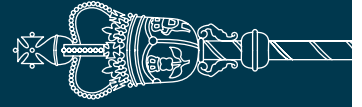


# TheParliamentarian



Journal of the Parliaments of the Commonwealth

2015 | Issue Two XCVII | Price £13



## PLUS ▶

The International Legacy of Magna Carta

PAGE 80

Childrens' Rights in Jamaica

PAGE 82

The Right to Food in Mauritius

PAGE 90

The Right to Representation: Norfolk Island

PAGE 102





**61<sup>st</sup> CPC 2015**  
COMMONWEALTH  
PARLIAMENTARY  
CONFERENCE  
ISLAMABAD PAKISTAN



**61<sup>st</sup> COMMONWEALTH PARLIAMENTARY CONFERENCE**  
**ISLAMABAD, PAKISTAN**  
**30 SEPTEMBER – 8 OCTOBER 2015**

**Conference Main Theme:**  
**Renewing the commitment to pluralism and  
inclusive democracy in the Commonwealth**

**Workshops and Debates:**

- A. Workshop: Impact of terrorism on state and society;  
the Commonwealth Parliamentarians' challenge**
- B. Debate: Parliaments and Governments are ineffective in their response to  
the management of natural and man-made disasters**
- C. Workshop: Fostering religious freedom in Commonwealth democracies**
- D. Workshop: Gender based violence; the economic impact**
- E. Workshop: Enhancing good governance and accountability in Parliament:  
developing and enforcing anti-corruption measures**
- F. Debate: The media is far too influential in modern day politics**
- G. Workshop: Creating political space for youth in Commonwealth Parliaments**
- H. Workshop: Is unequal wealth distribution a threat to democracy in the Commonwealth?**

**Final Plenary: Is the Commonwealth still relevant in today's world?**

**35<sup>th</sup> SMALL BRANCHES CONFERENCE**  
**2 – 3 OCTOBER 2015**

**Plenary Sessions:**

- 1) Improving the role of Parliamentary Committees in Small Branches: the practices and challenges**
- 2) How should Small Branches deal with the impact of Climate Change?**
- 3) Meeting the challenges of protecting territorial waters**
- 4) Is unequal wealth distribution a threat to democracy in the Commonwealth?**
- 5) Eliminating barriers to women's leadership in politics in Small Branches**

**For further information and to register visit [www.cpc2015.pk](http://www.cpc2015.pk)**



**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 the implementation  
of the enduring values of the Commonwealth.**

**Calendar of Forthcoming Events**

**Confirmed at 24 June 2015**

**2015**

**July**

- 19-25 July CPA Canada Regional Conference - British Columbia, Canada
- 26 July to 1 August CPA Caribbean, Americas and Atlantic Region 40<sup>th</sup> Annual Conference  
Tortola, British Virgin Islands
- 30 July to 1 August Human Rights Seminar for the Australia and Pacific Regions - Wellington, New Zealand

**August**

- 9-15 August CPA Africa Region 46<sup>th</sup> Regional Conference – Nairobi, Kenya
- 17-21 August CPA Small Branches Committees – Isle of Man
- 26-27 August Public Accounts Committee Meeting for the Pacific Region - Wellington, New Zealand

**September**

- 1-5 September CPA Constituency Development Funds Conference – London, UK
- 30 September to 8 October 61<sup>st</sup> Commonwealth Parliamentary Conference - Islamabad, Pakistan

**October**

- 2-3 October 35<sup>th</sup> Small Branches Conference - Islamabad, Pakistan
- 26-28 October CPA and United Nations Environment Programme (UNEP) Legislators' Experts Meeting on  
Climate Change - London, UK

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 events and conferences to [hq.sec@cpahq.org](mailto: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](http://www.cpahq.org) or by emailing [hq.sec@cpahq.org](mailto:hq.sec@cpahq.org).**





# CONTENTS: *THE PARLIAMENTARIAN*

## 2015: ISSUE TWO



PAGE 82



PAGE 90



PAGE 102



PAGE 108

**The *Parliamentarian*:**  
Journal of the Parliaments  
of the Commonwealth  
Vol. XCVII  
2015: Issue Two  
ISSN 0031-2282

Issued by the Secretariat  
of the Commonwealth  
Parliamentary Association,  
Suite 700, Westminster  
House, 7 Millbank, London  
SW1P 3JA, United Kingdom  
Tel: (+44-20) 7799-1460  
Fax: (+44-20) 7222-6073  
Email: [hq.sec@cpahq.org](mailto:hq.sec@cpahq.org)  
[www.cpahq.org](http://www.cpahq.org)

Publisher:  
**Mr Joe Omorodion**  
Acting Secretary-General  
& Director of Finance and  
Administration.

**Jeffrey Hyland, Editor**  
[editor@cpahq.org](mailto:editor@cpahq.org)

Images: Credit Shutterstock  
and CPA images.  
Front cover image: Magna  
Carta (Shutterstock image  
185480369).

Printed in: United Kingdom by  
Warners Midlands, PLC;  
New Delhi, India by Jainco Art  
India, and Singapore by Times  
Printers Private Limited.

## IEWS & COMMENT

### Editor's Note

Promoting and protecting  
our rights  
Page 70

### View from the Chair

Chairperson's Update to the  
Executive Committee Meeting  
Page 72

### View from the CWP

Women against Global  
Terrorism  
Page 74

### View from the Acting Secretary-General

The role of Parliaments in  
protecting our rights  
Page 76

### The Acting Secretary-General's Commonwealth Photo Gallery

Page 78

## FEATURE ARTICLES

### Magna Carta: 1215-2015

Examining the International  
legacy of Magna Carta.  
Page 80

### Protecting Children's Rights

Engaging the local community  
in protecting children's rights in  
Jamaica.  
Page 82

### Human Rights and Terrorism

The War of Terror and the War  
on Terror: A view from Ghana.  
Page 86

### The Right to Food

How the agricultural industry in  
Mauritius is meeting the needs  
of the population.  
Page 90

### Child Advocacy

Examining accountability in  
Children's Services in Western  
Australia.  
Page 94

### Immigration Rights

Balancing economic and family  
based immigration in Canada.  
Page 98

### Parliamentary Rights

Norfolk Island and the right to  
self-government.  
Page 102

### Media Rights

The relationship between  
Parliament and the Media.  
Page 106

### Child Labour

Is India's Child Labour  
(Prohibition & Regulation)  
Law enough?  
Page 108

### Codes of Conduct

Maintaining ethical standards  
and ensuring that public  
confidence in parliament is  
assured.  
Page 112

## NEWS

### CPA Conferences, Seminars and Events Photo Gallery

Page 116

### CWP News

Commonwealth Women  
Parliamentarians (CWP)  
Regional Strengthening  
activities.  
Page 118

## PARLIAMENTARY REPORT

### Parliamentary Report

Featuring parliamentary  
reports and third readings  
from Sri Lanka, New Zealand,  
Canada, India, the United  
Kingdom and Australia.  
Page 119

#### Annual subscription

(four issues)

UK: £40 inc. postage.  
Worldwide: £42 surface post  
£48 airmail

#### Price per issue

UK: £13  
Worldwide: £14 surface post  
£15 airmail

#### Disclaimer

Opinions and comments  
expressed in articles and  
reviews published in *The  
Parliamentarian* are those of  
the individual contributors and  
should not be attributed to the  
Secretariat of the Association.

#### Contributors

Thank you to all contributors  
for this issue. Special thanks  
to Anna Schuesterl at the CPA  
Secretariat.



Promoting sustainable forest management





# PROMOTING AND PROTECTING OUR RIGHTS

## The Editor's Note

Today, many of the rights which we take for granted in our daily lives have developed through their definitions as laid out in international treaties and conventions, such as the UN Declaration of Human Rights and the Commonwealth Charter. This also extends back to early documents in history such as the Magna Carta, which established the basic freedom of the individual and rights such as the right to 'trial by jury', which is celebrating its 800<sup>th</sup> anniversary in 2015.

This issue of *The Parliamentarian* focuses on the many different rights that we value and the challenges to those rights that affect people right across the Commonwealth. It also examines how parliamentarians are working to promote and protect those rights in many different ways.

The 800<sup>th</sup> anniversary of Magna Carta this year provides us with the opportunity to reflect upon the historical aspects of our rights and the establishment of key principles that have shaped parliamentary democracies across the Commonwealth. Sir Robert Worcester, Chairman of the Magna Carta 800<sup>th</sup> Anniversary Commemoration Committee and a leading academic gives us his



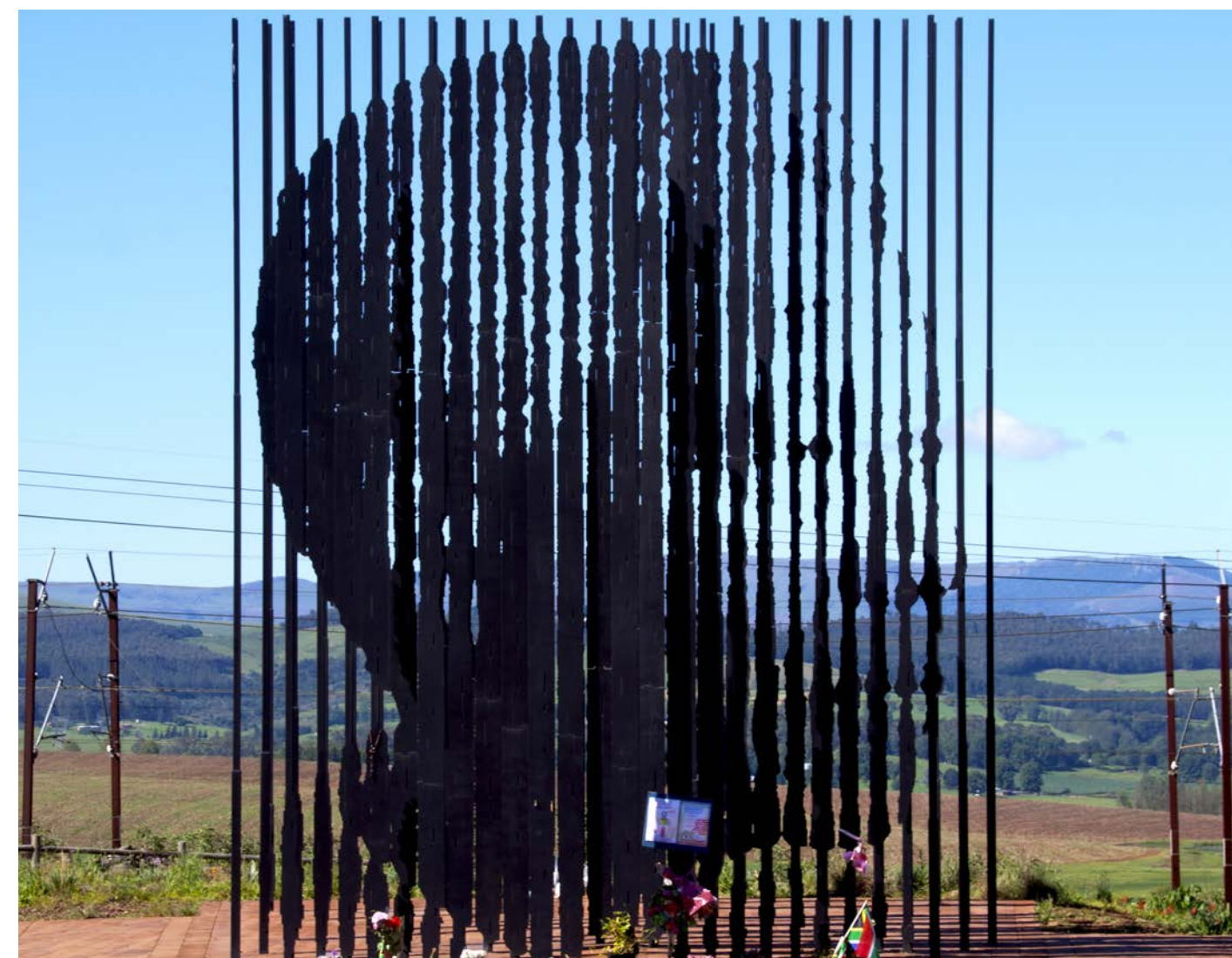
**Jeffrey Hyland, Editor**  
*The Parliamentarian*

overview of the international legacy of the charter. The Acting Secretary-General & Director of Finance and Administration of the Commonwealth Parliamentary Association (CPA), Mr Joe Omorodion outlines in his 'View' how Magna Carta and other international treaties have influenced rights in the Commonwealth and how they have given parliamentarians renewed focus on protecting these rights.

The Chairperson of the Executive Committee of the CPA, Dr. Shirin Sharmin Chaudhury, MP (Bangladesh) shares her vision for the CPA and its members in a speech that was given at the Executive Committee meeting held in Sabah,

Malaysia earlier this year.

The political, military and judicial challenges in combating cross-border terrorism and the impact this has on human rights is examined by Dr. Benjamin Kunbuor, MP (Ghana) while the Chair of the Commonwealth Women Parliamentarians (CWP) Rt Hon. Rebecca Kadaga, MP (Uganda) in her 'View' looks at the role of women in the fight against global terrorism.



**"Today, many of the rights which we take for granted in our daily lives have developed through their definitions as laid out in international treaties and conventions, such as the UN Declaration of Human Rights and the Commonwealth Charter."**

Children's rights are scrutinized in several ways in this issue:

Minister Sharon Ffolkes-Abrahams (Jamaica) looks at ways that the government in Jamaica are combatting child abuse and Lisa Baker, MLA (Western Australia) documents how the establishment of a Commissioner for Children and Young People will help in the accountability of children's rights. The protection of children in relation to labour rights and the measures that parliament is putting in place to protect their right to education are outlined by Prem Das Rai, MP (India).

Parliamentary rights and the right to self-representation in the Norfolk Island Legislative Assembly are examined by Speaker David Buffett MLA and Chief Minister Lisle Snell MLA (Norfolk Island). The rights of immigrants and an analysis of how Canada has attempted

to integrate their existing population with an influx of migrants is looked at by Devinder Shory, MP (Canada) and the Hon. Mahen K. Seeruttun, MP (Mauritius) looks at the basic human right of access to food and how his government is working with the agricultural industry to protect this.

The rights of the media and the role of parliaments in ensuring media accountability are reflected upon by the Hon. Linda Reid, MLA (British Columbia, Canada) following the CPA Parliament and Media Law Conference which was held in Andhra Pradesh, India and Senator Hon. Anita Raynell Andreychuk (Canada) reports on the impact of developing an Ethics and Conflict of Interest Code in the Senate of Canada.

This issue of *The Parliamentarian* also includes a report on the Commonwealth Women Parliamentarians (CWP) regional strengthening activity as well as parliamentary reports and legislative news from Sri Lanka, Canada, the United Kingdom, India, New Zealand and Australia.

Finally, as the new Editor of *The Parliamentarian*, I look forward to hearing your feedback and comments on the publication and if you would like to suggest any future themes, articles or contributions to the Journal then do please get in contact at [editor@cpahq.org](mailto:editor@cpahq.org).

**Jeffrey Hyland**  
Editor, *The Parliamentarian*, June 2015





# VIEW FROM THE CHAIR

## View from the Chairperson of the CPA Executive Committee

**Chairperson's Update to the Executive Committee Meeting held in April 2015 in Kota Kinabalu, Sabah, Malaysia.**

"Allow me to begin by welcoming all the esteemed members of the Executive Committee of the Commonwealth Parliamentary Association (CPA) to the Executive Committee Meeting at Kota Kinabalu, Sabah, Malaysia. I would like convey my heartfelt thanks to the host Branch, CPA Malaysia, for their warm hospitality to us in the beautiful, serene resort, Kota Kinabalu.

This is my second meeting of Executive Committee after my election to the position of Chairperson. The first meeting was held on 9 October 2014 in Cameroon, just after the election. We are already in the midst of the Executive Committee meeting and are going through very important agendas.

I would like to express my sincere gratitude to you for your kind support extended to me as the Chairperson and to the team at the CPA Secretariat in taking forward the work of the Commonwealth Parliamentary Association (CPA).

It is indeed a great pleasure for me to give you an update of the ongoing work of the CPA since October 2014. The last six months have been a very busy time for CPA. During this time, I had the opportunity to take part in a number of CPA events organized by different Branches across the Commonwealth regions.

I attended the CPA Workshop on Parliamentary Agriculture

**"Promoting the 'Young Commonwealth' is the theme of the Commonwealth. CPA is working to facilitate young parliamentarians to give young people a platform to raise a range of issues that impact their lives."**



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

Committees of India, Asia and South East Asia held in Chandigarh, Punjab in October 2014. It was a great opportunity to take part in the CPA UK Branch Conference on 'Human Rights in Modern Day Commonwealth: Magna Carta to Commonwealth Charter' in London in February 2015.

I also went to the British Islands and Mediterranean Region (BIMR) Commonwealth Women Parliamentarians Conference in Gibraltar in February 2015. I was invited by the Royal Commonwealth Society to speak at Westminster Abbey on Commonwealth Observance Day on 9 March 2015 in the presence of Her Majesty Queen Elizabeth II and members of the Royal Family. The CPA Bangladesh Branch also hosted the CPA Parliamentarians of South Asia Conference on Emerging Economies of South Asia in November 2014 in Dhaka.

Let me begin by sharing a vision for CPA. CPA, being a unique platform of Parliamentarians of Commonwealth countries, has great potential to effectuate innovative changes in addressing the common concern of ensuring the welfare of the people.

It is therefore, important for us to ascertain where we would like to see CPA in the next three years. It is imperative to pin point with objective precision and the utmost clarity as to what CPA wants to achieve over this tenure and lay down a foundation for the years beyond.

It is for the Executive Committee to steer the way ahead by putting together a forward looking, relevant plan linked to the present objectives and activities of CPA. In doing so it is essential to have a focused approach. It is necessary to identify a couple of issues which can be taken forward by adopting innovative ideas and approaches.

Promoting the 'Young Commonwealth' is the theme of the Commonwealth. CPA is working to facilitate young parliamentarians to give young people a platform to raise a range of issues that impact their lives. In our endeavour to pursue this goal, the Executive Committee can find new ways of empowering the young to shape their future. We can devise modes for resource mobilization in member countries for providing the best



**The opening ceremony at the CPA Executive Committee Mid-Year Meeting in Malaysia.**

opportunities to our young people.

CPA is also working to promote gender sensitive parliaments by increasing women representation to form a critical mass and also to ensure capacity building of women members of parliament and nurturing women political leadership from grass root level. We can think about how to make it more effective and deliver results by actually changing the dynamics within parliaments of Commonwealth countries.

In the era of globalization, we live in an interconnected world. Parliaments need to play a proactive role in encountering the challenges posed by globalization. We are in a phase of transition. Moving away from the Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs), effectuating a shift in the global development agenda framework.

It is time for Parliamentarians of the Commonwealth to voice the

**"In our endeavour to pursue this goal, the Executive Committee can find new ways of empowering the young to shape their future. We can devise modes for resource mobilization in member countries for providing the best opportunities to our young people."**

needs and aspirations of the people they represent in this process.

I would therefore, like to propose to the Executive Committee to consider the idea of putting forward a proposal, highlighting the position of the Commonwealth on development issues like food security, climate change, gender equality, eradication of poverty, access to health care, water and sanitation, energy crisis, peace and security before the Commonwealth Heads of Government Meeting (CHOGM) due to take place in November 2015 in Malta. It is important that the governments making their commitment at global level take account of the concerns of Parliamentarians.

I would therefore, request all members to consider the thoughts that I have shared with you. Your valuable suggestions and inputs will further fortify our efforts in promoting democratic governance, rule of law, sustainable, inclusive and equitable development, through proactive parliaments and vigilant parliamentarians across the Commonwealth.

Let us work together in making the Commonwealth Parliamentary Association proactive, relevant, dynamic and visible in its effort to make a positive difference in the lives of the people of Commonwealth by materializing their common aspirations."

**Dr Shirin Sharmin Chaudhury, MP  
Speaker, Bangladesh Parliament  
Chairperson, CPA Executive Committee  
Kota Kinabalu, Sabah, Malaysia.**





# WOMEN AGAINST GLOBAL TERRORISM

## View from the Commonwealth Women Parliamentarians (CWP) Chairperson

Our dear readers, welcome yet again to another issue of *The Parliamentarian*. It is always an honor for us as the Commonwealth Women Parliamentarians and for me personally as the Chairperson to contribute to this Journal.

This time, I feel a sense of responsibility to touch on an issue which is a major threat globally to the entire mankind – the issue of global terrorism. Recent times have showed that women are very much at the centre of this real threat in different capacities; as victims, as accomplices and as fighters against terrorism.

### Women as victims of terrorism

If there has been one common strand shared by the extremist movements that have captured the world's attention in the last year, from northern Nigeria to northern Iraq, Syria to Somalia, and Myanmar to Pakistan, it is that in each and every instance, the advance of extremist groups has been coupled with vicious attacks on women's and girls' rights.

Terrible mass violations are mirrored in the accounts of the Nigerian girls who fled from Boko Haram; in the narratives of Somali women liberated from the rule of Al-Shabaab; and in descriptions of life under the Islamist group Ansar Dine in northern Mali. In all these scenarios, the bodies of women have been turned into 'battlefields' where rape is used as an instrument of humiliation, degradation and oppression.

The identity and scene may change, but the common agenda and first order of business for these extremist groups is almost invariably to place limits on women's access to education and health services, restricting their participation in economic and political life and enforcing the restrictions through terrifying violence.

These violations are the extreme end of a global wave of fundamentalist conservatism, but it is an agenda shared by extremists of all religions, whose efforts seem invariably to focus on the suppression of women's autonomy and a return to delineated, outdated gender roles. In the last couple of years, over 1,000 terrorist attacks occurred worldwide, resulting in more than 17,800 deaths and more than 32,500 injuries. In addition, more than 2,990 people were kidnapped or taken hostage, with the majority being women.



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

### Women as accomplices of terrorism

It is evident that women are increasingly playing a role in terrorism or at least abetting the crime. The war on terror has restricted freedom of action within the security environment for terrorist organizations, making it more advantageous for terrorist organizations to use women to support or execute terrorist activities.

In countries where terrorism originates and extremist organizations find safe haven and freedom of movement, the social environment can also play a significant role in leading women towards supporting terrorism. Discriminatory religious and social customs in these same countries leave women as a largely untapped resource in supporting the ideological causes of terrorist organizations.

Female terrorist acts can also generate much greater media attention than those conducted by males, further encouraging terrorist organizations to expanding their recruiting of women.

Counterterrorism strategies tend to ignore gender as a relevant factor and in doing so exclusively focus on male imposed threats. Although women taking part in terrorist and extremist acts is not new and dates back many years, their presence in terrorist organizations as both leaders and executors is increasing around the globe.

The increasing role of women in terrorist organizations in many cases can be attributed to meeting a need or a shortage within the organization. Terrorist organizations are struggling with a shortage of available personnel with so many males being captured, killed or unwilling to support the cause. International cooperation in the global war on terror has made it difficult for organizations to continue to fight without access to the appropriate human and financial resources.

This is a pattern associated with terrorist organizations that increases pressure on both women and men. In Iraq for example, women were deployed to smuggle arms and execute suicide bombings, during a clamp down on Al-Qaeda in the mid-2000s. The perpetrators usually capitalize on the women's superior ability to evade security checks, cache weapons in clothing and attract less suspicion as suicide bombers.

The tactical use of women due to lesser suspicion has also been evident in Islamist violence in Pakistan and Indonesia; and within the

conflict in Israel and Palestine. Increasingly, organizations abduct and forcefully recruit both males and females during childhood to train and manipulate them at an early age to support the cause.

### Women as fighters against terrorism

Whereas it is factual that women have been the victims, and in some instances real accomplices, it is also increasingly evident that women are a formidable force as fighters against terrorism be it as investigators, prosecutors, counsellors, peace makers and as managers of defence and security. I would like to take the opportunity to salute those brave women who have stood up and resisted terrorists especially those who are in the armed forces all over the world.

A number of organizations worldwide such as Women Without Borders and PAIMAN Alumni Trust are utilizing the strategic role of mothers and matriarchs to build early warning systems when they suspect their husbands, sons or daughters may be involved with extremist groups. While this is important, the International community must also prioritize women's participation, leadership and empowerment in prevention and response frameworks. This is a critical factor to address the structural inequalities underpinning extremist violence and to ensure that when the capacity of one extremist group is destroyed, another will not rise up to take its place.

The way forward is clear. The International community must take up the challenge to combine militarized action with governance, human rights and development — including women's empowerment

and gender equality. Drones, airstrikes and boots on the ground can halt the advance of extremist groups but these tools cannot defeat radical ideologies nor build resilient families and communities.

It is also incumbent for governments to establish structures that will support women and girls in post-war and post-trauma management. It is the psychological and social areas that are often forgotten by policy makers. Empowered women are the best drivers of growth and the best hope for reconciliation. They are the best buffer against the radicalization of youth and the repetition of cycles of violence. Women and girls are the first targets of attack — the promotion of their rights must be the first priority in response.

**“Empowered women are the best drivers of growth and the best hope for reconciliation. They are the best buffer against the radicalization of youth and the repetition of cycles of violence. Women and girls are the first targets of attack — the promotion of their rights must be the first priority in response.”**







# THE ROLE OF PARLIAMENTS IN PROTECTING OUR RIGHTS

## View from the Acting Secretary- General & Director of Finance and Administration

In any democratic society, our rights are something that we often take for granted in our everyday lives and so when these rights are restricted, or even taken away, then we realise the importance of our rights.

At the 800<sup>th</sup> anniversary of the signing of the Magna Carta at Runnymede, the Prime Minister of the United Kingdom, the Rt. Hon. David Cameron MP emphasized the history, importance and relevance of the ancient charter that established key rights for the people. *"The limits of executive power, guaranteed access to justice, the belief that there should be something called the rule of law, that there shouldn't be imprisonment without trial, Magna Carta introduced the idea that we should write these things down and live by them. That might sound like a small thing to us today. But back then it was revolutionary, altering forever the balance of power between the governed and the government. [...] Magna Carta takes on further relevance today.*

*For centuries, it has been quoted to help promote human rights and alleviate suffering all around the world."*<sup>1</sup>

Magna Carta is widely recognised as a key historical document across the globe, and it continues to be seen as an enduring symbol of freedom and the rule of law.

One example of the document's enduring international importance is the purchase by the Australian government in 1952 of a 1297 Magna Carta from an English private school for £12,500. This manuscript is now displayed prominently in Australia's Parliament building in Canberra, not far from Magna Carta Place and its monument to the document, erected in 1997. Elsewhere across the Commonwealth, Magna Carta has been vaunted as an important document for individual political rights. It was publicly praised by Nelson Mandela (1918-2013) during his famous trial for his life at Pretoria in 1964 and looked to by women campaigning for female suffrage in the Bahamas in the 1960s.<sup>2</sup>

Parliaments across the Commonwealth are based on protecting our democratic rights and freedoms and developing new legislation and protections to ensure that our rights are not restricted in many different areas – from the freedoms of the media to voting rights,



**Mr Joe Omorodion**  
**Acting Secretary-General**  
**& Director of Finance**  
**and Administration of the**  
**Commonwealth Parliamentary**  
**Association**

from child protection to immigration rights. Many of our rights are laid out in international treaties and conventions, including the UN Declaration of Human Rights and the Commonwealth Charter.

In relation to our rights, the Commonwealth Charter states that members are committed to: *"equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just and stable societies. We note that these rights are universal, indivisible, interdependent and interrelated and cannot be implemented selectively. We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds."*<sup>3</sup>

The Commonwealth Charter, adopted in December 2012, stands both as an example of the ongoing influence of the original Magna Carta and

the continued relevance of a written charter of rights, responsibilities and values in the 21<sup>st</sup> century.

We continue to experience challenges to our rights from many different sources: from international terrorists abducting civilians; to attacks on press freedom through restrictive reporting; to human dignity in form of modern-day slavery, the protection and implementation of our rights has been continuously provoked.

However, the protection of our rights does not come without responsibility. Citizens and parliamentarians both have an equal role in protecting our rights and have a responsibility in ensuring that systems are in place to guarantee those rights and that all in society are actively participating in the active promotion of our rights.

Parliamentarians must be free to express their own rights and freedoms, otherwise how can they defend, represent and promote the rights of those who elect them?

Many parliamentarians around the Commonwealth find their rights as elected representatives being challenged and they have been prevented from exercising their mandate through many different methods including, for example, the extreme measures of politically motivated bankruptcy proceedings and the revocation of a

parliamentarian's citizenship. Many international and Commonwealth organisations are working to help protect these rights and ensure that parliamentarians have the right to represent their electorates in a free and fair manner.<sup>4</sup>

Parliamentary privilege is an example of a fundamental right of parliamentarians that allows members to speak freely in parliament during debates and proceedings without fear of legal action, although members are often bound by conventions surrounding the language that they use or the implication that someone is not telling the truth.

The development of democratic institutions and the provision of free and fair elections is a right that has been challenged in many countries around the world and we must ensure that this essential right is protected for all. This also extends to ensuring that institutions at all levels are free of corruption and that citizens can be secure in the integrity of their elected representatives.

One of the recommendations from the 60<sup>th</sup> Commonwealth Parliamentary Conference held in Cameroon in October 2014 was that *"Codes of conduct only improve trust in Parliamentarians if the public see that they are upheld, and that Parliamentarians represent all their constituents equally."*<sup>5</sup>

There are huge challenges that all parliamentarians face in the protection and continued promotion of our rights in the 21<sup>st</sup> century and we need to engage with our citizens to ensure that their rights are acted upon and understood. The international treaties and conventions stretching right back to Magna Carta provide us with the basis for the rights of all democratic societies and it is our responsibility to protect these rights for future generations.

Parliamentarians across the Commonwealth are called upon to renew their action on the issues explored here and to actively engage in the protection and promotion of our rights.

### References:

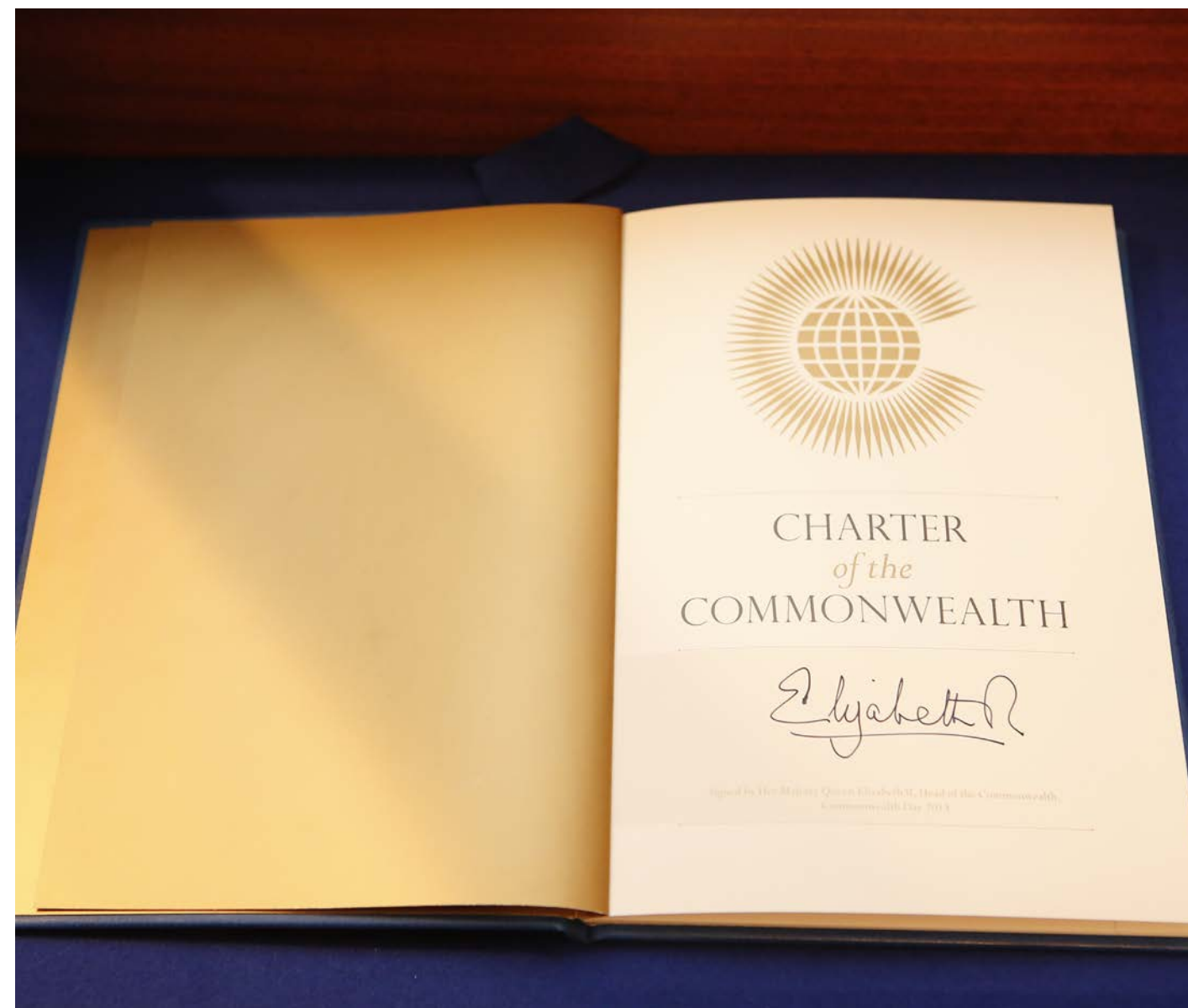
<sup>1</sup> The Rt Hon David Cameron MP, 15 June 2015.

<sup>2</sup> Article by Alexander Lock at the British Library website: <http://www.bl.uk/magna-carta/articles/magna-carta-in-the-20th-century>

<sup>3</sup> Commonwealth Charter: <http://thecommonwealth.org/our-charter>.

<sup>4</sup> An example includes the IPU Committee on the Human Rights of Parliamentarians established in 1976.

<sup>5</sup> 60<sup>th</sup> Commonwealth Parliamentary Conference Concluding Statement, October 2014.





# The Acting Secretary-General's Commonwealth Photo Gallery



Above: Hon. Sardar Ayaz Sadiq, MNA (front centre), Speaker of the National Assembly of Pakistan and President of the Executive Committee of the CPA visits the CPA Secretariat in London.

Right: Ms Helen Clark, Administrator of the United Nations Development Programme (UNDP) and former New Zealand Prime Minister visits the CPA Secretariat to hear about the work of the CPA.

Below left and below right: On Commonwealth Day 2015, the CPA held a series of events for young people from across the Commonwealth including a speech by Mr Joe Omorodion, Acting Secretary-General & Director of Finance and Administration (CPA) and presentations by two Commonwealth High Commissioners who spoke about their work in London, HE Norman Hamilton, High Commissioner from Malta and HE Syed Ibne Abbas, High Commissioner from Pakistan.



Above left: His Excellency Mr Guy Hewitt, High Commissioner of Barbados to the United Kingdom, (pictured right) visits the CPA.

Above right: Ms Lisa Baker MLA, Western Australia, (pictured front centre) visiting the CPA Secretariat.

Below right: Professor Paul Palmer from the CASS Business School in London meets with Mr Joe Omorodion, Acting Secretary-General and Director of Finance and Administration.

Below left: Karen McKenzie, Head of the Human Rights Unit at the Commonwealth Secretariat meets with Mr Joe Omorodion, Acting Secretary-General & Director of Finance and Administration.







# MAGNA CARTA 1215-2015

Examining the international legacy of Magna Carta on its 800th anniversary.

**Sir Robert Worcester** is the Chairman of the Magna Carta 800<sup>th</sup> Anniversary Commemoration Committee. He is Founder of MORI (Market & Opinion Research International) and now Senior Advisor of Ipsos MORI Public Affairs Research. He is a Past President of the World Association for Public Opinion Research (WAPOR). Sir Robert is former Chancellor of the University of Kent, and a Governor of the London School of Economics and Political Science (LSE). He is Honorary Visiting Professor at the Universities of Kent and Warwick. He is Chairman of the Pilgrims Society, a Governor of the English-Speaking Union, and a Trustee of the Magna Carta Trust among many other patronages and appointments. Sir Robert holds joint US and British citizenship.

A century ago, the 700<sup>th</sup> anniversary of the sealing of Magna Carta was not marked in 1915 due to the War. There was no commemoration other than in the excellent but long out-of-print Royal Historical Society produced book of Magna Carta Commemoration essays.

While the war on terrorism goes on today, it is a far cry from the turmoil of the First World War in 1915, and reminds us that the link between the military and other security forces and Magna Carta is the defence of liberty and the rule of law in democratic societies, not autocratic or even royal dictatorships.

Magna Carta is England's greatest export. It is embedded in both the Declaration of Independence and the Constitution of the United States of America and in the constitutions of most of the countries of the Commonwealth. Magna Carta affects the lives of nearly two billion people in over 100 countries throughout the world; for centuries it has influenced constitutional thinking worldwide including in many Commonwealth countries, as well as France, Germany, and Japan, and throughout Asia, Latin America and Africa.

The values enshrined in the Magna Carta and its legacy is largely the reason for the existence of the 'Special Relationship' that bonds my

two countries, Britain and America. Two countries which have fought two world wars and many other, smaller conflicts shoulder to shoulder in defence of Liberty, ignoring the brief period during the late 18<sup>th</sup> and early 19<sup>th</sup> centuries following the War of Independence.

President Obama observed in 2011 in a speech to the British Parliament: *"Our system of justice, customs, and values stemmed from our British forefathers...Our relationship is special because of the values and beliefs that have united our people throughout the ages. Centuries ago, when kings, emperors, and warlords reigned over much of the world, it was the English who first spelled out the rights and liberties on man in Magna Carta."*

Over the past 800 years, it is denials of Magna Carta's basic principles that have led to a loss of liberties, of human rights and even genocide taking place yesterday, and no doubt today and tomorrow. Its 800<sup>th</sup> anniversary is an opportunity to return to the principles of this exceptional document on which all democratic society has been constructed, described by the former German Ambassador when he said to me that everybody in Germany knows about the Magna Carta, it is *'the foundation of democracy.'*

As any parliamentarian will

be aware, its acknowledgement of limits on the authority of the monarch allowed the establishment of the power of Parliament, and so its anniversary holds particular meaning for those in Westminster and its international equivalents.

The Commonwealth Parliamentary Association's UK Branch led the United Kingdom Parliament's international commemorations with a conference entitled *'Human Rights In the Modern Day Commonwealth: Magna Carta to Commonwealth Charter'* that took place in February 2015.

Forty senior Commonwealth MPs, including five Speakers and four Deputy Speakers, convened at Westminster to evaluate human rights protections eight hundred years on from this seminal document. They also had the opportunity to view the four surviving copies, on display in Parliament together for probably the first time since 1215.

The highlight of the programme was a debate on modern human rights with Commonwealth Scholars and the Lord Speaker presiding; the current leaders and legislators of the Commonwealth arguing issues on morality and human rights with those of the future. The parliamentary participants and Commonwealth Scholars debated the motion *'Can you*



Delegates from Commonwealth Parliaments attend the Magna Carta 2015 Conference in London.

*legislate for a moral issue?'* At the close of the discussion, the Lord Speaker summed up the arguments, leaving participants with an appropriate closing message at the end of the three-day exploration of modern human rights: *'Human rights, like democracy, are not a fixture. They need constant attention to ensure continued effectiveness.'*

On 15 June 2015, MPs and Peers from the Speakers'

**"Human rights, like democracy, are not a fixture. They need constant attention to ensure continued effectiveness."**

Committee on Magna Carta and members of both Houses of the UK Parliament (many of whom have signed up for David Ruffley MP's All-Party Parliamentary Group for Magna Carta) joined Her Majesty The Queen, Prime Minister David Cameron, US Attorney General Loretta Lynch and thousands of spectators at Runnymede in the English countryside to commemorate the document that the former Master of the Rolls, Lord Denning called *"The greatest constitutional document of all times."*

Amongst many hundreds of other 800<sup>th</sup> anniversary commemorative activities, the UK Supreme Court has organised a mock trial in Westminster Hall on the 31 July,

the last day of the UK law year, with the 'Barons' and 'Bishops' on trial for treason before a legal tribunal of distinguished judges led by Lord Neuberger. The 'trial' is due to be broadcast on BBC World (TV) and BBC World Service (radio).

From the start of August until the end of September, the UK Supreme Court Magna Carta Exhibition opens and the British Library, starting in April and running through September has the biggest exhibition it has ever held, in addition to the four 'original' copies which were displayed there following their day in Parliament.

There will be coins and stamps, evensongs and commemorative services, exhibitions and demonstrations, pageants and concerts, sound

and light shows, seminars and symposiums, open lectures and plays in the Magna Carta towns, in cathedrals and castles, town halls and town squares throughout the UK, and in many exhibitions and events in Canada and the USA, France and Germany, Poland and Trinidad and throughout the Eastern Caribbean, in southern Asia, Africa, Australia and New Zealand, and everywhere that values the principles that the Barons wrenched from the King at Runnymede. They had to fight for it, and we are the beneficiaries of their fight.

For further information visit  
<http://magnacarta800th.com/>





# PROTECTING CHILDRENS' RIGHTS IN JAMAICA

An urge for a paradigm shift and a beckoning for community participation in the protection of children from abuse.



**Hon. Sharon Ffolkes-Abrahams** is a Minister of State in Jamaica and an accomplished Attorney-at-Law. Called to the Jamaican Bar in 1981 and the Ontario Bar in 1985, she is a committed defender and human rights specialist successfully practicing in Ontario and at tribunals on immigration, human rights and criminal law. She has a passion for social justice, particularly for young people. The Minister has successfully implemented projects for youth education and employment especially within her constituency of West Central St. James, Montego Bay.

It appears that the silence is breaking in Jamaica over the reporting of sexual abuse as we witness an increase of the total number of reported sexual abuse cases in 2013. The Office of the Children's Registry (OCR) statistics indicate a 23% increase of reported cases from the previous year. The majority of the victims in these cases were girls, though the number of boy victims has been increasing in recent years. Over half of the cases were deemed as carnal abuse (sex with a child under 16 years old), while the remaining cases were concluded as rapes, fondling, incest and oral sex. Amongst the devastating consequences of childhood sexual abuse are sexually transmitted infections and diseases, teenage pregnancy, interrupted education and psychological impairment. Many female victims have difficulty trusting males and engage in risky behaviours that put them at further risk of abuse and contracting sexually transmitted infections.

Reports of instances of child neglect are also on the rise, with over 5,000 cases reported to the OCR in 2013. Child neglect exposes children to unusual and unnecessary danger and has undeniably contributed to the missing children dilemma. The

data suggests that there ought to be a link between child abuse and missing children. Between January and April of 2014, 656 children were reported missing, 415 of which returned home and two of which were found dead. Research on the topic also suggests that the lack of parental supervision, care and discipline that defines child neglect is also correlated with human trafficking.

Despite the alarming reality, we have embarked on a mission to attack the issues head on. Though Jamaica has a long way to go, our legislation, policy objectives and programmes reflect major strides in tackling these issues and fulfilling our international treaty obligations. The Jamaican government is undoubtedly dedicated to promoting and protecting human rights, especially the rights of the child. In 1991, the Government ratified the Convention on the Rights of the Child (CRC). Significantly, the CRC was the subject matter of our most recent participation in the Universal Periodic Review (UPR) process which took place this year. Our consistent participation in the UPR process is only one of the ways in which we have attempted to adhere to our tripartite objective to respect, protect and fulfill the rights of

the child under the CRC.

In relation to child abuse, neglect, maltreatment and exploitation, our respect is shown through the range of legislation we have implemented to facilitate the provision, protection and participation rights outlined in the CRC.

One of our foundational legislative instruments is the Child Care and Protection Act (CCPA), 2004. It facilitates the establishment of specialized agencies and offices to increase protection, provision of care and participation of children. The present Act emphasizes the responsibility of parents and guardians to care and protect

**“Despite the alarming reality, we have embarked on a mission to attack the issues head on. The Jamaican government is undoubtedly dedicated to promoting and protecting human rights, especially the rights of the child.”**



children; but also recognizes the mandatory responsibility of all persons to report incidents of children in need of care and protection by imposing 'a duty on any person who knows or suspects that a child is, has been or is likely to be abused, neglected or in need of care and protection.' to report it to the OCR. Importantly, note that there is a higher standard of proof for certain named professionals who work with children because they are deemed to have knowledge or suspicion that a child is in need of care and protection, based on their access to certain information for example teachers and doctors.

The CCPA also identifies a range of offences: the maximum sentence for child neglect is three years and the more grievous the abuse the higher the sentence. The CCPA imposes sanctions such as a \$1 million fine as well as a business closure order for the hiring of a child in a night-club and condemns child trafficking with a fine and/or imprisonment

of up to 10 years. Despite the broad range of protection that the CCPA offers, there are plans to expand the scope of the Act.

Firstly, as emphatically indicated by Prime Minister Portia Simpson-Miller, the government intends to create a new offence of parental neglect such that a parent 'whose child is found in circumstances consistent with inadequate parental care and attention' (which includes children found unsupervised on the streets or other public places late at night, or a child, found living with an adult where the arrangement exposes the child to the risk of sexual or other abuse) will be charged and prosecuted. Secondly, there are plans to increase reporting obligations by expanding the number of agencies to which reports of child abuse can be made.

Moreover, the CCPA's provisions are reinforced by the Sexual Offences Act (SOA), The Offences Against the Person Act (OAPA), The Trafficking in Persons (Prevention,

Suppression and Punishment) Act, The Child Pornography (Prevention) Act (CPPA) and The Cyber Crimes Act. The SOA, for example, provides penalties for the abduction, unlawful detention of a child for sexual purposes, sexual intercourse with a child under the age of 16, sexual grooming of a child, sexual touching or interfering with a child; and procuring a child to become a prostitute, either in or outside of Jamaica, or to become an inmate in a house of prostitution. It also criminalizes the act of incest with a maximum sentence of life imprisonment.

The OAPA assigns a maximum sentence of 3 years imprisonment for child abandonment or exposure of child under 2 years of age, whose life or health has been or likely to be permanently injured and punishes child stealing, kidnapping, aggravated assault on a child, concealing the birth of a child and infanticide. Additionally, Cabinet approved the Minister of Justice, Mark

Golding's plan to 'prescribe harsher penalties for persons who murder, rape or commit other serious violent offences against children and for these cases to be given priority treatment in the trial list, with respect to scheduling and disposal.'

We have also adopted the Child Pornography (Prevention) Act (CPPA) 2009 prohibiting the production, distribution, importation, exportation or possession of or profiting from child pornography, and employing or using children to produce pornographic material. Additionally, the Cyber Crimes Act (CCA) 2010 complements the CPPA by protecting children from cybercrimes such as sexting and textopornographie. Here, we reinforced the legislation with the ratification of United Nations (UN) Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography on 26 August 2011.

Our laws are not only geared towards combating sexual abuse





and violence against children but addressing the issue of child neglect and exploitation. For example, the CCPA forbids the involvement of children in illicit activities such as drug trafficking or gang activities. Furthermore, the Adoption of Children Act, 1958, on the advice of UNICEF, is currently under review to make the adoption process in Jamaica less tedious, allowing potential parents to secure safer homes for neglected children.

Importantly, we have implemented a number of protective and preventative mechanisms that are pivotal to legislative enforcement and achieving our due diligence objective to investigate, prosecute and punish crimes against our children. Some of our major infrastructural and executive arms include: The

Child Development Agency (CDA), Centre for Investigation of Sexual Offences and Child Abuse (CISOCA), The Office of the Child Registry (OCR) and the Ministry of Youth and Culture (MYC). Each arm is crucial to enforcement and are mutually reinforcing. Our goal is not only focused on catching the culprit but also to address the needs of the victims, implement preventative measures and involve the community in preventative measures.

Our enforcement measures aimed at combating child abuse consist of, but are not limited to, eight crucial initiatives. The initiatives are as follows:

1) CISOCA - a specialized arm of the Jamaican Constabulary Force (JCF) trains police officers to investigate and receive sexual abuse and

all other forms of child abuse complaints. CISOCA works closely with the CDA and represents an encouraging atmosphere for victims to make reports; an investigative arm committed to 'proactivity', efficiency and effectiveness; and a victim rehabilitation centre through its provision of counseling. CISOCA also tries to garner the involvement of all through public education programmes on Sexual Offences and Child Abuse.

2) The Missing Person Monitoring Unit of the JCF aims to minimize the number of missing children. This unit is experiencing success, and as such, I happily report that the OCR Registrar reported a ten percent (10%) decline in the number of children reported missing in 2014 compared to

the previous year.

3) The 'Ananda Alert System', named after Ananda Dean who was abducted and murdered, is very popular and familiar to all. The alert system, which was modeled off the Amber Alert System in the United States of America, helps to put everyone on the lookout for the missing child; it helps to mobilize public and private sectors, civil society and communities to work with law enforcement to assist in the speedy and safe recovery of missing children.

4) We've also responded to the emergence of smart-phones and social media to help catch child abuse culprits. Through the OCR we've developed the Child Abuse Reporting System (CARS) application. It enables users to submit reports of suspected and actual cases

of child abuse directly to the Office of the Children's Registry. Importantly, the application protects reporters and does not save or keep information entered in the report.

5) The Child Abuse Hotline, which facilitates access to immediate help, is a vital enforcement measure which can be used by the victims or community members who have a duty to report occurring or suspected child abuse.

6) The CDA's intake, investigation and court services are crucial in ensuring compliance and enforcement. The CDA investigates reports of child abuse, neglect and abandonment and takes appropriate action to ensure the child's safety. More specifically, it (i) gathers information; (ii) determines the steps to be

taken on a case by case basis; (iii) initiates contact between clients and other support services; (iv) prepares reports on findings for the Courts; and (v) guides the Courts by making recommendations that are in keeping with the best interests of the child.

7) The CDA helps to safeguard against child neglect and ensure child protection via the Police Lock-Up Surveillance programme by investigating whether children have been jailed and the conditions of their imprisonment. The programme also offers counseling, bail arrangements and facilitates the release to parents or guardians and relocations to places of safety where possible.

8) Lastly, the CDA also monitors, inspects and regulates Residential Child Care facilities, public and private, to ensure adherence to acceptable standards of child care and protection.

The preventative measures are wide-ranging and target all aspects of child abuse. General measures include:

i) The Child's Registry, created under the CCPA, which receives, reviews and refers child abuse reports. The reports not only aid enforcement but are also used to guide policy and decision-making about child protection.

ii) The Sex Offenders Registry (SOR) is a newly installed data system managed and operated by the Department of Correctional Services (DCS) under the remit of the SOA, which demands that all persons convicted of specified offences including rape, abduction and the sale or trafficking of persons be registered in the SOR. I anticipate that the registry will protect children from sexual predators as we will be able to identify them and deter re-offenders. If there are re-offenders the registry will make it easier to find and punish them.

More specific programmes

are aimed at families and children. They involve public awareness, rehabilitation, monitoring, research and data collection. Aside from the CISOCA awareness and education campaign, the CDA offers a community and school outreach public education programme on child rights, child abuse and good parenting within the context of the CCPA.

Notable is that in July 2012, the agency embarked upon an 'Every Child is My Child' campaign geared toward engaging the community in child welfare, care and protection. In tandem with the CDA, the OCR hosts community programs which, through the help of media houses, disseminate information on child abuse. The programs also seek to relate to children through school tours addressing named schools on matters of missing children, reporting and practical safety tips for children to help safeguard their own protection.

Recognizing the pertinence of the parents' role in preventing child abuse, the Victim Support Division also provides information to parents via the 'The Parents Place', a 'one-stop-shop' information centre available in or near every major community.

The centre aims to improve parenting skills and foster better parent-child relationships that will cultivate child care and protection. The centre provides a comfortable place for parents, guardians and other caregivers seeking not only general information but also mentoring support from other parents, specific diagnostic and therapeutic services and referrals to workshops and education courses on up-to-date and positive child-rearing practices.

The rehabilitative and support programs include the CDA's Children and Family Support Unit and Multi-Agency Partnership Programme which help to keep children out of

state care through counseling and other interventions available to families and abuse victims and the Victim Support Division (VSD) Re-socialization projects. The CDA, for example, has implemented the Living in Family Environment Project as an alternative to placing children into residential care facilities. It involves foster care, family re-integration, and adoption and supervision orders.

The VSD focuses on children who have been or are likely to be affected by violence and abuse. For example, the cultural Re-socialization Intervention Project is 'a therapeutic intervention for "at-risk" and hurting children aged 6 – 18 years from various inner-city communities. It provides therapeutic healing for children through the use of cultural re-sensitization, cognitive restructuring and behaviour modification.' The children are taken out of their environment and placed in a free and healthy atmosphere where they learn coping skills to overcome trauma, self-determination and respect and positive regard for authority.

A similar and equally important program is the Special Intervention Project for Schools (SIPS). It emphasizes the provision of therapy to children in schools who are identified as being emotionally disturbed and suffering from symptoms of Post-Traumatic Stress and Depression.

Thus looking forward, our success in tackling the issue of child abuse, maltreatment and child neglect is hinged on the purposeful involvement of not only government and its institutions but also communities, churches, schools and the private sector. Child care and protection is the duty of every Jamaican citizen.







# THE WAR OF TERROR AND THE WAR ON TERROR

Implications for good governance and fundamental Human Rights in Commonwealth countries.



**Hon. Dr Benjamin Kunbuor MP** is the Minister for Defence in Ghana. He is the Member of Parliament for the Nandom constituency. Dr. Kunbuor is a former Majority Leader of the 6th Parliament of the 4th Republic of Ghana and Member of the Executive Committee of CPA (International).

The proliferation and emergence of terrorist cells around the world puts new demands on states to rethink and reassess the nature of security threats and their order of priority. There is an interesting development that that has come to the fore with the upsurge of terrorist activities - the war on terror and the war of terror.<sup>1</sup>

As observed by Baxi, the war on terror is said to be a 'just war' raising the question only of how far the nomenclature may regard its efficient pursuit. It also defocuses the antecedent or on-going forms of state and international terrorism. On the other hand, he sees the war of terror as one of collective intent and capability of non-state actors and networks to deliver, organize, and implement the threat or use of force directed permanently against civilian populace and sites across the world.<sup>2</sup>

Whichever way one looks at this development, it has implications for good governance generally and respect for fundamental human rights and freedoms specifically. One of the core objectives of the CPA is to champion the course of fundamental human rights and freedoms within member states and society at large. As an association made up of peoples' elected representatives of member states, it becomes

an imperative for it to begin to engage the implications for human rights of the 'war on' and 'war of' terror. This article is a modest contribution in that direction. It is my hope that it will kindle interests in the subject for consideration at subsequent CPA conferences. Ghana like many countries has built a detailed legal architecture to combat the terrorist threat. This paper seeks to review this legal regime and how it could impact on respect for fundamental human rights.

This article seeks first of all to briefly engage some conceptual issues as the context in which it has to be read. In addition, it will address Ghana's legal architecture in addressing the challenges of the threat of terrorism and how this darkens or illuminates the realization of fundamental human rights within the context of good governance.

Lastly, the article introduces a conversation based on the experiences of the author as a former Attorney-General of the Government of Ghana and therefore constitutionally, it's principal legal adviser; Leader of the 6th parliament of the fourth republic of Ghana; and currently Ghana's Defence Minister.

In all these roles the author has encountered or is encountering policies on terrorism and their implementation.

## Some conceptual issues

Combating or overcoming terrorism will not succeed if the means to secure society are not consistent human rights standards. To that extent counter terrorism tools that do not comply with human rights are liable to be ineffective. From case law of the international courts and tribunals, as well as domestic courts, and the United Nations (UN) mechanisms, we know that some counter terrorism measures have resulted in:

- Prolonged detention without a charge
- Denial of rights to challenge the lawfulness of the detention
- Denial of the right to access legal representation
- Monitoring of conversation with Lawyers
- Incommunicado detention and ill-treatment; even torture of detainees as well as inhuman and degrading conditions of detention.

A joint statement by a UN High Commissioner for Human Rights, the Secretary General of the Council of Europe and the Director of OSCE in 2001 states as follows:

*"While we recognize that the threat of terrorism requires specific measures, we call on all governments to refrain from*

*excessive steps which would violate fundamental freedoms and undermine legitimate dissent. In pursuing the objective of eradicating terrorism, it is essential that states strictly adhere to their international obligations to uphold human rights and fundamental freedoms."*<sup>3</sup>

The former UN Secretary General Kofi Annan had this to say on the proper approach to counter terrorism:

*"Human rights law makes provision for counter terrorism action, even in the most exceptional circumstances, but compromising human rights cannot serve the struggle against terrorism. On the contrary, it facilitates the achievement of the terrorist's objective by ceding the moral high ground, and provoking tension, hatred and mistrust of government among precisely those parts of the population where he is most likely to find recruits."*<sup>4</sup>

In Hamdi v. Rumsfeld, the US Supreme Court Justice Sandra Day O'Connor observed that:

*"It is during our most challenging and uncertain moments that our nations commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad."*<sup>5</sup>

There is yet another conceptual challenge of an acceptable definition of the phenomenon of terrorism. This arises from the notion that there can be legitimate resort to the use of violence in certain circumstances. Replete in our history from George Washington to Nelson Mandela through liberation struggles for self-determination are significant texts on justifications for resort to violence.

The first ill-fated attempt in an international instrument at a definition of terrorism was in 1937 in the Geneva Convention for the Prevention of Punishment



of Genocide which defined it as:

*"[all] criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons or group of persons or the general public."*

The definition was said to lack precision and did not get the necessary number of ratifications. Yet a definition of terrorism is key for an instrumental global approach to combat terrorism. However the current UN draft Comprehensive Convention on Terrorism in article 2 provides a global template for global and regional engagement:

Any person commits an offence within the meaning of this convention if that person unlawfully or intentionally causes:

(a) Death or serious bodily injury to any person, or

(b) Serious damage to public or private property, including a place of public use, a state or government facility, public transportation system, infrastructure, or environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature and context, is to intimidate a population, or to compel a government or international organization to do or abstain from doing an act.<sup>6</sup>

The above definition has introduced its own controversies even on very basic issues, mainly focusing on whether the convention will apply to state armed forces and movements involved in struggles for self-determination. In addition,

the Islamic Conference have proposed that activities of the parties during armed conflicts including situations of foreign occupation be excluded from the ambit of the convention. As observed by Thalif Deen:

*"The very sticking points the draft treaty revolve around several controversial yet basic issues, including the definition of 'terrorism'. For example what distinguishes a 'terrorist's organization' from a 'liberation movement'? And do you exclude activities of national armed forces even if they are perceived to commit acts of 'terrorism'. If not how much of that constitutes 'state terrorism'."*<sup>7</sup>

## Terrorism and Human Rights

The nexus between counter-terrorism measures and human rights is at a number of scalar levels, which range from





substantive and procedural legal requirements, policy considerations and policy implementation. A few areas which stand out clearly are the following:

- Respect for the right to life
- Absolute prohibition of torture, inhuman and degrading treatment and punishment
- Right to liberty
- Right to fair trial
- Right to privacy

Ghana's Anti-terrorism legislation seeks to address a number of terrorist concerns as contained in its long title:

*'An Act to combat terrorism, suppress and detect acts of terrorism, to prevent the territory, resources and financial services of this country from being used to commit terrorist acts, to protect the right of the people in this country to live in peace, freedom and security and to provide for connected purposes.'*<sup>8</sup>

Ghana's legislation contains most of the salient features of the draft UN Comprehensive Convention on Counter-terrorism. It also addresses a number of the sticky points of definition which has bedeviled the UN draft convention.

For instance, while it does not seek to diminish the other rights, obligations and responsibilities of citizens and the Republic under international law in its human rights and humanitarian aspects, it excludes terrorist acts in situations of armed conflict if the conflict is in accordance with the rules of international law. It also excludes from terrorist acts activities of the armed forces during armed conflict and exercise of their official duties in accordance with international law.<sup>9</sup>

An important human rights attribute of Ghana's legislation is that it does not make a terrorist act a capital offence in which case the death penalty will apply. It provides for a term of imprisonment of not less than seven years and not more than

twenty-five years.<sup>10</sup> However, a person accused of a terrorist act will not be admitted to bail since the legislation has amended section 96 (7) of the Criminal Procedure Code of 1960 by adding terrorist offences to offences to which an accused is not entitled to bail.<sup>11</sup> To that extent, the sanctity and right to life are preserved while the non-admissibility to bail invades the right to liberty albeit temporary.

The legislation also invades the right to privacy in as much as it gives power for a Senior Police Officer to apply to the court ex parte with prior approval of the minister (in this case the Attorney-General) to intercept communications for purposes of obtaining evidence of commission of an offence under the Act. This power extends to a situation in which the said Senior Officer can enter a premises and install devices for the interception and retention of specified communication where there is reasonable suspicion that an offence has been committed under the Act.<sup>12</sup>

A related legislation as part of Ghana's counter-terrorism measures is the Anti-Money Laundering Act of 2007.<sup>13</sup> This legislation establishes a Financial Intelligence Centre which aims, among a range of objectives, to:

(a) Assist in the identification of proceeds of unlawful activity and the combat of money laundering activities

(b) Make information available to investigating authorities, the intelligence agencies and the revenue agencies to facilitate the administration an enforcement of the laws of the Republic

(c) Exchange information with similar bodies in other countries as regards money laundering.

Money laundering is defined in the legislation to include situations where a person knows or ought to know that property forms part of proceeds of unlawful activity;

and converts, conceals, disguises or transfers the property or conceals and disguises its origin and in addition, acquires, uses or takes possession of the property. Unlawful activity is defined to include financing of a terrorist act.<sup>14</sup>

Ghana missed an opportunity to address and operationalize the anti-terrorism legislation in the famous *Kennedy Adjepong's Case*.<sup>15</sup>

The accused who was a Member of Parliament of the leading opposition party in Ghana, was involved in a heated debate on a local radio station with other panel members some of whom belonged to the ruling party. In the heat of the debate passions went high. The accused was alleged to have called on persons from one ethnic group to attack persons from other ethnic groups wherever they meet or find them.

There was a public outcry over the MP's statement as it had the potential to ignite ethnic violence. He was subsequently arrested by the police and a docket prepared and submitted to the Attorney-General's office for prosecution. One of the charges preferred in this case was terrorism under Ghana's Anti-terrorism Act. The charge of terrorism was made within the backdrop that similar statements made on local radio stations in Rwanda and Kenya led to the genocides in both countries and were the subject of prosecution in the International Criminal Court. However, the charge of terrorism was subsequently dropped after a review and the circumstances of that case.

Important considerations which led to a review of the charge was that the charge was novel and that it might have wider implications for the elaborate human rights provisions in Ghana's 1992 Constitution; which included the right to freedom of expression.

Our decision was further informed by the seminal

statement made by a former Supreme Court Judge, Justice Hayfron Benjamin in the *Edusei Case*<sup>16</sup> that the framers of the 1992 Constitution intended that Ghanaians should enjoy its human rights provisions bountifully. This consideration was further informed by the fact that the offending statements were made during a political debate where rules of free speech are encouraged.

### Parliamentary Oversight in Ghana

Civilian oversight of the police and security forces in the context of counter-terrorism will ensure greater transparency of its policies and enhance public trust. OSCE participating countries have recognized civilian control of the military and police as:

*[...] 25.1 among those elements of justice which are essential to the full expression of the inherent dignity and of equal and inalienable rights of all human beings.*

They have agreed that states will: *Ensure that their military and paramilitary forces, internal security and intelligence services, and the police are subject to the effective direction and control of the appropriate civil authorities.*

*25.3 Take appropriate steps to create, wherever they do not exist, and maintain effective*

**“An important human rights attribute of Ghana’s legislation is that it does not make a terrorist act a capital offence in which case the death penalty will apply. It provides for a term of imprisonment.”**

*arrangements for legislative supervision of all such forces, services and activities.*

By the Constitution, the people of Ghana solemnly declared and affirmed a commitment to probity and accountability, and the *principle that all powers of Government spring from the Sovereign Will of the People*.

The Will of the people in Ghana is expressed through their representatives elected to parliament under the Constitution.

Beyond the vesting of legislative power in parliament under article 93 (2) of the Constitution, parliament is further enjoined under article 103 to appoint standing committees and other committees that are necessary for the effective discharge of its duties. Committees appointed in parliament pursuant to the above constitutional provision are charged:

*“[With] such functions, including the investigation and inquiry into activities and administration of ministries and departments as Parliament may determine; and such investigation and inquiries may extend to proposals for legislation.”*<sup>17</sup>

The power to investigate and inquire into the activities and administration of ministries and departments is sufficiently broad to cover what in common parlance is often referred to as parliamentary oversight.

There are other parliamentary tools such as statements made on the floor of the house on specific issues and parliamentary questions asked of Ministers on activities of their ministries, which constitutes aspects of oversight.

Article 110 of the Constitution enjoins parliament to regulate its own procedure by means of Standing Orders. Pursuant to this provision the Standing Orders of the Parliament of Ghana were made and revised in 2000.

Part 20 of the Standing

Orders has constituted Standing and Select Committees for the conduct of parliamentary business. Order 52 (j) provides for the Select Committee on Defence and Interior. It is the Committee which addresses issues of the security sector.

The Committee consists of 18 members and has the mandate to *“examine all questions relating to Defence and internal affairs.”*<sup>18</sup>

This mandate of the Select Committee on Defence and Interior is problematic if viewed against the backdrop of emerging regional and sub-regional blocs which address trans-border security issues.

### Conclusion

I have deliberately focused on the nexus between the war on terror and fundamental human rights for a number of reasons.

First, those prosecuting the ‘war on’ (Baxi describes as aggressive incumbents) are of states with known rules of engagement either of constitutional or legislative generis. Secondly, most of the leaders of such states were constituted by the will of the people through universal adult suffrage and can and should be held accountable.

Lastly, as opposed to those prosecuting the ‘war of terror’ described by Baxi as nomadic insurgents, a distinction needs to be made between otherwise terrorist acts by ‘within-nation’ insurgence in liberation struggles or struggles for self-determination and ‘cross-nations’ terrorists activities of a global nature.

In lieu of a prototype conclusion, I bring back by way of concluding remarks the complexities and human rights implications of the ‘war of terror’.

An important question to pose is how international lawyers and law persons can make sense of the relationship between ‘terror’ and human rights? Put another way, is deliberate infliction of indiscriminate violence by

insurgent non-state actors against civilian populations and sites ever justified as a means of restoring their own human rights estates? This question I agree with Baxi is better addressed by his illuminating strategic discourse.

First, that there is the need to distinguish the ‘perspectives’ of such violent recourse from those who are directly or indirectly harmed or hurt by them. A victim oriented perspective suggests that terrorist’s violence cannot be justified.

Second, that human rights as a whole ought not to be advanced by recourse to collective violence - a notion of ‘ethical peace.

Third and most significantly, is the context-sensitive aspects of the debate which raises questions of justification of terrorist violence in terms of ‘within-nation’ insurgent violence and its ‘cross-nations’ global practices.<sup>19</sup>

There are influential voices to the effect that ‘within-nation’ terrorist recourse to violence may be justified in terms of what Allen Buchana calls the ‘problematic morality of secession’ as well as the context of activities of decolonization movements.<sup>20</sup>

Virginia Held is of the view that *“... if we might have rights violations, a more equitable distribution of such violations is better than a less equitable distribution”*.<sup>21</sup>

A useful position from the narratives so far is that ‘within-nation’ insurgence may be justified in situations such as the practices of the former apartheid state formations but ‘cross-nations’ acts from fatwas remains unjustifiable in the context of human rights.

Given the fact that many national anti-terrorism legislation including that of Ghana excludes ‘within-nation’ acts from the definition of terrorism, it is obvious that the ‘war on terror’ is likely to re-write international law in fundamental ways.

### References:

- <sup>1</sup> This distinction is taken from Upendra Baxi’s article “The War on Terror and the War of Terror: Nomadic Multitude, Aggressive Incumbents, and New International Law: Prefatory Remarks on Two Wars”, in Osgoode Hall Law Journal, Vol. 43 No. 1/2.
- <sup>2</sup> Ibid.
- <sup>3</sup> Joint Statement by Mary Robinson, UN High Commissioner for Human Rights, Walter Schwimmer, Secretary General of the Council of Europe and Ambassador Gerard Stoudmann, Director of OSCE Office for Democratic Institutions and Human Rights. 29 November 2001
- <sup>4</sup> ‘Global Strategy for fighting terrorism’, Keynote Address to the closing Plenary of the International Summit on Democracy, Terrorism and Security, 8 – 11th March, 2005, Madrid.
- <sup>5</sup> (03-6696) 542 US 507, 2004.
- <sup>6</sup> UN General Assembly, Report of the Ad hoc Committee Established by the General Assembly Resolution 51/210 of 17th December 1996, 6th Session, Doc. 7/57/37.
- <sup>7</sup> Thalif Deen, (2005) POLITICS: UN Member States Struggle to Define Terrorism, IPS, and 25th July 2005.
- <sup>8</sup> Anti-Terrorism Act, 2008 (Act 762).
- <sup>9</sup> See section 4 of Act 762.
- <sup>10</sup> Ibid, section 2 (2).
- <sup>11</sup> Ibid, section 41.
- <sup>12</sup> Ibid, see section 34.
- <sup>13</sup> Act 749.
- <sup>14</sup> Ibid, section 1.
- <sup>15</sup> Republic v. Kennedy Adjepong, 2012
- <sup>16</sup> Edusei v. Attorney-General [1996-97] SCGLR 1
- <sup>17</sup> Article 103 (3).
- <sup>18</sup> See Order 158 of the Standing Orders of the Parliament of Ghana.
- <sup>19</sup> Supra, pp. 16 – 19.
- <sup>20</sup> Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec, Boulder, Colo: Westview Press, 1991.
- <sup>21</sup> “Terrorism, Rights and Political Goals”, in R. G.Frey & Christopher W. Morris eds, in Violence, Terrorism, and Justice, Cambridge: Cambridge University Press, 1991 at p. 80







# THE RIGHT TO FOOD

The agriculture industry in Mauritius has responded to the needs of the country to ensure that the right to food is met.



**Hon. Mahen K. Seeruttun MP** is the Minister of Agro-Industry and Food Security in Mauritius. He was elected as an MP in 2010 and was a member of the Public Accounts Committee between July 2010 and October 2014. He was re-elected as an MP in December 2014 and was appointed Minister of Agro-Industry and Food Security. Mahen K. Seeruttun is a professional Accountant with a Master's Degree in Business Administration.

The Mauritian agricultural industry is dominated largely by sugar cane cultivation. Out of 62,100 ha of cultivable land excluding forestry, some 8,000 ha are devoted to the cultivation of various food crops and fruits.

The contribution of agriculture to the National GDP of Mauritius was 3.3% in 2014. Agricultural production activities are undertaken mainly by the corporate sector and a large number of small farmers. Our net food requirement is estimated at 700,000 tons annually, 78% of which is made up of agricultural and food products imports. The food import bill represents around 22% of total import (estimated at around USD 500m).

The production of food crops amounts to some 120,000 tons annually and is meant mainly to meet local requirements. Seasonal imports of some strategic crops such as potatoes, onions and garlic are allowed to supplement local production during the off-season.

The agricultural sector is characterized by the low levels of technology adopted resulting in high dependence on manual labour for field operations on small scale holdings.

Livestock production is

undertaken by some 5,000 farmers involved mainly in cattle, goat, sheep, pig, deer and poultry farming. Production of fresh milk is around 5 million litres, representing around 4% of our requirements.

A reasonable level of self-sufficiency has been achieved in some of the crop-derived food items and on almost 100% of fresh vegetables and fruits with around 120,000 tons produced annually.

## The Right to Food

The right to food is a basic human right which protects the right of all human beings to be free from hunger, food insecurity and malnutrition.

Food and its production are the most basic of human concerns and are at the foundation of civilization. Despite the progress achieved by humanity, we continue to struggle to meet this basic need of mankind.

Food security means far more than having sufficient food to meet human needs on a national basis. Other important factors include access to safe drinking water, primary health care and environmental hygiene.

## Obstacles to the Right to Food

Access to food in Mauritius is however subject to a number of constraints. These inter alia include:

(a) The increasing prices of imported food and fuel.

(b) The increasing prices of agricultural inputs.

(c) The limited land area available for food production and the increasing competition of the land for other more economic uses.

(d) The climatic changes and frequent adverse climatic conditions causing high incidence of pests and diseases on agricultural production yield.

(e) The shortage of field labour in agricultural production due to an ageing population and competition from other economic sectors.

(f) The high reliance on imported food.

(g) The increasing use of fertile agricultural land for the production of bio-fuels which are more profitable.

## Measures to address the obstacles to the Right to Food

A number of incentives and measures have been taken by the Government to ensure that the population has the



right to food. In the wake of the World Food Crisis in 2008, the Government of Mauritius established a Food Security Fund to enhance local food production. Under this fund, schemes and incentives such as grants and loan facilities were put in place to encourage small farmers to engage in food production activities.

A sum of around USD 300m was provided under the Food Security Fund to cover inter alia the costs of land preparation works, construction of model farms, acquisition of modern farm equipment, irrigation facilities, rainwater harvesting systems, sheltered farming techniques and importation of improved animal breeds for reproduction.

To boost the production of food crops and livestock production, the Government has since 2009 leased around 300 ha of state

lands to the farming community. Land preparation works including derocking, fine-derocking, farm roads, drilling of boreholes, in-field drainage systems, utilities and other land infrastructure facilities were provided to the farming community.

To address the problem of climate change, adverse climatic conditions and the increased incidence of pests and diseases, cultivation under greenhouses has been encouraged and promoted.

It is a fact that cultivation under sheltered structures offer enormous advantages as opposed to outdoor or open field agriculture, considering the fact that it allows better control over a number of parameters such as light, temperature and humidity, whilst at the same time offering a certain degree of protection against entry of pests, weeds and diseases. It also limits the use of chemical inputs which are otherwise used excessively to control infestations

in common traditional outdoor cultivation systems.

To this end, a Sheltered Farming Scheme and a Crop Nursery/Curing Scheme have been put in place to encourage farmers to shift from traditional methods of crop production. Grants of up to maximum of USD 8,000 are given to farmers to adopt this modern system of production.

To encourage the sustainable production of meat, a Calf Productivity Incentive Scheme was put in place. Under this Scheme a cash incentive of USD 100 is given to breeders whose

calf has reached an age of 3 months and above. Through the Pasture Development Scheme, breeders are encouraged to plant their own fodder and to decrease their reliance on costly imported animal feed.

Milk is an important basic food commodity consumed by almost the whole population. Supply of this commodity is heavily dependent on imports and subject to frequent fluctuations in prices on the world market. To raise local production capacity and ensure availability of this item, farmers have been encouraged to modernize their dairy farms.

Moreover, model dairy farms have been set up to showcase modern technologies and practices to optimize dairy production. The Government has facilitated access to capital by providing grants and loans at low interest rates with a moratorium

**“Despite, the progress achieved by humanity, we continue to struggle to meet this basic need of mankind.”**





period of 3 years as well as a long term repayment period of 8 years to enable farmers to upgrade their farms, acquire improved breeds of animals for reproduction and to purchase modern farm equipment to achieve the set objective. Pasteurisation units were granted to farmers and dairy cooperatives to increase the quality of raw milk for local consumption.

Foreign Direct Investments in the agriculture sector have been encouraged through the provision of land and duty exemption. International companies involved in the production of hybrid rice, certified seeds and bovine semen have thus established themselves in Mauritius to boost food production.

The Government has also set up a plan to organize local food production. This plan fosters the

concept of organized production systems. In Mauritius, agricultural production has long been self-regulated and not based on any scientific data.

To address this issue, an Agricultural Production and Information System has been set up. This system provides updated information on production of food crops to farmers to enable the latter to take informed decisions on future productions to match demand with supply. With this Information System, there is greater stability in the production and supply of food products.

To increase local production capacity, through regional and cross border initiatives, agreement has been reached between the Government of Mauritius and the Governments of Mozambique and Madagascar for land allocation to Mauritian

farmers in these two countries.

To ensure that the population, particularly the most vulnerable groups, have access to basic staple foods, the Government has been making provision of substantial subsidies in the budget to stabilize prices and make these foods affordable and accessible.

Rice and flour are two basic food commodities on which there are huge subsidies. In addition to these, the prices of other basic commodities such as bread, milk products and fruit are subject to price control by Government. Moreover, there are no value added taxes on basic food items thus rendering these commodities accessible to each and every one.

Vulnerable families earning less than USD 200 per month are given monthly income support to enable them to have access to basic food.

Primary school students in vulnerable localities of the country are provided with a free hot meal daily.

Accessibility of food in Mauritius is not a problem as retail outlets are available at each and every corner. In addition, the Mauritius Agricultural Marketing Board plays a key social role by ensuring that strategic crops such as potatoes, onions and garlic are available at all times and at affordable prices. These products are controlled under the Agricultural Marketing Act.

#### Legislation in place to ensure the right to food

In Mauritius, there are a number of regulations which are in place to ensure food security. The Mauritius Agricultural Marketing Act 1964 ensures that all strategic food commodities are available to the population at all times at fair

**“Mauritius has over the years taken bold measures to boost its agricultural production and ensure food security and safety. However, we are still facing numerous challenges ahead, one of which is the phenomenon of climate change which is having drastic effects on food production.”**



and reasonable prices.

The State Trading Corporation incorporated under the State Trading Corporation Act is responsible for the importation of other strategic food items and other items such as rice, flour and fuel at subsidized prices.

To ensure that farmers optimize their food crop production yield, a Seeds Act was introduced in 2013 to ensure that only quality seeds are used. The Consumer Protection Act also allows the Government to regulate the prices of basic food commodities with a system of maximum mark up.

#### The Sugarcane Industry

Despite the numerous challenges which the sugarcane sector is having to face as a result of reduction in price of sugar in its traditional market the sector still plays a very crucial role within the socio-economic framework of the country and the agricultural sector.

There are over 15,000 people who are either directly or indirectly,

employed by the industry and it therefore provides a vital source of income to the workers and helps in food procurement.

The total revenue to producers for the sugar crop is estimated at USD 150m in 2014. More than 80% of income generated from the sugarcane industry are in foreign exchange earnings.

The economic importance of the industry is further demonstrated by the fact that the sugarcane crop occupies nearly 90% of cultivated area. Sugar production for the crop in 2014 was just over 400,000 tons.

The Government is taking all the measures which it can to ensure that the sector remains viable and continues to contribute to the national economy.

The policies in relation to sugar is geared towards increasing value by moving up the value chain and making more efficient use of the byproducts of the sector (which are now referred to as co-products).

#### Conclusion

Mauritius has over the years taken bold measures to boost its agricultural production and ensure food security and safety. However, we are still facing numerous challenges ahead, one of which is the phenomenon of climate change which is having drastic effects on food production.

The Government is monitoring the situation closely and will take remedial measures as and when required to ensure that the basic human right, that is the right to food, is always upheld and protected.

This is a critical issue which requires a holistic approach and has to be dealt with at local, regional and global level.

Furthermore the issue of food security in Mauritius and the wider region poses a number of other major challenges. These include, firstly, the production of cheap and adequate amounts of food and of inputs for food processing.

Secondly, the establishment of

infrastructure in terms of storage and handling facilities and harbor installations which otherwise would not attract investments.

Thirdly, fostering through agricultural development, not only in terms of commodity production but also in terms of value added crops, the much needed economic and social development of the rural areas and thereby an effective means to combat poverty.

The Government of Mauritius is wholly committed to overcoming these challenges in the near future and will spare no effort to ensure that the whole population have access to their daily requirement of adequate food.

The Government is also committed to creating and sustaining the enabling political, social and economic environment which is an essential foundation to give adequate priority to food security and poverty eradication.







# OVERSIGHT AND ACCOUNTABILITY OF CHILD ADVOCACY

Examining accountability in Children's Services in Western Australia.



**Lisa Baker, MLA** is a member of the Western Australian Legislative Assembly representing Maylands since the 2008 state election. She is the Chair of the Joint Standing Committee on the Commissioner for Children and Young People. She holds a Bachelor of Science and a Graduate Diploma of Development Studies and before entering parliament was the Chief Executive Officer of the Western Australia Council of Social Services.

The Joint Standing Committee on the Commissioner for Children and Young People (the Committee) is a Western Australian Parliamentary oversight committee charged with monitoring, reviewing and reporting on the exercise of the functions of an independent statutory authority, namely Western Australia's Commissioner for Children and Young People. Parliamentary oversight committees for a children's commissioner or similar position are rare, with New South Wales being the only other Australian jurisdiction to have such a Committee.<sup>1</sup>

The foundations for the establishment of the Committee can be traced to the final report tabled in 2004 by the Legislative Council Select Committee on Advocacy for Children on its Inquiry into the Appointment of a Commissioner for Children.

The report investigated the need for children's advocacy in Western Australia, reviewed national and international models of child advocacy and made recommendations for establishing advocacy for children and young people in this state. Among the Select Committee's recommendations were those for a Commissioner

for Children and Young People to be appointed for Western Australia, and for consideration to be given to a joint parliamentary committee of oversight.

Pre-empting the Select Committee's report, the then Minister for Community Development, Hon Sheila McHale MLA announced in May 2004 that the government intended to establish a new independent Children's Commission, to be headed by a Commissioner. Legislation establishing the Commissioner for Children and Young People duly came into effect in 2006. Western Australia's inaugural Commissioner, Ms Michelle Scott, was appointed to the position in November 2007 and took up the role in December 2007. Ms Scott retired from her position in December 2013; and the post was taken up in an acting capacity by Ms Jenni Perkins.<sup>2</sup>

In keeping with the Select Committee's recommendations and a desire reflected during parliamentary debate for the Commissioner to be independent of executive government, the *Commissioner for Children and Young People Act 2006* (the Act) provided for the establishment of a Joint Standing Committee on

the Commissioner for Children and Young People - which was to provide Parliamentary oversight.

The debate surrounding the establishment of the Committee highlighted the importance of the Parliament having this oversight responsibility of reviewing and monitoring the activities of the Commissioner for the purposes of greater accountability and transparency.<sup>3</sup> Greater accountability to be achieved through monitoring and review is, on a broader level, one of the basic principles underpinning parliamentary committees of oversight.<sup>4</sup> The defining feature of the relationship between an independent body and its corresponding Parliamentary oversight committee is that of accountability:

*They are accountable to a parliamentary committee, the committee to the Parliament and the Parliament to the people.*<sup>5</sup>

With this ideal of accountability underpinning the Committee's work, each Committee<sup>6</sup> has developed its own monitoring and review processes at the beginning of each parliament - informed by its functions and powers determined by agreement between the Houses.

Among the Committee's

terms of reference is a requirement to monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People; to examine annual and other reports of the Commissioner; and to consult regularly with the Commissioner.

As such, the Committee's earliest tasks comprised of regular hearings with the Commissioner and the close examination of the Commissioner's Annual Reports - primarily focusing on the Commissioner's strategic planning, key performance measures of the Commissioner's Office and maintaining a watching brief on the Commissioner's progress in several public policy priority areas identified by the Commissioners (such as early childhood, the wellbeing of Aboriginal and Torres Strait Islander children and young people and the promotion of a child focus in the delivery of mainstream services).

Historically, the Committee also monitored effectiveness of initiatives developed by the Commissioner as the role was developed over time and additional functions under the Act were explored.<sup>7</sup>

Various other functions of the Committee are defined throughout the Act; including the ability to make recommendations to the Treasurer in relation to the budget for the Commissioner for a financial year;<sup>8</sup> the ability for the Committee to request that the Commissioner advise the Minister on 'any matter relating to the wellbeing of children and young people';<sup>9</sup> and the ability to refer to the Commissioner 'any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people' for the Commissioner to make recommendations upon.<sup>10</sup>

The Committee has only enacted these functions on



a needs be basis.<sup>11</sup> Although the Committee has historically considered such functions an important plank to the Committee's accountability role, the overuse of such functions could overly influence the direction of the Commissioner's work away from the self-determined strategic priorities of the Commissioner's office.

A review of the operation and effectiveness of the Commissioner for Children and Young People Act 2006 was required to be conducted five years after it came into operation<sup>12</sup> and was subsequently scheduled for early 2013.

To inform the legislative review, the Committee of the 38<sup>th</sup> Parliament tabled its final report in November 2012 reviewing the functions of the Commissioner and made a number of recommendations for amendments to the Act. Parliament was prorogued before the statutory review took place; however the subsequent review of the Act had 'significant regard'

to the Committee's report.<sup>13</sup>

Other matters were to impact on the statutory review that would influence the way in which the Commissioner's role would be considered going forward and subsequently impact on the method of oversight the Committee would employ.

In November 2011, the Hon. Peter Blaxell was appointed to conduct a Special Inquiry into the response of public officials to allegations of sexual abuse at the St Andrew's Hostel in Katanning (a regional town in Western Australia).<sup>14</sup> The report (known as the Blaxell Inquiry) made a number of recommendations; notably, in this context, that there "exists an opportunity for a whole of government approach to developing a 'child-friendly' system for handling complaints in relation to child abuse...[the development of which] would aim for a 'one stop shop'...as an avenue for any complaint."<sup>15</sup>

When tabling the Report, the Premier, showing clear support for the Blaxell Inquiry's

recommendations, advised Parliament that the government "has selected the Commissioner for Children and Young People as the preferred body to perform the one-stop shop complaints role."<sup>16</sup>

**"The defining feature of the relationship between an independent body and its corresponding Parliamentary oversight committee is that of accountability: They are accountable to a parliamentary committee, the committee to the Parliament and the Parliament to the people."**





This proposal would then go on to be included as a term of reference for the statutory review of the Commissioner's Act.

A further impact on the statutory review was that on 11 January 2013, her Excellency Quentin Bryce, (then) Governor-General, appointed the Royal Commission to inquire into institutional responses to child sexual abuse. The Letters Patent provided that the Commissioners provide a just response for people who have been sexually abused and ensure institutions achieve best practice in protecting children in the future.<sup>17</sup>

The statutory review, completed in May 2013 by the independent reviewing body, was provided to the Attorney General, yet was not released. The current Committee, established also in May 2013, determined quickly that the delay in the release of the statutory review leant significant uncertainty to the role of the Commissioner; hence, the Committee utilised its powers as a parliamentary committee to make recommendations to the Government to release the report. The report of the statutory

review was ultimately tabled on 20 August 2014, during which the Attorney General advised that the Government provided in-principle support to each of the recommendations. Yet, it announced that any implementation of the Commissioner's function as recommended by Blaxell (newly coined in the statutory review as a child abuse complaints support function)<sup>18</sup> would be delayed until the final recommendations of the Royal Commission could be considered.

In addition to this delay, the detail provided was ambiguous as to the way in which this child abuse complaints support function should operate. Also it was unclear what impact this may have on the future advocacy role of the Commissioner. The Committee therefore considered its response to the review and determined that as part of its oversight and accountability role it would undertake its own inquiry into how the proposed child abuse complaints support function should operate.

Of paramount importance to this work will be the Committee's

assessment of the role of the Commissioner with regard to other relevant agencies in the state that are involved in the reporting of child abuse. The proposed child abuse complaints support function must allow the Commissioner to become a trusted avenue for people to be made aware of the issues surrounding child abuse and to raise their concerns about child abuse. For this to occur, the role will need the support of, and be supportive of, the existing child protection framework.

The Commissioner's most recent report *The State of Western Australia's Children and Young People*<sup>19</sup> notes that during the 2011–12 reporting period, 13,745 notifications of abuse or neglect of a child or young person were received by the relevant authorities in Western Australia. Due to a quirk in the data collection, this statistic is only based on those departments directly responsible for child protection. Notifications made to other organisations, such as the police or non-government organisations, are not necessarily included;<sup>20</sup> therefore, it is likely

that this number understates the prevalence of child abuse and neglect in Western Australia.<sup>21</sup>

The Commissioner's proposed child abuse complaints support role could, in effect, have the potential to more accurately report on the number of child abuse notifications in the state, and it may crucially develop ways to break down reporting barriers. It is now a priority for the Committee that this role, if implemented, be a positive addition to the child protection landscape. The Committee seeks to help ensure that the implementation of this role does not add unnecessarily to the reporting burden of any child who has suffered abuse.

To effectively achieve these aims, the Committee must look beyond the mechanics of how this complaints role might operate and consider the current advocacy role of the Commissioner to determine whether the model prescribed under the Act is strong enough to adequately support the needs and interests of all the children in the state, or alternatively, if a strengthening of this role is required under the legislation.

A 'key principle' to be observed by the Commissioner (and the Committee) in carrying out or performing any functions under the Act is one stating that *"the Commissioner or any other person must regard the best interests of children and young people as the paramount consideration."*<sup>22</sup> The Act contemplates other principles that must be observed in the administration of the Act, including that *"children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation."*<sup>23</sup>

The more specific functions of the Commissioner include advocacy for children and young people; the promotion of strategies and outcomes

which enhance the wellbeing of children and young people; monitoring the wellbeing of children and young people generally in the community; inquiring into any matter affecting the wellbeing of children and young people, and considering and making recommendations on laws, policies, programs and services affecting children and young people.<sup>24</sup>

Further, the Act requires the Commissioner to give priority to the interests and needs of Aboriginal and Torres Strait Islander children and young people; children and young people who are vulnerable or disadvantaged. A third priority is that the Commissioner must have regard to the United Nations Convention on the Rights of the Child.<sup>25</sup>

The Committee notices that the Act provides a strong basis to ensure that the best interests of children and young people are given paramount consideration in Western Australia. However, the Committee must now consider whether the Act enables the Commissioner to carry out a complaints function in a way that will complement and strengthen the functions listed above.

It is a weighty consideration but one that falls squarely within the accountability and oversight role of the Committee. At the outset, the Committee is very interested to assess if a new function would impact on the three priority areas: Aboriginal and Torres Strait Islander children and young people; children and young people who are vulnerable or disadvantaged, and the Commissioner's ability to have regard to the United Nations Convention on the Rights of the Child. It is the Committee's view that these areas must continue to be given precedence; perhaps even greater emphasis in any new iteration of the Act. The Committee is continuing its examination and aims to report its findings to Parliament in October 2015.

## The Act contemplates other principles that must be observed in the administration of the Act, including that "...children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation."

### References:

<sup>1</sup> The NSW Parliamentary Committee on Children and Young ended on the 6 Mar 2015 (Committees of the 55th Parliament (2011-2015) have expired). Committees of the 56th Parliament will be appointed shortly and it is expected another like Committee will be established.

<sup>2</sup> The recruitment process for a permanent Children's Commissioner is currently underway.

<sup>3</sup> Hon. Barbara Scott, MLC, Western Australia, Legislative Council, Parliamentary Debates (Hansard), 4 June 2008, p3435.

<sup>4</sup> Griffith, Gary, Parliament and Accountability: The Role of Parliamentary Oversight Committees, Briefing Paper No. 12/05, NSW Parliamentary Library Research Service, Parliament of New South Wales, np, November 2005. Available at: <http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/key/ParliamentandAccountability:TheRoleofParliamentaryOversightCommittees>. Accessed on 7 May 2015.

<sup>5</sup> Ibid, p20.

<sup>6</sup> Established Pursuant to Section 51 of the Commissioner for Children and Young People Act 2006 (WA); the first Committee was established in June 2008 and met only once in

the 37th Parliament; was re-formed in the 38th Parliament in November 2008 and in the 39th Parliament in 22 May 2013.

<sup>7</sup> For example, the Commissioner developed guidelines to assist departments in reviewing the impacts of legislation on children, which was one of the first functions that the Committee maintained a watching brief on to see if it was developed in accordance with the function contemplated under the Commissioner's Act.

<sup>8</sup> Section 57 of the Commissioner for Children and Young People Act 2006 (WA).

<sup>9</sup> Section 19(k) of the Commissioner for Children and Young People Act 2006 (WA).

<sup>10</sup> Section 19(l) of the Commissioner for Children and Young People Act 2006 (WA).

<sup>11</sup> For example, in addition to making recommendations to the Treasurer on the Commissioner's budget on a number of occasions, in 2009, the Committee referred to the Commissioner the Parliamentary Commissioner Amendment Bill 2009 and the Child Exploitation Material and Classification legislation Amendment Bill 2009 for her consideration and comment. In 2010 it referred the Commonwealth Attorney-General's Department Discussion Paper, Should the Australian National Classification Scheme include an R18+ Classification Category for Computer Games. In October 2012 the then Committee referred to the Commissioner particular written laws, national and international reports, and certain practices and procedures insofar as they were relevant to the sexualisation of children. The Committee then requested the Commissioner consider and make recommendations as to any specific actions required to be taken by the Government of Western Australia in relation to these matters in order to better secure the wellbeing of children and young people in Western Australia.

<sup>12</sup> Section 64 of the Commissioner for Children and Young People Act 2006 (WA).

<sup>13</sup> Public Sector Commission,



Review of the Commissioner for Children and Young People Act 2006, Government of Western Australia, May 2013, p3

<sup>14</sup> The report St Andrews Hostel Katanning: How the system and society failed our children (the Blaxell Inquiry Report) was tabled in Parliament on 19 September 2012 by the Premier of Western Australia.

<sup>15</sup> Hon. Peter Blaxell, St Andrews Hostel Katanning: How the system and society failed our children, Government of Western Australia, November 2011, p340.

<sup>16</sup> Mr C.J.Barnett, Premier, WA, Legislative Assembly, Parliamentary Debates (Hansard), 19 September 2012, pp6137b-6142a.

<sup>17</sup> The Royal Commission is currently due to release its findings in December 2017.

<sup>18</sup> The statutory review identified that the term 'one stop shop' used by Blaxell may be misleading by creating an impression that the Commissioner would have a role in investigating individual complaints of child abuse, so, to counter this, the review identified the term 'child abuse complaints support' function as appropriate to describe the role contemplated by Blaxell.

<sup>19</sup> This is a significant report by the Commissioner. See note below for the reference.

<sup>20</sup> Reports to these organisations are only included in the data if they are also referred to the responsible department. Jenni Perkins, A/Commissioner for Children and Young People WA, The State of Western Australia's Children and Young People - Edition Two, Perth, Western Australia, July 2014, p141.

<sup>21</sup> Ibid.

<sup>22</sup> Section 3 Commissioner for Children and Young People Act 2006 (WA).

<sup>23</sup> Section 4 Commissioner for Children and Young People Act 2006 (WA).

<sup>24</sup> Summarised from section 19 Commissioner for Children and Young People Act 2006 (WA).

<sup>25</sup> Section 20(1)(a)(b) Commissioner for Children and Young People Act 2006 (WA).





# IMMIGRATION RIGHTS

## The changing face of immigrants: Canada's recent shift to balance economic and family based immigration



**Devinder Shory** MP has been a member of the Canadian Parliament since 2008. He was born in Barnala, Punjab, India and studied for his BA and Law degrees from Punjabi University. Coming to Canada in 1989, Devinder worked in several jobs including driving a taxi before setting up his own law practice. He has served on the India Canada Association and has sat on many different Parliamentary Committees and the International Trade Committee.

Canada has long been described as a land of immigrants. From the earliest European settlers to the newest wave of newcomers from around the world, Canada has successfully absorbed a wide range of immigrants. Coupled with the duty to govern in the interest of existing Canadians, the high demand from potential immigrants requires the Government of Canada to maintain and improve an effective immigrant selection process to keep numbers manageable and ensure integration.

To that end, the current Government of Canada has taken steps in recent years to reform the immigration system. In discussing the recent reforms, I will address several main topics. Beginning with examples of the challenges facing immigrants to Canada, moving on to what immigrants should expect from the Government of Canada and what Canada expects from them in return, and finishing with legislative changes which have recently reformed Canada's immigration system.

### Challenges immigrants face in coming to Canada

*Language:* The first challenge faced by new arrivals to Canada could be language. To

thrive in Canada, newcomers must communicate in English or French. Although there are significant clusters of Canadians from particular ethnic backgrounds who can assist immigrants from their countries of origin, all public services and most private services are only available in Canada's two official languages.

Participation in public life and responsible citizenship both require adequate language skills. Those without adequate English or French may become permanent residents, but will have difficulty passing the citizenship application language requirements. Furthermore, as recent research confirms, immigrants who have sufficient language skills fare better economically, since they enjoy much better prospects of finding work in their fields or using their skills.

*Foreign Credential Recognition:* Canada has very high professional standards for a wide range of occupations, but could perhaps better communicate these requirements to potential immigrants.

Take my own immigration story as an example. Born and raised in the state of Punjab in India, I attended law school, earned my licence and began

practicing law. I later moved to Canada thinking that as a fellow Commonwealth country with a similar English Common Law heritage, Canada would allow me to set up a practice with minimal hassle. Instead, it took me nine years of working in low end jobs to provide for my family while requalifying before I was called to the Bar in Alberta. My story is not unique. In fact, I often joke that the safest place to have a heart attack in Calgary may be in the back seat of a taxi, since chances are the driver is an experienced, foreign-trained cardiologist.

The current Government of Canada is taking steps to streamline the foreign credential recognition process without compromising our high standards, but must cooperate closely with provincial licensing bodies, since education and professional licensing are provincial jurisdiction.

Meanwhile, I believe that the Commonwealth should prioritize cooperation on foreign credential harmonization. More standardized qualifications and recognition would greatly aid professional and trades labour mobility and facilitate international operations and trade.

*Skills Imbalance:* The final challenge I will mention is

intimately connected to the second. Canada is currently experiencing an imbalance between available jobs and available workers.

Too many students are graduating from the humanities and professional programs while too few are graduating from the skilled trades. The labour market information showing the imbalance is freely available online. Potential immigrants would be well advised to consult it regarding which occupations are likely to be in demand when they apply.

### What immigrants can expect from Canada

With a long history of immigration, Canada understands the need to connect newcomers to support networks as soon as possible, so offers valuable settlement services.

The Government of Canada and civil society organizations cooperate to provide immigrants with services such as language training, language assessments, help finding a job, help with daily life, refugee services, mentoring, and services specifically aimed at youth or seniors.

Canada also provides much information for newcomers. It offers free guides with extensive information on the

first steps to take upon arrival, sources of information available to newcomers, rights and responsibilities of residents, the legal system, essential documents, employment, education, housing, healthcare, transportation, taxes etc.

These guides help newcomers adjust and fulfill their legal obligations without requiring expensive legal advice from immigration lawyers. They also help combat human trafficking by alerting immigrants to the protections available to them.

### What Canada expects from immigrants

*Cultural Integration:* Canada prides itself on being a multi-ethnic country with Canadians hailing from all corners of the globe. That said, we do expect immigrants to integrate once they arrive. They must learn the language, must abide by the laws of the land, and must adhere to our fundamental values such as volunteerism, individual liberty, and the rule of law.

I like to describe Canada's stance on multiculturalism as a potluck meal in which every culture brings the best it has to offer and shares with everyone else. However, there are many cultural practices and attitudes which are antithetical to Canadian principles. At the time of writing this article, the Government of Canada is in the process of passing a Bill targeting barbaric cultural practices such as polygamy, underage and forced marriage, and honour killings. Practices like these and the misogynistic attitudes which spawn them have no place in Canada. Likewise, immigrants must leave the problems of their homelands at the water's edge instead of bringing sectarian or tribal conflicts to Canada.

Canada also expects newcomers to join in the wider society and public life. Although

there may be an incentive for immigrants to surround themselves with those of the same ethnic background, such enclaves isolate them from the wider society and can damage our polity through formation of single issue or ethnic voting blocs.

As important as it is to inform immigrants of the expectation that they will integrate culturally, the onus is not solely on them. Established Canadians must reach out and welcome newcomers. I often encourage immigrants to join and volunteer with civil society organizations which are not limited to their ethnic or religious background so that they can interact with and befriend a wide variety of established Canadians.

Finding a practical mechanism for inculcating the national culture into immigrants, and integrating newcomers while respecting their individual liberty, may pose a challenge to Canada and other Western countries, but is necessary for the preservation of our civilizations and the freedom and prosperity they have produced. I believe that Canadian values, culture, and civilization are worth preserving, and that it is eminently reasonable to require newcomers to aid in the task. As such, I see a need for a serious and thoughtful discussion on such a mechanism leading to implementation.

Moving to the next topic under integration, newcomers need to join the Canadian economy as well.







**“Canada wants immigrants to succeed economically as well as socially. We understand that working in one’s chosen field or with one’s skillset is very important for morale. As such, we want newcomers to integrate economically, to find productive work, and to contribute to the GDP.”**

*Economic integration:* Canada wants immigrants to succeed economically as well as socially. We understand that working in one’s chosen field or with one’s skillset is very important for morale. As such, we want newcomers to integrate economically, to find productive work, and to contribute to the GDP.

I will touch on this more in the next section, but I should mention that the Government of Canada is reforming our immigration policy to increase the relative numbers of economic immigrants for this very reason.

The new Express Entry program explicitly favours applicants who have job offers already in place. Unlike the immigration criteria in the 1990s and early 2000s, the rebalanced system is designed to avoid long backlogs which leave immigrants in a kind of application limbo.

*Loyalty to Canada:* The last major expectation I will mention is the requirement that newcomers be loyal to Canada. Many

**Above: A Hispanic family become Canadian citizens at a citizenship ceremony. Canadian nationality law determines who is eligible for citizenship.**

immigrants come to Canada as a land of opportunity but need a reminder to adopt the principles of individual rights and freedoms which make it so. Unfortunately, there are those who would abuse our generosity by radicalizing the disaffected or by using Canada as a staging ground to attack us or our allies.

Likewise, there are those who accept Canada’s aid by seeking refuge here, eventually taking out citizenship, only to travel with a Canadian passport while returning to their homelands to join the jihad.

To address these abuses, in 2012, I introduced a Private Member’s Bill in parliament to strip Canadian citizenship from convicted terrorists and traitors (without leaving anyone stateless) and to reward permanent residents who joined our armed forces by reducing

their residency requirement before applying for citizenship.

The Ministry at the time incorporated its provisions into official government legislation which was passed by Parliament and came into force in June 2014.

This leads to the next major point; the recent reforms to Canada’s Immigration system.

#### **Legislative changes in recent years**

The current Government of Canada has passed significant reforms to Canada’s immigration system since forming in 2006, but I will only highlight a few of the most recent ones.

For example, to improve the chances of newcomers economically and culturally integrating once in Canada, the government increased funding in April 2015 for expanded pre-arrival services including orientation sessions overseas.

These sessions brief immigrants on what to expect and how to connect upon arrival.

Although our immigration system is reforming the economic immigration elements, it still operates a generous family reunification program. Canada cut the backlog in parent and grandparent applications by almost 54% since 2012 and brought in the Parent and Grandparent Super Visa which is valid for ten years and allows multiple entries and prolonged stays.

Believing that immigration should benefit both new and established Canadians, Canada has taken steps to improve the security side of the system. This was done through the Faster Removal of Foreign Criminals Act which imposed stiffer penalties for misrepresentation on immigration applications, removed the possibility of appealing a deportation decision

for foreign criminals on Canadian soil who were sentenced to more than six months in prison, barred potential immigrants with a foreign conviction bearing a sentence of ten or more years from admissibility, and barred applicants who are inadmissible on serious grounds like national security, international rights violations, or organized crime from applying for humanitarian and compassionate consideration.

To counter potential abuse, the current government has also reformed the refugee and asylum portion of the system through measures like the Designated Country of Origin.

Human rights respecting countries with the rule of law which do not normally produce refugees are designated as such, so that asylum claimants from those countries receive additional scrutiny and faster processing.

We recently brought the total

number to 42 such countries by October 2014 by introducing a list of designate safe countries. Asylum claims from designated countries have dropped by 88% since 2011, freeing up resources to address legitimate claimants from elsewhere.

Lastly, Canada has just implemented a new electronic only program called Express Entry which fast-tracks the most qualified candidates from the economic immigration categories. The program is based on rankings in language proficiency, age, skills and experience, and most significantly, existing employment offers at the time of application. It allows the most qualified candidates from the economic immigration streams to enter an express processing pool which takes approximately six months from invitation to application to receiving permanent residency.

Coupled with other reforms, this ensures that those economic immigrants who are most likely to succeed in Canada are given priority without creating paper files and backlog.

#### **Conclusion**

Canada’s immigration system may not be perfect, and will continue to need adjustments from time to time, but serves as an example of sensible reforms matching available immigrants to the country’s needs.

By rebalancing the system to better meet our economic needs without compromising family unification programs; by prioritizing economic category applications from those most likely to succeed; and by clarifying our national expectations of newcomers, Canada has set the stage for many years of generous and productive immigration.







# NORFOLK ISLAND'S REMONSTRANCE

Norfolk Island's Legislative Assembly and the right to self-government.



**Hon. David E. Buffett AM MLA** is the Speaker of the outgoing Legislative Assembly of Norfolk Island. He was first elected to the Legislative Assembly in 1979 and has been a Member of each Assembly except the Twelfth.



**Hon. Lisle D. Snell MLA** is currently the Chief Minister and Minister for Tourism in the outgoing Legislative Assembly of Norfolk Island. Mr Snell was also a Member of the First Legislative Assembly of Norfolk Island.

Norfolk Island is an external territory under the authority of the Commonwealth of Australia. At the time of writing, it is substantially self-governing, and has been for the last 36 years.

However the Australian Parliament has recently passed legislation which will abolish Norfolk Island's Legislative Assembly. That legislation will probably come into operation in mid-June 2015. When it does commence, one of the smallest member branches of the Commonwealth Parliamentary Association – with 9 elected representatives – will cease to exist.

## Why has this happened?

The explanation is given in a document entitled *'Remonstrance'*, which was approved by the Norfolk Island Legislative Assembly on 20 May 2015 and subsequently presented by the Assembly's Speaker to the Deputy President of the Australian Senate and the Speaker of the Australian House of Representatives.

The document's title echoes not only the title of the *Grand Remonstrance of 1641*, presented by the English Parliament to King Charles I in that year, but also one of the substantive issues raised by the Grand Remonstrance, namely ministerial accountability to Parliament.

The short background to the Australian Parliament's recent measure is as follows. Norfolk Island was given a significant degree of autonomy in 1979.

The Legislative Assembly created in that year had plenary legislative power, subject only to a restricted list of matters on which it could not legislate, or could do so only with Australia's consent.

Therefore, the Assembly could legislate on many matters which in metropolitan Australia would have been matters for the Federal Parliament including immigration, social security, customs, quarantine, postal services and telecommunications.

The Assembly could also legislate on matters typically under the authority of a State in the Australian federal system, for example education, surface transport, firearms, registration of births, deaths and marriages, and public health.

At a third level, the local government level, the Island's democratic institutions had authority over a wide range of local matters, such as roads, water and electricity supply, sewerage, garbage, building control, and museums.

This vertically-integrated system is made for simplicity in decision-making and clarity in accountability. The executive government of the Island was appointed from the membership of the Legislative Assembly and was accountable to them. The members of the Assembly, in turn, were elected by the Island's voters.

For many years the system worked well. The Norfolk Island community funded,

under its own system of laws, numerous infrastructure initiatives including taking over the operations and management of the airport, a new airport terminal, extension of the electricity reticulation network, a sewerage scheme and enhanced education opportunities to the end of secondary education.

In addition, the Legislative Assembly has passed many innovative laws including a statutory social security system, no fault workers compensation, a health care scheme, land planning and land titles legislation.

The Island's principal industry, tourism, suffered a significant downturn in recent years, which has impacted on the Island's

**“This vertically-integrated system is made for simplicity in decision-making and clarity in accountability. The executive government of the Island was appointed from the membership of the Legislative Assembly and was accountable to them.”**

economy. It became necessary to seek – to a relatively modest extent – financial assistance from the Australian government.

This was forthcoming, but on conditions which included the Island government abandoning its opposition to a Federal measure to drastically reduce the powers of the Legislative Assembly (the Territories Law Reform Bill 2010) and agreeing, in exchange for financial assistance, to the Island's inclusion in Australian taxation and social security systems.

Those changes were accepted by the Norfolk

Island Government and by the Legislative Assembly. They were formally embodied in inter-governmental agreements. Those agreements did not contemplate the abolition of the Assembly or Norfolk Island's other democratic institutions.

The expressed preference of the Norfolk Island Government was for Federal-type functions to be assumed by the Australian authorities, leaving State-type and local government functions to be undertaken by the elected representatives of the Island's community.

Instead, the notion that

**Above: The Legislative Assembly of Norfolk Island (Chamber and Offices are shown in the foreground). Image courtesy of Harvie Allison.**

the Norfolk Island Legislative Assembly should be abolished arose quite recently, in a report by an Australian Parliamentary Committee published in October 2014. That Committee's perspective was that *“a new legislative framework”* was required and that State-level services ought to be provided by a state government, *“most probably New South Wales”*, on a contracted fee for service basis.

Local government services would be provided by a proposed

Norfolk Island regional council.

This model explicitly mirrored the governance model of Australia's Indian Ocean Territories – *Christmas Island, and the Cocos (Keeling) Islands* – which was referred to in the Committee's Report in the following terms:

*“This model has delivered appropriate State-level government services to the Indian Ocean Territories at an affordable cost to residents.”*

Contrary to that though, the







**“Norfolk Island is accordingly faced with the prospect of a democratic deficit, in which the delivery of State-type services – including such essential functions as education and health – are delivered by unelected persons under opaque arrangements of an unknown kind.”**

outgoing Administrator of the Indian Ocean Territories, Mr Jon Stanhope, has recently publicly expressed the view that, in the Indian Ocean Territories:

*“There are no democratic arrangements in place for State type purposes. Most State type services are delivered to Western Australian State Departments under contracts negotiated and administered by Commonwealth public servants based in Perth and Canberra.*

*There is no input into the content of the contracts by residents of the Territories nor are the Service Delivery Agreements under which the services are delivered published or made publicly available.”*

Norfolk Island is accordingly faced with the prospect of a democratic deficit, in which the

delivery of State-type services – including such essential functions as education and health – are delivered by unelected persons under opaque arrangements of an unknown kind.

To seek to avoid that outcome the Norfolk Island community was given the opportunity by the Legislative Assembly to express their opinion in a referendum which took place on 8 May 2015, and in which the electors of the Island overwhelmingly expressed their opinion that the Commonwealth Parliament should not go ahead with the contemplated changes until the Island's community had exercised their right to freely determine their political status.

As the Norfolk Island's Remonstrance said:

*“The Legislative Assembly*

*of Norfolk Island and its democratically elected Members respectfully request that the Commonwealth Parliament affirm the rights of the people of Norfolk Island to self-government by re-examining those aspects of the Norfolk Island Legislation Amendment Bill 2015 that result in the removal of the Norfolk Island Legislative Assembly and call on the Prime Minister to confer on the people of Norfolk Island the right to freely determine their political status, their economic, social and cultural development and be consulted at referendum or plebiscite on the future model of governance for Norfolk Island before such changes are acted on by the Australian Parliament.”*

Despite this, the Federal Bills were passed by the Australian

Parliament on 14 May and Royal Assent was given by the Governor-General on 26 May 2015.

As stated, at the time of writing the Acts are yet to commence. However it is expected that they will commence very shortly indeed. The outcome, we fear, is that very important public functions will no longer be performed by persons appointed from, and responsible to, a legislature.

That is the outcome sought to be avoided by the English Parliament in 1641:

*“...that for the future your Majesty will vouchsafe to employ such persons in your great and public affairs, and to take such to be near you in places of trust, as your Parliament may have cause to confide in.”*

For further information about the Norfolk Island Legislative Assembly please refer to the following issues of *The Parliamentarian*:

- *The Parliamentarian* 2014 Issue Two (pages 92-95): “*The Commonwealth of Australia and Norfolk Island: Bridging the Divide.*”
- *The Parliamentarian* 2012 Issue Three (pages 182-185): “*Norfolk Island and the Isle of Man strengthen historical ties: From mutiny to unity.*”
- *The Parliamentarian* 2010 Issue Two (pages 130-133): “*Governance and Democracy 'Norfolk Island Style': At Risk Again?*”

**“The outcome is that very important public functions will no longer be performed by persons appointed from, and responsible to, a legislature.”**



Above: The Remonstrance from Norfolk Island was presented to the Deputy President of the Australian Senate, Senator Gavin Marshall MP (above left) by the Speaker of the Norfolk Island Legislative Assembly, the Hon. David Buffett AM (above right).

Below: Overlooking the World Heritage Listed ‘Kingston and Arthur’s Vale Historic Area’ and across to Phillip Island. Image courtesy of Harvie Allison.







# PARLIAMENT AND THE MEDIA

## Examining Canada's self-governing model of media accountability



**The Hon. Linda Reid, MLA** has served as Speaker of the Legislative Assembly of British Columbia since her election to the position in June 2013. Previously, she served as Deputy Speaker from 2009 to 2013. Ms. Reid served as Minister responsible for early childhood development and child care. First elected as a Member of BC's Legislative Assembly in 1991, Ms. Reid is British Columbia's longest serving current MLA.

Media coverage of the Commonwealth Parliamentary Association conference on Parliament and the Media included the following headline in the Times of India newspaper: **Parliamentarians, media must be accountable for conduct.**

The article reported that, in the view of delegates to the conference, Members of Parliament and the media should be held accountable for their conduct and need to work responsibly to ensure that democratic institutions flourish.

This was indeed the consensus we reached at this significant CPA conference that I was privileged to attend in Andhra Pradesh, India from 8 to 10 April 2015. It is an important statement. If our parliamentary democracies are to endure, we need to ensure the accountability of both Parliament and the media.

With the 800<sup>th</sup> anniversary of the sealing of the Magna Carta this year, it is opportune to reflect on what steps we can take today to honour and preserve our parliamentary democracies. Most would agree that efforts that would promote greater accountability of Parliamentarians and the media should be one of those laudable steps.

### Accountability of Parliament

Accountability is the hallmark of a parliamentary democracy. In any free and democratic society, citizens must have the ability to hold their government to account. In order to do so, citizens must be informed. As stated in the Statement of Principles of one of Canada's

leading newspapers, the Toronto Star: *"An informed public is essential to fostering and preserving Canada's democratic society."*

A free press informs citizens by gathering and communicating information to citizens about public policy issues and actions taken by government. It performs this vital role without government interference. The principle of freedom of expression, and freedom of the press in particular, is essential to the working of a parliamentary democracy.

The media are conduits for information about the work of Parliament as well as critics of Parliamentarians. In recognition of the role of the media, many Parliaments provide facilities and support within their precincts to legislative press galleries. Their independence is reflected in the fact that legislative press galleries determine their own membership. The work of members of the press gallery is integrated into the daily operations of the Legislature and working relationships are maintained with Parliamentarians.

Transparency is an important component of accountability. Parliaments are taking new measures to promote greater transparency. In the British Columbia Legislature, for example, receipts for the travel expenses of Members are now posted online on the Legislature's website.

### Accountability of the Media

Media accountability is also critical in a democratic society.

In a 2009 decision of the Supreme Court of Canada involving a newspaper, the Chief Justice discussed freedom of expression and stated that: *"Freedom does not negate responsibility. It is vital that the media act responsibly in reporting facts on matters of public concern, holding themselves to the highest journalistic standards."*

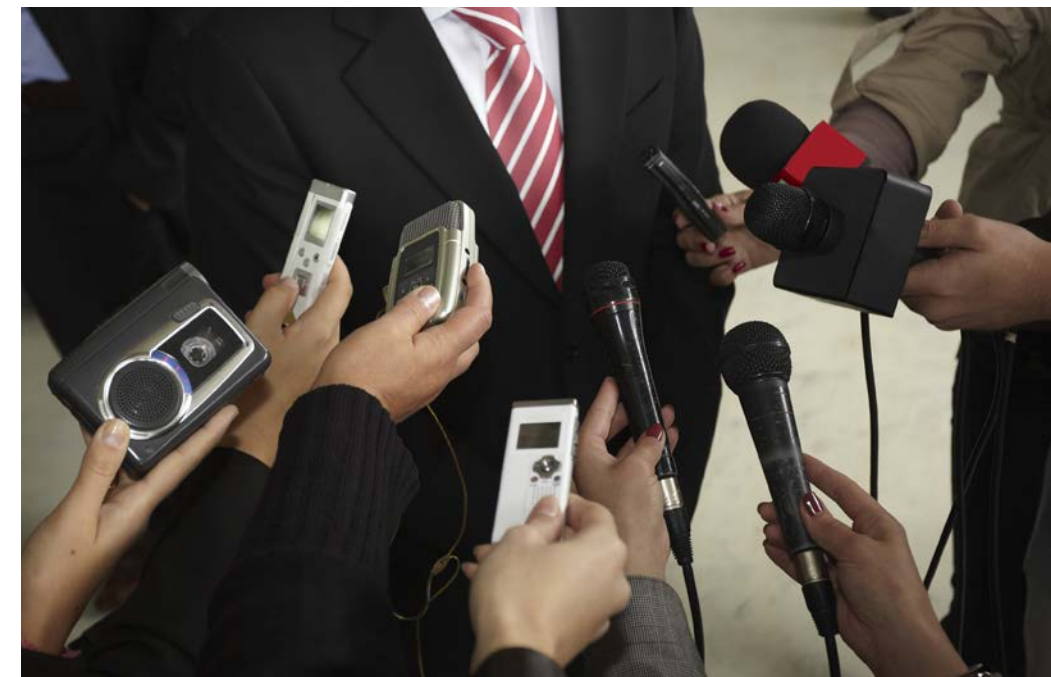
Given the importance and influence of the media, it is essential that journalists be accountable for how they perform their role. News stories and commentary must be accurate, balanced and fair.

The damaging and far-reaching harm to the reputations of individuals that results from unfair personal attacks is well recognized. Damaging and far-reaching harm to democratic institutions also ensues from unethical and irresponsible reporting about their activities.

Defamation laws permit individuals to bring a civil action for damages for reputational harm. Recourse to the courts is always, however, a costly and lengthy process.

At the CPA conference, delegates discussed alternative ways in which the media can be held accountable. We considered regulatory models in different jurisdictions and leading practices.

In India, there is a statutory, quasi-judicial national authority that functions as a watchdog of the press. It adjudicates complaints against and by the press for violation of ethics and for violation of the freedom of the



press. Another model that was discussed is the self-governing model that exists in Canada.

### Canada's self-governing model of media accountability

Independent self-governing bodies across Canada are responsible for ensuring that the newsprint media and journalists are acting in the best interests of the public.

The British Columbia Press Council is the self-governing body of the press in my own jurisdiction. It is one of five regional regulatory bodies governing the newspaper industry in Canada.

It describes its Code of Practice as follows:

*Newspapers are a vital and essential part of a free and democratic society, as history has shown time and again. That is why the Press Council created the Code of Practice – to encourage the highest professional and ethical standards of journalism, and in the belief that vigilant self-regulation is the hallmark of a free and responsible press.*

The Code of Practice includes such duties as accuracy, to give an opportunity to reply and to

balance an individual's desire for privacy with the requirements of a free press.

The Press Council considers unsatisfied complaints from the public about the conduct of member newspapers in the gathering and publication of news and opinion. The Council Directors, which include both members of the public and of the profession, oversee the mediation and adjudication of complaints, with input and response from both the newspaper and the complainant.

Apart from press councils, individual newspapers may also have their own codes of conduct. For example, Canada's national newspaper, *The Globe and Mail*, has a comprehensive Editorial Code of Conduct which is publicly available. It states that it is *"designed as a road map to clarify the boundaries between ethical and unethical journalism" and that editorial staff "must not only conduct themselves honourably but must be seen to do so by the public."*

### Challenges and opportunities

At the CPA conference, delegates expressed concerns that the media has become less

responsible and more cynical and prone to hastiness and superficiality. One conference delegate said that a crisis of trust in traditional media is growing by leaps and bounds.

Some saw this as a result of rapid technological change where digital media has sharpened the timeframes. Information is shared globally in an instant via the Internet. There is an increasing use of social media which may contribute to a tendency to focus on transitory and personality issues.

*In the face of this, is a self-governing model effective enough?* Perhaps regulatory models need to be assessed on a regular basis to see whether they are meeting the challenges of ensuring responsible journalism in the digital age.

A major Journalism Research Centre in Toronto recently published a report entitled *'Toward Press Council 2.0: An international review of models of, and alternatives to, the traditional press council'*. The authors are from a well-respected School of Journalism at Ryerson University.

The authors of the report saw the need for some action

by the Canadian news industry to be more accountable and transparent about its ethics and professional standards. They criticized Canada's system of media self-assessment as being neither comprehensive, nor consistently effective.

In Canada, there has been some discussion of moving towards a national press council that has regional representation. At a recent annual conference, Newspapers Canada, which represents more than 800 daily and community newspapers, decided to pursue a proposal put forward by the Ontario Press Council to create a voluntary national press council.

Presumably a national press council would have more resources and a larger profile than its regional predecessors. This would result in increased awareness of its role and function and, therefore, greater transparency.

I submit that these kinds of reviews and considerations of possible reforms of existing structures are timely and should be encouraged.

Given the breathtaking changes in the media landscape, there is an increasing need to ensure that existing regulatory models are effective and transparent. They must keep pace with the changes in how the media is delivering information to the public and what is being delivered. Their complaints processes must be accessible.

The media are key accountability actors in modern democracies. Both members of the media and Parliamentarians must be accountable for how they carry out their role. For the sake of our democratic institutions, efforts to strengthen that accountability must be a priority.

**The CPA Parliament and Media Law Conference was held in Andhra Pradesh, India between 8 and 10 April 2015.**







# CHILD LABOUR AND THE RIGHT TO EDUCATION

**Is India's Child Labour (Prohibition & Regulation) Law enough to protect the rights of children to education?**



**Prem Das Rai MP** is a member of the India Parliament of the 16<sup>th</sup> Lok Sabha from Sikkim and represents CPA India on the CPA Executive Committee as a regional representative. He was also a Member of the 15<sup>th</sup> Lok Sabha, is currently the Secretary-General of North-East MPs Forum and is a member of the Committees on Finance, Subordinate Legislation and Consultative Committee on Tribal Affairs. He has also served as the Deputy Chairman of the State Planning Commission of Sikkim.

Within India, there is considerable debate about the economic benefits that will come by way of demographic dividend. In fact, we have been having this discourse for over a decade.

Our country has one of the youngest populations in the world, with almost half the population under the age of 29<sup>1</sup>. We are putting effort into evolving a mechanism that will help us put our youth into meaningful jobs in all sectors of our growing economy.

Going by some of the recent initiatives and statements embedded in the 2015 budget speech of Finance Minister Arun Jaitley, we intend to become the fastest growing economy in the world. Prime Minister Narendra Modi is upbeat that with policies like 'make in India' we will achieve that goal.

However, the underbelly of this demographic is the huge number of young children who go to work every day. There can be no denying that about 1.67% of children between the ages of 5 to 14 years old are working<sup>2</sup>.

Overall, ten states represent 80% of the child labour burden in India<sup>3</sup>. They are mostly in the more populous states of India like Uttar Pradesh, Bihar and Madhya Pradesh, whilst North Eastern States do not seem to have this phenomenon. If at all, it

is limited in numbers.

Child labour is therefore a problematic issue especially in view of our policies being geared towards getting children out of work and putting them into schools through a rights-based legislation.

In a move towards that end, the Union Cabinet approved amendments to the Child Labour (Prohibition and Regulation) Amendment Bill 2012 ("Child Labour Bill") on 13 May 2015. The proposal seeks to ban the employment of children below 14 years of age in all occupations and processes, with certain limited exceptions.

The proposal further prohibits the employment of adolescents (14 to 18 years) in hazardous occupations and processes. The original Child Labour (Prohibition and Regulation) Act 1986 ("Child Labour Act") banned the employment of children below the age of 14 in only 18 hazardous industries and 65 processes and covered less than 20% of the working children between the age group of 5-19 years<sup>4</sup>.

The objective of the proposed amendments is to ensure that the right to education for children between the ages of 6 to 14 years is not compromised in line with the spirit of the Right to Free and Compulsory Education Act 2009 ("RTE Act").

The Child Labour Act, once

amended, will be titled as the 'Child and Adolescent Labour (Prohibition and Regulation) Act 1986' to reflect the expanded scope. The proposed amendments need to be passed by both the Houses of the Parliament and receive the assent of the President of India before it becomes law.

This article provides the legislative background and an assessment of key provisions of the proposed amendments. It also presents an argument for ensuring that the national policies on child labour and education are consistent and based on the child rights framework.

## Legislation process

In 1979, the Government of India appointed the Gurupadaswamy Committee that studied the issue of child labour and observed that as long as poverty continued, it would be difficult to totally eliminate child labour. Furthermore, the Committee observed that "any attempt to abolish child labour through legal recourse would not be a practical proposition." In light of these observations, the Committee recommended a ban on child labour in hazardous areas and a multiple policy to deal with the problems of working children.

Based on the recommendations, the Child

Labour Act was enacted in 1986. The Act prohibits employment of a child in 18 occupations and 65 processes. It regulates the conditions of working of children in other occupations and processes.

As per the Act, a child is defined as any person below the age of 14 years. The Act provides penalties for the offense of employing or permitting employment of any child in violation of the provisions of the Act.

The RTE Act and Article 21-A of the Indian Constitution guarantee free and compulsory education to all children in the age group of 6 to 14 years. It was observed that the existing Child Labour Act was therefore not in conformity with the RTE Act, as it permitted employment of a child below 14 years in occupations and processes which were not prohibited.

Further in May 2010, it was decided by the Government of India to amend the Child Labour Act to align it with the International Labour Organization (ILO) Conventions 138 and 182. The latter provides for a minimum age of entry into employment (ILO Convention 138) and the prohibition of employment of persons below 18 years in work which is likely to harm health, safety and morals (ILO Convention 182).

After extensive deliberations, the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 was introduced in the Rajya Sabha (the upper house of the Indian Parliament) by the then Minister of Labour and Employment, Mallikarjun Kharge on 4 December 2012. The Bill recommended a complete ban on child labour until the child finishes elementary education, as guaranteed under the RTE Act. It also added a new category of adolescents.

The Child Labour Bill was



also referred to the Standing Committee on Labour by the Speaker of Lok Sabha (the lower house of the Indian Parliament) in consultation with the Chairman of Rajya Sabha for examination. In the process of the examination of the Bill, the Standing Committee invited representatives of the Ministry of Labour and Employment and other stakeholders, for expressing their views and suggestions on the proposed amendments. The final report of the Standing Committee was presented in December 2013.

In June 2014, after extensive consultations, the Ministry of Labour and Employment annotated comments to the Report of the Standing Committee. The Ministry

invited further comments and suggestions from the public on the proposed amendments in its office memorandum.

The changes in the Child Labour Bill were approved by the Union Cabinet on 13 May 2015, after taking a considered view of the suggestions of different stakeholders.

## Key Features of the Proposed Amendment Bill

The Child Labour Bill (as amended by the Union Cabinet) proposes to define a child as a person below the age of 14 years or the age defined under the RTE Act. It links the age of prohibition of employment to the age under the RTE.

The Bill imposes a complete ban on employing children as

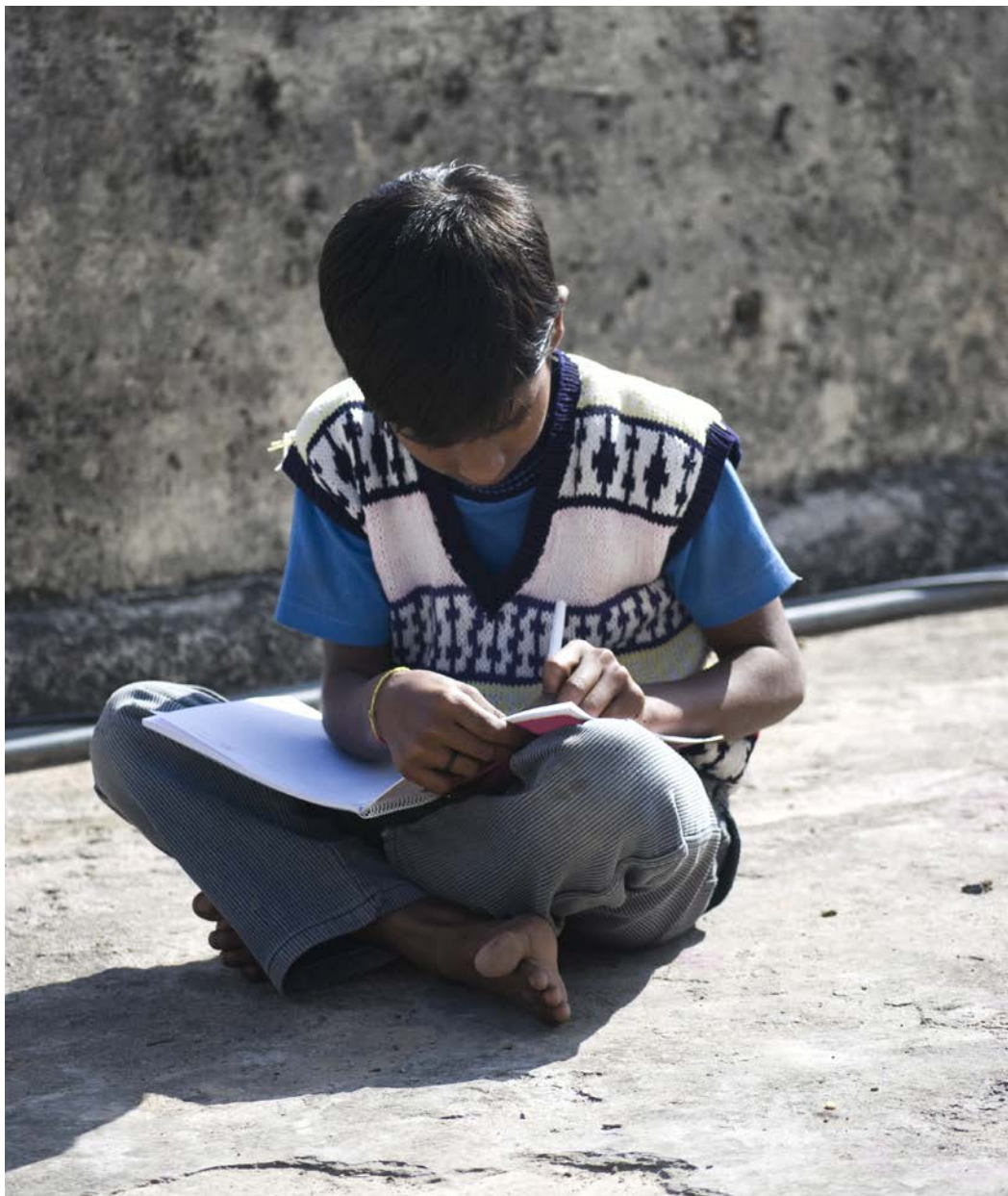
defined under the Act in all occupations and processes.

However, certain limited exceptions have been proposed for the following cases:

- a) a child helping his/her family or family enterprise, which is other than any hazardous occupation or process, provided the work is carried out after school hours or during vacation;
- b) a child working as artist in an audio-visual entertainment industry or sports activities, except the circus, provided that the school education of the child is not affected.

The Bill introduces a new definition of adolescent in the Child Labour Act – an adolescent means a person between 14 and 18 years of age. A new provision has





been added to prohibit the employment of adolescents in hazardous occupations and processes, in order to protect adolescents from the employment not suitable to their age. This is expected to provide relief to a majority of working children in the age group of 15-18 years, who were not previously protected by the law.

The amendments have also relaxed the penal provisions for parents or guardians, who were earlier subjected to the same punishment as the employer of the child.

The reason stated for the

change is the socio-economic fabric of the country. The amendments propose no penalty provision for parents for the first offence. However, in case of parents being repeat offenders, they may be penalized with a fine up to approximately USD 150.

The changes in the labour law provide for stricter punishment for employers for violation:

a) In case of the first offence, the penalty for employers has been increased from a minimum of approximately USD 150 to USD 300 to a minimum of approximately, USD 300 to USD 750. In addition, an imprisonment

for a term not less than six months but which may extend to two years may be applicable (earlier it was three months to one year)

b) In case of a second or subsequent offence of employing any child or adolescent in contravention of the law, the minimum imprisonment would be one year to three years (earlier it was six months to two years).

The Bill provides that the offence of employing any child or adolescent in contravention of the Act by an employer will be made a cognizable offence, which allows the police to arrest without a warrant.

The Bill provides for creation of a special fund – Child and Adolescent Labour Rehabilitation Fund – for rehabilitation of rescued children and/or adolescents. The Bill vests the powers with the District Magistrate to ensure that the provisions of the amended law are properly enforced.

### Analysis

The proposed amendments to the Child Labour Act are historic due to two key reasons. For the first time, India is moving towards a complete ban on employment of children below 14 years in all occupations and of adolescents in hazardous occupations.

Secondly, recognising the socio-economic realities of the country and providing relaxation to parents in case of children assisting their families in non-hazardous work after school.

Although the proposed amendments are stricter than the existing law, many activists have highlighted the need for a total ban on child labour below 14 years. Furthermore, some have suggested that the provisions will have a detrimental impact on education, as children may find it difficult to work in a family enterprise and at the same time meet the demands of school. Concerns that by working after school, children will be unable to play or indulge in other activities, which could impact their growth and development, have also been expressed.

While any form of 'child labour' ought to be prohibited, there is a need to look at the issue in a holistic manner especially within India. There is recognition that child labour conversation has two sides – both the demand and the supply – and is influenced by various factors including (but not limited to) family wealth, number of siblings, joblessness, education and accessibility. A nuanced approach, keeping in mind the social fabric and socio-economic conditions in the country, must be considered.

Children everywhere in the world visit their parents' workplace, from "mom and pop" stores in the developed world to children working in farms in developing countries. Even Prime Minister Narendra Modi assisted his father as a teenager at the family tea stall. Moreover, such experiences can also be educative and enable children to learn the basics of an occupation while helping their parents. In fact, earning pocket money is also encouraged in many societies.

Nobel Laureate Kailash Satyarthi has said that the demand for a ban on any kind of labour for children under 14 does not mean that children cannot help their families in their free time.

Furthermore, Article 5 (3) of the ILO Convention 138 also provides that the provisions of the convention shall exclude family and small-scale holdings producing for local consumption and not regularly employing hired workers.

Therefore, to strike a balance between the need for education for a child and the reality of the socio-economic condition and social fabric in the country, the

government has allowed children to help their family or family enterprise, provided the work is not hazardous, after school hours or during vacations.

Another major concern highlighted is the possible exploitation of children due to the exceptions proposed in the law. There have been concerns that the amendments will allow traditional employers of child labour to engage children in work and escape from the clutches of law. Fears were also expressed that practices may lead to child trafficking.

The Minister of Labour and Employment, Bandaru Dattatreya has emphasized the need for collective and coordinated action by the district magistrates, labour inspectors and state officials to address this issue.

He stated that more powers will be given to district magistrates as per the law. He suggested that the district magistrates and labour inspectors need to take stringent action and ensure strict implementation of the law, particularly in sectors where most of child labour is involved (textiles, carpets, handicrafts).

The government also proposes to formulate rules and regulations governing the employment of children in the audio-visual entertainment industry to curb the threat of exploitation.

In addition to impacting on the development of a child, child labour also perpetuates the generation of money for the parallel economy. As Kailash Satyarthi states, no employer shows that they are employing children. Addressing this threat is important for the overall development of the nation.

### The Way Forward

John F. Kennedy said that "Children are the world's most valuable resource and its best hope for the future." This sums up how valuable children are, but also the need to create

an enabling environment for their development to ensure a sustainable and perhaps a brighter future.

The problem of child labour is a key challenge before India. Parliamentarians and Government are aware of this. Various proactive steps initiated by the Government have resulted in reduction in the number of child-workers from 12.6 million as per Census 2001 to 4.3 million as per Census 2011<sup>5</sup>.

While the amendment is definitely a step in the right direction, much more remains to be done. We need to create robust structures to ensure that the national policies on child labour and education are consistent. Such policies must be based on the child rights framework and incorporate their voices.

Policies which address both child labour and poverty are being formulated. These must have measurable goals to assess the progress achieved. We must also consider incorporating a sunset clause on the provision allowing children to work in non-hazardous family enterprises. A time bound exercise will possibly be the key.

There is a need to ensure that children who are working in family enterprises are given sufficient time and space to attend to their school activities.

Support, in the form of conditional cash transfers, must be provided to incentivize parents to send their child to school. Non Governmental Organizations and civil society groups have an important role to play in creating awareness about the importance of education for children whilst keeping them away from working during these tender years. Simply getting children into school has a positive impact on economic growth, as each extra year of schooling provided to the whole population can increase average annual GDP growth by 0.37%<sup>6</sup>.

We have re-imagined our

education policies to ensure that they address the learning and developmental needs of our children. We are investing in imparting skill-based education to our youth. Even as we allow adolescents to engage in non-hazardous work, we are creating policies and programs that ensure it will lead to the augmentation of skills. Out of the box solutions, such as providing onsite training and integrating it with educational structures such as evening colleges, are now being attempted.

A final thought is that we all know that Legislation by itself will not fix this problem but empowered societies will. Involvement of every member of our society to do their part is the best antidote for this scourge.

Many of the North Eastern States of India have shown the way. These States of India have conquered this problem. That is the way to go. Empowerment of society through education is the key, with Child Labour Prohibition Legislation being an instrument of guidance and providing some regulation, but mainly defining the path on which we must quickly tread.

### References:

<sup>1</sup> As per Census 2011

<sup>2</sup> As per Census 2011

<sup>3</sup> As per Census 2011, Uttar Pradesh, Maharashtra, Bihar, Andhra Pradesh (including Telangana), Madhya Pradesh, Rajasthan, Gujarat, Karnataka, and West Bengal constitute 80% of the working population between the age group of 5-14 years.

<sup>4</sup> As per Census 2011, working children between the age group of 15-19 years represent 80% of the total working children between the age group of 5-19 years

<sup>5</sup> Child labour, as per Census, is currently defined as an instance of child under 14 primarily working and not in school

<sup>6</sup> Global Campaign for Education 2010.





# DEVELOPING AN ETHICS AND CONFLICT OF INTEREST CODE

One of the biggest challenges facing parliamentarians today is maintaining ethical standards and ensuring that public confidence in parliament is assured.



**Hon. Anita Raynell Andreychuk** is a Senator in the Canadian Parliament since 1993, following diplomatic posts on behalf of Canada and as representative to the UNEP and the UN Human Rights Commission. She was instrumental in setting up the Senate Committee on Human Rights and is the first female chair of the Senate Committee on Foreign Affairs and International Trade. She also chairs the Committee on Conflict of Interest for Senators and is a long-time member of the CPA, serving on the Executive Committee of the Canadian Branch.

When parliamentarians take the oath of office, it is because they are “*assuming positions of public trust*,” says James Robertson, a former senior analyst with the Canadian Library of Parliament’s Parliamentary Research Service; “*the oath of allegiance is a pledge that they will conduct themselves ‘patriotically,’ and in the best interests of the country.*”

In an era driven by 24-hour news channels, social media and information communications technologies, however, the oath, unto itself, is insufficient proof that the public interest is being served according to the public’s expectations.

There is no evidence to suggest that today’s parliamentarians take public service and the responsible use of public resources any less seriously than their predecessors. But parliamentarians’ sense of integrity is no longer assumed. Instead, parliamentarians today are expected to be willing and able to withstand public scrutiny of their interests, behaviours and ethics.

It is therefore necessary that the public’s expectations be translated into a set of principles and policies to which parliamentarians can adhere and, in the event of perceived or real transgressions, against which they can be judged. As professional associations and parliaments across the world have discovered, this involves striking

a delicate balance between the public interest, the reputation of the institution or profession in question and the legitimate interests of the individuals to which the code applies.

## Recent History

Dating back to at least 1973, federal parliamentarians in Canada have been guided by a series of ‘green papers’, guidelines, studies and reports describing the standards against which parliamentarians’ ethics and behaviour could be judged.

Between 1978 and 2003, at least six bills were proposed that centred on governance of parliamentary conduct, but all died on the Order Paper before they could be passed into law.

By and large, these initiatives focussed on issues of conflict of interest. Such was also the case when amendments to the Parliament of Canada Act, adopted in 2003, led to the creation of the *Conflict of Interest Code for Senators*.

The Code quickly became the key mechanism for ensuring that Canadian Senators live up to the public trust in which they are vested. It began with a set of three principles stating that Senators were expected:

(a) to remain members of their communities and regions and to continue their activities in

those communities and regions while serving the public interest and those they represent to the best of their abilities;

(b) to fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate;

(c) to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest.

It then went on to detail how Senators and their families were expected to carry on their private business, refrain from using their influence for personal gain and publicly disclose their interests or any gifts or sponsored travel above a certain threshold.

The Code also provided for the creation of a Standing Committee on Conflict of Interest for Senators, which was responsible for all matters relating to the Code. This ensures that the Code remains relevant by conducting regular reviews and suggesting improvements.

## Strengthening the Code

One such effort was launched early in 2013, when the Committee agreed that the

The Canadian Parliament in Ottawa.



Code should be strengthened and improved to reflect changing realities and public expectations. In particular, it was determined that a clearer and more transparent process for conducting an inquiry into an alleged breach of the Code needed to be established, while greater depth needed to be given to the principles detailing acceptable behaviour.

After all, the Code had been established under that same Act that created the Senate Ethics Officer; nine years later, the integrity system the Code articulated had matured to a point where it needed to be broadened to reflect a more comprehensive public awareness of what modern professional conduct and ethics for parliamentarians should entail.

After months of deliberation and consultation between the Standing Committee on

Conflict of Interest for Senators, the Senate Ethics Officer and Parliamentary counsel, the Senate adopted several key amendments in early 2014. The new Code now opens with the following statement: “*Senators shall give precedence to their parliamentary duties and functions over any other duty or activity, consistent with their summons to the Senate, which commands them to lay aside all difficulties and excuses to perform their parliamentary duties and functions.*”

This principle now stands front and centre, guiding Senators’ interpretation of the Code and providing a day-to-day reminder of the oath each of us took upon being summoned to the Senate. Senators were also now required to file annual statements of compliance with the SEO, confirming that they have read the Code and that, to

the best of their knowledge, they are in compliance with it.

This preventive enforcement mechanism reflects the emerging norm in ethics regimes, including in Britain’s House of Lords and among senior public servants. It ensures that the Code remains current in Senator’s minds, as a source of guidance in their deliberations on matters of parliamentary ethics and behaviour. It also provides useful reassurance to the public.

This was reinforced by a new, streamlined process for determining whether a Senator has not complied with his or her obligations. The new process consists of a preliminary review followed, if necessary, by an inquiry by the Senate Ethics Officer. Conducted at arm’s length from the Committee, this investigative process ensures that Senators themselves are no longer involved in

**“The new Code now opens with: ‘Senators shall give precedence to their parliamentary duties and functions over any other duty or activity, consistent with their summons to the Senate, which commands them to lay aside all difficulties and excuses to perform their parliamentary duties and functions.’ ”**







the adjudication of the facts surrounding an alleged breach of any section of the Code by a peer. Instead, the Committee is responsible for the consideration of the inquiry report and, if the report establishes that a breach has occurred, recommending appropriate sanctions.

A list of remedial measures or sanctions included in the new Code sets out the responses available, from least to most intrusive. The ultimate decision of which sanction or remedial measure to apply rests with the Senate Chamber as a whole.

This three-staged process ensured that there would be no ambiguity as to how the Senate would be obliged to react if one of its members was suspected of breaching the Code.

Further strengthening the Code's transparency, the Senate Ethics Officer was given express

**"As Winston Churchill once said 'To improve is to change; to be perfect is to change often.'"**

authority to provide general information about the Senate ethics and conflict of interest regime to the public and to inform the public about the status of a preliminary review or inquiry.

While simplifying the enforcement process and increasing openness and transparency are virtues in themselves, a key consideration was that these changes would give the Code new value and currency as a guide to help inform and educate Senators and the public alike.

By articulating the principles of public integrity and trust to which Senators are expected to adhere, they gave effect to the Code's new title: *The Ethics and Conflict of Interest Code for Senators*.

Broadened in scope beyond the erstwhile almost exclusive focus on matters of conflict of interest, the new Code combines guidance for Senators' daily behaviour with a clear statement of the procedures for addressing real or apparent breaches of the Code.

#### Sharing Best Practice

As parliaments around the world continue in their efforts to develop appropriate means for governing their members' ethics and behaviour, it is perhaps unsurprising that it is these procedural considerations that pose the greatest challenge.

In early April 2015, I was privileged to participate in

a workshop hosted by the Commonwealth Parliamentary Association at Monash University in Melbourne.

The workshop provided an opportunity for parliamentarians from around the Commonwealth to deliberate on a set of Recommended Benchmarks for Parliamentary Codes of Conduct developed under the leadership of Associate Professor Hon. Dr. Ken Coghill.

Our discussions revealed that, while parliamentarians generally agree on the principles that should guide us for the preservation of public trust in our respective legislatures, the mechanisms and procedures that make such Codes enforceable are best developed to reflect the nuances of each jurisdiction.

Few who are truly committed to public service would dispute the universal importance of

selflessness, integrity, objectivity, accountability, openness, honesty and leadership among public office holders.

Irrespective of their common Westminster heritage or other similarities, however, each parliament must develop its own tools for the effective enforcement of parliamentary behaviour in a manner that is consistent with its own particular practices and structures.

Instructive, in this regard, is that Parliamentary Codes of Conduct appear best oriented towards the discharge of natural justice. Bearing parliamentary privilege in mind, the duty to act fairly – rather than a focus on legal rights and due process – provides the surest means to demonstrate a solid commitment to the public interest and to avoid public perceptions of bias.

In addition to the principles of honourable conduct and the right to a fair hearing, parliamentarians tend to agree on at least one other characteristic that is critical to the effectiveness of all parliamentary codes of conduct:

*'Codes of conduct must remain relevant, be regularly reviewed and updated and made familiar to all those to whom they apply, as well as to the public whose interests they aim to uphold.'*

In its ten years of existence, the Senate of Canada's Code has already undergone several rounds of changes.

The latest measures help transform the Code into a tool to which Senators can turn from time to time as they determine appropriate courses of action, thereby ensuring that they are regularly reminded of its provisions.

It is hoped that this new awareness will assist in ensuring that the new Ethics and Conflict of Interest Code for Senators is both more accessible and adapted to the evolution of public expectations. But the role of the committee in anticipating and affecting further changes



remains as central to the effectiveness of the Senate's new ethics regime as ever.

Indeed, the Senate of Canada's Ethics and Conflict of Interest Code for Senators will continue to change as long as dynamism remains a defining feature of the societies and public expectations it seeks to uphold.

As Winston Churchill once said *"To improve is to change; to be perfect is to change often."*

In an era of rapid social change, perfection may be an impossible standard for internal accountability systems, standards of conduct and ethical behaviour to meet; set against the imperative of maintaining public confidence in our parliaments, however, regular improvement remains a constant and necessary pursuit.



Recommended Benchmarks  
for  
**Codes of Conduct**  
applying to  
Members of Parliament

Published by the Commonwealth  
Parliamentary Association

The Commonwealth  
Parliamentary  
Association (CPA)  
produces a number  
of documents and  
booklets including  
the Recommended  
Benchmarks for  
Codes of Conduct  
for Members of  
Parliament.

Please contact  
[hq.sec@cpahq.org](mailto:hq.sec@cpahq.org) for further information  
or visit [www.cpahq.org](http://www.cpahq.org) to download a copy.





# Commonwealth Parliamentary Association Conferences, Seminars and Events



Right: Participants at the Commonwealth Parliamentary Association Benchmarks for Codes of Conduct Workshop for Members of Parliament in partnership with Monash University and hosted by the CPA Victoria Branch in Melbourne, Australia in April 2015.

Below centre left: The opening ceremony of the CPA Parliament and Media Law Conference which was held in Andhra Pradesh, India between 8 and 10 April 2015.

Below centre right and bottom: The 26<sup>th</sup> Commonwealth Parliamentary Seminar which was held in Dhaka, Bangladesh from 17 to 22 May 2015.



Above: The opening ceremony at the Commonwealth Parliamentary Association Executive Committee Mid-Year Meeting held from 27 April to 3 May 2015 in Sabah, Malaysia.

Left: Participants at the 12<sup>th</sup> Canadian Region Parliamentary Seminar at the Houses of Parliament. The packed programme was hosted by Mr Joe Preston MP, Chair of the CPA Canada Branch and ran from 24 to 30 May 2015 in Ottawa, Canada.



Left: The Commonwealth Parliamentary Association Professional Development Programme for Clerks which was held at the CPA Secretariat where attendees included (front row left to right) Ms Kerry Scott, Manager, Public Information & Chamber Operations, Parliament of New Zealand; Ms Heather Lank, Principal Clerk, Senate Directorate, Parliament of Canada; Mr Paul Martinez, Clerk to the Gibraltar Parliament; Dr Szabó Zsolt, Legal Officer, Legislation Department, National Assembly of Hungary.







**CWP REGIONAL  
STRENGTHENING:  
CANADA**

# CWP NEWS

## Commonwealth Women Parliamentarians (CWP) from Canada report on regional activities.

### CWP at Ottawa Outreach Event

In November 2014, the Commonwealth Women Parliamentarians (CWP) Canadian Region held an outreach event at the Parliament Buildings in Ottawa, the national capital of Canada. Hosted by the Hon. Noël Kinsella, Speaker of the Senate, and the Hon. Andrew Scheer, Speaker of the House of Commons, the reception was well attended by over 30 MPs and Senators, university students and members of specially invited women's groups.

In addition to the keynote speaker, CWP Federal Representative (Canadian Branch), Susan Truppe MP for Ontario, the CWP was represented by Vice-Chair (National) Laura Ross, Member of the Legislative Assembly of Saskatchewan and steering committee members, Lisa Thompson, MP Ontario and Lisa Dempster, Member of the House of Assembly, Newfoundland & Labrador.

In her speech, Ms. Truppe, also the Parliamentary Secretary for the Status of Women, outlined the goals of the CWP since it formed in the Canadian Region ten years ago. Ms. Truppe spoke of the CWP's determination towards increasing the number of female members in the parliaments of Commonwealth countries and its promotion of the greater participation of women parliamentarians within the Commonwealth Parliamentary Association (CPA) members.

Emphasizing that a central feature of our democratic landscape is the representation and active participation of women in our parliaments, Ms. Truppe was able to report the

progress of gender equality that has been made within the Commonwealth over the decades. Using Canada as a prime example, she noted that the number of women that hold a seat in Canada's House of Commons now stands at 25%, a success when you consider that just 30 years ago it stood at just 9%.

After her speech, Ms. Truppe invited the guests to enjoy the reception and all of the CWP representatives were able to network with other guests to further promote the CWP, its goals and successes.

### North West Territories Campaign School for women

In preparation for the general election in October 2015, the Status of Women Council of Canada's North West Territories (NWT) held a campaign school in February 2015. The event was organised by CWP member, Wendy Bisaro, a MLA in the NWT, along with Lisa Dempster, MLA for Cartwright - L'Anse au Clair in Newfoundland and Labrador and a member of the Steering Committee of the CWP, Canadian Region.

The campaign school was attended by 45 women from all over the vast territory who were interested and engaged. A panel discussion took place with Lisa Dempster, representing the CWP along with Wendy Bisaro and Jane Groenewegen, the only two elected women in the NWT. The panel discussed the role of MLAs, managing people's expectations and maintaining a work/life balance in public service.



In another session that discussed how to set up and effectively run a campaign, Lisa Dempster and Wendy Bisaro were able to have considerable input by answering the many questions posed by the attendees. In particular, considerable discussion around fundraising revealed that this seemed to be a primary area of concern. The topics of working in male dominated environments, the challenges of public life and basic campaigning information were also widely discussed.

At the conclusion of the event, Lisa Dempster noted that there are many challenges to campaigning in the remote north. Those challenges include not only getting elected, but once elected, being effective in your role. Towns are very spread out, air travel is costly and often smaller areas speak a native language that may require an interpreter at the door. Because of the vast geography, door to door campaigning isn't always possible, so the importance of signage with a brief but clear message that voters will remember is essential.

These challenges are heightened when the candidate is female; gender issues and 'old boys' clubs' are still alive and well in many parts. However, Ms. Dempster was encouraged that an impressive number of women are considering running in the general election (at least six) and is hoping they will be encouraged and supported. Ms. Dempster offered her future assistance to any women who moves forward with an election plan. She noted that "two females

in a legislature of 19 MLA's was a glaring statement of just how under represented we are at this level and a reminder of how much work we still have left to do."

Lisa Dempster is thankful to the CWP for allowing her to travel this great distance to offer support to those women who are interested in sitting at the tables where policy is made and changes are implemented.

As a final remark, Ms. Dempster said: "It's imperative that we continue to see female representation grow in the legislatures across our country. Women do bring a different perspective to the table. Politics can be a viable and rewarding career for women and those of us involved have an important responsibility to encourage and support those interested in pursuing this worthy vocation."



*Further reports of regional CWP activities received by the CPA Secretariat will be published in future issues of The Parliamentarian and at [www.cpahq.org](http://www.cpahq.org).*

# Parliamentary Report

## NEWS AND LEGISLATION FROM COMMONWEALTH PARLIAMENTS

### UNITED KINGDOM:

Parliamentary 'Wash-up' ahead of general election  
Page 132

### AUSTRALIA:

Tributes in parliament as former Prime Minister Malcolm Fraser dies  
Page 134



## PRESIDENT OF INDIA ADDRESSES PARLIAMENT

Page 128

### SRI LANKA

Financial Measures discussed  
Page 120

### NEW ZEALAND

Referenda proposal for New Zealand flag  
Page 122

### CANADA

Budget announcements and Cabinet Reshuffle  
Page 126



# FINANCIAL MEASURES HIGH ON THE AGENDA IN PARLIAMENT

## Amendments to the Appropriation Act 2014 are people friendly

On 29 January 2015, the Minister of Finance of the new Government of Sri Lanka made a special statement in Parliament. The foremost intention of the Statement was to implement specific measures to provide relief to the people by reducing the rising cost of living. It was a pledge given at the Presidential Election campaign under the 100 day programme.

In his statement, the Minister of Finance, **Hon. Ravi Karunanayake MP** proposed several measures to provide relief to the general public as well as several other revenue and expenditure proposals. He also stated the importance of making the statement in a situation where it has made a significant change in the structure of the line Ministries in the government.

Since the number of Ministries was reduced from 71 to 31, it required the reallocation of resources to newly created Ministries and seek the approval of the Parliament to formalize the new structure.

Expressing views on the Budget 2015, the Minister stated that the estimated deficit in the Budget does not reflect the contingent liabilities that the country has incurred over the past few years.

He said that the total 'government' debt at the end of 2014 would be about 74.4% and its real value would be about 88.9% if the contingent liabilities are included. Sri Lanka's annual real economic growth averages around 7% during the last three years, while it expanded by

around 15% annually in nominal terms during the same period.

## Expenditure Proposals

The Minister proposed a salary revision for the public sector and stated that it would be recorded as the highest ever salary increase granted to public servants of Sri Lanka. He also proposed an increase to pensions.

Beneficiaries of Samurdhi Welfare Scheme were granted enhanced monthly payments with an increase of 200% with effect from April 2015. In order to reduce the cost of living, the Minister made several significant proposals to reduce fuel prices, passenger bus fares and school van hiring charges, taxes on 13 essential goods and LP gas prices.

Additional proposals included granting 15% interest for deposits of senior citizens; providing an allowance for pregnant mothers; granting 50% reduction for farmer's loans; providing guaranteed price for tea leaves, rubber and liquid milk; empowering the Youth Parliament; increasing the Decentralized Budget (DCB); special relief for people who had pawned jewellery; increasing healthcare expenditure to 3% of GDP; increasing education expenditure to 6% of GDP; the establishment of Innovator's Commission; and providing concessions for Colombo City Dwellers relocated against their will.

## Revenue Proposals

Elaborating on the revenue measures, the Minister proposed several new forms of taxes. A tax termed as Mansion Tax of Rs. 1 million would be levied on owners of all houses valued at Rs. 150 million or more, or on houses above 10,000 square feet whichever is higher on an annual basis. Migrating Tax is a tax of 20% on foreign exchange taken out of the country by Sri Lankans who permanently leave Sri Lanka.

A payment of Rs. 500,000 was proposed to be charged to dual citizenship holders. Super Gain Tax is a one off payment that any company or individual who has earned profits over Rs. 2,000 million in the tax year 2013/2014 would be liable to pay 25% of their profit.

It was proposed to reduce taxes applicable on motor cars with engine capacity less than 1,000 cc by around 15%. The Minister was of the view that the present practice of depreciating the value of vehicles at the point of import has created many mal-practices, including under valuation of vehicles and changing the date of registration which has led to a significant amount of revenue loss to the government.

Therefore, he proposed to remove the depreciation table with immediate effect and to revise the excise taxes applicable on hybrid vehicles in order to rectify the disparity between hybrid and normal motor cars.

A one off special levy of Rs. 1,000 million was proposed to be imposed on all casino operators and an annual levy on liquor and beer manufacturers. The Minister stated that it had been decided to reformulate the licensing regulations through a tendering

process which would prohibit anyone possessing more than three licenses.

Commenting favourably on the measures taken to uplift the lives of people and public servants, the Leader of the Opposition, **Hon. Nimal Siripala De Silva MP** stated that the Opposition would be the main shareholder in providing these benefits. He stated that the proposals are minor changes to the proposals brought in the previous Budget. He said that it was doubted whether the revenue proposals were practical and realistic.

He inquired about the Government policy regarding the casino industry and stated that indirectly the Government has legalized it. Commenting on the newly introduced taxes, the Super Gain Tax and Mansion Tax, he stated that taxation should be based on clear and fair criteria.

He stated that the then Government had taken a number of measures to empower the local farmer but the new proposals may adversely affect local farmers and inquired whether the subsidies provided by the previous Budget would remain the same.

The **Hon. Sunil Handunnetti MP** stated that it is a positive factor that reliefs are granted on the cost of living but certain practical issues have arisen due to certain proposals made. Through the new taxation mechanism imposed on imported vehicles, he stated that the people who are already in the process of importing a vehicle face a greater difficulty as they have to open the Letters of Credit (L/C) before the new tax is imposed.



The Parliament chamber

He requested relief for the said parties. He further pointed out that the proposals do not address the anomalies in pensions.

The **Hon. Prof. Tissa Vitarana MP** was of the view that Government should have sustainable economic development and there needs to be investment in infrastructure development as well as in industrial development.

However there is no guarantee from the way the Budget has been prepared that the proposed mechanisms would be sustained and he said that they were very short-sighted budgetary measures. The type of taxation, which is based on earnings acquired in the past, is a poor system of taxation and that very act has already been producing negative effects.

Expressing his views on the tax policy, the **Hon. D.E.W. Gunasekara MP** stated that it could not expect a change to the prevailing tax policy in a proposal made in about 20 days, but the

only good thing that he could observe was the relief given to the PAYE taxpayers.

He stated that the imposition of the Mansion Tax has not even considered the principles of Economics and that the contingent liabilities are included only in the consolidated fund but not in a Budget. He informed that the report of the Taxation Commission should be referred and it has given good direction towards a better tax policy.

The Minister of Power and Energy, **Hon. Patali Champika Ranawaka MP** stated that this government was elected mainly to establish political reform in the country and at the same time it may focus on providing some economic benefits to the people. He said that it could not expect long term economic plans from this government.

The Minister stated that the most important factor in these proposals was the removal of unreasonable taxes on consumer goods. He stated that though there

had been an issue with the tax imposed on hybrid vehicles, electric and hydrogen powered vehicles have been given total tax relief.

The Minister denied fact that the proposals were focused on settling long term expenses through one-off or short term revenues. He stated that it had to confine to the budgetary proposals of the previous Government.

The Minister also stated that the previous Government was on a construction revolution which had not adhered to proper benchmark costs and had no strategic revenue plans and he outlined the magnitude of debt created in the country.

The Minister of Finance concluding the debate on the Amendments to the Appropriation Act stated that the government is drafting roadmaps to empower state owned enterprises by eliminating waste and corruption. He stated that the mega projects which had been initiated by the then government would be continued to the actual

cost, so the tax paid by the people would effectively be utilized.

The amendments were debated for three full days and put to the vote. 165 voted for and 1 against and the Act was passed.



The Minister of Finance, Hon. Ravi Karunanayake MP addresses the Sri Lankan parliament



# REFERENDA PROPOSAL TO DECIDE ON NEW ZEALAND FLAG DISCUSSED

## New Zealand Flag Referenda

On 12 March 2015, the Deputy Prime Minister, **Hon. Bill English MP** (National) introduced the New Zealand Flag Referendum Bill for its first reading. He reiterated the government's "commitment to hold a binding referendum on the New Zealand flag well before the 2017 general election." He said that should New Zealanders vote in favour of a new flag, "the Bill provides for this to become the official flag of New Zealand by amending the Flags, Emblems, and Names Protection Act 1981."

Mr English explained the government's intention to hold a two-stage postal ballot that "begins with a vote on alternative flag designs and concludes with a clear choice between the current New Zealand flag and the most preferred alternative design."

**Mr Jono Naylor MP** (National) spoke in favour of the Bill, saying: "The current flag was put in place in 1902, so it probably is a good time for us to stop and ponder the future of our flag in New Zealand." Fellow National Member **Ms Joanne Hayes MP** added: "We need a flag that tells the world that we are Aotearoa New Zealand."

**Hon. Maurice Williamson MP** (National) described the difference between the Australian and New Zealand flags. "They have got white stars; we have got red ones. They have got a bigger [star], but it's hardly that much of a difference."

**Dr Kennedy Graham MP** (Green) added that the current flag "simply serves to sow confusion as to our separate identities."

The Co-Leader of the Māori Party, **Ms Marama Fox MP**, expressed her desire for a flag that represents her "duality of nationhood", and **Mr James Shaw MP** (Green) highlighted the fact that "twelve percent of [the] population identifies as Māori, but [the] current flag ignores the indigenous people of this land."

Opposing the Bill, **Hon. Phil Goff MP** (Labour) said: "Two percent of New Zealanders think that changing the flag is an important issue." He suggested that a single referendum could be held "at the same time as the general election, to save the \$26 million the government is spending." Also opposing the Bill, **Mr Denis O'Rourke MP** (New Zealand First), stated his preference for the current flag saying "Everybody knows it. Everybody respects it."

The Bill passed its first reading by 76 votes to 43, and was referred to the Justice and Electoral Committee for public submissions.

## Legislating against MPs' Pay Increase

Under existing legislation, the independent Remuneration Authority used certain criteria (for example, the need to achieve fairness for both the Member and for the taxpayer) to determine the salaries of MPs.

The House sat under urgency on 17 March to pass the Remuneration Authority (Members of Parliament Remuneration) Amendment Bill through all stages to revoke a recent determination of the authority and change the criteria

for setting salary rises. Urgency was used to ensure that MPs did not receive a backdated 3.56% salary increase that was due to be paid the following week.

At its third reading, Minister for Workplace Relations and Safety, **Hon. Michael Woodhouse MP** (National) said that the Bill "is the government's response to the most recent determination of the Remuneration Authority, [...] The government considers this increase to be disproportionate to the salary movements in the wider public sector and unfair to taxpayers. The Bill limits the Remuneration Authority consideration to applying the wage growth in the public sector, as measured by the quarterly employment survey, to MPs' remuneration."

Speaking in support of the Bill, the Deputy Leader of Labour, **Hon. Annette King MP** noted in the first reading: "Using this measure means the remuneration of Members of Parliament will increase in line with the average public sector salary."

**Mr Grant Robertson MP** (Labour) said in the second reading: "I think the government needs to explain very carefully to us why it is limiting this to the public sector. If we looked across the economy more broadly, then I would have more comfort."

**Ms Tracey Martin MP** (Deputy Leader, New Zealand First) asked: "Are we sure that the quarterly employment survey is the thing that we should be working on?"

At the Committee of the whole House stage, the Green Party did not win sufficient support for an amendment that would have revoked the pay increase but allowed time for further consideration of the criteria used by the Remuneration Authority.

In the third reading, Green Party Co-Leader **Ms Metiria Turei MP** said: "We are opposing this legislation because it does not do what the government says it wants it to do [...] The purpose of the legislation [...] is to constrain public sector pay." The Bill passed by 106 votes to 14.

## Changes to Paid Parental Leave Legislation

The Parental Leave and Employment Protection (Six Months' Paid Leave) Amendment Bill, a Member's Bill in the name of **Ms Sue Moroney MP** (Labour) was negatived in its third reading on 25 February 2015 when the voting was tied at 60 votes in favour and 60 against.

The Bill as introduced would have extended paid parental leave from 14 to 26 weeks in staged increases. Under the Standing Orders, any Member other than a Minister may propose a Bill for inclusion in the ballot. The Standing Orders prescribe the rules around the priority of Member's Bills on the order paper.

Introduced in 2012, Ms Moroney's Bill passed its second reading on 28 February 2014 by 61 votes to 60. However, sitting under urgency on 15 May, the House passed government legislation to extend paid parental

leave from 14 to 18 weeks and to extend other support measures. Ms Moroney's Bill nevertheless proceeded to be considered by the Committee of the whole House on 25 June.

The committee agreed to the first three clauses of the Bill by 60 votes to 59 on 23 July 2014, the last Member's day before Parliament was dissolved.

The Committee of the whole House resumed its consideration in November and December following the September general election when National party increased its majority by one seat.

The committee voted against the remaining clauses, including the purpose clause, by 61 votes to 60. On 25 February 2015, after a failed motion to recommit the Bill to further consideration by the Committee of the whole House, the Bill proceeded to its third reading lacking the

provisions necessary to effect the intent of the legislation. Moving the third reading, Ms Moroney commented: "What a wild ride this has been." Referring to the Committee stage of the Bill she said "[National] filibustered a Bill that would give 26 weeks' paid parental leave to families [...] in order to try to stop it from going ahead [...]"

So after all of this, what have we achieved? [...] we have pushed the government into extending paid parental leave to 18 weeks over the course of the next 2 years."

**Ms Sarah Dowie MP** (National) countered by saying: "We do support the spirit of the Bill [...] but we disagree as to the fiscal constraints and how we are going to implement it"

**Hon. Michael Woodhouse MP** said: "The government does intend to increase paid parental

leave [and] it has already locked in [...] the fiscal appropriation to do just that"

## By-election win for Winston Peters

On 28 March 2015 Rt Hon. **Winston Peters**, the Leader of New Zealand First, won the seat of Northland in a by-election following the resignation of former Northland MP, **Mr Mike Sabin** (National).

Mr Peters won the seat with a majority of 4,441 over National's candidate. In the September 2014 general election National, the governing party, held the seat with a majority of 9,300 votes.

Under New Zealand's Mixed Member Proportional electoral system voters have two votes: one for their preferred electorate MP and the other for their preferred party. The number of electorate MPs is topped up by Members

drawn from party lists, with the overall number of MPs being determined by a party's proportional share of the party vote.

Prior to his election as Northland MP, Mr Peters had served as a list MP for New Zealand First, having first entered Parliament in 1978 as a National MP. He has been an MP for all but two terms since then.

In his first speech in the House following his win, Mr Peters remarked: "It is a privilege to be back, as the Member of Parliament for Northland."

Mr Peters' election as an electorate Member reduces the number of National Members from 60 to 59 in the current 121 member Parliament and creates a list vacancy within New Zealand First.





# THIRD READING: NEW ZEALAND

## Education Amendment Bill (No 2)

The Education Amendment Bill (No 2), which was read a third time on 10 February 2015, provides for the creation of the new Education Council of Aotearoa New Zealand, a reduction in the size of university councils, and the establishment of a regulatory framework for teachers and an independent contract disputes resolution scheme for international students.

The Minister of Education, **Hon. Hekia Parata MP** (National) told the House that *“the Bill reflects the recommendations of the 2012 review of the New Zealand Teachers Council and the 2013 report of the ministerial advisory group [...] creates a regulatory environment that promotes accountability and high standards.”*

The Minister for Tertiary Education, Skills and Employment, **Hon. Steven Joyce MP** (National) emphasised the importance of international education and said: *“It contributes, the latest figures say, \$2.85 billion a year to our economy and over 30,000 additional jobs for New Zealanders [...] The changes proposed are the latest in a series of reforms made by this government to improve the performance and quality of tertiary education.”*

Opposition parties opposed the legislation at every stage. **Mr Chris Hipkins MP** (Labour) told the House that *“the Education Council of Aotearoa New Zealand is being set up to fail from the beginning [...] because it does not have the support of the profession. The overwhelming feedback from the hundreds and hundreds and hundreds of people who came along [...] to have their say on this Bill was that they were opposed to it.”*

**Ms Catherine Delahunty MP** (Green), said: *“In six years of being on the Education and Science Committee, I have never seen so much unity and solidarity from all parts of the tertiary education sector [as there was] against this Bill.”* Ms Tracey Martin, MP (New Zealand First) added that *“not a single university came and supported this legislation—not a single one.”*

However, **Mr Paul Foster-Bell MP** (National), commented that the legislation *“is about the students more than it is about teachers”* while fellow National Member Mr Todd Barclay, MP added that the Bill *“improves the discipline and reporting requirements that protect children.”*

The Bill passed its third reading by 61 votes to 59.

## Statutes Amendment Bill (No 4)

Thirty-four Bills divided from the Statutes Amendment Bill (No 4) by the Committee of the whole House passed their third readings unanimously on 24 March 2015. The Bills make minor or technical amendments to 34 separate Acts.

In New Zealand statutes amendment Bills are one of the few types of omnibus bills that may be introduced into the House. Introducing the second reading on 24 February 2015, the Associate Minister of Justice, **Hon. Simon Bridges MP** (National) said: *“what a Statutes Amendment Bill enables Parliament to do is to make technical, short, and non-controversial amendments to a number of Acts. It enables amendments that would not usually receive sufficient priority to be progressed individually. This is achieved with the support of all parties in Parliament.”*

**Hon. Ruth Dyson MP** (Labour) said: *“the most important thing that Members need to know is that one single Member of Parliament can object to a provision in a Statutes Amendment Bill, and then it [...] would be withdrawn [...] So it is not a simple majority as it is with other statutes that are before the House; it is one that everyone agrees to.”*

The select committee that considered the parent Bill had recommended most provisions be passed. It recommended against a proposed amendment that sought to include a definition of “legal professional privilege” in the Local Government Official Information and Meetings Act.

**Hon. David Parker MP** (Labour) said: *“the introduction of a narrower definition than the wider definition of ‘legal professional privilege’ might have had the opposite effect to that which was intended.”*

At the third reading Ms Dyson, who chairs the select committee, explained that amendments within statutes amendment Bills *“generally clarify policy that is unclear because of the drafting, so that the original policy intent is reflected in the amended drafting. They are not meant to involve any policy changes at all. [...] The Government Administration Committee [...] considered that some of the provisions, as they were outlined, were not appropriate for inclusion in a statutes amendment Bill [...] So we struck out some provisions and we recommended changes in others.”*

# THIRD READING: BRITISH COLUMBIA, CANADA

## Liquefied Natural Gas Income Tax Act

The Liquefied Natural Gas Income Tax Act sets out an income tax regime for application to the province’s developing liquefied natural gas (LNG) industry, reflecting a February 2014 government commitment and ongoing consultation with industry.

For taxation years that begin on or after 1 January 2017 and before 1 January 2037, tax is imposed at a rate of 3.5% of a taxpayer’s net income. During the period when net operating losses and the capital investment are being deducted, a tax rate of 1.5% will apply, creditable against the 3.5% rate. Beginning on 1 January 2017, the natural gas tax credit under the Bill provides a non-refundable credit based on the cost of natural gas owned by a corporation at the inlet to an LNG facility in British Columbia. The tax credit can be used to reduce the effective British Columbia corporate income tax rate to as low as 8%.

In introducing the Bill at Second Reading, BC’s Minister of Finance, **Hon. Michael de Jong**, emphasized government’s conviction that *“the taxation measure contained within Bill 6, including the natural gas tax credit, will serve as an important plank in the overall suite of regulatory and taxation measures that will render us competitive and attractive for those who are seeking to develop this industry in a way that will benefit British Columbians, their families and communities across British Columbia.”*

In response, Opposition Member **Bruce Ralston** referenced the highly technical nature of the Bill, and suggested that recent shifts to the global context within which the framework was developed were perhaps more predictable than government comments would indicate. The Liquefied Natural Gas Income Tax Act received Third Reading, on division, on 27 November 2014.

## Greenhouse Gas Industrial Reporting and Control Act

The Greenhouse Gas Industrial Reporting and Control Act repeals the 2008 Greenhouse Gas Reduction (Cap and Trade) Act and enacts a provincial emissions intensity benchmark of 0.16 tonnes of carbon dioxide equivalent per tonne of LNG produced. For coal-fired electricity generation, it sets a benchmark of zero greenhouse gas emissions. The regulatory

scheme authorizes operations to meet emission limits by applying carbon offsets against their greenhouse gas emissions.

While introducing the Bill at Second Reading, BC’s Minister of Environment, **Hon. Mary Polak**, asserted that the legislation would provide certainty for industry, establishing *“a performance benchmark for liquefied natural gas facilities in BC to be the cleanest in the world.”*

Opposition Member **Spencer Chandra Herbert** expressed concern that many of the proposed controls rely upon yet to be established regulations, restricting opportunity for legislative or public oversight of their development; and doubts that given the scope of proposed LNG development in the province, this legislation can facilitate government meeting its stated greenhouse gas reduction commitments. The Greenhouse Gas Industrial Reporting and Control Act received Third Reading on 20 November 2014.

## Federal Port Development Act

The Federal Port Development Act will extend provincial authority and application of provincial law to LNG-related development on Canadian federal port lands, creating a comprehensive regulatory environment in coordination with 2014 federal government amendments to the Canada Marine Act. This legislation authorizes the Province to enter into agreements with the federal government and a federal port to administer and enforce provincial law on port lands — for example, providing the regulatory framework for Provincial oversight of development and operations of LNG facilities at a federally regulated port.

At First Reading, BC Deputy Premier and Minister of Natural Gas Development **Hon. Rich Coleman** described the legislation as ensuring consistent regulation for LNG proponents in BC, allowing them to move forward with investments knowing that provincial oversight is clear. Marine traffic and LNG shipping operations are not affected by this bill, and will continue to be led by Transport Canada under the Canada Marine Act.

In Committee Stage debate, Independent Member **Andrew Weaver** proposed several unsuccessful amendments aimed at clarifying the relationship between federal and provincial

governments and protection measures for species at risk. The Federal Port Development Act passed Committee Stage without amendment on division, and received Third Reading on 5 March 2015.

## Nisga’a Final Agreement Amendment Act 2014

When the Nisga’a Final Agreement Act received Royal Assent on 26 April 1999, following more than 20 years of negotiations, the Nisga’a Final Agreement became the first treaty signed in British Columbia since 1899. The tri-partite agreement, between the Nisga’a Nation and governments of Canada and British Columbia, established Nisga’a territorial and natural resource rights over more than 1,900 square kilometres of land in the Upper Nass Valley in north-western British Columbia, and set the terms for wide-ranging powers of self-government, including stipulations around the delivery of health care, education and social services to Nisga’a citizens and area residents.

The Act gives effect to the Real Property Tax Co-ordination Agreement between the province and the Nisga’a Nation, which enables the Nisga’a Lisims Government to levy and collect property tax from persons other than Nisga’a citizens, including companies that operate industrial installations.

In the words of the Minister of Aboriginal Relations and Reconciliation, **Hon. John Rustad**, this agreement *“ensures that the Nisga’a Nation receives a direct benefit from property taxation on Nisga’a lands, and particularly with respect to the LNG opportunity.”*

Amendments in the Bill also provide for the Nisga’a Nation to become a full member of the northwest regional hospital district and for an enhanced relationship with the Kitimat-Stikine regional district, enabling increased Nisga’a autonomy in delivery of health care and social services for its citizens. Opposition Members commended the introduction of this Bill, which brings terms of the Nisga’a Treaty into line with those of more recent treaties reached under the now established BC treaty process.

The Bill received Third Reading to resounding applause in the House on 27 November 2014.



# BUDGET ANNOUNCEMENTS AND CABINET RESHUFFLE IN CANADIAN PARLIAMENT

## Budget

On 21 April, Finance Minister **Hon. Joe Oliver MP** tabled the budget, the last one before the general election scheduled for October. Usually tabled in February or March, the budget was delayed because of the drop in oil prices.

The budget was the first since 2007 to show a surplus, and the government projected it to grow from \$1.4 billion in 2015-2016 to nearly \$5 billion in 2019-2020.

At the same time, the budget introduced measures such as increasing tax cuts aimed at families, increasing the annual amount Canadians may put in tax-free savings accounts, and reducing the tax rate for small businesses. Minister Oliver also pledged \$1 billion per year for major public transit projects and regular annual increases to the military budget. Both the Official Opposition New Democratic Party and the Liberal Party said the budget did not benefit the middle class.

## Death of the Senate Speaker

On 23 April, the Speaker of the Senate, Senator **Hon. Pierre Claude Nolin**, passed away at the age of 64 after a lengthy battle with cancer. Speaker Nolin was appointed to the Senate in 1993 and was appointed Speaker in November 2014.

Speaker Nolin was an eloquent advocate for the Senate as an independent chamber of sober second

thought. He had spent time reflecting on the Senate's role of reviewing legislation, investigating public issues, representing Canada's regions, protecting linguistic and other minorities and conducting parliamentary diplomacy. He had also urged all Senators, regardless of party affiliation, to work together in order to fulfil the Senate's constitutional mandate.

On 4 May, Prime Minister Harper named Senator **Hon. Leo Housakos**, the *Speaker pro tempore*, as the next Speaker of the Senate. Senator Housakos, a Montreal-born businessman and community activist, was appointed to the Senate in 2008.

## Motion to extend mission against ISIL

As reported in 2014: Issue Four of *The Parliamentarian*, in October 2014 the House of Commons approved a motion on contributing military assets to the fight against Islamic State of Iraq and the Levant (ISIL) for a period of up to six months.

Canada sent six fighter aircraft, several support aircraft and 69 soldiers to act as advisors in northern Iraq. The aircraft took part in a number of bombing missions against ISIL targets and one of the soldiers died in a friendly fire incident.

On 24 March 2015, Prime Minister **Rt. Hon. Stephen Harper MP** announced he would seek the House of Commons' support for the Government's decision to extend the mission by a year

and to expand its mandate to attacking ISIL targets in Syria. Both the leader of the official opposition, **Hon. Thomas Mulcair MP** and the leader of the Liberal Party, **Justin Trudeau MP** said their parties would oppose the motion. On 30 March, the motion of support passed by a vote of 142 to 129.

## Legislation

In March, the House of Commons Standing Committee on Public Safety and National Security held 10 meetings on Bill C-51, the Anti-Terrorism Act 2015. The Bill was introduced in the aftermath of the attacks in Ottawa and Saint-Jean-sur-Richelieu, Québec. It includes a number of measures to counter terrorism, including criminalizing the advocacy or promotion of terrorism offences, providing for the removal of terrorist propaganda from the Internet and giving law enforcement agencies the power to disrupt terrorist activity.

The Bill was criticized by academics and legal experts, who argued that it would give the state too much power and threaten Canadians' privacy rights.

The Committee reported the Bill with amendments. These addressed concerns that lawful demonstrations could be included under the new measures, clarified that the Canadian Security Intelligence Service does not have the power to arrest people, established limits on

the sharing of information between government agencies, and revised a provision that would have seen air carriers being directed to do "anything" to prevent a terrorist act.

Meanwhile, the Standing Senate Committee on National Security and Defence undertook a pre-study of the bill. It heard from a number of witnesses that did not appear before the House committee. Opposition Leader **Hon.**

**Thomas Mulcair MP** came out strongly against the bill. Liberal Leader Trudeau, on the other hand, said that while he thought the bill could be improved, the Liberal Party would support it.

Also in March, the Minister of Justice and Attorney General of Canada, **Hon. Peter MacKay MP** introduced Bill C-53, the Life Means Life Act. This Bill would remove the chance of parole for people convicted of murders involving kidnapping, sexual assault, terrorism or the killing of police and correctional officers. People convicted of first-degree murder are not eligible for parole for 25 years.

Another bill addressing the issue of criminals was introduced by the Minister of Public Safety and Emergency Preparedness, **Hon. Steven Blaney MP**. Bill C-56, the Statutory Release Reform Act, would end statutory release for repeat violent offenders. Under statutory release, convicted offenders can serve the last one-third of their sentence in the community under supervision.

In late March, the Minister

of Veterans Affairs, **Hon. Erin O'Toole MP** introduced Bill C-58, the Support for Veterans and Their Families Act. The Bill would improve the financial support for disabled veterans and their families by ensuring they receive financial support beyond the age of 65. This gap in financial support had been identified by the Veterans Ombudsman to the House of Commons Standing Committee on Veterans Affairs. Also in late March, Finance Minister Oliver introduced Bill C-57, the Support for Families Act. This would increase child care benefits and introduce a new benefit of \$60 per month for children aged 6 to 17 years.



Rt. Hon. Stephen Harper MP

## Cabinet shuffle

On 9 February 2015, Prime Minister **Rt. Hon. Stephen Harper MP** announced changes to his cabinet. **Hon. Robert Nicholson MP** moved from Minister of Defence to become Minister of Foreign Affairs. **Hon. Jason Kenney MP** moved from Minister of Employment and Social Development to become Minister of National Defence while retaining the position of Minister for Multiculturalism.

**Hon. Pierre Poilievre MP** who was Minister of State (Democratic Reform), became Minister of Employment and Social Development and Minister for Democratic Reform.

## Changes in party standings

On 9 February, **Eve Adams MP** left the governing Conservative Party of Canada (CPC) caucus to join the Liberal Party. In doing so, she resigned her position as Parliamentary Secretary to the Minister of Health.

On 31 March, **James Lunney MP** left the CPC caucus so that he can speak out in defense of his Christian beliefs. Mr. Lunney, who is not seeking re-election, said that he did not want to entangle the CPC caucus in his decision and that he would continue to vote with the Government.

## Supreme Court ruling on the long gun registry

In 1995, following the massacre of 14 women at the École Polytechnique in Montreal, Parliament established a long-gun registry. While seen by some as a way of reducing gun violence, many law-abiding gun owners opposed the registry.

In 2012, Parliament passed a law ending the registration of long guns and requiring the destruction of all the data in the registry. Quebec, which wants to set up its own provincial long-gun registry, contested the destruction of the data in court. On 27 March, in a split 5-4

decision, the Supreme Court of Canada ruled that Quebec has no legal right to the data.

Quebec argued that the principle of cooperative federalism prevented the federal government from destroying the data in the registry, which was operated with the involvement of both the federal and provincial governments. The Supreme Court ruled, however, that the principle has no foundation in Canada's constitutional law. It said the principle of cooperative federalism could not be used to limit the federal government's legislative authority.

In this case, the long-gun registry is a matter of criminal law, which falls under federal jurisdiction. Therefore, the Supreme Court ruled, Parliament has the constitutional power to require the destruction of the data.

## Trial of Senator Duffy

On 7 April, the trial of Senator **Hon. Mike Duffy** began. He is charged with fraud, breach of trust and bribery related to expenses he claimed as a senator.

Appointed as a senator for Prince Edward Island, the Crown prosecutor alleged he

committed fraud by, among other things, claiming his primary residence is in Prince Edward Island, when he had been living in Ontario for years.

In his defence, Senator Duffy's lawyer argued that the Senate's rules on residency and expenses were unclear. The trial, which was scheduled to end on 19 June, is now expected to last much longer.

## Governor General's term extended

On 17 March, Prime Minister Harper announced the two-year extension of the term of Governor General **His Excellency the Rt Hon. David Johnston**, which was due to end in September 2015.

The Governor General's term is usually five years, but it may be extended. Mr. Johnston was appointed in October 2010 and the extension will allow him to participate in many of the events surrounding the 150th anniversary of Confederation in 2017.

The extension also means that an experienced Governor General will be in office in October 2015, when the general election is expected to be held.





# PRESIDENTIAL ADDRESS TO INDIA PARLIAMENT

## Presidential Address to Parliament

The President of India, **Shri Pranab Mukherjee** addressed the members of both Houses of Parliament assembled together in the Central Hall of Parliament, on 23 February 2015 at the first Session of Parliament for 2015.

The President, in his Address said the fundamental tenet of the government was ‘*Sabka Saath, Sabka Vikas*’ (All Together, Development of All). Realizing that financial inclusion was critical to poverty elimination, the government launched an ambitious scheme called *Pradhan Mantri Jan Dhan Yojana* to provide universal access to banking facilities – a bank account, having in-built accidental insurance with a Rupay debit card. A record 132 million new bank accounts were opened; over 110 billion rupees were deposited and 115 million Rupay debit cards were issued.

Believing that Swachhata or cleanliness had a cascading impact on national development and the potential to generate wealth from waste, the government launched the *Swachh Bharat Mission* to achieve a clean and open defecation free India by October 2019. *Swachh Vidyalaya* programme was rolled out to construct a toilet in every school before 15 August 2015. The President made an appeal to MPs to spend at least fifty per cent of their Local Area Development Scheme Funds on Swachh Bharat Mission.

Safeguarding the interest of farmers and families affected by land acquisition was of paramount importance. While taking utmost care to protect the

interest of farmers, including their compensation entitlements, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act was suitably refined to minimize certain procedural difficulties in acquisition of land inevitably required for critical public projects of infrastructure and for creation of basic amenities like rural housing, schools and hospitals, particularly in remote areas.

In view of the critical role of soil for productivity and farm output, a Soil Health Card Scheme was launched. Price stabilization fund was set up for perishable commodities. Another scheme was being launched to address the irrigation requirements of every village in an effective and sustainable manner. A mission had also been launched with the objective of conserving and developing indigenous cattle breeds.

The President felt happy that the economy was on the high growth trajectory due to the government’s sustained efforts and series of policy initiatives.

The Constitutional (Amendment) Bill on goods and services tax once enacted would simplify the indirect tax regime, broaden tax base and promote better tax compliance.

The President said the government was committed to taking all possible steps to stop generation of black money, both domestically and internationally. The steps included putting in place robust legislative and administrative frameworks, systems and process with due focus on capacity building, integration of information through

technology, and fast tracking prosecution. The Insurance Laws (Amendment) Ordinance 2014 was promulgated which was later replaced by an act of Parliament, enhancing the foreign equity cap from 26% to 49% while safeguarding Indian ownership and control. This would enhance capital availability and ensure better access to insurance services, especially in rural areas and for economically weaker sections.

Relations with neighbouring countries were reinvigorated promoting greater cooperation and integration in South Asia.

At the same time, the government spoke clearly about its interests and was fully prepared to defend its borders and secure the people. Relations with China expanded significantly based on mutual respect and sensitivity to each other’s concerns and interests.

Confidence and momentum in the time-tested strategic partnership with Russia was restored. The visit of US President Barack Obama as the chief guest on Republic Day elevated India’s relations with the United States to a new level. India intended to further deepen its cooperation with Europe. With Japan, a deeper political, economic and security relationship was at the forefront of a more active and purposeful Act-East-Policy, which was anchored in relations with Southeast Asia and now extended to Australia and the Pacific Islands. India was committed to deeper engagement with West Asia, Central Asia, Africa and South Americas.

The government would continue to work with others to reform multilateral institutions, including the United Nations, and would seek India’s rightful place

in these institutions. India would also participate actively in regional and international groupings. **Shri Mukherjee** said the UN decision to observe 21 June as International Yoga Day was a global recognition for India’s rich cultural heritage and traditions. The President urged the MPs to discharge their solemn responsibility in a spirit of cooperation and mutual accommodation.

Moving the Motion of Thanks on the President’s Address on 24 February 2015, **Shri Anurag Singh Thakur** (BJP) said the performance of the last nine months reflected that the government tried to live up to the expectation and aspiration of the people of India. Seconding the Motion, **Shri Nishikant Dubey** (BJP) said the government started the Namami Gange Project for cleaning the river Ganga and renewed focus on tourism would increase employment and revenue.

The leader of the Congress Party in Lok Sabha, **Shri Mallikarjun Kharge** rejected the government’s assertion that nothing was done during the last 65 years and all the developmental works took place only during the last nine months. It took years and lot of efforts to develop the country. The previous governments and leaders strived hard in this direction and implemented several schemes. The present government came into being because the roots of democracy were firm in the country.

**Dr P. Venugopal** (AIADMK) said efforts to arrive at a common view on issues like Goods and Services Tax must be given priority. The Tamil Nadu government was trying to make the state the most favoured

manufacturing investment destination in India and one of the top three investment destinations in Asia.

**Prof. Saugata Roy** (AITC) said the government was busy in dismantling old structures and repackaging old schemes. It dismantled the Planning Commission and jettisoned the planning process without any consensus and consultation with the states.

**Shri Bhartruhari Mahtab** (BJD) regretted that there was no mention in the Address about the assurance the Prime Minister had given to the people of the eastern region that highest priority would be accorded to bring that region on par with western region in terms of physical and social infrastructure. He demanded special category status for the state of Odisha.

Minister **Shri M. Venkaiah Naidu** said the focus was on development along with good governance. The government accepted the recommendation of the 14th Finance Commission to devolve 42% of the Union tax receipts to the states. Grants to local bodies and municipalities were also increased. Agriculture and industry were like eyes of a

person and the government would have to take care of both.

**Shri Abhijit Mukherjee** (INC) was of the view that several announcements mentioned in the Address were about the schemes started by the previous UPA government.

**Shri Mulayam Singh Yadav** (SP) said poverty was the root cause of uncleanness and the cleanliness drive would succeed only after poverty was eradicated. The dream to clean Ganga would not become a reality until the tributaries of the river were cleaned. Agriculture provided the largest employment but sadly farmers were not properly mentioned in the Address.

**Dr. Kulmani Samal** (BJD) requested the government expedite covering all areas in Odisha under the Pradhan Mantri Jan Dhan Yojana to eliminate poverty, especially in tribal dominated areas.

The former Prime Minister of India and JD-S leader, **Shri H.D. Devegowda** wanted to know what would be the alternative for a person who would lose land. It should not be mere compensation as generations had been depending only on agriculture.

**Smt. Supriya Sule** (NCP)

called for increasing the allocation under the MPLADS Scheme as the existing amount was too limited to meet the targets of various development schemes. Referring to the proposed one-Stop Crisis Centre for women in every state she demanded such centres in every district and block. She requested the government to address the chewing tobacco issue as it was the biggest cause of oral cancer.

Replying to the debate, the Prime Minister **Shri Narendra Modi** said cleanliness and sanitation were linked to the dignity of women. Girls were dropped from schools because there were no toilets for them in the schools. Governments would come and go but it was the people who made the country. Every country had his philosophy and the country run on the essence of its philosophy. The issue of corruption should not be discussed along political lines and all should come together to prevent corruption.

The Prime Minister believed that the prosperity and empowerment of the states was absolutely imperative for the prosperity and empowerment of the nation. The government

accepted the recommendations of the Finance Commission giving 42% share of the central revenue to the states. For the first time in independent India, there would be a stage when, in totality, the states would have 62% of the total exchequer of the country, leaving only 38% with the central government. Unity in diversity was India’s identity and strength. Flourishing of all the communities was something which was unique to India.

The Indian Constitution reflected the general behavior, hopes and aspirations of the people and the country would be able to continue moving forward only within the ambit of the Constitution. No one had any right to discriminate against others in the name of religion. ‘India first’ was the only one religion of the government.

The government had to follow only one scripture which was the Constitution of India. The government had only one worship which was centered on the welfare of the 1.25 billion countrymen and the government had only one style of working which was *Sabka Saath Sabka Vikas* (All Together, Development of All).

At the end of the debate that lasted for more than 14 hours running in to several days, all the amendments moved were negated and the motion was adopted.

The government, however, suffered an embarrassment in Rajya Sabha on 4 March 2015, when the non-NDA parties joined hands to force an amendment to the Motion of Thanks on the President’s Address for the failure of the government to curb high-level corruption and bring back black money allegedly stashed abroad. The amendment, moved by CPI-M members Sitaram Yechury and P. Rajeeve, was accepted with 118 votes in favour and 57 against.







# THIRD READING: INDIA

**The Constitution (One Hundred and Twenty-first Amendment) Bill 2014 and The National Judicial Appointments Commission Bill 2014**

In India, Supreme Court Judges and High Court Judges are appointed under the Constitution by the President. A Memorandum of Procedure for appointment of Judges to the Supreme Court and High Courts was formulated and is followed for appointments.

After a review of the relevant constitutional provisions, it was decided that a broad based National Judicial Appointments Commission should be established for making recommendations for appointment of Judges of the Supreme Court and High Courts. The Commission would provide a meaningful role to the judiciary, the executive and eminent persons to present their view points and make the participants accountable, while also introducing transparency in the selection process.

The National Judicial Appointments Commission Bill 2014 was dependent upon the Constitution (One Hundred and Twenty-first Amendment) Bill 2014. In other words it would only have been feasible to bring forward the National Judicial Appointments Commission Bill 2014 only after requisite amendments to relevant provisions are made through the Constitutional (One Hundred and Twenty-first Amendment) Bill 2014. As the provisions of the two Bills were interlinked, both the Bills were taken up together through a combined discussion.

The Constitution (One Hundred and Twenty-First Amendment) Bill 2014 sought to insert new articles into the Constitution which would provide for the composition and the functions of the proposed National Judicial Appointments Commission.

Further, it provided that Parliament might by law, regulate the procedure for appointment of Judges and empower the National Judicial Appointments Commission to lay down procedure by regulation for the discharge of its functions, manner of selection of persons for appointment and such other matters as might be considered necessary. Article 124A which sought to set up National Judicial Appointments Commission provided that it would comprise of key people including:

The Chief Justice of India, as its ex-officio Chairperson; Two other senior Judges of the Supreme Court next to the Chief Justice of India as its ex-officio members; Two eminent people to be nominated by the committee as Members (one of the eminent nominees shall be nominated from the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women); in addition the nominated members shall be nominated for a period of three years and shall not be eligible for re-nomination.

The functions of the National Judicial appointments Commission are to: recommend nominees for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts; recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; ensure that the person recommended is of ability and integrity.

The National Judicial Appointments Commission Bill 2014 sought to broaden the appointment of Judges, enabling participation of judiciary, executive and eminent persons and for ensuring greater transparency,

accountability and objectivity in the appointment of the Judges in the Supreme Court and High Courts.

During the discussion on the Bill in Parliament, the Minister stated that the Parliamentarians have always held the institution of Judiciary in highest esteem. There had been four attempts for Constitutional amendments and seven recommendations of various Committees over the years, all emphasising that the collegium system of appointment of Judges needed to be changed. While the Parliamentarians respected the independence of Judiciary, the supremacy of Parliament was also equally important. Members from all sections of the House welcomed the measures and expressed agreement on the fundamentals.

The short title of the Bill was changed to the Constitution (Ninety-ninth Amendment) Bill 2014 and it was passed along with the National Judicial Appointments Commission Bill 2014 by Lok Sabha on 13 August 2014 and by Rajya Sabha on 14 August 2014. Since amendments sought to make changes to the Constitution under in Chapter IV (Union Judiciary) and Chapter V (The High Courts in States) the Bill was also ratified by the States of the Indian Union. Both the Bills were assented to by the President of India on 31 December 2014.

**The Citizenship (Amendment) Bill 2015**

The Citizenship Act, 1955 provides for the acquisition and determination of Indian citizenship, after the commencement of the Constitution by birth, descent, registration, naturalisation and citizenship by incorporation of territory and for renunciation, termination and deprivation of citizenship under certain circumstances.

The Citizenship Act has been amended from time to time making enabling provisions for the registration of Overseas Citizen of India Cardholders, conferment of certain rights on such citizens, renunciation of overseas citizenship and cancellation of registration as Overseas Citizen of India Cardholders.

The Government felt a need for amending the Citizenship Act, 1955 owing to certain lacunae which were noticed during the implementation of the law. The Citizenship (Amendment) Bill 2015 brought about several amendments to the Citizenship Act, 1955 including: the definition of an Overseas Citizen of India Cardholder; providing for the Registration of Overseas Citizens of India; conferment of rights on overseas citizens of India; renunciation of overseas citizenship; and the provision for the cancellation of registration as overseas citizen of India.

The Bill also relaxes the period of twelve months as resident of India or in the service of a Government in India specified as one of the qualifications for grant of certificate of naturalisation by a period up to a maximum of thirty days which may be in different breaks.

During the discussion on the Bill in both the Houses of Parliament, there was near unanimity among Members in welcoming the measure as a timely initiative. Members extending support to the Bill observed this to be a long-pending demand of the Indian diaspora in the world. It was noted that Non-Resident Indians living abroad are no less patriotic than an

Indian living in the country and the Non-Resident Indians contribute a lot to the country especially in terms of foreign exchange earnings.

Merging of the two statuses (People of Indian Origin and Overseas Indian Citizens Cardholders) had been welcomed as this facilitates 'hassle free' travel to India and avoidance of needless problems at the immigration counters at various airports. Some Members expressed apprehension over the likely misuse of discretionary powers by the executive. Furthermore, some apprehensions were also expressed with regard to the interests of Tamils in Sri Lanka; Hindus coming from Pakistan and Bangladesh.

In response, the Minister of Home Affairs clarified by stating that this measure emanated from a commitment made by the Prime Minister of India to the fact that OIC facility would be made available on the Pravasi Bharatiya Diwas on 9 January to commemorate the 100th anniversary of Mahatma Gandhi's return from South Africa to India on 9 January 1914.

The Minister acknowledged the tremendous contribution from Persons of Indian Origin across the globe to the growth of the country and that the Government wishes to accord proper status to every Person of Indian Origin living across in more than two hundred countries.

The Bill was passed in Lok Sabha on 2 March 2015 and in Rajya Sabha on 4 March 2015. The Bill as passed by both the Houses of Parliament was assented to by the President of India on 10 March 2015.

**The Motor Vehicles (Amendment) Bill 2015**

Under the Motor Vehicles Act, 1988, no-one can be granted a learner's licence to drive a transport vehicle unless he has held the driving licence for a period of at least one year.

Drivers of e-rickshaws and e-carts do not have a licence and so the existing legislation will debar them from operating e-rickshaws/e-carts for a year. In order to remove this difficulty, the Government proposed amending the Motor Vehicles Act, 1988 to give provisions for e-rickshaw and e-cart drivers only. The Motor Vehicles (Amendment) Bill 2015 was introduced to define an e-cart or e-rickshaw to mean a special purpose battery powered vehicle of power not exceeding 4,000 watts, having three wheels for carrying goods or passengers.

During the discussion on the Bill in both Houses of Parliament the measure was welcomed as an initiative to provide employment to innumerable people who had been upgraded from the manually pulled rickshaws to be electric powered three-wheeled vehicles.

The Bill was passed by Lok Sabha on 3 March 2015 and by Rajya Sabha on 11 March 2015. The Bill as passed by both Houses of Parliament was assented to by the President of India on 19 March 2015.



PARLIAMENTARY  
 ‘WASH-UP’

The Parliamentary ‘Wash-up’

The lead up to the dissolution of a Parliament is often called ‘the wash-up’; a period of frantic legislative activity as the Government seeks to get its Bills into law before dissolution.

In 2010, major pieces of legislation such as the Constitutional Reform and Governance Bill were substantially re-written in order to ensure the cross-party agreement needed to get them into law.

By comparison, the end of the 2010-2015 Parliament was comparatively sedate – at least in legislative terms. The largest piece of legislation was the Finance Bill, needed to enact the Budget announced by the Chancellor of the Exchequer, Rt Hon. George Osbourne MP (Con) on 18 March. However, the period was not without its controversies.

Firstly the Chancellor used his speech to argue that the Government’s time in power had been an economic success and to use this to launch the Conservative’s election campaign. “Five years ago, millions of people could not find work. Today I can report that more people have jobs in Britain than ever before. Five years ago, living standards were set back years by the great recession. Today the latest projections show that living standards will be higher than they were when we came to office. Five years ago, the deficit was

out of control. Today, as a share of national income, it is down by more than a half. Five years ago, they were bailing out the banks. Today I can tell the House that we are selling more bank shares and getting taxpayers’ money back. We set out a plan, that plan is working, and Britain is walking tall again.”

The Leader of the Opposition, Rt Hon. Ed Miliband MP (Lab) did not share the Chancellor’s interpretation of his economic record: “This Chancellor has failed the working families of Britain. For the first time since the 1920s, people are earning less at the end of a Government than they were at the beginning. [...] People are £1,600 a year worse off. The next generation has seen wages plummet and tuition fees treble. The Government have built fewer homes than at any time in the past 100 years. It is certainly not a truly national recovery when there are more zero-hours contracts than the populations of Glasgow, Leeds



Rt Hon. Ed Milliband, MP



and Cardiff combined. That is the reality of the lives of working people. These are the facts. These are the inconvenient truths of this Chancellor’s record. It is a recovery for the few from a Government of the few.”

The Liberal Democrats – the second party in the coalition Government – presented their own economic plans in a Ministerial Statement by the Chief Secretary to the Treasury, Rt Hon. Danny Alexander MP (Lib Dem).

This resulted in furious protests by the Labour opposition, who saw it as an abuse of process for a Minister to make what they believed to be a purely party political announcement. Indeed, before Mr Alexander’s statement, the Speaker set out the Chair’s position on the use of Ministerial statements:

“The content of ministerial statements is, by longstanding practice, not a matter for the Chair, nor is my permission required for such a statement to be made. However, these statements must be ministerial, delivered not in a personal or a party capacity but on behalf of the Government. Although some latitude is of course permitted, there comes a point at which using the privilege accorded to Ministers for purely party purposes would be unfair to the House and would put the Chair in a very difficult position.”

Mr Alexander’s statement defended the Government’s economic record. But he argued that future spending plans need not follow the path set out by the Conservative or Labour parties and that the deficit could be controlled whilst preserving “fairness”. The Chief Secretary defended his right to make the statement, arguing that the figures he had based his analysis on were official Treasury figures.

The role of the Chair and, specifically, the re-election of the Speaker, was also to be at the centre of the second controversy of the ‘wash-up’ period.

In the House of Lords at 5:35pm on Wednesday 25 March, following a Government victory in a division on motion to agree to a Commons amendment to the Modern Slavery Bill, the Government announced that Parliament would prorogue the following day at the close of business. At about the same time, the Government whips in the Commons were tabling four motions relating to procedural changes in the new Parliament. Three of them were uncontroversial, the fourth related to the election of a Speaker and proved to be anything but.

At the start of a Parliament, if the Speaker from the previous Parliament has been re-elected, the Question is put to the House that that person take the Chair as Speaker in the new Parliament.

The Question can be opposed and, if it is opposed, a division is held in the normal way with the names of Members voting “Aye” or “No” recorded by the clerks and made public. If the motion is voted down – or if there is no incumbent Speaker – then a secret ballot of Members is held to determine the new Speaker.

The fourth of the motions tabled by the Government on 25 March would have replaced the initial division on whether an existing Speaker take the Chair with a secret vote. It was interpreted by many in the press and in the House, as an attempt by the Government to pave the way for the voting out of the incumbent Speaker, Rt Hon. John Bercow MP, at the start of the new Parliament.

The four motions were due to be debated together for an hour on 26 March as the last substantive business of the Parliament before an opportunity for retiring Members to make valedictory speeches. The debate was due to begin at around 10:30am, but the Speaker granted three urgent questions – on the findings of an inquiry into the provision of contaminated blood by the NHS, on undercover policing and on the day’s business itself – delaying the start of the debate by around two hours. It was later argued by some Members that this had a decisive impact on the outcome.

The Urgent Question on the day’s business was tabled by Sir Gerald Kaufman MP (Lab). If re-elected in May, Sir Gerald will become Father of the House (the longest-serving Member) in the new Parliament.

It would fall to him to make the arrangements for the Speaker’s election. In asking his question he was the first of a number of opposition Members to accuse the Government of “grubby, squalid, nauseous”

behaviour in tabling the motion at the last minute.

The Conservative, Philip Davies MP, accused the Government Whips Office of “keeping the [Conservative] parliamentary party here for a meeting so that as many people would be here as possible in the hope that the Opposition parties would have left so the motion could be sneaked through at the last minute.”

The Shadow Leader of the House, Angela Eagle MP (Lab) wanted to know: “Why did the Government, who had so resolutely refused to allow the debate for three and a half years, suddenly change their mind on Tuesday? Why did the Government decide that this motion was so sensitive that it would not and could not be discussed with Opposition Front Benchers, the Chair of the Committee or even the Speaker himself? Why did the Leader of the House wait until the last moment yesterday before tabling it, without any warning or notification to anyone?”

In defending the Government’s position, the Leader of the House, Rt Hon. William Hague MP (Con) argued that the Procedure Committee had recommended earlier in the Parliament that the House should be asked to decide whether it wished to make the change. He said the motions had only been tabled once the Lords and Commons had completed their deliberations on the Modern Slavery Bill as it was only then it was clear there would be time. He stressed that the question would be decided on a free vote and that he considered that it was in the interests of the House that the question be decided before the next Parliament.

He set out the arguments for and against a secret ballot: “The arguments in favour of the status quo are that it is a familiar procedure, that it is a

quick procedure, and that the Speaker stands for election as the Speaker in his or her constituency in expectation of continuing in office and is therefore in a different situation from other officeholders. But [...] whenever voters elect someone to a position of power and authority over them, the principle is that they should be able to do so without fear or favour. It is how we elect our party leaders, it is how we elect our Select Committee Chairs [...] It also frees MPs from pressure from the Chair or from their parties.”

Members on the Labour side attributed the bringing forward of the motion to dislike of the Speaker by the Conservative front bench and, particularly, by the Prime Minister.

Barry Sheerman MP (Lab) said: “This is a politicisation of the role of the Speaker, because this is a Speaker who has opened up this Chamber as never before, and what the Prime Minister cannot stand is that he has liberated Back Benchers in this place.”

The speech that drew most attention was by the Chair of the Procedure Committee, Charles Walker MP (Con), who recommended first in 2009 and then in 2011 that the issue should be debated by the House but concluded that the motion should be an amendable one for no change.

Mr Walker became emotional as he spoke of the way he felt he had been kept in the dark in the run up to the debate:

“This week, I went to the leaving drinks for the Leader of the House. I spent 20 minutes saying goodbye to his special adviser yesterday. I went into his private office and was passed by the Deputy Leader of the House yesterday. All of them would have been aware of what they were proposing to do. I also had a number of friendly chats with our Chief Whip yesterday, yet I found out at 6.30pm last night that the Leader of the House was bringing forward my report. I have

been played as a fool. When I go home tonight, I will look in the mirror and see an honourable fool looking back at me. I would much rather be an honourable fool, in this and any other matter, than a clever man.”

As he sat down, he was applauded by Labour MPs. Applause in the Chamber is very rare – previous examples of applause in the Chamber included at the end of Tony Blair’s final Prime Minister’s Questions and following the resignation speech of the former Foreign Secretary, then-Leader of the House, Robin Cook prior to a debate on the second Iraq War.

With the exception of the Leader of the House, every Member who made a speech in the debate spoke either against the motion or the way it had been brought forward.

This prompted the Conservative Jesse Norman MP, a critic of the Speaker over the proposal to appoint the Australian official Carol Mills to be Clerk of the House, to raise a point of order to “express my sadness and regret that you [Mr Speaker] have not seen fit to call any other Members to speak in support of the motion?” The Speaker replied by saying that the Government had set the hour time limit and that it was out of his power to extend it.

At the end of the debate, the Government’s motion was defeated by 228 votes to 202.



Rt Hon. John Bercow MP, Speaker of the House of Commons



# FORMER PRIME MINISTER MALCOLM FRASER DIES

**Former Prime Minister Malcolm Fraser dies at 84**  
A titan of Australian politics, the Rt Hon. John Malcolm Fraser AC, CH died on 20 March 2015 aged 84.

In 1955 he was elected to Parliament as the Liberal Member for Wannon aged 25 and was appointed as a Cabinet Minister in 1966. In 1975 he was elected Leader of the Opposition which led to his historic battle against the Labor Government led by the then Prime Minister, Hon. Edward Gough Whitlam.

The Whitlam Government was damaged by a series of scandals, resignations, ministerial reshuffles and increasing pressure on the economy arising from the oil shock of 1974 which led to rising inflation and unemployment.

Mr Fraser played a high risk game by deciding to use his Senate numbers to block the government's supply bills in an attempt to make Whitlam call an early election which he refused to do declaring that it was unconstitutional for the Senate to decide who should hold government.

This deadlock between the government and opposition continued until 11 November 1975 when the then Governor-General Sir John Kerr, in a highly controversial act, used 'reserve powers' in the Constitution to dismiss Whitlam's government. The Governor-General then installed Mr Fraser as a caretaker Prime Minister who immediately called an election which he went onto win handsomely. Mr Fraser went on to win a further two

elections finally losing to Bob Hawke in March 1983. In government, Mr Fraser is best recognised for his humanitarian efforts and progressive policies on race and immigration.

Domestically, Mr Fraser advanced land rights for Indigenous Australians and internationally campaigned to abolish apartheid in South Africa.

In managing the economy, Mr Fraser introduced expenditure cuts, streamlined the public service and provided responsible economic management. However, the economic rationalists of the party believe he should have gone further by introducing more far reaching economic reform such as currency deregulation and opening up the financial sector to more competition.

In retirement, Mr Fraser grew increasingly distant from the Liberal Party in which he was a life member. In particular, he was critical of certain policies of the Liberal Howard Government noting its alignment with the foreign policy of the United States and domestically the introduction of harsh asylum seeker policies.

In relation to the modern Liberal Party, Mr Fraser stated that *"the departures from the principles underlining that Liberal Party are substantial and serious. The party has become a party of fear and reaction. It is conservative and not liberal. It has not led positive directions, it has allowed and, some would say, promoted race and religion to be party of today's agenda. I find it unrecognisable as liberal."* In 2010 Mr Fraser quit the Liberal Party.

On 23 March both the House of Representatives and the Senate moved condolence motions in relation to the death of Mr Fraser.

The Prime Minister, Hon. Tony Abbott MP, commented that *"it is fitting that we celebrate the life and legacy of our 22nd Prime Minister here in this chamber, because this very building is one of his achievements. He was prepared to endure gibes about politicians spending money on themselves because he understood that Australians would come to appreciate a Parliament House that reflected our pride in ourselves and in our country."*

Mr Abbott noted that *"Fraser was not an avid social reformer like Whitlam, nor a mould-breaking economic reformer like Hawke, but he gave the country what we needed at that time. He restored economic responsibility while recognising social change. His government passed the Northern Territory land rights act and he was the first Prime Minister to visit the Torres Strait. He established the Special Broadcasting Service and began large-scale Asian immigration to Australia by accepting 50,000 Vietnamese refugees fleeing communism. In 1983 Malcolm Fraser left parliament, proud of his government and its achievements. As he said at the time, 'Australia is handed over in as good or better condition than any other western country in the world.'"*

The Leader of the Opposition, Hon. Bill Shorten MP, commented *"We give thanks for Malcolm Fraser's six decades of service to our nation as a*

*parliamentarian, Prime Minister and statesman. We farewell a person of hidden depths and many parts, a man often misunderstood. For some, Malcolm Fraser was a hero who became a villain. For others, he was a villain who became a hero. But neither of these simple sketches are fair, and, in time, history's judgement will be kinder than either."*

Mr Shorten noted Mr Fraser's commitment to human rights commenting that *"as Prime Minister, he led Australia's independent condemnation of the evil of apartheid. He took a principled stand, declaring that South Africa's regime of racial prejudice was 'repugnant to the whole human race'. And he matched his words with deeds, visiting Mandela in prison, imposing international sanctions and, perhaps most famously in our sport-loving nation, refusing to allow the Springboks' plane to stop here on its way to New Zealand."*

Later, Fraser delighted in telling the anecdote of Mandela's first question to him at their meeting: *"Mr Fraser, can you tell me, is Don Bradman still alive?" And so, when Mandela became President, Fraser took him a bat inscribed by the Don: 'To Nelson Mandela, in recognition of a great unfinished innings.'"*

The Leader of the Australian Greens, Senator Christine Milne commented that Mr Fraser embraced everyone, *"regardless of colour or creed, and we will always remember that, as Prime Minister, it was his Aboriginal Land Rights Act in 1976 that recognised that Aboriginal people in the Northern Territory should have control over their own land."*

Senator Milne noted that *"right up until his death, you could say that he was a great advocate for multicultural Australia and for the rights of refugees and asylum seekers. That, of course, stemmed from his time in office, where, as we have heard, he did set up the Family Court, the ombudsman,*

*the first FOI laws, the Australian Federal Police and also the Human Rights Commission."*

Right up until his death, he was still defending the Human Rights Commission and its head, Gillian Triggs, saying, *"Enough is enough," on the attack on the Human Rights Commission. In terms of the media, he set up SBS, and later on, in his post-parliamentary career, he was a leader in the campaign against the concentration of media ownership."*

Senator Glenn Lazarus commented that *"not long after I started in this place, I walked into my office and I was told that a Mr Malcolm Fraser wanted me to ring him. When I came to my senses, I thought: why would the great man Malcolm Fraser be ringing me? I did ring him, and he wanted to talk to me to share*

*his passion for human rights and the need for Australia to embrace people in need. He was concerned by the way Australia was treating asylum seekers and how this was impacting Australia's reputation across the world. It was an absolute honour to receive a call from Mr Fraser, and I told him so."*

Senator Nick Xenophon noted that *"another former Prime Minister, Paul Keating, a junior MP during the Dismissal, said this of Mr Fraser's death: it 'underwrites a great loss to Australia'. While, Mr Keating reflected, 'The great pity for him of the budget crisis of 1975 was that it de-legitimised his government, at its inception, and with it, much of the value he otherwise brought to public life,' Mr Keating also praised Mr Fraser for his significant*

*and lasting contributions: his achievements for land rights, multiculturalism, refugees and, in Paul Keating's words, 'many other clear-sighted reforms'. His passion and commitment against racism, against apartheid in South Africa, his leadership role for Nelson Mandela's freedom were unwavering, although I understand how his joy at Rhodesia becoming a democratic Zimbabwe had turned to despair with the increasingly despotic and ruthless Mugabe regime."*

Rt. Hon. John Malcolm Fraser AC, CH, (1930 – 2015)  
22<sup>nd</sup> Prime Minister of Australia and the Leader of the Liberal Party from 1975 to 1983.



Image courtesy of AUSPIC





# THIRD READING: AUSTRALIA

## Enhancing Online Safety for Children Act 2015

The Enhancing Online Safety for Children Act implements a series of measures to enhance online safety for children.

The Parliamentary Secretary to the Minister for Communications, the **Hon. Paul Fletcher MP** commented that the legislation creates a “new statutory office, the Children’s e-Safety Commissioner, and provides for the commissioner to administer a complaints scheme in relation to harmful cyberbullying material targeted at an Australian child.”

Government commissioned research into cyberbullying found that “the best estimate of the prevalence of cyberbullying over a 12-month period is 20 per cent of Australians aged eight to 17, with some studies putting that figure as low as six per cent and others as high as 40%.”

Mr Fletcher noted that “the research found that most incidents of cyberbullying occurred on social media—and that the prevalence of cyberbullying has ‘rapidly increased’ since it first emerged as a behaviour.”

A key function of the commissioner is to administer a complaints system for cyberbullying material targeted at an Australian child. Mr Fletcher advised that “other functions of the commissioner will include promoting online safety for children, coordinating relevant activities of Commonwealth departments, authorities and agencies in relation to online safety for children, and accrediting and evaluating online safety educational programs.”

In addition, the legislation sets out a two tiered scheme for the rapid removal from large social media services of cyber-bullying material targeted at an Australian child.

Mr Fletcher explained that “the two-tier scheme in the Bill allows for a light touch regulatory scheme in circumstances where the social media service has an effective complaints system and it is working well; but it enables the government to require that cyber-bullying material targeted at an Australian child be removed in circumstances where the social media service does not have an effective and well-resourced complaints system.”

In arriving at a definition of cyber-bullying, Mr Fletcher noted that it was important to strike a balance between capturing the full extent of cyber-bullying material but at the same time not being excessive or heavy handed.

There are three features of the definition. First, material must be likely to have the effect of seriously threatening, intimidating, harassing or humiliating a particular Australian child. Second, the definition includes the capacity for the legislative rules to include other conditions if it becomes apparent during the course of administering the legislation that further conditions are necessary. Third, the definition will be applied in the commissioner’s exercise of discretionary powers to issue notices.

The Shadow Assistant Minister for Communications, **Ms Michelle Roland MP** commented that the opposition will support the legislation subject to scrutiny and any recommendations arising from a Senate Committee inquiry.

Ms Roland noted that Labor is committed to doing all it can to combat online child bullying. She commented that “bullying itself is a scourge on our society. It can have devastating impacts on victims and their families,

and I am sure many of us, representing our local communities as we do, have been touched in some way by that fact.”

Ms Roland commented that “today, through the advent of social media, many of our children are enduring relentless harassment and anguish in the supposed sanctuary of their own homes. According to research led by the University of New South Wales Social Policy Research Centre, which I note the government has quoted, one in five of our nation’s children aged between 10 and 17 have experienced some sort of cyberbullying.”

## Succession to the Crown Act 2015

The Succession to the Crown Act will provide the Parliament of Australia’s assent to three important reforms to modernise the law relating to royal succession.

The Parliamentary Secretary to the Prime Minister, **Hon. Christian Porter MP** commented that “these changes are consistent with changes being made to the law in the United Kingdom. They will align the royal succession laws with modern values and ensure that the same person is the Sovereign of Australia and of the United Kingdom.”

The first reform will end the system of male preference primogeniture so that in future the order of succession will be determined simply by the order of birth. Female heirs will no longer be displaced by their younger brothers.

The second reform removes the bar on succession for an heir and successor of the Sovereign who marries a Catholic.

The third reform is to limit the requirement that the Sovereign consent to the marriage of a descendant of His Late Majesty King George II to the first six persons in line to the Crown.

Mr Porter noted that “the reforms were enacted by the Parliament of the United Kingdom on 22 April 2013 and will come into force on the commencement of the UK legislation, as soon as all 16 realms, including Australia, implement the reforms in their jurisdictions.”

Mr Porter concluded that “this modernisation of the laws of succession ensures the continued relevance of the monarchy to Australia and her people and reflects the commitment that all Australians have to equality and to non-discrimination.”

The Leader of the Opposition, **Hon. Bill Shorten MP** noted that the opposition supports the measures in the legislation but took the

opportunity to comment on the question of an Australian republic.

Mr Shorten stated that “I believe that Australians are ready for a discussion about an Australian head of state. Our aim has to be a respectful national conversation between equals, not an insider A-list celebrity debate between politicians, constitutional pedants and the same old faces. Reigniting the republic debate will be a test of our national spirit and our national imagination. It is a moment that we are equal to.”

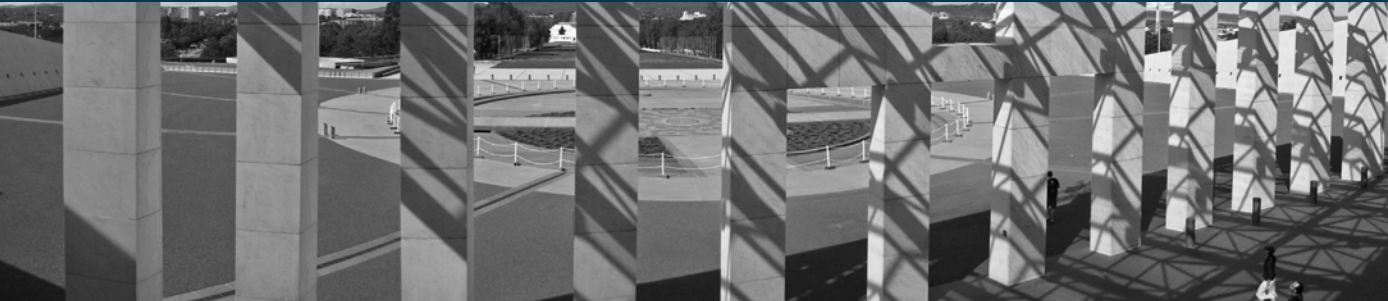
Mr Shorten noted that “none of this should be taken as criticism of Queen Elizabeth II or of the House of Windsor. The Queen has given decades of committed service to our nation. She has earned the affection of many and the admiration of us all. But the simple fact is that our nation, our place in the world, has changed and our Constitution should change with it. The sun has long since set on an empire that we once bound ourselves to, to the last shilling and the last man.”

The Leader of the Australian Greens, **Senator Christine Milne**, also noted that the Greens support the legislation but made broader comments about Australia’s head of state.

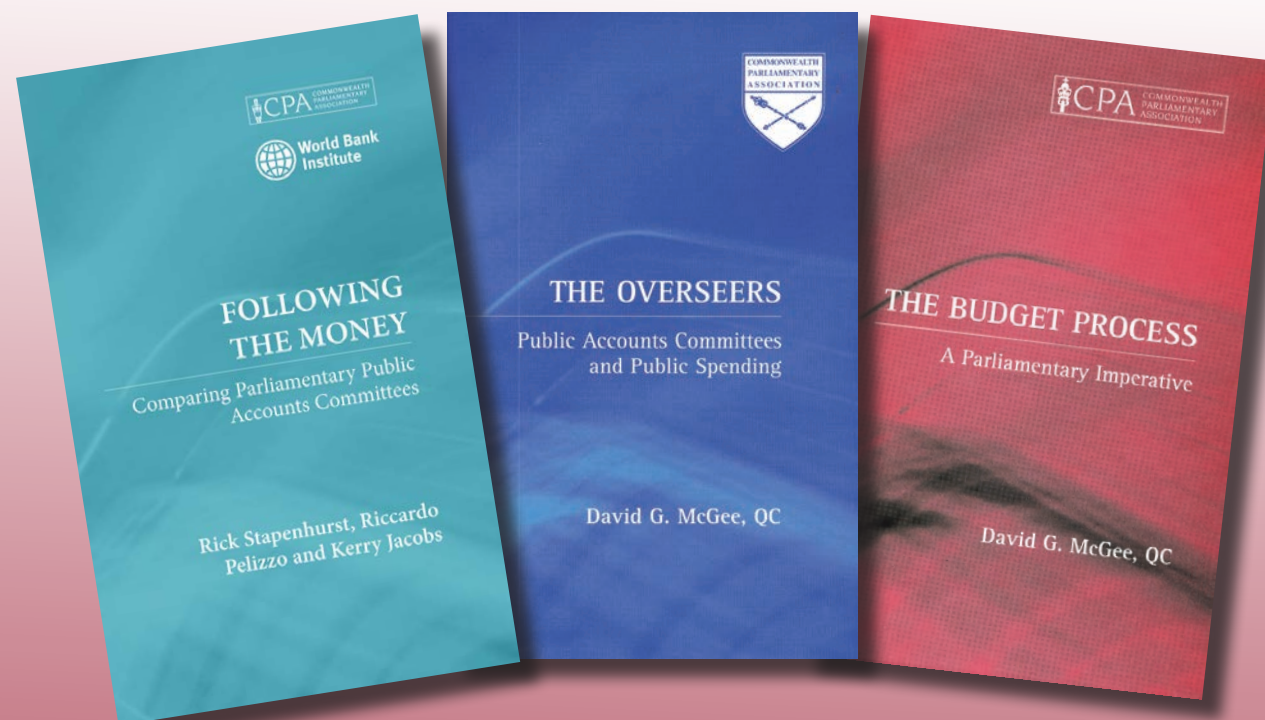
Senator Milne commented that “Australia is a modern country. I am really proud of this nation and we should have our own head of state. It is a complete nonsense that we are still deferring to the British royal family. The British royal family themselves think it is ridiculous. At the end of her Diamond Jubilee year, the Queen said she understands where Australia sits in relation to the end of the British Empire.

It would be an enormous relief to her if we finally stood up for ourselves, I am sure. How ridiculous would we have looked had the referendum for Scotland had succeeded? We would have looked so stupid. There was Scotland, an independent country, and Australia still with its apron strings attached to the monarchy. It would have looked utterly ridiculous. Where would we have been with our flag and everything else at that point? It all would have had to have been changed if Scotland had to be taken off.”

Senator Milne concluded that “at some point we need to stand up. At some point, Australia must affirm itself as a modern, independent nation that can have its own national identity and values and our own head of state. Times have changed. Australia has changed. The Queen realises Australia has changed. That does not mean that Australians do not have enormous affection for the royal family. They do. That is not the point. The point is we should be a republic. We should have our own head of state.”

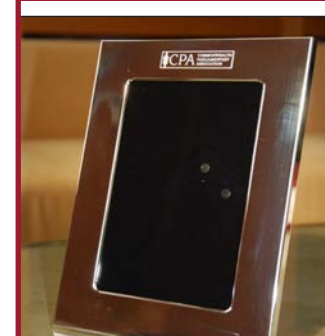






Available to CPA Members and Officials for purchase from  
the CPA Secretariat. Also available to members of the public.

CPA publications are available by contacting the CPA Secretariat by email:  
hq.sec@cpahq.org or by post: CPA Secretariat, Suite 700, 7 Millbank, London  
SW1P 3JA, United Kingdom. Visit [www.cpahq.org](http://www.cpahq.org) for further details.



CPA silver-plated  
photoframe



CPA cufflinks



CPA ties



CPA business  
card holders

CPA souvenirs  
are available for  
sale to Members  
and officials of  
Commonwealth  
Parliaments and  
Legislatures by  
contacting the  
CPA Secretariat  
by email:  
hq.sec@cpahq.org  
or by post: CPA  
Secretariat, Suite  
700, 7 Millbank,  
London SW1P 3JA,  
United Kingdom.



# SUBSCRIBE TODAY

# *THE PARLIAMENTARIAN*

