

Virtual Meeting Commonwealth Law Ministers on the legal aspects of the COVID-19 pandemic

Videoconference - 18 February 2021

OUTCOME STATEMENT

1. Law Ministers of the Commonwealth met via videoconference on 18 February 2021 to discuss the legal aspects of the COVID-19 pandemic in the Commonwealth. The meeting was chaired by Sri Lanka, represented by The Hon. Ali Sabry, Minister of Justice, and was attended by representatives of 30 Commonwealth countries.
2. Law Ministers expressed their sadness at the number of lives lost to COVID-19 in the Commonwealth family and across the world. They praised the outstanding work of health workers, as well as judges, prosecutors, lawyers, and all justice system workers, who faced increased workloads and quickly adapted to the unprecedented situation in order to ensure people's access to justice during the pandemic.
3. Law Ministers welcomed the opportunity to come together to discuss the legal aspects of the COVID-19 pandemic in the Commonwealth. Law Ministers addressed three sub-themes in relation to the COVID-19 pandemic: a) ensuring equal access to justice for all; b) upholding the rule of law in the fight against COVID-19; and c) legal barriers to equitable access to essential medicines, including vaccines, and equipment.

ENSURING EQUAL ACCESS TO JUSTICE FOR ALL

4. Law Ministers stressed the unprecedented impact the pandemic has had on justice systems and those seeking to use the courts or any alternative dispute resolution mechanism to resolve their legal problems in Commonwealth countries. The Meeting highlighted how social distancing, lockdowns, and other measures implemented to curb the spread of the virus have led to courts and other justice service providers being closed for various lengths of time and contributed to increased case backlogs in both civil and criminal justice systems and delays in the resolution of issues. Law Ministers acknowledged that these challenges can have a serious impact on equal access to justice and countries' ability to realise the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development, including SDG 16. Law Ministers agreed that the pandemic-induced crisis in justice systems should not be underestimated, and stressed the

importance of governments in Commonwealth countries providing adequate budgetary support to their justice systems.

5. Law Ministers noted how the use of technology in the delivery of justice services increased exponentially following the outbreak of the pandemic. Law Ministers noted how courts and other justice service providers were compelled to rapidly adopt technologies, ranging from the use of mobile phones and text messaging to email and online platforms for virtual court hearings. Law Ministers acknowledged that accelerated adoption of digital technologies had spurred important innovations that could lead to greater efficiency and access. However, they would now need to be fully embedded in the long-term strategic planning and operating models of national justice sector institutions. Law Ministers agreed that collection of data on the impact of technology on their court systems and on court users was timely, in order to obtain an assessment of how the transition to the increased use of technology had affected and continues to affect their populations' ability to resolve legal problems.
6. Law Ministers noted that digitisation had shown clear benefits in the delivery of justice, which should be maintained in the future. They agreed to give priority to this issue and maintain regular exchanges in order to share successful practices and provide support to each other as much as possible in the harnessing of technology.
7. Law Ministers shared experiences of alternative dispute resolution mechanisms used during the pandemic, some of which will be maintained on a permanent basis. Mediation, for example, was used successfully to try to address part of the backlog of cases. Law Ministers agreed to share data and outcomes of research on the impact of these measures on justice systems, where available and appropriate.
8. Law Ministers reiterated their call made at their last meeting held in Colombo, Sri Lanka, in November 2019, for Heads of Government to consider the accessibility of justice systems for vulnerable persons. The impact of the pandemic on access to justice for groups with vulnerabilities, whether by reason of age, sex, sexual orientation, gender identity, mental or physical or any other disability, race, ethnicity, origin, religion, political, economic or other grounds, needs to be fully assessed.

UPHOLDING THE RULE OF LAW IN COVID-19

9. Law Ministers reaffirmed the importance of upholding the rule of law, ensuring that public health legislation was consistent with legal standards and enabled under domestic constitutional frameworks. They acknowledged how the adoption of measures to contain the spread of COVID-19 should follow due process, be clear and transparent, protect human rights, and be subjected to proper parliamentary, judicial, and public oversight. Law Ministers noted that these principles are in line with our collective commitment to the Commonwealth Charter and the Sustainable Development Goals, and particularly SDG 16, to provide access to justice for all. Law Ministers noted that with the arrival of COVID-19 vaccines, the same principles should apply to laws and regulations surrounding the provision and distribution of vaccines amongst their populations.

10. Law Ministers referred to the commitment made by Commonwealth countries through the Commonwealth (Latimer House) Principles on the Three Branches of Government and highlighted the importance of implementing the Principles in the adoption of COVID-19 public health legislation.
11. Law Ministers affirmed that the enforcement of public health laws and regulations need to be clear and comprehensible. To avoid the erosion of trust in justice systems, Law Ministers committed to ensuring that law enforcement measures are effective, fair, and non-discriminatory, including towards marginalised and vulnerable groups.
12. Law Ministers stressed the importance of addressing crimes that have escalated during the pandemic. They highlighted the rise in domestic violence and sexual and gender-based violence against women and girls, spurred by lockdown, stay-at-home orders, and the closure or reduced capacity of key protection facilities. Law Ministers committed to ensuring adequate resources and implementing relevant domestic frameworks and strategies that can effectively prevent and respond to sexual and gender-based violence against women and girls, which has been shown to increase in times of emergencies.
13. Law Ministers highlighted how the pandemic has contributed to a rise in cybercrime, particularly online fraud and online child sexual abuse and exploitation, and gender-based violence against women and girls. Law Ministers noted how Commonwealth countries had committed, through the Commonwealth Cyber Declaration adopted in 2018, to ‘strengthening legislative, social and educational measures that protect the vulnerable.’ Law Ministers noted the impact that cybercrime has had on the most vulnerable during the pandemic, including children forced to spend more time online. Law Ministers committed to ensuring that their domestic legislative frameworks allow for effective rule of law online, including the effective prevention, investigation, and prosecution of those suspected of committing and enabling cybercrime. Law Ministers also committed specifically to combatting online child exploitation and abuse, and to collaborate with each other in doing so, ensuring full respect for human rights and fundamental freedoms.
14. Ministers also highlighted the importance of protecting free and responsible media, access to information, and combating misinformation to end the pandemic, consistent with the Commonwealth COVID-19 statement that was agreed by Heads of Government in July 2020. Law Ministers reaffirmed the unwavering commitments found in the statement, including to ‘upholding the rule of law, consistency with relevant international treaties, and to take necessary measures to counter the spread of misinformation and disinformation, online and offline, including manipulated media that incites violence and divides communities, while ensuring that any action respects human rights.’

LEGAL BARRIERS TO EQUITABLE ACCESS TO ESSENTIAL MEDICINES AND EQUIPMENT

15. Law Ministers noted with appreciation the work done by the World Health Organisation (WHO) and other stakeholders to address the COVID-19 pandemic, particularly the rapid development of vaccines. Law Ministers noted how the availability of COVID-19 vaccines could lead to a greater reduction in the spread

and virulence of the virus and the eventual end of the pandemic. However, Law Ministers noted concerns expressed in relation to the ‘standard form’ Indemnification Agreement, to be signed without any review or modification, found in the legal framework for the WHO COVAX mechanism. Law Ministers highlighted how inequalities in access to medical countermeasures, especially vaccines, therapeutics, and diagnostics, and other essential medical equipment and medicines, could impede the Commonwealth’s efforts in recovering from the pandemic. Law Ministers again recalled the Commonwealth COVID-19 statement, agreed by Heads of Government in July 2020, which reaffirmed member states commitment to ensuring equitable access to safe and effective vaccines for all, particularly the most vulnerable and high-risk populations, such as older persons, persons with disabilities, and others who are more likely to have a pre-existing health condition. Law Ministers committed to work collaboratively, within the realm of their mandates, to support timely and equitable access to vaccines for the Commonwealth and all other countries. Law Ministers also committed to ensuring effective frameworks to prevent corruption, and to implementing fair procurement processes.

16. Law Ministers discussed how vaccination regimes may raise human rights concerns and impact on rights to privacy and freedom of movement of their populations. They committed to addressing these issues in compliance with their human rights obligations.

CONCLUSION

17. Law Ministers highlighted the importance of enhanced collaboration between Commonwealth member countries due to their common legal heritage. Law Ministers noted with appreciation the Commonwealth COVID-19 Statement, the Commonwealth Charter, and the initiatives implemented by the Commonwealth Secretariat which could assist member countries in addressing the impacts of the pandemic, including the Commonwealth Business Law Response Initiative (COBULRI) and the ‘Commonwealth Says No More’ initiative on domestic violence. They also stressed the importance of adapting justice systems to the new normal by accelerating justice innovation and transformation. Furthermore, Law Ministers thanked the Secretariat for organising the webinar series on the rule of law and COVID-19 in the Commonwealth, which provided an opportunity for member countries to learn from each other.
18. Law Ministers expressed their gratitude to the Secretary-General and the Secretariat for convening this timely Meeting and for providing a forum for sharing experiences and solutions.
19. Law Ministers pledged to share successful practices, examples of legislation, results of research and studies, and other elements that could support member countries in addressing the pandemic’s impact on justice systems. Law Ministers agreed to take forward discussions towards the establishment of a Law Ministers Action Group, which could assist in addressing these issues, as well as other issues of common concern to Commonwealth jurisdictions. Law Ministers issued a plea to Governments to provide adequate resources to ensure the realisation of the goal of equal access to justice for all in the Commonwealth.