

TheParliamentarian



Journal of the Parliaments of the Commonwealth

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Commonwealth trade and the implications of 'Brexit'



PLUS ►

Implementing the
Separation of Powers
and Embracing Latimer

PAGE 228

Parliament and the
Media: Fostering an
Effective Partnership

PAGE 232

Why Parliamentary
Privilege Matters
today

PAGE 236

Ensuring compliance
with International
Humanitarian Law

PAGE 240

Commonwealth Youth Parliament

November 6-10, 2016
Victoria, British Columbia, Canada

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P8



- Network with young people from across the Commonwealth
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- Gain first-hand knowledge of the Commonwealth Democratic Values from experienced Parliamentarians and Parliamentary Officials



Commonwealth Parliamentary Association (CPA)

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STATEMENT OF PURPOSE

The Commonwealth Parliamentary Association (CPA) exists to connect, develop, promote and support Parliamentarians and their staff to identify benchmarks of good governance, and implement the enduring values of the Commonwealth.

Calendar of Forthcoming Events

Confirmed as of 30 September 2016

2016

October

- | | |
|------------------|--|
| 13 to 14 October | Updating of the Benchmarks for Democratic Legislatures in cooperation with the Westminster Foundation for Democracy - London, UK |
| 24 to 25 October | Caribbean Network of Public Accounts Committees (CarNPAC) Meeting - Kingston, Jamaica |

November

- | | |
|-------------------|--|
| 6 to 10 November | 8 th Commonwealth Youth Parliament - British Columbia, Canada |
| 7 to 9 November | Pacific Network of Public Accounts Committees (PaNPAC) Meeting - Honiara, Solomon Islands |
| 12 to 14 November | CPA Post-Election Seminar for the Parliament of Zambia - Lusaka, Zambia |
| 22 to 24 November | CPA/WTO Regional Trade Workshop for Parliamentarians from the Caribbean, Americas and the Atlantic (CAA) Region - Port of Spain, Trinidad and Tobago |

To be confirmed: The date and venue for the 62nd Commonwealth Parliamentary Conference will be published on the CPA website www.cpahq.org when confirmed.

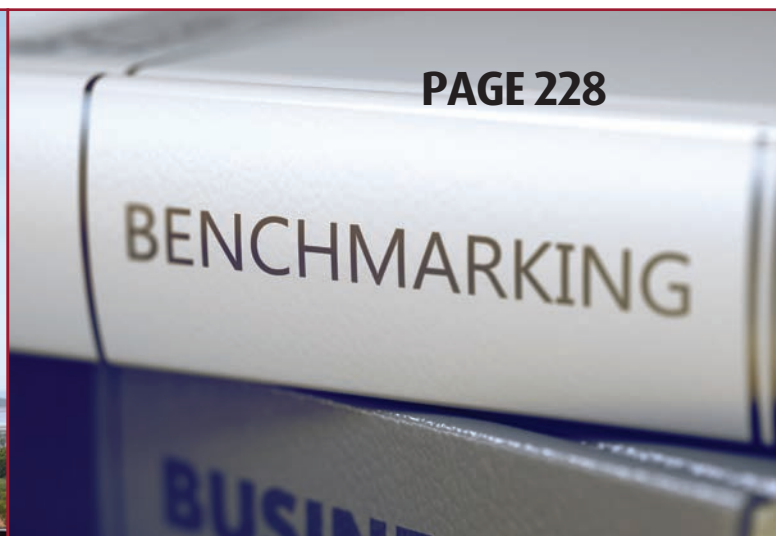
The publication of a Calendar of Commonwealth Parliamentary Association (CPA) events is a service intended to foster the exchange of events and activities between Regions and Branches and the encouragement of new ideas and participation. Further information may be obtained from the Branches concerned or the CPA Secretariat. Branch Secretaries are requested to send notice of the main CPA events and conferences to hq.sec@cpahq.org in advance of the publication deadline to ensure the Calendar is accurate.

Further information can also be found at www.cpahq.org or by emailing hq.sec@cpahq.org.



CONTENTS: *THE PARLIAMENTARIAN*

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IEWS, COMMENT & NEWS

Editor's Note
Page 196

**View from the
CPA Chairperson**
The Political Economy of
Commonwealth Trade and
Human Rights
Page 198

**View from the
CWP Chairperson**
Commonwealth Trade from a
Gender Perspective
Page 200

**View from the CPA
Secretary-General**
Commonwealth Trade and
Human Rights
Page 202

CPA Photo Gallery
Pages 204-207

CPA News
Pages 208-209

FEATURE ARTICLES

**'Brexit' poses a trade
conundrum for the
UK – but it can be
solved**
Threat, opportunity, or both?
Page 210

**Will it or will it not?
That's the question**
Implications of the EU referendum
for UK Overseas Territories
Page 212

**Potential Implications of
Brexit for Small States**
How will Brexit affect the
Falkland Islands?
Page 216

**Brexit: A Fillip for
Commonwealth Trade
and Development?**
A View from Jamaica
Page 219

**Commonwealth
trade relations with
the EU and the UK at
a crossroads**
Commonwealth Trade Advantage
Page 222

**What does Brexit mean
for non-EU trade?**
The post-Brexit trading
landscape beyond the EU
Page 226

**Embracing Latimer:
The ACT experience**
Implementing the Separation
of Powers
Page 228

**Parliament and the
Media: Fostering an
Effective Partnership**
Working with the media in India
Page 232



Why Parliamentary Privilege Matters

More bully pulpit than cowards' castle

Page 236

Ensuring national compliance with International Humanitarian Law

The role and impact of national IHL committees: A View from the International Committee of the Red Cross

Page 240

Glad Tidings from the Commonwealth Women Leaders' Summit

The Chairperson of the Commonwealth Women Parliamentarians (CWP) shares her experience from the first Commonwealth Women Leaders' Summit

Page 244

Commonwealth Women Leaders' Summit starts 'Roadmap to 2020'

Report from the first Commonwealth Women Leaders' Summit

Page 246

Commonwealth Women Parliamentarians (CWP)

News and Regional Strengthening Activities from the CWP

Page 248

PARLIAMENTARY REPORT

Parliamentary Report

Featuring parliamentary and legislative reports from Canada, Sri Lanka, New Zealand, United Kingdom, Australia and India

Pages 250-269

Book Review

The Indian Parliament: Beyond the seal and signature of democracy

Pages 270

Commonwealth Parliamentary Association (CPA) Organisational Structure

CPA Executive Committee and Commonwealth Women Parliamentarians (CWP) Steering Committee Members, Regional Secretaries and the CPA Secretariat

Page 272

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Contributors

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COMMONWEALTH TRADE AND ITS RELATIONSHIP WITH THE EU IN THE LIGHT OF 'BREXIT'

The Editor's Note

The impact of the result of the referendum in the United Kingdom on 23 June 2016 on the question of whether to remain within the European Union will have far reaching consequences across the Commonwealth. 'Brexit' will have an impact on many aspects of the global economy as well as social and cultural ties, and the specific impact on Commonwealth trade will be keenly debated for many years to come.

This issue of *The Parliamentarian* examines Commonwealth trade in the global economy and the impacts of Brexit for Commonwealth jurisdictions. Commonwealth trade has many different aspects that are examined by Parliamentarians and experts in this issue.

The influence of Commonwealth trade on human rights is explored by the Chairperson of the CPA Executive Committee, **Hon. Dr Shirin Sharmin Chaudhury MP** (Bangladesh) who writes about the 'political economy' of Commonwealth trade. The Secretary-General of the CPA, **Mr Akbar Khan** also shares his views on Commonwealth trade and its effect on human rights for this Journal.

Rt Hon. Rebecca Kadaga MP (Uganda) in her 'View' for *The Parliamentarian* as Chairperson of the Commonwealth Women Parliamentarians (CWP), writes about Commonwealth trade from a gender perspective and in particular the effect of trade policy on economic and social activities in relation to women.

"Brexit will have an impact on many aspects of the global economy as well as social and cultural ties, and the specific impact on Commonwealth trade will be keenly debated for many years to come."



Jeffrey Hyland, Editor
The Parliamentarian,
Commonwealth
Parliamentary Association

Hon. Richard Graham MP (United Kingdom), one of the UK Prime Minister's Trade Envoys, begins the debate with his article on the 'Brexit' trade conundrum now facing the United Kingdom and how it can be solved in relation to Commonwealth trade.

The outcome of the UK referendum on the European Union has wide reaching implications across the Commonwealth and in particular for the UK Overseas Territories. **Hon. Shirley Osborne MLA** (Montserrat), Vice Chairperson of the CPA Executive Committee, looks at Commonwealth trade and its potential bearing on smaller states while **Hon. Michael Poole MLA** (Falkland Islands) looks at the specific effects of Commonwealth trade and Brexit on his jurisdiction.

Parliamentary staff members, **Miss Tracy Cohen** and **Miss Chesanne Brandon** (Jamaica) examine Commonwealth trade and its impact in the Caribbean Region and ask if Brexit will provide a fillip for growth in Commonwealth trade and development.

Two experts on trade and the economy share their expertise on the issues around Commonwealth trade. **Mohammad Razzaque**, Head of International Trade Policy at the Commonwealth Secretariat, asks if Commonwealth trade relations with the EU and the UK are at a crossroads and if the Commonwealth Trade Advantage will result in any direct solutions. **Oliver Everett**, CEO of the Commonwealth Enterprise and Investment Council (CWEIC), examines what Brexit may mean for non-EU trade.

In addition to the main theme of Commonwealth trade, this issue of *The Parliamentarian* also looks at a wide range of current parliamentary and global questions.

Hon. Vicki Dunne MLA and **David Skinner** (Australian Capital Territory, Australia) examine the Commonwealth Latimer House Principles and the Separation of Powers and look at the ACT experience of 'embracing Latimer'.

Hon. Sumitra Mahajan MP (India), Speaker of the Lok Sabha, reports on the effective partnerships that her parliament has created with the media through their introduction to parliamentary procedures.



**The European Parliament in
Brussels, Belgium.**

Former Member of the Victoria State Legislature, **Hon. Dr Ken Coghill** (Monash University/Victoria, Australia) looks at the role of parliamentary privilege and why it matters for today's Parliamentarians.

The role and impact of national International Humanitarian Law Committees in ensuring national compliance with International Humanitarian Law is scrutinized by **Cristina Pellandini**, Head of the International Committee of the Red Cross (ICRC) Advisory Service on International Humanitarian Law.

In July 2016, Commonwealth Women Parliamentarians (CWP) attended the first Commonwealth Women Leaders' Summit to develop an action plan on gender equality and women's empowerment. The Chairperson of the Commonwealth Women Parliamentarians (CWP), **Rt Hon. Rebecca Kadaga MP** (Uganda) gives her perspective on this international summit followed by a report of the events that took place.

This is followed by reports of the Commonwealth Women Parliamentarians (CWP) Regional Activities from the Canadian;

Caribbean, Americas and Atlantic (CAA); and Africa Regions.

The *Parliamentary Report* and *Third Reading* section in this issue includes parliamentary and legislative news from Canada (Federal, Quebec and British Columbia), India, New Zealand, the United Kingdom, Sri Lanka and Australia.

May I also take this opportunity to thank our regular contributors from Parliaments across the Commonwealth who send us reports of their legislative and parliamentary news.

Finally, this issue of *The Parliamentarian* contains an obituary for the late Hon. Request Muntanga, CPA Treasurer from 2014 who sadly passed away earlier this summer.

As always, we look forward to hearing your feedback and comments on this issue of *The Parliamentarian* and the issues of concern to Parliamentarians across the Commonwealth.

Jeffrey Hyland
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editor@cpahq.org



THE POLITICAL ECONOMY OF COMMONWEALTH TRADE AND HUMAN RIGHTS

View from the Chairperson of the CPA Executive Committee

Commonwealth Trade, bearing immense significance in the economic development of the Commonwealth of Nations, brings to the fore a range of issues. Emerging in the late twentieth century as a concept of “forming a multilateral free trade regime” amongst the member states of the Commonwealth, it continues to be relevant in today’s global economic discourse.

Strengthening collaboration between Commonwealth nations to promote inter-Commonwealth trade and economic cooperation has been a central theme. It is based on the premise that duty-free and quota-free access to markets of the developing and developed countries would ensure economic development of the less wealthy member countries within the Commonwealth.

The debate revolves around the notion of whether Commonwealth trade offers any qualitative advantages to the Commonwealth nations in comparison to trade with non-Commonwealth countries. It poses the question of whether the General Agreement on Tariffs and Trade (GATT) opening up generalized free trade is a better and more viable option. ‘Brexit’ may now bring in a new twist to the discourse necessitating the adoption of a trade policy by the United Kingdom wherein Commonwealth free trade may gain currency. Generally any discussion on Commonwealth trade would aim to provide a comparative analysis of these issues. It would attempt to identify the impediments and barriers that exist in facilitating trade between the countries within the Commonwealth. It would entail examining cost advantage, etc.

The focus would be on increasing trade volumes by removal of barriers, ensuring free flow of goods to bring about a win-win situation for all. However, while the concept of Commonwealth free trade has been termed by certain critics as “the ultimate Euro sceptic fantasy”¹², it is believed that “Common Trade, Common Wealth, Common Growth”¹⁸ presents a wealth of opportunities for Commonwealth nations.

Let me introduce a different perspective. Commonwealth nations, comprising of 53 member states, represent 2.3 billion people, nearly one third of the world’s population. The objectives of the Commonwealth to promote democracy and development, individual liberty, equality and eradication of poverty resonates with the



**Hon. Dr Shirin Sharmin
Chaudhury, MP, Chairperson
of the CPA Executive
Committee and Speaker of
the Bangladesh Parliament.**

commitment to uphold human rights. The Universal Declaration of Human Rights, an integral component of the International Bill of Rights⁴, is considered as the universal standard setter or benchmark of essential basic rights and the minimum necessary to ensure the fundamental welfare of individuals. It is therefore essential to examine how the ‘political economy’ of Commonwealth nations affects human rights.

Trade and economic development in a region has substantive connotations on the lives and livelihood of the people. It also has serious implications for ensuring respect and the promotion of human rights of individuals. Financial crisis results in the deterioration of state finances and the realisation of human rights is closely related to this, especially when the availability of state resources is severely affected.⁵

There is an inextricable nexus between the prevailing economic orders, policies and different models of trade and the complex market systems that operate within Commonwealth nations, together with the protection of human rights, which are guaranteed under respective Constitutions. It is important to note that economic recession and meltdown has a severely negative impact on human lives, causing unemployment and job loss, shrinking

“The Universal Declaration of Human Rights, an integral component of the International Bill of Rights⁴, is considered as the universal standard setter or benchmark of essential basic rights and the minimum necessary to ensure the fundamental welfare of individuals. It is therefore essential to examine how the ‘political economy’ of Commonwealth nations affects human rights.”



opportunities for business and livelihoods. Poor and vulnerable segments of society are the ones who are hardest hit. Economic depressions often lead to the withdrawal of the social safety net and protection for the extreme poor. They tend to clamp down on welfare entitlements, social spending and public sector employment. In this backdrop, it becomes essential to address the issue as to whether the free market economy is the most suitable model for ensuring welfare of the people.

Financial systems shape trade and economic growth. The right to enjoy food, shelter, healthcare, education, employment, etc. – these are socio-economic rights and they are dependent, to a great extent, on economic growth, trade and development. It is therefore essential to factor in human rights costs within the financial processes that govern trade.

It necessitates equipping the economic models with appropriate regulations and policies, responsive to human rights issues. Risk management mechanisms must be carefully installed. Adequate protection must be ensured for the poor, vulnerable and disadvantaged, so that they do not fall through the net in times of economic crisis. It requires a comprehensive approach, looking at human rights issues at a macro level. Embedding human rights within economic and financial systems is therefore critical.

Economic growth, development and trade do not operate in a vacuum. At the core of the entire gamut of discourse lies the welfare of the people – socio-economic development and the advancement of people. Griffin attempts to define “well-being”⁶ in many different ways. In his search as to “what makes an individual life good”, he examines different approaches such as ‘need account’, ‘desire account’, ‘prudential perfectionism’, ‘moral perfectionism’⁷ etc.

However we perceive the concept, the well-being of people must be central to the advancement of trade and economic policies.

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¹ Commonwealth Free Trade, Wikipedia.

² Walter Bagehot (30 October 2011) “*The Ultimate Eurosceptic Fantasy: Putting Faith in the Commonwealth*” *The Economist*, The Economist Group, retrieved 14 June 2015.

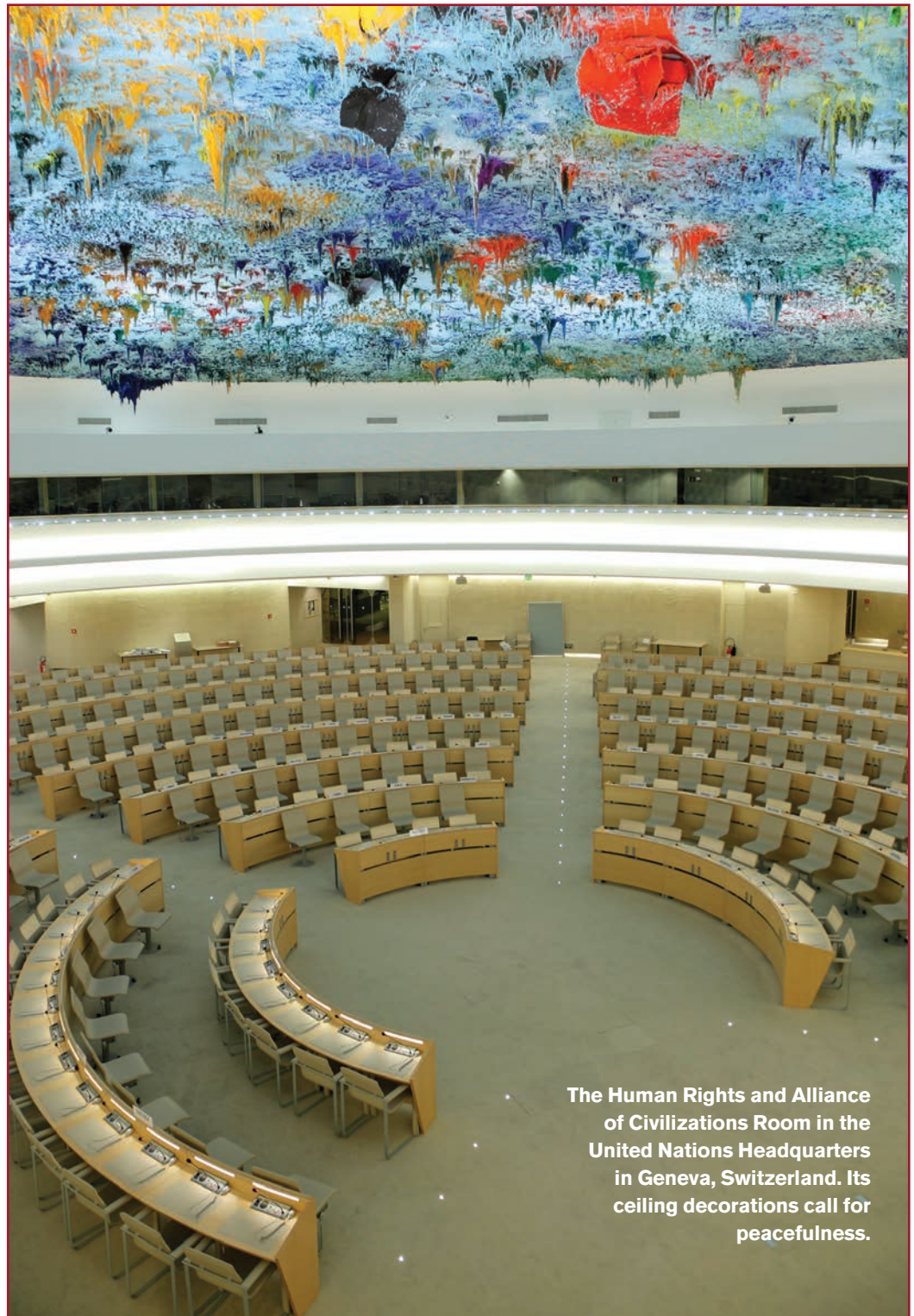
³ Commonwealth Trade Info.

⁴ Year 1948.

⁵ “*Minding the gap: Global Finance and Human Rights*”, by Mary Dowell Jones and David Kinley *Ethics & Int. Affairs*, 25, No.2(2011) pp. 183-210.

⁶ *Well-Being, Its Meaning, Measurement and Moral Importance*, Clarendon Press: Oxford, 1986.

⁷ Ibid.



The Human Rights and Alliance of Civilizations Room in the United Nations Headquarters in Geneva, Switzerland. Its ceiling decorations call for peacefulness.

COMMONWEALTH TRADE FROM A GENDER PERSPECTIVE

View from the Commonwealth Women Parliamentarians (CWP) Chairperson

Dear Readers, when I last interacted with you in the hitherto issue of *The Parliamentarian*, it was supposed to be my last contribution in the capacity of Chairperson of the Commonwealth Women Parliamentarians (CWP). But circumstances have since dictated that I have at least one last go and who am I to turn down the opportunity!

The main reason behind this scenario is obviously the postponement of the 62nd Commonwealth Parliamentary Conference (CPC) which was scheduled to be held earlier in Dhaka, Bangladesh at the very beginning of September 2016. Obviously the CPA Secretariat is working around the clock to have this conference held very soon.

The theme of this issue of *The Parliamentarian* is Commonwealth trade and I think this is appropriate because of the importance of trade in the global order. In my article, I will try to discuss trade from a gender perspective and more specifically, the impact of trade policy on women's economic empowerment and well-being.

The effect of trade policy on economic and social activities tend to be different between men and women as they have different economic and social roles and different access to and control over resources, due to socio-cultural, political and economic factors. Women tend to be more affected by the negative side-effects of trade liberalisation and are facing bigger challenges than men when it comes to taking advantage of the opportunities trade offers.

This situation is due to gender biases in education and training, gender inequalities in the distribution of income and command over resources, as well as unequal access to productive inputs such as credit, land and technology, which translate into significant gender differences in occupational distribution. This is where it is important for us as Parliamentarians to ensure that legislation is driven towards addressing these inequalities.

In my Parliament (Uganda), we have introduced an initiative in the legislative process which we envisage will create huge impact in addressing the same issue. We have introduced a certificate of gender equity and compliance which is now a compulsory requirement for any new law being introduced in Parliament.

Dear readers, we must be cognizant of the fact that pre-existing gender imbalances at the macro, meso¹ and micro levels determine



**Rt Hon. Rebecca Kadaga, MP
Chairperson of the
Commonwealth Women
Parliamentarians (CWP) and
Speaker of the Parliament of
Uganda**

the differential impact of trade on women and men, girls and boys. Such impacts can be best considered at the following levels of analysis:

(a) the sector level, in which trade can augment or reduce employment and income opportunities for women, depending on whether the sectors where women work, expand or contract as a result of trade liberalization and import competition;

(b) the governmental level, where fiscal revenues and public expenditures modified by trade liberalisation in accordance to the relative importance of tariff revenues in government financing - have an impact on public investments in social infrastructure and services that particularly benefit women, such as health, education, electricity, water, sanitation and other infrastructure to meet household needs; and

(c) the household level, where expenditures may decrease or expand according to the effects of trade

on consumer goods prices.

For example, trade liberalisation may benefit poor consumers, including women in their role as family providers and caregivers, if price reductions (through the dismantling or the reduction of tariffs) affect imported products that represent a relevant part of the household consumption basket. On the other hand, trade liberalisation can disrupt economic sectors and markets where women are active, depriving them of employment opportunities and pushing them towards the informal sector.

Trade liberalisation increases international competition. While this may bring more opportunities for individuals and firms, it also implies the need to grow and upgrade technologically, which may be particularly challenging for women employees and women-run enterprises with limited access to marketing networks, credit and technical knowledge.

Trade-related changes in employment, taxation, public provision and consumption may in turn have important consequences for the gender-related distribution of paid and unpaid work among household members, including children. I have always made a case for the rural women in Uganda, who do enormous chunks of unpaid and informal work.

For us as CWP, the plight of the rural women is a critical issue that demands policy re-direction and resources. There is no way a rural woman will think about engaging in elective politics when she is permanently occupied by these household chores. We need to create



an equilibrium atmosphere that allows women time to participate in trade, in politics and other forms of organised civil liberties.

While men and women are affected differently by trade policies, gender inequalities, in turn, impact on trade policy outcomes and economic growth.

One fundamental way in which gender equality can have a sustained positive impact on economic growth is through greater accumulation of human capital of women and girls – a crucial factor for the development of national productive capacity.

Recent evidence on the links between girls' improved education and economic growth has shown that enhanced gender equality increases the level of investments in a country. I was disturbed by findings in a recent report by the World Economic Forum which revealed that women are not likely to reach economic equality with men until the year 2133. This projection is scary to say the least and we must do a lot more to change these trends.

In this respect, I invite all Commonwealth Parliamentarians and our dear readers to keep trail of the annual Global Gender Gap report which tracks changes in equality between men and women by analysing female participation in four key categories: the economy, education, health and politics.

Still on the investment aspect, a more productive workforce, through greater gender equality in employment and education, increases the rates of return on investments and attracts more investors. In addition, the cases in which girls' education had the greatest impact on growth were in areas where (i) employment opportunities were readily available for women; (ii) countries had a sizeable export-focused manufacturing sector; and (iii) their economies had already reached the middle-income status.

Although equality in education and employment opportunities have a positive impact on a country's long-term growth, these benefits may be negated by the industrial strategies of a number of semi-industrialised countries that have focused their export strategy on labour-intensive goods produced by predominantly cheap female workforces, taking advantage of gender wage inequalities.

While such a strategy stimulated profits, investment and exports in the short run, it is counter-productive on the longer run. There is conclusive evidence that economic development and social equality tend to go together. Studies on the determinants of economic growth suggest that societies where income inequality and gender discrimination are lower tend to grow faster. There seems to be a strong correlation between gender equality (measured by economic participation, education, health and political empowerment), competitiveness and GDP per capita.

Going forward therefore, we need to appreciate that recent experiences in trade liberalisation and their impacts on gender equality thus make a strong case for the need to incorporate gender perspectives into overall trade policy design and implementation. Incorporating (main streaming) gender considerations in trade policy means assessing the impacts of such policy on the wellbeing of men and women, evaluating how trade policies affect gender relations, for example by widening or closing the gender wage gap,



Above: A woman picks tea leaves in Rwanda, which ranked sixth in global gender equality reports.

and formulating and implementing trade policy in a gender-sensitive manner.

This is done with a view to: (i) better understanding the specific challenges and opportunities that women and men face from trade policy; (ii) designing and implementing trade and other macro-economic policies to maximise opportunities for all; (iii) facilitating the successful integration of women into more technologically advanced and dynamic sectors of the economy; (iv) avoiding the increase of gender disparities and mitigating the existing; and (v) facilitating women's empowerment and well-being. Different policy measures in trade and other areas of economics provide specific entry points to mainstream gender issues in international trade.

Specific instruments include: (a) trade liberalisation agreements; (b) unilateral liberalisation – for example, unilateral reduction of tariffs on intermediate inputs in productive sectors with high female employment; (c) tax incentives – for example to encourage exports from women-owned enterprises; (d) multi-lateral development assistance frameworks.

As trade policies interact and are mutually affected by many other domestic policies and international factors, there is a need for overall coherence in order to achieve development goals. For this to happen, several coordinated and gender-sensitive policies are needed in areas such as fiscal policies, education, labour, training, innovation, financing, to mention a few. We need to enact enabling legislation for this to happen. We also need our governments to put forward and strengthen a gender-sensitive policy and institutional framework. Together, I believe we can mitigate the adverse effects of trade policies from a gender perspective.

¹ At the meso level, concentration is mainly on the experiences of groups and the interactions between groups.



COMMONWEALTH TRADE AND HUMAN RIGHTS

View from the 7th Secretary-General of the Commonwealth Parliamentary Association

In the aftermath of the 'Brexit' vote in the United Kingdom, there has been much positive talk about promoting Commonwealth trade. In many ways, the renewed focus on Commonwealth trade from a UK and global perspective is to be welcomed and certainly not before its time.

For many observers who have been following the Commonwealth before Brexit, the steady rise in Commonwealth trade has been impressive. It is only now following Brexit that others are catching up with the Commonwealth success story. The figures speak for themselves.

Trade between Commonwealth members is now above \$600 billion and heading to \$1 trillion by 2020. Total Commonwealth exports have grown from \$19 billion in 2000 to \$268 billion today.

The advantage of Commonwealth links, a shared history, common laws and parliamentary systems provides a solid foundation from which to develop new and continuing trading partnerships and networks.

Recent research undertaken by the Commonwealth Secretariat reveal that bilateral trade between two Commonwealth countries are on average 19% lower in cost compared to those between two other countries according to a recent Commonwealth report.

The Commonwealth Charter (2013) brings together the values and aspirations which unite the Commonwealth - democracy, human rights and the rule of law – and expresses the commitment of member states to the development of free and democratic societies and the promotion of peace and prosperity to improve the lives of all peoples of the Commonwealth. It is clear therefore that promoting trade, good governance and human rights should all be pursued equally as underscored by the Charter.

The promotion of trade is an important opportunity for any country's growth and development and for the advancement of human rights. At the same time, trade can also have a negative influence on these human rights and trade agreements regularly affect the human rights of the people, especially key workers and those in poverty.

As observed by Professor John Ruggie, the United Nations Special Representative of the Secretary-General on business and human rights "business is a major source of investment and job creation and constitutes a powerful force capable of generating economic growth, reducing poverty and increasing the demand for the rule of law, but history teaches us that markets pose the greatest risks to society and business itself when their scope and power far exceed the reach of the



Mr Akbar Khan
Secretary-General of
the Commonwealth
Parliamentary Association

institutional underpinnings that allow them to function smoothly and ensure their political sustainability."

The ability of countries to regulate and protect the human rights of their people are affected by trade agreements as they are often negotiated without reference to their impact on the rights to health, education, food, work, and water, according to a joint report from the UN Human Rights office (OHCHR) and United Nations Development Programme (UNDP).

The purpose of human rights analysis in trade issues is to explore how "trade affects the enjoyment of human rights and how the promotion and protection of human rights can be placed among the objectives of trade reform."¹

Trade agreements can have a negative impact on the enjoyment of human rights – one example could be the impact of farming subsidies in developed countries on the right to food in developing countries but there are many such examples.

However human rights can be used as a useful method for assessing the impact of trade and the enjoyment of human rights in individual countries. Today, many of the world's most important trading nations include human rights language in their trade agreements and it is estimated by the WTO that over 75% of the world's governments now participate in trade agreements with human rights provisions.

Article 55(a) of the United Nations Charter states that the UN will encourage "higher standards of living, full employment, and conditions of economic and social progress and development." Article 55(c) goes on to commit the UN to the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

The preambles to the General Agreement on Tariffs and Trade (GATT) (1947) and the Agreement Establishing the World Trade Organization (WTO Agreement) (1994) both echo Article 55(a) of the Charter, referring to "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand."

Nevertheless the ostensible connection between the objectives of international trade and human rights in Article 55 of the Charter and international trade instruments is clear and it remains the case that the relationship between international trade and human rights remains contentious.² There is widespread disagreement between international trade scholars and human rights academics over the true impact and benefits of trade agreements on human rights globally.



However as the international community and members of the Commonwealth are seeking greater economic security in these unsettled times, there is a clear advantage for Commonwealth countries in pursuing trade agreements.

Malta and the UK are due to co-host the inaugural Commonwealth Trade Ministers meeting in London in March 2017, which will be an excellent opportunity to promote greater trade and investment within the Commonwealth.

CPA Programmes on Trade

The Commonwealth Parliamentary Association (CPA) Secretariat has been working on trade programmes for a number of years for the benefit of our Members. The CPA holds a position as a member of the Steering Committee on the Parliamentary Conference on the World Trade Organisation (WTO) and as such contributes to the annual conference on global trade for Parliamentarians.

The CPA Secretariat works closely with the WTO and have in recent years delivered joint initiatives and programmes on trade such as the CPA's Regional Workshops on Trade Policy for Parliamentarians which have been delivered in the African, Caribbean and Pacific Regions.

A key outcome has been the recognition of the need to have independent Parliamentary Committees to undertake in-depth deliberations over trade and trade-related agreements and policies and for these Committees to be able to draw upon specialists to provide advice on technical issues where required.

The CPA is continuing this focus on Commonwealth trade and is working with partners like the WTO to deliver Regional Seminars on International Trade as well as the first of our Masterclass series.

Above: The headquarters of the World Trade Organisation (WTO) in Geneva. The CPA works closely with the WTO and has in recent years delivered several joint initiatives and programmes on Commonwealth trade for our Members.

Request Muntanga Tribute

Finally, I would like to pay tribute to the former Zambia Member of Parliament, the late Hon. Request Muntanga who sadly passed away in July this year. He had served the Commonwealth Parliamentary Association (CPA) as Treasurer from 2014 and he was also a Trustee of the CPA. I had worked with Hon. Muntanga since the start of this year and saw how he had built strong relationships across the Commonwealth and gave willingly of his time and expertise to support the CPA in its mission. You can read an article about the late Hon. Request Muntanga on page 209.

Mr Akbar Khan

7th Secretary-General

Commonwealth Parliamentary Association (CPA)

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¹ Human rights in the trade arena, United Nations Human Rights Office of the High Commissioner, <http://www.ohchr.org/EN/NewsEvents/Pages/HRInTheTradeArena.aspx>

² International Trade and Human Rights Anthony E. Cassimatis, Catherine E. Drummond <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0098.xml>.

The Commonwealth Parliamentary Association (CPA) Photo Gallery



The CPA Secretary-General Mr Akbar Khan met current and newly-elected Parliamentarians (right) and delivered a CPA Roadshow for young people to over 100 sixth form students at Guernsey Grammar School and Sixth Form Centre (above) during a two day visit to Guernsey. The CPA Secretary-General was welcomed into the Royal Court and the Assembly Chamber by the Deputy Bailiff of Guernsey and Deputy President of the States, Richard McMahon (pictured with the Secretary-General right) when he watched the debates and proceedings in the States of Guernsey prior to attending the CPA Guernsey Branch AGM.



Left: Mr Akbar Khan, Secretary-General of the Commonwealth Parliamentary Association (CPA) (right), paid a courtesy call on the Prime Minister of the Bahamas, Rt Hon. Perry G. Christie (centre) together with Hon. Dr Kendal Major MP, Speaker of the House of Assembly of the Bahamas (left) ahead of the 41st CPA Regional Conference of the Caribbean, Americas and Atlantic Region which was held in the Bahamas.

Below left and below right: The CPA Secretary-General Mr Akbar Khan visited the New Zealand Branch of the CPA and the Parliament of New Zealand on his first visit as Secretary-General. The Secretary-General was received by Rt Hon. David Carter, Speaker of the House of Representatives (below left) and David Wilson, Clerk of the House of Representatives at the Parliament of New Zealand. The Secretary-General was received into the Chamber of the House of Representatives during a parliamentary sitting and was received by Members of the New Zealand Parliament. As part of the visit the Secretary-General delivered a CPA Roadshow to students on the Victoria International Leadership Programme at Victoria University in Wellington (below right).





Above: The CPA Secretary-General Mr Akbar Khan attended the 47th Presiding Officers and Clerks Conference in Tonga together with Speakers, Presiding Officers and Clerks from Parliaments and Legislatures from across the Pacific and Australia Regions. The theme of this year's conference was *'Navigating together the challenges for modern parliaments'* and the Secretary-General of the CPA delivered a presentation on *'Strengthening networks and partnerships for modern parliaments'* to the conference.



Above right and right: The CPA Secretary-General Mr Akbar Khan delivered CPA Roadshows to hundreds of young people in Tonga while attending the 47th Presiding Officers and Clerks Conference for the Pacific Region. The Secretary-General visited eight schools and colleges in Tonga - St Andrew's High School, Tonga High School, 'Apifo'ou College, Tailulu College, Liahona High School, Tonga College, Ocean of Light International School and Tupou College – where he spoke to hundreds of young people about democracy and the Commonwealth.



Right and below right: The CPA Mauritius Branch and the National Assembly of Mauritius hosted the 47th Commonwealth Parliamentary Association (CPA) Africa Regional Conference at Balacalava in Mauritius. At the same time, the CPA Mauritius Branch hosted the 7th Commonwealth Women Parliamentarians (CWP) Africa Regional Conference. Delegates attended the regional conferences from CPA Branches across the Africa Region and the CPA International Executive Committee was represented by Hon. Shirley M. Osborne MLA, Vice-Chairperson of the CPA International Executive Committee and Speaker of the Legislative Assembly of Montserrat.



Below right: Myrna Driedger MLA, Speaker of the Legislative Assembly of Manitoba, Canada accompanied by Patricia Chaychuk, Clerk of the Legislative Assembly visited the CPA Secretariat in London, United Kingdom and met with Ms Meenakshi Dhar, Director of Programmes and Ms Lucy Pickles, Assistant Director of Programmes to discuss the work of the CPA across the Commonwealth and in particular the Commonwealth Women Parliamentarians (CWP) role in raising awareness of women's representation in Parliament.



The Commonwealth Parliamentary Association (CPA) Photo Gallery



Left and below left: The 6th CPA Parliamentary Staff Development Workshop for the Caribbean, Americas and the Atlantic (CAA) Region took place in St George's, Grenada, hosted by the Parliament of Grenada. The CPA Workshop saw Parliamentary staff from across the CAA Region come together to develop their core skills and to share experiences from their own jurisdictions. Parliamentary staff represented the following jurisdictions: Antigua and Barbuda, Anguilla, Guyana, Dominica, Saint Vincent and Grenadines, Jamaica, British Virgin Islands, Bermuda, Barbados, Cayman Islands, Montserrat, Trinidad and Tobago, Turks and Caicos, St Christopher and Nevis and St Lucia. The CPA Parliamentary Staff Development Workshop for the CAA Region was officially opened by the Speaker of the Grenada Parliament, Hon. Michael Pierre MP.



Below left: Members of the Khyber Pakhtunkhwa Assembly Women's Caucus in Pakistan visited the Commonwealth Parliamentary Association (CPA) Secretariat where they met with Ms Meenakshi Dhar, Director of Programmes and Mr Joe Omorodion, Director of Finance & Administration during their visit to London, United Kingdom and heard about the work of the Commonwealth Women Parliamentarians (CWP) and other CPA Programmes work.



Bottom left: The CPA Secretary-General, Mr Akbar Khan met with Hon. Carmelo Abela MP, Minister for Home Affairs and National Security in Malta at the CPA Secretariat in London, United Kingdom. Hon. Carmelo Abela MP has recently served a three year term as an Executive Committee Member of the CPA.



Below: Hon. Alix Boyd-Knights, Speaker of the House of Assembly of the Dominican Republic and former Chairperson of the Commonwealth Women Parliamentarians (CWP) visited the CPA Secretariat.





The CPA Secretary-General Mr Akbar Khan visited the CPA Northern Ireland Branch at the invitation of the Branch Chair Jo-Anne Dobson MLA. During his visit to the Northern Ireland Assembly, the Secretary-General met with the Speaker of the Northern Ireland Assembly, Robin Newton MLA, who is also the President of the CPA Northern Ireland Branch at the Parliament Buildings (top right) before meeting with Members of the CPA Northern Ireland Executive Committee (top) and other Members of the Assembly.

The CPA Secretary-General also visited two local schools in Northern Ireland - Lurgan College (above right) and Dromore Central Primary School (above) - as part of the CPA Roadshows tour of Commonwealth schools and universities. The Secretary-General was accompanied by Jo-Anne Dobson MLA, Chair of the Northern Ireland CPA Branch to Lurgan College and by Brenda Hale MLA, Member of the CPA Northern Ireland Executive Committee on the visit to Dromore Central Primary School.



Centre right: The CPA Secretary-General Mr Akbar Khan and UK Member of Parliament, Dr Tania Mathias MP (centre) visited Twickenham Prep School in South West London as part of the CPA Roadshows tour of schools and universities across the Commonwealth.

Right: The CPA Roadshow for young people visited Ursuline High School in Wimbledon, London, UK with an event for local students. The CPA Roadshow about the Commonwealth, parliament and democracy heard from local UK Member of Parliament for Wimbledon, Mr Stephen Hammond MP who spoke about his role as an MP as well as Arlene Bussette and Anna Schuesterl from the CPA Secretariat who spoke about the Commonwealth and the CPA.





CPA funding helps Small Branch to refurbish Chamber

The first of many official meetings including the Legislative Council of St Helena was held in July 2016 in the newly refurbished Council Chamber at the Castle buildings in St Helena.

The refurbishment programme was funded through the Commonwealth Parliamentary Association (CPA) Development Assistance Fund and the improvements to the Council Chamber included the installation of a wireless conference delegate system and sound-proof flooring, plus carpet, chairs and conference tables.

Assistant Chief Secretary of St Helena, Gillian Francis, said: "Up until this meeting, all formal Legislative Council sessions were held in the Court House, but with the increasing number of Court cases, especially when the Supreme Court is in session, we had to on some occasions use the Council Chamber – which in its former state was inconvenient. This refurbishment was much needed, and now with the improvements all formal and official meetings can take place in the Council Chamber with minimal interruptions and without affecting the Court schedule."

The refurbishment of the Council Chamber also supports St Helena's parliamentary development, providing an assembly layout for all Hon. Members, the Speaker and Deputy Speaker, senior officials and visiting dignitaries to conduct formal meetings in an appropriate and professional manner.

CPA Executive Committee Member representing the British Islands and Mediterranean (BIM) Region and also representing the CPA St Helena Branch, Hon. Derek Thomas MLC said: "The newly refurbished Council Chamber provides a great facility for Elected Members to discharge their functions – and the Legislative Council is extremely grateful to the CPA for its support in funding this refurbishment. The new Programmes vision, approved by the Executive Committee of the CPA in April 2016, provides for greater opportunities for membership branches to access funding for training courses, CPA Roadshows for young audiences and other specific projects to assist Parliamentarians in the delivery of their business. As a member of the Executive Committee I do hope that I will be able to encourage further support to achieve some of these initiatives for the benefit of St Helena."

Obituary: Request Muntanga, Zambia (1952-2016) CPA Treasurer 2014-2016

Former Zambia Member of Parliament, Request Muntanga has died suddenly at the age of 64. He had served the Commonwealth Parliamentary Association (CPA) as Acting Treasurer from 2013 to 2014 when he was elected as CPA Treasurer for a term of three years. During that time, Mr Muntanga was also a Trustee of the CPA. He held these positions until the dissolution of the National Assembly of Zambia in May 2016.

During his tenure as CPA Treasurer, Request Muntanga built strong relationships across the Commonwealth and he supported the CPA in achieving a 'clean' Financial Audit in the years that he was Treasurer. He also shared his vast experience as a Parliamentarian through several CPA programmes and conferences and acted as a resource person for the CPA including at the CPA Post-Election Seminars for the Parliament of Swaziland and for the Senate of Pakistan.

Born on 27th October 1952, Request Muntanga began his career as an agriculturalist following his higher education studies in accounts, livestock management and Advanced Agriculture Business Management. He continued to farm his land throughout his parliamentary career.

He was first elected to the National Assembly of Zambia in 2001 for the United Party for National Development (UPND) to represent Kalomo Central Constituency, in the Southern Province of Zambia. He was recognised in Parliament as an expert on agricultural matters and he often held the government to account, scrutinising government actions in a targeted and well-informed fashion.

While in Parliament, he served as Chairperson of the Parliamentary Committee on Agriculture and was a member of the Committee on Lands, Environment and Tourism from January 2015 and the Communications, Transport, Works and Supply Committee from September 2015. He also served as a member of the CPA Zambia Branch Executive Committee from 2007 to 2011. He was the Acting Treasurer for the CPA Africa Region from 2009 to 2011 when he was elected as Treasurer. He served as Treasurer of the CPA Africa Region until 2016.

With regard to his party, Mr Muntanga was one of the pillars of the UPND having served in the party's National Management Committee from inception until his death.

Request Muntanga's hobbies were football, volleyball and reading.

Tributes to Request Muntanga came from across the Commonwealth. The Secretary to the Cabinet, Roland Msiska announced that President Edgar Lungu of Zambia declared 12 July 2016, a Day of National Mourning in honour of the late former Kalomo UPND MP, Request Muntanga.

Chairperson of the CPA Executive Committee, Hon. Dr Shirin Sharmin Chaudhury, MP, Speaker of the Parliament of Bangladesh said:

Allow me to express deepest condolences on my behalf and also on behalf of the fellow Officers of the Association; the CPA Executive Committee; the Members of the Commonwealth Parliamentary Association; the CPA Secretary-General, Mr Akbar Khan and staff of the CPA Secretariat; on the sad demise of Hon. Request Muntanga, MP, who served as Treasurer of the CPA and made valuable contribution to the Association. Building on Mr Muntanga's achievements we will continue to take the necessary steps to ensure that the CPA develops into an Association that is more responsive and dynamic; serving the membership in the best possible way.



Hon. Lindiwe Maseko, MP (South Africa), Chairperson of CPA Africa Regional Executive Committee said:

This is a tribute on my behalf and that of the CPA Africa Region. Hon. Muntanga has been an active Member of the Association and rose within its structures to become "DOUBLE T" since 2007. The Commonwealth Parliamentary Association (CPA) has indeed lost a giant. A giant in a true sense of the structure of Hon. Request Muntanga - intimidating yet a kitten at heart - and the giant responsibilities he undertook diligently and with passion and distinction. He was the Treasurer of both CPA International and CPA Africa Region and there was no gap in holding both positions at the same time. The sacrifices he made and his contribution in fighting for a just cause, that of ensuring that the Status of the Association is changed from that of charity to that of an international organisation are second to none. He guarded the finances of the Association and encouraged all to pay their subscription diligently. As CPA Africa Region, we felt safe and protected with him around. He ran a good race and fought a just fight, his absence will take a long time to be filled. The Association has lost a gallant son, brother, friend and Member. May his soul rest in eternal peace.

Below: Hon. Request Muntanga (centre) attends the CPA Africa Regional Conference with other delegates in 2015 in Kenya.





'BREXIT' POSES A TRADE CONUNDRUM FOR THE UK – BUT IT CAN BE SOLVED

Threat, opportunity, or both? Britain's export prospects post-EU Referendum are at a crossroads – and could go either way.



Hon. Richard Graham MP is the UK Member of Parliament for Gloucester and the UK Prime Minister's Trade Envoy to the ASEAN EC, Malaysia, the Philippines and Indonesia. He chairs the All Party Parliamentary Groups for Pensions, China and Indonesia. He is a member of the Work and Pensions Select Committee and a director of the Great Britain China Centre. Richard was previously an airline manager, a diplomat and an investment manager. He has worked in ten countries, speaks eight languages and is a charity trustee.

The new British Prime Minister's government inherits a trade conundrum. Theresa May's predecessor, David Cameron made huge efforts personally to boost exports for the UK – leading large trade missions, where I saw his very effective salesmanship and convening power, initiating the Prime Minister's Trade Envoys and creating the successful GREAT campaign to promote the UK abroad. His government supported research in sectors like aerospace, expanded apprenticeships and supported business growth through reduced corporate tax and tax breaks on R&D and capital allowances. More UK Trade & Investment (UKTI) resources were put into export Growth Markets, and particularly China - where exports doubled in five years. So far so good.

But the wider picture has been less encouraging – no productivity improvements from business, little increase from the one in five companies that export towards the one in four target figure (and Germany's reality), and a further deterioration in our balance of trade. We have to do better, with a currency wind which should help exports and overseas earnings.

At the same time UKTI has been restructured from a country focus to a sectoral focus with mixed success. Further re-structuring under Minister Francis Maude and inherited by Mark Price was a work in progress when the new Prime Minister took over – and

signalled her intent by creating a new Department of International Trade under Liam Fox MP. This combines UKTI, Defence Sales, and UK Export Finance (UKEF) and has a team of ministers focused on improving our balance of trade and inward investment.

The trade argument during the referendum campaign was exaggerated either as dumping a focus on sclerotic Europe for another more dynamic world or risking losing fifty-plus Free Trade Agreements (FTAs) under the EU umbrella without any guarantee of replacements. The truth is more nuanced. We need both to maintain and grow our exports to Continental Europe (currently 44% of the total) and be as proactive and successful as we are with China in many other Growth Markets – a term I much prefer to Emerging or Developing Markets.

Secretary of State for International Trade, Liam Fox MP is already deploying some cards. The 'old' Commonwealth nations are keen on free trade deals which are not possible while we're in the EU. EU law prohibited the UK, Malta and Cyprus from joining Commonwealth-wide trade and investment agreements, but once the UK exits the EU, we won't be bound by restrictions from Brussels. A coalition of the willing in the Commonwealth can be built up before and around the Commonwealth Trade Ministers' London meeting next March.

It will be the first ever

Commonwealth Trade Ministers Meeting and comes at an interesting time – for both the UK and the Commonwealth. Where some members of the group felt the agenda was too driven by values and not enough by practical steps, now there is a chance to talk business. It will be a useful opportunity to gauge the levels of interest and appetite for a Commonwealth-wide trade and investment agreement, or whether some members will find free trade politically challenging.

As the co-hosts, along with the current Chair-in-Office of the Commonwealth, Malta, (the UK takes over and hosts 2018's Commonwealth Heads of Government Meeting) of next year's Trade meeting, we have a chance to reinvigorate the business of business.

Commonwealth Secretary-General Baroness Patricia Scotland has argued that following the EU Referendum, the Commonwealth will become *"more pivotally important than it has ever been."* She may be right. With a population of 2.3 billion, an economy of more than US\$10 billion and annual GDP growth in excess of 4%, the Commonwealth offers a readymade English Language trading network. Intra-Commonwealth trade is predicted to exceed \$1 trillion by 2020. But at present there is no inter-governmental coordination to help unlock and increase the trade and investment potential of the Commonwealth – something that



the meeting of Ministers should seek to address.

But this doesn't necessarily mean a Commonwealth-wide agreement is possible. Which is where the coalition of the willing may be a starting point: Canada, Australia, New Zealand, Singapore and Malaysia will be likely candidates for this, and South Africa, Nigeria and Kenya will be important litmus tests.

In 2001 only 5% of British exports went to the Commonwealth and 15 years later that figure has inched up to 9%. The UK has had a trade surplus with the Commonwealth since 2011. So, whilst the direction of travel has been positive, the relative numbers are small, particularly in comparison to the 44% of our exports going to the EU. A doubling of exports to the Commonwealth would be a good goal to aim for by 2020: but it will take a long time to impact the total.

Approximately half of the attendees will be senior business leaders with the hope that some practical and tangible ideas can be looked at. If the meeting is successful, it is proposed to hold it every two years before the CHOGM (Commonwealth Heads of Government Meeting) by the host Government, in conjunction with the previous host. But this must be more than just a talking shop. The outcomes and recommendations of the Commonwealth Trade and Investment Ministers Meeting will be a clear mandate for a Commonwealth focus on a business agenda. This would then help set the agenda for the Commonwealth Business Forum and for inter-Governmental Commonwealth trade and investment policy development for CHOGM in 2018. So the UK should seize this opportunity to lead the way.

At the same time, the UK Government should continue to extract as much direct global benefit as possible from our



International Development programme and more from our Prosperity Fund. This will need strong co-operation between the three lead departments (DIT, FCO and DFID). The opportunities are there if we adopt the spirit and flexibility of enterprise, and agree priorities. Experienced trade negotiators are scarce and not cheap: they need to be deployed where the return on investment is likely to be greatest.

The key to getting things off the ground quickly will be the enthusiasm and energy of Ministers, Heads of Mission and trade envoys. But I would caution against expectations getting ahead of reality. A complete FTA with China, for example, may be a long term ambition but is not without risks on both sides, as our own steel sector knows so well. And local distribution rules can often be as much an obstacle to genuinely free trade as the principle of duty free imports.

Judging by the current mooted timetable of Brexit, we shouldn't expect new trade deals to go live until the last year of this UK Parliament. Before then exports will be largely the prosaic business of '99% perspiration and 1%

inspiration', as Calvin Coolidge once said in a different context.

The good news is that good business is being done. In July 2016, BP signed off on a giant further \$8 billion investment in Indonesian offshore gas – creating 10,000 jobs there while generating a partly UK supply chain and long-term earnings that support many British pensioners. Air Asia generated the largest single order (100 planes) for Airbus at the Farnborough Air Show.

Big, bold, bilateral projects invariably need government (taxpayer) support, which is why it is right to agree the Hinkley Point C project after consideration and after tightening security issues around national infrastructure.

At the heart of all this has to be a strong vision of a Britain in the world, with strong links everywhere. Based in Europe and leading its innovation, services and enterprise. At the heart of the Commonwealth and leading more intra-Commonwealth trade and rising prosperity. Asia's western partner of choice, with London as its international base. Latin America's window for capital and

Above: The UK and Malta will jointly host the Commonwealth Trade Ministers' meeting in 2017.

preferred European HQ. Second only to the US in defence, intelligence and aerospace. And of course, a major role in the UN Security Council and NATO.

This should come with a commitment to remain open to inward investment, while considering the strategic implications of certain deals and a determination to move up the Premier League of Exporters. The UK should aim to improve on sixth place.

I hope that we hear more of this post-Brexit narrative at the UK party conferences this autumn. And it's important that we get the message over that business growth is ultimately about jobs and raising tax revenue for public services: currently 75% of our taxes come directly and indirectly from business. So exporting is not just nice to have, it's essential to the UK Prime Minister's mission of recognising how tough life is for millions – and improving both our standard of living and our public services across the United Kingdom.



WILL IT OR WILL IT NOT? THAT'S THE QUESTION

The outcome of the referendum on the European Union has wide reaching implications across the Commonwealth and in particular for the UK Overseas Territories.



Hon. Shirley M. Osborne, MLA is the current Speaker of the Legislative Assembly of Montserrat and the Vice-Chairperson of the Executive Committee of the CPA. She is also a Regional Representative for Caribbean, Americas and the Atlantic Region on the Steering Committee of the Commonwealth Women Parliamentarians (CWP). First elected to the Legislative Assembly in 2015, she has held various positions with the People's Democratic Movement; The Girls' Education Project; and the Government of Montserrat. Her interests include sailing, travel, horses and cricket.

"Brexit will allow Britain to embrace the Commonwealth." So trumpeted the online version of the British daily newspaper *The Daily Telegraph* in March 2016, three months before the referendum on whether Britain should leave or remain in the European Union.

"A bright future awaits Britain post-Brexit in the Commonwealth Markets" - the newspaper further enthused just days after the British majority did, indeed, vote to exit the EU.

Of course, this 'Leave or Remain' dilemma was a matter for 'the British people', and so, the considerations or fears - or even the joys - of others need not have been taken into account. And according to some, they were, in fact, not. 'The Commonwealth' had no say in the matter.

British Citizen, Commonwealth Citizen

Eligibility to vote in the referendum - i.e. to affect the outcome of the vote - was restricted to British citizens over the age of eighteen. The matter of whether, for example, citizens of the United Kingdom Overseas Territories (UKOTs) could vote or not was as unclear as whether citizens of all the UKOTs are British citizens or not. These are as vexing as the subtle and not so subtle differences in the relationships of individual UKOTs with the UK, subject as the UKOTs are to bureaucratic-

speak such as needing to have a 'connection', meeting 'conditions', and belonging to 'qualifying territories'.

As the UK Government website www.gov.uk explains, a citizen of a UKOT "automatically became a British citizen on 21 May 2002 if ... British Overseas Territories citizenship was gained by connection with a qualifying territory." However, as a citizen of these qualifying territories: "You may be able to register as a British citizen if you became a British overseas territories citizen after 21 May 2002 and meet certain conditions."

So, other than Gibraltar, the citizens of the British Overseas Territories had no chance to directly affect the outcome of the referendum. For them, Leave or Remain, go or stay, was not much more than an academic exercise, effectuated through discussions that were sometimes quite heated, rendered such, in part, by feelings of exclusion and powerlessness and by fears of some perceived great loss.

As it is, although according to Gibraltar's Chief Minister, Fabian Picardo, Gibraltar's political leaders had "fought to ensure that Gibraltar is able to vote in the Brexit referendum so that we can influence that decision," and although 95.5% of Gibraltar's voters ticked the 'Remain' box, their influence was not nearly as great as they had hoped, and Gibraltar, too, must now either

find ways to renegotiate its European relationship or lose some benefits therefrom.

Preparing for Brexit

In Part One of a report commissioned by the UKOT Association last year titled: 'The United Kingdom Overseas Territories and the European Union: Benefits and Prospects', Peter Clegg wrote, "It is clear, therefore, that the UKOTs benefit in several important ways from their relationship with the EU, and many of these will be placed at serious risk if the UK decides to leave the EU."

The alarm raised by Clegg's report was not mitigated by the assertions of James Duddridge, the then-Minister for the Overseas Territories that a British exit from the European Union will be an advantage for the OTs because the UK will be able to focus on traditional relationships with them.

Nor was it much allayed by the confusion and uncertainty that evidenced themselves in the immediate aftermath of Brexit, or by what Britain is calling an "opportunity to recalibrate our valuable relationships". It was not quelled by the facile reassurances of Baroness Anelay, Britain's new Minister for British Overseas Territories, in her letter of 20th July to the pre-Joint Ministerial Council (JMC) meeting in Turks & Caicos which reads in part: "The previous Prime Minister made clear our



commitment fully to involve the Overseas Territories as we prepare for negotiations to exit the EU, in line with your various constitutional relationships with the UK."

That one sentence fragment – 'in line with your various constitutional relationships with the UK' – reinforces a longstanding sore point that will likely rear its head in the looming renegotiations of trade and other relationships with Britain.

In response to the Minister's letter, Premier Alden McLaughlin of the Cayman Islands, issued an invitation to Baroness Anelay to visit the Cayman Islands, given that they were "an integral part" of the UK and its history, and that "the people of the Cayman Islands are proud of our connection to Britain." The Premier looks forward "to working with you and your Government toward a stronger partnership between

the United Kingdom and the Cayman Islands."

Sir Hillary Beckles, Caribbean academic, economic historian and Vice-Chancellor of the University of the West Indies, agrees with Premier McLaughlin on the "integral part of the UK and its history" but not necessarily with much more. In a post-Brexit symposium held in Jamaica on 29th June, Sir Hillary Beckles argued that the CARICOM Members' territories, six of which are UKOTs (Montserrat having full membership and the other five being associate members of CARICOM) must move immediately to strengthen themselves as a bloc and begin aggressively and very strategically to "renegotiate their relationship with the EU and to conceptualise" their new relationships with the UK. They must move to Republican status and say to the Queen – 'Thank

you very much and goodbye.'

The question 'What are we going to do now?' asked by small and large states in the seventies when Britain elected to enter the EU is being asked again, forty plus years later, as former colonies find themselves, once again, turning in the winds of change stirred up by the UK's uneasy relationship with Europe. Says Sir Hillary, throughout the last seven to eight hundred years, Britain has been very skilfully engineering a series of entries and withdrawals from Europe, to thwart any rise of a European super state within which it fears it would be subordinated.

It has been asserting itself over Europe, he explains, pursuing its own self-interest by "skilfully" manipulating and interfering with the government and economies of European nations such as Spain, France and the Netherlands, for

Above: Rendezvous Bay in Montserrat.

example, through such devices as royal marriages, naval aggression, international trade policies and laws, seizing lands and colonies, and purposefully destroying other countries' trade and financial industries. 'Brexit', the Vice Chancellor believes, is merely another British manoeuvre, a play for power and global dominance.

The history of Britain, including its presence in Africa, Asia and the Americas would seem to bear this out, as would the histories of OTs such as Gibraltar, Tristan de Cunha and the Falkland Islands.

The Caribbean has been at the centre of Britain's relationship with Europe for more than 400 years, Sir Hillary reminded his audience, and he is not off-base in asserting that: "We will relate to the EU. It is a



IMPLICATIONS OF THE EU REFERENDUM FOR UK OVERSEAS TERRITORIES

logical, historical market for us...” because “European history is part of our domestic history. We have always been in it; we have helped to build it... So, when we are speaking with the EU, it is not a foreign discourse; it is an internal, domestic conversation between us who, for the last 500 years, have been building the Atlantic economy.”

So, what now?

The architects and drivers of the Leave side of the argument fought for the exit so as to liberate Britain from EU bureaucracy, to regain some notion of British independence lost, and to open the door to lucrative, free-trade deals with countries across the world, a position that would assure the resurgence of British prosperity – a push for the return of British hegemony, some say. While it remains in the EU, Britain cannot

negotiate its own bilateral free trade deal with India for example, with which it claims a special, historical relationship.

The world has changed much since the end of the British Empire. The Empire Parliamentary Association has become the Commonwealth Parliamentary Association, and of the 53 member states, thirty-two are Republics, which means that the monarch of Great Britain is not the head of their government.

The world has changed even more immensely in the years since 1972 when the UK joined the EU. After the initial consternation occasioned by that event, Britain’s former colonies – the Commonwealth – had settled into some form of stability – if not actual growth and progress – within their relationship with the European Union, by way of Great Britain.

Britain voted to join the EU, because it seemed that all the best growth opportunities lay just across the English Channel. Now, it is Asia, Africa and Latin America who now hold the big prizes, and the UK is betting that the Commonwealth network is its gateway to many of these fast-growing new economies. Even in bloc, the UKOTs would not present an irresistibly attractive trade to Britain or to the EU, compared to the countries in the three blocs just mentioned so it will be a challenging time for them, in any case.

In the EU, the UKOTs are included in the Overseas Countries and Territories (OCTs) and over the years, as Clegg points out, they have found ways to strengthen their voice within the Union. One outcome of this strengthened voice is the ‘Overseas Association Decision’, (OAD), warmly welcomed by the UKOTs, which aims to move the relationship between the EU and the OCTs beyond development cooperation and into a ‘reciprocal

relationship based on mutual interests’.

The OAD extends the trade benefits already available to OCTs but even so, the EU recently signed free-trade agreements with Colombia, Costa Rica, Mexico, South Africa and the Central American Common Market, as well as a new agreement with the African, Caribbean and Pacific (ACP) Group of States, the result of which has been a reduction in the margin of preference for the OCTs.

“There is no doubt that the current situation is a threat to Caribbean economies”, Vice Chancellor Beckles maintains. Montserrat’s Minister of Trade commented that Brexit *“... should be generally greeted with concern as it asserts political autonomy over the economic needs and expectations of people and the global market...”* The day after the referendum, the Falkland Islands Government issued a statement thanking David Cameron *“for his unwavering support of the Falkland Islands and our right to self-determination”* and implored, *“We are certain this will remain unchanged under the next leadership.”*

So, how to navigate these new waters?

The Commonwealth at large, and the micro-states and UKOTs within it in particular, must find answers to several questions. They must dig deep to investigate the real intentions of the architects of Brexit and ascertain the reach of this influence on the policies and associations historical and new. To find answers they must look analytically at the history of British relations with its former holdings, consider the state of those economies now thirty, forty or sixty years later, and place them all into the context of the ‘New World’ which now exists.

Whether Vice-Chancellor Beckles is correct that this ‘Brexit’ was not an irrational event but the *“skilfully managed”* result of an historical pattern of behaviour, and even if he is not, the UKOTs and the Commonwealth must be assiduous and unrelenting in seeking answers and asserting themselves.

The UKOTs are kept divided by their *“various constitutional relationships with the UK”* which, in spite of any apparent camaraderie and goodwill, does occasion considerable dissatisfaction and distrust, both among the UKOTs and between the OTs and the UK. The likelihood of the UKOTs combining to form a bloc, to agitate together in any sustained and meaningful way for anything is, therefore, slim.

Will Britain look after the interests – trade and otherwise – of its UKOTs equitably or will it do so in line with its “various constitutional relationships? And how will the EU approach this, given its tortured history with the same Commonwealth countries? Will Britain, in this restructured world, be seeking overall to re-establish old hierarchies, claiming dominance and hegemony or will its associations be partnerships of equals?

Given that, as a direct result of Britain’s colonial policies, many of its former colonies are still quite vulnerable and unsettled in many aspects, will the UK now, as it seeks again to exploit its historical relationships, scrap the inadequate *“preferential treatment”* arrangements it had offered to countries gaining independence, and will it replace them with policies of support and technical development that will better position these countries, and itself as a result, to thrive?

How great a neglect will the UKOTs suffer as Britain seeks to reconfigure its relationships with the larger Commonwealth

“Britain voted to join the EU, because it seemed that all the best growth opportunities lay just across the English Channel. Now, it is Asia, Africa and Latin America who now hold the big prizes, and the UK is betting that the Commonwealth network is its gateway to many of these fast-growing new economies.”



Lord Howell, economic consultant and former Parliamentarian, writes that, in 1972, it seemed that all the best growth opportunities lay in Europe. Now it is to Asia, Africa and Latin America that Britain needs to look for the big prizes.

Britain has chosen 'Out'. It has

Its history with the Commonwealth nations is grounded in notions of superiority and exploitation. But times have changed. Have these changes wrought corresponding

The Brits are betting that this new world will be better for them. *Will it?* The Commonwealth nations and the UKOTs are hoping that it will somehow redound to their benefit. *Will it not?*



THE POTENTIAL IMPLICATIONS OF BREXIT FOR THE FALKLAND ISLANDS

The UK's decision to leave the European Union has potentially wide-reaching implications for its Overseas Territories



Hon. Michael Poole, MLA is a Member of the Legislative Assembly of the Falkland Islands. Michael Poole was first elected to the Legislative Assembly in 2013, becoming the first Member of Legislative Assembly to be born after the Falklands War in 1982. He has portfolio responsibility for Public Diplomacy, Policy Development, Tourism and the Environment.

The Constitutional Arrangements

As an Overseas Territory of the United Kingdom, the Falkland Islands are internally self-governed by eight elected Assembly Members. They manage all government budgetary affairs and all revenues are raised within the Islands themselves, with no external aid received. The UK Government is responsible, in consultation with the Islands' Government, for external relations and defence.

The Falkland Islands' relationship with the European Union (EU) is established via its relationship with the UK as a Member State. The EU recognises 22 Overseas Countries and Territories (OCTs) linked to four Member States: the United Kingdom (9 OCTs), Denmark (1), Netherlands (6) and France (6). The EU relationship with these 22 territories is defined in a document called the '*Overseas Association Decision*', a 120 page document which was last updated and ratified by the EU Council of Ministers in late 2013. The existing version is open-ended, but the funding

arrangements underpinning it currently only extend up until 2020.

The Overseas Association Decision covers a wide range of areas and has as its goal a partnership between the EU and the OCTs that is based on three key pillars: (1) Enhancing Competitiveness, (2) Strengthening Resilience and Reducing Vulnerability and (3) Promoting cooperation and integration between OCTs and other partners and neighbouring regions.

To achieve these goals, the document details a range of trade, financing, support and coordinating measures aimed at the OCTs and supported by the European Commission and EU member states. However, this document remains extant until the UK negotiates its full departure from the EU.

The Referendum Itself

Falkland Islands residents did not receive a vote in the United Kingdom referendum in June 2016. Gibraltar, due to its separate and unique relationship with the EU, was the only UK Overseas Territory given the right to vote. The UK

EU Referendum Bill debate had made it clear that suffrage would likely be limited to UK residents and other select groups.

However, the lack of a vote for many residents of the Falkland Islands did not reduce the attention that was paid to this historic vote and the passion with which the issue was discussed in the Islands. The population and Government of the Islands fully recognised that it was for the people of the UK, who were eligible to vote, to make their own choice.

The Falkland Islands population had exercised their own democratic free will via a referendum in relation to their political future just three years before (see article in *The Parliamentary* Issue Three Volume XCVI, 2015 pages 192-195 about the Falkland Islands Referendum). That experience, whilst logistically and practically tiny compared to the UK EU referendum vote, held the same weight of importance for Islanders at the time.

However, as you will see, the 'Brexit' issue is one of great importance to the Islands, with it touching as many elements of life in the Falklands as it does



“Generally held to be the most important area of interaction between the Islands and the EU is that of trade and economic integration. There are a range of both financial and economic implications for the Islands. These impact both the Government in fiscal terms and also the local private and third sectors.”

within the UK mainland itself. This article shall run through those by theme.

Financial and Economic Implications

Generally held to be the most important area of interaction between the Islands and the EU is that of trade and economic integration. There are a range of both financial and economic implications for the Islands. These impact both the Government in fiscal terms and also the local private and third sectors.

Firstly, the decision to leave the EU has led to short-term fluctuations in the currency and financial markets, which have impacted the Islands both positively (in terms of exports sold in USD) and negatively (in terms of financial reserves invested in the FTSE AllShare). The overarching impact of these fluctuations and economic uncertainty is difficult to assess immediately, but there is little

doubt that it makes financial planning considerably more difficult.

In addition, the Islands currently have quota- and tariff-free access to the EU single market for both exports and imports. As the OAD recognises, the EU is the “*principle trading partner of the OCTs*”. This is especially true for the Falkland Islands. The Islands generated an annual GDP of c. £175m in 2014 (*Falkland Islands Government Policy Unit*), with c. 50% of that dependent commodity exports such as fish, meat and wool. Nearly 70% of all of those exports end up in the EU single market. Clearly such trading arrangements work well for the Islands and its industry, but they also result in good quality products being provided into the EU in areas where they do not produce sufficient quantities internally. For example, much of the calamari so loved in Spain and Italy will

Above: Jetty used by visitors arriving by sea in Stanley, capital of the Falkland Islands.

have originated in Falkland Islands' waters.

There are some direct transfers of funds from the EU into the Falkland Islands – totalling 7.5 million euros over recent rounds of the European Development Fund. Whilst direct transfers are considerably smaller and of less concern than the existing trade arrangements, the financing received from the EU plays a key supporting role in the Islands and has contributed to major infrastructure projects such as rural communications networks (roads and an inter-Island ferry service).

Indirect transfers also exist, particularly to environmental NGOs that operate in the Islands and the region generally. These are of considerable importance and will roughly be double



THE POTENTIAL IMPLICATIONS OF BREXIT FOR THE FALKLAND ISLANDS

that of any direct transfers annually. Ensuring that NGOs who do good work continue to be properly funded will be a joint challenge for UK and OCT governments post-Brexit.

In addition, and in part related to the next key set of potential impacts (those of a social nature), the Islands also benefit from access to the collective knowledge and skills of the European Commission (EC). For example, a project has recently commenced, coordinated by the EC, which looks to develop the capacity for innovation in OCTs. This long-term thinking and approach underpins the strategic partnership that currently exists between OCTs and the EU.

Social Implications

Being predominantly British passport holders, Falkland Islanders benefit from the same freedoms of access and movement across the EU as those utilised by residents of the UK. To better quantify the

implications of any possible restrictions in this regard, the Falkland Islands Government are currently undertaking a survey to assess numbers of people that plan to travel, work or study within the EU over the coming years. There is expected to be a significant proportion of the population that intend to utilise these existing freedoms in some form over the coming years.

Additionally, as with many small Islands, there is often a need to obtain expertise from outside of the Islands. Much of this comes from the UK and some neighbouring South American countries, but a significant proportion also comes from mainland Europe. For example, consultants from France have been utilised in recent months, as have doctors from Portugal. Added barriers or bureaucracy to this process may exacerbate already challenging recruitment to the Islands.

Parallel to this sourcing of expertise from the EU, there is also a raft of legislation in the Islands which is based on EU legislation and regulation. Properly understanding and working through the implications of Brexit in that regard will be an important step for not only the UK but its OCTs as well.

Political and Commonwealth Implications

With the United Nations Charter recognising the right to self-determination for all peoples, and the UK's steadfast support for the Islanders rights, fundamentally very little will change in practice for the Islands.

However, there is a lack of clarity in terms of some of the shorter-term practical political implications for the Islands. The current arrangements under the OAD mean that key European institutions such as the European Commission formally recognise UK sovereignty of the Islands. It is hoped that this shall continue



and be clearly stated within any exit treaty.

The UK Government putting themselves on a new bilateral footing with key international partners also represents an opportunity not only for them but for Overseas Territories as well. If the Falkland Islands Government continues to engage with the Foreign and Commonwealth Office then it may be that better bilateral relationships for the Islands and key countries in the region can be the result of this process.

This is particularly important for the Islands brothers and sisters within the Commonwealth. The Islands greatly value their status within the Commonwealth and attend key annual plenary and regional meetings.

The Government is also keen to further develop its practical links within the Commonwealth across a range of areas such as environment and climate change, sports, renewable energy and others.

The UK restating its key place at the heart of the Commonwealth post-Brexit can only be a good thing in this regard and further reinforces the importance of all Commonwealth countries actively implementing the Commonwealth Charter and demonstrating our solidarity and

joint values around the globe.

Where Next?

With Article 50 of the Lisbon Treaty yet to be triggered, this has given time for the Falkland Islands Government to more fully prepare its stance on the key issues detailed above. Like departments across Whitehall in London, the Islands are collectively assessing all the possible 'touch points' between the Falklands and the EU. Categorising and quantifying the risks and opportunities identified within this article is then the goal. Early outlines of this work have already been shared with the UK Government and more detail will be presented in due course.

Rt Hon. David Davis MP, Secretary of State for Exiting the EU, recently told a House of Commons Committee that the negotiation process would be as transparent as possible and that it would not be a 'black box' from which an exit treaty eventually fell out. This reinforces the messages given to Overseas Territories and Crown Dependencies by UK Ministers that there will be ample opportunity for all parties to provide input to the negotiation process.

“Parallel to this sourcing of expertise from the EU, there is also a raft of legislation in the Islands which is based on EU legislation and regulation. Properly understanding and working through the implications of Brexit in that regard will be an important step for not only the UK but its OCTs as well.”



BREXIT: A FILLIP FOR COMMONWEALTH TRADE AND DEVELOPMENT?



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Background

The Commonwealth identifies itself as a “voluntary association of independent and equal sovereign states” that is “bound together by shared history and tradition.”¹ This assertion of equality holds true in relation to each member’s formal political status within the group. Nevertheless, there is room for improvement in relation to substantive equality, as the 53 nations of the Commonwealth are variously classified as low-, lower-middle-, upper-middle- and high-income countries by the World Bank.²

Disparities in economic development levels around the globe have spurred initiatives such as the Millennium Development Goals (MDG) and the Sustainable Development Goals (SDG) contained in the Synthesis Report of the Secretary-General of the United Nations on the post-2015 Sustainable Development Agenda. Both instruments recognise the importance of international cooperation in helping to reduce inequality. SDG 17, which reiterates MDG 8, is to “strengthen the means of implementation and revitalise the global partnership for sustainable development.” The Synthesis Report later goes on to say that “mobilising the support to implement the ambitious new agenda will require political will and action on all fronts, domestic and international, public and private, through aid and trade...”³

Trade and Development

The idea that trade is a potential driver of economic development

is at least as old as the Monterrey Consensus of 2002; Article 26 of this document states that “a universal, rule-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalisation, can substantially stimulate development worldwide, benefiting countries at all stages of development.”⁴ Similarly, the UN System Task Team on the Post-2015 UN Development Agenda recognises that “trade can serve as an engine of growth, development and job creation.”⁵

The monumental decision by the British public in a referendum on 23 June 2016 to break ties with the European Union after four decades could be the gateway to trading partnerships within the Commonwealth that are more beneficial to its less developed members, for should the vote be given full effect through the enforcement of Article 50 of the Treaty of Lisbon, the UK could then negotiate its own trading agreements independently of the EU.⁶ If preferential trading agreements between the UK and other Commonwealth countries were to emerge in the process, this would enhance that nation’s role in advancing economic development within the association.

Commonwealth Development Initiatives

It is not to be understood, however, that membership of the Commonwealth has not had a positive impact on national development for member states.

Members of the Commonwealth benefit from initiatives designed to promote the sixteen core values and principles articulated in the Charter of the Commonwealth, including democracy; good governance; recognition of the needs of small states; international peace and security; and sustainable development. Moreover, trade-based development programmes have been implemented. Even *The Economist* magazine, while critical of the Commonwealth as a whole, concedes that it “runs a good scholarship programme [and] development projects for its poorest members” and that its African members “are conspicuously better off than their non-Commonwealth neighbours.”⁷

Democracy and good governance are strengthened through the work of the Commonwealth Parliamentary Association (CPA). According to its statement of purpose, it “exists to connect, develop, promote and support Parliamentarians and their staff to identify benchmarks of good governance and implement the enduring values of the Commonwealth.” This it does through conferences, workshops and seminars that provide opportunities for capacity building and networking. It also sponsors the attendance of Parliamentarians and parliamentary staff from member countries at these events. Additionally, the CPA disseminates information to aid persons in applying the



BREXIT: A FILLIP FOR COMMONWEALTH TRADE AND DEVELOPMENT?

principles of parliamentary democracy, using forums such as the present journal, which is its flagship publication, as well as online platforms.

The Small States Forum, which meets each year to assess the position of such countries in relation to the activities of the international system, share information and engage in mutual support, is a product of the work of the Commonwealth Secretariat. Also, in order to give policy-makers access to much-needed information, they have compiled an online database of development indicators for small states. Furthermore, they assist countries in creating plans to make their economies more resilient.⁸

In addition, the Commonwealth Secretariat is involved in peacekeeping, having facilitated dialogue between the official government of Sierra Leone and the Revolutionary United Front during that country's civil war between 1991 and 1998⁹ and negotiated the Townsville Peace Agreement, which helped to ease tensions over internal migration and land ownership in the Solomon Islands in October of 2001.¹⁰

Commonwealth trade-related initiatives have tended to focus on capacity building for less developed countries in the area of trade policy and practice rather than actual trade. For instance, the Commonwealth Secretariat, in collaboration with the European Union and the *Organisation Internationale de la Francophonie*, developed a project to deploy experienced trade policy advisers and analysts throughout the African, Caribbean and Pacific region.¹¹ In light of the achievements of the project, which was known as 'Hub and Spokes' and ran from 2004-2012, a second phase was developed and it was extended to 2016.¹²

Although the UK does not have autonomous trading arrangements

with other Commonwealth states, there has been robust trade between the parties. In fact, the Commonwealth Deputy Secretary-General has spoken of the discovery of a '*Commonwealth effect*' that "*favours trade between Commonwealth member states.*"¹³

He further states that estimates suggest that "*trade costs between two Commonwealth member countries are on average 19% lower compared to with other partners, and therefore average global trade costs.*"¹⁴

The Potential Impact of Brexit

The changes occasioned by Brexit may create an opportunity for the restructuring of trade relations within the Commonwealth. Moreover, the impact of the decision will be evident in financial markets and investments; migration; financial assistance to developing countries; and trade.¹⁵ The UK would need to seek potential trading partners elsewhere and explore other avenues for trade such as joining the European Economic Area; negotiating bilateral deals with the EU; becoming a 'lone' member of the World Trade Organisation (WTO); and negotiating trade deals with other countries.¹⁶

For the Commonwealth of Nations, this could signal a renewed partnership between the UK and her former colonies in which arrangements that would increase the advantages afforded to more vulnerable members of the association could be emphasised. Commonwealth countries might be able to negotiate new trade deals and a free trade area could be created (*Dhingra and Sampson, 2016*) to reduce barriers to trade.

A former Commonwealth Minister, Lord Howell of Guildford, maintains that "*the assumptions... that the UK's best trade prospects [lie] in Europe and not in the Commonwealth...*

are being turned on their head" thanks to the grassroots nature of the Commonwealth, which he believes to be better suited to the network age and more conducive to the expansion of trade.¹⁷ He goes on to say that "*the time for a sharply increased focus on both Commonwealth and adjacent markets is now ripe*", while noting that the Commonwealth is the gateway to many of the fast-growing economies of Asia, Africa and Latin America.¹⁸ It is perhaps for this reason that he warns that the UK needs to "*see any trade deals from the Commonwealth perspective as well*", "*avoid sounding narrowly Anglo-centric*" and "*knock politely and ask to be let back in*" by some Commonwealth countries which it had "*shown...the door back in 1972.*"¹⁹

A less positive development has been the devaluation of the pound sterling since the UK's vote to leave the EU; it reached a 31-year low against the US dollar on 6 July 2016.²⁰ This could have negative implications for the UK's imports and financial markets as well as their ability to aid other countries with development financing (*Willem te Velde, et al, 2016*).

Regional and Local Perspectives

The news of Brexit has provoked responses from government and business interests in the Caribbean in general and in Jamaica in particular. A report in the *Jamaica Gleaner* on Thursday 7 July 2016 indicates that "*the Caribbean Community (CARICOM) is being urged to consider getting a waiver from relevant obligations under the World Trade Organization (WTO) to avert the loss of preferential access to the United Kingdom (UK) following that nation's vote to leave the European Union (EU).*"²¹ The writer then explains that CARIFORUM, which includes CARICOM and the Dominican

Republic, has duty-free and quota-free access to EU markets under an economic partnership agreement, but with Brexit, the UK would no longer be subject to the terms of that agreement.²²

A senior governor of the Bank of Jamaica has predicted that Brexit will produce increased uncertainty and a slowdown in global growth, but has also noted that Jamaica is "*better placed than we ever were*" to handle the changes because of our macroeconomic stabilisation and reform process.²³

The managing director of Jamaica Producers, a major exporter of agricultural products such as bananas, has chosen to bear in mind both the potential advantages and disadvantages of Brexit. His observation, as reported in the *Gleaner*, is as follows: "*For us, a [post-Brexit] depreciation of Sterling can negatively impact on our revenues. But, on the other hand, because we are in the shipping business [as well], a depreciation can mean more trade with the UK.*"²⁴

Conclusion

There can be no doubt that the Commonwealth affords its members opportunities for growth and development. Should there be a complete separation between the EU and Britain, there may be room for enhanced trading agreements that could redound to the benefit of its Commonwealth partners.

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Above: The busy port of Montego Bay in Jamaica.

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⁷ *The Economist* explains: *What's the point of the Commonwealth?* Retrieved from: www.economist.com/blogs/economist-explains/2013/11/economist-explains-12. Last accessed

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⁸ For further information on these and other economic development initiatives undertaken by the Commonwealth Secretariat, please see www.commonwealthofnations.org/commonwealth-in-action/economic-development-2/

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COMMONWEALTH TRADE RELATIONS WITH THE EU AND THE UK AT A CROSSROADS

‘Brexit’ means that Commonwealth member countries’ trade relations with the EU and the UK are at a crossroads writes the Head of International Trade Policy at the Commonwealth Secretariat. Many developing countries will be especially concerned by the fallout, but there are opportunities for increased trade with the UK. It is also time for Commonwealth members to better exploit their so-called Commonwealth trade advantage.



Mohammad Razzaque is Head of International Trade Policy at the Commonwealth Secretariat. He has written extensively and led numerous research and advocacy work on international trade, trade negotiations and development issues. He was the lead author of the 2015 report, *The Commonwealth in the Unfolding Global Trade Landscape*. He holds a PhD in economics from the University of Sussex.

The United Kingdom’s impending exit of the European Union will have important implications for many Commonwealth member countries. For an overwhelming majority of members, the EU is a vital trade partner, with the trade relationship between themselves and the UK governed for decades through EU policies.

The newfound trade policy independence of the UK means some of these relationships are likely to change.

Commonwealth trade with the EU

The implications of ‘Brexit’ for individual Commonwealth members will vary depending on the trade partnerships they hold with the EU and the UK. Following the referendum of 23 June 2016, however, there is a general concern regarding the implications of Brexit for both the UK and the EU and how they will impact on the overall stability of the global economy.

Between 2000 and 2015, Commonwealth developing countries’ total merchandise exports to the EU rose from \$74 billion to \$173 billion. In 2015, almost 16% of Commonwealth developing countries’ overall

exports were destined for the EU (including the UK).¹

For Commonwealth developed countries – for example Australia, Cyprus, Canada, Malta, New Zealand and the UK – total merchandise exports to the EU rose from \$196 billion to \$247 billion between 2000 and 2015. In 2015, almost 23% of the combined exports of these countries went to the EU.²

One important feature of the trade with the EU for many Commonwealth developing countries has been their preferential market access into the single market. To support trade capacity and economic development, the EU has provided special trade preferences, often through complex mechanisms such as its *Everything But Arms* scheme for the world’s poorest countries, known as the least developed countries (LDCs) and its Economic Partnership Agreements (EPAs) for African, Caribbean and Pacific (ACP) states.

Through agreements such as these, goods originating from the world’s poorest countries can enter the EU market without paying the standard customs duties. That means, for example,

“The implications of ‘Brexit’ for individual Commonwealth members will vary depending on the trade partnerships they hold with the EU and the UK. Following the referendum of 23 June 2016, however, there is a general concern regarding the implications of Brexit for both the UK and the EU and how they will impact on the overall stability of the global economy.”



that while imports of textiles and clothing items attract an average customs duty rate of 12%, such goods procured from countries like Bangladesh and Lesotho can qualify for duty-free market access, helping improve their trade competitiveness.

Currently thirteen of the Commonwealth's least developed countries are eligible for unilateral duty-free and quota-free market access to the EU single market. Similarly, thirty-nine Commonwealth ACP countries are part of various EPAs that are at different stages of finalisation or implementation.

Fallout from Brexit

If the fallout from Brexit translates into lower growth in Europe, trade flows from other countries and regions may be hampered, particularly as global trade growth has slowed alarmingly in recent years and such low growth has persisted for an unprecedentedly prolonged period.³

The depreciation of the pound since 23 June 2016 implies a lower value for developing countries' exports to the UK and remittances, or the money that people send to their countries of origin while working in the UK. This will

also impact on the value of UK aid received by beneficiary countries. In 2015, the UK was the source of \$31 billion worth of goods exports earnings from developing member countries of the Commonwealth, plus \$12 billion in remittances and \$3.3 billion in development aid. A 10% sustained depreciation in the value of the pound would therefore result in a loss of more than \$4 billion for Commonwealth developing members from their combined foreign exchange outlay of exports, remittances and international aid.

There is no doubt about the

UK's commitment to supporting development as it has always recognised and championed the special needs and challenges facing poor and vulnerable countries. It is also one of the few high-income countries that fulfils the UN target of providing 0.7% of gross national income as development assistance. However, with many competing demands on the UK's post-Brexit negotiating capacity, there is an apprehension amongst some analysts that devising appropriate development-oriented policies might not be prioritised. Also, instituting and implementing



COMMONWEALTH TRADE RELATIONS WITH THE EU AND THE UK AT A CROSSROADS

trade preferential mechanisms can take time, leading to uncertainty for exporters and investors in preference-receiving developing countries.

In the absence of equivalent UK preferences, Commonwealth developing countries could end up paying additional duties to the tune of \$800 million in order to export their products to the UK. Indeed, this potential import tax hike could be as high as at least 1% of their total exports to the UK for as many as thirty six Commonwealth developing countries. For countries such as Bangladesh, Mauritius, Seychelles and Swaziland, this could be more than 10%.⁴

Even when the likely impacts on overall GDP or exports are small, there could be significant consequences for specific sectors. For example, more than 80% of Saint Lucia's exports, mainly bananas, to the EU are bound for the UK. As the

Saint Lucian banana industry has already faced tremendous competitive pressures, unless it secures the same level of market access as in the EU, post-Brexit trading could deal a further blow to the sector. Similarly, two-thirds of Fiji's EU exports are to the UK alone, of which 95% of the earnings come from sugar. Furthermore, 80% of Kenya's total vegetable exports to the EU is destined for the UK.

Many other Commonwealth developing countries have export sectors that are not yet major revenue generators but show tremendous potential for future growth in the UK market, so, post-Brexit, countries will be seeking trade preferences to support trade expansion in these export categories.

Importantly, Commonwealth developing countries today enjoy the benefits of the EU single market, which allows a bulk importer based in one EU country to source imports from developing countries and then distribute to other EU member states without being subject to any barriers. Whether such mass exporting opportunities through one importer can continue will depend on the outcome of the Brexit negotiations between the EU and the UK.

The Commonwealth trade advantage

Irrespective of the potential ramifications from Brexit, huge untapped trading opportunities do exist within the Commonwealth.

Trade cooperation among countries has increasingly been manifested in regional or bilateral trade deals, with more than 600 of them being listed by the World Trade Organisation. The Commonwealth of course is a voluntary association and not a trading bloc. Yet, since 2000, trade in goods and services among Commonwealth countries – *intra-Commonwealth* trade –

has almost tripled from just over \$200 billion to more than \$600 billion.

A recent Commonwealth Secretariat report, *The Commonwealth in the Unfolding Global Trade Landscape*, showed that when both bilateral partners are Commonwealth members, they tend to trade, on average, 20% more, and generate 10% more foreign direct investment flows than they would otherwise.

Factors such as historical ties, long-established trading relations, familiar administrative and legal systems, the use of largely one language, English, as the means of communication, and large and dynamic diasporas, all seem to be contributing to an inherent Commonwealth advantage that drives trade among Commonwealth member countries. This '*Commonwealth trade advantage*' means bilateral trading costs between Commonwealth countries are on average 19 percentage points lower compared with trade between other country pairs.

The significance of this *intra-Commonwealth* trade is impressive for several reasons. Firstly, most member countries are members in several trading blocs involving non-member countries. Secondly, all members are looking for greater trading opportunities with traditional economic powers, such as the USA, Japan, and the EU, as well as major emerging economic powers such as China.

Analysis by the Commonwealth Secretariat suggests that, even in the absence of any coordinated policy measures – for example no new trading blocs being established – *intra-Commonwealth* exports have the potential to expand by \$156 billion. According to one projection, over the next 15 years or so, the combined GDP of the 53 Commonwealth member countries would double

to \$20 trillion.⁵ Even under a low world trade growth scenario, *intra-Commonwealth* trade could expand to reach \$1.85 trillion by 2030.

Towards the future

Post-Brexit, it is difficult to foresee a Commonwealth-wide single preferential trade deal, as Malta and Cyprus remain EU members. Additionally, the Commonwealth is an association of very diverse members – in terms of their size, location and level of development. The experience of WTO-led multilateral trade negotiations suggests trading arrangements involving a large number of diverse countries can be very time-consuming and often yield marginal gains.

However, new bilateral deals between the UK and other interested Commonwealth members are possible, promising trade gains for involved parties. This would further boost *intra-Commonwealth* trade. But even without such formal arrangements, given the tremendous potential that exists, proactive initiatives by the UK and other Commonwealth members can generate new trade and investment opportunities.

Stability in the global economic environment will also be important in boosting Commonwealth members' trade performance and economic prosperity, alongside the strong future economic performance of the UK as well as Europe. Commonwealth member countries will be aiming to maintain and expand trade with the EU while at the same time exploiting the unique trade advantage that the Commonwealth offers. As member countries expand their overall trading and productive capacity, they will be able to exploit this advantage further still.

“Irrespective of the potential ramifications from Brexit, huge untapped trading opportunities do exist within the Commonwealth. Trade cooperation among countries has increasingly been manifested in regional or bilateral trade deals, with more than 600 of them being listed by the World Trade Organisation.”



References

¹ Of this, the UK's share was less than 3%. Commonwealth developing countries' exports to the EU are however dominated by two major suppliers, India and Singapore. These two countries together exported about \$100 billion to the EU in 2015.

² However, amongst bigger developed countries, the UK's dependence on the EU market is much higher: 44%. Also, in 2015 the global economy witnessed

considerable slowdown in export trade, including export earnings from the EU market. Commonwealth developed countries' average yearly export receipts from the EU during 2011-14 is estimated at \$300 billion as against of \$247 billion in 2015.

³ The annual average world trade growth for 2011-16 has been about 3% as against 7% achieved during 1980-2008.

⁴ Detailed analysis on this can be found in Stevens, C. and Kennan,

J. (2016), "*Trade Implications of Brexit for Commonwealth Developing Countries*", Commonwealth Trade Hot Topics, issue no. 33, Commonwealth Secretariat, London.

⁵ It should be noted here that the prolonged recovery of the global economy from the recession following the 2008 financial crisis could affect this projected growth of combined Commonwealth GDP. Nonetheless, economic growth in most Commonwealth Asian

developing countries, prominently India, and several Sub-Saharan African countries remains resilient. It is possible that the seven largest Commonwealth developing countries - India, Nigeria, South Africa, Malaysia, Singapore, Pakistan and Bangladesh - will see their combined GDP rise from currently less than \$4 trillion to more than \$10 trillion in 2030.



WHAT DOES BREXIT MEAN FOR NON-EU TRADE?

Britain's relationship with the European Union (EU) will continue to be at the forefront of minds for some time. But alongside this key concern are further ripples of change – and opportunity. The CEO of the Commonwealth Enterprise and Investment Council (CWEIC) explores what the post-Brexit trading landscape might look like beyond the EU.



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increased trade and
investment across the
Commonwealth.

The day came, and the day went. For better or worse, after over four decades, Britain voted to leave the European Union – a vote which proved to be at least as controversial, both in the run-up and aftermath, as the vote to join all those years ago. Now, as they say, comes the tricky bit. But as ever in business, change and volatility also herald an era of opportunity.

Whatever side of the fence you found yourself on before Brexit, as with any separation there are undeniably pros and cons. Life after Brexit in the UK holds uncertainty, it is true, but the old clichés of metallicity-edged clouds and bi-faceted coins are coming out to play. Of course, it will be some time (at least two years) before the material realities of the new landscape will be confirmed. And far longer, it must be assumed, before all the consequences are revealed.

Again, regardless of pre-Brexit opinions, negative outlooks ought to be taken with a pinch of salt. It is possible to speculate for perhaps too long, but logic dictates that Britain will go on having a trading and political relationship with the EU and – given that Britain is a highly important market for many EU economies and vice versa – there is a good chance of a favourable trade agreement. What exact shape this might take remains to be seen, but the knock-on effects and business implications will not be limited to the EU.

Indeed, one subject that has yet to be fully explored is

what changes are likely with respect to trade beyond the EU, and specifically with the Commonwealth?

More than one way to skin a cat

The EU will continue to be an important market for Britain, and the Commonwealth Enterprise and Investment Council has always recognised it as such. That some Commonwealth nations are members of both (i.e. Malta and Cyprus are both EU and Commonwealth members, as well as the UK for the time being) shows that the coexistence of these two groups can and should be harmonious and complementary rather than polarising.

It is nonetheless possible – and desirable – that the UK at the same time makes the most of the trade opportunities that being a Commonwealth nation has to offer. The globe-spanning market of 53 countries has a number of inbuilt advantages for UK firms, as well as a strong existing appetite for UK goods and services. This unique network comprises member countries from every inhabited time zone and continent, from the vast to the tiny, advanced to emerging or developing – and often with huge growth potential.

The shared commonalities that bring Commonwealth member states together are also, happily, ones that lower barriers to business. The *lingua franca* is English, with legal systems and business practices built on the same foundations

and underpinned by the same values. While two-thirds of executives identify linguistic and cultural differences as barriers to gaining a foothold in new markets, two countries that share a common business language trade 42% more than a pair lacking such a bond. With 82% of Commonwealth countries having legal systems based on English Common Law, such characteristics combine to make the Commonwealth a ready-made market for UK exporters – one that lowers the cost of business by 19% between members versus non-Commonwealth countries.

Opening doors

Regardless of the amicability of the split or the friendliness of the new Britain-EU trade agreement, Brexit will mean greater autonomy for Britain when negotiating such agreements elsewhere. Indeed, in the days following the vote, two major Commonwealth markets have already sought such arrangements, with Australia calling for a free trade deal and Canada looking to deepen trade ties, as well as further interest from New Zealand and Ghana. India's Prime Minister Modi has also professed hope that *"leaving the EU will help reinvigorate relations between the UK and India."*

Confirmed as the world's fastest growing economy again this year, markets such as India can only grow in importance with regards to the UK's future trade relations. Indeed, across the Commonwealth's population



as a whole, 60% are currently under 30, and by 2020 one billion are projected to be middle class consumers. Trade between members is expected to double to £700bn in the same time and, for intrepid exporters who gain a foothold in these markets, the future rewards could be staggering.

Clearly, such trade will be a two-way street. On the one hand, Brexit may well level the playing field for non-EU counterparties – especially Commonwealth members – further stimulating such trading relationships. Brexit will not block British trade with the EU, but it may have the effect of opening up other potential markets; stimulating British exports and increasing competitiveness.

Little and large

Looking beyond what is on the doorstep could mean diversification – both in terms of markets and in terms of industry – and could be a chance for British companies to grow and enter new arenas. For example, many SMEs are currently falling short of exploiting their full export potential. Although such companies make up a staggering 99% of UK businesses and contribute 50% of the gross value added to the economy, their contribution to total UK exports stands at only 40%. Indeed, the new Trade and Investment Minister, Lord Price CVO, noted recently that: *“the UK punches well below its weight in the export market and badly needs to improve.”*

This is evidenced by just 20% of UK SMEs exporting anything at all. Below the European average, this translates to around 100,000 currently non-exporting firms that could be doing so. Businesses that export are proven to achieve a higher growth rate in revenue and profit than those restricted to domestic trade, and the benefits go beyond revenue. Research by UK Trade and Investment (UKTI) shows that exporting businesses become

34% more productive in their first year alone and it is 11% more likely a UK company will survive a recession if it sells overseas. The same survey showed that 85% of businesses found exporting helped them grow to a level not otherwise possible, and 66% said that trading overseas led them to fresh business ideas and innovation.

The benefits of exporting are clear and conditions are excellent. Not only does low sterling make UK exporters competitive, securing export finance is easier than ever. Banks are lending at historically low rates, and, should sterling remain low, forward contracts would allow exporters to lock in these beneficial rates for up to three years.

In theory, getting the aforementioned 100,000 SMEs to sell overseas could add up to an estimated £30bn to the UK economy and create thousands of jobs. More realistically, a recent survey by the Federation of Small Businesses suggested that the number of SMEs exporting could double due to the drop in sterling, and this would no doubt help cushion the economy from post-Brexit volatility. Indeed, an export-led rebalancing of the economy has been at the heart of the government's agenda since the recession, although achieving this has been harder than anticipated.

Reaching out

In a post-Brexit landscape, there are opportunities to deepen existing trade relationships and embark on new ones – although doing so is not without its challenges. UK SMEs list cultural and language barriers, and lack of contacts, understanding of legal and regulatory requirements or market knowledge, among the obstacles causing them to restrict themselves to national trade, as well as citing the difficulty of accessing potential buyers and business partners. But such roadblocks are greatly reduced among Commonwealth members and are being further dismantled by pointed



initiatives to address them.

One such initiative comes via CWEIC in collaboration with Royal Mail. Called *CommonwealthFirst*, it will select 100 ambitious, high-potential, UK SMEs and offer them tailored training and business development support to help them access high-growth Commonwealth markets. The first 27 have already been selected in time for a trade mission to India later this year, including fast-growing British names such as drink manufacturer *Fever-Tree* and tech-startup *what3words*, and the programme will be rolled-out to other Commonwealth countries in the near future.

More recently, the CWEIC launched the *Commonwealth Trade Platform*, a digital trading platform that aims to connect potential trade counterparties across the Commonwealth. With this free-to-join business-matching portal, the aim is to bring

the seemingly far-flung markets of the Commonwealth to each other's front doors.

The UK must continue to value and protect its long-standing relationship with Europe. But, now more than ever, such a relationship does not preclude capitalising on the potential for trade with other regions, and especially those – such as the Commonwealth – that have a favourable view of 'Brand Britain'. So, choose your line – *he who dares wins, fortune favours the brave, or a stitch in time* – but for Commonwealth markets and the UK alike, Brexit can mean a wealth of opportunity for those who grab the bull by the horns.

Supported by Royal Mail, CWEIC have created *CommonwealthFirst* – an initiative aimed at boosting UK SME exports to high-growth Commonwealth markets – and Commonwealth Trade Initiative – an online counterparty-matching platform. <http://www.commonwealthfirst.org>



EMBRACING LATIMER: THE ACT EXPERIENCE¹



Hon. Vicki Dunne, MLA is the Speaker of the Legislative Assembly for the Australian Capital Territory*. First elected in 2001, she has held many different positions including Shadow Attorney General; Opposition Whip; and various ministerial portfolios. Hon. Vicki Dunne has been involved in the Commonwealth Parliamentary Association (CPA) for a number of years serving for three years on the Executive Committee, attending CPA conferences and latterly as the CPA's Acting Treasurer.

David Skinner is the Director of Governance and Communications at the Legislative Assembly for the Australian Capital Territory.

*correct at the time of printing.

The Legislative Assembly for the Australian Capital Territory (ACT) is the only Parliament in the Commonwealth to have incorporated in its practice and procedure an explicit endorsement of the *Commonwealth (Latimer House Principles) on the three branches of Government*. Since that, time significant progress has been made towards strengthening the independence of the Legislative branch.

The adoption of the Latimer House Principles by the Assembly has provided a comprehensive and largely uncontested framework within which MLAs have been able to advance the discussion about the separation of powers, and to shape the evolution of the Assembly's conventions and statutory structures. This has also assisted in developing and maintaining an institutional culture whereby successive Executives have generally acknowledged the scrutiny and accountability functions of the Legislative branch; a situation that is not always readily observable in Westminster systems.²

This paper sets out a brief history of the Assembly's embrace of Latimer, reviews recent developments in this area and advances two additional proposals, which I think would see the principles more fully embodied.

The journey begins

On 11 December 2008, following the commencement of the 7th Assembly, the Assembly for the Australian Capital Territory (ACT) passed unanimously by continuing resolution the following:

*Members of the Legislative Assembly endorse and adopt the Commonwealth (Latimer House Principles) on the Three Branches of Government as agreed by Law Ministers and endorsed by the Commonwealth Heads of Government Meeting, Abuja, Nigeria, 2003. Members do so in acknowledgment that the principles express the fundamental values they believe should govern the relationship between the three branches of government in the Australian Capital Territory.*³

The fact that the continuing resolution was passed unanimously reflected the high regard in which the principles were held. It is significant that the Latimer House Principles have featured strongly in the debates of the Assembly and its Committees. The Hansard record shows that since 2007 there have been 244 references to the Principles in proceedings of the Chamber. In addition, there have been 43 references to the Principles in the proceedings of Assembly Committees.

Against this background, it is not too much of a stretch to say that the Assembly has seen its aspirations for the development of democracy in the ACT in terms of the Latimer House Principles. It is at the forefront of promoting the Principles and actively seeking to see them realised to the greatest extent possible, particularly in relation to the Legislative branch.

Reviews

There have been two independent assessments of the ACT's implementation of the Latimer House Principles in the governance of the ACT.⁴ The first review was conducted by Professor John Halligan, Professor of Public Administration at the University of Canberra in 2011. The second was conducted in 2014 by Bill Burmester and others on behalf of the Institute for Governance and Policy Analysis at the University of Canberra. Both reviews indicated that the ACT had a good record in living up to both the spirit and the letter of the Principles, but also found that there were areas where improvements could be made.

As Professor Halligan observed: "*The Legislature rates very well against the Latimer Principles in terms of its relative independence from the Executive,*



the opportunities for private members, and the concern with enhancing the institution.¹⁵

Echoing these sentiments three years later, Burmester et al noted that: “...in passing its resolution to formally adopt the Principles, and in many other regards, the ACT Legislative Assembly has marked itself out as a leading legislature among those across Commonwealth nations. And in other regards too, the ACT can be seen as ahead of the game amongst Westminster-based systems of governance in its success in implementing the Latimer House Principles.”¹⁶

However, the 2014 review team also found that: “...opportunities exist to further strengthen this performance, and some challenges to the direction of democratic practice are emerging in the Territory.”¹⁷

Members themselves appear to agree that the Latimer House Principles are alive and well, but also that more can be done to educate and promote them more widely. A recent survey of MLAs from the 7th and 8th Assemblies⁸ on the Latimer House Principles indicates a continuing respect for the Principles, moderate to

high levels of understanding about them and a sense that both ministers and non-Executive members understand and respect the separation of powers doctrine more generally. Seventy-five percent of respondents to the survey indicated that the Latimer House Principles and the separation of powers doctrine, more generally, were either ‘very important’ or ‘somewhat important’ in informing their decisions about the Territory’s governance and administrative arrangements so far as the Judiciary, Legislature and Executive were concerned. Eighty-five percent of respondents indicated that they either ‘strongly agreed’ or ‘agreed’ with the statement that: ‘Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the Executive to Parliament.’

Developments

In the eight years since the continuing resolution was first passed, several notable developments have occurred.

Independent statutory support agency

Firstly, the Assembly enacted the *Legislative Assembly (Office of the Legislative Assembly) Bill 2012*, providing for the first time a comprehensive framework for the primary support agency of the Legislature in the ACT. The Act establishes: the independence of the Clerk and staff from the Executive; the statutory functions; and an independent process for the appointment, suspension and ending the appointment of the Clerk. A number of amendments were also made to other legislation to further enhance the independence of the Legislative branch. These reforms took the Assembly somewhat closer to a comprehensive realisation of Guideline VII 4 of *Latimer House Guidelines for the Commonwealth*, which states that ‘Parliament should be serviced by a professional staff independent of the regular public service.’⁹

Budget protocols

In 2013, the Speaker initiated the development of budget protocols setting out process requirements governing the formulation of the Assembly’s budget. Following a

period of negotiation between parliamentary and Treasury officials, the Chief Minister and the Speaker reached agreement, and the signed-off protocols were tabled in the Assembly in August 2014. The protocols go some way towards the realisation of Guideline VII 6¹⁰, which states that, ‘An all party Committee of Members of Parliament should review and administer Parliament’s budget which should not be subject to amendment by the Executive’.¹¹

The protocols establish explicit requirements as to how the central Treasury directorate and the Office of the Legislative Assembly will work together to preserve, as far as is currently politically feasible, the exclusive role of the Parliament. The protocols commit the parties to ‘advance the separation of powers doctrine as it relates to the mutually independent status of the Legislative and Executive branches of government in the ACT’s form of parliamentary democracy’.¹²

Now the protocols have been in place through two budget rounds, it is clear that they have established a useful means



SEPARATION OF POWERS: THE ACT EXPERIENCE

for parliamentary and Treasury officials to navigate the budget process in a manner which respects the independence of the Legislative branch. The mere existence of the protocols has had the effect of educating the broader public service, particularly treasury officials, on the importance of the separation of power doctrine.

Officers of the Legislative Assembly

Another development since the Assembly's endorsement of the Latimer House Principles was the unanimous decision to establish independent Officers of the Legislative Assembly¹³, and make the Auditor-General and the Electoral Commissioner¹⁴ the first such officers. In addition, the Speaker gained the power to appoint, suspend or to end the appointment of an officer (in consultation with/advice from the relevant Assembly Committees, the Chief Minister, Leader of the Opposition and the leader of any other party that is represented in the Assembly by at least two members).¹⁵ This, and other related reforms, have taken the Assembly and the ACT governance arrangements more generally, closer to the realisation of the 'oversight of government'¹⁶ provisions in the Latimer Principles.

Parliamentary ethics

Although the Assembly had already established an Ethics and Integrity Advisor¹⁷ shortly before it formally adopted the Latimer House Principles, two further developments have gone some significant way towards promoting ethical behaviour in accordance with Latimer Principle V 2 relating to integrity in Parliament. The first was the establishment of a Commissioner for Standards, and the second was the establishment of a Register of Lobbyists to, 'provide a public

official (ministers, non-executive MLAs and public servants) being "targeted" by lobbying activity with transparency as to the identity of the parties on whose behalf lobbying is being undertaken, thus enabling them to better assess the views being advanced and to better judge whether they need to seek alternative or balancing views from other quarters'.¹⁸

More work to be done

There are two main areas where further reforms could be implemented to strengthen the Assembly's adherence to the Latimer Principles and associated guidelines.

The first is increasing the role of the Legislative Branch in the development of the budget for the Assembly, and the budgets of Officers of the Legislative Assembly. The second is expanding the role of Standing Committees in the scrutiny of proposed legislation.

Autonomous budget process

Ideally, the Assembly would acquire, through political consensus leading to procedural codification¹⁹, full autonomy for the formulation of the budget for its own operations, and those of its officers (the Auditor-General and the Electoral Commissioner). Under such an arrangement, the Executive would, as a matter of convention, agree not to alter the recommended appropriation given it by the Speaker, following consultations with the relevant Standing Committee.

Another important element would be implementing – again through the standing orders – a requirement for the Assembly's budget to be reviewed by an independent third-party panel,²⁰ under the direction of the Speaker, once each Assembly term. This review process would enable the Standing Committee on Administration and Procedure to have a baseline against which

to assess any particular funding proposals that emerge as part of the budget development process. Encouragingly, a recent survey of Members of the 7th and 8th Assembly indicated that 87.5% of respondents agreed or strongly agreed with the proposition that '*The Assembly should play a large role in developing its annual budget*'.²¹ Such an approach would accord with the relevant Commonwealth Parliamentary Association benchmark which states that '*Only the Legislature shall be empowered to determine [my emphasis] and approve the budget of the Legislature*'.²²

Legislative scrutiny

Another area where the Assembly could advance its embrace of Latimer is the enhancement of accountability mechanisms through the Assembly's Committee system. Principle VII states that '*Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the Executive to Parliament*'.²³ As most legislation that is put before the Assembly is conceived, designed and developed by the Executive, Committee scrutiny of all proposed legislation is a critical mechanism for improving legislative outcomes and bringing the government of the day to account for its legislative programme.

There would be merit in an approach whereby all proposed legislation is referred to the relevant Assembly Standing Committees for review, not just of the technical aspects, but of the underlying policy substance. Such an approach, which would more closely resemble arrangements in place in the New Zealand and Queensland Parliaments, would give the Legislative branch a broader and deeper capacity for review.

Where to from here?

With the expansion of the Assembly from 17 to 25

Members at the October 2016 election, which will inevitably produce an even greater proportionate increase in the number of Members available to serve on Committees, particularly on the Government side – together with an infusion of 'new blood' and new ideas generally – the coming 9th Assembly provides a major opportunity to further advance some of matters discussed above.

Although the Assembly, and the ACT more generally, has some way to go to fully meet the spirit and the letter of the Latimer House Principles, there is good reason to believe that we have solid foundations for an effective separation of powers within the Westminster tradition. It will be interesting to see what can be achieved on these fronts in the coming 9th Assembly.

References:

¹ This paper was initially presented to the 47th Presiding Officers' and Clerks' Conference in Tonga in July 2016. The conference theme was '*Navigating together the challenges for modern parliaments*'.

² The fact that all but one of the governments formed since the Assembly's establishment in 1989 have been minority governments, requiring the support of a crossbench, has played no small part in apportioning significant authority, particularly in relation to appropriate scrutiny functions, to the legislative branch.

³ Legislative Assembly for the ACT: 2008-2009 Week 1 Hansard (11 December) p 312.

⁴ Legislative Assembly for the Australian Capital Territory, Standing Orders and Continuing Resolution of the Assembly, Continuing Resolution 8A '*Latimer House Principles – Endorsement of the Commonwealth (Latimer) House Principles on the Three Branches of Government*', agreed by the Assembly, 11 December 2008 (Amended 23 February 2012), p 87. http://www.parliament.act.gov.au/in-the-assembly/standing_orders



Office of the Legislative Assembly, signed 24 June 2014 and tabled in the Assembly 5 August 2014, p 2.

¹³ The Officers of the Assembly Legislation Amendment Bill 2013 was passed unanimously by the Assembly towards the beginning of the 8th Assembly. http://www.legislation.act.gov.au/b/db_48349/default.asp

¹⁴ The ACT currently purchases the services of the Commonwealth Ombudsman, but in the event that the ACT acquires a separate Ombudsman, the statutory changes will mean that this office is also located in the Legislative branch, rather than the Executive branch.

¹⁵ These elements of the legislation were closely modelled on the equivalent provisions in the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*.

¹⁶ See part IX of the *Latimer House Principles*, p12.

¹⁷ Resolution agreed by the Assembly, 10 April 2008 (amended 21 August 2008), Assembly Standing Orders op cit, p 82.

¹⁸ <http://www.parliament.act.gov.au/act-register-of-lobbyists/act-register-of-lobbyists5#AbouttheRegister> accessed on 17 June 2016

¹⁹ eg by a Continuing Resolution; changes to Standing Orders; or extension of existing Budget Protocols between the Speaker and Chief Minister.

²⁰ A small panel of two or three individuals with the necessary mix of parliamentary, legal, and financial management credentials would be appropriate.

²¹ Latimer survey op cit.

²² Commonwealth Parliamentary Association, Recommended Benchmarks for Democratic Legislatures, p 7. http://www.cpahq.org/cpahq/Main/Document_Library/Benchmarks_for_Democratic_Legislatures/Recommended_Benchmarks_for_Democratic_Legislatures.aspx

²³ Latimer House Guidelines op cit, p 11.

⁵ Halligan, John, 2011, *An Assessment of the Performance of the Three Branches of Government in the ACT Against the Latimer House Principles*, p 2. http://www.parliament.act.gov.au/_data/assets/pdf_file/0006/572766/ThreeBranchesofGovernment.pdf

⁶ Burmester, B; Evans, M; Edwards, M; Reid, R, 2014, *Report on the Implementation of the Latimer House Principles in the Australian Capital Territory* p 8. <http://www.parliament>

act.gov.au/_data/assets/pdf_file/0003/690213/2015-02-Report-on-the-Implementation-of-the-Latimer-House-Principles-in-the-Australian-Capital-Territory.pdf

⁷ Op cit

⁸ Latimer House Survey conducted by the Office of the Legislative Assembly in May and June, 2016, in which 36% of eligible respondents (Members of the 7th and 8th Assemblies) participated. The sample included: MLAs who had been ministers or the Chief Minister, presiding officers,

committee chairs, members of the crossbench, and non-Executive MLAs.

⁹ Parliamentary Supremacy Judicial Independence Latimer House Guidelines for the Commonwealth, 19 June 1998, Annex to Commonwealth (Latimer House) Principles on the Three Branches of Government p 16. <http://thecommonwealth.org/sites/default/files/history-items/documents/LatimerHousePrinciples.pdf>

¹⁰ Ibid.

¹¹ Ibid, p 22.

¹² Budget Protocols for the



PARLIAMENT AND THE MEDIA: FOSTERING AN EFFECTIVE PARTNERSHIP



Hon. Sumitra Mahajan MP is the Speaker of Lok Sabha (House of the People) in the Parliament of India, since June 2014. Smt. Mahajan has represented Indore in Madhya Pradesh since 1989 (8th term). She has held a number of important positions including Ministerial posts and holds the unique distinction of being the only woman MP to be elected eight consecutive times from the same constituency. She is widely respected across the political spectrum for her affable and non-partisan approach as Presiding Officer in Lok Sabha. An avid reader and an ardent theatre lover, she has been actively associated with social and cultural organisations promoting music, theatre and other performing arts.

India is the largest democracy in the world. The functioning and vibrancy of Indian democracy has always attracted appreciation and amazement from all over the world. The successful conduct of sixteen General Elections to the Lok Sabha and many more elections to the State Legislative Assemblies, urban and local bodies and the smooth and peaceful transition of governments are a testimony to the fact that institutions of democracy have struck deep roots in our country. This challenging and exciting journey has been made possible by the combined and sustained efforts of all stakeholders of democracy, including the organs of State, a vibrant and vigilant media and most of all by our informed citizenry.

In particular, the print and the electronic media have functioned as a bulwark of democracy facilitating cooperative relationship between the democratic institutions that function as per the constitutional mandate and the people who are the ultimate custodians of our democratic heritage.

The press, rightly described as the *Fourth Estate* of

Democracy, plays a very crucial role in a parliamentary system, acting as an effective communicator between the Parliament and the people.

The media informs the people of the activities of Parliament and helps to generate public opinion on issues of national importance. It also acts as a bridge between the Parliament and the people and facilitates a two-way flow of information.

The media provides vital information that goes into the making of important policies and programmes in tune with the demands of time. More importantly, it enables the people to learn about the business in Parliament, thus keeping them up-to-date on the proceedings of the Legislatures. That is why it is acknowledged that the media helps Parliament in keeping the Executive accountable to the people through the elected representatives.

The Founding Fathers of our Constitution had well recognised the primacy of the Parliament in our constitutional scheme as also the importance of the media in our polity. Their endeavour was to facilitate good governance, transparency and probity at every level of the system, through an array

of mechanisms, including a free and vibrant media. The importance of the press in covering proceedings of Parliament was realised as early as in 1929 when the then President of the Central Legislative Assembly, Hon. Shri Vithalbhai Patel constituted a Press Advisory Committee for the House.

It is now widely accepted in parliamentary circles that the press provides vital information inputs required for parliamentary questions, motions, debates, etc. Members often depend on media reports for preparing themselves for legislative deliberations. As such, the media is an important channel of communication between the legislators and the people and that being so, it is imperative that the press should enjoy freedom of expression.

In our country, freedom of the press is implicitly provided in the fundamental right to freedom of speech and expression under Article 19(1) (a) of the Constitution. The Parliamentary Proceedings (Protection of Publication) Act, 1977 provides statutory protection to publication in newspapers or broadcasts of substantially true reports of the proceedings



of Parliament. At the same time, the House has the power to control and prohibit the publication of its proceedings and punish for the violation of its orders. By respecting each other's jurisdictions, roles, responsibilities, and privileges, the Parliament and the media have developed a healthy relationship in the larger cause of a successful parliamentary democracy.

“It is now widely accepted in parliamentary circles that the press provides vital information inputs required for parliamentary questions, motions, debates, etc. Members often depend on media reports for preparing themselves for legislative deliberations. As such, the media is an important channel of communication between the legislators and the people and that being so, it is imperative that the press should enjoy freedom of expression.”



Our Parliament has consistently striven to extend all facilities to the media persons accredited to cover the proceedings of the two Houses.

In this task, the Presiding Officer is assisted by a Press Advisory Committee comprising senior members of the media. While providing facilities to the media in Parliament is in itself important, it is equally necessary that the media persons get to have a proper perspective and understanding of parliamentary practices and procedures, the operational dynamics of parliamentary functioning and the contours and nuances of Parliament's working.

India's democratic and governance system is spread across the Legislative Bodies in our States and Union territories. Each of the Legislative Bodies has a large number of media persons covering its proceedings. That makes for

a large body of media persons who need to be properly acquainted with the functioning of our representative institutions, so that they can communicate to the citizens at large about their working in an efficacious manner.

It was in this background that I conceptualised the idea of organising Familiarisation Programmes for media persons accredited to the Legislative Bodies in India. We have in our Parliament, the Bureau of Parliamentary Studies and Training (BPST), set up in 1976, which is entrusted with the task of capacity building of different stakeholders of democracy. Since the Bureau has a reputed faculty comprising veteran Parliamentarians and senior parliamentary functionaries, it was felt that the BPST should be the platform to organize such Programmes for the media persons.

Above: The media are a constant presence in the majority of Commonwealth Parliaments with TV cameras at the ready.

The first step was to design appropriate course content, and then select suitable faculty members, so that the participants could get the maximum benefit out of this Programme. It was also necessary to develop appropriate study material on the topics selected for discussions/interactions on various issues. The duration of each course, how many participants could be accommodated, and their mode of selection were also key components.

Equally important was to work out the logistics, knowing that media persons from far corners of the country would come to attend these courses. While giving a perspective on legislative functioning was the core concern, we felt that for



PARLIAMENT AND THE MEDIA: FOSTERING AN EFFECTIVE PARTNERSHIP

many of the participants it would be a special opportunity to visit the nation's capital. This aspect also had to be factored into, while working out the course.

After a series of meetings at various levels, and with inputs from the Honorary Advisor of the Bureau, we eventually got the Programme on track.

The Familiarization Programme has been so designed that it provides ample opportunities to the media persons to gain valuable insights into the functioning of our parliamentary system. The basic objective is to acquaint the participants with the Rules of Procedure, various parliamentary devices, customs, and conventions which are followed by Members while discharging their parliamentary duties.

Some of the subjects which are included in the Programme are: Parliamentary

“We believe that through these Programmes, the media are able to gain a better understanding of parliamentary processes and procedures. That way, the media can play a significant role in broadening the perception of the citizens about their elected representatives and how they deliberate in the Legislatures.”



Questions; Procedural Devices to raise matters of urgent public importance on the floor of the House; the Role of Media as the Fourth Estate; Constructive Media: its Role in Strengthening Parliamentary Democracy; Changing Dimensions of Electronic Media, etc. Interactions on Legislative Process and Budgetary Process take place with the faculty.

The Programme is especially significant for the fact that it enables the visiting media persons from around the country to meet with the high constitutional functionaries.

On several occasions, the participants got an opportunity to call on the Hon. Prime Minister of India. Senior Union Ministers and other eminent Parliamentarians have also interacted with the media persons, making it a highly educative experience for them.

While reporting the parliamentary proceedings, the media persons have to be very well-versed with and also be very cautious about the privileges enjoyed by Members of Parliament as well as the laws relating to the media.

Media laws and Parliamentary Privileges, therefore, form an important part of the Programme. Experts from the

media who have been covering parliamentary proceedings for a long time also interact with the participants.

The Chairman of Press Advisory Committee of Lok Sabha also meets the media persons and shares his experience of parliamentary reporting. A visit to the media centre in the Parliament complex is also arranged for the participants with the purpose of making them aware of the facilities available to the media.

During the three day Programme, the participants are taken to witness the proceedings of both Lok Sabha and Rajya Sabha; they also are taken to the Parliament Museum and Parliament Library.

The visit to the state-of-the-art Parliament Museum gives the participants an understanding of the evolution of democracy in India since ancient times.

The Parliament Library is the second largest library in the country with a huge collection of books, journals, reports and newspapers which are received from all over India and abroad. It is also the repository of the original calligraphic copy of the Constitution of India. The visit to the Parliament Library gives the participants an opportunity

Above: Hon. Sumitra Mahajan MP, Speaker of Lok Sabha, Parliament of India (centre) attends the opening ceremony of the CPA Parliament and Media Law Conference which was held in Andhra Pradesh, India in April 2015.

to see the Original Constitution of India and browse through the rich library collections. The BPST also arranges a half-day tour of some historical sites in New Delhi for the visiting media.

During the valedictory session, certificates of completion and mementos are presented to the media. The expenditure on the Programme is largely borne by the Lok Sabha Secretariat. This includes reimbursement made to the media for to-and-fro rail fare from their respective States to New Delhi, and local transport in the capital.

So far, eight such Familiarization Programmes have been organised in which nearly 350 media people from twenty States have participated. The States covered to date are: Andhra Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Haryana, Karnataka, Kerala, Jharkhand, Madhya Pradesh,

Maharashtra, Manipur, Meghalaya, Puducherry, Punjab, Rajasthan, Sikkim, Telangana, Tripura and Uttarakhand.

The States which are to be covered for organising the Familiarisation Programme are decided well in advance. The Bureau writes to the Secretary of the Legislative Assembly to suggest names of media accredited to the Legislative Assembly in consultation with the Hon. Speaker/Chairman of respective States Legislatures. They are encouraged to nominate media people both from the print and the electronic media. After the nominations are received, the BPST works out the logistics and the Programme Schedule.

As in the case of all other Programmes, the Honorary Advisor of BPST gives his guidance for the conduct of the Programmes; he advises on deciding the States to be invited, subjects to be covered and the faculty for interaction and also meets with the visiting media.

We believe that through these Programmes, the media are able to gain a better understanding of parliamentary processes and procedures. That way, the media can play a significant role in broadening the perception of the citizens about their elected representatives and how they deliberate in the Legislatures.

I have myself met with every group of media persons who have attended the Programme since its inception. I am greatly encouraged by their positive feedback, and we are constantly trying to streamline the Programme based on the inputs received from them. This Programme has also received extensive coverage in the media of the States from where the participants have attended the Programme.

We now intend to organise the Familiarization Programmes for media persons accredited to



the Legislatures of the remaining fourteen States of our country. Once the series of Familiarization Programmes is completed, we propose to organise an All India Conference/Seminar for media from across the country. We are of the considered view

that through these productive exercises involving two pivotal segments of our political system, we will be able to foster and further consolidate an effective partnership between the Parliament and the Media.

Above: A selection of international media.



WHY PARLIAMENTARY PRIVILEGE MATTERS

More bully pulpit than cowards' castle.



Hon. Dr Ken Coghill is a former Australian State Parliamentarian. Educated at Caulfield Grammar School, Coghill studied Veterinary Science at the University of Melbourne and worked as a veterinarian before serving on the Wodonga City Council. He entered the Victorian Legislative Assembly as an Australian Labor Party Member for Werribee in the 1979 State elections, and served as the Speaker of the Victorian Legislative Assembly from 1988 to 1992. After retiring from Parliament, he earned a PhD and he is currently an Associate Professor at Monash University specialising in governance, parliamentary matters and accountability.

The right to speak under parliamentary privilege had a very real significance for me as an MP and even greater impact for some constituents in at least one case. In a speech in the Victorian Legislative Assembly in 1988, I named a man who, I alleged on the basis of information received from investigating officers, was using a Ponzi-like scheme to defraud farmers in my constituency. I alerted the media that I would be making such a speech; next morning, the issue was front page news. The scheme stopped immediately and the perpetrator was charged, convicted and jailed. Sadly, much of the money had been gambled away and could not be recovered. Using parliamentary privilege to expose such obvious wrong-doing with immunity from charges of defamation is uncontroversial.

Much more contentious have been police raids earlier this year on an Australian Senator's Senate and constituency offices and his staffer's home seeking the source of information (including electronic records of its transmission), concerning a government-owned enterprise, that the Senator had disclosed.

The Senator argued that any such documents were integral to carrying out his senator's duties, including scrutiny of portfolio administration by the then-responsible Minister, now Prime Minister. The police claimed to be investigating alleged theft of those documents. It is not clear how the police could avoid viewing politically sensitive documents (e.g. policy documents and strategies for the election campaign underway at the time of the first raid) whilst conducting such searches. At the Senator's request, documents and records collected by the police were forthwith secured by the Clerk of the Senate pending resolution of the question of privilege. That matter was referred for deliberation by the Senate Committee of Privileges.

The Senator has since unexpectedly announced his resignation. His resignation is not expected to affect the Senate's consideration of the question of privilege.

Other applications of parliamentary privilege require deeper understanding. According to that popular internet source, Wikipedia:

Parliamentary privilege is

"Parliamentary privilege is a legal immunity enjoyed by members of certain legislatures, in which legislators are granted protection against civil or criminal liability for actions done or statements made in the course of their legislative duties. It is common in countries whose constitutions are based on the Westminster system. A similar mechanism is known as parliamentary immunity."
- Wikipedia



a legal immunity enjoyed by members of certain legislatures, in which legislators are granted protection against civil or criminal liability for actions done or statements made in the course of their legislative duties. It is common in countries whose constitutions are based on the Westminster system. A similar mechanism is known as parliamentary immunity.

An important distinction to be recognised here is between two forms of parliamentary privilege:

- non-liability, covering actions related to the parliamentarian's performance of his or her duties, and
- inviolability, covering actions not related to those duties.

Non-liability provides immunity for actions taken whereas inviolability was introduced in France and later elsewhere to protect MPs from harm. In some jurisdictions,

it gave MPs immunity from prosecution which shielded them from charges including bribery. As recently as 1998, an Italian MP escaped arrest when the parliament voted against allowing his arrest on corruption charges. However:

the principle of inviolability is increasingly questioned whereas the principle of non-liability remains uncontested according to the European Parliament's Office for the Promotion of Democracy.

In research by the Secretary-General of the Belgian House of Representatives (Robert Myttenaere), parliamentary privilege was defined as:

the protection members of parliament enjoy from legal action resulting from an opinion expressed or vote cast.

In the Commonwealth, our understanding is closer to Myttenaere's. Our MPs are not entitled to the immunity from criminal prosecution. However, interfering with an MP may be

a contempt of the parliament or a breach of the parliament's privileges (see more below).

Westminster's parliamentary privilege derives from the Bill of Rights (1689) which states:

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament (s 9).

Correspondingly, parliamentary privilege:

... refers to two significant aspects of the law relating to Parliament:

- *the privileges or immunities of the houses of the Parliament, and*
- *the powers of the houses to protect the integrity of their processes, particularly the power to punish contempts, according to the Parliament of Australia.*

It is important to recognise that: *the privilege of freedom of speech is not limited to*

Members of Parliament; it also applies to others taking part in 'proceedings in Parliament'. The most obvious example of others who may enjoy absolute privilege are witnesses who give evidence to committees. It is important to note that the privilege only applies to evidence given to properly constituted parliamentary committees, and does not, for instance, apply to party committees, in the Australian House of Representatives.

A subtle but important distinction, related to the powers of the houses to protect the integrity of their processes, is between breach of privilege and contempt. 'Contempt' and 'breach of privilege' are not synonymous terms although they are often used as such.

Below: The entrance hall in the Parliament building in Melbourne, Victoria, Australia.





“Notwithstanding differences in emphasis in descriptions of parliamentary privilege, the underlying principle must be the primacy of the public interest: it must prevail over an MP’s personal, private, party or other interests.”

May states in respect of contempt:

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary.

Australian authorities have said that ‘All breaches of privilege amount to contempt; contempt does not necessarily amount to a

breach of privilege’.

In other words, a breach of privilege (an infringement of one of the special rights or immunities of a House or a Member) is by its very nature a contempt (an act or omission which obstructs or impedes a House, a Member or an employee of the House), but an action can constitute a contempt without breaching any particular right or immunity.

Some jurisdictions, concerned that this is a one-sided privilege, allow a right of reply to people claiming to have been wrongly maligned, subject to conditions to sustain integrity (for example in Australia).

Whilst there is much in common between Commonwealth Parliaments,

Above: The Parliament building in Melbourne, Victoria, Australia.

there are significant differences such as the right of reply and other, more subtle variations. This fact emphasises that each MP must refer to how parliamentary privilege is understood and applied in their own parliamentary chamber. For example the Australian parliament has legislated to define it; other parliaments rely on common law.

Notwithstanding differences in emphasis in descriptions of parliamentary privilege, the underlying principle must be the primacy of the public interest: it must prevail over an MP’s personal, private, party or other interests.



This then brings us to codes of conduct applying to MPs. We must be sufficiently realistic to acknowledge that some MPs have taken advantage of their privileged status to seek advantage for their political party, campaign donors, business or other special interests or their personal interests. Others have used it to attack the credibility of political opponents.

Unethical behaviour of this type has led parliaments to introduce codes of conduct (also called: code of ethics; conflict of interest code). Codes rest on principles including fiduciary duty and public trust.

As Sir Gerard Brennan, retired Australian Chief Justice, stated
"...it has long been an established legal principle that a Member of Parliament holds

'a fiduciary relation towards the public' and 'undertakes and has imposed upon him a public duty and a public trust.'"

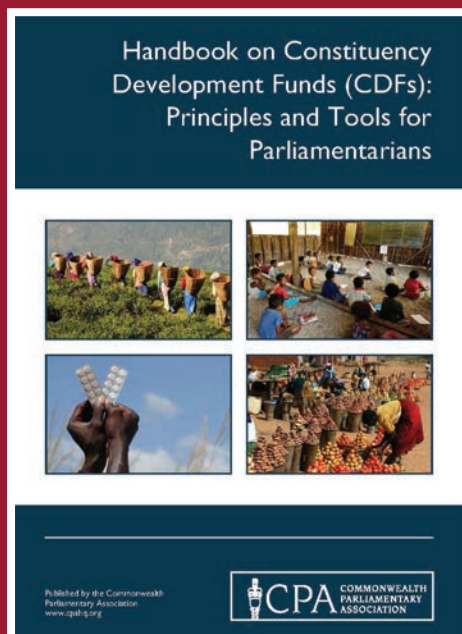
This supports the provision in the Open Government Partnership Common Ethical Principles for Members of Parliament that:

1.3.1 Members of Parliament have a duty to advocate for and protect the institutional

powers and prerogatives of the legislature, as delineated in the constitution and constitutional legislation.

Parliamentary privilege is both a power and prerogative that MPs should advocate and protect and a vital immunity that, as public officers, they should apply according to the highest ethical standards.

The Commonwealth Parliamentary Association (CPA) produces a number of toolkits and booklets for Parliamentarians and Parliamentary staff including the *Recommended Benchmarks for Codes of Conduct for Members of Parliament* and the *Handbook on Constituency Development Funds (CDFs): Principles and Tools for Parliamentarians*.





ENSURING NATIONAL COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW: THE ROLE AND IMPACT OF NATIONAL IHL COMMITTEES



Cristina Pellandini is head of the International Committee of the Red Cross (ICRC) Advisory Service on International Humanitarian Law, which supports efforts by States to implement international humanitarian law at the national level. Since joining the ICRC in 1984, she has carried out several field assignments for the organisation in Latin America and Asia. She has also held various legal and diplomatic advisory positions, both in the field and at headquarters. In 1995–1996 she helped create the ICRC Advisory Service on IHL.

Since the First Geneva Convention¹ was adopted in 1864, international humanitarian law (IHL) has become a complex and steadily developing body of international law. Its conventions, protocols and customary rules encompass a large range of subjects, from the protection of the sick and wounded, civilians, civilian objects, prisoners of war and cultural property to the restriction or prohibition of specific types of weapons and methods of warfare. All parties to a conflict are bound by applicable IHL, including armed groups involved in non-international armed conflicts.

The 1949 Geneva Conventions are universally accepted today and the 1977 Additional Protocols enjoy increasingly widespread acceptance.² At the same time, other IHL instruments are not yet universally recognised. Furthermore, acceptance of international instruments is only the first – albeit vital – step towards effectively implementing the legal protections contained in the instruments. States parties must then comply with their obligations under these instruments³ and, for the rules of IHL to be effective in times of armed conflict, States must carry out a number of actions domestically in times of peace. These include creating a legal framework that will ensure that national authorities, international

organisations, the armed forces and other weapons bearers understand and respect the rules; that the relevant legislative and practical measures are undertaken; that applicable IHL norms are complied with during armed conflicts; and that violations of this body of law are prevented – and when they occur, that the perpetrators are punished.

Responsibility for ensuring full compliance with IHL rests with States. This responsibility is prominently set forth in Article 1 common to the four Geneva Conventions, which requires States Parties to “*respect and to ensure respect for the present Convention in all circumstances.*”⁴

Genuine political will is an essential precondition to the protections that IHL affords in situations of armed conflict. Political will alone, however, is insufficient. It must be translated into legislative and regulatory measures, policy directives and other mechanisms aimed at creating a system that will ensure the law is complied with and violations are dealt with appropriately. Coordination among State entities, government departments, armed forces and civil society is a *sine qua non* of an effective system.

The national authorities face a formidable task. The very relevance of IHL is being

challenged by the nature of today’s armed conflicts. Added to this is the complexity faced by States – competing political agendas and legislative priorities, and limited financial and human resources – whether or not they

“The national authorities face a formidable task. The very relevance of IHL is being challenged by the nature of today’s armed conflicts. Added to this is the complexity faced by States – competing political agendas and legislative priorities, and limited financial and human resources – whether or not they are involved in or affected by an armed conflict.”



are involved in or affected by an armed conflict. This situation has prompted an increasing number of States⁵ to recognise the usefulness of creating a group of experts – often called a national IHL committee or a national commission for IHL – to coordinate activities in the area of IHL. In many cases this expert group acts as an inter-ministerial and multi-disciplinary advisory body on IHL-related issues for political and military authorities and decision-makers. The creation of such entities was encouraged twenty years ago by the 26th International Conference of the Red Cross and Red Crescent, echoing the recommendations of the Intergovernmental Group of Experts for the Protection of War Victims on the usefulness of such mechanisms.⁶ The recent trend validates that initiative.

The International Committee of the Red Cross (ICRC), through its Advisory Service on IHL, assists States wishing to set up a national

IHL committee and maintains regular contacts with existing committees. The ICRC supports them by providing expert legal advice, training their members, strengthening their capacity and delivering any needed technical assistance.⁷ Drawing on the best practices of existing national committees, the ICRC Advisory Service has developed specific tools to facilitate and harmonise the work of the committees and relations between them.⁸ It also organises meetings of national committee representatives from around the world to assess their achievements, discuss the challenges they face and facilitate the sharing of experience.

For example, the ICRC – with the support of the Swiss Federal Department of Foreign Affairs – will convene a meeting, at the universal level, of National IHL Committees in Geneva, in November 2016. The theme of the meeting is *Enhancing protection in armed conflict through domestic law and*

policy and it will focus on IHL implementation and national mechanisms and processes for facilitating respect for IHL.

The Advisory Service also encourages peer exchanges and cooperation, especially among committees within the same region, which often have a common language and shared legal traditions and face similar situations and challenges.

The work and track record of the national IHL committees of Belgium, Peru and Mexico among others demonstrate that national committees can be effective if they are made up of the right people and given the necessary human and financial resources. They have a role to play in creating an environment that favours the implementation of IHL and other relevant international norms and increases respect for the law, and they help their respective States implement their IHL-related commitments and achieve policy objectives in

Above: The International Red Cross mission in a refugee camp in the Greek port of Athens in April 2016.

this area. The cited examples also show how the national committees' roles and tasks have evolved over time and how they have gradually become part of their respective countries' governmental structures, with a recognised advisory function on the implementation of all norms concerning the protection of people and objects affected by violence and all issues linked to IHL, i.e. beyond the mere adoption of domestic implementation measures.

Several factors underpin the success of these three national committees. Committee membership, including, in the case of Belgium, the role of the Red Cross National Society, is one. Another is the branch of government to which the committee is attached, as seen in the example of Peru. A third is the committee's



ENSURING NATIONAL COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW: THE ROLE AND IMPACT OF NATIONAL IHL COMMITTEES

terms of reference, working procedures – such as, in the case of Mexico, the annual work plan and reporting obligation to the President of the Republic – and concrete, theme-based activities.

Belgium was among the first States to appoint a specific body for the implementation of IHL, shortly after its adherence to the 1977 Additional Protocols. The initial purpose of the Belgian Inter-ministerial Commission for Humanitarian Law was limited in scope: to identify and coordinate the development and adoption of the national measures required for Belgium to comply with its obligations under the Conventions and Protocols. Over the years, the Commission has developed into a technical IHL expert committee and permanent governmental advisory body that actively contributes to Belgium's IHL agenda and humanitarian diplomacy. Its structured and

methodical approach to IHL implementation, consistent efforts over almost three decades and scope of activities have earned it recognition both domestically and worldwide and served as an inspiration for many other States.

Amongst the many activities undertaken by the Commission, two are particularly noteworthy, as they constitute pioneering work. The first was identifying 43 measures needed at the domestic level for the country to meet its obligations under the Geneva Conventions and their Additional Protocols. This effort, conducted with the support of working groups, clarified what type of action was required, which ministry was responsible, and what the financial implications were. It also resulted in a valuable collection of documents published in 1997 on the occasion of its tenth anniversary; this practical tool was widely circulated and consulted by many other national IHL committees and national experts.⁹ In its role as advisory body to the federal government, the Commission itself refers to the list of needed measures when drafting proposals on specific IHL issues to be submitted to the ministry concerned.

Another example of the Commission's pioneering work relates to the repression of violations of IHL. The studies it conducted and laws it drafted were instrumental in the adoption of the 1993 law on the prosecution of grave breaches of the Geneva Conventions and their Additional Protocols – the first ever comprehensive, stand-alone piece of legislation dedicated to this topic adopted by a country with a civil law system. This law served as a model for many other States. The Commission also played a unique role as the national advisory committee for the protection of cultural property linked to the 1954 Cultural Property Convention and the 1954 and

1999 Protocols. This may serve as inspiration for other States.

The most notable achievement of Peru's National Committee for the Study and Implementation of IHL concerns its place in the structure of government.

Following its creation in 2001, it was gradually incorporated into the executive branch and, in 2013, it attained the status of formal advisory body to the executive branch in the development of public policies, programmes, projects, action plans and strategies on all matters pertaining to IHL. Furthermore, as the technical secretariat of the Committee is run by the Justice Ministry's Directorate-General for Human Rights, which is formally tasked with promoting and overseeing human rights and IHL in Peru, the Committee benefits from additional human and financial resources to conduct its activities. Peru's Committee has made a number of important achievements within its two strategic fields of activity. These include Peru's adherence to IHL instruments and their incorporation in domestic law; promoting the adoption of specific domestic implementation measures, including an analysis of domestic legislation to identify gaps (such as the protection of cultural heritage in the event of armed conflict or other emergencies); and the preparation of draft laws on such topics such as the prohibition on recruiting children into the armed forces, the use of force in law enforcement operations, the repression of war crimes and other international crimes, and the development of IHL training programmes for the public sector.

Peru's Committee acquired visibility and recognition nationwide through the coordination of its professional training activities. Particularly important in this respect were the nine Miguel Grau IHL training courses conducted

on an annual basis since 2006. These were designed mainly for representatives of the public sector: the executive branch of government, judges and law professionals, and members of the military and police forces. The Committee has also coordinated a series of more issue-specific training courses on such topics as the protection of cultural property in the event of armed conflict and the protection of children in the case law of the International Criminal Court.

Finally, the Committee's role in the implementation of Peru's reporting obligations is worth highlighting. This body has, on various occasions, coordinated the drafting of official reports on issues linked to IHL and/or international human rights law, including reports requested by the United Nations General Assembly (e.g. on the Additional Protocols of 1977), the Organization of American States (e.g. on the missing and on the domestic implementation of IHL), the Committee on Enforced Disappearances and the Special Procedures of the UN Human Rights Council.

Mexico's Inter-ministerial Committee on IHL, created in 2009, has already gained recognition as the government body responsible for IHL-related issues. It also successfully expanded the dialogue and discourse of IHL beyond the traditional sphere of foreign policy and into the realm of domestic policy and legislative debate. The Committee has proved its usefulness in broadening awareness of the relevance of IHL within the Mexican government and clarifying uncertainties and misunderstandings related to IHL amongst government authorities. It has demonstrated its added value as a platform for the discussion and coordination of IHL-related issues and topics; it has managed to gradually bring to the table issues considered sensitive

“These three national committees have undoubtedly had a positive impact on the domestic implementation of IHL, its integration in domestic law and procedure, and the concern for compliance in their respective countries, and the committees have supported their respective States in promoting and ensuring respect for IHL.”



in Mexico; and it has helped bridge the gap between the civilian and defence sectors. As a permanent technical advisory body of the federal executive branch of government, it has also proved its effectiveness in supporting the dissemination and implementation of IHL at the domestic level and in shaping Mexico's positions and foreign policy on IHL-related subjects. Its chairmanship rotates annually among the four permanent member institutions, a system meant to ensure that each of the institutions assumes responsibility for reaching the Committee's objectives; continuity of the Committee's work is achieved through a permanent technical secretariat. The Committee's work is guided by its annual work programme and summarized in annual reports to the President of the Republic. Its concrete achievements, such as the adoption of the law concerning the use and protection of the Red Cross name and emblem in March 2014, have quickly made this Committee one of the most dynamic in the region.

These three national committees have undoubtedly had a positive impact on the domestic implementation of IHL, its integration in domestic law and procedure, and the concern for compliance in their respective countries, and the committees have supported their respective States in promoting and ensuring respect for IHL.

Looking beyond the specificities of each country, the three national committees discussed here share some features that appear to have contributed to their effectiveness. For example, in all three cases, the committees had the membership, resources and operating structure needed to perform their duties and ensure the continuity of their work. These include having a permanent secretariat (or

appointed secretary) and addressing specific issues and topics through working groups. Each committee asserted its role as an expert advisory body through a variety of activities, such as analysing individual issues and drafting legislative proposals, hosting international conferences and representing their respective governments at such events, and carrying out reporting requirements on behalf of their governments. These activities often dovetailed with the three States' domestic or foreign policy agendas and met specific international commitments.

These three national committees have gained visibility and recognition by virtue of their IHL-related dissemination and training activities targeting key governmental sectors and groups within their respective societies. These committees have also managed to become an integral part of their States' governmental structures over time and acquire a recognized advisory function for their government.

The national committees described here are surely representative of many other equally successful national IHL committees. That said, they may also serve as case studies on what can work at the domestic level in the ongoing effort to build an effective system for improving compliance with IHL and repressing violations.

References

¹ *Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field*, 22 August 1864.

² For the current status of ratifications of all IHL and related instruments, see: www.icrc.org/ihl (all internet references last visited in October 2014).

³ See *Vienna Convention on the Law of Treaties*.

⁴ See *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 UNTS 31 (entered into force 21 October



1950), Art. 1; *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Art. 1; *Geneva Convention relative to the Treatment of Prisoners of War*, 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Art. 1; *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 1; *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978), Art. 1(1). For an analysis of the obligation to "respect and to ensure respect", see the article by Knut Dörmann and José Serralvo, "Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations".

⁵ Currently 108; see the table showing the existing National IHL Committees at: <https://www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law>.

⁶ "Commission I: War Victims and Respect for International Humanitarian Law," *International Review of the Red Cross*, Vol. 76, No. 310, 1996, p. 37; see also "Recommendations of the Intergovernmental Group of Experts for the Protection of War Victims," *International Review of the Red Cross*, Vol. 77, No. 304, 1995, pp. 33 ff.

Right: Red Cross teams on a humanitarian mission. The Red Cross has won the Nobel Peace Prize three times 1917, 1944, and 1963.

⁷ For further information on national committees and commissions for IHL, see ICRC, *Preventing and Repressing International Crimes: Towards an "Integrated" Approach Based in Domestic Practice*, report of the 3rd Universal Meeting of National Committees for the Implementation of International Humanitarian Law, Publication Ref. 4138, 29 October 2013, pp. 89 ff, available at: www.icrc.org/en/war-and-law/strengthening-ihl/national-committees.

⁸ See ICRC, *Guiding Principles Concerning the Status and Methods of Operation of National Bodies for the Implementation of International Humanitarian Law*, and ICRC, *Practical Advice to Facilitate the Work of National Committees on International Humanitarian Law*, which supplements the Guiding Principles, both available at: www.icrc.org/en/war-and-law/strengthening-ihl/national-committees.

⁹ See the *Inter-ministerial Commission for Humanitarian Law* website, available at: http://cidh.be/fr/activites%20de%20la%20CIDH#documents_travail.

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GLAD TIDINGS FROM THE COMMONWEALTH WOMEN LEADERS' SUMMIT



Rt Hon. Rebecca A. Kadaga MP

is the Speaker of the Parliament of Uganda and Chairperson of the Commonwealth Women Parliamentarians (CWP). A lawyer by profession, she holds a Master's Degree and is currently the Speaker of Parliament of Uganda, the third highest position in the national leadership of Uganda. She was the Deputy Speaker of Parliament of Uganda from 2001 to 2011. From 1986-1999, she won accolades of distinguished service in many portfolios when she served as a Cabinet/State Minister. She played a leading role in women empowerment activities at national and international levels.

The Chairperson of the Commonwealth Women Parliamentarians reports from the first Commonwealth Women Leaders' Summit.

Earlier this year in mid-July, I was privileged to be among a special group of women who attended the first ever Commonwealth Women Leaders' Summit in London, UK. This event brought together visionary women leaders in government, business and civil society from across the Commonwealth to identify practical steps to achieve gender equality and the protection and empowerment of women and girls.

What made the Commonwealth Women Leaders' Summit even more monumental was that this was the inaugural event with massive attendance. However, it is the deliberations and the outcomes of the Summit that ought to be celebrated. A wide range of issues were discussed but primarily they hinged on the purposively selected three thematic areas namely: violence against women and girls; women in leadership and women's economic empowerment. In my opinion, these are the major impediments to the total emancipation of women within the Commonwealth and beyond.

I want to say special thanks to the Commonwealth Secretary-

General Patricia Scotland for the impeccable organisation and promoting such a great idea. The concrete positions that were reached at the end of the Summit will go a long way to addressing the challenges related to the three thematic areas that were under discussion. The Action Plan that we adopted will be a fundamental guidebook in the quest for achieving freedom for women within our respective countries.

I was particularly impressed by the visible and unanimous passionate commitment of women leaders towards the total elimination of all forms of violence against women. Admittedly, violence against women and girls continues to be a serious challenge globally. The current statistics released by UN Women are still a far-cry from the ideal situation. It is estimated that 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner at some point in their lives. However, some national studies show that up to 70% of women have experienced physical and/or sexual violence from an intimate partner in their lifetime.

Women who have been

physically or sexually abused by their partners are more than twice as likely to have an abortion, almost twice as likely to experience depression, and in some regions, one and a half times more likely to acquire HIV, as compared to women who have not experienced partner violence.

This further justifies the perfect timing of the Women Leaders' Summit. We were able to push the Commonwealth to start to lead with initiatives such as model laws to strengthen legislation, creating tool kits, co-coordinating collaborations, sharing best practice, rewarding companies with diverse boards, and stepping up its advocacy efforts on behalf of women and girls. We must continue to remind ourselves that a woman or girl who is free from violence has the leverage for the attainment of the best things in life.

A second very important aspect that was scrutinised during the Summit was the aspect of women in leadership.

On a personal note as the sitting Chairperson of the Commonwealth Women Parliamentarians (CWP), this aspect was of particular interest.

Our principal target as CWP is



how to forge ways of increasing the number of women in positions of leadership and more especially political leadership.

Despite comprising over 50% of the world's population, women continue to be underrepresented in every aspect of political and public life. Today, as you all well know, only 21% of the world's Parliamentarians are women. There are 21 women either serving as head of state or head of government. Only 17% of government ministers are women, with the majority serving in the fields of education and health. In terms of Parliamentary representation, the most impressive country in the Commonwealth is Rwanda, which has the most female-dominated Parliament in the world, with 64% of female politicians. My country Uganda is at 33.5%. Quite obviously these statistics are abysmal if we are to achieve the

desired 50% representation of women in Parliament.

The third important aspect that formed part of the discussions during the Women Leaders' Summit was the aspect of women's economic empowerment. Today, women remain disproportionately affected by poverty, discrimination and exploitation. Gender discrimination means women often end up in insecure, low-wage jobs and constitute a small minority of those in senior positions. It curtails access to economic assets such as land and loans. It limits participation in shaping economic and social policies. And, because women perform the bulk of household work, they often have little time left to pursue economic opportunities. Therefore, investing in women's economic empowerment can offset a direct path towards gender equality,

poverty eradication and inclusive economic growth. Women make enormous contributions to economies, whether in businesses, on farms, as entrepreneurs or employees, or by doing unpaid care work at home.

Going forward, delegates to the Women Leaders' Summit agreed to the need to work with a variety of partners such that our future programmes promote women's ability to secure decent jobs, accumulate assets, and influence institutions and public policies determining growth and development.

Further on the economic empowerment of women, we resolved to strive for the removal of barriers that cripple Small and Medium Enterprises (SMEs) that are women owned. These barriers include limited access to finance for growth and investment, weak networks, lack of knowledge on how to access

the tendering process, and an inability to conform to the required international standards due to failure to obtain appropriate accreditation.

In conclusion, I think the first ever Women Leaders' Summit was a great step forward. It provides women leaders with a great platform to cause genuine change for the betterment of women in the socio-political and economic spheres within the Commonwealth and beyond. To put the icing on the cake, the results of the Summit now form part of the Commonwealth Secretariat's Gender Equality Framework 2020 and we must be proud that we played a part in this massive achievement.

Below: Commonwealth Secretary-General Rt Hon. Patricia Scotland QC opens the first Commonwealth Women Leaders' Summit.





COMMONWEALTH WOMEN LEADERS' SUMMIT STARTS 'ROADMAP TO 2020'

Commonwealth Women Parliamentarians attended the first Commonwealth Women Leaders' Summit to develop an action plan on gender equality and women's empowerment.

A group of visionary women leaders came together at the Commonwealth Secretariat's headquarters in London to identify practical steps to achieve gender equality and the empowerment of women and girls. The Commonwealth Women Leaders' Summit was organised by the Commonwealth Secretariat and its partners, the Commonwealth Parliamentary Association, the Royal Commonwealth Society, the Commonwealth Businesswomen's Network and the Women of the World Festival. Participants started designing an empowerment plan they called the 'Roadmap to 2020'.

The Summit was hosted by Commonwealth Secretary-General Patricia Scotland, who was joined by Jude Kelly, founder of the Women of the World festival and Kiran

Bedi, Lieutenant Governor of Puducherry State in India as the keynote speaker.

The Commonwealth Parliamentary Association supported a number of Commonwealth Women Parliamentarians (CWP) to attend the summit including Rt. Hon. Rebecca Kadaga MP, Speaker of the Parliament of Uganda and CWP Chairperson and Members of the CWP Steering Committee from The Maldives; New South Wales, Australia; Wales; Montserrat; British Columbia, Canada; and India as well as many other Commonwealth Women Parliamentarians.

The Commonwealth Secretary-General Patricia Scotland said that action on gender equality and women's empowerment is "core to the success of the Commonwealth", and that the Summit forms

part of her plans to "move from aspirations to entitlements and from plans and intentions to actions." Delegates from government, business and civil society came to the Summit ready to share their experience and to discuss an action plan for women's empowerment in the Commonwealth. They explored solutions ranging from improved education, to making better use of new technologies, to targets and quotas to boost women's leadership.

The keynote speaker, Kiran Bedi, Lieutenant Governor of Puducherry State in India gave an inspiring speech about the importance of taking a collaborative approach as a leader. She shared her six-point plan for sustainable crime prevention, which involves collaboration with the media, the police, the courts and other

agencies. Ms Bedi was voted the most admired and trusted woman in India by the Reader's Digest. She stressed the importance of collaboration, care and conscientiousness in effective leadership. *"It's all about sharing – the more you share, the more you give others a voice. You are translating leadership to the grassroots level, and as you turn back and go home you've left leaders behind, who will continue to transform because they were inspired. You became a mentor and a role model and that was your duty to do, you've not done anyone a favour."*

The women leaders from parliaments, governments, business and civil society then

Below and below left: Delegates attending the first Commonwealth Women Leaders' Summit in London, UK in July 2016.



split into mixed, cross-sectoral working groups to examine three specific areas: violence against women, women in leadership and women's economic empowerment. They had been pre-armed with a range of statistics on the status of women in the Commonwealth and the issues that they face: from forced marriage at a young age to female genital mutilation and barriers that inhibit their participation in politics and the corporate world. Armed with these facts, delegates were able to keep the conversations solution-oriented, and came up with a range of actions for leaders across the three sectors in the Commonwealth to work towards gender parity.

"Can you imagine a bunch of women leaders coming together and agreeing action points? It was quite a passionate session. With the sheer power in this room you know we will be able to affect change through collaboration," said Melanie Eusebi, founder of the Black British Business Awards.

During lunch, delegates discussed their shared experiences – which actions that they had tried to implement previously that had worked and which hadn't. They were also encouraged to provide the names of any individuals or organisations that hadn't been invited and these were gathered and collated by the Commonwealth Secretariat. The outcomes learnt from these discussions included: that policies need to be context-specific and take into account societal norms; that monitoring and evaluation is important to be able to demonstrate evidence-based impact; and that men must be included in order to achieve attitude changes in societies.

After lunch, a draft version of the action plan was discussed by everyone at the Summit. The groups then came back together and presented their



recommendations to the Commonwealth Secretary-General. The document makes recommendations on the development and use of Gender-Based Data Disaggregation, the formation of model laws on violence against women, engaging with headhunting companies and supporting women to access climate change financing.

In the afternoon HRH The Duchess of Cornwall paid a surprise visit to the Summit to show her solidarity with women leaders at the Commonwealth meeting. She was herself convening a meeting on women's empowerment the same day.

The Women Leaders' Summit demonstrated the importance of collaboration. Meenakshi Dhar, Director of Programmes at the Commonwealth Parliamentary Association (CPA) who also attended the Summit said, *"The Commonwealth Women Parliamentarians (CWP), as part of the Commonwealth Parliamentary Association, were very pleased to be a part of the Summit and to have the opportunity to bring a parliamentary perspective to the*

discussions, particularly those centring on women's political leadership. The CPA was keen to be able to contribute as fully and as meaningfully as possible to the outcomes of the Summit, and was able to bring a pan-Commonwealth range of Parliamentarians, from Maldives, Australia, Montserrat, Canada, India and the United Kingdom." Feedback from partners was useful and identified a number of learning points for working together on future partnerships.

The 'Roadmap to 2020', as the action plan is now known, was submitted to the Women's Affairs Ministers Meeting (WAMM) in Apia, Samoa in early September 2016, and will be taken forward by the Commonwealth Secretariat's Gender Unit. Once approved, it will be available on the Commonwealth Secretariat's website. Some key recommendations from the Roadmap include:

- Promote the development and use of Gender-Based Data Disaggregation
- Promote gender-mainstreaming of

Above: HRH The Duchess of Cornwall meeting delegates at the Commonwealth Women Leaders' Summit during a surprise visit to the event.

government policies and issues across all government departments, including mainstreaming of gender in all Ministerial meetings

- Promote the effective utilisation of existing and emerging technologies, including online platforms and mobile phones, for raising awareness, dissemination of information, capacity building, and sharing of experiences, in a manner that promotes collaboration, builds existing and proven interventions and ensures accessibility to all women.

The first Commonwealth Women Leaders' Summit took place on 14 July 2016 in London, United Kingdom. With thanks to the Commonwealth Secretariat for their assistance in sourcing this article and for the photography of the summit.

Commonwealth Women Parliamentarians (CWP) Regional Activities

Commonwealth Women Parliamentarians Outreach Programme, Ontario, Canada

The Vice-Chair of the Commonwealth Women Parliamentarians Canadian Region, Laura Ross, MLA Saskatchewan, led a delegation of CWP members from Ontario, Alberta, Ottawa, Québec, Saskatchewan, British Columbia, Nova Scotia, New Brunswick, and Prince Edward Island to attend the CWP Outreach Programme in Toronto and Kincardine, Ontario.

The delegation consisted of the following participants: Laura Ross, MLA, Saskatchewan, Chair; Lisa Thompson, MPP, Ontario (Host); Hon. Raynell Andreychuk, Senator, Senate

of Canada; Debbie Jabbour, MLA, Alberta; Julie Boulet, MNA, Québec; Jackie Tegart, MLA, British Columbia; Patricia Arab, MLA, Nova Scotia; Lisa Harris, MNA, New Brunswick; Tina Mundy, MNA, Prince Edward Island.

The purpose of the CWP Outreach Programme is to increase women's representation in all levels of government. The principal theme of the programme 'Women engaging to make a difference' was clearly demonstrated in the following areas; politics, the agri-food industry, social service, the nuclear industry, as well as community engagement and participation.

CWP Canada Regional Conference held at the 54th CPA Canada Regional Conference, St. John's, Newfoundland

The CWP Canada Regional Conference took place in July 2016 hosted by the Newfoundland and Labrador House of Assembly in St. John's attended by women Parliamentarians from across Canada. The conference was held immediately prior to the CPA Canada Regional Conference which also took place in St. John's, Newfoundland.

As per past practice, the CWP Canada invited guest speakers and women Parliamentarians to address participants on topics relevant to women's issues and the CWP organization. Discussion topics included *Making Legislatures more welcoming to Female Parliamentarians* and *Gender Budgeting*.

This year's objectives were to promote programmes for young women while outlining the vision, mission and values encouraging women's participation in the political process. The CWP Canada Regional Conference was attended by women Parliamentarians from all regions of Canada.

The CWP Canada Regional Conference also saw the participation and attendance of Commonwealth Women Parliamentarians from three CPA Caribbean, Americas and the Atlantic (CAA) Branches of the CPA funded through CWP Canada's 2016 regional strengthening funding from the CPA Secretariat.

Turks and Caicos has now twinned with Prince Edward Island and a number of twinning arrangements and partnerships are being considered between the CPA Canada Region and the CPA Caribbean, Americas and the Atlantic (CAA) Region through the Caribbean Twinning Initiative, including British Columbia and Guyana. This activity was an extension of these initiatives.

The participants from the CAA Region who attended the CWP Canada Regional Conference were: Hon. Nicolette Henry, Minister within the Ministry of Education and Bhagmattie

Left and below: The 9th Regional Conference of Commonwealth Women Parliamentarians (CWP) Caribbean, Americas and Atlantic Region held in The Bahamas.





Veerasammy from Guyana; Hon. Lillian Misick and Hon. Josephine Connolly, Deputy Speaker, Turks and Caicos; and Hon. Natalie Neita-Headley, Jamaica.

9th Regional Conference of Commonwealth Women Parliamentarians (CWP) Caribbean, Americas and Atlantic Region takes place in Nassau, The Bahamas

The 9th Regional Conference of Commonwealth Women Parliamentarians (CWP) Caribbean, Americas and Atlantic Region was held in July 2016 in Nassau, The Bahamas.

The conference was hosted by the Bahamas Branch of the Commonwealth Parliamentary Association (CPA) alongside the 41st Regional Conference of the Caribbean, Americas and Atlantic (CAA) Region.

The two-day Regional Conference of Commonwealth Women Parliamentarians (CWP) Caribbean, Americas and Atlantic Region was chaired by Hon. Shirley Osborne MLA, Speaker of the Legislative Assembly of Montserrat and Chair of the Regional CWP, as well as Vice Chairperson of the CPA Executive Committee.

Hon. Glenys Hanna-Martin MP, Minister of Transport and Aviation of The Bahamas, former Chair of the Regional CWP delivered the keynote address at the official opening of the Regional Conference of the CWP.

Hon. Melanie Griffin MP, Minister of Social Services and Community Development (Bahamas) also gave a speech at the conference.

Mr Akbar Khan, Secretary-General of the Commonwealth Parliamentary Association



also addressed the Regional Conference of Commonwealth Women Parliamentarians.

The conference was attended by women Speakers, Members of Parliament and parliamentary staff from across the region. A number of topics were discussed at the Commonwealth Women Parliamentarian's Regional Conference including 'Women in Political Leadership: Why Does it Matter?', 'Violence: An Impediment to Women's Political Leadership Within the Region' and 'Perceptions of the Role of Women in Society and Their Effect on Women's Political Leadership within the Region'.

Commonwealth Women Parliamentarians (CWP) Africa Region meet for Workshop at the KwaZulu-Natal Legislature in South Africa

The KwaZulu-Natal Legislature Women's Caucus and Commonwealth Women Parliamentarians (CWP) group held a workshop in Durban, South Africa in September 2016 on the impact of the

Sustainable Development Goals (SDGs). The workshop was a joint programme with UNDP on the operationalisation of the SDGs and the role of the CWP in playing effective oversight.

The Chairperson of CWP Africa Region, Hon. Angela Thoko Didiza MP (South Africa) gave a keynote address on the topic 'The role of the Commonwealth Women Parliamentarians in playing effective oversight' to the Workshop.

The following sub-themes were also covered: *Transition*

from the MDGs to SDGs; SDGs alignment to Agenda 2063 and the National Development Plan; Parliamentarians engagement; Gender in the Local Context; Mainstreaming Gender in SDGs; Localising the SDGs; and UN system's Common Approach to Supporting Countries to Integrate the SDGs.

Above and below: The KwaZulu-Natal Legislature Women's Caucus and Commonwealth Women Parliamentarians (CWP) group meet in Durban, South Africa.



Parliamentary Report

NEWS AND LEGISLATION FROM COMMONWEALTH PARLIAMENTS



With thanks to our Parliamentary Report and Third Reading contributors: Stephen Boyd (Federal Parliament of Australia); Ravindra Garimella (Parliament of India); Dr Jayadev Sahu (Parliament of India); Michael Dewing (Federal Parliament of Canada); Luke Harris (Parliament of New Zealand); Ron Wall (Legislative Assembly of British Columbia); André Grenier (Legislative Assembly of Québec); Talitha Rowland (Parliament of the United Kingdom); Neil Iddawala (Parliament of Sri Lanka).

CANADA

Federal Parliament Legislation and US Presidential address

Page 252

AUSTRALIA

Federal Election: Coalition government returned with one seat majority

Page 256

UNITED KINGDOM

The UK Parliament and Britain's exit from the European Union

Page 260

INDIA

India Constitution amended to establish new tax structure

Page 264

THIRD READINGS

British Columbia, Canada

Page 251

Québec, Canada

Page 254

Sri Lanka

Page 258

New Zealand

Page 262

India

Page 267

THIRD READING: BRITISH COLUMBIA, CANADA

Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016

The Legislative Assembly of British Columbia was convened on 25 July 2016 for a special four-day summer sitting to address an urgent request from the City of Vancouver to revise statutory provisions in order to allow the city to create and collect a tax on vacant housing.

The *Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016* responds to the complex causes of rising housing prices in the City of Vancouver, as well as other regions of the province, by enabling the city to impose a vacancy tax on empty homes, adding a 15 percent property transfer tax on Vancouver real estate purchased by foreign nationals, creating a new Housing Priority Initiatives Fund to receive revenues from the property transfer tax for investment in housing and rental programs, and increasing the provincial Superintendent of Real Estate's authority and oversight powers.

During second reading debate, **Hon. Michael de Jong**, Minister of Finance, indicated that the legislation *"creates new measures that are intended to make home ownership more available, more affordable. It establishes a fund for market housing and rental initiatives. It's intended to strengthen consumer protection and also, of course, give the city of Vancouver the tools it has requested to increase rental property supply."* Moreover, the legislation, *"would impose an additional (15%) tax on residential properties where the transferee, the purchaser, is a foreign national ... We chose the rate in part because it reflects the rate other jurisdictions faced with similar challenges have chosen. Singapore ... is an example, and Hong Kong. Both of those jurisdictions apply a rate of 15 percent to residential property bought by foreign nationals."*

The Opposition Housing critic, **David Eby MLA** stated that: *"We've come a long way in terms of the government's position on the housing market in Metro Vancouver,"* and noted that the legislation was, *"a good start to start the conversation."* He advised that, *"I'll be supporting the bill for what it is, but we'll be putting forward amendments"* to address specific concerns about the operation of the legislation's provisions, including an extension of the legislation's tax provisions beyond the City of Vancouver, excluding foreign workers in the province from the 15% property tax and addressing concerns

about the application of the tax to presale condominium units. The Minister outlined technical and tax policy issues regarding the amendments, which precluded government's support for their adoption.

The *Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016* received Third Reading with a vote of unanimous support on 28 July 2016.

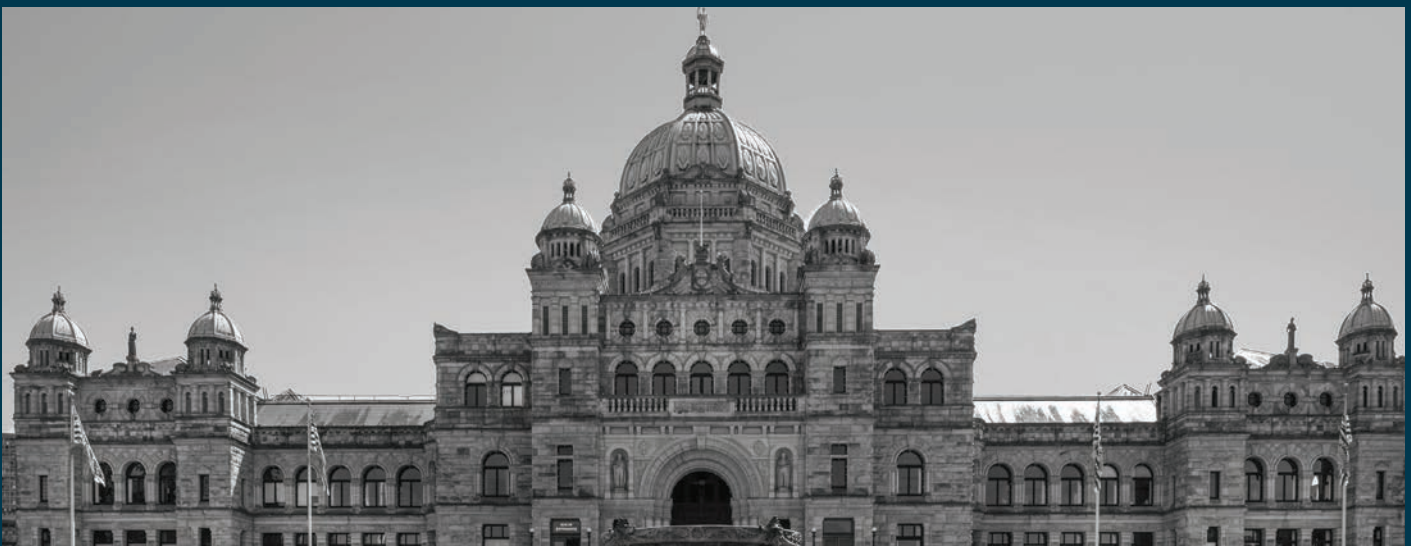
Human Rights Code Amendment Act, 2016

The *Human Rights Code Amendment Act, 2016* explicitly protects transgender persons from discrimination under the provincial Human Rights Code, by adding gender identity or expression to prohibited grounds of discrimination listed in the code.

Hon. Suzanne Anton, Minister of Justice, advised in second reading debate that, *"the courts and the B.C. Human Rights Tribunal have already ruled that discrimination against transgender persons is prohibited by the existing language in the code. Based on meetings with many transgender persons ... many persons in the transgender community sincerely believe that the broader community is not aware of the rights of transgender persons to be free from discrimination ... It is important for transgender persons to know that they are protected, to know that government is with them ... I'd like to recognize the Member for Vancouver–West End (Spencer Chandra Herbert), who has worked long and hard over the years as an advocate for these amendments."*

The Opposition critic for Arts, Tourism and Culture, **Spencer Chandra Herbert, MLA**, commended the Minister and government for addressing the concerns of the transgender community with respect to the importance of laws which clearly support equal human rights for all British Columbians. He stated: *"This is not just about changing a law and we'll leave it there. This about changing a law so we can help change a culture to be one that's more inclusive, one that's more accepting, one that embraces difference and diversity ... We as a culture have not changed to embrace that full diversity yet ... But we can become leaders. So I'm going to take this opportunity to call on us all to look at what more we can do, what more we can change."*

The Legislative Assembly agreed to expedite passage of the legislation in one day, and the *Human Rights Code Amendment Act, 2016* received Third Reading with a vote of unanimous support on 25 July 2016.



CANADIAN FEDERAL PARLIAMENT LEGISLATION, COMMITTEE REPORTS AND US PRESIDENTIAL ADDRESS

Legislation

Before Parliament adjourned for the summer on 17 June 2016, it adopted Bill C-14, the government's legislative response to the Supreme Court's February 2015 ruling that prohibiting physician-assisted dying is unconstitutional. The Senate had made seven amendments to the Bill and sent it back to the House. The House agreed with several amendments, but not with some of the more contentious ones, including one that would have expanded the eligibility criteria. When the Bill was returned to the Senate, accepting some of the Senate's amendments while rejecting others, the Senate passed it.

Cabinet shuffle

On 19 August 2016, **Hon. Bardish Chagger MP**, Minister of Small Business and Tourism, was appointed Leader of the Government in the House of Commons. She became the first woman to occupy the position. She succeeded **Hon. Dominic LeBlanc MP**, who will continue serving as Minister of Fisheries, Oceans and the Canadian Coast Guard.

Committee Reports

Prior to the summer adjournment, parliamentary committees tabled a number of reports. Senate committees reported on, among other things, internal trade barriers, the situation

in Venezuela and obesity in Canada. Reports by House of Commons committees dealt with subjects such as the review of the Access to Information Act, including the extension of the Act to include organisations that support Parliament; family-friendly policies in Parliament; health emergencies in First Nations communities; the Employment Insurance Program; crimes against religious, ethnic and other groups in Syria and Iraq; pay equity; rail safety; and gender-based analysis in the federal government.

In August, the Senate Committee on Legal and Constitutional Affairs released an interim report on court delays in which it recommended that the federal government immediately fill vacant judicial seats in order to reduce court delays. The Committee released the report following a Supreme Court ruling that placed time limits on court delays.

Committee meetings

During the summer recess, the House of Commons Special Committee on Electoral Reform held 20 public hearings during which it heard from the Minister of Democratic Institutions, **Hon. Maryam Monsef MP**; the Chief Electoral Officer, Marc Mayrand; academic experts; and electoral officials from Australia and New Zealand.

Other House of Commons committees held meetings

during the summer recess as well. The Standing Committee on Government Operations and Estimates met to discuss the situation surrounding the government's new payroll system. Problems with the system had led to 80,000 public servants having problems with their pay cheques.

The Standing Committee on International Trade held meetings on regulatory issues related to the import of milk products and chicken and on softwood lumber negotiations with the United States.

The Standing Committee on Citizenship and Immigration met to discuss immigration measures for the protection of vulnerable groups.

The Standing Committee on Justice and Human Rights met to discuss the new process for nominating Supreme Court justices (see below).

Appointments to the Supreme Court of Canada

On 2 August 2016, the Prime Minister, **Rt Hon. Justin Trudeau MP**, announced the government's new process for appointing Supreme Court of Canada justices. Hitherto, the process has taken place out of the public's view. The Chief Justice of Canada and the eight other justices are appointed by the Governor in Council. Three of the justices must be from Québec, and, traditionally, three have been

from Ontario, two from the West and one from Atlantic Canada.

Justice Hon. Thomas Cromwell from Atlantic Canada is due to retire in September. Under the process announced by the Prime Minister, qualified lawyers and judges from across Canada may apply for the vacant position. The applications will be reviewed by the new Independent Advisory Board for Supreme Court of Canada Judicial Appointments, which is headed by former Prime Minister, **Rt Hon. Kim Campbell**. The Advisory Board will draw up a list of three to five candidates and the Minister of Justice, **Hon. Jody Wilson-Raybould MP**, will consult on the list before making a recommendation to the Prime Minister. The candidates must be functionally bilingual. The assessment criteria, the application questionnaire, and certain answers that the Prime Minister's nominee provided to the questionnaire will be made public. Although Parliamentarians will not participate in the selection process, the Minister of Justice will be available to appear before a parliamentary committee to explain the process and once the nominee has been chosen, he or she will take part in a moderated question-and-answer session with Parliamentarians.



Rt. Hon. Stephen Harper MP

Changes in the House of Commons

On 16 August 2016, **Hon. Mauril Bélanger MP**, died from amyotrophic lateral sclerosis or Lou Gehrig's disease. He had represented a riding in Ottawa, Ontario since 1995.

On 26 August 2016, former Prime Minister, **Rt Hon. Stephen Harper MP** resigned his seat in Calgary, Alberta. First elected in 1993, he resigned in 1997. In 2002, he became leader of the Canadian Alliance party and, after being elected in a by-election, became leader of the opposition. In 2003, the

Canadian Alliance merged with the Progressive Conservative Party to form the Conservative Party, with Mr. Harper as Leader. He led the Conservatives to victory in the 2006 election and served as Prime Minister until his party was defeated in November 2015.

The Senate

On 13 July 2016, charges of fraud and breach of trust against **Senator Hon. Patrick Brazeau** were withdrawn and he returned to his seat in the Senate.

On 14 July 2016, Alberta **Senator Hon. Doug Black** left the Conservative caucus to sit as an independent. He was appointed to the Senate by Prime Minister Harper in 2013 after winning a non-binding election in that province.

On 7 August 2016, Quebec **Senator Hon. Michel Rivard** retired. Meanwhile, the government announced that the Independent

Advisory Board for Senate Appointments would be accepting applications from Canadians to fill vacancies in the Senate.

On 6 September 2016, the party standings in the Senate were 41 Conservatives, 23 non-affiliated and 21 Liberals; there were 20 vacancies.

President Obama addresses Canadian Parliament

On 29 June 2016, **President Barack Obama**, 44th President of the United States of America, addressed a joint session of both Houses of Parliament in Canada. He was the ninth US President to do so.

The President of the United States was in Ottawa, Canada for the North American Leaders' Summit. The Summit (NALS) presents an important opportunity for Canada, the United States and Mexico to meet together in recognition of the value of a more integrated North America in order to advance the security

and prosperity of the entire continent. The Summit focuses on the shared democratic values, vibrant economies, dynamic cultures, and cooperation on pressing global and regional issues across the three countries.

The speech was watched by Members of both Houses of Parliament in Canada including the Prime Minister, **Rt Hon. Justin Trudeau MP** and the Speaker of the House of Commons, **Hon. Geoff Regan MP**.

Premiers from a number of Canadian Provinces and Territories including Alberta, Québec, Ontario, Manitoba and the Northwest Territories were also present.

Below: President Barack Obama waves after delivering an address to Parliament in the House of Commons Chamber at Parliament Hill in Ottawa, Canada, 29 June 2016. (Official White House Photo by Lawrence Jackson www.whitehouse.gov).



Between February and June 2016, the National Assembly of Québec passed 21 public bills (12 unanimously). This report provides an overview of some of them.

Municipal affairs

On 10 June 2016, the National Assembly

passed Bill 83, *An Act to amend various municipal-related legislative provisions concerning such matters as political financing*, which amends 21 Québec municipal statutes.

A number of the Act's provisions tighten political financing rules at the local level and strengthen ethics in awarding municipal

contracts. The Act also aims to increase locally-elected officials' independence, responsibility and accountability.

In municipalities with a population of 5,000 or more, the total amount of contributions that an elector may pay to authorized political parties and independent candidates in a given fiscal year is decreased from \$300 to \$100. However, an additional contribution of \$100 may be paid during a general election or a by-election.

In cities with a population of 20,000 or more, the Act sets out supplemental public (municipal) financing, which pays amounts to parties and independent candidates on the basis of the amounts they receive from individuals.

The Act follows through on many recommendations made by the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry. The Commission, chaired by Justice France Charbonneau, sat from 2011 to 2015 and published its report on 24 November 2015. In particular, the new legislation decreases the total amount for which an elector may grant a deed of loan or contract of suretyship to a party or an independent candidate from \$10,000 to \$5,000. The elector must also sign a declaration stating that he or she is not acting as a nominee and that the loan or suretyship comes out of the elector's own property, voluntarily and without compensation. Furthermore, the elector may only grant a loan by cheque or other order of payment.

With respect to awarding contracts of \$100,000 or more through a public call for tenders, the Act provides that the power to establish "selection committees" must be delegated to an officer or employee by by-law of the political authority, i.e. the municipal council. Another section prohibits disclosing committee members' identity in any way. Anyone who attempts to communicate with a selection committee member is liable to a fine of \$5,000 to \$30,000 in the case of a natural person and \$15,000 to \$100,000 in the case of a legal person.

Elections in Québec

On 10 June 2016, the National Assembly also passed Bill 101, *An Act to give effect to the Charbonneau Commission recommendations on political financing*.



THIRD READING: QUÉBEC, CANADA

This Act essentially consists of amendments to Québec's Election Act. Among other things, it specifies that volunteer work for an authorized political party must be performed willingly and without compensation of any type. It also abolishes the time limit after which an illegal contribution to a party need no longer be remitted to the Chief Electoral Officer. During the debate on the Act's passage in principle, the Minister responsible for the Reform of Democratic Institutions explained the measure as follows.

We will allow the Chief Electoral Officer to recover the amounts once he or she has established overriding evidence, since there will no longer be a prescription period for the reimbursement of such amounts, other than the Civil Code's usual time frame, that is, three years after awareness of the fact. So, what does that mean? It means that, if illegal contributions were made in 1992 and the Chief Electoral Officer becomes aware of them in 2016, he or she has until 2019 to claim a reimbursement.

If the Chief Electoral Officer requires a political party to return an illegal donation, he or she must publish the content of communications with the party on the DGEQ website within 30 days.

As in municipal law, individuals who grant a loan or contract a suretyship to a political party must sign a declaration intended to prevent name-lending. In this case, the loan or suretyship is limited to \$25,000.

Immigration

Bill 77, the *Québec Immigration Act*, was passed on 6 April 2016 and replaces legislation dating from 1968. One month earlier, on 7 March 2016, a new government policy on immigration, participation and inclusiveness was presented by the Minister responsible for the immigration portfolio.

In developing the *Québec Immigration Act*, Québec took inspiration from practices in Canada, Australia and New Zealand. Under the new approach, foreign nationals must first submit an "expression of interest" in staying or settling in Québec. Then, from among the people who have submitted such a document, the Ministère de l'Immigration (immigration department) invites those who are admitted to submit a formal application for selection.

The Act maintains the Minister's power

to set conditions, by regulation, for selecting candidates for economic immigration, which includes skilled workers and business people. The grid used by the Government includes criteria such as training, work experience and knowledge of French. People recognized as refugees when already in Québec and "family class" immigration candidates are not subject to the selection process.

Under this Act, the Minister is authorised to create both temporary and permanent pilot immigration projects. These programs will help meet the needs of a region or an economic sector and will run up to five years.

The Act also allows foreign nationals who are temporarily staying in Québec to file an application for permanent settlement. It aims to improve access to permanent resident status for skilled workers and international students in Québec.

Justice and Transgender

With respect to justice and human rights, the National Assembly passed Bill 103, *An Act to strengthen the fight against transphobia and improve the situation of transgender minors in particular*, on 10 June 2016.

This Act was preceded, in 2013, by amendments to the Civil Code of Québec to eliminate the requirement that a person have undergone medical treatment or surgery before the designation of sex on his or her act of birth could be changed. However, this only applied to people aged 18 or older.

In 2015, the National Assembly's Committee on Institutions held consultations on a draft regulation on this subject. The Committee then recommended that the Government quickly take action to improve the lives of transgender minors and that it consider extending the rights already granted to persons of full age to minors.

The Act passed on 10 June 2016 addresses that recommendation. It gives minors aged 14 or older (or, with the minor's consent, one of the parents or tutors) the right to apply for a change of designation of sex in the register of civil status.¹ This request must be accompanied by a letter of support from a health professional and by an affidavit sworn by the person going through the process.

Applications concerning children under 14 years of age can only be submitted by one of their parents or tutors, who must inform the

other parent or tutor. If the latter is not informed or objects before the courts, the application will be refused, unless there is a compelling reason (*Civil Code of Québec*, new s. 71.1).

Finally, the *Act to strengthen the fight against transphobia and improve the situation of transgender minors in particular* adds gender identity or expression to the 13 grounds of discrimination already prohibited by the Québec Charter of human rights and freedoms.

Public security

On 9 June 2016, the National Assembly passed Bill 64, the *Firearms Registration Act*. This measure provides for identification of the firearms present in the territory of Québec in order to support police officers in their investigations and interventions. It also seeks to ensure the enforcement of court orders prohibiting the possession of firearms. The courts make such orders when issuing convictions for violent crimes or, as a precaution, when a person's health constitutes a risk to himself or herself or to others.

The Act targets long guns, which correspond to the majority of guns and hunting rifles in circulation in Québec. Approximately 5% of all firearms are governed by federal legislation.² These are 'restricted weapons' within the meaning of the Canadian *Criminal Code*, which include certain pistols, and 'prohibited firearms', such as assault rifles.

According to Québec legislation, new firearm owners must apply to the Ministère de la Sécurité publique (public security department) to register their firearm as soon as it is in their possession. They must also give notice of a transfer of ownership. Moreover, firearms businesses (sale or repair) must keep an up-to-date log on all operations involving the firearms in their possession.

The Act states that no tariff may be set for its purposes. It includes penal provisions and a procedure for police officers—but not wildlife officers—for seizing firearms that do not comply with the Act.

¹ Six other Canadian provinces also amended legislation, allowing minors to apply for changes to their birth certificate so that it is consistent with their gender identity.

² Firearms Act, S.C., 1995, c. 39.

AUSTRALIA FEDERAL ELECTION: COALITION GOVERNMENT RETURNED WITH ONE SEAT MAJORITY

Following the Australia Federal election on 2 July 2016 the Liberal/National Coalition Government of Prime Minister, **Hon. Malcolm Turnbull MP**, was re-elected with a one seat majority. The Coalition went into the election with 90 seats but was returned with 76 seats out of the 150-seat House of Representatives. The election was so close that it was not possible to determine the winner on election night. Finally, on 10 July the Leader of the Labor Opposition, **Hon. Bill Shorten MP**, conceded defeat.

Mr Turnbull in announcing victory commented that *"I want to thank all of the candidates that ran for the Coalition. Many of them have been returned, a number have not of course, as you know. We have had a successful election, in that we have won considerably more first preference votes than Labor – about 800,000 more first preference votes and according to the AEC's latest two-party-preferred tally, we are ahead of the Labor Party but most importantly of course, we have secured the largest number of seats in the Parliament. We are a parliamentary system of government."*

Mr Shorten in conceding defeat commented that *"one thing which unites Mr Turnbull and I is our love of Australia and our huge respect for our democracy. Therefore, I want to thank the Australian people. When we look at the world around us, it is fantastic that the Australian people can settle their political disagreements*

in thousands of school halls over sausage sizzles, voting in ballot boxes. It is the way that it should be and Australians, again, have vindicated our system of democracy. I hope for our nation's sake that the Coalition does a good job."

The 2016 election was notable for being the longest in over 50 years and only the seventh double dissolution election where both the House of Representatives and all 76 seats of the Senate were up for election. It is conventional for Prime Ministers, from the point of tactical advantage, to have short election periods with the minimum period being 33 days. In addition, Prime Ministers normally seek to keep the election date secret until it is announced. Prime Minister Turnbull, in contrast, was telegraphing the election date well before it was announced and then ran an eight week election campaign. Part of the reason for this is that the Prime Minister chose to have a double dissolution election to deal with various deadlocked bills, including the *Fair Work (Registered Organisations) Amendment Bill 2014* and two bills relating to the re-establishment of the Australian Building and Construction Commission.

Under section 57 of the Constitution a double dissolution shall not take place within six months before the expiry of the House of Representatives. To satisfy this requirement both House needed to be dissolved before

11 May 2016. The Governor-General, on the advice of the Prime Minister, dissolved both Houses on 9 May.

In addition, the election needed to be held after 1 July 2016 because under section 13 of the Constitution the term of service for a Senator following a double dissolution shall be taken to begin on the first day of July preceding the day of the election. For example, if the election had been held before 1 July 2016 then the terms of elected Senators would be backdated to 1 July 2015 and then both Houses would be out of synchronisation in relation to future elections.

The Prime Minister's objective of calling a double dissolution to ultimately pass the *Fair Work (Registered Organisations) Amendment Bill 2014* and two bills relating to the re-establishment of the Australian Building and Construction Commission remains in doubt. Section 57 of the Constitution provides that after a double dissolution if the House of Representatives again passes the deadlocked bills and the Senate rejects or fails to pass the bills then a joint sitting of the House and the Senate maybe convened to deliberate and vote together to deal with the proposed bills. The future of these bills will be keenly observed.

Mr Turnbull has taken the Coalition to near defeat after only one term in office but he continues to remain positive claiming that he has a 'working majority.' The Opposition have signalled that they will now

test how reliable this working majority actually is by refusing to have an arrangement on pairs. During the Minority Gillard Labor Government from 2010-2013, the then Opposition Leader, **Hon. Tony Abbott MP**, also took a hard line on pairs.

Mr Turnbull will no doubt have challenges managing the House of Representatives but this could be minor compared to the challenges that confront him in the Senate. The Senate of the 44th Parliament was notable for the variety and number of independent Senators. Of the 76 Senators, there were 33 Coalition, 25 Australian Labor Party, 10 Greens, 4 Independents, 1 Palmer United Party, 1 Liberal Democratic Party, 1 Family First and 1 Australian Motoring Enthusiast Party. To pass legislation, the government needs 39 votes. As the government did not have control of the Senate it was not always able to pass its legislation. This proved challenging for the government but the challenge in the 45th Parliament could be even more demanding.

During the 44th Parliament, government ministers were often critical of the make-up of the Senate and, in particular, independent members who they claimed had 'worked' the Senate voting system to become elected on very small first preference votes. This is why the government pushed through the *Commonwealth Electoral Amendment Act*

2016 which was designed to reduce the complexity of the Senate voting system and improve transparency around the allocation of preferences in a Senate election. However, Mr Turnbull by choosing to have a double dissolution made it easier for independent Senators to be elected because the quota for election is halved compared to a usual half Senate election. Accordingly, the make-up in the new Senate is even more diverse and potentially challenging than the previous parliament. The Senate of the 45th Parliament comprises 30 Coalition, 26 Labor, 9 Greens, 4 One Nation, 3 Nick Xenophon, 1 Liberal Democratic Party, 1 Derryn Hinch's Justice Party, 1 Family First, and 1 Jacqui Lambie Network.

Government temporarily loses control of the House

In a dramatic first week of Parliament, the Coalition Government temporarily lost control of the House of Representatives. It was an embarrassing outcome for the Prime Minister, **Hon. Malcolm Turnbull MP**, who after the election claimed that he had a working majority. The Opposition won three procedural votes and came close to pushing through a critical substantive motion when the votes were tied and the Speaker, **Hon. Tony Smith MP**, used his casting vote to allow debate on the motion to continue. This chain of events came about in the adjournment debate on the final sitting day of the week.

In previous Parliaments it was usual for some Members to leave the chamber early so they could get the early flight home to their electorates. However, in the previous parliament the Coalition

Government had 90 seats so losing a vote was never in doubt. However, it is highly surprising that this behaviour continued in the current Parliament where the government has only a one seat majority. When the Opposition observed that some Ministers and backbenchers had left and knowing that Opposition members had remained vigilant, they then used their superior numbers to take control of the House delivering a major tactical victory for the Opposition. During this time, the Government was frantically calling absent members demanding that they return to the House. Finally, after almost two hours since the Opposition won its first vote, the government won a vote and regained control. For the government this episode highlighted the reality that managing the House with a one seat majority will be much harder than they thought. It is the first time in over 50 years that a majority government has lost a vote in the House of Representatives.

New Coalition Ministry

On 18 July the Prime Minister, **Hon. Malcolm Turnbull MP**, announced the new Coalition Ministry. Mr Turnbull noted that *"as the re-elected Coalition Government we have a clear mandate to proceed with our policies. We are committed to three years of strong, stable economic leadership so we can provide both the economic security and the national security that Australians expect and deserve."* In particular, Mr Turnbull commented that *"Budget repair will be a front of mind issue for this entire Parliament. This has been reinforced by the three*

ratings agencies following the campaign. Only the Coalition has a credible fiscal strategy. Labor promises - as we saw during the campaign - higher spending, higher taxes, higher debt and deficits."

The Ministry line-up is similar to the Ministry prior to the election, excluding certain Ministers that lost their seats. The National Party gained greater representation in the Ministry due to their increased share in the Coalition party room. Mr Turnbull indicated that all Cabinet Ministers appointed last term will be re-appointed with some changes of role and title. In the key economic portfolios, **Hon. Scott Morrison MP**, continues in the role of Treasurer as does **Senator Mathias Cormann** in the role of Minister for Finance.

The South Australian Liberal MP for the seat of Sturt, **Hon. Christopher Pyne MP** will be appointed to the new role of Minister for Defence Industry, within the Defence portfolio. South Australia has a significant naval shipbuilding industry. Mr Turnbull commented that *"Mr Pyne will be responsible for overseeing our new Defence Industry Plan that came out of the Defence White Paper. This includes the most significant naval shipbuilding program since the Second World War. This is a key national economic development role. This program is vitally important for the future of Australian industry and especially advanced manufacturing. The Minister for*

Defence Industry will oversee the Naval Shipbuilding Plan which will itself create 3,600 new direct jobs and thousands more across the supply chain across Australia."

Hon. Dan Tehan MP becomes the Minister for Defence Personnel and continues as the Minister for Veterans' Affairs. **Senator Marise Payne** continues in the senior role as Minister for Defence.

Senator Scott Ryan was appointed Special Minister of State and Minister Assisting the Cabinet Secretary. **Senator Matt Canavan** was promoted to Cabinet as the Minister for Resources and Northern Australia.

Hon. Greg Hunt MP was moved from the Environment portfolio to be Minister for Industry, Innovation and Science. Mr Turnbull noted that Mr Hunt has a *"keen understanding of innovation, he has a keen understanding of science and technology and he will give new leadership to that important portfolio and those important agendas so central to our economic plan."* **Hon. Josh Frydenberg MP** moves to the expanded Environment and Energy portfolio combining all the key energy policy areas.

The Leader of the Opposition, **Hon. Bill Shorten MP** commented that *"Malcolm Turnbull's problem is that he's increased the size of his Cabinet, he's got the largest Cabinet since Whitlam, but he's got the smallest agenda since McMahon."*





Right to Information Bill (RTI) introduced in Sri Lanka Parliament

On Friday 24 June 2016, the Right to Information (RTI) Bill was passed by the Parliament of Sri Lanka unanimously, after the Second Reading, Committee Stage and the Third Reading of the Bill.

The Bill was introduced to Parliament by the Minister of Parliamentary Reform and Mass Media, **Hon. Gayantha Karunathilaka** on 24 March 2016. The implementation of the Act will be the responsibility of the Ministry of Mass Media, which includes establishing a Right to Information Commission to directly oversee the functions of the Bill.

The Bill includes provisions on the public's right to know, assures access to information from government, public and local entities as well as information held by organisations who receive significant funding from the government. The Bill was challenged before the Supreme Court and the Supreme Court in its determination suggested few amendments to some clauses which were considered and included at the time of Committee Stage of the Bill.

During the Second Reading of the Bill, the Prime Minister, **Hon. Ranil Wickramasinghe** reminded of the history of the Bill and how their government has tried to pass the drafted Bill unsuccessfully due to the political discrepancies in the government from 2004-2015 despite the continuous pressure from numerous civil societies and organisations. He stressed that if the Bill was passed in 2002 according to the initial plan, Sri Lanka would have become the first South Asian country to recognise the right to information as a fundamental right. The Prime Minister also emphasised that right to information is a crucial part of the people's sovereignty pointing out that it will pave the way to carry out government's duties with more transparency and accountability.

The 19th Amendment (Article 14A) to the Sri Lankan Constitution declared Right of Access to Information as a fundamental right. This Bill gives effect to the aforesaid fundamental right declared by the constitution. Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority. RTI is not absolute but subject to several restrictions set out in Section 05 of the Act and this law will prevail above all other written law.

The Section 5 of the Act outlines the grounds on which, disclosure of information could be refused. Some such instances are;

- personal information with no relationship to any public activity or interest

- defense of the State or its territorial integrity or national security
- seriously prejudicial to Sri Lanka's relations with any State where information was given by or obtained in confidence
- serious prejudice to the economy of Sri Lanka
- information, protected under the Intellectual Property Act
- medical records
- communications between professional and public authorities
- information kept confidential by reason of the existence of a fiduciary relationship
- grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders
- to protect identity of a confidential source of information in relation to law enforcement or national security
- contempt of court, Parliamentary privileges, integrity of examinations, elections and cabinet memorandum under discussion

The Act also suggests that *"a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure."*

The Act also demands the Ministries and public authorities maintain duly catalogued and indexed records, maintain existing records for 10 years and new records for 12 years, preserve records in electronic format, produce biannual reports to enable RTI by citizens, inform the public three months prior to the commencement of any projects and produce annual reports before the Right to Information Commission.

The RTI Commission shall consist of five persons appointed by the President, upon the recommendation of the Constitutional Council. In making such recommendations, the Constitutional Council shall recommend one person nominated by:

- a. Bar Association of Sri Lanka;
- b. organisations of publishers, editors and media persons; and
- c. other civil society organisations.

The main duties and functions of the Commission are to,

- monitor the implementation of the Act
- make recommendations for reform
- publicise the rights and requirements under the act
- determine fees and exempts from fees
- hold inquiries
- inspect information held by a public authority

THIRD READING: SRI LANKA

- direct the provision and publication of information
- hear and determine appeals

The Act also underlines the procedure for gaining access to information. Every public authority shall appoint one or more officers as information officers and a designated officer to hear appeals. Any citizen who is desirous of obtaining any information shall make a request in writing to the appropriate information officer, specifying the particulars of the information requested for.

While a written acknowledgement of the request will be provided then and there, the Information Officer must decide whether to provide or refuse within 14 days of such request. An extension of 21 days could be granted if substantial reasons are given. Where the request for information concerns the life and personal liberty of the citizen making such request, the response to it shall be made within forty-eight hours of the receipt of the request.

Article 27(1) of the act specifies that where a decision has been made to grant a request for information, such information shall be provided in the form in which it is requested, unless the information officer is of the view that providing the information in the form requested would be detrimental to the safety or preservation of the relevant document or record in respect of which the request was made.

Part VI of the Act denotes the instances where an aggrieved citizen can lodge an appeal to the designated officer. Such appeal

should be filed within fourteen days of the refusal and the grounds for appeal identified in this section are:

- a. refusing a request made for information
- b. refusing access to the information on the ground that such information is exempted from being granted under section 5
- c. non- compliance with time frames specified by this Act
- d. granting of incomplete, misleading or false information
- e. charging an excessive fees
- f. the refusal of the information officer to provide information in the form requested.

The Designated Officer should give the decision on such appeal within three weeks together with reasons for the decision subjected to appeal. Any citizen dissatisfied with the decision made by the Designated Officer in respect of an appeal, can appeal to RTI Commission within two months of the communication of such decision. The RTI Commission must decide on such appeal within 30 days of the receipt of the appeal. Any citizen or public authority who is aggrieved by the decision of the commission can appeal to Court of Appeal within one month of the communication of the decision.

The citizens of Sri Lanka remain hopeful that the effective implementation of this Act will assure the fundamental rights of all Sri Lankans and that it will in turn strengthen the country's democratic development.



THE UK PARLIAMENT AND BRITAIN'S EXIT FROM THE EUROPEAN UNION



Unsurprisingly, the result of the 23 June referendum, that Britain should leave the European Union, has dominated the UK Parliamentary and political landscape in recent months. The result, which came as a surprise to most in Westminster, sent shockwaves through the political parties. The Prime Minister, **Rt Hon. David Cameron MP** who had campaigned for the UK to remain in the European Union, resigned the day after the referendum. A new Prime Minister, **Rt Hon. Theresa May MP** was appointed after a short but lively campaign.

Meanwhile, the Leader of the Opposition, **Rt Hon. Jeremy Corbyn MP** faced a leadership contest after half his shadow Cabinet resigned, with many claiming he had failed to wholeheartedly support the Labour's party's campaign to remain. Between the new Prime Minister's large-scale reshuffle of her Cabinet, and the Leader of the Opposition having to draw on some unfamiliar faces to fill his team, the world in Westminster looked a very different place heading into the summer recess.

With all this activity it was no surprise that attention was diverted away from normal Parliamentary business. Parliament's role in the process of withdrawing from the EU was contested from the outset.

Some argued that the referendum result was

only advisory requiring Parliamentary approval, prompting a legal challenge about the limits placed on Prerogative powers that is presently before the Supreme Court.

Others called for a second referendum, either immediately or once the exit terms were clear, with an online petition for a second referendum proving to be the most popular ever considered by the Commons Petitions Committee, gaining over 4 million votes. The Committee agreed to a debate in the House on the subject, but made it clear that in doing so they were not endorsing the idea of another referendum. Indeed the idea that the result should be respected emerged as the prevailing view within Parliament, reflected most strongly by the incoming Prime Minister **Rt Hon. Theresa May MP** in her first statement as PM: *"On 23 June the British people were asked to vote whether we should stay in the EU or leave. The majority decided to leave. Our task now is to deliver the will of the British people and negotiate the best possible deal for our country."*

The specific role of Parliament in scrutinising Britain's exit from the EU remains a matter for significant debate. The outgoing Prime Minister, **Rt Hon. David Cameron MP**, stressed that *"Parliament will clearly have a role in making sure we find the best*

way forward.” Everyone was agreed on the scale of the challenge but there were myriad views as to how best to approach the task.

Some suggested that the UK Parliament should establish a new joint committee of both Houses, while others called for entirely new approaches, bringing together expert external members or representatives from the devolved legislatures with UK Parliamentarians.

The debate has yet to be settled, but at least for the time being it appears that the response may be a more familiar one: with

the Commons committees established to scrutinise the two new departments focused on ‘Brexit’ – the Department for Exiting the EU and the Department for International Trade - joining the existing EU committees in both Houses at the vanguard of the scrutiny process.

Although the structures may well be familiar, there has been a recognition that the speed, complexity and sensitivity of forthcoming negotiations will require imagination, collaboration and different ways of working for both Houses.

Lord Boswell, Chairman of the House of Lords

European Union Committee, for example, talked of finding “innovative ways” to cooperate across both Houses and the UK as a whole. There has also been much talk about drawing upon a broader range of legal and trade expertise to help with the task, with questions being asked about whether Parliament is resourced for scrutinising such complex negotiations.

In addition to the analysis and scrutiny of the options available, there will be the legislative challenge of untangling Britain’s forty years of EU membership, and the subsequent provision for its new relationships with

the world. There has been widespread speculation and an expectation that this process will prompt changes to the procedures and working practices of both Houses, if only to deal with the vast quantity of legislation anticipated, particularly secondary legislation.

So while the new Prime Minister has been clear that “*Brexit means Brexit*”, both Houses head into their autumn sittings keen to untangle what it will mean for the United Kingdom, as well as for Parliament.



Parental Leave and Employment Protection (6 Months' Paid Leave) Amendment Bill

The Parental Leave and Employment Protection (6 Months' Paid Leave) Amendment Bill, a private member's Bill, was introduced by Opposition member **Ms Sue Moroney MP** (Labour) in July 2015, with the aim of increasing New Zealand's paid parental leave entitlement to 26 weeks. The Bill progressed through the Committee of the whole House on 8 June 2016; however, on 16 June, Minister of Finance **Hon. Bill English MP** (National) exercised the Government's power of financial veto, the first time a New Zealand Government has done so in respect of an entire Bill since the procedure's establishment in 1996. Mr English explained that the implementation of the Bill would have "more than a minor impact on the Crown's fiscal aggregates."

Mr Mark Mitchell MP (National) commented: "We have been very clear about the fact that, when we are able to - when the money is available - then, of course, we would look at increasing paid parental leave again." Fellow National MP **Ms Sarah Dowie** expressed her support for the Government, saying: "I am very proud of this Government's record, but in this instance, because of our prudent management of the economy, we cannot support this Bill."

Mr David Seymour MP (Leader, ACT), also speaking in opposition to the Bill, stated: "The idea that the only block between children growing up healthy and well-adjusted in New Zealand is simply the problem that parents do not have funding for an extra 6 weeks while their children are very small is simply not true."

A third reading debate took place on 29 June 2016, at the end

of which no vote was taken. **Mr Iain Lees-Galloway MP** (Labour) commented that "... the people voted for a Parliament that is prepared to extend paid parental leave to 26 weeks. That is the will of Parliament, that is the will of the people of New Zealand."

Ms Denise Roche MP (Greens) said: "It is a slap in the face for democracy, and all New Zealanders need to be worried about that." However, **Mr Jami-Lee Ross MP** (National) commented: "... we reject the argument that this is undemocratic. Sure, a majority of the House wants an increase in paid parental leave, but a majority of the House also supports the Budget that the Government has put forward."

Ms Jacinda Ardern MP (Labour) called for a vote on the Bill, saying: "I do not believe that all members of the National Party actually oppose this Bill ... so let us give them that democratic right and allow them to exercise it." However, Assistant Speaker **Mr Lindsay Tisch MP** (National) determined that "the Government has issued a financial veto certificate for this Bill, so, in accordance with Standing Order 328(3), there will be no question put on the Bill being read a third time."

The debate concluded and the motion lapsed.

Health (Protection) Amendment Bill

The Health (Protection) Amendment Bill, a Government Bill, passed its third reading on 30 June 2016, amending the Health Act 1956 in two parts. Part 1 of the Bill dealt particularly with infectious diseases: creating new provisions and options for managing individuals with infectious diseases; providing specific measures for the tracing of contacts of individuals with infectious diseases; and widening the range of notifiable



THIRD READING: NEW ZEALAND

infectious diseases. Part 2 placed a restriction on the commercial use of artificial UV tanning services for people under the age of 18.

At the Bill's third reading, Part 1 was supported unanimously. **Ms Louisa Wall MP** (Labour) said of Part 1: *"The value of this piece of legislation [is] that it is now going to be proactive. It is going to involve a public health perspective - not treating these infections as individual infections that actually have no ongoing interest or ramification in our community. It will now lead to a better targeted approach and support."*

Ms Barbara Kuriger MP (National) said of the contact tracing provisions in Part 1: *"This is not about chasing people, this is not about witch hunting, but this is about protecting the vulnerable people who are likely to be around a person who is carrying a notifiable and infectious disease."*

Mr Kevin Hague MP (Green) supported Part 1 of the Bill but questioned the decision to include both parts in the same Bill, saying: *"These two matters actually relate to quite different types of control, and if one were to be regulating sunbeds, there are some other matters that could also be regulated at the same time if one took an objective perspective on controlling some of the risks of non-communicable disease to New Zealanders."*

Ms Ria Bond MP (New Zealand First) spoke in opposition to Part 2 of the Bill, as did **Ms Jan Logie MP** (Green). Ms Bond said: *"Without the ban on sunbeds, voluntary regulations will remain. ... We remain of the opinion that provisions within this Bill must be proportionate to the level of the risk to the general public. ... The lack of a total ban falls short of what is actually required."* Ms Logie told the House that *"the World Health Organisation's evidence was very clear that it classified sunbeds as carcinogenic in 2009, and the evidence is very clear that use of a sunbed before the age of 35 will increase your risk of getting melanoma by 75%. ... Our rates of melanoma are too high as it is."*

Ms Jacqui Dean MP (National) supported the Government's decision to place age restrictions rather than a ban on UV tanning: *"There are a number of people who use UV tanning salons, or UV tanning beds, to help treat diseases like psoriasis, and they get a benefit. We also believe that people should be able to make an informed choice about whether, when they are over the age of 18, they choose to use a sunbed, or a tanning device."*

The Bill passed with 109 votes in favour. New Zealand First abstained from voting.

Wellington Town Belt Bill

The Wellington Town Belt Bill, a local Bill, passed its third reading on 4 May 2016, receiving unanimous across the House. **Mr Paul Foster-Bell MP** (National) explained that the Bill *"aims to protect the land of the Wellington town belt, modernise the governance arrangements - the 1873 trust is being modified in this legislation - and to preserve the land hereafter for the benefit of the people of Wellington."*

The local Bill was promoted by Wellington City Council and the MP in charge, **Mr Grant Robertson MP** (Labour), who outlined how the Wellington town belt has changed since its establishment in 1839, noting that *"it has reduced in size by about one-third since 1873. For the most part, this has been for public purposes such as educational*

facilities, hospitals, prisons, and roads ... when this legislation passes, 120 hectares of land will immediately get added to the town belt - the most substantial addition of land to the protections provided by the town belt since 1873."

Hon. Annette King MP (Labour) commended Mr Robertson for showing *"how you can work with a local authority as a local MP and bring forth a Bill."* Mrs King, who is also a Wellington-based MP, pointed out that the 500 hectares of town belt *"in fact covers a large part of the three Wellington electorates."*

Mr Scott Simpson MP (National) said that the Local Government and Environment Committee, of which he is chairperson, *"received 31 submissions and ... heard from 21 submitters, each of them passionate and vigorous."*

Mr Nuk Korako MP (National) also emphasised the importance of the Wellington town belt as *"a unique and distinguishing feature of this city. To me, and to all of us, it is the pūkahu o te pā—it is the lungs of the city."* **Mr Gareth Hughes MP** (Greens) concurred, saying: *"It is great that so many people have come together to protect what is a taonga [treasure] for our city."*

Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill

The Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill was introduced on 16 November 2015 with the aim of reforming New Zealand's tax system in three areas. The Bill introduced a new residential land withholding tax for offshore persons, required that GST be applied to cross-border services, including internet downloads, and introduced a relationship with the Australian Taxation Office to ensure student loan repayment obligations are met by borrowers based in Australia.

At the Bill's third reading on 5 May 2016, **Hon. Michael Woodhouse MP** (National) commented that the changes would *"address the non-taxation of cross-border purchases of intangibles, maintain the broad base of New Zealand's GST system, and also help to level the playing field for domestic and offshore suppliers."* Also speaking in support of the Bill, **Mr Andrew Bayly MP** (National) explained that sharing borrower information with the Australian Taxation Office was a way of *"making sure that the Government receives the revenue it should, and making sure that it can apply that money to meeting our social commitments."*

Opposition members were critical of the scope of the Bill. **Ms Meka Whaitiri MP** (Labour) said that although she would be supporting the Bill, it *"should have addressed those relationships of students who are living in the UK, for example, and ... the GST that we did not cover in terms of assisting small businesses."* **Ms Julie-Anne Genter MP** (Green) added that although she supported changes to GST and the residential land withholding tax, *"in both of these cases, this legislation does not go far enough."*

New Zealand First opposed the Bill, with **Mr Fletcher Tabuteau MP** (New Zealand First) stating that the party could not support the residential land withholding tax legislation.

The Bill passed by 109 votes to 12.



A landmark constitution amendment Bill was passed in the Winter Session of Parliament that continued from 18 July to 12 August 2016. The Constitution of India was amended by the Constitution (One Hundred and Twenty-second Amendment) Bill, 2014 to create a new tax structure by bringing in Goods and Services Tax (GST), touted as India's biggest tax reform ever. The introduction of GST would mark a clear departure from the scheme of distribution of fiscal powers envisaged in the Constitution. The Bill as passed by both Houses of Parliament by a special majority was ratified by more than half of the State Legislatures and became an Act after receiving Presidential assent on 8 September 2016.

The Bill was first passed by the Lok Sabha on 6 May 2015 by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting after a thorough examination by the Departmentally-related Parliamentary Standing Committee on Finance. When the Bill as passed by Lok Sabha came to Rajya Sabha where the government did not enjoy a majority, the House referred the Bill to its Select Committee for examination which presented its report on 22 July 2015. The Rajya Sabha finally, in a rare show of unanimity, passed the Bill with certain amendments on 3 August 2016. On 8 August 2016, the Lok Sabha concurred with the amendments made by Rajya Sabha. The opposition Members in both the Houses demanded that the enabling Bills to be brought before Parliament for its concurrence should not be introduced as Money Bills but as a Finance Bill so that there could be voting and discussion in both Houses. After the Presidential assent, the path was cleared for the setting up of the GST Council which would decide on

the tax rate. The Bill had been introduced in Lok Sabha on 19 December 2014.

The Constitution was amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying GST on every transaction of the supply of goods or services or both. The GST would replace a number of indirect taxes being levied by the Union and the State governments and would remove the cascading effect of taxes and provide for a common national market for goods and services. It covered all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In the case of petroleum and petroleum products, these goods would not be subject to the levy of GST till a date notified on the recommendation of the GST Council.

It was expected that GST would simplify and harmonize the indirect tax regime in the country, reduce cost of production and inflation in the economy, making the Indian trade and industry more competitive, domestically as well as internationally. It would foster a common and seamless Indian market, contribute to the growth of the economy, broaden tax base, and result in better tax compliance.

Moving the Bill in the Rajya Sabha, the Minister of Finance and the Minister of Corporate Affairs, **Shri Arun Jaitley** said GST would empower the States and increase their revenues as well as that of central government. It would discourage and bring down tax evasion. It wouldn't be a tax on tax and decrease the cost of products. GST would boost the economy and serve the interest of the federal system in the best possible manner. After the

Constitution was amended, the GST Council would come into existence and subsequently, three enabling laws, two by the Central Parliament and one by State legislatures, would be passed.

The Finance Minister in the previous UPA government, **Shri P. Chidambaram (INC)** clarified that his party was never opposed to the idea of a GST. It opposed the Bill as it had too many flaws. He was glad that the Government had seriously discussed these aspects with the opposition parties and considerable progress was made in removing the flaws. He wanted the standard rate on most goods and services to be 18% which should not be changed by the whim of the Executive. He wanted the Finance Minister to assure that the enabling Bills should be brought as Finance Bills and not as Money Bills. **Shri Bhupender Yadav (BJP)** said the Bill would establish a new economic system in the entire country replacing the complex tax structure which limited the possibilities of expansion of business and contributed to tax evasion. **Shri Naresh Agrawal (SP)** said his party was unwillingly supporting the Bill to dispel the misgiving that it was opposed to financial reforms. He wanted the government to use technology wherein the taxes brought by Goods and Services Tax Network (GSTN) should automatically go to the Centre as well as to the States according to their determined shares. He wanted to know whether GST would be imposed on food items. The AIADMK member, **Shri A. Navaneethakrishnan** termed the Bill as unconstitutional as it violated the States' fiscal autonomy. There would be permanent revenue loss to the State of Tamil Nadu as it was a manufacturing and the Centre must compensate the State. **Shri Derek O'Brien**

INDIA CONSTITUTION AMENDED TO ESTABLISH NEW TAX STRUCTURE

(AITC) seeking clarifications on some of the provisions of the GST Bill, stressed on the need to implement it at the earliest. **Shri Sharad Yadav** (JD-U) said corruption was rampant because of many tax regimes and GST would curb it to a large extent, making it easy for foreign investors to do business. **Shri Sitaram Yechury** (CPI-M) was apprehensive that with the passing of the constitutional amendment, the State governments might not have any right to raise resources which was against the concept of federalism. The entire concept of GST was a regressive tax as it put burden on the poor.

Supporting the Bill, **Shri A.U. Singh Deo** (BJD) proposed the addition of a cess as determined by the GST Council to be levied by the mineral-rich States to protect and conserve environment. **Shri Satish Chandra Misra** (BSP) pointed out that even though States faced different issues their powers to tax various items was taken away and conferred upon GST Council. **Shri C.M. Ramesh** (TDP) was not for putting a cap on GST rate. **Shri Praful Patel** (NCP) said GST was a big step in tax reform. The first advantage would accrue to the manufacturing sector but it was going to put pressure on the service sector. **Dr Narendra Jadhav** (Nominated) termed the Bill as a game changer as the GST would simplify and unify the indirect tax regime, eliminate geographical fragmentation and create one common market for the entire country, reduce black money, accelerate GDP growth, facilitate fiscal consolidation by widening the tax base and lower the inflation rate over time.

Shri Rajeev Chandrasekhar (Independent) called GST as independent India's biggest indirect taxation reform. A large common market would create economic growth, more jobs and provide wide choices to the consumers while reducing corruption and red tape. Therefore, a less than perfect GST was better than no GST. **Shri Vivek K. Tankha** (INC) said dispute resolution systems must be in place before starting the process of tax and subsidies should be exempted from taxation. He was afraid that subsuming all the local taxes of States would deprive their local bodies of revenue. **Shri Ajay Sancheti** (BJP) described the Bill as a historical step towards strengthening co-operative federal mechanism between the Centre and the States. **Shri Garikapati Mohan Rao** (TDP) sought a constitutional guarantee and a roadmap on the mode of payment for compensation to be paid to Andhra Pradesh for the revenue loss incurred on account of GST. **Shri K. Parasaran** (Nominated) suggested the placing of the recommendations of the GST Council before each House of Parliament and putting a ceiling on GST rate. **Shri Hishey Lachungpa** (SDF) argued that GST would result in loss of revenue for the manufacturing State. **Shri V. Vijayasai Reddy** (YSRCP) wanted electricity duty to be exempted from GST like petroleum products and alcohol. **Prof M.V. Rajeev Gowda** (INC) said the Service sector should not be burdened with higher tax and a cap of 18% tax be put in the GST. The issue of revenue loss by local bodies as a result of the GST also needed to be

resolved. **Shri T.K.S. Elangovan** (DMK) argued that passage of the Bill would impact State governments' financial powers. **Shri Narendra Budania** (INC) said the provisions of the Bill should be implemented honestly and transparency. **Shri Anil Desai** (SS) wanted a distinct provision in the GST legislation itself in regard to direct transfer or devolution of funds from Centre to the local bodies.

Shri Naresh Gujral (SAD) said the GST Bill would totally transform the Indian economy establishing a unified market and a uniform tax regime leading to free flow of goods and services within the country. **Shri D. Raja** (CPI) asked the government to ensure that indirect taxes did not adversely affect the tax payers. **Shri Sanjay Raut** (SS) wanted some kind of special status or special right for Mumbai, India's financial capital, so that the right of tax collection remained with it. **Shri Ram Kumar Kashyap** (INLD) desired to know how the loss of revenue, if any, caused to the agriculture-based States like Haryana, would be met after the Bill came into force. He had an apprehension that the unelected GST Council might become more powerful than the State legislatures. **Shri Prem Chand Gupta** (RJD) demanded the inclusion of backward States like Bihar and Jharkhand in the category of special States. **Shri Biswajit Daimary** (BPF) said there could be problem in distribution of taxes as institutions like the Bodoland Territorial Council and other autonomous bodies of North East India were also involved in levying and collection of taxes. **Shri Anand Sharma** (INC) said

it was the Congress-led UPA government which first brought the Bill in 2011 and the then BJP State governments were against it. It was not justified to say that the Congress party was against the GST. **Shri Abdul Wahab** (IUML) said Kerala State would lose heavily because of GST.

Replying to over six hour long debate, **Shri Arun Jaitley** said after GST, the system would be more efficient and agreed that an effort had to be made to keep the rate at a reasonable level. Stating that Parliament would get adequate opportunity to discuss each one of the enabling Bills, he asserted that there was no parliamentary practice to say anything about the nature of a Bill in advance, whether it would be a Finance Bill or a Money Bill. The Constitution Bill, 2014, was adopted with certain amendments by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members of the House present and voting.

When the Bill as passed by Rajya Sabha with amendments came back to Lok Sabha for its concurrence, **Shri Jaitley**, on 8 August 2016, moved the motion for consideration of the amendments in Lok Sabha. He was glad that after concerted and prolonged efforts, consensus had emerged and majority of the political parties came forward to support the GST Bill. A consensus was reached that the Central government would compensate the revenue loss to the States for the first five years. All decisions would be made in the GST Council comprising of the representative of the Central government as chairman and representatives of the States as

members. The Council would have two-third votes of States, one-third of the Centre and the final decision would be made on the basis of three-fourth votes. The rates of taxations would be worked out and all by the GST Council. The efforts to ensure the support of all major political parties might have delayed the process but the Minister was happy that the inner strength of Indian democracy brought all the political parties together along with the States in support of the Bill.

Initiating the debate in Lok Sabha, **Shri M. Veerappa Moily** (INC) said the Congress party extended its full support for the GST. Since there were significant concerns about a very high GST rate, it was necessary and justifiable to cap the standard GST rate at 18 per cent. **Shri Subhash Chandra Baheria** (BJP) said the implementation of GST would give a further boost to the idea of ease of doing business. **Dr. P. Venugopal** (AIADMK) said his party was opposed to the Bill right from the beginning because Tamil Nadu, as a manufacturing and origin State, would lose substantial revenue and there was no full compensation for the loss accrued to the State. The implementation of GST would compromise the financial autonomy of the States in a federal set up. **Shri Kalyan Banerjee** (AITC) said as it would benefit micro, small and medium enterprises which were the backbone of the economy in terms of providing employment. **Shri Tathagat Satpahi** (BJD) said his party supported this Bill despite the fact that this would attack and erode the very base of federalism. He was afraid that GST would benefit the large manufacturing corporate sector alone and put the States in a disadvantaged position. **Shri Anand Rao Adsul** (SS) said it should be ensured that local

bodies received revenue on regular basis.

Dr Ravindra Babu (TDP) said GST would establish the concept of 'one nation, one tax' and GST rate should be fixed in very scientific way and should be a revenue neutral rate (RNR). **Shri A.P. Jithender Reddy** (TRS) asked for keeping the tax low while protecting the existing revenues of the Centre and the State governments. **Shri P. Karunakaran** (CPI-M) said the grievances of the States which had strong difference of opinion on the Bill needed to be addressed. He was of the view that GST would virtually take away the right of the States to impose taxes and leave them at the mercy of the Central government. **Shri Mekapati Raja Mohan Reddy** (YSR Congress) believed an abnormally high GST rate would add to inflationary pressures. **Shri Tariq Anwar** (NCP) said GST might lead to improved tax collection but GDP growth would depend upon how the government mobilized its internal revenues and how it spent its income. **Shri Rajesh Pandey** (BJP) said high GST rate would lead to tax evasion and too low rate could lead to revenue loss to the Centre and the States. **Shri Dharmendra Yadav** (SP) observed there was no mention of a tax limit on food grains. **Shri Prem Singh Chandumajra** (SAD) believed GST would eliminate leakages besides bringing uniformity in tax regime.

Shri Jai Prakash Narayan Yadav (RJD) said the tax system should be able to strengthen national and States' economy, besides removing regional imbalance. **Shri Sirajuddin Ajmal** (AIUDF) wanted to know how IT infrastructure would reach small villages and towns which lacked connectivity, electricity and Internet connection. **Dr Heena Vijaykumar Gavit** (BJP) was convinced GST would result in

a unified national market with seamless flow of goods and services and a simpler taxation structure. **Shri Dushyant Chautala** (INLD) wanted to know under which provision alcohol was excluded from the purview of GST which might result in States levying higher VAT on petrol and diesel. **Shri Santosh Kumar** (JD-U) said keeping petroleum products outside GST would be a deterrent to the development of markets based on uniform tax rates. **Shri N.K. Premachandran** (RSP) said the Bill was a significant step in the comprehensive indirect tax reform and would boost the national economy. **Shri Deepender Singh Hooda** (INC) urged the government to keep GST rate low and continue the capping for a long period. **Shri Vijay Kumar Hansdak** (JMM) wanted to know whether any green cess clause would be added in the law to compensate the States suffering due to mines and mineral related activities and environment pollution. **Shri C. N. Jayadevan** (CPI) asked the government to address the concerns of States regarding their fiscal freedom subsequent to the introduction of the GST. **Shri Raju Shetty** (Swabhimani Paksha) pleaded certain relaxations to cooperative sector and to the agro based companies. **Adv. Joice George** (Independent) wanted to know whether tea, coffee, cardamom, rubber, etc. would be treated at par with the agricultural products and exempted from the GST. **Shri Mallikarjun Kharge** (INC) said had the government accepted his party's suggestions earlier, the Bill would have been passed and implemented two years ago. He reiterated that any GST-related bill should be brought as Finance Bill not as Money Bill and the cap on tax should not exceed 18%.

Intervening in the debate, the Prime Minister, **Shri Narendra Modi** said Parliament was going to take an important step to liberate the people from tax terrorism. Thanking the political parties for their support, he said this was not a victory of any party or any government; rather it was a victory of high democratic traditions of the country. It was necessary that such an important issue was not decided solely on the basis of majority alone and efforts were made to accommodate suggestions from all quarters. After all consensus mattered in a democracy. All political parties always kept national interests above everything and this was one of the finest aspects of Indian democracy. The Prime Minister was confident that the system would bring uniformity in tax rates, strengthen the federal system, stop tax evasion and put an end to corruption and black money.

The Minister of Finance and Minister of Corporate Affairs, **Shri Arun Jaitley** in his reply said the 2011 Bill introduced by the UPA government never mentioned any cap or the concept of a cap. The taxes could be reduced as the system became more efficient. There would be no tax upon tax and certain items would be included under low taxation items bringing down the average taxation. Petroleum was covered by GST but not to be taxed under the present regime. It would be taxed by the States. Alcohol was kept out of the scope of GST because all the States were unanimous in this regard. The shift was towards a new mechanism of uniform tax structure across the country, away from separate State and Central taxes, said the Minister.

The Bill, as amended by the Rajya Sabha, was passed by a special majority after about a six hour long debate.

THIRD READING: INDIA

The Central Agricultural University (Amendment) Bill, 2016

The *Central Agricultural University Act, 1992* was enacted for the establishment and incorporation of a University for the North-Eastern region for the development of agriculture and for the furtherance of the advancement of learning and prosecution of research in agriculture and allied sciences in that region.

However, the definition of 'North-Eastern region' and the jurisdiction of the Central Agricultural University under the said Act did not cover the State of Nagaland. Therefore, it had been decided to amend the *Central Agricultural University Act, 1992* so as to include the State of Nagaland under the jurisdiction of the Central Agricultural University, having its headquarters at Imphal.

The Government accordingly brought forward the *Central Agricultural University (Amendment) Bill, 2016* to extend to the State of Nagaland the benefit of facilities provided by the Central Agricultural University for the development of agriculture and for the furtherance of the advancement of learning.

Debate

While piloting the Bill, the Minister in-charge of the Bill stated that in the *Central Agricultural University Act, 1992*, enacted for the North-Eastern Region States, the Government of Assam and the Government of Nagaland had opted out at that point of time. However, the Government of Nagaland had recently decided to go for a veterinary college. But to start the college, they needed a university with the recognition. It was for this reason the Amending Bill in question was required to be brought.

During discussion on the Bill in both Houses of Parliament, the measure got unanimous support from members of all sections of the Houses. While welcoming the measures some of the suggestions/views which emerged were:

- There is a need to expand the area of research and development of Central Agricultural University, Imphal in the State of Manipur, where they can do research in respect of pisciculture, fisheries and animal husbandry.
- The State of Nagaland has enormous potential for agricultural crops, fruits and vegetables but due to improper storage and harvest handling there is a huge loss, especially of the perishable items. Funds have to be provided for purchase of machinery and equipment with reasonable, affordable subsidy policy. The State does not have industries to absorb the educated, unemployed youth. So, they have every reason to take up agriculture seriously.

Agricultural education in the country must conform to global standards and there is a need to create a large pool of competent faculty in the country's institutions of technology to promote agriculture nation-wide.

- In view of growing global warming, the ill-effects of climate change and change in the cycle of seasons, it would be beneficial to provide proper and timely agricultural guidance to the farmers by the Agricultural Universities and save them from incurring losses.
- Modern technology and techniques in the North-East are to be considered by the Government. The Government has to come in a big way to implement modern technology and techniques in these regions.
- India is an agrarian country. Therefore, the agricultural research institutions have to play a vital role in ensuring the food security and economic growth of the country.

The Minister while replying to the discussions on the Bill inter alia stated that the Government of India had increased the agricultural education budget by 40%. It was further assured that the Government was fully committed to the development of the North-Eastern region of India.

The Bill was passed by Lok Sabha on 9 August 2016 and by Rajya Sabha on 11 August 2016. The Bill as passed by both Houses of Parliament was assented to by the President of India on 19 August 2016.

The Child Labour (Prohibition and Regulation) Amendment Bill, 2016

The *Child Labour (Prohibition and Regulation) Act, 1986* provides for prohibition of the engagement of children in certain employments and for regulating the conditions of work of children in certain other employments.

Section 3 of the said Act, *inter alia*, provides that employment of children below the age of fourteen years is prohibited in any of the occupations or processes specified in the Schedule to the said Act. Section 6 of the said Act provides that the provisions of Part III of the Act (which relates with the regulation of conditions of work of children) would apply to an establishment or a class of establishments in which none of the occupations referred to in section 3 is carried on.

On a considered decision it was proposed to prohibit employment of children in all occupations and processes to facilitate their enrolment in schools in view of the *Right of Children to Free and Compulsory Education Act, 2009* and to prohibit employment of adolescents (persons who have



completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the *ILO Convention 138* and *Convention 182*, respectively.

To achieve these objectives the Government brought forward *The Child Labour (Prohibition and Regulation) Amendment Bill, 2016*.

Salient Features of the Amending Legislation

- A number of amendments were made to the wording of the title of the Principal Act in view of the proposed provision to prohibit employment of children below fourteen years in all occupations and processes and the proposed provision to prohibit employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes set forth in the proposed Schedule;
- Further the short title of the Principal Act has been proposed to be amended by insertion of a new definition "adolescent" whose employment in hazardous occupations and processes is also proposed to be prohibited;
- Besides definition of "child" has been amended to the effect that a child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009;
- Section 3 of the Principal Act provides for prohibition of employment of children in certain occupations and processes, amendment has been proposed to this section to the effect to prohibit employment of children in all occupations and processes except where the child helps his family after his school hours or helps his family in fields, home-based work, forest gathering or attends technical institutions during vacations for the purpose of learning, but does not include any help or attending technical institutions where there is subordinate relationship of labour or work which are outsourced and carried out in home;
- A new section 3A has been inserted to prohibit employment of adolescents in any hazardous occupations and processes specified in the proposed Schedule;
- Section 4 of the Principal Act (pertaining to power to amend the

schedule) has been proposed to be amended to empower the Central Government to add or omit any hazardous occupations and processes from the Schedule to the proposed legislation;

- Part III of the Principal Act which contained provisions regarding regulation of conditions of work of children has been omitted in view of the prohibition of employment of children below fourteen years of age in all occupations and processes;
- An amendment has also been proposed to sub-section (1) of section 14 of the Principal Act to enhance the punishment :
 - from imprisonment for a term which shall not be less than three months but which may extend to one year
 - or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, to imprisonment for a term which shall not be less than six months but which may extend to two years,
 - or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both, for employment or permitting any children to work in any occupations or processes in contravention of section 3.
 - It is also proposed the parents or guardians of such children shall not be liable for such punishment unless they permit such children for commercial purposes.

Further amendments relating to penal provisions and offences as well as empowering the Government to undertake routine inspections were also included in the amended Bill.

Debate

During discussion on the Amending Legislation in both Houses of Parliament, there had been an extensive debate. The Minister-in-charge while piloting the Bill observed that the Amending Bill primarily sought total prohibition on the employment of any child of the 14 years in factories, establishment, shops etc. The intention was that every child should study in school. That was the very purpose of *Right to Education Act*.

The crux of the views which emerged during the discussion is as detailed below:

- The child labour usurps the childhood of the children and prevents them from going to school regularly. The girls are more susceptible to child labour than the boys. In case of daughters, child labour starts right from their house and finally goes to the farms. In the recent past the children were rescued from cracker industries, zari industries, carpet industries and bangle industries by several NGOs. The rescued children need to be trained through skill development schemes so that they are not pushed again into child labour.
- The decision to completely prohibit children up to the age of 14 years for employment is a welcome step.
- As regards penal provisions instead of penalizing the poor parents, a lenient view needs to be taken so that an alternate source of income can be provided to the family to help in abolishing child labour.
- It was felt that by justifying in law the participation of children in work before and after school hours, the Bill denies them the time and space to develop and grow as citizens with similar choices.
- In some quarters reservations were expressed that vide clause 5 of (family enterprises exemption) of the Amending Bill, the



THIRD READING: INDIA

Government is actually legitimizing the use of child labour albeit in a manner of family enterprises. It was also felt that by allowing this provision the Government sought to block hands of civil society from acting on saving children who are forced into labour.

- A view was also expressed that family enterprises provision must not be allowed to serve as a loophole to allow for exploitation of child in the name of family run enterprises. Most children who are academically inclined, do not have time for anything other than eat, sleep and study. It was, however, felt that children need be given life-skills and sought the dignity of labour. Hence part time work be encouraged. The Government nevertheless needs to have a monitoring mechanism.
- One of the fault lines in the country is the glaring reality of child labour. There are different definitions given to the term child labour. This needs to be looked into and align this with Right to Education, which the Amending Bill sought to do.
- Child labour is the outcome of socio-economic conditions prevailing in the society. This malaise needs to be rooted out. This requires a huge amount of social change and movement which can come about if the fraternity of legislators are able to build a lot of awareness.

The Minister-in-charge of the Bill in his reply underscored the objective of the Bill which is that every child must go to school and no child below the age of 14 years is deprived of school education. The term 'family' has been defined in the Bill keeping in mind the economic conditions of the country and many other factors. The Bill extends ban on child labour till the age of 14 in all sectors and adolescent children, i.e., 14 to 18 years, are prohibited to work in all hazardous processes. The Government had made the Child Labour Rehabilitation Fund mandatory. In the principal Act, there was a provision for working conditions of adolescents. It was assured that all provisions of labour rights would be included in the proposed Amending legislation.

Assuaging apprehensions and concerns expressed by Members, the Minister assured that Government were going to improve the National Child Labour Project along with all the other related matters like migrant labourers and bonded labourers. It was stressed that awareness was the most important thing. Further, participation of all the stakeholders including Trade Unions and NGOs is very necessary.

The Amending Bill was passed by Rajya Sabha on 19 July 2016 and by Lok Sabha on 26 July 2016. The Bill as passed by both Houses of Parliament was assented to by the President of India on 29 July 2016. Accordingly, the Child Labour (Prohibition and Regulation) Act, 1986, stood amended.

The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016

The Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*, were enacted for expeditious recovery of loans of banks and financial institutions. As many as about seventy thousand cases were pending in Debts Recovery Tribunals. Though the Recovery of Debts due to Banks and Financial Institutions Act provides for a period of 180 days for disposal of recovery applications, the cases were pending for many years due to various adjournments and prolonged hearings. In order to facilitate expeditious disposal of recovery applications, it had been decided to amend the said Acts and also to make consequential amendments in the *Indian*

Stamp Act, 1899 and the *Depositories Act, 1996*.

The amendments in the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* had been proposed to suit changing credit landscape and augment ease of doing business which, inter alia, include (i) registration of creation, modification and satisfaction of security interest by all secured creditors and provision for integration of registration systems under different laws relating to property rights with the Central Registry so as to create Central database of security interest on property rights; (ii) conferment of powers upon the Reserve Bank of India to regulate asset reconstruction companies in a changing business environment; (iii) exemption from stamp duty on assignment of loans by banks and financial institutions in favour of asset reconstruction companies; (iv) enabling non-institutional investors to invest in security receipts; (v) debenture trustees as secured creditors; (vi) specific timeline for taking possession of secured assets; and (vii) priority to secured creditors in repayment of debts.

The amendments proposed in the *Recovery of Debts due to Banks and Financial Institutions Act, 1993*, inter alia, include (i) expeditious adjudication of recovery applications; (ii) electronic filing of recovery applications, documents and written statements; (iii) priority to secured creditors in repayment of debts; (iv) debenture trustees as financial institutions; (v) empowering the Central Government to provide for uniform procedural rules for conduct of proceedings in the Debts Recovery Tribunals and Appellate Tribunals.

The Bill also sought to amend the *Indian Stamp Act, 1899*, so as to exempt assignment of loans in favour of asset reconstruction companies from stamp duty and the *Depositories Act, 1996* for facilitating transfer of shares held in pledge or on conversion of debt into shares in favour of banks and financial institutions.

The Government accordingly brought forward the *Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016*.

Debate

While piloting this umbrella Amending legislation, Minister of Finance, in-charge of this Bill, *inter alia* observed that one of the big challenges that the country faced was with regard to the enforcement of securities and the recovery of debt by financial institutions. As a follow up two important laws viz. the *Securitization Law* and the *Debt Recovery Tribunal Law (DRT)* also required to be amended. These laws were initially legislated in order to give disposal remedy as far as banks and financial institutions are concerned.

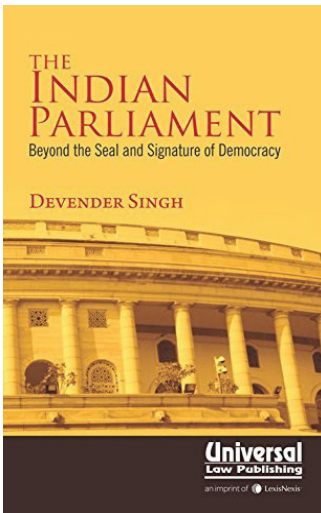
DRT as a law was meant to be an alternate or a substitute for a civil court. As far as the securitization law is concerned, this was enacted really with the idea of a bank or a financial institutions being entitled to enforce a security. The amendments were all referred to a Joint Committee of both Houses of Parliament. The Joint Committee had recommended changes to these laws and consequential changes to the Stamp Act and the Depositories Act itself. The report of the Joint Committee was unanimous. The Government had accepted all the suggestions which the members of the Joint Committee had given. The Amending Bill welcomed by Members as a timely initiative and met with a broad consensus.

The Bill was passed by Lok Sabha on 1 August 2016 and by Rajya Sabha on 9 August 2016. The Bill as passed by both Houses of Parliament was assented to by the President on 12 August 2016.



The Parliamentarian: Book Review

The Indian Parliament: Beyond the seal and signature of democracy



Title: ***The Indian Parliament: Beyond the seal and signature of democracy***

Author: Devender Singh
Published by Universal Law Publishing, an imprint of LexisNexis, New Delhi.
Price Rs 625/-

Book Review by Dr Shashi Tharoor MP

As somebody who has, over the last couple of decades, consistently made a case for the adoption of the presidential system of government in India, it was with much interest that I accepted an invitation to review Devender Singh's highly informative *The Indian Parliament: Beyond the Seal and Signature of Democracy*.

Parliamentary democracy has, from before Independence, been a concept that attracted the greatest moral reverence from our founding fathers. When the British Prime Minister Clement Attlee suggested on the eve of 1947 to our leaders the possibility of a presidential system in India, *"they rejected it with great emphasis. I had,"* he later wrote, *"the feeling that*

they thought I was offering them margarine instead of butter." Since the nineteenth century, Indians had admired the freedoms and ideals Parliament represented and sought to bring to their own countrymen that which the British had denied us.

There is no doubt that India and Indians have, over the last seventy years, embraced Parliament with great enthusiasm (though sometimes, in the face of political intransigence, it looks as though sincerity in following the rules and ideals of this institution is lacking). Even our Communists have delighted in making Parliament their own, reveling in their adherence to British parliamentary conventions (down to the desk-thumping form of applause) and complimenting themselves on their authenticity as Parliamentarians. One veteran Marxist legislator, Hiren Mukherjee, used to proudly assert that British Prime Minister Anthony Eden would have felt more at home during Question Hour in the Indian Parliament than in the Australian!

It is this cherished home of our democracy that Mr Singh captures in his lucid, highly readable text, covering history, procedure, methods, and even anecdotal accounts, giving us what is an excellent manual on what Parliament stands for and how it functions.

Accessible to the scholar as well as to the lay reader, *The Indian Parliament* marries Mr Singh's meticulous understanding of this complex institution with a succinct and exact writing style, leaving very little unsaid, without succumbing to verbosity or a daunting

excess of pages. Chapters on the budgetary process, on parliamentary questions, and on various devices that allow Members to raise issues in the Houses are particularly noteworthy. To Mr Singh, Parliament is the think tank of our polity, and not merely a 'talking shop' or a glorified debating club. It is a platform to identify solutions in a nation as diverse and complex as ours, and has mechanisms and processes that seek to allow it to achieve its fullest potential.

There are, as alluded to earlier, practical difficulties (particularly over the last decade) in tapping into this potential of Parliament, not only because the nature of our politics has changed but also on account of the rise of coalition governments and a dismaying disregard for institutional procedure. The power of contempt, sparingly used, along with Dr Singh's description of the topic of parliamentary privileges constitute a very interesting read, not least because these are also issues that engage the attention of our media and the wider (ever younger) population of our country.

The book also goes beyond Parliament - there are a series of chapters dedicated to political parties, electoral reforms, the relationship between Parliament and the Judiciary (another fascinating subject) and the media. The debates of the Constituent Assembly, which have been unduly neglected in general, receive promising attention in Mr Singh's hands. They are a vast, enriching collection of the voices and minds that shaped

our parliamentary system and constitution, and Mr Singh quotes substantial excerpts from these, making his book not only more informative but also more enjoyable and grounded in history. His immense experience and knowledge of the institution and its ancillary bodies are another advantage that he brings to his writing, which I have no doubt will serve not only as an asset to students and teachers of India's political and institutional history, but also to Parliamentarians like me.

As a Member of Parliament myself, *The Indian Parliament* is a book that I enjoyed engaging with and studying - it will serve as a point of reference not only to champions of parliamentary democracy but also to critics seeking to sharpen their own arguments due to the sheer scale and depth of the information it contains, not to speak of those future generations of Indians eager to learn about the history of our great democratic institutions.

Dr Shashi Tharoor MP is a second term Member of the Lok Sabha (the House of the People), India and a former Union Minister of State for Human Resource Development. Currently, he is Chairman of the Standing Committee on External Affairs. He represents Thiruvananthapuram parliamentary constituency and belongs to the Indian National Congress. He served at the United Nations for 29 years and announced his departure from the post of Under Secretary-General after finishing second in the 2006 election for the post of UN Secretary-General. He has to his credit several widely acclaimed books on a wide range of subjects. His sixteenth book



is, 'The Long Darkness'. The book, *Show Business*, published in 1992, received a front page accolade in the New York Times and has been made into a 'Bollywood' motion picture. He is a prolific writer of great artistic merit and has earned many awards, both for fiction and non-fiction works. He was named Global Leader of Tomorrow at the World Economic Forum, Davos, Switzerland in 1998. His special interests are International affairs, Literature, Cricket, Theatre and Human Rights. He is an author, politician and former international civil servant straddling different worlds of experience. He is author of hundreds of columns in the New York Times, The Washington Post, Time, Newsweek, The Indian

Express, etc. He is a dazzling speaker and the most followed politician in India until 2014 when Prime Minister Narendra Modi overtook him on Twitter.

Author Devender Singh is Additional Secretary, Lok Sabha Secretariat in the Parliament of India. He holds master's degree in English literature and Bachelor's degree in law. He has been closely associated over three decades with the yin and yang of Indian Parliament, its intricate processes and procedures and mechanics of parliamentary scrutiny and oversight. He is known for his deep analytical insight, professional competence and wide knowledge of different political and parliamentary

systems. As the principal draftsman of some of the most acclaimed reports of the Public Accounts Committee and the Estimates Committee and other prestigious committees of Parliament, he made distinct contribution in servicing the committees and earned all round encomium from the Chairmen and the committee members. A scholar of constitutional law, comparative politics and parliamentary studies, having long time ring side view of the working of Indian Parliament, he is a faculty member of the Bureau of Parliamentary Studies and Training and the Institute of Constitutional and Parliamentary Studies. He has delivered lectures on almost all aspects of the

functioning of Indian Parliament and the Constitution. As Secretary to parliamentary delegations, he has visited many countries and studied their parliamentary and political systems. A prolific writer, his articles on constitutional and parliamentary themes have been published in national dailies, magazines and journals of repute. His other two books are: *Parliamentary Questions: Glorious Beginning to an Uncertain Future*; and *Central Hall to Great Hall*.

Below: A Bank of India rupee note showing the Indian Parliament, known as Lok Sabha or the House of the People.



Executive Committee, Officers, CPA Secretariat and Commonwealth Women Parliamentarians (CWP) Steering Committee

Patrons

PATRON:

Her Majesty Queen Elizabeth II
Head of the Commonwealth

VICE-PATRON:

Vacant

CPA Executive Committee

Executive Committee Members' dates of membership are indicated below each name.

Officers

PRESIDENT:

Vacant

VICE-PRESIDENT:

Vacant

CHAIRPERSON OF THE EXECUTIVE COMMITTEE

(2014-2017):

**Hon. Dr Shirin Sharmin
Chaudhury, MP**

Speaker of Parliament,
Bangladesh

VICE-CHAIRPERSON

(2015-2016):

Hon. Shirley M. Osborne, MLA

Speaker of the Legislative
Assembly, Montserrat
*Also Regional Representative
for Caribbean, Americas and the
Atlantic Region (2013-2016)*

TREASURER

Acting Treasurer (2016):

Hon. Vicki Dunne, MLA

Australian Capital Territory

CHAIRPERSON OF THE COMMONWEALTH WOMEN PARLIAMENTARIANS (CWP)

(2013-2016):

Rt Hon. Rebecca Kadaga, MP

Speaker of Parliament, Uganda

Regional Representatives

AFRICA

Hon. Thandi Modise, MP

Chairperson of the National
Council of Provinces, South Africa
(2013-2016)

**Hon. Machana Ronald
Shamukuni, MP**

Botswana
(2013-2016)

Hon. Mutimura Zeno, MP

Rwanda
(2014-2017)

Rt Hon. Themba Msibi, MP

Speaker of Parliament, Swaziland
(2014-2017)

Hon. Emilia Monjowa Lifaka, MP

Deputy Speaker of Parliament,
Cameroon
(2015-2018)

Hon. Umar Buba Jibril, MP

Deputy House Leader, Nigeria
(2015-2018)

ASIA

Hon. Karu Jayasuriya, MP

Speaker of Parliament, Sri Lanka
(2013-2016)

Hon. Mian Tariq Mehmood, MPA

Provincial Assembly, Punjab,
Pakistan
(2014-2017)

Hon. Imran Ahmad, MP

Bangladesh
(2015-2018)

AUSTRALIA

Hon. Don Harwin, MLC

President of the Legislative
Council, New South Wales
Acting Regional Representative
(2016)

Hon. Kezia Purick, MLA

Speaker of the Legislative
Assembly, Northern Territory
(2014-2017)

Hon. Russell Paul Wortley, MLC

President of the Legislative
Council, South Australia
(2015-2018)

BRITISH ISLANDS AND MEDITERRANEAN

Hon. Carmelo Abela, MP

Minister for Home Affairs &
National Security, Malta
(2013-2016)

Hon. Derek Thomas, MLC

St Helena
(2014-2017)

Rt Hon. Sir Alan Haselhurst, MP

United Kingdom
(2015-2018)

CANADA

Hon. Tom Osborne, MHA

Speaker of the House of Assembly,
Newfoundland and Labrador
(2013-2016)

Hon. Jackson Lafferty, MLA

Speaker of Legislative
Assembly, Yukon
Acting Regional Representative
(2014-2017)

Hon. Alexandra Mendes MP

Canada
(2015-2018)



Portrait of The Queen © John Swannell/Camera Press

CARIBBEAN, AMERICAS AND ATLANTIC

Hon. Shirley M. Osborne, MLA
Speaker of the Legislative
Assembly, Montserrat
(2013-2016)
Also Vice-Chairperson
(2015-2016)

Hon. Michael Peyrefitte, MP
Speaker of Parliament, Belize
(2014-2017)

Hon. Franklin O. Brand, MP
Speaker of the National Assembly,
St Christopher and Nevis
(2015-2018)

INDIA

**Hon. Dr Charnjit Singh
Atwal, MLA**
Speaker of the Legislative
Assembly, Punjab
(2013-2016)

Dr Sitasharan Sharma, MLA
Speaker of the Legislative
Assembly, Madhya Pradesh
(2014-2017)

Shri P. P. Chaudhary, MP
Lok Sabha, India
(2015-2018)

PACIFIC

Hon. Paul Foster-Bell, MP
New Zealand
(2013-2016)

Hon. Niki Rattle, MP
Speaker of Parliament, Cook
Islands
(2014-2017)

**Hon. Nafioa Talaimanu Ketu,
MP**
Deputy Speaker of the Legislative
Assembly, Samoa
(2015-2018)

SOUTH-EAST ASIA

Hon. S. K. Devamany, MP
Speaker of Perak State
Legislative Assembly, Perak,
Malaysia
(2013-2016)

Dr Lim Biow Chuan, MP
Singapore
(2014-2017)

Hon. Dato' Noraini Ahmad, MP
Malaysia
(2015-2018)

CPA Regional Secretaries

AFRICA

Dr Thomas Kashillah
Parliament of Tanzania

ASIA

Md. Ashraful Moqbul
Parliament of Bangladesh

AUSTRALIA

Mr Tom Duncan
Australia Capital Territory
Legislative Assembly

BRITISH ISLANDS & MEDITERRANEAN

Mr Andrew Tuggey
Parliament of the United Kingdom

CANADA

Mr Blair Armitage
Parliament of Canada

CARIBBEAN, AMERICAS & ATLANTIC

Ms Heather Cooke
Parliament of Jamaica

INDIA

Shri Anoop Mishra
Parliament of India

PACIFIC

Mr Steve Cutting
Parliament of New Zealand

SOUTH-EAST ASIA

Mrs Roosme Hamzah
Parliament of Malaysia

CPA Secretariat

Mr Akbar Khan
7th Secretary-General

Commonwealth Parliamentary
Association, CPA Secretariat,
Suite 700, Westminster House,
7 Millbank, London SW1P 3JA,
United Kingdom

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A full listing of the CPA Branch Directory can be
found at: www.cpahq.org

Commonwealth Women Parliamentarians (CWP) Steering Committee

PRESIDENT

Hon. Sagufta Yasmin MP
Bangladesh
(2015-2016)

CHAIRPERSON

Rt Hon. Rebecca Kadaga, MP
Speaker of Parliament, Uganda
(2013-2016)

AFRICA

Hon. Angela Thoko Didiza, MP
South Africa (2015-2016 to
complete the remainder of Hon.
Lucia Witbooi MP's term from
2013-2016)

ASIA

Hon. Asma Rasheed, MP
Maldives (2015-2018)

AUSTRALIA

Hon. Michelle O'Byrne, MP
Tasmania (2016 to complete
the remainder of Hon. Catherine
Cusack, MLC's term from 2013-
2016)

BRITISH ISLANDS AND MEDITERRANEAN

Joyce Watson AM
Wales (2015-2018)

CANADA

Hon. Linda Reid, MLA
Speaker of the Legislative
Assembly, British Columbia,
Canada (2014-2017)
*Also Vice-Chairperson of the
CWP (2015-2016)*

CARIBBEAN, AMERICAS AND ATLANTIC

Hon. Shirley M. Osborne, MLA
Speaker of the Legislative
Assembly, Montserrat
(2015-2018)

INDIA

Hon. Meenakshi Lekhi, MP
India (2014-2017)

PACIFIC

**Hon. Munokoa Poto
Williams, MP**
New Zealand (2014-2017)

SOUTH-EAST ASIA

Ms Lily Neo, MP
Singapore (2013-2016)

SUBSCRIBE TODAY

THE PARLIAMENTARIAN

