

Evaluation of Commonwealth Secretariat's Support to Member Countries on Criminal Law ©

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Commonwealth Secretariat
Evaluation of Commonwealth Secretariat's Support to Member
Countries on Criminal Law

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This document has been approved for submission by Coffey's Project Director, based on a review of satisfactory adherence to our policies on:

- Quality management
- HSSE and risk management
- Financial management and Value for Money (VfM)
- Personnel recruitment and management
- Performance Management and Monitoring and Evaluation (M&E)

Rohan Burdett, Project Director

Signature:

A handwritten signature in black ink, appearing to read "R. Burdett".

Abbreviations and Acronyms

ADB	Asian Development Bank
AML	Anti-Money Laundering
APG	Asia-Pacific Group on Money Laundering
CLB	Commonwealth Law Bulletin
CLS	Criminal Law Section
CHOGM	Commonwealth Heads of Government Meeting
CFT	Countering Financing on Terrorism
CFTC	Commonwealth Fund for Technical Cooperation
CPAT	Commonwealth Plan of Action on Terrorism
CT	Counter-Terrorism
DDP	Director of Public Prosecutions
DFID	Department for International Development
ERB	Extra Budgetary Resources
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GIDD	Governance and Institutional Development Division
HDI	Human Development Index
HRU	Human Rights Unit
ICAC	Independent Commission Against Corruption
ICC	International Criminal Court
JS	Justice Section
LCAD	Legal and Constitutional Affairs Division
LDA	London Development Agency
LLM	Law Ministers' Meeting
M&E	Monitoring and Evaluation
MAR	Multilateral Aid Review
MDG	Millennium Development Goals
MOI	Ministry of Interior

ABBREVIATIONS AND ACRONYMS

NSW	New South Wales
NZAID	New Zealand Agency for International Development
OECD DAC	Organisation for Economic Cooperation and Development – Development Assistance Committee
OVI	Objectively Verifiable Indicators
PCM	Project Cycle Management
PCN	Project Completion Note
PDD	Project Design Documents
PIF	Pacific Islands Forum
PILON	Pacific Island Law Officers Network
PMRU	Project Management and Referrals Unit
PoA	Plan of Action
PPA	Pacific Prosecutors' Association
RBM	Results-Based Management
SOLM	Senior Officials of Law Ministries
SPED	Strategic Planning & Evaluation Division
STPD	Social Transformation Programmes Division
TCF	Technical Cooperation Frameworks
TOR	Terms of Reference
TOT	Training of Trainers
UNICEF	UN Children's Fund
UNODC	UN Office on Drugs and Crime
VFM	Value for Money
VSO	Voluntary Service Overseas
YAD	Youth Affairs Division

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Executive Summary

1 Introduction

The Commonwealth Secretariat contracted Coffey International Development to evaluate the rule of law programmes delivered by the Secretariat's Criminal Law Section (CLS) during 2007 to 2011. The **purpose** of the evaluation was to assess the **relevance, efficiency, effectiveness, sustainability** and **impact** of these programmes with a view to defining the focus and form the technical assistance programme should take, and to recommend strategic and operational changes that may be required by the Secretariat to make the delivery more focussed, relevant and sustainable.

The **scope** of the evaluation was limited to assessing the following three programmes (which were formerly five programmes) among the various programmes delivered by the CLS during 2007 to 2011: Preventing and Combating Terrorism and Anti Money Laundering and Financing Terrorism; International Cooperation and Strengthening of Criminal Justice; and International Criminal Court. The time period covered by the evaluation ended on **30 June 2011**.

The evaluation had three **focus** areas:

- **Process:** how was the intervention delivered? (relevance and effectiveness)
- **Efficiency:** did the benefits justify the costs? (efficiency)
- **Impact:** what did the programme achieve that wouldn't have otherwise been achieved and to what extent is this sustainable? (impact and sustainability)

The Commonwealth Secretariat has 13 divisions and units which manage programmes based on mandates set by Commonwealth Heads of Government (CHOGM) and other high-level Commonwealth meetings such as the Commonwealth Law Ministers' Meeting (CLMM). The Legal and Constitutional Affairs Division (LCAD), amongst other tasks, has the overall responsibility for managing all Rule of Law programming, and is comprised of the CLS and the Justice Section (JS). LCAD programme objectives and areas of work are detailed in the Commonwealth Secretariat Strategic Plan 2008/9 to 2011/12.

2 Methodology and Approach

The programmes were assessed according to a standard set of evaluation criteria adapted from the OECD DAC Criteria, covering Relevance, Effectiveness, Efficiency, Sustainability and Impact. The data collection methodology used was a systematic review of reports and existing evidence, and primary research consisting of semi-structured, in-depth interviews with key stakeholders and beneficiaries, including through field visits to Mauritius and Solomon Islands. The analytical approach consisted of qualitative data analysis; a measurement and management approach to a Value for Money (VFM) Assessment; and contribution analysis.

3 Findings

3.1 Rationale: Relevance of the Criminal Law work

Evaluation Area 1 is an assessment of the continued relevance of the Criminal Law work of the Rule of Law programme and assess its likely demand, including but not limited to content, focus and quality, over the coming years to inform recommendations on forward direction of the programme.

'Relevance' is *the extent to which the programmes are suited to the priorities and policies of the target group, recipient and donor*. With respect to this evaluation 'Relevance' is the extent to which the Criminal Law work of the Rule of Law programmes responds to the mandates set by the CHOGMs and the CLMMs, suits the priorities and policies of those member countries requesting assistance, and more generally addresses the global and national issues they seek to address.

Commonwealth Secretariat Project Design Documents (PDDs) detail the problems each programme seeks to address. These problem areas reflect international interest and investment by donors in rule of law assistance and key diplomatic initiatives in the rule of law field. They are likely to continue to be areas of high demand in content,

focus and quality for the period of the next Strategic Plan and therefore any Secretariat programming in these areas will remain relevant into the immediate future.

Until 2009 CLS programmes generally comprised a broad range of loosely connected activities based on attempting to meet mandate needs and ad hoc demand-based requests of member states. Staff appeared to have a large discretion as to what programmes they would implement as long as they fitted within a mandate. Since 2009, however, CLS moved away from ad hoc workshops by seeking to interconnect mandated work in a more 'holistic' manner focusing on more regionally—based projects. This has proved adequate to technically confirm relevance of the programmes. CLS's harmonisation with other donors was generally limited in the early years covered by this evaluation but has improved since 2010. Likewise alignment with beneficiary needs has on occasions been limited, partly owing to demand (and not necessarily need) being an adequate criterion for Secretariat assistance. Future relevance is best assured by improved efforts at harmonisation with broader donor efforts and better alignment with beneficiary needs.

The Secretariat's new technical cooperation framework (TCF) process is rigorous and founded in international development best practice and we support its full roll-out to countries receiving Secretariat assistance. Where assistance is requested outside the TCF framework, i.e. by a country not subject to a TCF or regarding an issue that is not an agreed TCF priority, we recommend that projects be assessed against specific criteria detailed in the recommendation below.

Recommendation1:

As part of its efforts to improve the cohesion and focus of its programmes the Secretariat should articulate criteria to be applied when considering approval of member country requests for Criminal Law technical assistance. We would suggest a matrix approach taking into account the following criteria at a minimum:

- *Alignment with a Strategic Plan rule of law programme results area or CHOGM or CLMM mandate (mandatory)*
- *Harmonisation with donor interventions to promote complementarity and to reduce duplication (mandatory)*
- *Rigorous scoping study / needs assessment undertaken (mandatory)*
- *Technical assistance represents value of money compared with reasonable alternatives (mandatory)*
- *Resources available to the Secretariat to meet the demand (mandatory)*
- *Technical assistance complements broader Commonwealth programming (desirable)*

We recommend the matrix should also include the following factors relevant to prioritising a country:

- *Small state*
- *In conflict or in danger of return to conflict*
- *Fragile state*
- *Least Developed Country/ relative UN HDI status*
- *Addresses MDGs*
- *Addresses cross-cutting and mainstreaming themes (gender, youth, human rights)*
- *Supports broader political efforts of the Commonwealth and promotes Commonwealth values*

The CLS' engagement with local beneficiaries in response to country requests does tend to promote elements of local ownership. These are by definition demand-driven, but the extent of local ownership that is broader than the requesting entity cannot generally be established. From 2009 in particular, CLS has engaged proactively with prosecution bodies, judges and financial intelligence units. The mandates are however entirely focused on the supply side of criminal justice through state agencies.

3.2 Design: Relevance to the Mandate

Evaluation Area 2 is a review the Criminal Law work of the Rule of Law programme against the relevant CHOGM and Ministerial mandates.

We conclude that the Criminal Law work is relevant to its mandates. Criminal law mandates from CHOGM are in most cases fine-tuned into more specific mandates by the CLMM. The issue of how the Secretariat should respond

to and resource mandates is considered by senior Secretariat staff in consultation with the Board of Governors and the Board of Governors' Executive Committee. On the basis of this senior level guidance, divisions develop programmes. LCAD appears to have relatively wide discretion as to how it programmes against these broad mandates.

The language in which the mandates are captured in the communiqués of these meetings varies significantly and mandates are not detailed and identified as *mandates* in these political-level meetings. This leads to some ambiguity as to what is the content and extent of each mandate, and Secretariat staff and the Board of Governors are therefore required to interpret what the Heads of Government and Minister actually meant to say.

After interpretation by the Secretariat and Board of Governors, mandates to date are incorporated in the result areas of the Secretariat's Strategic Plan. It is this document against which the Board and management measures the progress and impact of the Secretariat's work. The Areas of Work detailed in the Strategic Plan do provide guidance as to programming areas but these are also extremely broadly-defined not all of these have been undertaken by CLS and we have found limited evidence of a robust internal Secretariat discussion as to which areas to request CLS to prioritise.

The 2011 CLMM specified a timeframe and the deliverables for the mandates, and the chairman of a senior officials working group noted that, "too many of the mandates were open-ended and vague, don't proscribe time and didn't proscribe the outcomes required. We thought especially the Secretariat, when they come to Ministers with a proposed mandate, should explain what they think the resourcing requirements are and what the impact on their budget might be."

Recommendation 2:

The forthcoming Strategic Plan should narrow the scope of the Rule of Law programming in order to promote focusing of effort and programmatic coherence.

Recommendation 3:

LCAD should issue a guidance note detailing how the mandates and Strategic Plan results are to be translated into programmatic interventions, and strictly monitor compliance with this.

Cross-divisional engagement within the Secretariat is limited. The Secretariat has a tendency to operate in stovepipes, including throughout the design process. A number of CLS PDDs had extensive comments from the PMRU.

CLS PDDs have improved in quality over time. The ARTEMIS project management system is an improvement on PIMS in terms of the breadth of fields project designers must complete. This is supported by improved Annual Divisional Work Plan formats from 2009/10 (which specifically link divisional programming to Strategic Plan result areas) and the Secretariat's introduction of results-based management (RBM).

Recommendation 4:

Senior management including the Secretary General and Deputy Secretaries General should actively promote RBM and compel compliance with it.

3.3 Design / Delivery: Gender, Human Rights and Youth Mainstreaming

Evaluation Area 3 is an examination of the extent to which the three mainstreaming areas of gender, human rights and youth have been incorporated into the design and delivery of Secretariat's efforts

The Commonwealth Secretariat has a policy of mainstreaming gender, human rights and youth throughout its policies and programmes. Mainstreaming in each of these thematic areas is not yet fully rolled out in the Secretariat, which has in turn hampered the CLS' ability to incorporate such mainstreaming in the design and delivery of programmes. Despite ARTEMIS having dedicated sections in PDDs for analysis of these areas we saw no evidence of detailed analysis of mainstreaming issues. Nor are principles of mainstreaming applied elsewhere in programming, for instance by disaggregating purpose (outcome) indicators by gender or youth. We conclude therefore that there has been minimal incorporation of the three mainstreaming areas into the design and delivery of the Criminal Law programmes.

Recommendation 5:

The Criminal Law Section should actively collaborate with STPD, HRU and YAD to incorporate mainstreaming areas into existing and future programming, including disaggregating for gender and youth where possible in logframe indicators. PDDs should demonstrate more rigorous consideration of gender, human rights and youth issues and the risks and opportunities to these in the programmes.

3.4 Delivery: Overall Management Approaches

Evaluation Area 4 is an evaluation of the overall management approaches, including the design, modes of delivery and implementation strategies in terms of their relevance, efficiency and sustainability.

The Secretariat's functions as a strategy implementer are severely curtailed by the lack of any higher-level cohesive policy framework. Existing and past high-level mandates are not policy. They are instead a collection of statements of intent, concern or interest.

Programme cycle management is weak in CLS programming, as may well be the case across other Secretariat divisions and sections. High-level mandates are issued too infrequently and in too vague and unspecific a manner to be considered as policy. The Strategic Plan is extremely broad and quickly can become outdated by major developments in criminal law (e.g. terrorism, cyber crime). This means that CLS has to programme in the absence of a policy framework, which in turn means that strategies are almost impossible to devise, resulting in weak or non-existent linkages between policy, strategy and implementation. The Secretariat has a Project Management Manual dating from 2000 and is in the process of updating procedures, most significantly to formally RBM. The PMM is broadly fit for purpose, if a little outdated, but we have seen little evidence of it having been followed in CLS programming. While the evaluation covered only criminal law programming, broader discussions within the Secretariat demonstrated that it is likely that many if not most of the deficiencies identified with regard to CLS overall project management approach reflect a general weakness across the Secretariat.

Basic monitoring of activities and outputs is carried out. But there is generally no evaluation or review of individual activities, apart from participant feedback, where training interventions have been delivered. Hence there is no feedback loop from activities back up to 'policy' completion or review.

The CLS is primarily engaged in two spheres of activity: supporting legal process and delivering training. A significant proportion of CLS time is allocated to the development of model legislation and guidelines, best practice manuals, resource materials, etc. Each mandate has required the development or revision of such tools in addition to capacity building. We received generally positive comments about the relevance and usefulness of the tools, such as guidance notes and model legislation, which support Commonwealth countries.

Whilst since 2009 the CLS has moved away from ad hoc workshops – a positive step - examination of the training function raises a number of concerns. There is little evidence available to suggest that sector-wide assessments of criminal justice system structures inform the design and delivery of criminal justice system training interventions. Instead, the default position in the programmes under evaluation appears to be to support prosecutions activities or investigation and prosecution interventions. Whilst improving prosecution capability is not inherently the wrong thing to do, in the absence of a broader assessment of the problems affecting the criminal justice system it remains a high-risk intervention to make if attributable overall improvements in criminal justice system delivery of services are to be achieved.

The three-phased prosecutions and police training programme delivered in support of a number of East African countries raises concerns regarding sustainability. Whilst the training methodology utilised was generally considered to be innovative, it does not appear that due regard was given to the different levels of context, particularly institutional capacity, of those countries involved and individuals selected to attend the training courses. Training in and of itself will not lead to sustainability. We note that the East Africa training is in the process of being followed up by a series of workshops in several countries where participants develop action plans and further pro bono mentoring and placements are planned, but it is too early to assess sustainability of these efforts.

It is not at all clear whether the CLS prosecution training built upon these programmes or was conducted in isolation of interventions by bilateral donors, though we do note that the CLS seems to have engaged well with some multilateral and regional organisations working on transnational crime issues.

The training-of-trainers (TOT) methodology used in the East Africa prosecutions and police training programme shows some signs of having been effective in Mauritius. Training experts acknowledge that TOT can be a cost

effective means of cascading knowledge, though it should be noted that ongoing support will be required throughout the TOT process if real change is to be achieved.

On the basis of a number of negative findings in a previous evaluation of training the Secretariat is reviewing the use of training and workshops as a modality of delivering programmes. The Criminal Law programming anticipated this move through its use of regionally-based projects since 2009.

“Efficiency” is defined as a *measure of the outputs -- qualitative and quantitative -- in relation to the inputs*. This should be defined as the extent to which the programmes have delivered their outputs at the least cost and are able to demonstrate complementarity with other modes of support in doing so. This is essentially an assessment of VFM. VFM is not articulated in programming documentation and we conclude that the Criminal Law programmes have in some cases not provided the Secretariat with the quantity and quality of inputs, outputs and outcomes required at the ‘least’ cost. This places the Secretariat at odds with international donor practice which increasingly has placed VFM at the core of programming considerations

PDDs reveal that in a number of cases, budgets have gone through multiple amendments, often for small amounts. These multiple amendments were commented upon by PMRU and indicate inadequate budget preparation and add to transaction costs. The rationale for staff travel, as identified in the PDDs, is on occasions weak and in such cases we have been unable to discern any impact.

We have particular value for money concerns with holding the training workshop for East African prosecutors in Australia. We also note with concern the practice of deploying CLS staff abroad for administrative/logistics resource support, particularly where partner organisations might be better placed to provide value for money in the provision of such non-expert services. It is understood that the Secretariat are shortly to conduct a review of its travel policy and associated operations. The authors of this report feel that considerable cost savings will be identified by the review committee.

In our review of management processes above we saw no evidence of VFM being an objective in procurement, planning, financial systems, M&E and learning systems and delivery processes.

We note that despite the Secretariat not being a grant-awarding agency, grant funding is commonly used in the Criminal Law programme (e.g. funding participants to workshops run by third parties, funding third party conferences). We consider grant funding to be not generally a good use of Secretariat comparative advantage and added value, and endorse the Secretariat’s view on the use of grant funding.

Recommendation 6:

- *The Secretariat apply strict criteria for overseas travel*
- *Attendance at workshops and conferences only if the staff member has an active role, e.g. conducting training, giving a major presentation. Attendance of staff undertaking administrative or logistical tasks should only be permitted in exceptional circumstances.*
- *Increased use of videoconferencing or conference calls for discussions with partner organisations or beneficiaries*
- *The Secretariat develop a robust policy on promoting VFM throughout its key management and processes and in its resource allocation decisions.*

‘Sustainability’ is *the extent to which the qualitative and quantitative benefits arising from the programmes’ activities are likely to continue and progress once the programmes’ funding and activities have ceased*. The programmes are largely designed to strengthen systems and build institutional capacity – sustainability should therefore be at their very core.

There is limited evidence of sustainability in the Secretariat’s capacity building programmes, particularly where they have comprised stand alone workshops or conferences. Analysis of sustainability issues in PDDs is inadequate; in particular absence of an articulated theory of change risks interventions being targeted at symptoms of the problems rather than their root causes. The Secretariat’s pre-2009 focus on ad hoc activities and lack of programmatic cohesion makes sustainability of the benefits of these programmes unlikely except in the circumstance where an influential stakeholder is sufficiently inspired by the programming as to champion it themselves after Secretariat support has ceased. Improvements in programme cohesion (e.g. the ICC programme) and use of regional longer-term training and mentoring makes such sustainability more likely. Also, sustainability is

likely to be promoted where capacity building activities are linked to the development of model legislation, guidelines or other tools.

3.5 Impact: Institutional Strengthening and Capacity Building

Evaluation Area 5 is an assessment of the effectiveness and impact of the assistance provided to member governments in strengthening their criminal-justice institutions and capacity of criminal justice officials.

‘Effectiveness’ is *the extent to which the programmes have achieved their objectives*, i.e. the extent to which the Criminal Law Programmes achieved their intended outputs, outcomes and overarching goals (results) and how well they were achieved (process). Project cycle management (PCM) linkages between the mandates, design, delivery, evaluation, impact and closure of selected activities has been weak. This has hampered the feedback loops which in effective PCM lead to continuous improvement of programmes and lesson learning.

The Criminal law programmes have not used the Logical Framework Approach according to best practice. This has led to logframes which appear to be a form filling exercise for use in obtaining programmatic approvals. They are generally inadequate in their internal coherence, articulation of logical links between outputs, outcomes and Strategic Plan result areas, and lack measurable indicators against which progress may be reviewed.

We also note that the logical frameworks developed under the new ARTEMIS programme management system are in general better than those developed under PIMS. Part of this is due to an improved PDD and logframe and we consider it likely also that increased efforts on the part of LCAD and the CLS to make programmes to be focused and coherent as an additional causal factor.

Since 2009, a general improvement in logframes is evident. But we have seen little evidence of the logframes being a ‘living’ document upon which projects are continually monitored (including through an annual review process) and ultimately evaluated. Baseline conditions are not stated and indicators are not “SMART” and thereby offer little opportunity for measurement.

The Secretariat has asked divisions to measure contribution to impact at the Strategic Plan results area level. The current manner in which Strategic Plan result areas are articulated makes this difficult because the result areas are based around types of intervention, i.e. strategies, training, institutional/sectoral strengthening, tools, and adoption of treaties and not as typical higher level goals. These are elements of all three CLS programmes and so each programme’s goal will proceed logically to contribute to several Strategic Plan results areas.

Recommendation 7:

The Rule of Law programme’s result areas, as articulated in the next Strategic Plan, reflect higher level goals rather than types of intervention.

Recommendation 8:

We recommend that all programmes be time-bound and extensions to programmes be granted only in exceptional circumstances.

The move in recent years from a focus on ad hoc workshops and conferences to a regional focus has made the CLS programmes more coherent in some regards. But only the ICC programme in its entirety has the internal cohesion to allow individual workshops and conferences to produce identifiable results.

It is too early to judge if the provision of timelines for mandates in the 2011 CLMM will lead to improved effectiveness but we judge that this will be a likely result. It is incumbent upon Secretariat management at all levels to ensure timelines are met and that accountability for results more generally is improved.

The Secretariat’s performance management and M&E of Criminal Law programmes is not effective. The Secretariat currently lacks the performance management and accountability structures, processes and cultures which would facilitate this. We endorse the Secretariat’s move to RBM. We saw no evidence of use of M&E tools by the CLS to assess delivery at output, outcome or impact level.

We endorse the following findings of the previous evaluation of the Secretariat’s training programmes:

- Absence of a Secretariat approach or guidance to capacity building;
- Effective institutional change requires appropriate policies and strategies to be in place
- Stakeholders play only a very small role in decisions about training

- Poor communication within the Secretariat and externally
- No requirement for a needs assessment and budget allocations are not results-based

The three-phased East Africa prosecutions and police training programme was praised for its innovative methodology. The content, validity and relevance of web-based materials were generally highly praised. The same cannot be said about phase-two, a five day course held in June 2011 in Sydney, Australia. . Whilst it was acknowledged that the three day course content was relevant, topical and of interest, two serious criticisms diminished the effectiveness and efficiency of the intervention: the time and cost of transporting the participants to Australia (as opposed to delivering the course within the East Africa region); and the two days of external visits which took up valuable time within an already tight schedule and which were not of relevance to all attending the course.

Phase three consists of a series of five day long mentoring courses, the first of which held in Port Louis. Whilst there were mixed views on the relevance and topicality of some of the sessions, overall comments were positive.

The 2009 Asia- Pacific prosecutors' training course was viewed generally positively by participants and their supervisors. It had met a clear demand, as South Pacific Island prosecutors have limited opportunities for formal training, indeed only two organisations have provided specialist prosecutor training (the other being NZAID). As befitting of a pilot course, there were a broad range of comments – both positive and negative – about the relevance and impact of the training but some common themes emerged:

- Participants had difficulty using the web-based materials owing to poor internet services
- The web-based materials and intensive workshop partly met key training needs
- The e-mentoring had limited impact
- Future regional prosecution training should include only South Pacific island participants
- The programme was not adequately monitored by the Secretariat

Recommendation 9

The Secretariat should not provide training or workshops in Criminal Law programmes unless the training is an integral part of a longer term programme of assistance (e.g. the regional prosecutor training programmes) or is designed to consolidate use of tools provided by the Commonwealth (e.g. model laws).

3.5.5 Impact

'Impact' is *the extent to which the project has positively or negatively affected change, either directly or indirectly, intended or unintended, in high level outcome and impact indicators*. The complexity of the environment and scale of the programmes means that it will be very difficult to attribute the direct effects of the project to changes in national rule of law and democratic process to effectively address issues such as corruption, terrorism, and international cooperation on criminal justice.

Neither the logframes nor other parts of the PDDs identify a theory of change, and in interviews of Secretariat staff and stakeholders we have not seen evidence of a rigorous approach to determine intervention or programmatic logic. As discussed above, programme logframes, while improving over the years in a number of ways, have been generally of a poor standard. Moreover, logframes appear not to be used to monitor and evaluate programmes on an ongoing basis.

This evaluation has not seen evidence of impact at the Strategic Plan result level owing to the small scale and indirect nature of programme activities and because of the complexity of environment where there are many actors working towards common goals. This environment is further complicated by national, regional and international policy interventions. We consider that the ICC programme is relatively coherent and focused but it is too early to assess contribution to impact. The regional prosecutor training for East Africa might also have demonstrable income in future years, particularly if the mentoring component lasts its full twelve months, participants go on to train their colleagues, and the action planning workshops work well. This programme is certainly a significant step forward from the days of ad hoc activities.

In the case of some small island states in which the Secretariat is a relatively large player relative contribution of the criminal law programmes is likely to be proportionately larger. Moreover, the programmes in such jurisdictions

have led to change at the output and possibly contribution to outcome levels that would not have occurred had it not been for the Secretariat's interventions.

3.6 Impact: Comparative Advantage

Evaluation Area 6 is an assessment of the Commonwealth (comparative) advantage of Secretariat's work on criminal law in relation to a larger donor community involved in this area in member countries

Comparative advantage is a key determinant of impact, which is *the extent to which the project has positively or negatively affected change, either directly or indirectly, intended or unintended, in high level outcome and impact indicators*. The complexity of the environment and scale of the programmes means that it will be very difficult to attribute the direct effects of the project to changes in national rule of law and democratic process to effectively address issues such as corruption, terrorism, and international cooperation on criminal justice. We found some evidence for each of the comparative advantages claimed in the Strategic Plan, with a number being of particular potential significance in Criminal Law programming.

The Secretariat's focus on **small states** was considered a comparative advantage by virtually all stakeholders interviewed. Small states were comparatively well-supported in Secretariat programmes and several small states had made regular use of Secretariat assistance.

Fitting broadly within the comparative advantages of **Commonwealth 'values' and networks**, there was consensus among stakeholders regarding the Commonwealth's status as a trusted partner for member countries. There was also consensus among Secretariat staff regarding the comparative advantage of shared legal systems (i.e. **common law**) and use of the Harare Scheme.

Individually or in aggregate Secretariat comparative advantage is however insufficient to warrant programming in a particular area. Specifically, presence of a comparative advantage does not increase the likelihood of a programme having impact and sustainability. In our view it is a necessary but not sufficient precondition for Secretariat programming. The Secretariat must also **add value**. Criteria to be considered during programme development in judging whether there is added value include identification of needs and programmatic alignment with this; harmonisation with other donors (particularly to avoid duplication); bringing expertise which meets these needs and, might otherwise be unavailable or too costly; and the potential sustainability of the intervention. If these criteria had been applied to past programme design it is our contention that Secretariat programming would have been much more focused and coherent, and measurement of the Secretariat's contribution to impact would have been more possible.

CLS has regularly used **pro bono experts**, which adds benefit to Secretariat programming but should be underpinned by open advertising of positions, specific terms of reference and a risk assessment made as to the likelihood and impact of the pro bono experts not fulfilling their obligations.

Recommendation 10

The Secretariat develop a policy on use of pro bono experts which includes a requirement of open advertising of positions, development of specific terms of reference, and a risk assessment.

3.7 Lessons Learned

Evaluation Area 7 is the identification of lessons learnt in the design and delivery of the Criminal Law mandates and recommend strategic and operational changes that may be required to make it more focussed, relevant and sustainable.

The key lesson learned is that if CLS had employed from 2007 sound project cycle management, RBM and good international development practice most of the weaknesses and deficiencies observed in this evaluation might have been avoided. The Secretariat had a broadly fit-for-purpose Project Management Manual dating from 2000 but we saw little evidence of its use. While Criminal Law programmes were broadly relevant to mandates and to member country demands, until recently they have lacked the focus and internal coherence necessary for them to unambiguously contribute to change at the Strategic Plan results area level.

More specifically, we propose the following lessons learned, most of which are reflected in recommendations for strategic and operational change:

- the Secretariat should articulate criteria to be applied when considering approval of member country requests for Criminal Law technical assistance

EXECUTIVE SUMMARY

- The mandates and Strategic Plan are too broad and the process translating them into programmatic interventions is too complex
- A lack of adherence to RBM has limited programme effectiveness, efficiency, sustainability and impact
- Despite mainstreaming being mandated for a number of years for gender, human rights and youth, the Criminal Law programmes have done little to mainstream these issues into design and delivery of programmes
- Some aspects of the Criminal Law programme do not represent good value for money – the need for overseas travel needs to be monitored closely
- Grant funding, despite the Secretariat generally not being a grant-awarding agency, is common in Criminal Law programming
- There have been too many instances of extensions and revisions to programmes
- Grant funding has been frequently used in Criminal Law programming despite contrary Secretariat policy
- Ad hoc training and workshops, which have little potential for impact, have been used frequently but there is evidence of recent efforts to make programmes more coherent and focused.

1 Introduction

1.1 Purpose, Scope and Focus

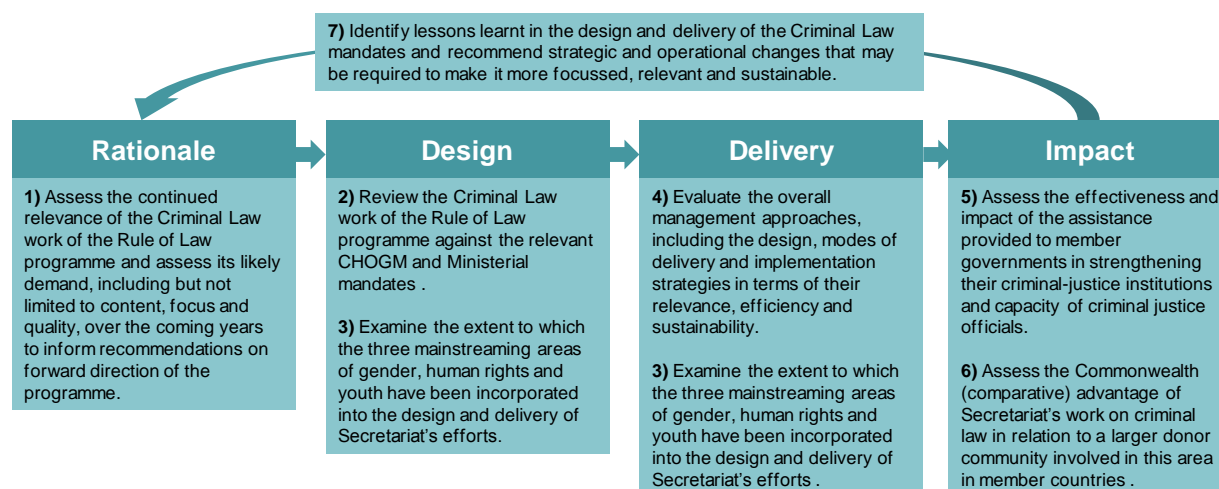
The Commonwealth Secretariat contracted Coffey International Development to evaluate the assistance provided by the Secretariat to member countries on Criminal Law under the rule of law programme delivered by the Secretariat's Criminal Law Section (CLS) during 2007 to 2011. The **purpose** of the evaluation was to assess the **relevance, efficiency, effectiveness, sustainability** and **impact** of these programmes with a view to defining the focus and form the technical assistance programme should take, and to recommend strategic and operational changes that may be required by the Secretariat to make the delivery more focussed, relevant and sustainable. Evaluation terms of reference are attached at **Annex A**.

The **scope** of the evaluation was limited to assessing the following three¹ programmes among the various programmes delivered by CLS during 2007 to 2011: Preventing and Combating Terrorism and Anti Money Laundering and Financing Terrorism (PLCWG0357); International Cooperation and Strengthening of Criminal Justice (PLCWG0409); and International Criminal Court (PLCWG0286). The time period covered by the evaluation ended on **30 June 2011**. In doing so, we were required to undertake the following:

- 1 Review the Criminal Law work of the Rule of Law programme against the relevant CHOGM and Ministerial mandates.
- 2 Assess the effectiveness and impact of the assistance provided to member governments in strengthening their criminal justice institutions and capacity of criminal justice officials.
- 3 Evaluate the overall management approaches, including the design, modes of delivery and implementation strategies in terms of their relevance, efficiency and sustainability.
- 4 Assess the Commonwealth (comparative) advantage of Secretariat's work on criminal law in relation to a larger donor community involved in this area in member countries.
- 5 Examine the extent to which the three mainstreaming areas of gender, human rights and youth have been incorporated into the design and delivery of Secretariat's efforts.
- 6 Assess the continued relevance of the Criminal Law work of the Rule of Law programme and assess its likely demand, including but not limited to content, focus and quality, over the coming years to inform recommendations on forward direction of the programme.
- 7 Identify lessons learnt in the design and delivery of the Criminal Law mandates and recommend strategic and operational changes that may be required to make it more focussed, relevant and sustainable.

In Figure 1 below we have re-numbered and re-ordered these seven evaluation areas to reflect the programme cycle. These evaluation areas relate to full programme cycle from the underlying rationale for project design, to the lessons learned through impact evaluation.

¹ The three programmes being evaluated were originally five discrete programmes, which were consolidated into three in 2010/11. The five original programmes were International Cooperation LCWG126, Strengthening of Criminal Justice Systems LCWG178, Preventing and Combating Terrorism and Anti-Money Laundering, LCWG152, Countering and Financing of Terrorism LCWG179 and International Criminal Court, LCWG144.

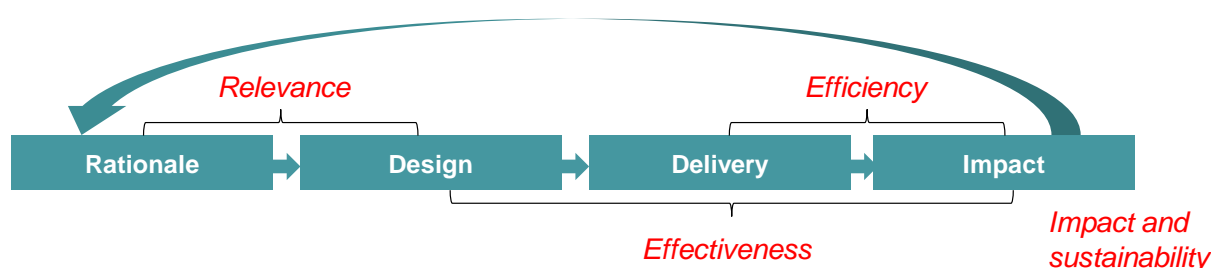
Figure 1: The evaluation relates to the full programme cycle

Evaluation **deliverables** were:

- 1 An evaluation framework with work plan and methodology (attached at **Annex B**)
- 2 A draft evaluation report
- 3 A seminar/ presentation of the findings and recommendations
- 4 A final evaluation report, incorporating all feedback/ comments

The evaluation had three **focus** areas:

- **Process:** how was the intervention delivered? (relevance and effectiveness)
- **Efficiency:** did the benefits justify the costs? (efficiency)
- **Impact:** what did the programme achieve that wouldn't have otherwise been achieved and to what extent is this sustainable? (impact and sustainability)

Figure 2: The evaluation assessed the full cycle of implementation from policy development to impact and learning

1.2 Policy context of the CLS Programmes

The Commonwealth Secretariat has 13 divisions and units which manage programmes based on mandates set by Commonwealth Heads of Government (CHOGM) and other high-level Commonwealth meetings. In the case of rule of law programmes, the most relevant other high-level meeting is the Commonwealth Law Ministers' Meeting (CLMM). The Legal and Constitutional Affairs Division (LCAD), amongst other tasks, has the overall responsibility for managing all Rule of Law programming. LCAD programme objectives as stated in the Commonwealth Secretariat Strategic Plan 2008/9 to 2011/12 are defined as:

'To support member countries to promote and strengthen the Rule of Law that underpins strong democratic and accountable governance. To assist members to harmonise their national laws with international frameworks'.

INTRODUCTION

LCAD objectives, referred to as **results**, in the Strategic Plan are stated as being:

- a) Measures and strategies to combat trans-national crime, counter terrorism and anti-corruption measures developed and adopted, and effectively implemented and used;
- b) Criminal justice actors are well trained and use best practice to respond effectively to transnational and domestic crimes;
- c) Criminal justice institutions and legal frameworks are established and strengthened for effective delivery of criminal justice;
- d) Criminal justice actors use tools produced by the Secretariat to enhance international cooperation on criminal matters;
- e) Capacity for legal drafting is enhanced and the operational effectiveness of drafting facilities is improved;
- f) International conventions on international and transnational crimes are adopted and implemented using model legislative provisions developed by the Secretariat.

Within LCAD two separate sections have been given the responsibility for managing and delivering the Rule of Law activities: the Criminal Law Section (CLS) and the Justice Section (JS).

According to the Strategic Plan, the **Criminal Law Section** has a responsibility to:

- a) Provide country specific and regional technical assistance to combat transnational crime, and support efforts to counter terrorism and fight corruption;
- b) Assist countries to strengthen their Financial Intelligence Units (FIUs) to support anti-money laundering, anti-corruption and combating financing of terrorism efforts;
- c) Conduct a comparative study of best practices in the criminal justice systems with an emphasis on police reform;
- d) Convene an expert group to revise the Harare Scheme;
- e) Develop model legislation on mutual legal assistance;
- f) Develop and deliver interactive criminal justice training programmes for prosecutors;
- g) Develop a Commonwealth Plan of Action on Human Trafficking

According to the Strategic Plan, the **Justice Section** has a responsibility to:

- a) Provide technical assistance to train key legal actors, e.g. judges, prosecutors, court registrars, police and legislative drafters;
- b) Conduct research and provide technical assistance to support constitutional and legal reforms;
- c) Assist members to implement the Commonwealth (Latimer House) Principles;
- d) Publish the Commonwealth Law Bulletin (CLB) on a quarterly basis.

In addition, the Strategic Plan allocates the following responsibilities to both CLS and JS:

- a) Assist countries to develop strategies to combat corruption and comply with the provisions of the United Nations Convention on Anti-Corruption²;
- b) Support national jurisdictions to implement international conventions and obligations by way of training courses, capacity building and model legislative provisions.

² JS addresses two areas of anti-corruption: conflict of interest and judicial codes of conduct. Other anti-corruption matters are the responsibility of CLS.

Whilst not within the TORs of this review, the authors of this report do feel that the role definition and delineation of responsibilities between CLS and JS is sometimes blurred. CLS is responsible for judicial capacity building under specific mandates on transnational crime (e.g. AML/CFT), while JS supports broader areas of judicial capacity building. The next Strategic Plan should make the distinction in role clear.

1.3 Structure of the Report

The report is structured as follows:

- 1 Introduction
- 2 Methodology and Approach
- 3 Findings
- 4 Recommendations

1.4 Our Team

Our evaluation team comprised four London-based Coffey experts: **Rohan Burdett (Team Leader)** and **Piet Biesheuvel** are experienced security and justice development specialists who are both principals in Coffey's Governance, Security and Justice team. **Simon Griffiths** leads Coffey's Evaluation and Research practice, and **Catriona Hoffmann** is a monitoring and evaluation consultant with over 5 years' experience working in the international development sector.

2 Methodology and Approach

2.1 Introduction

The programmes were assessed according to a standard set of evaluation criteria adapted from the OECD DAC Criteria¹:

Table 1: Evaluation Criteria

Criteria	Description
Relevance	<i>The extent to which the programmes are suited to the priorities and policies of the target group, recipient and donor.</i> In this case Relevance should be defined as the extent to which the Criminal Law work of the Rule of Law Programmes responds to the mandates set by the Commonwealth Heads of Government Meeting (CHOGM) and the Commonwealth Law Ministers' Meetings (CLMM) and more generally addresses the global and national issues they seek to address.
Effectiveness	<i>The extent to which the programmes have achieved their objectives.</i> For the programme, assessment of effectiveness will consider the extent to which the Criminal Law programmes achieved their intended outputs, outcomes and overarching goals (results) and how well they were achieved (process).
Efficiency	<i>A measure of the outputs -- qualitative and quantitative -- in relation to the inputs.</i> This should be defined as the extent to which the programmes have delivered their outputs at the least cost and are able to demonstrate complementarity with other modes of support in doing so. This is essentially an assessment of value for money.
Sustainability	<i>The extent to which the qualitative and quantitative benefits arising from the programmes' activities are likely to continue and progress once the programmes' funding and activities have ceased.</i> The programmes are largely designed to strengthen systems and build institutional capacity – sustainability should therefore be at their very core.
Impact	<i>The extent to which the project has positively or negatively affected change, either directly or indirectly, intended or unintended, in high level outcome and impact indicators.</i> The complexity of the environment and scale of the programmes means that it will be very difficult to attribute the direct effects of the project to changes in national rule of law and democratic process to effectively address issues such as corruption, terrorism, and international cooperation on criminal justice. However, Coffey's approach using theory of change and contribution analysis will ensure that evidence of impact is credible and plausible because they have been informed by extensive feedback from national counterparts and key stakeholders.

¹ OECD DAC, The DAC Principles for the Evaluation of Development Assistance, Paris: OECD, 1991, http://www.oecd.org/document/22/0,2340,en_2649_34435_2086550_1_1_1_1,00.html

2.2 Phases in Data Collection

Table 2 below outlines our data collection methodology and analytical approach for each evaluation focus area.

Table 2: Data Collection Methodology and Analytical Approach

Type of evaluation	Focus of evaluation	Data collection methodology	Analytical approach
Evaluation	Process evaluation	<ul style="list-style-type: none"> Systematic review of reports and existing evidence Primary research – in-depth interviews with key stakeholders and beneficiaries 	Qualitative data analysis
	Efficiency evaluation		Measurement and management approach to Value for Money Assessment
	Impact evaluation		Contribution analysis

2.3 Reasons for Selection

We selected documents for the systematic review from a list provided by SPED and built upon this following initial interviews with Secretariat staff when additional relevant documents were identified. Finally we reviewed relevant external documents either identified during interviews or through academic literature and internet research.

We selected interviewees based upon a stakeholder analysis informed by the initial document review and initial interviews of Secretariat staff. In order to triangulate the evidence gathered, it was important to consider the perspectives of as broad a range of stakeholders as possible among policy makers, strategy developers, implementing stakeholders, delivery partners and beneficiaries. The time and resources available allowed us to consult with around 60 stakeholders (see **Annex D** for a list of persons consulted). With a limited number of interviews it was important to ensure that:

- Interviewing focused on areas where the documentary evidence had been limited or non-existent;
- The interviews ensured that a range of perspectives were considered in the evaluation;
- The interviews addressed all of the evaluation questions related to the different phases of the programme cycle; and
- The sampling of interviewees was flexible and iterative to ensure that theories could be explored as they emerge.

The primary research was conducted through a series of field visits, UK-based meetings and telephone calls during which we conducted a series of semi-structured interviews with beneficiaries, partners and other stakeholders. The semi-structured nature of the interviews enabled a balance to be achieved between keeping the interviewee on the topic of interest and allowing sufficient scope for a free flowing discussion to take place. The purpose of these interviews was to gain a qualitative understanding of the perceptions of a wide range of agencies and organisations concerning the performance and impact of CLS's programming to date.

The field visits to Mauritius and Solomon Islands enabled us to interview representatives from several Commonwealth countries that have been beneficiaries of regional and national CLS programmes. The Solomon Islands visit coincided with the Secretariat-supported Pacific Prosecutors' Association (PPA) annual conference, which was attended by DPPs and other law officers from around the region as well as representatives from the Pacific Island Law Officers Network (PILON), Pacific Islands Forum, UNODC, International Association of Prosecutors and other regional and international stakeholders. During both visits we met with participants in the keynote CLS regional prosecutor training programme held in 2009 in the Asia-Pacific region and in 2011 for the East Africa region.

No significant problems were encountered during the data collection. A number of potential interviewees either did not respond or delayed their response but we are confident we interviewed a representative sample of stakeholders sufficient to fill major data gaps and to triangulate opinions.

2.4 Qualitative Data Analysis

Once we had completed the systematic review and primary research, we synthesised and analysed the evidence to enable value-based judgements and conclusions to be drawn about each of the programmes. The overarching evaluation approach enabled systematic qualitative research that was sufficiently representative of the portfolio as a whole and capable of producing meaningful and useful findings.

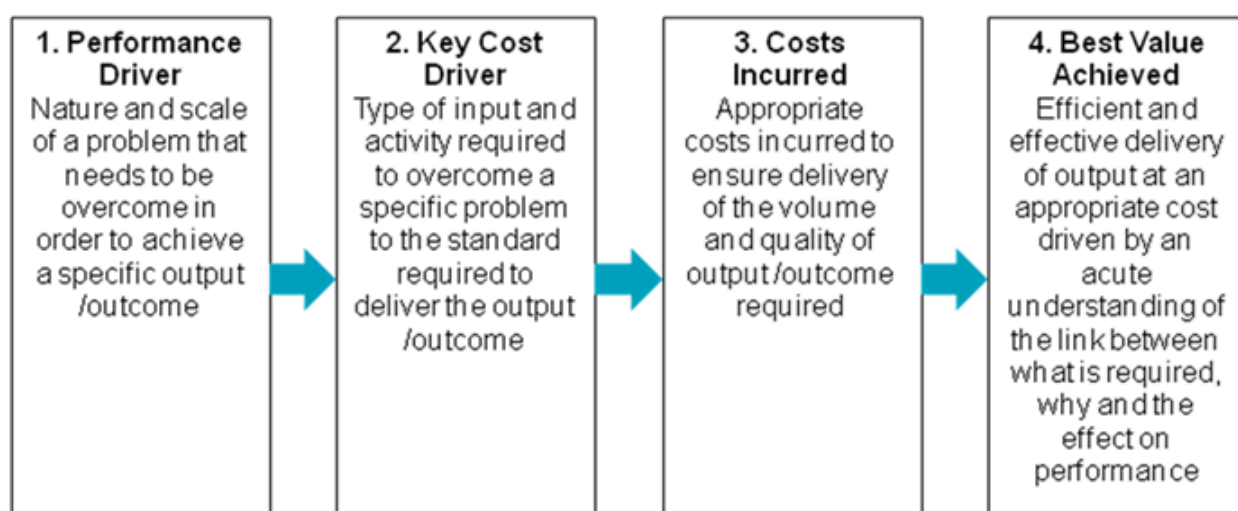
2.5 Value for Money Assessment

We used two main approaches to assess the **value for money** (VFM) of the programmes in order to evaluate programmatic efficiency:

- **A measurement approach** which focused on cost optimisation through measurement and comparative assessment to determine whether grantees have achieved the quantity and quality of the inputs, outputs and outcomes required at the 'least' cost; and
- **A management approach** which focuses on an assessment of the extent to which *key management processes and resource allocation decisions* made at each stage of the implementation process results in the efficient delivery of higher value inputs, activities, outputs and ultimately outcomes and impact.

Essentially, the measurement approach provides data on costs, while the management approach provides evidence on what drives the cost. In order to assess value for money, the relationship between the cost drivers, the costs and the performance of the initiatives was examined.

Figure 3: Value for Money Assessment



2.6 Contribution Analysis

We used contribution analysis to assess the **impact** that the Criminal Law work has had on achieving the goals of the Commonwealth Secretariat Strategic Plan and more broadly the mandates handed down by CHOGM and the Law Ministers.

'Impact' is defined as the additional benefits realised that are **directly attributable** to a programme and its activities. Because we are trying to capture the attributable benefits, impact evaluation is concerned with the **additional** benefits that would not have been realised in the absence of a programme. Capturing this 'additionality' is one of the key challenges of impact evaluation, as we cannot observe what would have happened to those already affected by the intervention if the intervention had not happened. While there are some scientific evaluation methods that try to establish a view of what might have happened without an intervention (i.e. a counterfactual), they are not appropriate for this evaluation because of the scale and indirect nature of the programme activities and because of the complexity of the environment where there are many actors working towards common goals.

Contribution analysis explores 'attribution' by assessing the **contribution** that a programme is making to a set of higher level goals. It seeks to verify the **theory of change** behind a programme and, at the same time, takes into consideration other influencing factors.

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In order to understand the contribution a programme has made to higher level goals, a clear impact logic needs to be developed which sets hypotheses for how and under what circumstances the programme will bring about higher level change.

3 Findings

3.1 Rationale: Relevance of the Criminal Law Work

Evaluation Area 1 is an assessment of the continued relevance of the Criminal Law work of the Rule of Law programme and of its likely demand, including but not limited to content, focus and quality, over the coming years to inform recommendations on forward direction of the programme.

3.1.1 Introduction

'Relevance' is *the extent to which the programmes are suited to the priorities and policies of the target group, recipient and donor*. With respect to this evaluation 'Relevance' is the extent to which the Criminal Law work of the Rule of Law programmes responds to the mandates set by CHOGMs and CLMMs, suits the priorities and policies of those member countries requesting assistance, and more generally addresses the global and national issues they seek to address. We will address relevance to mandates in detail in 3.2 below but in summary we judge the programmes to be relevant to them; indeed the breadth of content of the mandates (and the Strategic Plan results) is such that most conceivable areas of Criminal Law programming would fit within them. We note also that CLS has had responsibility for most LCAD mandates arising from CLMM 2008 while facing significant human resource constraints.

By 30 June 2011, CLS managed three programmes: Preventing and Combating Terrorism and Anti Money Laundering and Financing Terrorism (PLCWG0357); International Cooperation and Strengthening of Criminal Justice (PLCWG0409); and International Criminal Court (PLCWG0286). These originally took the form of five discrete programmes, however in 2010/2011 Preventing and Combating Terrorism and Anti-Money Laundering (LCWG152) and Countering and Financing of Terrorism (LCWG179) were combined to form PLCWG0357; and International Cooperation (LCWG126) and Strengthening of Criminal Justice Systems (LCWG178) became PLCWG0409. PLCWG0286 was formerly designated as LCWG144.

Commonwealth Secretariat Project Design Documents (PDDs) detail the problems each programme seeks to address, the most recent statements of which are:

Counter-Terrorism / Combating Money Laundering and Financing of Terrorism

- The continuing threat of terrorism to international peace and security
- The Commonwealth Plan of Action on Terrorism (CPAT) is outdated
- The threat posed by money laundering and financing of terrorism to financial systems, security and the global community
- Absence of full compliance with Financial Action Task Force (FATF) requirements
- The emerging threat of cyber crime
- Effective investigation and prosecution requires international cooperation

International Cooperation and Strengthening of Criminal Justice

- The lack of adequate institutional capacity
- Inadequate legal frameworks
- Lack of capacity of officials to effectively investigate, detect and address the threat posed by transnational crime...
- The knowledge and skills of criminal justice officials and others in substantive and procedural laws require strengthening
- Dearth of technical/human/financial resources

FINDINGS

- Insufficient/inadequate national coordination and regional/international cooperation and networking to prevent and combat criminality and transnational crime in particular

International Criminal Court

- Impunity of perpetrators of war crimes, crimes against humanity and genocide is assisted by the absence of legal frameworks for domestic implementation of the Rome Statute of the International Criminal Court by most Commonwealth member states, which is compounded by a lack of experience and knowledge in such states regarding dealing with such cases.
- In the absence of effective implementing legislation and national capacity, States will be unable to enforce the prosecution of those crimes covered by the Rome Statute
- As the ICC is now fully operational and cases have been referred to it by some (Commonwealth) Member States ... for consideration, the absence of implementing legislation would impact negatively on the functions of the court
- The Commonwealth model law is “slightly obsolete”.

These problem areas reflect international interest and investment by donors in rule of law assistance and key diplomatic initiatives in the rule of law field. They are likely to continue to be areas of high demand in content, focus and quality for the period of the next Strategic Plan and therefore any Secretariat programming in these areas will remain relevant into the immediate future.

Until 2009 CLS programmes generally comprised a broad range of loosely connected activities based on attempting to meet mandate needs and ad hoc demand-based requests of member states. Staff appeared to have a large discretion as to what programmes they would implement as long as they fitted within a mandate. Since 2009, however, CLS moved away from ad hoc workshops by seeking to interconnect mandated work in what they viewed as more ‘holistic’ manner focusing on more regionally—based projects.¹ In doing so it has sought to balance implementation of regional programmes, most notably the Asia-Pacific and East Africa prosecutor capacity building programmes, with meeting specific requests for assistance. CLS assessed needs by examining needs assessments already conducted by international organisations (e.g. UNODC) and regional FATF bodies (e.g. the Asia-Pacific Group on Money Laundering (APG) and by interviewing officials of potential beneficiary countries during visits or over the phone and conducting short surveys of some. This has proved adequate to technically confirm relevance of the programmes however CLS’s engagement with other donors and beneficiaries has limited **harmonisation** (i.e. “donor countries coordinate, simplify procedures and share information to avoid duplication”) and **alignment** (i.e. “donor countries align behind these objectives and use local systems”) as defined in the Paris Declaration on Aid Effectiveness.² Future relevance is best assured by improved efforts at harmonisation with broader donor efforts and better alignment with beneficiary needs.

3.1.2 Harmonisation

Harmonisation of Secretariat projects into wider donor efforts is particularly important owing to the relatively small scale of Secretariat interventions. This requires adroit consideration of comparative advantage and added value given the large number of rule of law donors operating in many countries and multiple memberships of international and regional organisations by Commonwealth member states. In the early years covered by this evaluation, CLS generally had limited engagement with other donors, in particular the major bilateral donors. But since 2010 it has engaged more closely with strategic multilateral partners such as FATF regional secretariats and the ICC, and has collaborated with major bilateral donors such as DFID and AusAID. This increased engagement is a welcome development. CLS does not often undertake formal scoping missions or needs assessments but has sought to obtain background knowledge of country and regional needs through such international and regional organisations. We note in this regard that during much of the evaluation period CLS has been understaffed (i.e. since 2009, having only one lawyer for ten months followed by only two lawyers). In programme documentation and from

¹ Note that not all ‘one-off’ interventions (e.g. workshops) are ad hoc. One-off activities may be effective and efficient use of Secretariat resources if they provide niche support and is harmonised, aligned and based on Commonwealth comparative advantage and added value

interviews with other donors we saw little evidence of efforts to collate details of donor interventions – in particular those of the major bilateral donors - and ensure complementarity and lack of duplication.

Our field visit to Mauritius revealed that the Office of the Director of Public Prosecutions (DPP) and not the Secretariat conducted initial discussions with the police when the East Africa regional prosecutor/police training initiative was initially proposed. It would also appear that the Commonwealth Secretariat Primary Contact Point (PCP) in Mauritius was never informed of the initiative by CLS. The prosecutor training did not appear to duplicate the efforts of other donors and was well received. However, whilst the training of police was generally well received, there appeared to be some duplication or overlap with other police training provided by donors on crime investigation and management, scientific and forensic examination and piracy. During our field visit to Solomon Islands we observed discussions between CLS and other donors to coordinate respective areas of support to prosecutions in the South Pacific. This is to be encouraged but similar coordination, if it had occurred prior to 2010, was not evident from programme documentation. The APG commented that CLS did discuss coordination with them and that by focusing on Commonwealth jurisdictions in the region were addressing a useful niche that complemented APG's focus on FATF blacklisted countries which were generally not Commonwealth countries.

3.1.3 Alignment

The Criminal Law programmes also undertake particular interventions on the basis of requests from member countries. The Secretariat at divisional level considers these requests and if approved develops a project concept note and then a PDD. In order to be accepted the requests must be aligned to a Strategic Plan result area, which is generally easy to demonstrate given the breadth of the result areas. If alignment is demonstrated, the request must be within the funding available. It is sufficient that there be a demand for the project; need is generally not assessed in a rigorous manner. These criteria seem to be of most assistance to those with the loudest or most persuasive voices.

While all Commonwealth member states have the opportunity to contribute to the development of mandates, programme documents reveal little if any discussion of alignment with national development plans or other relevant host country strategic priorities. This is compounded by a general lack of baseline studies and a generally weak problem analysis evident in the PDDs. Requests are made in a format described in CFTC guidance documents. Member state beneficiaries told us that it is common for them to raise a request informally at first and then, after discussion with LCAD, submit a formal request.

The field visit to Mauritius provided evidence in support of this lack of alignment. While CLS does not have a mandate to address all criminal justice needs, a common comment from many of the participants interviewed in Port Louis was that some of the very real and big issues confronting the criminal justice system in Mauritius had not been confronted during any of the three phases of the keynote East Africa prosecutor/police capacity building programme. These problems included excessive delays in case disposal, which were blamed for high-levels of dissatisfaction by all users of the system. Whilst it was acknowledged that improvements to prosecutions would help in reducing delays, it was repeatedly stated that the main cause of the delays lay elsewhere in the system and a more strategic intervention based on a comprehensive needs analysis would have provided a more bespoke course, perhaps better described as a needs driven course as opposed to a supply driven one. Participants also frequently mentioned the lack of course time spent on investigations – with the main focus of the programme being on prosecutions. It was stated that prosecutions practices could only be improved if initial police investigations were firstly enhanced – the police being the 'gatekeepers' to the criminal justice system. In this circumstance, the Secretariat's focus on demand rather than identified need has resulted in sub-optimal alignment.

CLS programmes demand some level of mutual accountability from beneficiaries. For instance, during the Solomon Islands field visit several stakeholders noted that the Secretariat expects a high degree of accountability for expenditure. CLS's record in effectively balancing provision of resources against requests and needs however has been generally weak, especially in light of its limited financial and human resources. In particular before the 2009 initiation of regional programming, there was little coherence in programming, with ad hoc, generally unrelated activity- level interventions being the focus of effort.

The Secretariat has guidelines for member countries to complete when seeking technical assistance through the CFTC.³ The guidelines provide basic definitions of 'input', 'activity', 'output/result'⁴, 'outcome' and 'impact' and require requesters to fill in a form covering basic project details, project definition and context, terms of reference for experts/consultants, cross-cutting issues (gender, youth, environment and human rights), and other information. We saw little evidence of ongoing engagement between CLS and beneficiaries to flesh out these requirements, for example, in agreeing the logframe including indicators. In more recent years however there has been an increased tendency for such requests to take the form of follow-up activities to other Secretariat support, for example, following the Asia-Pacific prosecutor capacity building, the Maldives requested Secretariat support to facilitate and fund the secondment of two prosecutors to work within an Australian prosecutors' office.

3.1.4 Technical Cooperation Frameworks

In response to a key recommendation of the CFTC evaluation, the Secretariat has commenced the development of a series of **technical cooperation frameworks (TCF)** with beneficiaries, including Sierra Leone, Solomon Islands, Sri Lanka and St Lucia. These frameworks are developed in cooperation with beneficiary governments and detail the development context, the relevance of Secretariat programming to the country (including an articulation of Commonwealth comparative advantage), other donors' programming, and beneficiary government priorities for Commonwealth assistance. St Lucia identified capacity building of its prosecution service as a priority for Commonwealth assistance but in the case of Solomon Islands and Sri Lanka, no Criminal Law programmes were regarded by their respective governments as a key priority. The TCF process is rigorous and founded in international development best practice and we support its full roll-out to countries receiving Secretariat assistance. Where assistance is requested outside the TCF framework, i.e. by a country not subject to a TCF or regarding an issue that is not an agreed TCF priority, we recommend that projects be assessed against specific criteria detailed in the recommendation below. Some of these criteria have recently been considered in Secretariat programming but for completeness' sake we have included a comprehensive list.

Recommendation 1:

As part of its efforts to improve the cohesion and focus of its programmes the Secretariat should articulate criteria to be applied when considering approval of member country requests for Criminal Law technical assistance. We would suggest a matrix approach taking into account the following criteria at a minimum:

- *Alignment with a Strategic Plan rule of law programme results area or CHOGM or CLMM mandate (mandatory)*
- *Harmonisation with donor interventions to promote complementarity and to reduce duplication (mandatory)*
- *Rigorous scoping study / needs assessment undertaken (mandatory)*
- *Technical assistance represents value of money compared with reasonable alternatives (mandatory)*
- *Resources available to the Secretariat to meet the demand (mandatory)*
- *Technical assistance complements broader Commonwealth programming (desirable)*

We recommend the matrix should also include the following factors relevant to prioritising a country:

- *Small state*
- *In conflict or in danger of return to conflict*
- *Fragile state*
- *Least Developed Country/ relative UN HDI status*
- *Addresses MDGs*

³ Commonwealth Secretariat, *Guidelines for Requesting Technical Assistance from the Commonwealth Fund for Technical Cooperation (CFTC)*, London: Commonwealth Secretariat, 2012

⁴ The guidelines' equating of "result" with "output" is at odds with the Strategic Plan which considers results to be an intermediate goal.

- *Addresses cross-cutting and mainstreaming themes (gender, youth, human rights)*
- *Supports broader political efforts of the Commonwealth and promotes Commonwealth values*

3.1.5 Local Ownership

CLS engagement with local beneficiaries in response to country requests does tend to promote elements of local ownership. These are by definition demand-driven, but the extent of local ownership that is broader than the requesting entity (e.g. prosecution service) cannot generally be established. From 2009 in particular, CLS has engaged proactively with national and regional prosecution bodies (such as the Pacific Prosecutors' Association), judges through the regional judicial forums⁵ (, and Financial Intelligence Units (FIUs). Prosecutor capacity building is a Strategic Plan activity area for CLS has been a particular focus on support to prosecution services since 2009, particularly through the regional training projects in the Asia-Pacific and in East Africa.

The mandates are however entirely focused on the supply side of criminal justice through state agencies. There is consequently no evidence of support to non-state provision of justice which accounts for the vast majority of service delivery in many Commonwealth countries nor is there evidence of support to criminal bars to 'balance' the focus on prosecutions. In many developing Commonwealth countries the poor, and vulnerable and marginalised groups and individuals face particular challenges in accessing justice. In our view the Secretariat should consider encouraging beneficiaries to extend requested programming to appropriate non-state mechanisms as well as civil society organisations working in the rule of law field. This would strengthen CLS' ability to meet the justice needs of citizens in beneficiary countries.

3.2 Design: Relevance to the Mandate

Evaluation Area 2 is a review the Criminal Law work of the Rule of Law programme against the relevant CHOGM and Ministerial mandates.

3.2.1 Introduction

In this section we assess the extent to which the Criminal Law work responds to the mandates set by CHOGMs and CLMMs. 3.1 focused on broader issues of relevance.

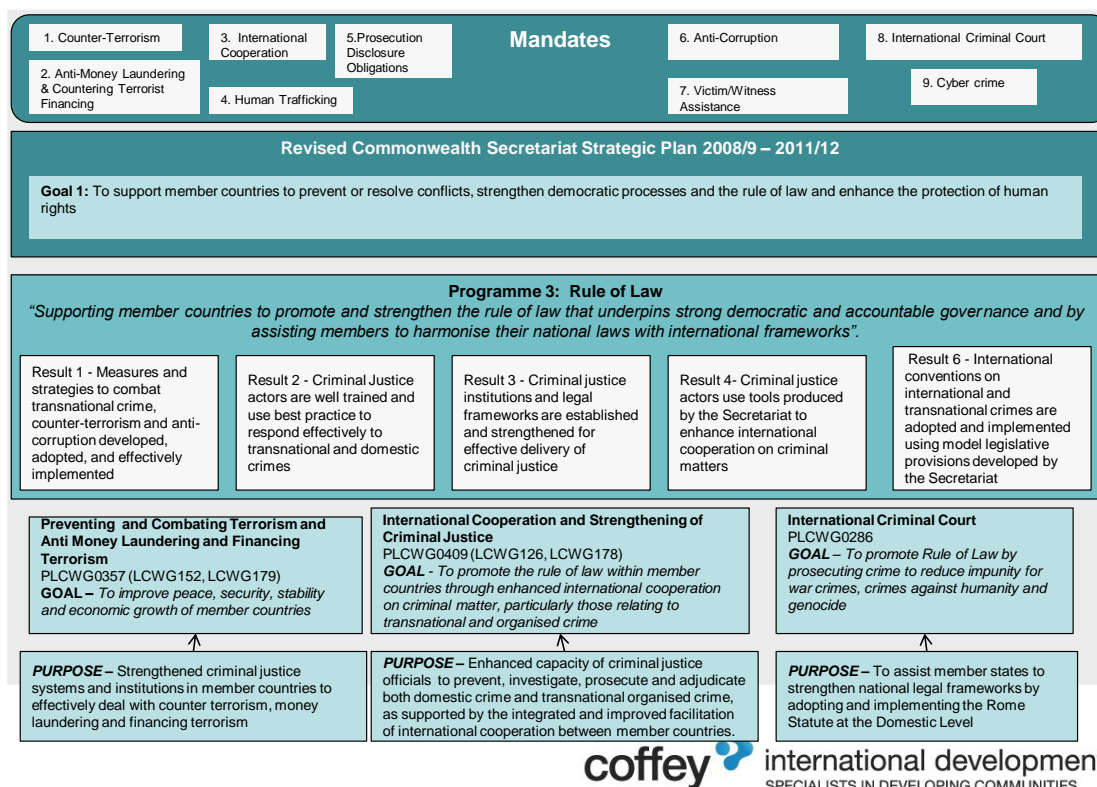
CLS currently follows nine mandates (down from 13 in 2009/10):

- 1 Counter Terrorism
- 2 Anti-Money Laundering and Countering Terrorist Financing
- 3 International Co-operation
- 4 Human Trafficking
- 5 Prosecution Disclosure
- 6 Anti-Corruption Measures
- 7 Victim and Witness Assistance
- 8 International Criminal Court
- 9 Cyber crime

3.2.2 Theory of Change

Figure 4 below represents the theory of change for the Secretariat's Criminal Law programmes. It shows the logical linkages from mandates, via the Strategic Plan's relevant goal and results, through to programme purpose (outcomes). The Criminal Law work seeks to address problems identified in CHOGM and CLMM mandates and those identified in requests for assistance by member states.

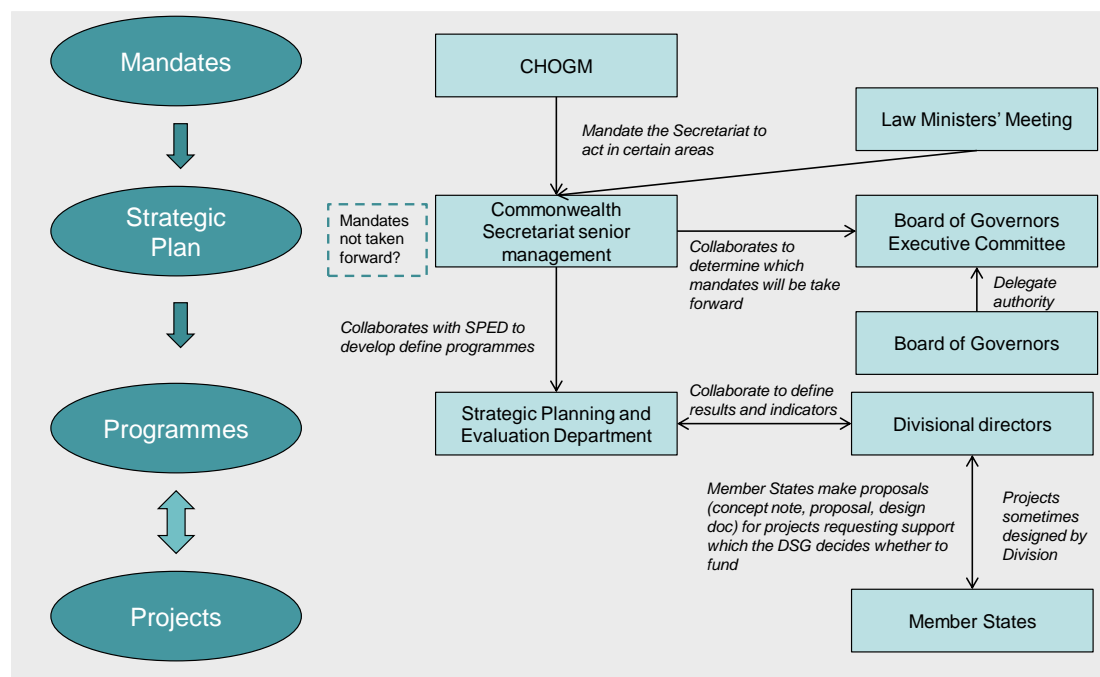
⁵ E.g. the South Asian Regional Judicial Forum on Economic and Financial Crime, in May 2011

Figure 4: Theory of Change for Commonwealth Secretariat Criminal Law Programmes

3.2.3 Translating Mandates into Projects

Figure 5 below demonstrates the process for translating mandates into projects. CHOGM criminal law mandates are in most cases fine-tuned into more specific mandates by the CLMM. Senior Officials of Law Ministries (SOLM) meetings and Meetings of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions provide additional strategic guidance on mandates. The issue of how the Secretariat should respond to and resource mandates is considered by senior Secretariat staff in consultation with the Board of Governors⁶ and the Board of Governors' Executive Committee. On the basis of this senior level guidance, divisions develop programmes. LCAD appears to have relatively wide discretion as to how it programmes against these broad mandates.

⁶ The Board of Governors comprises the 54 Commonwealth High Commissioners to the Court of St. James's. It meet annually and nominates 18 members (eight being permanent members) to an Executive Committee which meets twice a year.

Figure 5: Process map of translating mandates into projects

The language in which the mandates are captured in the communiqués and records of these meetings varies significantly and mandates are generally not specifically identified as *mandates* in these political-level meetings. This leads to some ambiguity as to what is the content and extent of each mandate, and Secretariat staff and the Board of Governors are therefore required to interpret what the Heads of Government and Ministers actually meant to say. There are no written criteria to assist in identification of activities (see Recommendation 1 above).

The Secretariat's Strategic Plan is this document "against which the Board and management measures the progress and impact of the Secretariat's work."⁷ After interpretation by the Secretariat and Board of Governors, those mandates in effect prior to the design of the Strategic Plan are translated into the Strategic Plan (the current Plan covering 2008/9 to 2011/12). This means that the Strategic Plan cannot be – apart from during a relatively short period of time – a complete statement of which mandates are extant. The recent mandate covering cybercrime – which post-dates the current Strategic Plan – is an example of this.

Prior to the 2011 CLMM, an Expert Group recommended that in order to improve the focus of the rule of law programme – particularly in light of limited resources – a number of mandates should be sunsetted over time. The Expert Group provided criteria for sunsetting but did not feel it appropriate to recommend specific mandates to be sunsetted. Subsequently, LCAD made recommendations to senior officials at the 2011 CLMM⁸ and the senior officials formed a working group to consider these and make recommendations to law ministers. The working group specified a timeframe and key project deliverables, with its chairman noting that, "too many of the mandates were open-ended and vague, don't proscribe time and didn't proscribe the outcomes required. We thought especially the Secretariat, when they come to Ministers with a proposed mandate, should explain what they think the resourcing requirements are and what the impact on their budget might be."⁹

⁷ Commonwealth Secretariat, *Commonwealth Secretariat Strategic Plan 2008/09-2011/12 – Revised*, Commonwealth Secretariat, 2010, p. 1

⁸ The 2011 CLMM was held in July 2011 but is covered in this evaluation as it deliberated upon significant reform proposals made *during* the time period covered by the evaluation (i.e. ending 30 June 2011).

⁹ *Meeting of Commonwealth Law Ministers and Senior Officials, Transcript of proceedings - Day 3*, Sydney, Wednesday 13 July 2011, p.99

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The Areas of Work detailed in the Strategic Plan do provide guidance as to programming areas but these are also extremely broadly-defined and not all of these have been undertaken by CLS. Under the Strategic Plan, CLS has responsibility for the following Areas of Work:

- *Provide country specific and regional technical assistance to combat trans-national crime and support efforts to counter terrorism and fight corruption.*
- *Convene an Expert Group to revise the Harare Scheme.*
- *Develop model legislation on Mutual Legal Assistance.*
- *Develop and deliver interactive criminal justice training programmes for prosecutors.*
- *Develop a Commonwealth Plan of Action on Human Trafficking.*
- *Assist countries to develop strategies to combat corruption and comply with the provisions of the United Nations Convention on Anti-Corruption.*
- *Support national jurisdictions to implement international conventions and obligations by way of training courses, capacity building and model legislative provisions.*

There has however been little programming on:

- *Assist countries to strengthen their Financial Intelligence Units (FIUs) to support anti-money laundering and anti-corruption and combating financing of terrorism efforts.*¹⁰

Given the Secretariat's modest human and financial resources allocated to criminal law programming the Plan's results areas and areas of work cover an exceptionally broad range of criminal law activities. The Plan does not give guidance as to how to assess the relative priority of work areas, leaving LCAD and CLS with broad discretion. While all programmes are technically 'relevant' there appears to be limited rigorous internal Secretariat debate – particularly at senior level - and external engagement to provide the direction and accountability structures required to CLS to ensure that all Criminal Law programming is conceptualised, designed and implemented in an effective and efficient manner, which in turn would promote impact and sustainability.

Recommendation 2:

The forthcoming Strategic Plan should narrow the scope of the Rule of Law programming in order to promote focusing of effort and programmatic coherence.

Recommendation 3:

LCAD should issue a guidance note detailing how the mandates and Strategic Plan results are to be translated into programmatic interventions, and strictly monitor compliance with this.

3.2.4 Cross-divisional Engagement

Cross-divisional engagement within the Secretariat is limited. The Secretariat has a tendency to operate in stovepipes, including throughout the design process. The Project Management and Referrals Unit (PMRU) has the role of quality assuring PDDs submitted for Deputy Secretary General approval but has no ongoing role in advising on delivery, M&E or closure of projects. PMRU has the authority to question the appropriateness and quality of project design and comment on issues such as value for money. A number of CLS PDDs had extensive comments from PMRU. Delivery, M&E and project closure are responsibilities of the division managing the project. The Governance and Institutional Development Division (GIDD) deploys criminal justice experts abroad for long-term engagements but there has been little engagement between it and CLS regarding these deployments and in particular harmonising the GIDD and CLS inputs in order to promote contribution to meeting the criminal law

¹⁰ We note the activity area "Conduct a comparative study of best practices in the criminal justice systems with an emphasis on police reform" has been transferred to JS.

mandates.¹¹ JS has collaborated with CLS on a number of programmes, including in training of judges on AML and on prospective programming on cyber-crime.

PDDs over time have improved in quality (see 3.5 below). Until the introduction of the ARTEMIS project management system on 1 July 2010, and increased engagement by SPED on RBM, CLS was delivered with relatively weak M&E tools and little corporate focus on providing resources to divisions and sections for RBM. The ARTEMIS system is an improvement on PIMS in terms of the breadth of fields project designers must complete. This is supported by improved Annual Divisional Work Plan formats from 2009/10 (which specifically link divisional programming to Strategic Plan result areas) and the Secretariat's introduction of results-based management (RBM). The on-going RBM trainings in the Secretariat for its staff is likely to improve technical capability to produce PDDs and monitor and evaluate programmes but RBM must be promoted actively by Secretariat senior management with consequences to staff (e.g. in performance appraisal, eligibility for promotion, etc.) if RBM is not complied with.

Recommendation 4:

Senior management including the Secretary General and Deputy Secretaries General should actively promote RBM and compel compliance with it.

3.3 Design / Delivery: Gender, Human Rights and Youth Mainstreaming

Evaluation Area 3 is an examination of the extent to which the three mainstreaming areas of gender, human rights and youth have been incorporated into the design and delivery of Secretariat's efforts

The Commonwealth Secretariat has a policy of mainstreaming gender, human rights and youth throughout its policies and programmes. Mainstreaming in each of these thematic areas is not yet fully rolled out in the Secretariat, which has in turn hampered CLS' ability to incorporate such mainstreaming in the design and delivery of programmes. Despite ARTEMIS having dedicated sections in PDDs for analysis of these areas we saw no evidence of detailed analysis of mainstreaming issues. Nor are principles of mainstreaming applied elsewhere in programming, for instance by disaggregating purpose (outcome) indicators by gender or youth. We conclude therefore that there has been minimal incorporation of the three mainstreaming areas into the design and delivery of the Criminal Law programmes.

3.3.1 Gender

Gender mainstreaming has been a Secretariat policy since 1995, and is viewed as "critical" to addressing problems such as gender-based violence and promoting full participation of women in leadership and decision-making.¹² It is a key requirement of the Commonwealth Plan of Action (PoA) for Gender Equality 2005-2015, and "Gender, Human Rights and the Law" is one of four critical areas for Commonwealth action under the PoA. Despite this, little achievement has been made in gender mainstreaming. Secretariat gender mainstreaming operates in a bureaucratic environment which has only recently embraced gender equality in employment. The Gender Section is currently working with other divisions to examine how far they can incorporate gender dimensions in programming and to include gender mainstreaming in the Secretariat's RBM processes. The extent to which the Gender Section has been able to promote gender mainstreaming has depended on personal relationships established between Secretariat gender experts and their colleagues in other divisions rather than the institutionalisation of practices across the Secretariat: gender mainstreaming is not yet embedded in the systems and culture of the Secretariat. We found no evidence of robust analysis by CLS of gender issues. Indicators are not disaggregated for gender and programme documentation does not reveal gender as being an issue in selection of participants in training courses.

The Gender Section is currently working on an implementation framework for gender mainstreaming which it hopes will build the capacity of Secretariat staff and require that programmes designs cannot be signed off unless they adequately address gender issues. We note that the Gender Section works significantly more closely with JS than

¹¹ We note that in 2011-12 there has been increased collaboration between CLS and GIDD, for example, joint participation in scoping missions.

¹² Commonwealth Secretariat, *The Commonwealth Plan of Action for Gender Equality 2005-2015*, p. 10

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CLS regarding gender mainstreaming and the law. Examples of collaboration with JS include: support to five regional colloquia to reconcile customary and state laws regarding women's rights; pan-Commonwealth review of case law on domestic violence; and engagement with judiciaries on violence against women and girls.

3.3.2 Human Rights

The 2007 CHOGM mandate the mainstreaming of human rights and this was reflected in the Strategic Plan 2008/09-2011/12. A draft human rights policy framework¹³ includes guidance and principles regarding mainstreaming including the incorporation human rights results and indicators in programme management. The framework describes mainstreaming as:

... the approach of enhancing the existing human rights programme and integrating rights concerns into the full range of Secretariat activities and interventions. The human rights framework provides a lens through which developmental processes and political, economic and social inequality can be viewed and which can shape engagement. This requires that all political and development initiatives be inclusive and participatory and take cognisance of, and address, the specific and differentiated needs of vulnerable, disadvantaged or marginalised groups.¹⁴

Human rights mainstreaming has not yet formally commenced within the Secretariat. Informal talks within the Secretariat on human rights have started, focusing on potential thematic areas and sharing of human rights knowledge. The Secretariat is commencing planning for division-specific interventions on human rights, and to this end, the Human Rights Unit (HRU) met recently with LCAD (including CLS) to discuss human rights support to judiciaries.

The HRU has provided human rights training of police for three years and is currently looking to broaden this intervention to cover issues such as impunity and oversight. This work has been conducted without CLS support but the HRU is seeking to link in with CLS in future on these issues. The HRU also wishes to look at current LCAD programmes, including for prosecutors, with a view to providing input on human rights issues. This may include collaboration in training, wherein human rights perspectives augment technical training.

3.3.3 Youth

Youth is a cross-cutting and mainstreamed area of work for the Secretariat. "Youth" are defined as 15 to 29 year olds. Mainstreaming was mandated in 2003 but this is not reflected in CLS programming. There is little interaction between the Youth Affairs Division (YAD) and CLS, which seems largely due to CLS not being relevant to the key mandates under which YAD operates. There may be future opportunities for engagement with CLS/LCAD over integrity of sport issues, and YAD is also considering future programming in the areas of legal rights and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights (including impact on HIV/AIDS). The PDDs gave no evidence of youth mainstreaming having occurred and programme indicators are not disaggregated for youth.

Recommendation 5:

The Criminal Law Section should actively collaborate with STPD, HRU and YAD to incorporate mainstreaming areas into existing and future programming, including disaggregating for gender and youth where possible in logframe indicators. PDDs should demonstrate more rigorous consideration of gender, human rights and youth issues and the risks and opportunities to these in the programmes.

¹³ Commonwealth Secretariat, *Human Rights Framework* (Final Draft)

¹⁴ *Ibid.*, p.10

3.4 Delivery: Overall Management Approaches

Evaluation Area 4 is an evaluation of the overall management approaches, including the design, modes of delivery and implementation strategies in terms of their relevance, efficiency and sustainability.

3.4.1 Introduction

In management best-practice a standard business organisational model would consist of a series of hierarchically inter-linked phases, which broadly fall into three categories: policy, strategy and activities/implementation. High-level policy would determine direction and intent, whilst strategy may be defined as the means by which policy is taken forward, including prioritisation, timelines, budgetary considerations, intent, monitoring and evaluation and impact. Individual activities contained within the strategic plan would form the implementation phase. The Secretariat's functions as a strategy implementer are severely curtailed by the lack of any higher-level cohesive policy framework. Existing and past high-level mandates are not policy. They are instead a collection of statements of intent, concern or interest.

Programme cycle management is weak in CLS programming, as may well be the case across other Secretariat divisions and sections. High-level mandates are issued too infrequently and in too vague and unspecific a manner to be considered as policy. The Strategic Plan is extremely broad and quickly can become outdated by major developments in criminal law (e.g. terrorism, cyber crime). This means that CLS has to programme in the absence of a policy framework, which in turn means that strategies are almost impossible to devise, resulting in weak or non-existent linkages between policy, strategy and implementation. The Secretariat has a Project Management Manual (PMM) dating from 2000 and is in the process of updating procedures, most significantly to formally incorporate RBM). The PMM is broadly fit for purpose, if a little outdated, but we have seen little evidence of it having been followed in CLS programming. While the evaluation covered only criminal law programming, broader discussions within the Secretariat demonstrated that it is likely that many if not most of the deficiencies identified with regard to CLS overall project management approach reflect a general weakness across the Secretariat.

The current (2008/9 to 2011/12) Rule of Law Programme in the Strategic Plan, whilst labouring under a lack of policy direction, is also extremely ambitious in nature with activities being allocated across a large range of potential interventions. The combination of a limited policy environment and an over-ambitious strategy has burdened LCAD, including CLS, with inadequate direction and focus.

Basic monitoring of activities and outputs is carried out. But there is generally no evaluation or review of individual activities, apart from participant feedback, where training interventions have been delivered. Hence there is no feedback loop from activities back up to 'policy' completion or review. Moreover, monitoring in the absence of evaluation is of limited value as it looks at results only up to output level.

3.4.2 Modes of Delivery and Implementation Strategies

CLS is primarily engaged in two spheres of activity: supporting legal process and delivering training. A significant proportion of CLS time is allocated to the development of model legislation and guidelines, best practice manuals, resource materials, etc. Each mandate has required the development or revision of such tools in addition to capacity building. We received generally positive comments about the relevance and usefulness of the tools, such as guidance notes and model legislation, which support Commonwealth countries, particularly small states, implement domestically complex and emerging criminal justice challenges such as CT, AML/CFT and cybercrime. Moreover a number of these tools focus on international collaboration between Commonwealth countries, for example through the Harare Scheme. The revision of the Harare Scheme and Prosecution Disclosure, Witness Assistance and Protection, and Corruption mandates required CLS to conduct surveys and facilitate expert group meetings in addition to developing tools.

Whilst since 2009 CLS has moved away from ad hoc workshops – a positive step, examination of the training function raises a number of concerns. The criminal law sector is made up of a large number of individual institutions which come together, hopefully, to deliver security and justice for all. The strength of the system is predicated on the horizontal linkages between institutions rather than the vertical individual and corporate capacity of any one institution. An over-simplified view of the criminal justice system would contain the police, prosecutions, courts, judiciary and prisons (in actual fact there are many more players involved). Development good practice has repeatedly demonstrated that individual institutional capacity weaknesses within the criminal justice system continuum will damage the overall ability of the criminal justice system to deliver effect or impact, in essence,

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creating a weak link in the criminal justice chain. Knowing where the weak link or links are in the criminal justice system prior to designing an input intervention will be critical if any long-term impact is to be achieved.

There is no evidence available to suggest that sector-wide assessments of criminal justice system structures inform the design and delivery of criminal justice system training interventions, for example in providing baselines and identifying gaps and complementarities. Instead, the default position in the programmes under evaluation appears to be to support prosecutions activities or investigation and prosecution interventions. Whilst improving prosecution capability is not inherently the wrong thing to do, in the absence of a broader assessment of the problems affecting the criminal justice system it remains a high-risk intervention to make if attributable overall improvements in criminal justice system delivery of services are to be achieved. A good example of this was highlighted during the field visit to Mauritius, where the primary focus of training was with the DPP's office, together with some police investigators/prosecutors. Whilst the training may have been relevant in terms of difficulties confronting those involved with prosecutions and appeared to promote hitherto limited police-prosecution linkages, there was little evidence to demonstrate that it would have made any impact on broader and more serious deficiencies within the overall Mauritius criminal justice system, e.g. poor evidence gathering and interview techniques by the police and excessive case delays.

The three-phased prosecutions and police training programme delivered in support of a number of East African countries raises concerns regarding sustainability. Whilst the training methodology utilised is innovative, it does not appear that due regard was given to the different levels of context, particularly institutional capacity, of those countries involved and individuals selected to attend the training courses. The countries involved (Rwanda, Tanzania, Kenya, Uganda, Seychelles and Mauritius) have very different levels of development need and this issue would not appear to have been addressed during the various course interventions. Additionally, while selection of Mauritius prosecutors appeared to be satisfactory one very senior interviewee alleged that the selection of participants from some other countries may have been based on patronage rather than need. While initial criteria for selection was put in place for police, eventual selection was less than optimum, for example, some participants had greater development needs than others. Whilst this training is relevant, training in and of itself will not lead to sustainability. To train people, however well, and then re-immerses them in their local environment without focussed and constant ongoing support is not deemed to be a sustainable training methodology. We note that the East Africa training is in the process of being followed up by a series of workshops in several countries where participants develop action plans and further pro bono mentoring and placements are planned, but it is too early to assess sustainability of these efforts.

When raising the issue of those countries sending delegates to the East Africa training, it should be noted that all but Mauritius and the Seychelles have been or are the recipients of substantial bilateral donor assistance to their respective security and justice sectors. Much of this support will have targeted the criminal justice system and specifically those responsible for prosecutions. It is not at all clear whether CLS prosecution training built upon these programmes or was conducted in isolation of such activities, though we do note that CLS seems to have engaged well with some multilateral and regional organisations working on transnational crime issues.

The training-of-trainers (TOT) methodology used in the East Africa prosecutions and police training programme shows some signs of having been effective in Mauritius, though it should be noted that the institutional capacity of the host agency leading the training of trainers workshop is judged to be well in excess of what may be found in other involved countries within the region. Concerns are therefore raised as to the effectiveness and sustainability of this approach elsewhere. Training experts acknowledge that TOT can be a cost effective means of cascading knowledge, though it should be noted that ongoing support will be required throughout the TOT process if real change is to be achieved. For optimum effectiveness a TOT approach requires the initial set of trainers to be trained in instructional techniques and to be backed by adequate institutional capacity of training departments, well designed curricula and training materials, and means of replication, and ongoing mentoring and support by the body providing the TOT.

On the basis of the recommendations from a recently concluded evaluation of its training programmes¹⁵ the Secretariat is reviewing the use of training and workshops as a modality of delivering programmes. Interestingly the

¹⁵ Commonwealth Secretariat, *Evaluation of Commonwealth Secretariat Training Programmes, 2004 – 2008*, September 2010

move from country based projects to regional projects, a move that was made by criminal law programmes in 2009, very much falls in line with one of the recommendations of this evaluation.

3.4.3 Efficiency of Overall Management Approaches

“Efficiency” is defined as a *measure of the outputs -- qualitative and quantitative -- in relation to the inputs*. This should be defined as the extent to which the programmes have delivered their outputs at the least cost and are able to demonstrate this in comparison with other modes of support in doing so. This is essentially an assessment of value for money (VFM).

VFM is not articulated in programming documentation and we conclude that the Criminal Law programmes have in some cases not provided the Secretariat with the quantity and quality of inputs, outputs and outcomes required at the ‘least’ cost. This places the Secretariat at odds with international donor practice which increasingly has placed VFM at the core of programming considerations. The CFTC evaluation considered that the CFTC’s financial management system adequately tracks and controls expenditure.¹⁶ However DFID’s 2011 Multilateral Aid Review noted that there had been “incremental progress in strengthening systems to take account of VFM”¹⁷ and the Secretariat’s response to the DFID review claimed that the Secretariat was seeking to establish cost allocation more accurately.

CLS programmes are funded on an annual basis by CFTC funds and Extra Budgetary Resources (EBR). The unspent CFTC cannot be rolled over to the next financial year but EBR can. PDDs reveal that in a number of cases, budgets have gone through multiple amendments, often for small amounts. This included a case where staff travel was not included in the initial budget. These multiple amendments were commented upon by the PMRU and indicate inadequate budget preparation and add to transaction costs. CLS staff travel has accounted generally for around seven per cent of programme costs and the rationale for such travel, as identified in the PDDs, is on occasions weak and in such cases we have been unable to discern any impact.

We undertook a **cost effectiveness analysis** of a representative sample of Criminal Law projects, using budget estimates in the PDDs as a reasonable proxy for likely actual cost. International Cooperation and Strengthening of Criminal Justice (PLCWG0409) had an overall budget of £224,156 in 2010/11. Average unit costs per day were the following budget estimate items:

Staff travel

- Conference participation, Netherlands Sep 2010 - £680.40
- Conference participation, India Feb 2011 - £780.60
- Facilitation of training, Australia and Maldives Jun 2011 - £708.00
- Facilitation/logistical support, Australia Jun 2011- £439.40¹⁸

Participant attendance

- East Africa prosecutors workshop, Australia Jun 2011- £750.76

Consultant travel

- East Africa prosecutors workshop, Australia Jun 2011 - £931.29
- Facilitation of training, Maldives Jun 2011 - £709.37
- Workshop, Australia Jun 2011 - £459.20

16 Commonwealth Secretariat, Evaluation of the Commonwealth Fund for Technical Cooperation, Volume I – Final Report, Undated

17 Department for International Development, Multilateral Aid Review, London, March 2011:
<http://www.dfid.gov.uk/Documents/publications1/mar/comsec.pdf>

18 Four remaining items of staff conference attendance did not detail number of days so we were unable to determine unit costs.

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We have particular value for money concerns with holding the training workshop for East African prosecutors in Australia. When staff, participant and consultant costs are added together the workshop in Australia cost a total of £93,225 to train 24 participants for five days (i.e. £776.88 per participant per day). The PDDs do not give the number of attendees at the other workshops but based on overall costs per day, which amounted to £18,645 in the case of the Australian workshop, basing workshops in attendees' own regions was markedly less expensive (i.e. per day costs of 2011-12 budgeted workshops in Maldives – £5,884; Mauritius - £1388.67; Uganda/Tanzania – £1,670.43; Kenya - £2,110.17). The key cost drivers for the Australian activity were increased airfare costs, the use of Secretariat staff rather than local partners as administrative staff, and use of seven international consultants travelling from Sri Lanka, Maldives and France. While Australian partners provided in kind support to the training we are of the view that this training should have taken place in the East African region. Moreover, only three days were devoted to classroom based learning, followed by two days of visits to the NSW courts, police academy and Sydney University. Many of those participants interviewed in Mauritius who attended this workshop expressed a frustration at the lack of time spent on classroom based training, the majority feeling that the two days of visits were neither relevant to all or demonstrated good use of time. The time and cost of flying participants to Australia, as opposed to holding the workshop in East Africa, was raised by a number of people as being an indicator of Secretariat financial profligacy. We also note with concern the practice of deploying CLS staff abroad for administrative/ logistics support, particularly where partner organisations might be better placed to provide VFM in the provision of such non-expert services.

It is understood that the Secretariat is shortly to conduct a review of its travel policy and associated operations. The authors of this report feel that considerable cost savings will be identified by the review committee.

We also assessed management approaches and their impact on VFM. In doing so we assessed whether the key management processes and resource allocation decisions made at each stage of the implementation process has resulted in the efficient delivery of higher value inputs, activities, outputs and ultimately outcomes and impact. In our review of management processes above we saw no evidence of VFM being an objective in procurement, planning, financial systems, M&E, and learning systems and delivery processes.

We note that despite the Secretariat not being a grant-awarding agency, grant funding is commonly used in Criminal Law programmes (e.g. funding participants to workshops run by third parties, funding third party conferences). This typically involves the transfer of funds to collaborating national or regional organisations so that they can assist CLS with administrative and logistical matters. We consider grant funding to be not generally a good use of Secretariat comparative advantage and added value, and endorse the Secretariat's view on the use of grant funding.¹⁹

Recommendation 6:

- *The Secretariat apply strict criteria for overseas travel*
- *Attendance at workshops and conferences only if the staff member has an active role, e.g. conducting training, giving a major presentation. Attendance of staff undertaking administrative or logistical tasks should only be permitted in exceptional circumstances*
- *Increased use of videoconferencing or conference calls for discussions with partner organisations or beneficiaries*
- *The Secretariat develop a robust policy on promoting VFM throughout its key management and processes and in its resource allocation decisions.*

3.4.4 Sustainability of Overall Management Approaches

Sustainability is the extent to which the qualitative and quantitative benefits arising from the programmes' activities are likely to continue and progress once the programmes' funding and activities have ceased. The programmes are largely designed to strengthen systems and build institutional capacity – sustainability should therefore be at their very core.

¹⁹ Commonwealth Secretariat, *Procurement Manual, Part 2: Programme Based Procurement*, September 2012, pp. 21-22

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There is limited evidence of sustainability in the Secretariat's capacity building programmes, particularly where they have comprised stand alone workshops or conferences. Analysis of sustainability issues in PDDs is inadequate; in particular absence of an articulated theory of change risks interventions being targeted at symptoms of the problems rather than their root causes. The Secretariat's pre-2009 focus on ad hoc activities and lack of programmatic cohesion makes sustainability of the benefits of these programmes unlikely except in the circumstance where an influential stakeholder is sufficiently inspired by the programming as to champion it themselves after Secretariat support has ceased.

Improvements in programme cohesion (e.g. the ICC programme) and use of regional longer-term training and mentoring makes such sustainability more likely. Also, sustainability is likely to be promoted where capacity building activities are linked to the development of model legislation, guidelines or other tools.

During our South Pacific field visit we examined sustainability of the 2009 Asia-Pacific prosecutors programme. While we acknowledge that this programme was a pilot and that there were useful lessons drawn from the experience which were applied to subsequent programmes, we judge its sustainability to have been limited. The programme was only conducted once in the Asia-Pacific and there was no aspect of cascading of learning or training of trainers that might have allowed participant countries to broaden the benefits of the course more widely within their prosecution services. No regional or local capacity development programmes appear to have developed out of the programme; while the Secretariat has provided grant funding to the Pacific Prosecutors' Association annual conferences; these conferences provide minimal capacity development opportunities. Some participants gave briefings and shared materials with fellow prosecutors and there were several instances where participants claimed to have initiated policy and procedural change owing to knowledge learned from the training. Subsequent prosecutor training provided under the auspices of the Pacific Island Law Officers' Network (PILON), funded by NZAID, was significantly different in approach to the Secretariat's training programme in that it was focused on domestic procedural matters and advocacy skills. One country, Maldives, followed up the training with a request for two of its prosecutors to be placed within an Australian ODPP and thus received a slightly longer-term benefit.

The inclusion of a "training of trainer" element in the 2011-12 East Africa regional prosecutor/police investigator training programme was a positive step towards promoting sustainability and built upon lessons learned from the Asia-Pacific programme, but as no instruction in training methodology or training needs analysis was provided this sustainability will be limited to the ability and interest of individual participants and their managers in their providing training to fellow prosecutors and investigators. However, sustainability is likely to be promoted through the various follow-on planning seminars being held (from 2012) for the two most senior participants from each country. As this process of supporting planning is only partially completed and this evaluation covers only the period to 30 June 2011 it is too early to make a conclusion on its sustainability.

A senior beneficiary country interviewee expressed concerns about the selection of participants by certain countries, alleging that selections were sometimes made on the basis of relationships or patronage. This is a risk with all donor-supported training and workshops, particularly if undertaken abroad, where there is significant incentive to participate owing to travel opportunities and per diems. It is imperative that CLS engage actively with beneficiaries to agree selection criteria and process in order to mitigate this risk.

3.5 Impact: Institutional Strengthening and Capacity Building

Evaluation Area 5 is an assessment of the effectiveness and impact of the assistance provided to member governments in strengthening their criminal-justice institutions and capacity of criminal justice officials.

3.5.1 Effectiveness

'Effectiveness' is the extent to which the programmes have achieved their objectives. For the programme, assessment of effectiveness will consider the extent to which the Criminal Law Programmes achieved their intended outputs, outcomes and overarching goals (results) and how well they were achieved (process). Programme cycle management linkages between the mandates, design, delivery, evaluation, impact and closure of selected activities has been weak. This has hampered the feedback loops which in effective PCM lead to continuous improvement of programmes and lesson learning.

PDDs under both PIMS and ARTEMIS include a logical framework matrix. Use of the Logical Framework Approach promotes good planning of interventions and its use is mandatory according to the Project Management Manual (PMM). If properly applied logframes promote stakeholder consensus, articulates anticipated impact and identifies measurable performance indicators. Use of this approach requires thorough analysis of context, stakeholders, donor environment, and articulation of assumptions and risk, and mitigation of risk.²⁰ Logframes are most useful as a 'living' document which are referred to constantly by programme managers in monitoring achievement of outputs and by evaluators in reviewing achievements against outcomes and higher-level goals.

The Criminal law programmes have not used the Logical Framework Approach according to the best practice identified above. This has led to logframes which appear to be a form filling exercise for use in obtaining programmatic approvals. They are generally inadequate in their internal coherence, articulation of logical links between outputs, outcomes and Strategic Plan result areas, and lack measurable indicators against which progress may be reviewed.

We note that the logical frameworks developed under the new ARTEMIS programme management system are in general better than those developed under PIMS. Part of this is due to an improved PDD and logframe and we consider it likely also that increased efforts on the part of LCAD and CLS to make programmes to be focused and coherent as an additional causal factor.

We have seen little evidence of the logframes being a 'living' document upon which projects are continually monitored (including through an annual review process) and ultimately evaluated. Multiple extensions of the CT/AML/CFT and international cooperation programmes over the years have not revealed changes to logframe result areas or indicators. This has also diminished opportunities for M&E because such extensions do not require completion of project completion reports or the development of a new programme.

Baseline conditions are not stated and indicators are not "SMART"²¹ and thereby offer little opportunity for measurement. We note that training in RBM is being rolled out in the Secretariat. This should result in improved logframes and use of logframes as a programme management tool if all levels of management actively enforce strict adherence to RBM and other programme cycle management best practice.

Prior to 2009, most logframes were lists of inputs and outputs tenuously linked to a purpose (outcome) which was equally (or more) tenuously linked to a goal. The 2007 logframe for LCWG152 (Preventing and Combating Terrorism) was generally vague at the input (activity) and output level with poor linkages between inputs and outputs. A reader of this logframe gains no specific understanding of what interventions will be carried out which in turn makes the objectively verifiable indicators (OVI) and means of verification nugatory. The programme purpose of strengthening counter-terrorism measures is vague but has a plausible logical link to the outputs but had overly ambitious and vague OVIs, for example, "member countries have implemented/developed sufficient legislative and administrative framework (sic)": which member countries?; sufficient for what? The goal is poorly drafted and vague: "strengthen the rule of law: to reduce the threat that terrorism poses to governance, economic growth and security and stability..."

²⁰ See generally, Department for International Development, *How to Note: Guidance on using the revised Logical Framework*, London: DFID, January 2011

²¹ i.e. Specific, Measurable, Achievable, Relevant, Time-bound

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Since 2009, a general improvement in logframes was evident. For example, the LCWG178 (Strengthening Criminal Justice Systems) 2009 logframe increased focus and cohesion by integrating most of the programme outputs into the Asia-Pacific prosecutors' training programme. However, these outputs focused only on support to the prosecution and therefore were inadequate to meet the purpose (output) of "holistically strengthening the Criminal Justice Systems". This programme supports an institution which forms an important part of the criminal justice system but it does not support the system as a whole. The purpose (output) does have a broad logical linkage to the goal ("to enhance compliance with the rule of law by Member States and to improve international cooperation") but strengthening criminal justice systems does not necessarily imply enhanced compliance with the rule of law as this requires accountability in addition to capacity development. The (OVI) at the purpose and goal levels are not measurable and are focused on prosecutions. Improvements in prosecutions are not necessarily a proxy indicator of improvements across the board in the criminal justice system, not least because deficiencies in capacity (or accountability) of, for example, police investigators or the judiciary might undermine any impact of better prosecutions at the systemic level. Means of verification are confused at the goal-level, for example, "enhancement of prosecutions" and "greater number of prosecutions" are indicators, not means of verification. The assumptions reveal little depth of analysis and appear very similar to earlier logframes such as the 2007 LCWG152 logframe. While this evaluation covers only the period to 30 June 2011, we note that there have been further improvements to logframe development in financial year 2011-12.²²

The Secretariat has asked divisions to measure contribution to impact at the Strategic Plan results area level of programme outputs. The current manner in which Strategic Plan result areas are articulated makes this difficult because the result areas are based around types of intervention, i.e. strategies, training, institutional/sectoral strengthening, tools, and adoption of treaties and not as typical higher level goals. These are elements of all three CLS programmes and so each programme's goal will proceed logically to contribute to several Strategic Plan results areas.

Recommendation 7:

The Rule of Law programme's result areas, as articulated in the next Strategic Plan, reflect higher level goals rather than types of intervention.

Recommendation 8:

We recommend that all programmes be time-bound and extensions to programmes be granted only in exceptional circumstances.

The move in recent years from a focus on ad hoc workshops and conferences to a regional focus has made CLS programmes more coherent in some regards. The regional prosecution training programmes, comprising as they do a period of e-learning followed by an intensive workshop, followed by a year's mentoring are more likely to lead to identifiable results than stand alone workshops and conferences. But as noted above in some cases at least lack of attention to project management, and in particular monitoring, has led to failures such as mentoring not taking

²² This 'third phase' in logframe development is exemplified by the logframe for PLCWG0286 (ICC) of 2012. This details a more focused and coherent programme based on a (mostly) clear impact chain. As is required by the logframe format in ARTEMIS, the activities are grouped under outputs. The programme itself is time bound (2010-2012) and the activities all logically support the outputs. Moreover, there is an internal cohesion to the programme – activities build on each other rather through linked outputs rather than being an ad hoc list of interventions that might be relevant to the purpose and goals but are too unfocused and short-term to lead to impact or sustainability. The first two outputs (updating draft model legislation and understanding and showing willingness to ratify the Rome Statute) link logically to the purpose (output) of assisting member states to strengthen national legal frameworks by adopting and implementing the Rome Statute. The third output (training of criminal justice officials in prosecution of crimes under the Rome Statute) also has a logical link to the purpose but being focused on prosecutions does not meet the cross-sectoral effect implicit in the purpose statement. The goal also reflects a focus on prosecuting crime to reduce impunity for war crimes, crimes against humanity and genocide, thus again restricting intended impact to the prosecution of crime rather than including other key actors in the criminal justice system such as police investigators, judges and defence counsel. But the OVIs at the goal level are vague, i.e. "countries prosecute perpetrators of ICC crime". Part of the OVIs at purpose level are measurable, i.e. "countries that have not signed or ratified become parties to the Rome Statute" while the second sentence is even more vague, i.e. "some countries enact the revised and updated model legislation."

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place for the full period or being limited in its scope (e.g. active cases not able to be discussed). Also regional workshops and conferences if only one-off and not part of a broader programme of work are unlikely to have more success than country specific programmes. Only the ICC programme in its entirety has the internal cohesion to allow individual workshops and conferences to produce identifiable results.

It is too early to judge if the provision of timelines for mandates in the 2011 CLMM will lead to improved effectiveness but we judge that this will be a likely result. It is incumbent upon Secretariat management at all levels to ensure timelines are met and that accountability for results more generally is improved.

The Secretariat's performance management and M&E of Criminal Law programmes is not effective. The Secretariat currently lacks the performance management and accountability structures, processes and cultures which would facilitate this. We endorse the Secretariat's move to RBM and encourage the Secretariat's senior leadership to actively promote this as a key policy initiative. We had numerous anecdotal reports from staff that there are few negative consequences for underperforming staff.

Criminal law programmes are designed after result areas and indicators are defined. SPED leads on the identification of results, working closely with Director LCAD. SPED has asked divisions to design their programmes to show how they contribute to Strategic Plan Results. We saw no evidence of use of M&E tools by CLS to assess delivery at output, outcome or impact level.

We have commented on training as a mode of delivery of technical assistance in 3.4 above. The following is a more detailed examination of the effectiveness of training interventions. An evaluation of the Secretariat's training programmes²³ made the following findings of key relevance to this evaluation:

- Absence of a Secretariat approach or guidance to capacity building;
- Effective institutional change requires appropriate policies and strategies to be in place
- Stakeholders play only a very small role in decisions about training
- Poor communication within the Secretariat and externally
- No requirement for a needs assessment and budget allocations are not results-based

We endorse these findings. A number of generic issues come to the fore when reviewing CLS funded training initiatives in Mauritius. The provision of short training courses in the absence of longer-term institutional capacity building is queried for both VFM and impact reasons. This approach becomes particularly high-risk if there is a lack of cohesion with other donor programmes of a similar nature, as appears to have occurred with the police. Second, short-term training would normally only be considered viable if such inputs supported an existing policy framework, this to ensure relevance and sustainability. In 2010 the Mauritius Police Force produced a new National Policing Strategic Framework. The strategy contains improvements in six key areas:

- Community Policing;
- Human Rights Compliance;
- Human Resource Management;
- Strategic Planning;
- Intelligence-Led Policing;
- Reactive Capability.

There is no evidence to suggest that the requirements of the police strategic plan were considered when the Prosecution and Investigation course was designed.

²³ Dearden, P, Edbrooke, J, Flett, P, Surridge, M and Van Grann, M, *Evaluation of Commonwealth Secretariat's Training Programmes*, London: Commonwealth Secretariat, Evaluation Series No. 85 – September 2010, pp. 10-12

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Those attending one-off events, such as the Anti-Corruption Workshop in June 2010 and the Financial Crimes Investigations Workshop in November 2011, were grateful for the opportunity of being able to attend and participate in the events, acknowledging that many of the issues covered had been topical and relevant. But in both instances, participants were unable to identify longer-term activities or strategic changes that had taken place within their institutions as a result of the workshops. While these workshops produced outputs such as action plans we saw no evidence of longer-term outcomes having yet been achieved. It was stated that a draft Guidance Note of the Development of Anti-Corruption Strategies had emanated from the ICAC as a result of the June 2010 Workshop, which in due course was presented to the Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions on 21/22 October 2010. The members of this committee were invited to note and consider the ICAC guidance note. Thereafter further progress appears to have stalled within the complex structures of Commonwealth meetings.

The three-phased Prosecutions and Police training programme was praised for its innovative methodology. The initial phase delivered during April – May 2011 consisted of a series of web-based learning modules and materials. The content, validity and relevance of these materials were generally highly praised. The links to further reading and information were described as very useful. Access to IT technology in Mauritius was at a level that allowed full utilisation of the web-based phase and the methodology used was judged as demonstrating good value for money.

The same cannot be said about phase-two, a five day course held in June 2011 in Sydney, Australia. 24 prosecutors and police officers from six East African countries (Rwanda, Tanzania, Kenya, Uganda, Seychelles and Mauritius), together with CLS staff, travelled to Australia to take part in this course. Three days were devoted to classroom based inter-active learning (described as being facilitated and delivered to a high-order), followed by two days of visits to the New South Wales courts, police academy and University of Sydney. Whilst it was acknowledged that the three day course content was relevant, topical and of interest, two serious criticisms diminished the effectiveness and efficiency of the intervention: the time and cost of transporting the participants to Australia (as opposed to delivering the course within the East Africa region); and the two days of external visits which took up valuable time within an already tight schedule and which were not of relevance to all attending the course.

Phase-three consisted of a five day long mentoring course held in Port Louis, attended by members of the Attorney General's office, DPP's office, police service and visitors from the Seychelles. Whilst there were mixed views on the relevance and topicality of some of the sessions, overall comments were positive. Sessions on asset forfeiture, piracy and witness protection, whilst narrow in content were seen to be timely, with changes to legislation and consequent investigation and prosecution guidelines in these areas being imminent in Mauritius. Whilst many of those participating in the course were only able to attend for limited periods of time due to court or other duty commitments, the vast majority of those interviewed expressed satisfaction at the way the course was delivered. The only recurrent critical comment was that there was insufficient time for interactive questioning.

Having a mixed institutional group present for the first two days of the course was seen to present the facilitators with some difficulties – many non-DPP staff felt that the first two days were too DPP-centric, perhaps this was inevitable given the nature of the course, though overall the benefits of increased inter-institutional networking and understanding was seen to outweigh these difficulties.

Despite these critical comments, the overall view of those attending the Prosecution and Investigation training package was uniformly positive, with recipients being grateful for the opportunity to attend the various training packages and thankful for the initiative undertaken by the Office of DPP and CLS.

The 2009 Asia- Pacific prosecutors' training course was viewed generally positively by participants and their supervisors. It had met a clear demand, as South Pacific Island prosecutors have limited opportunities for formal training, indeed only two organisations have provided specialist prosecutor training, namely the Secretariat in 2009 and the Pacific Island Law Officer's Network (PILON) through a NZAID training programme implemented by the New Zealand Crown Law Office. As befitting of a pilot course, there were a broad range of comments – both positive and negative – about the relevance and impact of the training but some common themes emerged:

- Participants had difficulty using the web-based materials owing to poor internet services
- The web-based materials and intensive workshop partly met key training needs
- The e-mentoring had limited impact

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- Future regional prosecution training should include only South Pacific island participants
- The programme was not adequately monitored by the Secretariat

All interviewees who had participated in the 2009 training expressed frustration at the poor internet access which made using the materials difficult. Several contrasted this experience with the PILON litigation in which they were sent hard copies of materials. Views on the curriculum of the web-based training and workshop were mixed, but there was a general view that the sessions on procedure were not particularly useful and indeed were confusing owing to the breadth of jurisdictions involved in the training. This was exacerbated by the training including participants from beyond the South Pacific. Some countries had not yet started focusing on transnational issues but despite this they regarded these elements of the course as useful background preparing them for enhanced future engagement. However there were a range of views as to the appropriate balance between international and local issues with most attendees interviewed thinking that there was too much emphasis on international matters.

All found the four day workshop – which was generally their first professional training abroad following law school and the practical legal training course generally useful, including:

- The opportunity to network with fellow junior prosecutors in the Asia-Pacific
- The building of confidence through the opportunity of receiving training in an environment beyond their own small jurisdictions
- Trainers were generally of a high standard

Several South Pacific participants commented that Asian and African participants were generally more advanced in their prosecutorial knowledge and skills. Moreover they opined that Asian and African countries represented, with the exception of the Maldives, the only small island state among Asian or African representatives, shared little in common with the issues faces by the Pacific participants. There was a preference from these participants for future training to be South Pacific focused and not include participants from other regions.

There was a general view that the training ought to be more practical. Several participants contrasted the lecture/Q&A approach of the intensive workshop with highly practical litigation training provided by the New Zealand Crown law Department through PILON. The PILON training included practical scenarios, including moot courts, and had a busier pace which the students founds challenging and interesting. Interviewees had differing views on the appropriateness of the balance between providing foundational, domestically-oriented skills and exposing participants to new and emerging transnational issues.

The mentoring element did not work well. It was designed as a 'voluntary' e-mentoring scheme wherein mentees would take the initiative in taking advantage of a process of engagement with an Australian or New Zealand mentor (and the mentors, in turn, would be responsive) and as such was not designed to be monitored closely by CLS. While the mentoring was supposed to be for a twelve month period none of the participants interviewed were able to continue being mentored for over more than a few months. Participants also questioned the value of the process in light of the apparent policy of some mentors not to comment on 'live' cases. It was precisely this on-the-job advice that the participants sought. Those with access to visiting (e.g. Samoa) or resident mentors (e.g. Solomon Islands, Cook Islands) contrasted this with the value of having a mentor willing to discuss live cases. It appears however that this policy was inconsistent: one participant was able to discuss live cases and obtain comments on her proposed legal advice from the mentor, which she found to be useful. She engaged with him once or twice a week over a period of about four months, but then suddenly found the mentor had ceased to respond. Another attendee said the mentoring started well but after a few months the mentor dropped contact and neither he nor the Secretariat advised her what would happen next. A third participant reported that because her mentor said he couldn't discuss live cases she didn't bother following up with him, particularly as she could seek advice from a senior New Zealand prosecutor who had been deployed to provide prosecutorial support in-country. In order to promote sustainability future mentoring programmes should be monitored by CLS as an integral part of the project

Recommendation 9

The Secretariat should not provide training or workshops in Criminal Law programmes unless the training is an integral part of a longer term programme of assistance (e.g. the regional prosecutor training programmes) or is designed to consolidate use of tools provided by the Commonwealth (e.g. model laws).

3.5.2 Impact

Impact is the extent to which the project has positively or negatively affected change, either directly or indirectly, intended or unintended, in high level outcome and impact indicators. The complexity of the environment and scale of the programmes means that it will be very difficult to **attribute** the direct effects of the project to changes in national rule of law and democratic process to effectively address issues such as corruption, terrorism, and international cooperation on criminal justice. However, Coffey's approach using theory of change and contribution analysis will ensure that evidence of impact is credible and plausible because they have been informed by extensive feedback from national counterparts and key stakeholders.

The TOR notes that the Secretariat's first strategic goal in its Strategic Plan is *"to support member countries to prevent or resolve conflicts, strengthen democratic practices and the rule of law, and enhance the protection of human rights"*. LCAD contributes to this goal by *"supporting member countries to promote and strengthen the rule of law that underpins strong democratic and accountable governance and by assisting members to harmonise their national laws with international frameworks."*

These goals are at the highest level and the Secretariat's programming to achieve them is relatively insignificant in the context of the global corpus of interventions aimed at promoting and strengthening the rule of law. Moreover there are a large number of important factors external to the Secretariat's involvement which varies according to circumstance and which will influence the results achieved. Under these conditions we consider it necessary to consider methods for assessing the programmes' "contribution" to change that do not solely rely definitively quantifying "attributable" change. We have therefore applied **contribution analysis** to explore causality by assessing the "contribution" the programmes are making or have made to observed results through a **theory of change** based approach. In doing so we have looked for evidence which verifies the theories of change that underpin the programmes as a whole and their component strands whilst, as far as possible, accounting for a wide range of contextual factors.

We have identified the intervention logic of the programmes in 3.2 above. Neither the logframes nor other parts of the PDDs identify a theory of change, and in interviews of Secretariat staff and stakeholders we have not seen evidence of a rigorous approach to determine intervention or programmatic logic. As discussed above in 3.4, programme logframes, while improving over the years in a number of ways, have been generally of a poor standard. Moreover, logframes appear not to be used to monitor and evaluate programmes on an ongoing basis.

Figure 6 below represents an impact chain for the Criminal Law programmes. This chain provides a set of hypotheses for how the programmes contribute to the overarching mandates – see figure 7 below.

Figure 6: The impact chain for the Criminal Law programmes

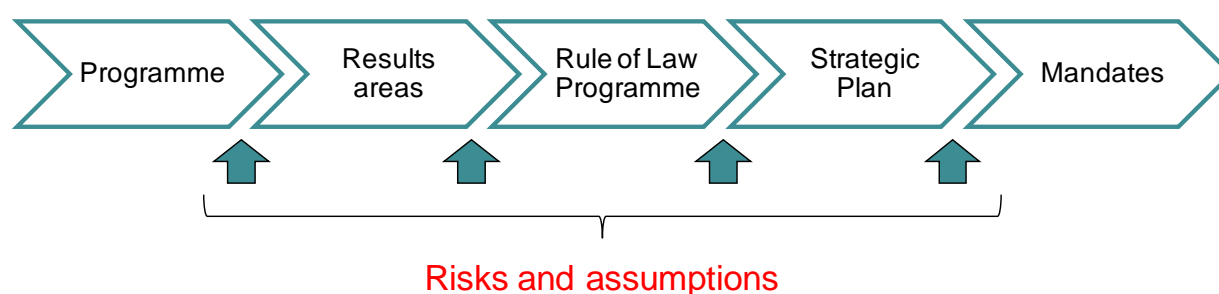
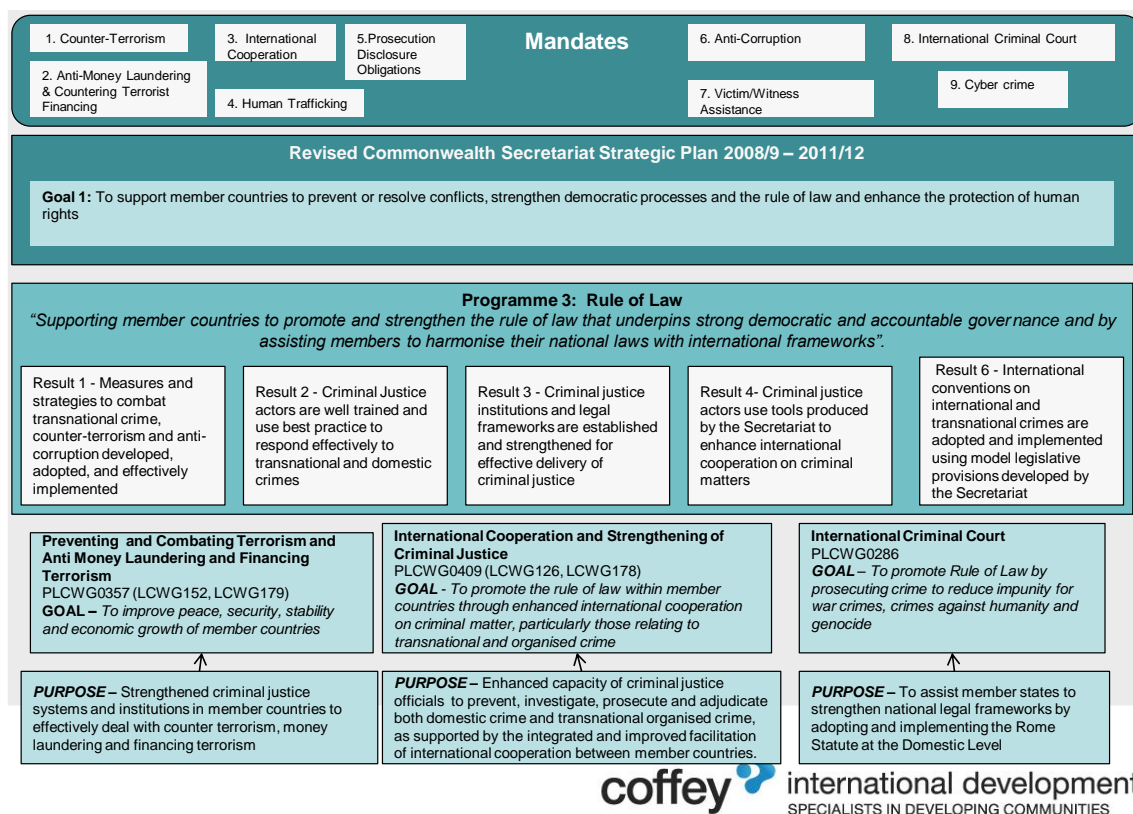


Figure 7: Theory of Change for Commonwealth Secretariat Criminal Law Programmes

This evaluation has not seen evidence of impact at the Strategic Plan result owing to the small scale and indirect nature of programme activities and because of the complexity of environment where there are many actors working towards common goals. This environment is further complicated by national, regional and international policy interventions. We consider that the ICC programme is relatively coherent and focused but it is too early to assess contribution to impact. There are however promising signs, for instance, Grenada ratified the Rome Statute of the ICC soon after a Commonwealth-facilitated conference and Seychelles has engaged actively with the Secretariat on domestic implementation of the Rome Statute. Further ratifications, accessions and use of the Commonwealth model law may in the near future present enough evidence of a contribution. The regional prosecutor training for East Africa might also have demonstrable income in future years, particularly if the mentoring component lasts its full twelve months, participants go on to train their colleagues, and the action planning workshops work well. This programme is certainly a significant step forward from the days of ad hoc activities.

In the case of some small island states in which the Secretariat is a relatively large player (e.g. Mauritius, Maldives) relative contribution of the criminal law programmes is likely to be proportionately larger. Moreover, the programmes in such jurisdictions have led to change at the output and possibly output levels that would not have occurred had it not been for the Secretariat's interventions

The Strategic Plan result areas are highly ambitious and reflect outcomes and goals to which the Secretariat can only be an extremely small player whose contribution is difficult to attribute save for particular small jurisdictions where Secretariat support is relatively larger. Interviews with beneficiaries reveal that there have been benefits in Criminal Law programming but change to higher level indicators is not possible to measure. The internal logic of some Strategic Plan indicators is questionable, for example, Indicator 1 posits a correlation between “changes in the nature and type of requests for assistance” and “members’ progress in upholding the rule of law.”

Prior to 2009, CLS programming focused on ad hoc workshops based on member country requests. There appears to have been wide discretion on the part of CLS staff regarding which projects would be implemented. In 2009, CLS moved to focus on a regional approach which was claimed in PDDs to be “holistic and needs-based”. This included the regional capacity building for prosecutors (and in the case of East Africa, police) as well as initiatives

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such as the CNCP, which acts as a facilitation network for AML. One senior Secretariat officer saw value in both national level and regional approaches but risks in both. A focus on national level programmes risks spreading Secretariat interventions too thinly but this risk may be mitigated by using national level programmes as pilots which can be scaled up either regionally or to other individual member states.

The CFTC evaluation concluded that CFTC programming had delivered some benefits but this particular evaluation did not specifically address criminal law programming. It is worth noting the evaluation's conclusions because they demonstrate the general standards found within Secretariat programming. At the *institutional or policy* level, the evaluation found that "CFTC activities have supported the building and strengthening of public institutions". At the *organisational* level, the evaluation identified "a number of changes that include (d) improved systems and data availability, improve processes or procedures, new products or services, and new or revised plans and strategies." Finally, at the *individual* level, "training has contributed to enhancing skills, providing on-the-job relevance, and opportunities for networking and sharing experiences." These comments should however be taken in the context of the doubt cast upon aspects of the Secretariat's training activities in the subsequent evaluation of training.²⁴

The CFTC evaluation regarded that Secretariat as having contributed to capacity *expansion*, capacity *replacement* and capacity *gap filling*. It did note however complaints from some countries that capacity expansion expectations were not met because there were "no planned efforts to transfer technical knowledge to the host country." Capacity replacement was sometimes critical, especially in cases of crisis or natural disaster but some stakeholders felt their needs were not being met. Gap filling was helpful in particular to small countries by providing temporary technical capacity or human resources. This was considered to be of value by interviewees from Mauritius who acknowledged a lack of local capacity in legislating for and implementing complex criminal law issues (e.g. CT, AML, and cyber crime).

DFID reviewed development assistance provided a number of key multilateral actors, including the Secretariat, in its Multilateral Aid Review (MAR). The Secretariat was judged to have "not performed strongly". In its response to the MAR, the Secretariat noted that it differed from other donors in several ways, a point also articulated in the evaluation of the CFTC, in that it "is a discreet and trusted partner" and delivers its mandates based on the collective views of its members.

The response noted positively that the MAR recognised the Secretariat's value as a "network of networks" which facilitates information sharing and extension of influence beyond the Commonwealth. However the Secretariat's considered that the MAR underestimated the Secretariat's value to small states, noting that the CFTC review had found that while the fund had less than £25 million per year it was considered responsive to small state challenges and exhibited flexibility in doing so. The response also welcomes the MAR's acknowledgement that the evaluations of debt management and maritime delimitation showed effective programme delivery but considered that DFID underestimated development in adhering to RBM (e.g. the introduction of ARTEMIS) and streamlining of the Strategic Plan after its 2009 MTR.

²⁴ Commonwealth Secretariat, *Evaluation of the Commonwealth Fund for Technical Cooperation, Volume I – Final Report*, Undated, p. iv

3.6 Impact: Comparative advantage

Evaluation Area 6 is an assessment of the Commonwealth (comparative) advantage of Secretariat's work on criminal law in relation to a larger donor community involved in this area in member countries

Comparative advantage is a key determinant of **impact**, which is *the extent to which the project has positively or negatively affected change, either directly or indirectly, intended or unintended, in high level outcome and impact indicators*. The complexity of the environment and scale of the programmes means that it will be very difficult to **attribute** the direct effects of the project to changes in national rule of law and democratic process to effectively address issues such as corruption, terrorism, and international cooperation on criminal justice. However, our approach using theory of change and contribution analysis will ensure that evidence of impact is credible and plausible because they have been informed by extensive feedback from national counterparts and key stakeholders.

3.6.1 Comparative Advantages

The Strategic Plan claims that the Secretariat has a number of **comparative advantages** over other international development actors. These are:

- Commonwealth 'values'
- 'Diverse membership'
- 'Small states'
- 'Similarity of governmental administrative systems' and English as a common language
- 'CHOGM and Ministerial meetings', convening power and high-level dialogue
- Common law (noted as a comparative advantage of the Rule of Law programme)
- Strong gender and human rights dimension (noted as a comparative advantage of the Rule of Law programme)

We found some evidence for each of these comparative advantages, with a number being of particular potential significance in Criminal Law programming. The Secretariat's focus on small states was considered a comparative advantage by virtually all stakeholders interviewed. Small states were comparatively well-supported in Secretariat programmes and several small states, including Mauritius and Maldives, had made regular use of Secretariat assistance. A very senior interviewee from Mauritius considered the Secretariat as his "first port of call" for most criminal justice needs. This additional attention to the needs of small states is also reflected in the Commonwealth convening conferences focusing on the specific needs of small states.

Fitting broadly within the comparative advantages of **Commonwealth 'values' and networks**, there was consensus among stakeholders regarding the Commonwealth's status as a trusted partner for member countries. They characterised the relationship between member states and the Commonwealth as being of a more consensual and reciprocal nature than traditional donor-beneficiary relationships. In particular, the Commonwealth does not impose conditionality and lacks coercive power. The engagement is predicated on Commonwealth values and principles. Member states sometimes prefer the Commonwealth to engage on particular issues, particularly as opposed to with powerful (or controversial) individual countries or international bodies. An example cited by a senior Secretariat official was that African member states seemed to prefer Commonwealth engagement on the ICC to other fora. A number of stakeholders noted that the relationship they enjoyed with the Secretariat was of a more intimate and informal nature than the relationships they had with the UN or other donors. Moreover, there appeared to be a perception among some member states that the Commonwealth is not promoting a Western/northern agenda and that it facilitates south-south dialogue and capacity building more than most international players. Beneficiaries added that the Secretariat could move quickly to respond to and address requests for assistance from member states, and was 'less bureaucratic' than some other donors.

There was consensus among Secretariat staff regarding the comparative advantage of **shared legal systems** (i.e. common law) and use of the Harare Scheme. At the strategic level in particular this allows officials to meet and discuss common challenges and develop plans. Beneficiaries also regarded the Secretariat as having excellent

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convening power, providing a quick and flexible response to requests. However the other areas of comparative advantage were less important in the view of beneficiaries of Criminal Law programmes.

Individually or in aggregate Secretariat comparative advantage is however insufficient to warrant programming in a particular area. Specifically, presence of a comparative advantage does not increase the likelihood of a programme having impact and sustainability. In our view it is a necessary but not sufficient precondition for Secretariat programming. The Secretariat must also add value. Criteria to be considered during programme development in judging whether there is added value include identification of needs and programmatic alignment with this; harmonisation with other donors (particularly to avoid duplication); bringing expertise which meets these needs and, might otherwise be unavailable or too costly; and the potential sustainability of the intervention. If these criteria had been applied to past programme design it is our contention that Secretariat programming would have been much more focused and coherent, and measurement of the Secretariat's contribution to impact would have been more possible. Piracy was considered as an example of a criminal law area where the Secretariat could facilitate engagement among member states and with other donors but ought not to programme.

CLS has regularly used **pro bono experts**, including a number of eminent senior prosecutors and barristers, to deliver short term mentoring programmes. Australian and New Zealand prosecutors were also engaged on a pro bono basis to act as long-term (12 months) mentors for the Asia-Pacific and East Africa prosecutor training programmes. This use of pro bono expertise is considered to be an additional comparative advantage of the Secretariat's Criminal Law work in the view of some Secretariat staff and beneficiaries. CLS has been able to deploy eminent lawyers at minimal rates, resulting in significant cost saving over engaging such experts at consultant rates.

There are however some weaknesses in this system. As was detailed in above, a number of mentors in the Asia-Pacific prosecutor training appeared to have dropped out of their mentoring duties after only a few months. This resulted in a number of developing country prosecutors not getting the optimum benefit of the project. In another case, programming was interrupted by the unavailability of two pro bono experts. We have concern that pro bono experts may not place Secretariat duties above other (paid) opportunities. There appears to be limited recourse by the Secretariat in such cases whereas if there was a paid consulting arrangement the Secretariat would presumably have more capacity to enforce performance of contractual terms.

Pro bono experts are recruited at the discretion of CLS. There is no advertising of positions and experts are identified from internally held lists of experts and CVs, through persons offering their services and through contacts in professional bodies or governments. There is limited performance management of pro bono experts and they do not appear to be subject to rigorous terms of reference. Participants in activities were asked to complete feedback sheets and CLS staff visit the training or mentoring sessions and observe the pro bono experts.

We conclude that the use of pro bono expertise adds benefit to Secretariat programming but that it should be underpinned by open advertising of positions, specific terms of reference and a risk assessment made as to the likelihood and impact of the pro bono experts not fulfilling their obligations.

Recommendation 10

The Secretariat develop a policy on use of pro bono experts which includes a requirement of open advertising of positions, development of specific terms of reference, and a risk assessment.

3.7 Lessons Learned

Evaluation Area 7 is the identification of lessons learnt in the design and delivery of the Criminal Law mandates and recommend strategic and operational changes that may be required to make it more focussed, relevant and sustainable.

The key lesson learned is that if CLS had employed from 2007 sound project cycle management, RBM and good international development practice most of the weaknesses and deficiencies observed in this evaluation might have been avoided. The Secretariat had a broadly fit-for-purpose Project Management Manual dating from 2000 but we saw little evidence of its use. While Criminal Law programmes were broadly relevant to mandates and to member country demands, until recently they have lacked the focus and internal coherence necessary for them to unambiguously contribute to change at the Strategic Plan results area level.

More specifically, we propose the following lessons learned, most of which are reflected in recommendations for strategic and operational change:

- the Secretariat should articulate criteria to be applied when considering approval of member country requests for Criminal Law technical assistance
- The mandates and Strategic Plan are too broad and the process translating them into programmatic interventions is too complex
- A lack of adherence to RBM has limited programme effectiveness, efficiency, sustainability and impact
- Despite mainstreaming being mandated for a number of years for gender, human rights and youth, the Criminal Law programmes have done little to mainstream these issues into design and delivery of programmes
- Some aspects of the Criminal Law programme do not represent good value for money – the need for overseas travel needs to be monitored closely
- Grant funding, despite the Secretariat generally not being a grant-awarding agency, is common in Criminal Law programming
- There have been too many instances of extensions and revisions to programmes, a clear indicator of the need for better planning and budgeting
- Ad hoc training and workshops, which have little potential for impact, have been used frequently but there is evidence of recent efforts to make programmes more coherent and focused.

3.8 Acknowledgements

The authors acknowledge the excellent support they received from Commonwealth Secretariat staff, particularly Mr Yogesh Bhatt, Adviser and Head of Evaluation (SPED), Mr Akbar Khan, Director LCAD, and CLS staff; and extend their gratitude to other officials of the Secretariat, member states' governments, international organisations, and other stakeholders who agreed to be interviewed for this evaluation.

4 Recommendations

Following are recommendations for strategic and operational changes the Secretariat might wish to make to make the Criminal Law programme more focussed, relevant and sustainable.

Recommendation 1:

As part of its efforts to improve the cohesion and focus of its programmes the Secretariat should articulate criteria to be applied when considering approval of member country requests for Criminal Law technical assistance. We would suggest a matrix approach taking into account the following criteria at a minimum:

- Alignment with a Strategic Plan rule of law programme results area or CHOGM or CLMM mandate (mandatory)
- Harmonisation with donor interventions to promote complementarity and to reduce duplication (mandatory)
- Rigorous scoping study / needs assessment undertaken (mandatory)
- Technical assistance represents value of money compared with reasonable alternatives (mandatory)
- Resources available to the Secretariat to meet the demand (mandatory)
- Technical assistance complements broader Commonwealth programming (desirable)

We recommend the matrix should also include the following factors relevant to prioritising a country:

- Small state
- In conflict or in danger of return to conflict
- Fragile state
- Least Developed Country/ relative UN HDI status
- Addresses MDGs
- Addresses cross-cutting and mainstreaming themes (gender, youth, human rights)
- Supports broader political efforts of the Commonwealth and promotes Commonwealth values

Recommendation 2:

The forthcoming Strategic Plan should narrow the scope of the Rule of Law programming in order to promote focusing of effort and programmatic coherence.

Recommendation 3:

LCAD should issue a guidance note detailing how the mandates and Strategic Plan results are to be translated into programmatic interventions, and strictly monitor compliance with this.

Recommendation 4:

Senior management including the Secretary General and Deputy Secretaries General should actively promote RBM and compel compliance with it.

Recommendation 5:

The Criminal Law Section should actively collaborate with STPD, HRU and YAD to incorporate mainstreaming areas into existing and future programming, including disaggregating for gender and youth where possible in logframe indicators. PDDs should demonstrate more rigorous consideration of gender, human rights and youth issues and the risks and opportunities to these in the programmes.

Recommendation 6:

- *The Secretariat apply strict criteria for overseas travel*
- *Attendance at workshops and conferences only if the staff member has an active role, e.g. conducting training, giving a major presentation. Attendance of staff undertaking administrative or logistical tasks should only be permitted in exceptional circumstances*

RECOMMENDATIONS

- *Increased use of videoconferencing or conference calls for discussions with partner organisations or beneficiaries*
- *The Secretariat develop a robust policy on promoting VFM throughout its key management and processes and in its resource allocation decisions.*

Recommendation 7:

The Rule of Law programme's result areas, as articulated in the next Strategic Plan, reflect higher level goals rather than types of intervention.

Recommendation 8:

We recommend that all programmes be time-bound and extensions to programmes be granted only in exceptional circumstances.

Recommendation 9

The Secretariat should not provide training or workshops in Criminal Law programmes unless the training is an integral part of a longer term programme of assistance (e.g. the regional prosecutor training programmes) or is designed to consolidate use of tools provided by the Commonwealth (e.g. model laws).

Recommendation 10

The Secretariat develop a policy on use of pro bono experts which includes a requirement of open advertising of positions, development of specific terms of reference, and a risk assessment.

Annex A – Terms of Reference

Evaluation of Commonwealth Secretariat's Support to Member Countries on Criminal Law





Request for Tenders

Invitation to Individual/Group of Consultants / Consultancy Companies from Commonwealth Member Countries

Project Reference:	SPED/PCWG/0619
Assignment Title:	Evaluation of Commonwealth Secretariat's Support to Member Countries on Criminal Law
Level of Effort & Duration:	45 person days (including field mission)
Location:	United Kingdom and Field visits to selected Commonwealth countries
Budget:	Professional fees at the rate of up to a maximum of £500 per day. In addition, costs (economy class travel, subsistence, local travel) related to field missions to selected commonwealth countries (to be agreed) and other project related expenses will be reimbursed on receipt of itemised statement of expenditure and supporting receipts
Responsible to:	Director, Strategic Planning & Evaluation Division, Commonwealth Secretariat or his nominee
Closing Date for Applications/Proposals:	Tuesday, 10 January 2012 (1800 hrs BST)

1. This invitation is open to individual/group of consultants who are nationals of Commonwealth member countries / Consultancy companies registered in Commonwealth countries that meet the eligibility criteria.
2. The Commonwealth Secretariat is seeking proposals for a consultancy to undertake an evaluation of its Criminal Law Programme. The terms of reference (TOR) for the consultancy are attached herewith.

The proposal should show how you would carry out this consultancy to meet the specific objectives set out in the TOR. The proposal should also provide details of the personnel to be assigned to the assignment, including their professional qualifications and specific experience. It would also be helpful

if you can include a short statement of your team's relevant expertise and experience in undertaking similar evaluation studies.

In submitting the proposal, you should be aware that the Commonwealth Secretariat has a policy on gender issues and consultancy firms are encouraged to include women consultants in their teams.

The Secretariat has estimated the resources required to deliver the outputs as approximately 45 consultant days over the period February to June 2012. Included in your proposal should be:

- i. An interpretation of the Terms of Reference of the evaluation study;
- ii. A discussion of your approach to the task and a schedule of work;
- iii. A budget for the work, including fees and costs; and
- iv. Full CVs of each team member and assignment details.

We are requesting several organisations to submit proposals and the Commonwealth Secretariat is not obliged to accept the lowest value, or indeed any tender.

We should receive an electronic copy of your proposal by Tuesday, 10 January 2012.

Further information on the Commonwealth Secretariat's development assistance can be obtained from www.thecommonwealth.org.

3. For information on the tender, clarification of any aspects in the documentation and submissions of applications, please contact Mrs Puja D Sharma (p.sharma@commonwealth.int)

Thank you for your interest.

Mrs Puja D Sharma
Human Resources
Commonwealth Secretariat
Marlborough House
Pall Mall
London SW1Y 5HX
United Kingdom
Fax: +44 (0) 207 747 6520

(Note: In view of the volume of applications the Secretariat receives, it is our practice to communicate further about this vacancy only with those who are short listed. If you do not hear from us within three months of the closing date, you may assume that your application has not been successful)



TERMS OF REFERENCE

Evaluation of Commonwealth Secretariat's Support to Member Countries on Criminal Law

1. Background

As part of the ongoing programme of in-depth evaluation studies, the Commonwealth Secretariat's Strategic Planning and Evaluation Division (SPED), in collaboration with the Legal and Constitutional Affairs Division (LCAD), is undertaking an evaluation of the work undertaken by the Secretariat in supporting member countries in the area of Criminal Law between 2007-2011.

The Secretariat's Strategic Plan's (2008/09-2011/12) first strategic goal is *"To support member countries to prevent or resolve conflicts, strengthen democratic practices and the rule of law, and enhance the protection of human rights"*. LCAD, which implements the "Rule of Law" Programme of the Secretariat, contributes to this goal by *"Supporting member countries to promote and strengthen the rule of law that underpins strong democratic and accountable governance and by assisting members to harmonise their national laws with international frameworks"*. LCAD's Criminal Law Section, which implements the Criminal Law mandates, contributes to this programme objective through their contribution to the following results, as defined in the Strategic Plan.

- a) Measures and strategies to combat transnational crime, counter-terrorism and anti-corruption developed, adopted, and effectively implemented;
- b) Criminal Justice actors are well trained and use best practice to respond effectively to transnational and domestic crimes;
- c) Criminal justice institutions and legal frameworks are established and strengthened for effective delivery of criminal justice;
- d) Criminal justice actors use tools produced by the Secretariat to enhance international cooperation on criminal matters; and
- e) International conventions on international and transnational crimes are adopted and implemented using model legislative provisions developed by the Secretariat.

The key beneficiaries in member countries are the criminal justice officials and institutions, i.e. the Police, Prosecutors and Judges.

The Criminal Law Section draws its mandates from Law Ministers and Commonwealth Heads of Government Meetings, which seek to strengthen criminal-justice institutions and enhance the capacity of criminal justice officials of member states. Some of these mandates address international and transnational crimes, by

providing technical assistance to countries to enable them to implement the provisions of the various relevant international conventions and resolutions of the United Nations.

Between 2007 and 2011, the Criminal Law Section has had a number of specific mandates in the thematic areas of criminal law. Some of these mandates are in substantive areas of law while others are procedural, complementing the implementation of the substantive mandates. These include: Counter-Terrorism (CT), Anti-money Laundering and Financing of Terrorism (AML/CFT), International Cooperation, Prosecution Disclosure Obligations, Human Trafficking, Corruption, Anti-corruption Strategies for Commonwealth Small Jurisdictions, Victims/Witness Protection and Assistance and the International Criminal Court. These mandates have been implemented by the Secretariat through various projects.

In the delivery of its mandates the Section embarks on building the capacity of officials working in the criminal justice systems that are required to effectively implement measures that would promote and strengthen rule of law. It also includes the strengthening of criminal justice systems by providing bespoke assistance to legislative reforms. This approach acknowledges that member countries are at different stages of legal and structural developments, and therefore adopts regionally oriented/ in-country strategies to achieving results. These strategies include regional or in-country specific training workshops, mentoring, and placement of prosecutors, as well as the development of implementation kits, manuals and model legislation.

2. Purpose

The overall purpose of this evaluation is to assess the relevance, efficiency, effectiveness, sustainability and impact of the rule of law programmes delivered by the Criminal Law Section between 2007-2011 with a view to defining the focus and form the technical assistance programme should take, and to recommend strategic and operational changes that may be required by the Secretariat to make the delivery more focussed, relevant and sustainable. The evaluation will contribute to an overall review of LCAD's criminal law work.

Specifically, the study will:

1. Review the Criminal Law work of the Rule of Law programme against the relevant CHOGM and Ministerial mandates.
2. Assess the effectiveness and impact of the assistance provided to member governments in strengthening their criminal-justice institutions and capacity of criminal justice officials.
3. Evaluate the overall management approaches, including the design, modes of delivery and implementation strategies in terms of their relevance, efficiency and sustainability.
4. Assess the Commonwealth (comparative) advantage of Secretariat's work on criminal law in relation to a larger donor community involved in this area in member countries.
5. Examine the extent to which the three mainstreaming areas of gender, human rights and youth have been incorporated into the design and delivery of Secretariat's efforts.
6. Assess the continued relevance of the Criminal Law work of the Rule of Law programme and assess its likely demand, including but not limited to content, focus and quality, over the coming years to inform recommendations on forward direction of the programme.

7. Identify lessons learnt in the design and delivery of the Criminal Law mandates and recommend strategic and operational changes that may be required to make it more focussed, relevant and sustainable.

3. Scope and Focus

The evaluation period will cover Secretariat's Criminal Law work implemented from 2007 onwards, though some reference may be required to mandates which had been carried forward from before, their implementation, results and any lessons that could usefully be applied in the forward direction of the programme. Based on the evaluation findings, the study is expected to propose both strategic and operational changes that would enable the Secretariat to better deliver its mandate.

4. Suggested Methodology

The Consultant will include the following key steps in the conduct of the evaluation for information collection, analysis and feedback during the study.

- Review of all pertinent records and data related to the Criminal law work of the Secretariat.
- Interviews of LCAD personnel and others engaged in the delivery of Criminal Law activities at the Secretariat.
- Interviews of selected stakeholders- governments, programme partners, collaborating institutions, and project beneficiaries- through field visits and electronically.
- Such additional activities as may be agreed with SPED Evaluation Section in order to enable the proper execution of the evaluation study.

5. Deliverables

The evaluation study will provide the following deliverables to the Secretariat:

1. Evaluation framework with work plan and methodology
2. Draft evaluation report
3. A seminar/ presentation of the findings and recommendations
4. Final evaluation report, incorporating all feedback/ comments

The deliverables must be submitted to SPED electronically as a Microsoft document. A draft Evaluation Report is to be submitted within two weeks of completion of the fieldwork stage. Following the presentation of the evaluation findings at a seminar at the Secretariat and receipt of feedback comments from the Secretariat and other stakeholders on the draft report, the evaluator is expected to submit a revised final Evaluation Report. The draft (and final) Evaluation Reports must be no more than 50 pages, excluding all annexes.

6. Schedule and Level of Effort

The study is planned to commence in February 2012. It is estimated that up to 45 consultant days will be appropriate to complete the study, including agreed field missions. Field missions will include fact finding missions to at least one country in the Commonwealth Region. The country will be finalized after the selection

of the consultant(s) and after the review of pertinent records and data related to the Criminal Law work of the Secretariat.

The consultant(s) will work in close collaboration with the Secretariat (SPED / LCAD).

7. Consultant's Specifications

The consultant/team must demonstrate professional expertise in the area of Criminal Law and must have a strong track record in evaluating development assistance activities, particularly in the area of evaluating Criminal Law work. In addition, work experience in and knowledge of the geographical regions of the Commonwealth will be an added advantage.

Annex B – Bibliography

Evaluation of Commonwealth Secretariat's Support to Member Countries on Criminal Law



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Annex C – Persons Consulted

Evaluation of Commonwealth Secretariat's Support to Member Countries on Criminal Law



Annex C Persons Consulted

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