

# THE COMMONWEALTH SECRETARIAT AND THE INTERNATIONAL CRIMINAL COURT

## INTRODUCTION

The objective of this paper is to review the work of the Commonwealth Secretariat regarding the International Criminal Court (ICC). First, the paper sets out the mandates of the Secretariat in supporting the ICC, before exploring the various initiatives of the Secretariat in this context. The paper also provides a status report detailing signature, ratification and domestic implementation of the ICC Rome Statute as a first annex and a matrix setting out the various activities undertaken in chronological order in a second annex.

## BACKGROUND

The Commonwealth Secretariat's mandate regarding the ICC originates from the Meeting of Commonwealth Heads of Government (CHOGM) in Coolumb, Australia in 2002, where states were urged to ratify and implement the Rome Statute of the International Criminal Court. These same sentiments were echoed at subsequent CHOGMs in 2003, 2005 and 2007. In 2007, in stressing the importance of ending impunity for the perpetrators of genocide, crimes against humanity and war crimes, Heads of Government took positive note of the work of the international criminal tribunals and called on states to consider further contributions to the valuable work of the Special Court for Sierra Leone.

The emphasis accorded to ratification and domestication of the ICC Rome Statute at CHOGM was reinforced at the Law Ministers Meeting (LMM) 2002. In a round table discussion, Law Ministers noted that a number of regional courts had been established, and in this context, they drew attention to the importance of Commonwealth countries ratifying the ICC Rome Statute.

At their meeting in 2005, Law Ministers further considered a paper from the International Committee of the Red Cross (ICRC) addressing the implementation of International Humanitarian Law (IHL) treaties. The paper sought to encourage states to pass relevant national *legislation* and establish national IHL committees to ensure implementation of the IHL obligations. Law Ministers encouraged member countries to consider acceding to further IHL treaties and acknowledged the importance of effective domestic implementation of those treaties.

## PROGRAMME OF WORK

From 2001 to 2002, before CHOGM 2002, the Commonwealth Secretariat was involved in 3 workshops on the implementation of the Rome Statute in the Commonwealth.

The first workshop took place in Port of Spain, Trinidad and Tobago in February 2001 and was attended by representatives from eleven Commonwealth states within the Caribbean region, along with a representative of the International Committee of the Red Cross, two facilitators from the Government of Canada along with a representative of the Commonwealth Secretariat. A second and third workshop took place in Dar Es Salaam, the United Republic of Tanzania in February 2002, and in Apia, Samoa in March 2002,

where Commonwealth States from Africa and Asia/Pacific attended respectively, along with representatives from ICRC and the Canadian Government.

The workshops were divided between a consideration of the obligations set out in the Rome Statute that State Parties must implement (i.e. cooperation with the Court, administration of justice offences, state/diplomatic immunity and immunities and privileges for Court officials) and other matters that State Parties may implement in order to ensure a more effective international criminal justice system (i.e. establishing a domestic regime for prosecution to take advantage of the principle of complementarity in the Rome Statute, and enforcement of penal sentences).

Following the formal mandate from CHOGM and LMM 2002, the Legal and Constitutional Affairs Division of the Secretariat held a workshop to prepare model legislation that could be used by member countries of the Commonwealth to guide the development of domestic laws to implement the Rome Statute.

The Expert Group met in Marlborough House in July 2004. It consisted of representatives of five Commonwealth countries plus observers and experts from the Office of the Prosecutor and the Office of the Registrar of the ICC and the ICRC as well as the Government of New Zealand. The Group considered the various components of implementing legislation in accordance, examining existing Commonwealth ICC legislation and draft bills and concluded by setting out drafting instructions that could be used by a legislative drafter to prepare a model law, for use by states in developing domestic legislation.

In June 2005, the Commonwealth Secretariat published a book, 'The Prosecution of International Crimes: A Practical Guide to Prosecuting ICC Crimes in Commonwealth States'. Following CHOGM and LMM in 2005, the Secretariat participated in a Symposium on the investigation and prosecution of 'core international crimes' and the role of the International Criminal Court in Africa organised by the Open Society Foundation for South Africa in Zevenwacht, Cape Town in August 2006.

In December 2006, the Commonwealth Secretariat in collaboration with the Government of Sierra Leone and No Peace Without Justice organised a seminar for National Stakeholders on the domestic implementation of the ICC Rome Statute. The aim of the seminar to promote the drafting and adoption of national legislation implementing the Rome Statute and cooperation with the ICC in Sierra Leone and was attended by parliamentarians, other relevant public officials, legal professionals, representatives of civil society and others with an interest in the preparation of the implementation of the legislation.

The Commonwealth Secretariat also initiated a survey on the domestic implementation of the ICC Rome Statute. The results of this exercise, which was completed in June 2007, are set out in Annex 1.

## **CURRENT INITIATIVES/CONCLUSION**

The focus of the Commonwealth Secretariat's past work has been on the promotion of ratification and domestication of the ICC Rome Statute. It is important that the strategy also addresses the capacity of states to implement these international norms, especially given the role that national criminal justice agencies are required to play in assisting the

ICC and in the context of the principle of complementarity.

This brings into focus the work of the Secretariat in capacity building of criminal justice agencies generally. First, the web-based training programme and the mentoring and placement initiatives of the Commonwealth Secretariat could be adapted to accommodate the relevant issues.

Secondly, the present work of the Secretariat to enhance international co-operation between prosecution agencies is also particularly relevant. The Commonwealth is engaged in revising its Scheme on Mutual Assistance in Criminal Matters within the Commonwealth to ensure that it reflects contemporary trends and methods in tackling crimes with a transnational or international element. The Commonwealth Network of Contact Persons is another important initiative to further facilitate such co-operation within the Commonwealth. Consultations have now taken place over the possibility of linking the network with other regional and thematic networks such as the European Judicial Network, the network of the Organisation of American States as well as Interpol to further enhance the global network to facilitate the prosecution of crimes.

Thirdly, the Commonwealth Secretariat is in the process of developing part of its mandate on witness and victims' protection and assistance in view of the fact that the protection of witnesses and victims is paramount for the proper functioning of the ICC and the attainment of its objectives.

Finally, the Secretariat has worked closely with other relevant organisations to ensure widespread dissemination of IHL laws, rules and principles across the Commonwealth. In December 2008, the Commonwealth Secretariat published a Special Issue of the Commonwealth Law Bulletin on International Humanitarian Law with the collaboration of the ICRC. In addition, the Secretariat is in the process of developing a Criminal Law Resource Webpage in partnership with the Australasian Legal Information Institute in Australia. The main purpose of the webpage is to include in one searchable location as much freely accessible criminal law data, including ICC and IHL related materials. In this regard, consultations on the possibility of hosting IHL and ICC related materials have taken place.

**DOMESTIC IMPLEMENTATION OF ICC/ROME STATUTE**

DATED 13.11.2009

Note:

This is an existing Legal and Constitutional Affairs Division document last modified in June 2007. The information in *red italics* indicates updated information entered on 13 November 2009. The source of the updated information is the United Nations Treaty Collection and the Coalition for the International Criminal Court indicated accordingly.

Commonwealth member states that **have not** ratified:

Bahamas, Bangladesh, Cameroon, Grenada, India, Jamaica, Kiribati, Malaysia, Maldives, Mozambique, Pakistan, Papua New Guinea, Saint Lucia, Seychelles, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tonga, Tuvalu, Vanuatu, Virgin Islands

COUNTRY	ICC
Antigua and Barbuda	<i>Ratified 18 June 2001[UNTC]</i>
Australia	<b>Ratified</b> 1 July 2002; <b>Status of domestic implementation:</b> Enacted into domestic law as the International Criminal Court Act 2002 (entered into force 26 September 2002)
The Bahamas	<i>Signed, not yet ratified[UNTC]</i>
Bangladesh	<i>Signed, not yet ratified[UNTC]</i>
Barbados	<i>Ratified 10 December 2002[UNTC]</i>
Belize	<i>Ratified 5 April 2000[UNTC]</i>
Botswana	<i>Ratified 8 September 2000 [UNTC];</i>
Brunei Darussalam	<b>Brunei is not party to the Rome Statute of the ICC.</b>
Cameroon	<b>Signed</b> , not yet ratified
Canada	<i>Ratified 7 July 2000[UNTC]; Enacted Legislation: 29 June 2000 Crimes Against Humanity and War Crimes Act Text of Legislation available at <a href="http://laws.justice.gc.ca/eng/C-45.9/page-1.html">http://laws.justice.gc.ca/eng/C-45.9/page-1.html</a></i>
Cyprus	<b>Ratified</b> 7 March 2002 <b>Status of domestic implementation:</b> Bill has been submitted to Council of Ministers to make genocide, war crimes, crimes against humanity criminal offences under domestic law
Dominica	<i>Accession, 12 February 2001[UNTC];</i>
Fiji Islands	<i>Ratified, 29 November 1999[UNTC];</i>
The Gambia	<i>Ratified, 28 June 2002[UNTC];</i>
Ghana	<i>Ratified, 20 December 1999[UNTC];</i>

Grenada	
Guyana	<i>Ratified, 24 September 2004[UNTC];</i>
India	
Jamaica	<i>Signed, not ratified[UNTC];</i> Rome Statute of the ICC <b>not yet ratified</b> – partly because country is yet to pass necessary implementing legislation.
Jersey	<b>Signed</b> Rome Statute of the ICC on 17 July 1998. <b>Ratified</b> on 4 October 2001. <b>Enacted</b> domestically (UK) by the International Criminal Court Act 2001.
Kenya	<i>Ratified, 15 March 2005;</i> Draft Bill
Kiribati	
Lesotho	<i>Ratified, 6 September 2000[UNTC]</i>
Malawi	<i>Ratified, 19 September 2002[UNTC]</i>
Malaysia	<b>No action taken</b>
Maldives	
Malta	<b>Ratified</b> 29 November 2002; <b>Status of domestic implementation:</b> Enacted into domestic law as the International Criminal Court Act, including provisions within the Criminal Code of Malta <i>Legislation available at <a href="http://docs.justice.gov.mt/lom/legislation/english/leg/vol_14/chapt453.pdf">http://docs.justice.gov.mt/lom/legislation/english/leg/vol_14/chapt453.pdf</a></i>
Mauritius	<i>Ratified, 5 March 2002[UNTC];</i>
Mozambique	<i>Signed, not ratified[UNTC];</i>
Namibia	<i>Ratified, 25 June 2002[UNTC];</i>
Nauru	<i>Ratified, 12 November 2001[UNTC];</i>
New Zealand	<b>Ratified</b> 7 September 2000; <b>Status of domestic implementation:</b> Enacted into domestic law as the International Crimes and International Criminal Court Act 2000
Nigeria	<i>Ratified, 27 September 2001[UNTC];</i>
Pakistan	
Papua New Guinea	
St Kitts and Nevis	<i>Accession, 22 August 2006 [UNTC]</i>
St Lucia	<i>Signed, not ratified;</i> Enactment of domestic legislation implementing the Rome Statute is currently a priority on legislative agenda.
St Vincent and the Grenadines	<i>Accession, 3 December 2002[UNTC]</i>
Samoa	<b>Ratified</b> 16 September 2002; <b>Status of domestic implementation:</b> Draft International Criminal Court Bill 2006 (premised on the 2002 Commonwealth model) <b>[our comments welcomed]</b>
Seychelles	<i>Signed, not ratified[UNTC]</i>
Sierra Leone	<b>Ratified</b> 15 September 2000;

Singapore	Singapore is not party to the Rome Statute of the ICC.
Solomon Islands	<i>Signed, not ratified[UNTC]</i>
South Africa	<i>Ratified, 27 November 2000[UNTC]</i> <b>Ratified and domestically enacted</b> Rome Statute of the ICC, by the International Criminal Court Act 2002
Sri Lanka	
Swaziland	
Tonga	
Trinidad and Tobago	<i>Ratified, 6 April 1999[UNTC]</i>
Tuvalu	
Uganda	<i>Ratified, 14 June 2002[UNTC]</i>
United Kingdom	<b>Ratified</b> 4 October 2001 <b>Status of domestic implementation:</b> International Criminal Court Act 2001 (entered into force 1 September 2001). <b>Scotland; Status of domestic implementation:</b> Enacted International Criminal Court (Scotland) Act 2001
United Republic of Tanzania	<i>Ratified, 20 August 2002[UNTC]</i>
Vanuatu	
Virgin Islands	<b>No legislation in place</b>
Zambia	<i>Signed, not ratified[UNTC]</i>

**CRIMINAL LAW SECTION (23 October 2009)**

DATES	ACTIVITIES/MEETINGS	COUNTRIES
14 - 16 FEBRUARY 2001	<b>WORKSHOP ON IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT</b> PORT OF SPAIN, TRINIDAD AND TOBAGO	ANTIGUA & BARBUDA CANADA THE BAHAMAS DOMINICA BARBADOS GRENADA BELIZE GUYANA JAMAICA ST KITTS & NEVIS TRINIDAD & TOBAGO ST LUCIA ICRC
4-6 FEBRUARY, 2002	WORKSHOP ON THE IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT  DAR ES SALAAM, THE UNITED REPUBLIC OF TANZANIA	KENYA SWAZILAND MALAWI UNITED REPUBLIC OF TANZANIA MAURITIUS MOZAMBIQUE UGANDA SEYCHELLES ZAMBIA ZIMBABWE CANADA
25 - 28 MARCH, 2002	<b>WORKSHOP ON THE IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS</b> APIA, SAMOA	BANGLADESH CANADA FIJI KIRIBATI MALDIVES SAMOA TONGA PAPUA NEW GUINEA TUVALU VANUATU AUSTRALIA
7-9 JULY, 2004	COMMONWEALTH EXPERT GROUP MEETING ON IMPLEMENTING LEGISLATION FOR THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT LONDON, UNITED KINGDOM	CANADA GHANA NEW ZEALAND TRINIDAD & TOBAGO UGANDA ICC ICRC ACADEMIC (UCL)

2005	COMMONWEALTH SECRETARIAT PUBLICATION THE PROSECUTION OF INTERNATIONAL CRIMES: PRACTICAL GUIDE TO PROSECUTING ICC CRIMES IN COMMONWEALTH STATES BEN BRANDON AND MAX DE PLESSIS	
3 – 4 AUGUST, 2006	SYMPOSIUM ON THE INVESTIGATION AND PROSECUTION OF 'CORE INTERNATIONAL CRIMES' AND THE ROLE OF THE INTERNATIONAL CRIMINAL COURT IN AFRICA ZEVENWACH T, CAPE TOWN	
11 – 15 DECEMBER, 2006	WORKSHOP GOVERNMENT OF SIERRA LEONE, COMMONWEALTH SECRETARIAT & NO PEACE WITHOUT JUSTICE: NATIONAL STAKEHOLDERS CONSULTATIVE SEMINAR ON THE DOMESTIC IMPLEMENTATION OF THE INTERNATIONAL CRIMINAL COURT (ICC) & THE ROME STATUTE FREETOWN, SIERRA LEONE	
19 – 21 MARCH, 2007	ICRC CONFERENCE ON 'MISSING PERSONS' GENEVA, SWITZERLAND	
18 JUNE, 2007	SURVEY ON DOMESTIC	

	IMPLEMENTATION OF ICC ROME STATUTE COMPLETED	
29 – 31 AUGUST, 2007	ASSISTING IN THE ORGANISATION OF THE SECOND COMMONWEALTH RED CROSS AND RED CRESCENT CONFERENCE ON INTERNATIONAL HUMANITARIAN LAW WELLINGTON, NEW ZEALAND	