research and capacity building support from the Secretariat as needed on the various dispute resolution frameworks, including mediation which should be prioritized to assist the Commonwealth's goals of increasing intra-Commonwealth trade and investment, ensuring justice, and upholding the rule of law in international relations.

COMMONWEALTH BEST PRACTICE GUIDE ON CHILD, EARLY AND FORCED MARRIAGE

36. At the 2017 Commonwealth Law Ministers Meeting held in The Bahamas, 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 agreed on the need to compile and share best practices across the Commonwealth and mandated the Commonwealth Secretariat to compile a best practice publication on Child, Early and Forced Marriage (CEFM) in the Commonwealth.
37. Law Ministers reflected that CEFM is a violation of human rights, which undermines girls' and women's equality, opportunities and empowerment, and reinforces and perpetuates harmful social norms. Preventing and eliminating CEFM is a crucial step towards achieving the rights of girls and women across the Commonwealth.

38. Law Ministers adopted the Commonwealth Best Practice Guide on Child, Early and Forced Marriage and undertook to use it where appropriate in addressing child, early and forced marriage domestically.

DRAFT MODEL PROVISIONS ON PREVENTING ABUSE OF POSITIONS OF TRUST

39. Law Ministers received the outcome of the Expert Working Group (EWG) consisting of Senior Officials from both Sports and Justice Ministries across 15 Commonwealth member countries set up to draft Model Legislation on Preventing Abuse of Positions of Trust.
40. Law Ministers were invited to note the progress on the work of the EWG and advised that the finalised model provisions would be shared with Law Ministers in due course for consideration.

DIVERSITY IN JUDICIAL APPOINTMENTS

41. In their meeting in 2019, Law Ministers expressed strong support for the continuation of the Secretariat's work in diversity in judicial appointments and recognised the importance of addressing concerns specific to small commonwealth jurisdictions separately.
42. The meeting was presented with two papers, one examining judicial diversity across the Commonwealth, and another examining the use of foreign judges and judicial diversity in small Commonwealth states.
43. Law Ministers endorsed the Secretariat's proposal for the development of a set of Guidelines on Judicial Diversity in the Commonwealth. They requested that the Secretariat consult with the Commonwealth Magistrates and Judges Association (CMJA), the Commonwealth Lawyers Association (CLA), other relevant Commonwealth accredited organisations, and distinguished jurists to produce a full set of draft principles that will underpin the Guidelines on Judicial Diversity in the Commonwealth.

EFFICACY OF SUPPRESSION ORDERS IN THE DIGITAL AGE

44. At their meeting in 2019 in Colombo, Sri Lanka, Law Ministers discussed the practical challenges pertaining to the enforcement in the digital age of suppression orders which are court-issued injunctions prohibiting the publication of details of on-going, or the outcome of, legal proceedings.
45. Law Ministers agreed to explore potential solutions, including the establishment of frameworks that would enable the mutual recognition of suppression orders in the

Commonwealth. At their meeting in February 2021, Senior Officials of Law Ministries requested that the Secretariat establish an expert working group, which would meet virtually, to assess the need for a formal framework. They recommended that the expert working group update the Senior Officials, and report to Law Ministers at their next meeting, providing options, which would assist Law Ministers to consider the issue and/or decide on further work.

46. Law Ministers received the report of the Expert Working Group on Suppression Orders. Law Ministers accepted the recommendations of the Expert Working Group that the Secretariat develop a model law on the enforcement of suppression orders.

MILITARY JUSTICE TRANSFORMATION

47. Law Ministers also received a paper on ‘Military Justice Transformation Project’ in the Commonwealth. Ministers thanked the Secretariat for the work on this project including the proposal to produce the Commonwealth Military Justice Principles and directed the Secretariat to report on the activities of the Commonwealth Military Justice Transformation Project at their next meeting.

REPORT OF PARTNER AND OBSERVER ORGANISATIONS

48. Law Ministers received and noted reports from the Secretariat’s partner organisations including:
 - i. the Commonwealth Association of Law Reform Agencies (CALRAs);
 - ii. the Commonwealth Magistrates’ and Judges’ Association (CMJA);
 - iii. the Commonwealth Lawyers Association (CLA);
 - iv. the Commonwealth Judicial Education Institute (CJEI);
 - v. the Commonwealth Association of Legislative Counsel (CALC);
 - vi. The British Red Cross in collaboration with the International Committee of the Red Cross (ICRC); and the
 - vii. Commonwealth Parliamentary Association(CPA).
49. Law Ministers received observer reports from the Institute of Commonwealth Studies on the Decriminalisation of Poverty and from the Commonwealth Businesswomen’s Network. They also received a video report from the Commonwealth of Learning on its work on access to justice. This session ended with an informative video on domestic and sexual violence against women and girls titled ‘Commonwealth Says No More’. Law Ministers were encouraged to participate in the initiative.

ADOPTION OF DECLARATIONS

50. Law Ministers adopted the Model Law on Data Protection and the Principles on Freedom of Expression and the Role of the Media in Good Governance and directed the Secretariat to table them for the consideration of Heads at their next meeting.

CLOSING

51. Law Ministers thanked the Secretary General for her sterling performance and innovation in justice. They also thanked Mauritius for hosting a successful Law Ministers Meeting. Law Ministers thanked the United Republic of Tanzania for its generous offer to host the next Commonwealth Law Ministers Meeting in the beautiful Islands of Zanzibar, at a date to be agreed through the usual procedure.