



Discussion Paper

Virtual, 27 - 29 April 2021

Policies and Legislation: the Enabling Environment for Change

Lessons Paper by the Commonwealth Secretariat

Background

This paper identifies lessons for the Commonwealth Secretariat ('the Secretariat) related to impact. Target users for this paper are decision-makers in the organisation, from those involved with internal and external governance mechanisms to senior managers and individual employees. The paper distils lessons emerging from evaluations, meetings and action learning groups. It proposes actions to be taken forward by senior management, team leaders and individuals. This learning will also inform discussions on the development of performance indicators for the Secretariat to track progress in the effective delivery of its impact pathways in the new Strategic Plan.

The Commonwealth Secretariat's impact pathways

'Impact pathways' are the delivery strategies employed by the Secretariat to respond to the needs of member states, as expressed through the organisation's Strategic Plans. The 'pathway' refers to the change processes through which the Secretariat's actions are expected to contribute to desired outcomes. Beginning in 2012, the Secretariat identified a number of such pathways. It refined these during the development of the current Strategic Plan to the following:¹

1. Consensus Building, Thought Leadership and Advocacy
2. Policy and Legislative Development
3. Institutional and Capacity Development
4. Networking, Knowledge Generation and Sharing
5. Performance Management

Each pathway draws on the Secretariat's experience, knowledge and competencies in delivery to inform practitioners' theories, hypotheses and expectations of how actions taken and packaged will lead to desired results.

The 2020 consultation on the new Strategic Plan reviewed each pathway as part of the enabling factors for delivery. It focused particularly on greater collaboration across the Secretariat, strengthening monitoring, evaluation and learning, staff development, and funding. These actions could enable the Secretariat to deliver better for member countries, becoming a partner of choice, with more coherent, efficient and effective programming.

Introduction: the Commonwealth Secretariat's approach to policy and legislative development

Improved governance and absorption capacities of Commonwealth member states is core to the work of the Secretariat. Strengthened governance to deliver services to Commonwealth citizens is a core mandate in the Commonwealth Charter ('the Charter'), which is an agreed position for all member states. Sustainable development rests on sound policies and legislation that direct and manage interventions. The Secretariat's policy and legislation support to member states responds to this core governance function.

While there is no explicit definition of policies² and legislation³ used by the Secretariat, it is agreed by all the teams involved that policies are the guiding principles that inform legislation. Formulation of policies and legislation is the responsibility of national governments, an area that member states entrust the Secretariat to support. The trusted role of the Commonwealth provides for entry into member states governance and decision-making spaces involving policy and legislation. This delicate space is critical. Here, trusted expertise supports member states through strategic gap filling to deliver on key governance mechanisms, keeping them accountable while fulfilling Commonwealth principles as laid out in the Charter.

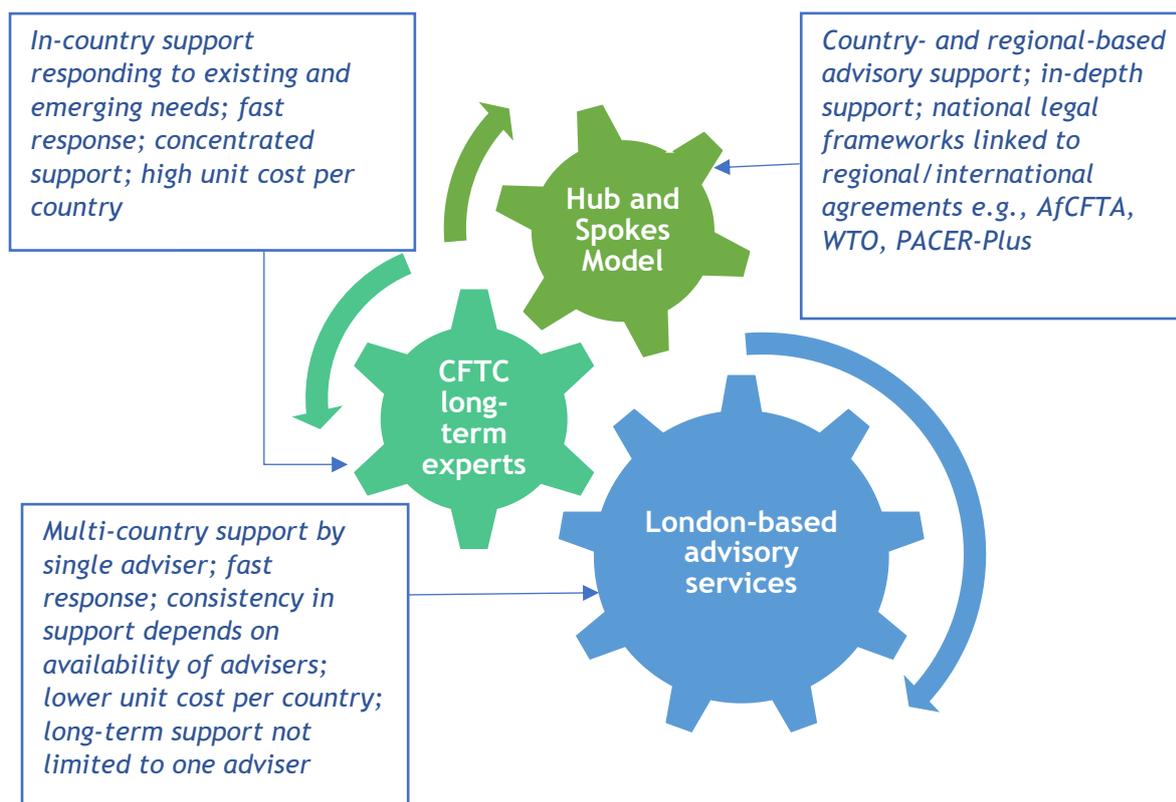
Delivery approach

The Secretariat's dedicated team of advisers responds to member states' policy and legislation needs. This expertise is supplemented by long-term and short-term consultants/experts sourced from member states (see Figure 1). Support ranges from defining the problem in consultation with stakeholders, drafting policies and legislation as required, to the development of strategies and plans for delivery. Key areas the Secretariat responds to within the policy and legislation domain include:

- Policy development
- Legislative drafting
- Investment treaties
- Development of model laws
- Negotiation of international agreements
- National plans and strategies
- Constitutional reviews and reforms
- Commonwealth plans of actions

The Secretariat's delivery approach to member states includes both capacity building to enable expansion of governmental capability in developing sound policies and legislations, as well as expertise within specific policy/legislation drafting processes. The three recognised models utilised are: London-based advisory services; Commonwealth Fund for Technical Co-operation (CFTC) long-term experts; and the Hub and Spokes Model (see Figure 1).

Figure 1. Delivery models



Methodology and approach

The approach taken to develop the paper included a review of the evaluations carried out in the last ten years, focusing on findings and lessons learnt. This included Strategic Plan evaluations, programme evaluations, project evaluations and country evaluations, internal reviews, and internal audits. Most of these evidence pieces were externally led. Notes from the consultation carried out ahead of the new Strategic Plan, with staff and Commonwealth organisations, were also reviewed. Evidence was also triangulated with discussions by the learning action group on implementation. Four meetings were convened for the learning action group, and two cross-learning action groups took place during March 2021.

We found lessons to be remarkably consistent across this diverse set of sources. This consistency places the Secretariat in good stead to learn and apply lessons in the new Strategic Plan and beyond.

Outcomes of policies and legislation development

Mutual recognition agreement (Mauritius): The Secretariat provided support to Mauritius in developing the mutual recognition agreement (MRA) of accountant qualifications among member states of the Accelerated Programme of Economic Integration (APEI) in 2016/17. This work led to further funding from the World Bank and subsequent support from all member states to the adoption of the MRA for auditors and accountants in 2017/18. (Commonwealth Secretariat 2020a).

Intellectual property (IP) laws (Seychelles): The Secretariat provided technical support to Seychelles in the drafting of copyright and IP laws. This led to the implementation of

the Intellectual Property Rights Act 2014 in compliance with the WTO TRIPS Agreement. The assistance also extended to strengthening the skills of the Registrar's Division to implement the new legislation (Commonwealth Secretariat 2020a).

The Bahamas Petroleum Law: In February 2016, The Bahamas passed a new Petroleum Bill and Regulations. The Secretariat's Oceans and Natural Resources (ONR) team was instrumental in this achievement. The new legislation was complemented by policies governing the exploration and production of oil, health, and safety practices, environmental protection, and pollution control, as well as regulations to manage profit-sharing between investors (Commonwealth Secretariat 2020a).

Charting a course for Blue Economy in Seychelles: In 2018, the government of Seychelles, in collaboration with the Commonwealth, approved the Blue Economy Strategic Framework and Roadmap to sustainably develop the island nation's vast Exclusive Economic Zone of 1.4 million square kilometres and build its ocean-based economy. The Secretariat's assistance also helped to drive positive institutional change, most notably through the establishment of a dedicated Blue Economy Department (Commonwealth Secretariat 2020a).

Regional integration (Africa): The Hub and Spokes programme helped enhance trade capacity in the African, Caribbean and Pacific group of states. In Africa region, trade advisers supported the Africa Continental Free Trade Area (AfCFTA) Phase I and Phase II negotiations by developing draft guidelines for services negotiations. National trade advisers worked to strengthen national capacity in negotiations and drafting and reviewing key documentation. AfCFTA has now come into force, contributing to African countries' integration at the continental level (Commonwealth Secretariat 2020b).

Youth Development Index (YDI) (Australia): A national YDI was piloted in Australia. The results showed a very high suicide rate among young Aboriginal and Torres Strait Island men. Shortly after publication of this finding, the Australian government launched a funded initiative to address the problem (Commonwealth Secretariat 2017).

Namibia youth credit initiative: The Namibia Youth Credit Scheme (NYCS) was established in 2005 based on the Commonwealth Youth Programme model with start-up capital provided by the Secretariat. It has successfully achieved its goal of job creation and the establishment of businesses (Commonwealth Secretariat 2019b).

Transparent procurement processes (Namibia): The Secretariat reviewed the public procurement system. In implementing recommendations from the review, public sector reforms resulted in the enactment of the Public Procurement Act 2015, which came into operation in April 2017. This established a Central Procurement Board and decentralised lower cost procurement in over 300 state-owned organisations nationwide, with more transparent procurement processes and structures (Commonwealth Secretariat 2019b).

Strengthening laws to foster investment, jobs and sustainable development (Grenada): The Secretariat provided critical support to Grenada in drafting new legislation and provided technical advice through long-term expert placement (Commonwealth Secretariat 2019a).

Supporting sustainable fishing and conservation of marine environment (Papua New Guinea): The Secretariat supported PNG to identify gaps and inconsistencies in reviewing its marine environment regime. It also drafted the initial version of Maritime Zones Act 2015. The Maritime Zones Act came into effect on 1 May 2017 (Commonwealth Secretariat 2019c).

Lessons learned

Lesson #1: Using theories of change

Impact(s) of policies and legislation developed takes a long time to mature and should be assessed within the broader development context. A holistic theory of change that positions policies and legislation within broader national development plan implementation, encompassing the funding and technical contributions of member state and development partners, will demonstrate the longer impact journey and the Secretariat's contribution.

Findings

Our support in policy and legislation development enables member states to improve their institutional governance mechanisms and programme implementation.

The figure below represents the impact pathway for policies and legislations. The Secretariat's pathway to impact stops at policies/legislations implemented, a journey that is still far from 'impact' as defined by benefit to the final beneficiary.



Impact relates to the changes that could be seen at the Commonwealth citizen's level. The journey from policies or legislation to results is a long-term process. This is particularly the case for the Secretariat, where assessment of impact entails the effective delivery of policies and legislation within the broader development context, encompassing funding and contributions from multiple stakeholders. Policies and legislation are therefore considered a precondition or an input for effective development.

The demand-driven nature of our programmes, particularly in policy and legislation, centres on filling a strategic gap that meets a member state's needs. The niche nature of requests means we respond to specific policy and legislation development needs that are part of implementation of an overall national development plan that other development partners are financing. Viewed from a national perspective and programme themes (as concluded in country evaluations), our programmes in member states are isolated and thinly spread. They therefore cannot be summed up in any big impact statements to provide visibility of the Commonwealth. However, viewed from a delivery approach, there is depth and consistency in the programmes with long-term impact, with policy and legislation as an inherent pre-condition for sustainable development. As indicated above, each support we provide has potential for impact. The impact pathway is longer and the contribution can be identified within the broader development context.

Recommendations

To enhance visibility of our impact in a member state, we should define, aggregate and communicate our contributions to impact on national development from a delivery approach (e.g. policy and legislations development) in addition to at the thematic/programmatic level (e.g. human rights, natural resource management or debt management). The aggregate contribution by policy and legislation will provide a holistic (horizontal) programmatic picture of the Secretariat's impact, providing cohesion to what may seem fragmented.

Lesson #2: Visibility

The positioning of our support within the national development context is internal and integral in the government system and fully owned by the member state. Visibility of the support is at the discretion of the host government, and this varies with each programme and level of sensitivity of the advisory support.

Findings

The country evaluations⁴ revealed policies and legislation within the national development context to be a precondition, an enabling environment for change. As a core government function, this support is located at the centre of government. As a pre-condition to sustainable development, our support to member states is integral to governmental systems (see Figure 2). Development partners contribute to finance national development plans and projects that deliver on national priorities. The Secretariat, meanwhile, responds to strategic gaps - such as policy and legislation development - to sustain development. In this regard, our claim to impact on Commonwealth citizens is indirect, compared to the other more direct contribution of development partners.

The entry and positioning of the Secretariat within the government machinery is important to its visibility. We are not seen as a development partner that needs recognition, but as a member of the team working together to address a strategic gap. This is demonstrated by the nature of the specific requests for advisory and technical support. The trusted role of the Secretariat, also a key comparative advantage, implies that our support is fully absorbed and owned by the government. Commonwealth experts and advisers are considered part of the government team and not external. Hence, programme and country evaluations revealed that the visibility of our work in member states to be low.

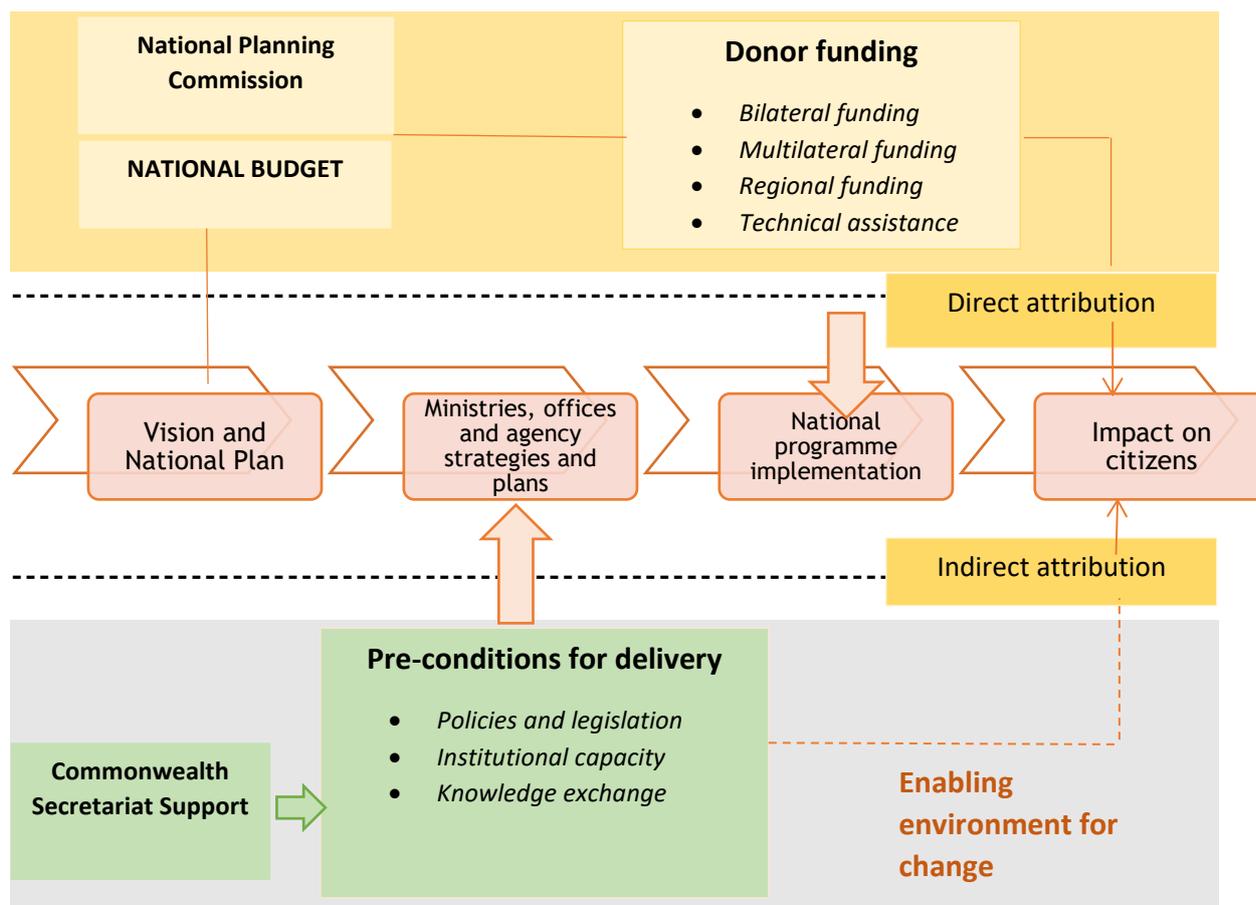
It is also notable that most of our interventions in-country are not sufficiently joined up to be visible. As the programmes are spread across different ministries, departments and agencies, with no national-level theory of change or implementation framework, the different interventions tend to be viewed in isolation of the whole.

The level of visibility of our work also relates to the political requirements of the target country and level of sensitivity/ nature of the intervention.

Due to the request-based response of our programmes in targeted areas, interventions are small compared to those of development partners. In some cases, they may be invisible. The country evaluations also noted that the co-ordinating office did not usually have a holistic picture of all the support provided by the Secretariat. At the programmatic level, support may be small, isolated or spread across many ministries and departments. Yet, if it was collated against the impact pathway - in this case, policies and legislation - the support would demonstrate a more comprehensive footprint. This would also allow the impact of our work to be traced.

A co-ordination mechanism and a country-based theory of change, utilising the impact pathway to draw together all interventions in a host country, would also allow a more effective communication strategy.

Figure 2. Position of Secretariat Support to policies and legislations in national development



Source: Adapted from the Evaluation of the Secretariat’s Support to Namibia 2018

Recommendations

Our organisational communication strategy should take a holistic view of our visibility requirements in member states. This should be based on an understanding of our being an internal member of the team, the nature of our delivery and given the discretion that member states have toward our contribution. The strategy should consider aggregating the Secretariat’s impact from its delivery approach as one key lens for communication.

Lesson #3: Policies and legislations as enablers of sustainability

Our trusted and strategic gap filling support to member states in the policy and legislation space needs to be redefined as an enabler of sustainable development. In this respect, we must recognise that policies and legislation are the bedrock on which development operates and is sustained.

Findings

Legislation (laws and regulations) is the backbone of sustainable development. Reviewing and reforming legislation is one of the primary functions of government. This is a space where we have been invited to support member states. We must fully understand the identity of the Secretariat as a political organisation within a development space. Evaluations conducted against development criteria find that the Secretariat does not demonstrate the same level of impact compared to development counterparts. However, when defined as an enabler to sustainable development, our support can be highly effective.

Redirecting and effectively defining our results to improve the governance (policies and legislation) and capacities of our membership will allow us to address the value-based

concerns of our memberships, as defined in the Commonwealth Charter, and effectively contribute to the delivery of SDGs. This will allow us to focus our limited resources to support governance arrangements, democratic values and institutional capacities. This in turn will enable member states to adhere to Commonwealth values, as outlined in the Charter, and to effectively access and utilise the extensive development resources availed by well-resourced development partners.

Recommendations

To demonstrate more impact, the Secretariat needs to identify itself as a political organisation, supporting its member states to realise the SDGs. We should therefore define our strategic gap-filling role in policies and legislation as an enabler of sustainable development.

Lesson #4: Global advocacy, regional and national policy links

Establishing linkages between policy/legislation development in member states and relevant ministerial meetings could positively influence decision-making, approval and enhance implementation of policies/legislation.

Findings

The thrust of the Secretariat's policy advocacy is focused at the international and regional level, rather than at the national level. Meanwhile policy and legislation support takes place at the national level. There is currently no clear interface between our global policy work and the national-level interventions. While the international policy advocacy is outward focused - for instance, influencing policies and mechanisms of multilateral organisations and developed countries to finance small and vulnerable states - impact is measured at the national level in recipient countries. This also involves advocacy for national policy change for implementation of international agreements.

There needs to be a holistic theory of change that links our international, regional and national policy and legislation work. This interface at the international, regional and national levels can be made when there is a comprehensive needs and context analysis during policy and legislation development at the country level. Collaborative work between the international policy team and national-level technical support team needs to be enhanced. This should then ensure that international mechanisms 'trickle down' to member states and outcomes of international advocacy can be traced at the national level, linking the measurement of outcomes.

Commonwealth ministerial meetings⁵ provide member states with the platform to engage with progressive thinking on policies and legislation. Ministers can reflect on their own policies and legislation to enable and drive development, comparing them with new developments, lessons learned, progressive ideas and research findings shared by peers and experts. The Secretariat is distinctly positioned to strengthen and foster exchange of expertise and experience on areas of common agreement.

Outcome Statements from ministerial meetings relate to areas within the ministers' influence and the Secretariat's required actions. The extent to which these opportunities for engagement are effectively utilised and traced back to national actions is unclear. Our monitoring and evaluation framework needs to establish linkages between ministerial meetings and national actions on policies and legislation, to measure learning, knowledge exchange and how the meetings influence policy and legislation development. Cumulative progress on implementation of ministerial actions and their impact in member states should be reported back to ministerial meetings, increasing the value of these meetings to member states.

Recommendations

We should establish linkages between our global advocacy, ministerial meetings and national action plans on policies and legislation. In this way, we can increase our influence on decision-making, approval and enhance implementation of policies and legislation. The monitoring and evaluation framework for this impact pathway should also provide a bridge between consensus building and policy/legislation for harmonised delivery and increased impact.

Lesson #5: 'Centre of government' approach

A joined-up approach to the Secretariat's access to and engagement at the centre of government, where the three branches of government - the legislature, judiciary and executive - interplay, can positively improve on the timeframe that policies and legislation takes to be approved and implemented.

Findings

The policy and legislative process for development is long and engaging, requiring extensive commitment that ranges from several months or even years. The timeframe is dependent on the priority of the development agenda, as well as the political will and commitment of the government at the time.

The consultative process is lengthy, in several cases affected by transitions in government. Such transitions have a significant impact on the policy/legislation development process and represent a key risk in this area. Approval processes are both technical and political in nature. The country evaluations demonstrated that delays in passing legislation drafted with Secretariat assistance were rarely due to technical difficulties, but was more often due to political factors such as changes in government or a change in priorities.

Our trusted position, a Commonwealth advantage, defined by the impartial and service role of the organisation, allows engagement with all three branches of government in member states. However, this role is spread across the different directorates of the organisation in the different teams. Due to the structural alignment of the organisation and the separation of results, opportunities for joined up access and engagement have been missed. Our bilateral engagements need to be strengthened, prioritising key interventions that are drivers of national development plans.

Recommendations

We need to view our support on policies and legislation in a holistic manner, with the relevant arms of the organisation working jointly to ensure the effective delivery of results. This requires prioritisation of key drivers of national development and an effective programme co-ordination mechanism that draws together all relevant internal expertise and stakeholders. This will ensure traction and momentum are maintained in terms of influence and delivery of policy decisions.

Conclusion

The Secretariat's contribution, viewed from a delivery approach, is consistent and impactful in member states, an approach that should be promoted for the meaningful communication of its contributions to sustainable development. An understanding of policies and legislation as enablers of sustainable development improves comprehension of the Secretariat's development contribution within the national development context. This understanding highlights our programme positioning and visibility. It calls for, in turn, joined up working across the organisation to enhance key drivers of development in member states.

Notes

¹ It is expected that these five areas will be reviewed and amended over time in line with the Secretariat's learning and practices.

² A **policy** is a deliberate system of principles to guide decisions and achieve rational outcomes. A policy is a statement of intent and is implemented as a procedure or protocol. Policies are generally adopted by a governance body within an organisation.

³ **Legislation** is law which has been promulgated (or 'enacted') by a legislature or other governing body or the process of making it. Legislation can have many purposes: to regulate, to authorise, to outlaw, to provide (funds), to sanction, to grant, to declare or to restrict. It may be contrasted with a non-legislative act, which is adopted by an executive or administrative body under the authority of a legislative act or for implementing a legislative act.

⁴ Country evaluations for Namibia, Grenada and Papua New Guinea.

⁵ The Commonwealth Secretariat convenes a total of ten ministerial meetings. These are: the Commonwealth Foreign Affairs Ministers Meeting; Commonwealth Law Ministers Meeting; Commonwealth Education Ministers Meeting; Commonwealth Women Affairs Ministers Meeting; Commonwealth Youth Affairs Ministers Meeting; Commonwealth Finance Ministers Meeting; Commonwealth Trade Ministers Meeting; Commonwealth Health Ministers Meeting; Commonwealth Public Sector Ministers Forum; and the Commonwealth Ministerial Meeting on Small States.

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Further Information

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