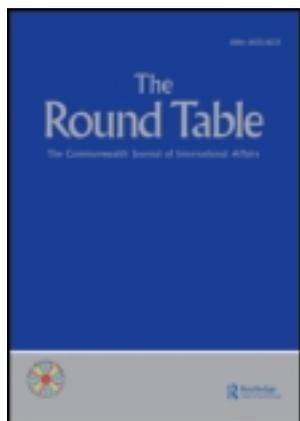


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Publisher: Routledge

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The Round Table: The Commonwealth Journal of International Affairs

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/ctr20>

Editorial: Success of EPG Recommendations Depends on Leadership

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Version of record first published: 08 Feb 2013.

To cite this article: Sir Ronald Sanders (2013): Editorial: Success of EPG Recommendations Depends on Leadership, *The Round Table: The Commonwealth Journal of International Affairs*, 102:1, 1-6

To link to this article: <http://dx.doi.org/10.1080/00358533.2013.764085>

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Editorial: Success of EPG Recommendations Depends on Leadership

Ninety of the 106 recommendations made by the Commonwealth Eminent Persons Group (EPG) in its report, *A Commonwealth of the People: Time for Urgent Reform*,¹ have been adopted by Commonwealth governments. This is a rare success and one that should propel the Commonwealth forward if the 90 recommendations (or 85% of the total) are fully implemented. It is on ‘implementation’ of the recommendations that, in large measure, the future of the Commonwealth lies.

It took more than a year to conclude the inter-governmental process of reviewing the recommendations. As it turns out, this was not a bad thing. The initial handling of the EPG report was poor and led to unnecessary suspicion among some member governments.

If there is one lesson that should be learned from the experience of managing the EPG report, it is that, in relation to reports and recommendations of vital importance, the Secretary-General and the Secretariat cannot give hostages to fortune and the most careful briefings and clarifications should be provided at the highest levels of government to build broad consensus. Failure to do so opens the door to misinterpretations, misunderstandings and misapprehensions, with the result of delaying if not derailing progress.

It is pertinent to recall that the EPG’s report on urgent reform of the Commonwealth was not simply an emanation of the EPG. Its roots lie in the collective will of Commonwealth Heads of Government who created the Group in their Affirmation of Commonwealth Values and Principles issued at the Port-of-Spain Commonwealth Heads of Government Meeting (CHOGM) in November 2009.² The Group was mandated to undertake an examination of options for reform, and Commonwealth leaders asserted their belief that by the EPG and other practical measures ‘the Commonwealth will build a stronger and more resilient and progressive family of nations founded on enduring values and principles’ and will ‘remain relevant to its times and people in future’. That Affirmation by Commonwealth leaders was the genesis of the EPG’s report.

The 106 recommendations, which the EPG made after 18 months of its own deliberations and study of over 300 submissions from Commonwealth civil society organisations, governments and individuals, covered a range of issues that included strengthening adherence to Commonwealth values and restoring the inter-governmental organisation’s credibility as well as: urgent attention to the existential threats to small island states posed by climate change; addressing the overwhelming debt problem faced by many Commonwealth countries; reform of international institutions; halting discrimination against vulnerable groups including women and young girls; providing opportunities for

youth, effective programmes to combat HIV/Aids and non-communicable diseases; and making ministerial meetings more effective.

Altogether, the EPG concluded that reform was critical for two substantial reasons: (i) an extensive perception that the Commonwealth is unresponsive to violations of its own values and therefore is losing the respect of its own people as well as its standing in the international community; and (ii) on issues such as development, food security, climate change and global pandemics, the Commonwealth is in danger of becoming inconsequential.

At Perth, the report was consigned to a meeting of Foreign Ministers before it went to Heads. The Chairman, Australia's then Foreign Minister, Kevin Rudd, steered the meeting to discuss only two of the recommendations, albeit prominent ones—a Charter for the Commonwealth and the appointment of a Commissioner for Democracy, the Rule of Law and Human Rights. Consequently, these were the only two recommendations on which the meeting, attended mostly by officials, made proposals to Heads. All other recommendations, they proposed, should be left to Foreign Ministers to consider.

Heads rejected the Foreign Ministers' proposals, however, and summoned them to meet again to give full consideration to the EPG report. At a late night session the recommendations were hastily reviewed and new proposals put to Heads. Not surprisingly, the Heads insisted that officials and ministers study the recommendations better than they had done in Perth and come up with considered responses. Hence, the additional year of review, while regrettable, was necessary.

Over the course of the year from October 2011 to October 2012, 90 of the EPG recommendations have been adopted, although some of them have been subject to caveats that the EPG did not intend. Nonetheless, while a challenge could be made against the 16 recommendations that were rejected outright, adoption of a large part of 90 of them confirms the validity of the EPG's finding that the Commonwealth is in need of urgent reform. It is noteworthy that even before the inter-governmental process was completed, the report had been widely endorsed, particularly by the numerous Civil Society Organisations throughout the 54-member states of the association. The most recent body to do so, following its own inquiry into the Commonwealth, was the Foreign Affairs Committee of the British House of Commons in November 2012.³

At the time of writing, however, a Strategic Plan that the EPG had recommended be brought into effect in March 2013 (to include implementation of its approved recommendations) has been delayed by a failure to reach consensus by member governments on what work should be retained and what should be dropped because the Commonwealth either has no advantage in its delivery or the available financial resources are too small. This suggests again a heightened level of misgiving in the inter-governmental process and the need for more attention by the Commonwealth Secretariat to allaying fears, providing explanations and rebuilding trust among governments.

The history of how the EPG report was handled is instructive and it is described here for clarity. At the Perth CHOGM, on the basis of consensus, 11 of the EPG recommendations were 'deemed inappropriate for adoption'.⁴ However, 30 recommendations were immediately accepted, 12 were adopted 'subject to consideration of financial implications', and 44 were 'referred to a Task Force of Ministers for more detailed advice'.⁵ Nine of the recommendations related to strengthening the mandate and improving the operations of the Commonwealth Ministerial Action Group (CMAG)

were said to be in harmony with CMAG's own proposals for reform and, therefore, were regarded as accepted.

In the event, the Ministerial Task Force (MTF) met under the Chairmanship of the new Australian Foreign Minister John Carr, who, by all accounts, treated the EPG report with the seriousness and urgency with which it was mandated by Heads. The MTF considered not only the 44 recommendations referred to them, but also the 12 that were subject to financial implications (bringing the number to 56). In turn, a meeting of all Foreign Ministers convened in New York on 29 September 2012. A Secretariat statement issued after the meeting stated that the Ministers 'agreed to all the remaining recommendations of the Eminent Persons Group, aimed at sharpening impact, strengthening networks and raising the Commonwealth's profile'.⁶ In reality a further five of the recommendations were rejected at the meeting, bringing the total declined recommendations to 16.

Apart from the refusal of the appointment of a Commissioner for Democracy, the Rule of Law and Human Rights, what was puzzling about the rejection of the other 15 recommendations—particularly the five rejected by Ministers at their New York meeting—is that they were in direct response to a specific remit given to the EPG by Heads at their 2009 meeting to 'examine, inter alia, the format, frequency and content of Ministerial meetings in order to ensure that these continue to support the Commonwealth's values and principles, and provide the greatest possible addition of value and cost effectiveness'.⁷ What Ministers rejected were recommendations that meetings, including CHOGMs, should dispense with elaborate opening ceremonies to save precious time, issue Communiqués only on matters that are discussed, and dispense with Conference 'themes' that could hamper discussion of issues of greater moment.

Also among these five rejected recommendations was one that called for a strengthened engagement between civil society organisations and Foreign Ministers in the year in-between CHOGMs with a report of the engagement presented to Heads for action. The EPG made this recommendation recognising that the Commonwealth is not only the inter-governmental relationship and the Secretariat, but also the people through their more than 90 civil society organisations and otherwise. It is surprising that this is one of the proposals that was rejected by Foreign Ministers and did not go to Heads for approval.

At the inter-governmental level, the EPG recommendations fell victim to the absence of a process of building consensus around them prior to formal decision-making meetings at the level of Foreign Ministers and Heads. The EPG was very vigilant in concluding its report by the end of July 2011 with a formal request to the Secretary-General on 11 August that it be transmitted to Heads of Government a full two months ahead of the CHOGM in Perth. The EPG had also requested that the Secretary-General seek the agreement of Heads to release the report publicly prior to the Perth CHOGM 'so that (civil society) organisations and individuals, and others, can give the Commonwealth's political directorate the benefit of their views'.⁸ This request was consistent with the treatment of the report of the first EPG in 1986 on Apartheid South Africa.⁹ That report, released publicly ahead of the Special 9th Meeting of Heads of Government in London, was the subject of broad discourse throughout the Commonwealth. As it turned out, the 2011 report was not made public prior to the Perth CHOGM, and it suffered from a lack of extensive attention and discussion that 'urgent reform' of the Commonwealth warranted.

Of the 106 recommendations that the EPG made, two received more attention than any others. These were a proposal for a Charter for the Commonwealth ‘after the widest consultation in every Commonwealth country’, and the appointment of a Commissioner for Democracy, the Rule of Law and Human Rights ‘to provide well-researched and reliable information simultaneously to the Secretary-General and the Chairperson of the Commonwealth Ministerial Action Group (CMAG) on serious or persistent violations of democracy, the rule of law and human rights in member states, and to indicate approaches for remedial action’.¹⁰

These two recommendations spurred a perception among some governments of an imposition by Australia, Britain and Canada of demands for democracy at the expense of development. This incorrect perception led to division among governments. The divide could have been avoided had the kind of careful briefing and clarifications described earlier in this Editorial been undertaken. Misapprehension and misconception took hold where appreciation and comprehension might have produced a different outcome. It might be argued that no amount of explanation and clarification would have helped because some governments, feeling threatened by the very idea of a Commissioner, would never have accepted it. That may be so, but having not tried to build a consensus through a process of high-level briefings, the Commonwealth will never know what might have been possible if a careful effort had been made.

Despite the rejection of the idea of a Commissioner by some governments, many had continued to hope that, in their year-long deliberations, officials and ministers may have found a mechanism that would provide ‘well researched and reliable information’ to the Secretary-General and CMAG and ‘indicate approaches for remedial action’, which was the EPG’s declared intention of what the role of Commissioner should be. As the EPG saw the post, the Commissioner would be no ‘bull in a China shop’. He/she would be a person with whom authorities in every Commonwealth country could reasonably engage. The central task was not to ‘punish’ governments but to ‘strengthen the early warning system that identifies member states in danger of violating core values’ and to indicate to the Secretary-General and the Chairman of CMAG ‘approaches for remedial action’.¹¹

Unfortunately, a Secretariat Official has indicated that ‘the examination of possible options by CMAG and the Secretary-General had not produced consensus on any such mechanism and, to be honest, such consensus is not in sight’.¹²

What is certain is that there is no effective system in place to give early warning of problems in member states on the basis of ‘well researched and reliable information’ of ‘serious or persistent violations’ of democracy, the rule of law and human rights in member states. The burden of this task has now fallen on the shoulders of the Secretary-General and, in the absence of a Commissioner or similar mechanism, much will be expected of him from those Commonwealth governments and Commonwealth people who, in part, judge the Commonwealth and its relevance by its adherence to the values for which it says it stands. This widened responsibility of the Secretary-General and of CMAG could quickly become a point of greater criticism of them both unless they are seen and heard to be addressing clear violations.

With regard to the second recommendation that consumed considerable time—a Charter for the Commonwealth—this was proposed in the first place by the EPG’s Chairman, Tun Abdullah Badawi, a former Prime Minister of Malaysia. After initial

trepidation among some governments—and only on the assurance that it would not be legally binding—the concept has been accepted.

The Commonwealth is not a treaty organisation and the Charter cannot and will not legally bind member countries any more than any of the many declarations by Heads of Government have bound any of them legally in the past. In making its recommendation for a Charter, the EPG knew that very well. The Group felt that the only way that a Charter would bring value to the Commonwealth is if it is ‘a People’s Charter’—one that resulted from ‘wide consultation about its content and formulation within each Commonwealth country’. However, such narrow consultation as occurred was limited to three of the 54 member states of the Commonwealth.

By failing to hold public consultations at the national level, Commonwealth governments lost a golden opportunity to renew interest in, and knowledge of, the Commonwealth and to ground the Charter in the aspirations of the people; but, at least, a moral responsibility will rest on all governments to respect its terms. That moral responsibility will be raised in the future for sure, not least because the first Commonwealth Summit, when the Charter will be in place, will be in Sri Lanka, where the government is controversially accused of war crimes.

On 18 October 2012, Secretary-General Kamallesh Sharma wrote to Heads of Government ‘regarding the adoption of the outstanding recommendations of EPG, including the proposed “Charter of the Commonwealth”, which it is envisaged should now be formally adopted by Commonwealth Heads of Government through this written procedure’. In his letter, he set out the decisions of the Foreign Ministers and stated that ‘unless any Head of Government informs me of any concerns about joining the existing consensus by 30 November 2012, both the Charter and the proposed way of dealing with each of the remaining 56 Recommendations of the EPG will be considered to be formally adopted’.

So, in the final analysis, 90 of the EPG’s 106 recommendations (even though some have caveats) have been adopted. They are very much now an inescapable and significant part of the Commonwealth agenda for progress, and they will contribute to the evolution of a better, more effective Commonwealth.

Real advance will be measured, however, by effective implementation. To do this, the Secretariat still needs resources and strong leadership. If governments truly want the role and relevance of the Commonwealth to be restored and enhanced, they should provide the Secretariat with the means to do the job. But, financial resources will not be enough. Leadership is also required, and the Secretariat—led by the Secretary-General with the support of Heads of Government—has to provide that leadership.

Notes

1. *A Commonwealth of the People: Time for Urgent Reform*, The Report of the Eminent Persons Group to Commonwealth Heads of Government, Perth, October 2011, Commonwealth Secretariat, London.
2. Affirmation of Commonwealth Values and Principles by Commonwealth Heads of Government in Port-of-Spain, November 2009.
3. Foreign Affairs Committee, Fourth Report, *The Role and Future of the Commonwealth*, 15 November 2012, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/114/11402.htm> (accessed 30 November 2012)
4. Agreement by Heads of Government Regarding the Eminent Persons Group Proposals, <http://www.thecommonwealth.org/files/249248/FileName/CHOGM2011OutcomeDocuments.pdf> (accessed 30 November 2012)

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5. The official Outcomes Document, referenced in note 4, spoke of 43 recommendations not 44. This is because, at Perth, the Foreign Ministers missed one of the recommendations and a correction was made later.
6. Foreign Ministers agree on draft Commonwealth Charter and EPG recommendations, <http://www.the-commonwealth.org/news/250284/290912cfamm.htm> (accessed 30 November 2012)
7. *Op. cit.*, note 2, para 15.
8. *Op. cit.*, note 1, p. 15.
9. (1986) *Mission to South Africa: The Commonwealth Report* (London: Penguin).
10. *Op. cit.*, note 1, pp. 40–42.
11. *Ibid.*, p. 40.
12. Amitav Banerji, Director of the Political Affairs Division of the Commonwealth Secretariat, speaking at a Commonwealth Advisory Bureau/Round Table Conference on ‘The Commonwealth in crisis—is reform possible?’ at Senate House, London University, 15 November 2012.

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