

Meeting of Senior Officials of Commonwealth Law Ministries

Videoconference - 16 and 17 February 2021

OUTCOME STATEMENT

1. Senior Officials from Commonwealth law ministries met on 16 and 17 February 2021. Due to the COVID-19 pandemic, the meeting took place for the first time by videoconference. Senior Officials discussed the topics to feature on the agenda of the next Commonwealth Law Ministers' Meeting (CLMM) and discussed the impact of COVID-19 on the rule of law in the Commonwealth. The meeting was attended by Senior Officials from 34 member countries.
2. The meeting elected Rwanda to the chair in the person of Mr George Karemera, Senior State Attorney. The agenda was formally adopted.

LEGAL WORK OF THE COMMONWEALTH SECRETARIAT AND CHOGM 2018 OUTCOMES

3. The meeting received a detailed report from the Commonwealth Secretariat (the Secretariat) on the rule of law-related work undertaken since the last CLMM held in Colombo, Sri Lanka, in November 2019. Senior Officials noted progress on several of the issues discussed during CLMM, including restorative justice and diversity in the judiciary. They noted that comprehensive studies on these topics would be submitted to Law Ministers at their next meeting. Senior Officials were also informed of the work conducted on the implementation of the Cyber Declaration, adopted by Heads of Government at their meeting in April 2018, with the second phase of the project having started in September 2020.
4. Senior Officials noted that the Secretariat will be collecting information, where relevant, on the implementation in member countries of the various schemes adopted by the Commonwealth over the years, more specifically the schemes on mutual legal assistance in criminal matters. They agreed to provide the information requested, including domestic legislation, which will be made accessible to member countries.
5. Senior Officials acknowledged the impact of the COVID-19 pandemic on the work of the Secretariat and the delivery of its activities. Senior Officials commented positively on the innovative initiatives implemented by the Secretariat during the pandemic, including the webinar series, and encouraged the Secretariat to continue to identify sustainable ways to deliver its work.

MODEL PROVISIONS ON DATA PROTECTION

6. Senior Officials received a paper presenting the final text of the Commonwealth Model Provisions on Data Protection. At their meeting in 2019, Law Ministers recommended that the previous Model Bills for both the public and private sectors be revisited in light of global developments in data protection law. Senior Officials welcomed the work done on the new Model Provisions on Data Protection and the accompanying commentary. Senior Officials noted the intention for the Model Provisions on Data Protection to be flexibly applied in order to promote high standards of data protection while enabling standards to be developed and/or maintained in the variety of regulatory environments found in the Commonwealth and to align with relevant domestic and international standards and systems.
7. Senior Officials highlighted the role the Model Provisions on Data Protection could play in providing Commonwealth member countries with guidance in developing and updating their legal enactments on data protection. Senior Officials noted the exponential increase in personal-data generation and the many uses that arise from the adoption of new technologies and business models, and the need to build and maintain confidence and trust in data use, government, and digital trade.
8. Senior Officials agreed that the Model Provisions on Data Protection should be received by them before being presented to Law Ministers at their next meeting.
9. Senior Officials acknowledged the dynamic nature of the data protection field and the rapid pace of development and implementation of domestic and international legislation and regulations, which could impact the Model Provisions on Data Protection. Senior Officials therefore agreed that consideration should be given to a review of the Model Provisions on Data Protection two years from the date of endorsement by Law Ministers.

PROPOSED WORK PLAN OF THE COMMONWEALTH CIVIL PROCEDURE LAW REFORM WORKING GROUP

10. Senior Officials recalled that at their meeting in 2018, they asked the Secretariat to establish an informal open-ended expert working group with equitable geographic representation from across the Commonwealth to identify a core group of civil procedure law and rules challenges commonly encountered and to propose potential solutions. The Commonwealth Civil Procedure Law Reform Working Group (Working Group) was established and, in 2019, Law Ministers recommended that the Working Group develop a work plan and report on its work at their next meeting. Senior Officials received the work plan developed by the Working Group.
11. Senior Officials noted that the Working Group identified five key areas in its work plan: 1) case management; 2) e-filing of documents; 3) mediation; 4) e-discovery and e-disclosure; and 5) laws of evidence and admissibility of evidence.
12. Senior Officials agreed with the key areas identified by the Working Group.

13. Senior Officials indicated their willingness to support the work of the Working Group through sharing details of initiatives in place in their jurisdictions. Senior Officials requested that the Working Group provide an update on its work to Law Ministers at their next meeting.

SUPPRESSION ORDERS IN THE COMMONWEALTH

14. At their meeting in 2019, Law Ministers used the round table discussion to raise the issue of the enforcement, in the digital age, of suppression orders, i.e., court-issued injunctions prohibiting the publication of particular details of on-going, or the outcome of, legal proceedings. Law Ministers had recognised how the internet had negatively affected the efficacy and enforcement of suppression orders, particularly in the context of extra-territorial breaches. Law Ministers had agreed to explore potential solutions, including the establishment of frameworks that would enable mutual recognition of suppression orders in the Commonwealth.
15. Senior Officials received a paper providing examples of legislation regulating suppression orders in Commonwealth countries. Senior Officials noted how legal enactments on this topic varied across the Commonwealth. Senior Officials also acknowledged that a number of considerations would have to be taken into account when determining the most effective mechanism for mutual recognition of suppression orders in the Commonwealth, including domestic legal frameworks, the principle of open courts, and the role of online service providers and search engines.
16. Senior Officials requested that the Secretariat establish an expert working group, which would meet virtually, to assess the need for a formal structure. They recommended that the working group update the Senior Officials, and report to Law Ministers at their next meeting, providing options, which would assist Law Ministers in deciding on further work.

REPEALING GENDER DISCRIMINATORY LAWS IN THE COMMONWEALTH

17. The Meeting received a paper reporting on the recent work undertaken by the Secretariat in repealing gender discriminatory laws. Senior Officials noted that the Secretariat's work in this area was premised on the commitment to gender equality found in the Commonwealth Charter, and member countries' commitment to meeting the Sustainable Development Goals (SDG), including SDG 5 on the promotion of gender equality.
18. Senior Officials noted that the Secretariat, in partnership with UN Women, the World Bank, and other organisations, launched a strategy entitled *Equality in Law for Women and Girls by 2030: A Multistakeholder Strategy for Accelerated Action*. The Secretariat will be delivering its commitment under the strategy through awareness raising and consensus building activities and the provision of technical assistance to Commonwealth member countries.
19. Senior Officials shared examples of successful law reform initiatives undertaken in their jurisdictions to eliminate discriminatory laws. Senior Officials welcomed the Secretariat's efforts to deliver on the objective of eradicating gender discriminatory laws and stressed that the assistance provided would be at the request of member

countries. Senior Officials noted the recent legislative reforms in member countries, which contributed to increasing gender equality. They invited member countries that wished to avail themselves of the assistance available to contact the Secretariat. Senior Officials recommended that an updated report be presented to Law Ministers, highlighting successful legal reforms and their impact on gender equality in member countries.

ACTION PLAN ON THE DECLARATION ON EQUAL ACCESS TO JUSTICE

20. At their meeting in 2019, Law Ministers adopted the Declaration on Equal Access to Justice, representing their collective commitment to provide the leadership required to ensure that Commonwealth member countries realise the objective of equal access to justice for all and the Sustainable Development Agenda 2030, including SDG 16. Senior Officials received a draft plan of action for the implementation of the Declaration.
21. Senior Officials considered the plan of action, which outlined recommendations for countries and proposed work by the Secretariat under the Declaration's themes. Senior Officials noted the importance of maintaining access to justice on the agenda of Commonwealth Heads of Government and Law Ministers, as a way to meet SDG 16 in Commonwealth countries.
22. Senior Officials agreed that the plan of action, when finalised, should be submitted to Heads of Government for their adoption.

SINGAPORE CONVENTION ON MEDIATION

23. Senior Officials received a paper on the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation). Senior Officials recalled that at their last meeting in November 2019, Law Ministers discussed arbitration and other potential dispute resolution mechanisms, such as mediation, which can be harnessed to enhance the goal of equal access to justice for all. Member countries were also encouraged to consider signing and ratifying the Singapore Convention on Mediation.
24. Senior Officials noted the potential benefits of the Singapore Convention on Mediation and shared examples of successful practice on mediation for international commercial disputes. Senior Officials recommended that the Singapore Convention on Mediation feature on the agenda of the next Law Ministers Meeting, in order to share good practice.
25. Senior Officials noted the importance of mediation as a means of increasing access to justice, not only in the context of the Singapore Convention on Mediation. They noted that the Commonwealth Civil Procedure Law Working Group had identified mediation as one of its areas of work and encouraged the Secretariat to disseminate good practice in Commonwealth countries.

THE IMPACT OF COVID-19 ON THE RULE OF LAW IN THE COMMONWEALTH

26. Senior Officials received a paper outlining some of the pandemic's main impacts on human rights and various areas of the rule of law, including access to justice, legislative measures and law enforcement. The paper also considered how the pandemic has fostered a rise in specific types of crime, such as domestic violence, online child abuse, and online fraud.
27. Senior Officials agreed that the COVID-19 pandemic has had an unprecedented impact on justice systems across the Commonwealth and the ability of individuals and businesses to access justice to resolve their problems and that the consequences were likely to be long-lasting. Senior Officials shared examples of the challenges they had experienced in the past year, including lost court days, closure of courts, all of which exacerbated existing threats to human rights, particularly on media freedom and access to information. They also highlighted the innovative measures adopted in their countries to mitigate the impact of the pandemic and its associated restrictions on their justice systems. Senior Officials noted measures such as the introduction of virtual meeting technologies, the use of alternative dispute resolution mechanisms, electronic filing, and the amendment of court rules to provide greater flexibility.
28. Senior Officials acknowledged that the pandemic had led to the rapid adoption of technology in the delivery of justice services. They noted how the impact of these technologies on access to justice had not yet been fully assessed. Senior Officials requested that the COVID-19 pandemic's impact on the rule of law be placed on the agenda of the next meeting of Law Ministers in order to reflect on long-term impacts and measures to ensure effective and responsive civil and criminal justice systems through a sharing of good practice and lessons learned.

REPORTS FROM PARTNER ORGANISATIONS

29. Senior Officials noted with appreciation reports received from the Secretariat's partner organisations: the Commonwealth Association of Law Reform Agencies (CALRAs), the Commonwealth Magistrates' and Judges' Association (CMJA), the Commonwealth Lawyers' Association (CLA), the Commonwealth Legal Education Association (CLEA), the Commonwealth Association of Legislative Counsel (CALC), the Commonwealth Judicial Education Institute (CJEI), and the Commonwealth Parliamentary Association (CPA). The meeting also received an update on international humanitarian law in the Commonwealth from the British Red Cross and the International Committee of the Red Cross (ICRC).

ROUNDTABLE DISCUSSION

30. Senior Officials noted the proposal for a Law Ministers Action Group. Senior Officials expressed support in principle for a mechanism that would advise the Commonwealth Secretary-General but urged caution regarding the inclusion of a peer review mechanism. Senior Officials requested that, before the proposal for an action group can be presented to Law Ministers, additional details be provided on

the rationale and scope of such a group, including the purpose, deliverables, the Secretariat's capacity, and funding requirements, if any.

31. Senior Officials supported a proposal for the update of relevant Commonwealth mutual legal assistance networks. Senior Officials agreed to make contact details available to the Secretariat and recommended that they be made available to member countries. A proposal was made for the Secretariat to consider developing guidelines on mutual legal assistance frameworks between common law jurisdictions and civil law jurisdictions.
32. Senior Officials discussed the Commonwealth's important work on media freedom and recommended the establishment of an expert working group, as a matter of priority, which will examine the substantive issues behind the Commonwealth Principles on Freedom of Expression and the Role of the Media in Good Governance, with a mandate to review the Principles as drafted by Commonwealth accredited organisations, and make appropriate recommendations. Senior Officials requested to review the outcome of the deliberations of the working group before it is presented to Law Ministers.

NEXT COMMONWEALTH LAW MINISTERS' MEETING

33. The Meeting noted that in accordance with the cycle of CLMM, the next meeting should be taking place in the autumn of 2021. Senior Officials recommended that CLMM be held in person and acknowledged that due to the uncertainty created by the COVID-19 pandemic, it was still difficult to plan such a meeting. Senior Officials encouraged member countries to inform the Secretariat if they would be interested in hosting.