

## UNODC Expert Meeting on International Cooperation

### Comments from the Commonwealth Secretariat

#### *Commonwealth Schemes on International Cooperation*

The Commonwealth Secretariat has undertaken work in this area for quite some time. We have developed a range of mechanisms including schemes on extradition and mutual legal assistance. Our schemes are not treaties in that they are not binding. Commonwealth Schemes represent flexible arrangements which provide a constructive and pragmatic approach to mutual co-operation in Commonwealth countries. Implementation may, however, often involve the passing of legislation at the national level in order to give effect to the provisions of the Schemes. In this regard, we have developed a model law on mutual legal assistance in criminal matters.

We also have an informal communication network called the Framework for the Commonwealth Network of Contact Persons. This was created in 2007. It is an informal network so the contact person is not necessarily the central authority. It could be a representative from the prosecutors office. The objective is to improve and enhance international assistance and cooperation in criminal cases through providing legal and practical information. Sometimes this can be a simple request for clarification on a legal process which may not need to involve the central authority. These informal channels actually enhance efficiency by reducing delays and errors that may be caused by lack of knowledge on a specific country.

A number of our tools/schemes require states to inform the secretariat of the contact information of the relevant authority or agency responsible for managing the specific request. The Commonwealth Secretariat has been collecting this information on an annual basis since 2021 but we share some of the challenges UNODC highlighted yesterday as it relates to response rate etc.

#### *Small States/Least Developed Countries – Specific Challenges*

Most of the presentations have come from countries with far more sophisticated legal systems than a number of Commonwealth member countries. A vast number of our member countries are small states or least developed countries with broken criminal justice systems dealing with limited staff and significant delays and backlogs in the general administration of justice. As a result, there are a number of challenges which are unique to them for certain contextual reasons which can be referenced or included in the manual in some way:

1. Most of my colleagues who are here identify themselves as members of teams or departments with a specific focus on international cooperation. That is not necessarily the case with some of the small states. For example, the AG's office acting as central authority will normally pass the request to the Director of Public Prosecution's office or the Solicitor General's office. The prosecutors in the DPP's office are responsible for prosecuting all criminal matters in that specific country so the request (however small) would be added to an already significant workload. Most of these legal systems are already facing significant backlogs in their criminal jurisdictions so they simply do not have the capacity to deal with requests as efficiently as one would like or one from another developed country would expect.
2. The ability of France and Columbia to complete an extradition in nine months was remarkable. There are some extraditions in the Caribbean which are over 10 years old. There is one as far back as 2007. The challenge is that extradition requests are subject to judicial determination and court systems are experiencing delays up to 10 years for trials to start. Then there is the

added hurdle of the appeal process which can take in some cases another 5 plus years. Moreover, some of these countries are not even digitized in case management processes and still rely on paper files and the challenges which may come as a result of that.

3. Finally, domestic frameworks. A comment was made that UNTOC forms part of the domestic legislation of all 192 parties but it is important to note that the dualist/monist issue is still a challenge in a number of our member states. So, while some member states ratify treaties and it automatically forms part of their domestic laws, there still needs to be formal inclusion in the domestic laws of certain member states. That remains a significant limitation in the use of UNTOC in the Commonwealth. There also needs to be significant changes in domestic legal frameworks to support the implementation of UNTOC – for example – mutual legal assistance requests can take many forms but there may not always be domestic legislation on electronic evidence or proceeds of crime or interception of communication to facilitate the request locally.

General Note: The objective of this meeting is to focus on the practical challenges and I note the limited representation of African, Pacific and Caribbean states so I wanted to contextualise some of the issues which have may be impacting that.