

**MEETING OF COMMONWEALTH LAW MINISTERS
ACCRA, GHANA, 17-20 OCTOBER 2005**

COMMUNIQUE

1. Commonwealth Law Ministers met in Accra, Ghana, from 17 to 20 October 2005. The Meeting was opened at a ceremony in the Accra International Conference Centre at which the speakers were the Attorney General and Minister of Justice of Ghana; the Chief Justice of Ghana; the Deputy Secretary General of the Commonwealth; and the Minister of Foreign Affairs of Ghana representing His Excellency the President of the Republic of Ghana, who personally received Heads of Delegation on the final day of the Meeting. The plenary sessions of the Meeting were held in the Homowo Conference Centre, Accra under the chairmanship of the Attorney General and Minister of Justice of Ghana. Ministers expressed their warm appreciation for the generous hospitality accorded to them by the Government of Ghana and the preparations for the Meeting made by their host and the Commonwealth Secretariat.

2. Law Ministers' deliberations covered many important contemporary issues touching on aspects of their responsibilities for civil and criminal justice, the progressive development and reform of the law, the role of law and the legal profession in supporting democracy and good governance, as well as certain areas of international law.

JUVENILE JUSTICE

3. Every Commonwealth country is a party to the United Nations Convention on the Rights of the Child, and that provided the background for Law Ministers' consideration of juvenile justice policy. The discussion was assisted by a paper reviewing present policies in a number of Commonwealth jurisdictions. Law Ministers were able to offer insights from the experience of their own countries, many of which had recently, or were about to, review their juvenile justice legislation. There was general support for some key policies: diversion from court proceedings; diversion from custody; and the use of lawyers and judges with specialised training. Several Law Ministers were able to report the success of restorative justice initiatives which offered a constructive approach and had a part to play in preventive programmes to which Ministers attached importance.

4. Law Ministers welcomed the work already undertaken by the Commonwealth Secretariat and asked that the Secretariat should explore the issues further, drawing in particular on the experience of developing countries and including issues concerning the child as a witness. They encouraged the Commonwealth Secretariat to continue to support member countries in complying with the United Nations Convention and to bring a further paper on good practice in juvenile justice to their next Meeting.

LAW REFORM

5. The Meeting heard a presentation on behalf of the Commonwealth Association of Law Reform Agencies (CALRA) in support of its paper on the role and effectiveness of law reform agencies. Law Ministers were very conscious of the need for continuous reform of the law to keep pace with changes in society, to cope with the often highly technical requirements of international bodies such as the Financial Action Task Force, and in some cases to complete the overhaul of legislation dating from pre-Independence times. Individual Ministers from the Caribbean, Southern Africa and the Pacific were able to testify to the great advantages to be gained from collaboration with other law reform agencies in their region: duplication was avoided and the resulting commonality in legislation across a region was very helpful.

6. Noting that only about a half of Commonwealth countries had a law reform agency, Law Ministers welcomed the establishment of CALRA, encouraged the creation of law reform agencies in more Commonwealth countries, and agreed that an adequately-resourced agency, working independently of Government but responsive to Government priorities, offered many advantages over other models. The Meeting hoped that CALRA would continue its work and give consideration to the particular needs of small jurisdictions.

REGULATING BROADCASTING ORGANISATIONS

7. The Meeting received a paper prepared by the Commonwealth Secretariat at the request of Law Ministers of Small Jurisdictions who at their meeting in 2004 had considered the principles which should govern the regulation of broadcasting organisations. The paper contained a set of Guidelines for an Independent Regulatory Framework for Commonwealth Broadcasting Organisations. Law Ministers recognised features of broadcasting regulation which promote democracy: a right of appeal and a right of reply; an obligation for news to be accurate and impartial; and rules which prevent discrimination and incitement to crime, including racial or religious hatred. They saw it as an accepted best practice to have a regulatory body independent of political or industry influence and control. There should be clear legal provision as to the remit and funding of the regulator and the process of appointment. The Meeting endorsed the Guidelines and encouraged the Commonwealth Secretariat to assist Member States in their implementation.

LEGAL EDUCATION IN THE COMMONWEALTH

8. Turning their attention to legal education, Law Ministers received a thoughtful paper prepared by the Commonwealth Legal Education Association (CLEA). They welcomed the CLEA's work on curriculum development notably in subjects such as human rights in the Commonwealth and transnational crime. Law Ministers recognised the problems of small States without a law school, and also the need for specialist training in such matters as mutual legal assistance and extradition.

9. Many jurisdictions experienced difficulties in gaining access to legal materials. The Attorney-General of Australia informed the Meeting of the establishment of the Commonwealth Legal Information Institute which offered access to 486 databases from 51 Commonwealth jurisdictions. The Meeting adopted a resolution in the following terms:

Commonwealth Law Ministers welcomed the development of the Commonwealth Legal Information Institute (CommonLII). The Meeting noted that CommonLII is an Internet research facility providing free access to legal information from all Commonwealth countries. The Meeting encouraged all countries to co-operate in the development of CommonLII by providing, to the extent possible, access to their legal materials, including legislation, case law and law reform reports.

CONSTITUTIONAL DEVELOPMENTS IN THE COMMONWEALTH

10. Law Ministers received a report on the work of the Commonwealth Secretariat in responding to a need recognised by Commonwealth Heads of Government in 2003 to intensify efforts to assist members in strengthening democracy and democratic institutions through the provision of constitutional, electoral and legal assistance. The report included a detailed paper which had been considered by Senior Officials at their meeting in 2004. This examined, inter alia, the methodology of constitutional change and a range of related good governance issues. Ministers recalled in this context the speech by the Chief Justice of Ghana at the Opening Ceremony in which he urged them to honour their responsibility to uphold the independence of the judiciary.

11. Ministers gave accounts of distinctive features in their countries' Constitutions and heard of recent experiences of constitutional reform in five African countries, Kenya, Nigeria, South Africa, Swaziland and Uganda, and of judicial reforms in Cameroon, the Caribbean and the United Kingdom. They asked the Legal and Constitutional Affairs Division to continue work in this field including the giving of advice and assistance on the development of appellate court structures and systems; reviewing bills of rights in Commonwealth constitutions; and capacity building in establishing sound constitutional structures.

GENDER AND HUMAN RIGHTS IN THE COMMONWEALTH

12. The Commonwealth Plan of Action for Gender Equality 2005-2015 identifies four critical areas for Commonwealth action over the next ten years: gender, democracy, peace and conflict; gender, human rights and law; gender, poverty eradication and economic empowerment; and gender and HIV/AIDS. A paper before the Meeting noted progress made in some areas, but recalled the statement in the Plan of Action that 'the lack of a gender perspective in the administration of the law has stymied gains made in international and regional treaties and conventions'. Law Ministers recognised that the mere enactment of legislation was not sufficient and that systemic problems needed to be overcome, which required attention to education and health issues as well as the promotion of active dialogue and engagement among those working in the justice system and the wider civil society. Ministers noted that the gap between commitment and reality is huge in gender and unfortunately appeared to be increasing.

13. The Meeting adopted a resolution in the following terms:

Commonwealth Law Ministers noted that the Plan of Action for Gender Equality 2005-2015 (which was agreed at the 7th Women's Affairs Ministers Meeting in Fiji Islands in May-June 2004) identified the area of gender, human rights and law as one of the four critical areas for Commonwealth action over the next ten years.

The Meeting recognised the importance of enacting and enforcing laws for the achievement of gender equality. In this regard, as Ministers responsible for law and justice, they resolved to play their part in the implementation of the Commonwealth Plan of Action for Gender Equality.

Ministers also encouraged the Legal and Constitutional Affairs Division to work closely with the Gender Section of the Social Transformation Programmes Division and the Youth Affairs Division to ensure the implementation of the Commonwealth Plan of Action for Gender Equality.

COMMONWEALTH LAND-LOCKED STATES AND THE LAW OF THE SEA

14. At their 2004 Meeting, Senior Officials considered a report by the Commonwealth Secretariat concerning the rights of Land-locked States under the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Law Ministers heard a presentation of the issues by Professor Stephen Vasciannie, speaking to a paper explaining the background and addressing issues which had arisen in the course of discussions within the Commonwealth. Having heard from the Law Ministers of a number of Commonwealth Land-locked States which had not yet become parties to UNCLOS, the Meeting endorsed the efforts of the Commonwealth Secretariat to sensitise member countries to the immediate need to accede to UNCLOS with the necessary enabling legislation, and encouraged both Land-locked States and their coastal neighbouring states to utilise the provisions of UNCLOS to foster relations and recognise the benefits of entering into regional arrangements for access to the sea. It noted that the Commonwealth Secretariat planned further action, including a further seminar in November 2005, and was ready to assist

Governments. Law Ministers welcomed the suggestion that the Secretariat should extend its work to include a focus on the needs of 'Geographically Disadvantaged States'.

PROLIFERATION OF SMALL ARMS AND LIGHT WEAPONS

15. The Meeting received a paper prepared by the Commonwealth Secretariat in response to the concern expressed by Heads of Government in 2003 at the proliferation of small arms and light weapons (SALW). This proliferation had had a tragic impact in some countries, could destabilise a whole region and contribute to the spread of transnational crime and terrorism. These concerns were borne out in the accounts some Law Ministers gave as to the consequences experienced in their own countries.

16. The Meeting noted the United Nation Plan of Action of 2001, the Firearms Protocol to the UN Convention on Transnational Organised Crime, and a number of regional initiatives in many of which Commonwealth countries had played a leading part. They asked the Commonwealth Secretariat to continue monitoring developments in this field and to prepare a summary of the obligations concerning the transfer and use of SALW which Commonwealth Member States already had under international law; to develop model legislative provisions for marking, tracing, brokering and transferring SALW; and to work with other organisations in capacity-building.

INTERNATIONAL HUMANITARIAN LAW

17. Law Ministers were grateful to the International Committee of the Red Cross for a paper, with full supporting material, which provided information on the accession of Commonwealth member countries to International Humanitarian Law (IHL) treaties, updating a review presented to Law Ministers at their Meeting in 1999. However, they also noted that the necessary national implementing legislation was not always in place, so that some countries which were parties to IHL treaties were not able to honour all of their treaty obligations.

18. Law Ministers encouraged member countries to consider acceding to further IHL treaties and acknowledged the importance of effective domestic implementation of those treaties. They noted that for most IHL treaties model implementing legislation, prepared by the ICRC or in some cases by the Commonwealth Secretariat, was already available or would shortly be published. For the remaining IHL treaties, they encouraged the Secretariat and the ICRC to develop model legislation and to report back to their next Meeting. Some Commonwealth countries already had inter-ministerial National IHL Committees which brought together those with responsibility for applying IHL and national Red Cross or Red Crescent societies, and the Meeting encouraged more countries to follow this practice. They welcomed the news that a second Commonwealth Red Cross and Red Crescent Conference on IHL was planned for 2007.

CRIMINAL DEFAMATION IN THE COMMONWEALTH

19. The Meeting received a paper prepared by the Commonwealth Press Union (CPU) reviewing the history and present status in a number of Commonwealth countries of criminal defamation and arguing the case for its abolition. The CPU rooted its arguments on the premise that the existence of the offence posed a threat to freedom of expression. It argued that criminal defamation laws were unnecessary, and were frequently abused, being used in cases which do not involve the public interest.

20. Law Ministers recognised that the CPU paper was a piece of advocacy by a particular interest group and identified a number of errors in its account of the current legal position in Commonwealth countries. There were indeed important and challenging issues as to the balance between the freedom of the press and the wider public interest, which had

been addressed – with differing results – in many member countries. The paper did not address those issues in any depth, and some Ministers expressed strong disagreement with particular arguments it deployed. Nor did the paper examine alternatives to the abolition of criminal defamation, such as its replacement by a more narrowly defined offence coupled with the development of clear ethical standards for the media.

21. Law Ministers agreed that any future consideration would be assisted by a more balanced analysis of the issues by the Commonwealth Secretariat.

HUMAN RIGHTS

22. The Meeting received papers describing the educational, promotional and awareness-building activities of the Commonwealth Secretariat's Human Rights Unit, in pursuit of attainment of the Commonwealth's strategic goal of strengthening respect for and fulfilment of basic human rights in member countries. These activities were premised on the belief that effective promotion and protection of human rights requires knowledge of human rights (with their proper and reasonable limitations) among public decision-makers at all levels, law enforcement officials and the judiciary, members of civil society, the media and the professions, students and young people, and women and vulnerable persons. Law Ministers endorsed the Unit's work in developing a model human rights curriculum, work with schools, with police, and with law enforcement officers. The Meeting reaffirmed the importance of human rights education, gave its support to the human rights education and awareness activities of the Human Rights Unit and encouraged the Unit to do more work in this regard.

AMENDMENTS TO THE HARARE SCHEME

23. In response to a mandate given to them by Law Ministers at their Meeting in St Vincent and the Grenadines, Senior Officials had agreed to the draft amendments, based on those prepared by an Expert Working Group, to the Harare Scheme on Mutual Assistance in Criminal Matters in the Commonwealth to deal with the preservation of computer data. The amendments provided for requests for the preservation (as opposed to the interception) of computer data, and provided for direct requests from agency to agency because of the need for an immediate response in this context. Data would be preserved for 120 days, within which time a formal request for the production of the data could be made in accordance with the other provisions of the Scheme. Ministers reiterated that the Harare Scheme was of great practical importance but agreed that it needed revision to deal with new forms of criminal activity and technological innovations since its adoption in 1990. They noted that access to data preserved by Internet service providers could be crucial in securing successful prosecutions.

24. Law Ministers adopted the amendments as set out in a consolidated text of the Scheme reproduced in Annex 1 to this Communiqué.

25. The Meeting noted that Senior Officials had given consideration to issues relating to the interception of communications and had decided that this required further study by a group which would include both technical experts and a wide range of Commonwealth legal representation.

CIVIL RECOVERY OF CRIMINAL ASSETS AND TERRORIST PROPERTY

26. At their Meeting in St Vincent and the Grenadines, Law Ministers asked the Commonwealth Secretariat to provide model legislative provisions dealing with the seizure and forfeiture of terrorist assets and for civil forfeiture regimes. The Secretariat undertook this work in collaboration with the United Nations Office on Drugs and Crime in Vienna. With the assistance of experts from a number of Commonwealth countries and drafting services provided by Canada, a text was produced and was adapted by the Commonwealth

Secretariat as a Draft Commonwealth Model Law on the Civil Recovery of Criminal Assets including Terrorist Property. This text, with certain amendments agreed by Senior Officials, was before the Meeting.

27. Law Ministers, having heard testimony about the successful use of civil recovery provisions, agreed to endorse the draft Model Law as set out in the Annex to paper LMM(05)15(revised).

A COMMONWEALTH NETWORK OF CONTACT PERSONS

28. Law Ministers welcomed a proposal developed by their Senior Officials for the further enhancement of the effectiveness of legal co-operation in criminal matters in the Commonwealth by the establishment of a Commonwealth Network of Contact Persons. The main purpose of the Network would be to facilitate access to practical information on the requirements and procedures of a country to which a request for assistance would be made. Senior Officials had prepared a Framework setting out the basic structure and functions of the proposed Network.

29. Law Ministers agreed to the establishment of the Network in accordance with the Framework, which is set out in Annex 2 to this Communiqué. They reserved for future consideration the extent to which the Network should deal with regulatory as opposed to criminal cases.

CAPACITY BUILDING TO COMBAT TERRORISM

30. Much work had been carried out by the Commonwealth Secretariat in assisting member countries to implement UN Security Council Resolution 1373, and Law Ministers expressed appreciation for this work, notably the preparation of model legislation. Their decision to establish a Commonwealth Network of Contact Persons would complement this work. A paper by the Secretariat identified a range of future activities which could be undertaken, in connection with the abuse of technology, tracking the movement of terrorists, and abuse of refugee systems.

31. The Meeting heard with pleasure of the establishment by Canada of a Counter-Terrorism Capacity Building Programme to provide training and technical assistance in many of the areas covered by the paper; and also Australia's willingness to provide specialist training programmes to countries in its region. Ministers from other countries spoke of the beneficial regional co-operation in East Africa and the ASEAN region.

32. The Meeting was aware of the work being done under the aegis of such bodies as the United Nations and the Financial Action Task Force. There was no wish to duplicate this work, but there was seen to be a clear role for the Commonwealth in the sharing of good practice and the giving of practical assistance. Law Ministers encouraged the Commonwealth Secretariat to pursue all the ideas set out in the paper.

BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME

33. Law Ministers had expressed at their 2002 Meeting their commitment to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. At that Meeting they considered a draft Commonwealth Statement which applied those Basic Principles to the position of victims of crime and was adapted to the practices of common law jurisdictions. They referred the draft for further consideration by Senior Officials, who agreed to a revised text at their 2004 meeting.

34. The Meeting considered the revised text and after agreeing to a number of amendments, Law Ministers adopted the Commonwealth Statement in terms which appear as Annex 3 to this Communiqué. They asked the Commonwealth Secretariat to consider further the role of Parole Boards and similar bodies in this context.

MODEL BILL ON THE PROTECTION OF PERSONAL INFORMATION

35. Senior Officials agreed in 2004 to recommend to Law Ministers a draft Model Bill on the Protection of Personal Information, an earlier draft having been revised with the assistance of the United Kingdom Information Commissioner's office. The Model Bill deals with personal information processed by private organisations. Law Ministers welcomed the revised text as striking a proper balance between the competing principles operating in this complex field, though a number of suggestions were made for the further improvement of the Bill in any future revision. The Model Bill as set out in the Annex to paper LMM(05)19 was adopted by Law Ministers.

MODEL BILL ON COMPETITION

36. A revised Model Bill, on competition and certain aspects of consumer protection, was prepared by the Commonwealth Secretariat responding to a request made by Commonwealth Heads of Government in 1999. After an initial consideration by Law Ministers in St Vincent and the Grenadines, the Bill was taken through a detailed revision process involving four regional Expert Meetings and a final Expert Group meeting in London in July 2005. In their renewed consideration of the draft Model Bill, Law Ministers recognised that some countries already had legislation which adopted different policies on, for example, the location of adjudicatory functions, enforcement powers and the prohibition of unfair contract terms. The Meeting believed that those who had prepared the Bill had honoured the mandate given by Law Ministers in 2002 to take into account the needs of small and vulnerable sectors of the economy within the wider context of trade liberalisation. Law Ministers expressed their appreciation of the work undertaken in preparing the Model Bill and agreed to adopt it in the form in which it appeared in paper LMM(05)20.

COMMONWEALTH ACTION IN PRIVATE INTERNATIONAL LAW

37. The Meeting received a paper which explored the implications for the existing intra-Commonwealth arrangements of work undertaken by the Hague Conference on Private International Law. Ministers noted the progress being made in the negotiation of a new Convention on the International Recovery of Child Support and other forms of Family Maintenance. They considered favourably a suggestion that would enable both countries involved in making an effective maintenance order under the reciprocal enforcement legislation in most Commonwealth countries to be regarded as the 'state of origin' under the new convention. They asked the Commonwealth Secretariat to consider the eventual text of the new convention and to report on its implications for Commonwealth practice.

38. Law Ministers also asked the Commonwealth Secretariat to review the intra-Commonwealth arrangements for the recognition and enforcement of money-judgments, which were seen as obsolete having regard to developments in recent decades. Account should be taken of work already done on this topic by Governments and law reform agencies in a number of member countries.

LEGAL ASSISTANCE FOR HIPC COUNTRIES

39. The Meeting received a report on the work of the Commonwealth Secretariat in providing legal assistance to HIPC countries. This was part of an initiative supported by Commonwealth Heads of Government and involving the Commonwealth HIPC Ministerial Forum (which had met most recently in Barbados in September 2005) and the Economic

Affairs Division of the Secretariat. Law Ministers expressed appreciation for the progress already made and endorsed the continuing efforts of the Secretariat to move as quickly as possible to render legal services to HIPC countries through the establishment of a legal clinic in the Secretariat.

ACTIVITIES OF THE COMMONWEALTH SECRETARIAT IN THE LEGAL FIELD

40. The Meeting received a report summarising the work of the various sections of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat, together with a number of information papers dealing with specific topics. These included papers on the following topics:

(a) Work to develop model legislative provisions on combating money-laundering and the financing of terrorism;

In this context the Meeting heard of the resolution of the Caribbean Financial Action Task Force that, in view of the great importance of this issue to so many States, it should be dealt with by a United Nations body rather than the more restricted Financial Action Task Force.

(b) The dissemination of the Commonwealth (Latimer House) Guidelines on the Accountability of and Relationship Between the Three Branches of Government; and the recommendations of the Commonwealth Colloquium on Combating Corruption within the Judiciary;

(c) The work of an Expert Group dealing with the establishment of final or regional appellate courts in place of the Judicial Committee of the Privy Council;

In noting this paper, Ministers heard accounts of the constitutional difficulties faced by some Caribbean countries in transferring the jurisdiction now exercised by the Privy Council to the newly-established Caribbean Court of Justice, and of the progress being made towards the inauguration of the SADC Tribunal.

(d) The implementation by small States of international environment instruments;

(e) The implementation of the WTO General Council Decision on Intellectual Property Rights and Affordable Drugs; and

(f) The *Commonwealth Law Bulletin*.

41. Appreciation was expressed of the breadth and quality of the Division's work. Ministers welcomed the extent to which the Commonwealth Secretariat worked in collaboration with other organisations, stressing the value of such co-operation in avoiding wasteful duplication of effort. Attention was drawn to the work undertaken on Land and Development following up the Kingstown Declaration on that subject. It was noted that this was one area in which other donors were active, but the Commonwealth Secretariat was ready to respond to any requests for specific assistance.

ASSET REPATRIATION

42. Law Ministers received for information the Report of the Commonwealth Working Group on Asset Repatriation, which was set up at the request of Commonwealth Heads of Government, who would be considering the report at their meeting in Malta in November 2005. They heard a presentation by the chairman of the Working Group, who explained the recommendations which were designed to deal with the problem of the recovery of assets of illicit origin and the repatriation of those assets to their country of origin. The Meeting

recognised the considerable achievement which the report represented, and Ministers made comments on a number of particular recommendations.

TRAINING IN LEGISLATIVE DRAFTING

43. At their Meeting in St Vincent and the Grenadines, Law Ministers asked the Commonwealth Secretariat to develop short courses on legislative drafting to supplement in-house training and to seek long-term solutions to the problem of recruiting, training and retaining drafters. They noted with pleasure that a 12-week course had been devised and was being offered initially in Ghana; and that the offer of placements in the office of parliamentary counsel in Scotland had been taken up by several countries.

44. The Meeting noted the view that both conditions of service and practical working conditions needed to be improved if the long-term problems were to be solved.

EXTENDED CONTINENTAL SHELF

45. The Meeting received a paper on rights and deadlines under Part VI of the UN Convention on the Law of the Sea dealing with the continental shelf. Ministers from countries which had made or were preparing to make submissions to the Commission on the Limits of the Continental Shelf testified to the very considerable demands on time and resources which a submission required. The deadline for submissions had already been extended by a Decision of the States Parties and there was support for the view that a further extension would be required if developing countries were to have an adequate opportunity to make submissions.

REPORTS FROM PARTNER ORGANISATIONS

46. The Commonwealth Secretariat works closely with a number of partner organisations and the Meeting heard reports from the Commonwealth Legal Education Association, the Commonwealth Magistrates and Judges Association, the Commonwealth Human Rights Initiative, the Commonwealth Lawyers Association, the Commonwealth Parliamentary Association and the Commonwealth Association of Law Reform Agencies.

FUTURE BUSINESS: INTELLECTUAL PROPERTY ENFORCEMENT

47. The Meeting agreed to a resolution in the following terms:

Law Ministers resolved that Senior Officials and the Commonwealth Secretariat should examine the development of appropriate responses to piracy and counterfeiting of intellectual property products within the Commonwealth and make recommendations at the next Law Ministers Meeting.

NEXT LAW MINISTERS MEETING

48. The Lord Advocate of Scotland on behalf of the United Kingdom extended an invitation to Law Ministers to hold their next Meeting in Scotland at a date in 2008. The Meeting gratefully accepted this invitation.

**SCHEME RELATING TO MUTUAL ASSISTANCE
IN CRIMINAL MATTERS WITHIN THE COMMONWEALTH**
including amendments made by Law Ministers in April 1990, November 2002
and October 2005

PURPOSE AND SCOPE

1. (1) The purpose of this Scheme is to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters. It augments, and in no way derogates from existing forms of co-operation, both formal and informal; nor does it preclude the development of enhanced arrangements in other for(a)
- (2) This Scheme provides for the giving of assistance by the competent authorities of the country (the requested country) in respect of criminal matters arising in another country (the requesting country).
- (3) Assistance in criminal matters under this Scheme includes assistance in
 - (a) identifying and locating persons;
 - (b) serving documents;
 - (c) examining witnesses;
 - (d) search and seizure;
 - (e) obtaining evidence;
 - (f) facilitating the personal appearance of witnesses;
 - (g) effecting a temporary transfer of persons in custody to appear as a witness;
 - (h) obtaining production of judicial or official records;
 - (i) tracing, seizing and confiscating the proceeds or instrumentalities of crime; and
 - (j) preserving computer data.

MEANING OF COUNTRY

2. For the purposes of this Scheme, each of the following is a separate country, that is to say
 - (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates; and
 - (b) each country within the Commonwealth which, though not sovereign and independent, is not designated for the purposes of the preceding sub-paragraph.

CRIMINAL MATTER

3. (1) For the purposes of this Scheme, a criminal matter arises in a country if the Central Authority of that country certifies that criminal or forfeiture proceedings have been instituted in a court exercising jurisdiction in that country or that there is reasonable cause to believe that an offence has been committed in respect of which such criminal proceedings could be so instituted.
- (2) "Offence", in the case of a federal country or a country having more than one legal system, includes an offence under the law of the country or any part thereof.
- (3) "Forfeiture proceedings" means proceedings, whether civil or criminal, for an order
- (a) restraining dealings with any property in respect of which there is reasonable cause to believe that it has been
 - (i) derived or obtained, whether directly or indirectly, from; or
 - (ii) used in, or in connection with,the commission of an offence;
 - (b) confiscating any property derived or obtained as provided in paragraph (a)(i) or used as provided in paragraph (a)(ii); or
 - (c) imposing a pecuniary penalty calculated by reference to the value of any property derived or obtained as provided in paragraph (a)(i) or used as provided in paragraph (a)(ii).

REQUESTS FOR COMPUTER DATA - DEFINITIONS

4. For the purposes of this Scheme
- (1) "subscriber information" means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:
- (a) the type of communication service used, and the period of service;
 - (b) the subscriber's identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;
 - (c) any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.
- (2) "computer system" means a device or a group of interconnected or related devices, including the Internet, one or more of which, pursuant to a program, performs automatic processing of data;
- (3) "computer data" means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;
- (4) "service provider" means:
- (a) a public or private entity that provides to users of its services the ability to communicate by means of a computer system, and

- (b) any other entity that processes or stores computer data on behalf of that entity or those users.
- (5) “traffic data” means any computer data:
 - (a) that relates to a communication by means of a computer system; and
 - (b) is generated by a computer system that formed a part in the chain of communication; and
 - (c) shows the communication’s origin, destination, route, time, date, size, duration, or type of underlying service.
- (6) “Content data” means the content of the communication; that is, the meaning or purpose of the communication, or the message or information being conveyed by the communication. It is everything transmitted as part of the communication that is not traffic data.
- (7) “Preservation of computer data” means the protection of computer data which already exists in a stored form from modification or deletion, or from anything that would cause its current quality or condition to change or deteriorate. Computer data that is stored on a highly transitory basis as an integral function of the technology used in its transmission is not computer data which already exists in a stored form for the purposes of this definition.

CENTRAL AUTHORITIES

- 5. Each country shall designate a Central Authority to transmit and to receive requests for assistance under this Scheme.

ACTION IN THE REQUESTING COUNTRY

- 6. (1) A request for assistance under this Scheme may be initiated by any law enforcement agency or public prosecution or judicial authority competent under the law of the requesting country.
- (2) The Central Authority of the requesting country shall, if it is satisfied that the request can properly be made under this Scheme, transmit the request to the central Authority of the requested country and shall ensure that the request contains all the information required by the provisions of this Scheme.
- (3) The Central Authority of the requesting country shall provide as far as practicable additional information sought by the Central Authority of the requested country.

ACTION IN THE REQUESTED COUNTRY

- 7. (1) Subject to the provisions of this Scheme, the requested country shall grant the assistance requested as expeditiously as practicable.
- (2) The Central Authority of the requested country shall, subject to the following provisions of this paragraph, take the necessary steps to ensure that the competent authorities of that country comply with the request.
- (3) If the Central Authority of the requested country considers
 - (a) that the request does not comply with the provisions of this Scheme, or
 - (b) that in accordance with the provisions of this Scheme the request for assistance is to be refused in whole or in part, or

- (c) that the request cannot be complied with, in whole or in part, or
- (d) that there are circumstances which are likely to cause a significant delay in complying with the request,

it shall promptly inform the Central Authority of the requesting country, giving reasons.

- (4) The requested country may make the granting of assistance subject to the requesting country giving an undertaking that:
 - (a) the evidence provided will not be used directly or indirectly in relation to the investigation or prosecution of a specified person; or
 - (b) a court in the requesting country will determine whether or not the material is subject to privilege.
- (5) If the requesting country refuses to give the undertaking under sub-paragraph (4), the requested country may refuse to grant the assistance sought in whole or in part.

REFUSAL OF ASSISTANCE

- 8. (1) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme if the criminal matter appears to the Central Authority of that country to concern
 - (a) conduct which would not constitute an offence under the law of that country; or
 - (b) an offence or proceedings of a political character; or
 - (c) conduct which in the requesting country is an offence only under military law or a law relating to military obligations; or
 - (d) conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the requested country.
- (2) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme
 - (a) to the extent that it appears to the Central Authority of that country that compliance would be contrary to the Constitution of that country, or would prejudice the security, international relations or other essential public interests of that country; or
 - (b) where there are substantial grounds leading the Central Authority of that country to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.
- (3) The requested country may refuse to comply in whole or in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot under the law of that country be taken in respect of criminal matters arising in that country.
- (4) An offence shall not be an offence of a political character for the purposes of this paragraph if it is an offence within the scope of any international convention to which both the requesting and requested countries are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.

MEASURES OF COMPULSION

9. (1) The competent authorities of the requested country shall in complying with a request under this Scheme use only such measures of compulsion as are available under the law of that country in respect of criminal matters arising in that country.
- (2) Where under the law of the requested country measures of compulsion cannot be applied to any person to take the steps necessary to secure compliance with a request under this Scheme but the person concerned is willing to act voluntarily in compliance or partial compliance with the terms of the request, the competent authorities of the requested country shall make available the necessary facilities.

SCHEME NOT TO COVER ARREST OR EXTRADITION

10. Nothing in this Scheme is to be construed as authorising the extradition, or the arrest or detention with a view to extradition, of any person.

CONFIDENTIALITY

11. The Central Authorities and the competent authorities of the requesting and requested countries shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in criminal proceedings and where otherwise authorised by the Central Authority of the other country.

LIMITATION OF USE OF INFORMATION OR EVIDENCE

12. The requesting country shall not use any information or evidence obtained in response to a request for assistance under this Scheme in connection with any matter other than the criminal matter specified in the request without the prior consent of the Central Authority of the requested country.

EXPENSES OF COMPLIANCE

13. (1) Except as provided in the following provisions of this paragraph, compliance with a request under this Scheme shall not give rise to any claim against the requesting country for expenses incurred by the Central Authority or other competent authorities of the requested country.
- (2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to the requesting country, including those of accompanying officials, for fees of experts, and for the costs of any translation required by the requesting country.
- (3) If in the opinion of the requested country, the expenses required in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue, and in the absence of agreement the requested country may refuse to comply further with the request.

CONTENTS REQUEST FOR ASSISTANCE

14. (1) Except in the case of a request for the preservation of computer data under Article 1 (3) (j) of this Scheme, a request under the Scheme shall:
 - (a) specify the nature of the assistance requested;
 - (b) contain the information appropriate to the assistance sought as specified in the following provisions of this Scheme;

- (c) indicate any time-limit within which compliance with the request is desired, stating reasons;
 - (d) contain the following information:
 - (i) the identity of the agency or authority initiating the request;
 - (ii) the nature of the criminal matter; and
 - (iii) whether or not criminal proceedings have been instituted.
 - (e) where criminal proceedings have been instituted, contain the following information:
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offences of which he stands accused, and a summary of the facts;
 - (iv) the stage reached in the proceedings; and
 - (v) any date fixed for further stages in the proceedings.
 - (f) where criminal proceedings have not been instituted, state the offence which the Central Authority of the requesting country has reasonable cause to believe to have been committed, with a summary of known facts.
- (2) A request shall normally be in writing, and if made orally in the case of urgency, shall be confirmed in writing forthwith.

REQUESTS FOR THE PRESERVATION OF COMPUTER DATA

15. (1) A request for the preservation of computer data under this Article made by an agency or authority competent to make such a request under the laws of the requesting country can be directly transmitted to an agency or authority competent to receive such a request under the laws of the requested country.
- (2) A request for the preservation of computer data shall
- (a) specify the identity of the agency or authority making the request;
 - (b) contain a brief description of the conduct under investigation;
 - (c) contain a description of the computer data to be preserved and its relationship to the investigation or prosecution, and in particular identifying whether the computer data to be preserved includes:
 - (i) subscriber information
 - (ii) traffic data
 - (iii) content data
 - (d) contain a statement that the requesting country intends to submit a request for mutual assistance to obtain the computer data within the period permitted under this Article.
- (3) The preservation of computer data pursuant to a request made under this Article shall be for a period of 120 (one hundred and twenty) days, pending submission by the requesting country of a request for assistance to obtain the preserved computer data. Following the receipt of such a request, the data shall continue to be preserved pending the determination of that request and, if the request is granted, until the data is obtained pursuant to the request for assistance.

- (4) If the requested country considers that the preservation of computer data pursuant to a request made under this Article will not ensure the future availability of the computer data, or will threaten the confidentiality of, or otherwise prejudice the investigation in the requesting country, it shall promptly inform the requesting country, which shall then determine whether the request should nevertheless be executed.
- (5) Notwithstanding the general grounds for refusal contained in Article 8, a request for the preservation of computer data under this Article may be refused only to the extent that it appears to the requested country that compliance would be contrary to the laws and/or constitution of that country, or would prejudice the security, international relations, or other essential public interests of that country.

IDENTIFYING AND LOCATING PERSONS

16. (1) A request under this Scheme may seek assistance in identifying or locating persons believed to be within the requested country.
- (2) The request shall indicate the purpose for which the information is requested and shall contain such information as is available to the Central Authority of the requesting country as to the whereabouts of the person concerned and such other information as it possesses as may facilitate the identification of that person.

SERVICE OF DOCUMENTS

17. (1) A request under this Scheme may seek assistance in the service of documents relevant to a criminal matter arising in the requesting country.
- (2) The request shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting country, such notice as the Central Authority of that country is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.
- (3) The Central Authority of the requested country shall endeavour to have the documents served:
 - (a) by any particular method stated in the request, unless such method is incompatible with the law of that country; or
 - (b) by any method prescribed by the law of that country for the service of documents in criminal proceedings.
- (4) The requested country shall transmit to the Central Authority of the requesting country a certificate as to the service of the documents or, if they have not been served, as to the reasons which have prevented service.
- (5) A person served in compliance with a request with a summons to appear as a witness in the requesting country and who fails to comply with the summons shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or the requested country notwithstanding any contrary statement in the summons.

EXAMINATION OF WITNESSES

18. (1) A request under this Scheme may seek assistance in the examination of witnesses in the requested country.
- (2) The request shall specify, as appropriate and so far as the circumstances of the case permit:

- (a) the names and addresses or the official designations of the witnesses to be examined;
 - (b) the questions to be put to the witnesses or the subject matter about which they are to be examined;
 - (c) whether it is desired that the witnesses be examined orally or in writing;
 - (d) whether it is desired that the oath be administered to the witnesses or, (as the law of the requested country allows, that they be required to make their solemn affirmation);
 - (e) any provisions of the law of the requesting country as to privilege or exemption from giving evidence which appear especially relevant to the request; and
 - (f) any special requirements of the law of the requesting country as to the manner of taking evidence relevant to its admissibility in that country.
- (3) The request may ask that, so far as the law of the requested country permits, the accused person or his legal representative may attend the examination of the witness and ask questions of the witness.

SEARCH AND SEIZURE

19. (1) A request under this Scheme may seek assistance in the search for, and seizure of property or computer data in the requested country.
- (2) The request shall specify the property or computer data to be searched for and seized and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required to be adduced in an application under the law of the requested country for any necessary warrant or authorization to effect the search and seizure.
- (3) The requested country shall provide such certification as may be required by the requesting country concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the property or computer data seized.

OTHER ASSISTANCE IN OBTAINING EVIDENCE

20. (1) A request under this Scheme may seek other assistance in obtaining evidence.
- (2) The request shall specify, as appropriate and so far as the circumstance of the case permit:
- (a) the documents, records, property or computer data to be inspected, preserved, photographed, copied or transmitted;
 - (b) the samples of any property or computer data to be taken, examined or transmitted; and
 - (c) the site to be viewed or photographed.

PRIVILEGE

21. (1) No person shall be compelled in response to a request under this Scheme to give any evidence in the requested country which he could not be compelled to give:
- (a) in criminal proceedings in that country; or

- (b) in criminal proceedings in the requesting country.
- (2) For the purposes of this paragraph any reference to giving evidence includes references to answering any question and to producing any document.

PRODUCTION OF JUDICIAL OR OFFICIAL RECORDS

- 22. (1) A request under this Scheme may seek the production of judicial or official records relevant to a criminal matter arising in the requesting country.
- (2) For the purposes of this paragraph "judicial records" means judgments, orders and decisions of courts and other documents held by judicial authorities and "official records" means documents held by government departments or agencies or prosecution authorities.
- (3) The requested country shall provide copies of judicial or official records which are publicly available.
- (4) The requested country may provide copies of judicial or official records not publicly available, to the same extent and under the same conditions as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

TRANSMISSION AND RETURN OF MATERIAL

- 23. (1) Where compliance with a request under this Scheme would involve the transmission to the requesting country of any document, record or property, the requested country
 - (a) may postpone the transmission of the material if it is required in connection with proceedings in that country, and in such a case shall provide certified copies of a document or record pending transmission of the original;
 - (b) may require the requesting country to agree to terms and conditions to protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.
- (2) Where any document, record or property is transmitted to the requesting country in compliance with a request under this Scheme, it shall be returned to the requested country when it is no longer required in connection with the criminal matter specified in the request unless that country has indicated that its return is not desired.
- (3) The requested country shall authenticate material that is to be transmitted by that country.

AUTHENTICATION

- 24. A document or other material transmitted for the purposes of or in response to a request under this Scheme shall be deemed to be duly authenticated if it:
 - (a) purports to be signed or certified by a judge or Magistrate, or to bear in the stamp or seal of a Minister, government department or Central Authority; or
 - (b) is verified by the oath of a witness or of a public officer of the Commonwealth country from which the document or material emanates.

PERSONAL APPEARANCE OF WITNESSES IN THE REQUESTING COUNTRY

25. (1) A request under this Scheme may seek assistance in facilitating the personal appearance of the witnesses before a court exercising jurisdiction in the requesting country.
- (2) The request shall specify
- (a) the subject matter upon which it is desired to examine the witnesses;
 - (b) the reasons for which the personal appearance of the witnesses is required; and
 - (c) details of the travelling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witnesses.
- (3) The competent authorities of the requested country shall invite persons whose appearance as witnesses in the requesting country is desired; and
- (a) ask whether they agree to appear;
 - (b) inform the Central Authority of the requesting country of their answer; and
 - (c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.
- (4) A person whose appearance as a witness is the subject of a request and who does not agree to appear shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or requested country.

PERSONAL APPEARANCE OF PERSONS IN CUSTODY

26. (1) A request under this Scheme may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a court exercising jurisdiction in the requesting country.
- (2) The request shall specify:
- (a) the subject matter upon which it is desired to examine the witnesses;
 - (b) the reasons for which the personal appearance of the witnesses is required.
- (3) The requested country shall refuse to comply with a request for the transfer of persons in custody if the persons concerned do not consent to the transfer.
- (4) The requested country may refuse to comply with a request for the transfer of persons in custody and shall be under no obligation to inform the requesting country of the reasons for such refusal.
- (5) A person in custody whose transfer is the subject of a request and who does not consent to the transfer shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or requested country.
- (6) Where persons in custody are transferred, the requested country shall notify the requesting country of:
- (a) the dates upon which the persons are due under the law of the requested country to be released from custody; and
 - (b) the dates by which the requested country requires the return of the persons
- and shall notify any variations in such dates.

- (7) The requesting country shall keep the persons transferred in custody, and shall return the persons to the requested country when their presence as witnesses in the requesting country is no longer required, and in any case by the earlier of the dates notified under sub-paragraph (6).
- (8) The obligation to return the persons transferred shall subsist notwithstanding the fact that they are nationals of the requesting country.
- (9) The period during which the persons transferred are in custody in the requesting country shall be deemed to be service in the requested country of an equivalent period of custody in that country for all purposes.
- (10) Nothing in this paragraph shall preclude the release in the requesting country without return to the requested country of any person transferred where the two countries and the person concerned agreed.

IMMUNITY OF PERSONS APPEARING

- 27. (1) Subject to the provisions of paragraph 24, witnesses appearing in the requesting country in response to a request under paragraph 23 or persons transferred to that country in response to a request under paragraph 24 shall be immune in that country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions before the time of their departure from the requested country.
- (2) The immunity provided for in that paragraph shall cease:
 - (a) in the case of witnesses appearing in response to a request under paragraph 23, when the witnesses having had, for a period of 15 consecutive days from the dates when they were notified by the competent authority of the requesting country that their presence was no longer required by the court exercising jurisdiction in the criminal matter, an opportunity of leaving have nevertheless remained in the requesting country, or having left that country have returned to it;
 - (b) in the case of persons transferred in response to a request under paragraph 24 and remaining in custody when they have been returned to the requested country.

TRACING THE PROCEEDS OR INSTRUMENTALITIES OF CRIME

- 28. (1) A request under this Scheme may seek assistance in identifying, locating and assessing the value of property believed to have been derived or obtained, directly or indirectly, from, or to have been used in, or in connection with, the commission of an offence and believed to be within the requested country.
- (2) The request shall contain such information as is available to the Central Authority of the requesting country as to the nature and location of the property and as to any person in whose possession or control the property is believed to be.

SEIZING AND CONFISCATING THE PROCEEDS OF INSTRUMENTALITIES OF CRIME

- 29. (1) A request under this Scheme may seek assistance in securing:
 - (a) the making in the requested country of an order relating to the proceeds of instrumentalities of crime; or
 - (b) the recognition or enforcement in that country of such an order made in the requesting country.
- (2) For the purpose of this paragraph, "an order relating to the proceeds of instrumentalities of crime" means:

- (a) an order restraining dealings with any property in respect of which there is reasonable cause to believe that it has been derived or obtained, directly or indirectly, from, or used in, or in connection with, the commission of an offence;
 - (b) an order confiscating property derived or obtained, directly or indirectly, from, or used in or in connection with, the commission of an offence; and
 - (c) an order imposing a pecuniary penalty calculated by reference to the value of any property so derived, obtained or used.
- (3) Where the requested country cannot enforce an order made in the requesting country, the requesting country may request the making of any similar order available under the law of the requested country.
 - (4) The request shall be accompanied by a copy of any order made in the requesting country and shall contain so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required in connection with the procedures to be followed in the requested country.
 - (5) The law of the requested country shall apply to determine the circumstances and manner in which an order may be made, recognised or enforced in response to the request.
 - (6) The law of the requested country may provide for the protection of the interests of bona fide third parties in property restrained or confiscated as a result of a request made pursuant to this Scheme, by providing:
 - (a) for the giving of notice of the making of orders restraining or confiscating property; and
 - (b) that any third party claiming an interest in property so restrained or confiscated may make an application to a court of competent jurisdiction for an order
 - (i) declaring that the interest of the applicant in the property or part thereof was acquired bona fide; and
 - (ii) restoring such property or the value of the interest therein to the applicant.

DISPOSAL OR RELEASE OF PROPERTY

- 30. (1) The law of the requested country shall apply to determine the disposal of any property
 - (a) forfeited; or
 - (b) obtained as a result of the enforcement of a pecuniary penalty order as a result of a request under this Scheme.
- (2) The law of the requested country shall apply to determine the circumstances in which property made the subject of interim seizure as a result of a request under this Scheme may be released from the effects of such seizure.
- (3) The law of the requested country may provide that the proceeds of an order of the type referred to in sub-paragraphs 27(2)(b) and (c), or the value thereof, may be
 - (a) returned to the requesting country; or

- (b) shared with the requesting country in such proportion as the Requested country in its discretion deems appropriate in all the circumstances.

CONSULTATION

- 31. The Central Authorities of the requested and requesting countries shall consult promptly, at the request of either, concerning matters arising under this Scheme.

OTHER ASSISTANCE

- 32. After consultation between the requesting and the requested countries assistance not within the scope of this Scheme may be given in respect of a criminal matter on such terms and conditions as may be agreed by those countries.

NOTIFICATION OF DESIGNATIONS

- 33. Designations of dependent territories under paragraph 2 and of Central Authorities under paragraph 4 shall be notified to the Commonwealth Secretary-General.

COMMONWEALTH NETWORK OF CONTACT PERSONS (CNCP) FRAMEWORK OF THE CNCP

PRINCIPLES OF THE CNCP

The purpose of the network of Contact Persons will be;

1. to facilitate international co-operation in criminal cases between Commonwealth Member States including mutual legal assistance and extradition.
2. to provide legal and practical information necessary to the authorities in their own country and Commonwealth Member States wishing to invoke international co-operation.

The network of Contact Persons will be an informal network. The Contact Person does not act as the Central Authority of a member State unless the Central Authority also acts as Contact Person; and the role of the Central Authority under the Harare Scheme on Mutual Assistance in Criminal matters remains unaffected by the establishment of the CNCP.

Article 1 - Establishment

The Commonwealth Network of Contact Persons, hereinafter referred to as the Network or CNCP, which shall include prosecutors and other authorities with responsibility in criminal matters, shall be established in the Commonwealth.

It will be for each Member State, taking into account their own constitutional rules, legal traditions and internal structure to nominate Contact Person(s).

The Contact Person(s) may include the Central Authority, if the Member State so chooses.

Article 2 – Objective

The objective of the CNCP is to improve and enhance international assistance and co-operation in criminal cases.

Article 3 – Composition

1. The CNCP shall comprise of at least one Contact Person from each of the jurisdictions of the Commonwealth.
2. The Commonwealth Secretariat shall designate one of its officials to co-ordinate the activities of the CNCP.

Article 4 – Functions of the Network

The CNCP shall, in particular:

- (a) facilitate the establishment of appropriate contacts between Contact Persons in the various criminal jurisdictions of the Commonwealth in order to carry out the functions laid down in Article 5;
- (b) meet periodically, as arranged by the Commonwealth Secretariat, to review activities;
- (c) make every effort to collaborate with other Networks.

Article 5 – Functions of the Contact Persons

1. The Contact Persons shall seek, to the extent permitted by their domestic laws, to facilitate international co-operation in criminal matters between Member States of the Commonwealth. They shall enable the most appropriate direct contacts between prosecution agencies, other competent authorities and Contact Persons in Commonwealth jurisdictions. They may, if necessary, travel to meet other Contact Persons, on the basis of an agreement between the administrations concerned.
2. The Contact Persons shall seek to provide legal and practical information to prosecution agencies, other competent authorities and Contact Persons in their own and other Commonwealth jurisdictions to improve international co-operation in criminal cases.
3. They shall aim to improve co-ordination of international co-operation in criminal cases where a series of requests from a Commonwealth jurisdiction necessitates co-ordinated action in another Commonwealth jurisdiction.
4. Contact Persons, through the Commonwealth Secretariat, shall distribute any changes in legislation or procedure introduced within their jurisdiction

Article 6 – Meetings

1. Contact Persons shall endeavour to meet periodically to review the activities of the CNCP.
2. The aims of the periodic meetings shall be as follows:
 - (a) to allow the Contact Persons to get to know each other and exchange experiences;
 - (b) to provide a forum for discussion of practical and legal problems encountered; and
 - (c) to provide to the Commonwealth Secretariat any information or collective opinions which may assist the Secretariat in its work.

Article 7 - Provision of Information

1. It will be the responsibility of each Member State initially to provide the details of the Contact Person(s) to the Commonwealth Secretariat.
2. It shall be the responsibility of each Contact Person to check the accuracy of the data contained in the system and to inform the Commonwealth Secretariat immediately if any of these details need to be amended or updated.

Article 8 – Role of the Commonwealth Secretariat

Activities of the network should be co-ordinated by the Commonwealth Secretariat which shall, *inter alia*:

1. maintain an up-to-date list of Contact Persons;
2. maintain an up-to-date web page concerning the activities of the CNCP;
3. facilitate meetings of Contact Persons;
4. disseminate information amongst Contact Persons.

COMMONWEALTH STATEMENT OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIMES

Commonwealth Law Ministers recall the adoption by the United Nations General Assembly of Resolution 40/34 which recognised “that the victims of crime and the victims of abuse of power, and also frequently their families, and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders”, and the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the Basic Principles);

Commonwealth Law Ministers reaffirm the principle that victims must be treated with courtesy, compassion and respect for personal dignity.

To express their commitment to the Basic Principles, Ministers agree that member countries would give consideration to the national implementation of measures designed to give practical effect to these Principles, in particular for serious crime. They believe that:-

1. Guidelines and training programmes should be developed to ensure that Police:-
 - are sensitive to the needs of victims;
 - are informed, knowledgeable, and supportive of existing social services and programmes for victims;
 - introduce, to the extent possible, procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of alternative methods of retaining and introducing evidence such as the use of photographs; and
 - establish procedures to ensure that, to the extent possible, victims of crime requiring information are periodically informed of the general status of investigations, taking into consideration the need to ensure the proper administration of justice.

2. Prosecutors, in the exercise of their powers and performance of their duties should:-
 - be sensitised to the fact that public interest should specifically take into consideration the views of victims, including consideration of pre-trial sessions with victims for this purpose, if possible and appropriate;
 - endeavour to provide information to victims – either directly or through another authority - about the status of the case such as scheduling, progress, final outcomes and general reasons for those outcomes;
 - to the extent possible and as appropriate taking into account all of the relevant fair trial interests, bring to the attention of the court the impact of the offence, investigation and the trial process on the victim, the better to inform the court’s decisions on bail, adjournments, sentencing, compensation and restitution
 - take appropriate action with respect to any persons who harass, threaten, injure or otherwise attempt to intimidate or retaliate against victims or witnesses, including referring the matter to the police or an application for bail variation, the withdrawal of bail, or the revocation of parole;
 - use a victim and witness on-call system, where practicable, to ensure that victims do not waste time unnecessarily in court;
 - to the extent possible, introduce procedures consistent with legal requirements to allow for the prompt return of property to victims, including the consideration of

alternative methods of retaining and introducing evidence such as the use of photographs;

- establish and maintain liaison with victim support structures; and
- be sensitised to the trauma and well being of victims of serious crimes.

3. Law Ministers may propose for the consideration of the Chief Justices and other members of the Judiciary of their respective jurisdictions, the following suggestions that they believe will assist in the achievement of national adherence to the Basic Principles:-

- encouraging participation in a training programme sensitising judges to the needs and interests of victims of crime in relation to the judicial process;
- allowing victims and witnesses to be on-call for court proceedings where practicable;
- in so far as possible, ensuring that their court officials establish separate waiting rooms for prosecution and defence witnesses;
- means by which members of the judiciary can bear their share of responsibility for reducing court congestion by ensuring that all participants fully and responsibly utilise court time;
- to allow, to the extent possible and appropriate taking into account all of the relevant fair trial interests, the views, if any, of victims to be made known to the court at bail hearings, postponements, sentencing, restitution or any compensation hearings;
- sensitising judges, where applicable, to consider ordering restitution to the victim in appropriate cases where such orders are possible;
- ensuring that, after having given any evidence, the victim's attendance at the trial is facilitated if he or she so wishes and, as requested, a member of the victim's family as well; and
- giving substantial weight to the victim's interest in the speedy return of property before trial in ruling on the admissibility of photographs of that property as being sufficient evidence.

4. Ministers also agree that they will give consideration to the passage, where necessary or appropriate, of legislation that will assist in the realisation of adherence to the Basic Principles. They further agreed that national consideration should be given to the development of appropriate mechanisms designed to provide assistance to the victims. They recognise that the precise form that such mechanisms could take must remain a matter for national decision, taking into account economic, social and cultural norms of each member country.