

The Commonwealth Secretariat and the Implementation of Human Rights^{*}

Respect for fundamental human rights is a core Commonwealth principle, enshrined in the Harare Commonwealth Declaration. Taking human rights seriously means recognising the equal worth of all human beings and respecting every person's fundamental political and civil rights. Human rights are also about social and economic development.¹

Introduction

The Secretary-General's words encapsulate the importance of the principles of human rights to the Commonwealth organisation. Not only is the Commonwealth perceived as an institution that could progress the human rights cause, but more importantly human rights and democracy are a method of reaffirming and redefining the role of the Commonwealth as an association of states. The biennial Commonwealth Heads of Government Meeting (CHOGM) is the principal decision-making body of the Commonwealth – it is in this forum that the fundamental values of the organisation are articulated. These values and goals are then implemented by the Commonwealth's organs, primarily through the programmes of the Commonwealth Secretariat as the main agency for joint endeavours within the organisation.

This year the Commonwealth Secretariat will celebrate its fortieth anniversary. During the last 40 years the breadth and the depth of the Secretariat's activities have expanded in a number of fields, including human rights. In the past the Commonwealth Human Rights Initiative (CHRI) has stated that the Commonwealth needs to "establish a clear procedure for systematically monitoring the implementation of pledges made by Heads of Government and the mandates given to the Commonwealth's official bodies."² The Commonwealth's Expert Group on Development and Democracy has also advocated the need for the Commonwealth Secretariat to provide progress reports to the Heads of Government on the implementation of its recommendations.³ During the fortieth anniversary of the Secretariat it is appropriate to assess the extent to which the Secretariat has succeeded in implementing the Commonwealth's human rights promises. This paper evaluates the progress made by the Secretariat in the human rights field by examining both the way in which the Commonwealth has fulfilled its own promises, and by identifying the goals that a human rights system at the international level should aim to achieve.

Broadly, an international human rights system should include elements of both standard setting and implementation. The protection of human rights at the international level requires the articulation of uniform standards in order to ensure consistent application.⁴ This is achieved through the adoption of legal rights in international treaties and, more specifically, the

^{*} This paper has been prepared by Alison Duxbury, Senior Lecturer, Faculty of Law, University of Melbourne, as a background document for the Commonwealth Human Rights Initiative for 'The Commonwealth Institutions in a Globalised World: Reflections on Four Decades Conference', to be held on 24 June 2005 at the Royal Commonwealth Society in London. The author would like to thank Stephanie Aiyagari, Richard Bourne, Clare Doube and Derek Ingram for their helpful comments and suggestions on this paper.

¹ *Development and Democracy – Report of the Commonwealth Secretary-General* (2003), 14 ('*Report of the Commonwealth Secretary-General* (2003)').

² CHRI, *Human Rights and Poverty Eradication – A Talisman for the Commonwealth* (2001), 103.

³ *Making Democracy Work for Pro-Poor Development – Report of the Commonwealth Expert Group on Development and Democracy* (2003), para 213 ('*Report of Expert Group*').

⁴ Christian Tomuschat, *Human Rights – Between Idealism and Realism* (2003), 112.

establishment of standards in a number of the Commonwealth's own documents, such as the Singapore Declaration (1971) and the Harare Declaration (1991). But norm-creation without implementation is not enough. This point was recently reinforced by the UN Secretary-General in the context of a review of the UN's human rights mechanisms, when he stated that "without implementation, [human rights] declarations ring hollow."⁵ More specifically, a complete system for the control and observance of human rights at the international level should include information, investigation, conciliation, decision and sanction.⁶ Activities at the international level can be divided into those that aim at promoting human rights and those that aim at protection. Promotion implies action directed towards preventing abuses in the future, whereas protection is designed to ensure the observance of human rights under existing law, including the possible use of sanctions.⁷ Both types of activities are necessary in a complete human rights system.⁸ This was recognised by the Heads of Government in the Aso Rock Declaration in listing the need for machinery to protect human rights as a necessary component of a democratic system.⁹ This paper does not suggest that the Commonwealth must perform all tasks that may be undertaken in the human rights field - the Office for the High Commissioner of Human Rights has acknowledged that "[a]s a practical matter, one organisation can never hope to keep an eye on every situation. Neither can it investigate every alleged violation of human rights or bring relief to all victims."¹⁰ Rather, the purpose of this paper is to examine the role of the Commonwealth Secretariat in implementing rights, taking into account the need for the organisation to focus on areas where it can demonstrate a "comparative advantage".¹¹

The Role of the Commonwealth Secretariat

The Commonwealth Secretariat was established in 1965 as the main organ for joint endeavours in the organisation. Its role is to promote consultation on matters of common concern, arrange meetings, disseminate factual information, and assist in development and technical projects.¹² The Secretariat is headed by a Chief Executive Officer,¹³ the Commonwealth Secretary-General, who is supported by two Deputy Secretary-Generals. The Secretariat's work is divided into a number of different divisions and programmes, most relevantly the Legal and Constitutional Affairs Division, the Political Affairs Division, the Human Rights Unit, and the Social Transformation Programmes Division, containing sections on education, gender and health.

In its latest Strategic Plan, the Secretariat has articulated its Mission Statement as follows:¹⁴

We work as a trusted partner for all Commonwealth people as:

- a force for peace, democracy, equality and good governance;
- a catalyst for global consensus-building; and

⁵ Report of the UN Secretary-General, *In Larger Freedom: Towards development, security and human rights for all (2005)* para 130 ('*Report of the UN Secretary-General*').

⁶ Karak Vasak, 'The Distinguishing Criteria of Institutions', in Karal Vasak (ed), *the International Dimensions of Human Rights* (1982) Vol I, 218.

⁷ Ibid. 216.

⁸ *Report of the UN Secretary-General*, paras 140-2.

⁹ Aso Rock Declaration on Development and Democracy (2003), para 7(v).

¹⁰ Officer of the High Commissioner for Human Rights, Fact Sheet No 19, *National Institutions for the Promotion and Protection of Human Rights*, available at <http://www.ohchr.org/english/about/publications/docs/fs19.htm> [accessed on 8 June 2005].

¹¹ The term "comparative advantage" is often used in Commonwealth literature when seeking to promote the Commonwealth's role in areas where other institutions are also undertaking work in order to distinguish the benefits that the Commonwealth can offer. See for example, 'Letter of Presentation', in the *Report of the Expert Group*, v.

¹² The Agreed Memorandum on the Commonwealth Secretariat (1965), paras 9-30.

¹³ The Agreed Memorandum on the Commonwealth Secretariat (1965), para 32.

¹⁴ Commonwealth Secretariat, *Strategic Plan 2004/05-2007/08*, 1 ('Strategic Plan')

- a source of assistance for sustainable development and poverty eradication.

This Statement reflects the goals established by the Heads of Government at their biennial meetings, in particular at Harare in 1991 and at Abuja in 2003. In fulfilling this vision, the Secretariat has two long-term goals: first, “to support member countries to prevent or resolve conflicts, strengthen the rule of law and achieve greater respect for human rights”; and secondly, “to support pro-poor policies for economic growth and sustainable development in member countries.”¹⁵ The first goal is to be fulfilled through four programmes: Good Offices for Peace, Democracy and Consensus Building, Rule of Law, and Human Rights. The objective of the Human Rights Programme is to “increase awareness of and respect for, human rights in the Commonwealth”.¹⁶ Human rights concerns are not confined to this programme, but have also been incorporated into other areas of the Secretariat’s work.

When discussing the Secretariat’s role in promoting and protecting human rights it is important to acknowledge both the Commonwealth’s strengths as well as its potential weaknesses. Given the number of international organisations that operate in the world the benefits that the Commonwealth can bring to the human rights field must be outlined. The Secretariat’s Strategic Plan records seven “comparative advantages” when it comes to the Secretariat’s role in addressing areas of concern. These benefits are listed as the diverse range of Commonwealth nations, the organisation’s status as a “safe place” for countries to come together in an informal setting (that is, its family atmosphere), its common language, shared history and traditions, its place as a source of impartial advice for developing countries in sensitive economic and political areas, the range and depth of the experience of its staff, and the diverse network of Commonwealth professional and civil society organisations.¹⁷

As well as these strengths it is also important to define the limits on the Secretariat’s powers as they set the boundaries within which the organisation must act. These restrictions are detailed in the document that founded the Secretariat, the Agreed Memorandum. The Agreed Memorandum on the Commonwealth Secretariat proclaims the Commonwealth’s adherence to two fundamental norms – state sovereignty and non-collective decision-making.¹⁸ Sovereignty, and its twin principle, non-interference in matters of domestic jurisdiction, have frequently been relied upon to deny the international community’s ability to interfere in breaches of human rights. While support for state sovereignty has gradually been eroded in the face of human rights violations, the Memorandum articulates a significant limitation on the Secretariat’s capacity to act.¹⁹ Secondly, the Memorandum provides that collective decision-making is not a necessary precursor to Commonwealth action. When linked with the Commonwealth convention prohibiting discussion of members’ internal affairs without their consent, this method of decision-making is an important limitation on the extent to which the Secretariat can pinpoint human rights problems and make determinations for appropriate action.²⁰ However, when examining the role of the Secretariat in articulating and promoting a human rights policy, it will be seen that these limitations appear to be of declining importance.

Secretariat Implementation of Commonwealth Commitments

At the Harare CHOGM, the Heads of Government pledged the Commonwealth to work with “renewed vigour” for a number of different values, including equal rights for all citizens, the fundamental political values of the Commonwealth, and extending the benefits of development

¹⁵ Strategic Plan, i.

¹⁶ Commonwealth Secretariat, *Operational Plan and Budget, 2004/05-2005/06*, 5 (‘Operational Plan’).

¹⁷ Strategic Plan, 4-5.

¹⁸ The Agreed Memorandum on the Commonwealth Secretariat (1965), para 4.

¹⁹ See Alison Duxbury, ‘Rejuvenating the Commonwealth – The Human Rights Remedy’ (1997) 46 *International and Comparative Law Quarterly* 344, 352-3.

²⁰ *Ibid.* 353.

within a framework of rights.²¹ The leaders undertook to improve Commonwealth cooperation in these areas, and to assist the intergovernmental institutions of the Commonwealth “to develop programmes which harness our shared historical, professional, cultural and linguistic heritage and which complement the work of other international and regional organisations.”²² In fact, the Heads of Government called on Commonwealth institutions to “seize” the opportunities presented by these challenges.²³ The pledges made by the Heads of Government, together with some of the key recommendations of CHRI, are analysed below to determine the way in which the Secretariat has implemented the organisation’s objectives in the field of human rights. The first seven of these goals relate to institutional modes of operation, while the final three deal with specific mandates given by the Heads of Government on issues such as deepening democracy, promoting equality, and supporting people-centred development.

1. Adopt a comprehensive Commonwealth Action Plan on Human Rights

The first step in any human rights programme is to develop a comprehensive plan that sets goals, targets, and concrete measures for the promotion of human rights. CHRI has suggested that a Commonwealth Action Plan should include a declaration or statement that draws on well accepted principles of human rights in the Commonwealth and relates them to specific problems in member countries.²⁴ The Commonwealth has made progress with both these objectives. The Heads of Government have proclaimed the organisation’s fundamental values in statements such as the Harare Commonwealth Declaration and the Fancourt Commonwealth Declaration on Globalisation and People-Centred Development. The Commonwealth’s wide-ranging approach to articulating standards can be summed up in the phrase ‘development, democracy and human rights’, demonstrating a commitment to both civil and political rights and economic, social and cultural rights. This accords with the 1993 Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights, where states proclaimed that “[a]ll human rights are universal, indivisible and interdependent and interrelated”. The Vienna Conference also stated that “[d]emocracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.”²⁵

The Secretariat has set out its strategic and operational approaches for human rights in its most recent plans. The Strategic and Operational Plans state the Secretariat’s objective as follows: “to increase awareness of, and respect for, human rights in the Commonwealth.”²⁶ This objective is to be realised through five strategies: assisting members in adopting and implementing international treaties, enhancing the capacity of key institutions to monitor and protect human rights, supporting members in adopting best practices, supporting other Secretariat Divisions in mainstreaming human rights, and assisting in removing the barriers to advancing the rights of women and girls.²⁷ The plan also describes six priorities and results that will flow from the fulfilment of these strategies, including an increase in the number of treaty ratifications by members, the wider protection of human rights in selected countries, and a reduction in the instances of harmful practices against women and girls. While this statement of the means for carrying out the objective cannot in itself be faulted, it does not amount to a comprehensive human rights plan as envisaged by CHRI. For example, the Strategy does not indicate which rights will be the focus when supporting members’ abilities to adopt “best practices”. More importantly, although the Strategy indicates the importance of enhancing the ability of national institutions to monitor and protect human rights, it does not explicitly state that the Secretariat will

²¹ Harare Commonwealth Declaration (1991), para 9.

²² Harare Commonwealth Declaration (1991), para 11.

²³ Harare Commonwealth Declaration (1991), para 11.

²⁴ CHRI, *Put Our World to Rights* (1991), 176.

²⁵ Vienna Declaration and Programme of Action, adopted at the World Conference on human Rights (1993), paras 5 and 8.

²⁶ Strategic Plan, 22; and Operational Plan, 5.

²⁷ Strategic Plan, 22.

also have a role in monitoring or protecting human rights – a necessary element in a complete human rights system.

2. *Establish a procedure for monitoring the implementation of pledges made by Heads of Government*

As well as adopting a comprehensive Action Plan on Human Rights, the Commonwealth also needs to put in place machinery to periodically review progress of its human rights mandate.²⁸ The Secretariat has recognised the need for such an approach by setting out the priorities and results in carrying out its objectives in its Strategic Plan. CHRI has recommended that a mechanism should be put in place so that a report can be tabled at each CHOGM on the progress made by member countries on the implementation of past Commonwealth commitments.²⁹ The Expert Group on Development and Democracy has made a similar point in relation to the recommendations made in its report.³⁰ This highlights that declarations of support are not enough – it is necessary to account for the way in which such pledges are realised in practice. For example, a monitoring procedure could “evaluate and publicise the progress made by the Commonwealth and its member states towards achieving the target set for halving the proportion of people living in poverty by 2015”.³¹ It could also monitor Commonwealth governments’ progress in ratifying international instruments³² (addressed below). The extension of the remit of the Commonwealth Ministerial Action Group to include serious and persistent breaches of the Harare Declaration indicates that the organisation as a whole has accepted that monitoring human rights violations in member states is not necessarily inconsistent with the Commonwealth’s ‘family atmosphere’. The Secretary-General’s decision to send an envoy to Cameroon to determine the extent to which it has implemented legislation for a Human Rights Commission is another instance of monitoring within the Commonwealth. Additionally, the use of Commonwealth Expert Groups to report on elections in various member countries is an example of monitoring by Commonwealth institutions. Given the continued focus on rights in Commonwealth Declaration and Communiqués, the possibility that further supervision of Commonwealth pledges could be undertaken within the Secretariat is a small step towards ensuring a more accurate picture of national implementation of the Commonwealth’s key values.

3. *Strengthen the capacity of the Human Rights Unit*

In 1985 the Human Rights Unit was established within the Secretariat in order to “promote human rights within the Commonwealth”.³³ In accordance with the limitations contained in the Agreed Memorandum it has no investigative or enforcement role. Calls have repeatedly been made, both within and outside the official Commonwealth, to increase the resources of the Human Rights Unit. In 1991 Secretary-General Anyaoku stated that “I consider it highly desirable that the Secretariat’s currently limited assistance to the Commonwealth institutions concerned with the promotion of human rights should be increased.”³⁴ The Heads of Government in Harare also endorsed the call for the Secretariat “to give greater impetus to its current activities to promote human rights in all its aspects.”³⁵ The lack of prominence and funding given to the work of the

²⁸ CHRI, *Act Right Now* (1993), 40.

²⁹ CHRI, *Open Sesame – Looking for the Right to Information in the Commonwealth* (2003) 76.

³⁰ *Report of Expert Group*, para 213.

³¹ CHRI, *Human Rights and Poverty Eradication – A Talisman for the Commonwealth* (2001) 103.

³² *Ibid.* 104.

³³ Human Rights Unit, ‘The Work of the Commonwealth Secretariat’s Human Rights Unit’ (1989), para 4.

³⁴ Quoted in CHRI, *Rights Must Come First - The Commonwealth Human Rights Unit: A Chequered History* (1999), 9.

³⁵ Harare Communiqué (1991), para 16.

Human Rights Unit in the Secretariat's activities has been criticised in the past.³⁶ However, recently the Unit has been reconstituted as a separate entity, reporting directly to the Deputy Secretary-General. The Unit's new mandate includes the development of programmes to support the Commonwealth commitment to the promotion and protection of fundamental human rights, the publication of human rights materials for member countries, and the integration of human rights activities into all divisions of the Secretariat's work.³⁷ An extra staff member has also been budgeted for the Unit as a further increase in its resources, although as with other areas of the Commonwealth's work there are still resource constraints.

In fulfilling its mandate, the Unit has organised workshops on human rights training for public officials, produced training manuals, and developed educational campaigns.³⁸ For example, in 2004 a workshop in Kenya discussed the role of human rights defenders in the African region.³⁹ The Unit has organised various expert groups to consider topics such as the trafficking of women and children, freedom of expression and assembly, and the victims of crime.⁴⁰ Current publications of the Unit include *Human Rights Update* and information papers on *Introduction to Law and Human Rights for Young People*, and *Tackling the Unconstitutional Overthrow of Democracies: Emerging Trends in the Commonwealth*. The Unit's work on National Institutions is particularly noteworthy – one instance is its role in assisting Cameroon in drafting legislation to establish a Human Rights Commission. Drawing on the Paris Principles and the Commonwealth Best Practice Guidelines, the Unit also plans to work with the Solomon Islands to set up a Human Rights Commission. The HRU has held a joint training workshop (with the Human Rights Centre of the University of Pretoria) for NHRIs, which included the Commissions from Ghana, Kenya, Lesotho, Malawi, Mauritius, Seychelles, Tanzania, Uganda, and Zambia. The workshop is to be replicated in other Commonwealth regions in the future.

While these activities do not breach the traditional boundaries of the Secretariat's role, there are two significant aspects of the Unit's new mandate. First, the Unit's activities have been described as including the "protection" of human rights, rather than just promotion. This would appear to suggest a more dynamic role for the Unit in identifying problems in member countries. Secondly, in its new mandate the Unit has also been allocated responsibility for providing advice to the Secretary-General and the CMAG.⁴¹ This last task is potentially very important given that CMAG is entrusted with the power to make recommendations on the suspension of a member from the Commonwealth for breaches of democratic standards. The fact that the Human Rights Unit has an input into this process is certainly a step forward in giving it a more active role in enforcement. However, the extent to which this has influenced CMAG is not immediately apparent from the statements released at the conclusion of its meetings.

4. Enhance the coordination of Commonwealth activities with other human rights organisations

The Commonwealth is only one of many fora in the international community which aims at promoting and protecting human rights. The need to coordinate Commonwealth activities with other organisations was acknowledged by the Heads of Government in 1979 when they called for

³⁶ See CHRI, *Rights Must Come First - The Commonwealth Human Rights Unit: A Chequered History* (1999).

³⁷ *Report of the Commonwealth Secretary-General* (2003), 14.

³⁸ See for example, Commonwealth Secretariat, 'Expert Groups, Training and Mainstreaming', <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=39443> [accessed on 14 May 2005].

³⁹ See Commonwealth Workshop on UN Declaration on Human Rights Defenders for the Africa Region, Nairobi, Kenya, 7-10 September 2004.

⁴⁰ *Report of the Commonwealth Secretary-General* (2003), 14-15.

⁴¹ Commonwealth Secretariat, 'Human Rights Unit - Mandate and Strategy', available at <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=39444> [accessed on 10 June 2005].

the Commonwealth to “seek to enhance the co-ordination of its activities with those of other organisations similarly committed to the promotion and protection of human rights and fundamental freedoms.”⁴² Such organisations include both intergovernmental organisations, such as the United Nations, and non-governmental organisations. In relation the first category, in 1991 the Heads of Government pledged themselves to develop programmes that would “complement the work of other international and regional organisations.”⁴³ The 2003 Report of the Secretary-General states that a Memorandum of Understanding has been concluded with the Office of the High Commissioner for Human Rights.⁴⁴ The Human Rights Unit has worked with the UNDP and has observer status with the Commission on Human Rights. A recent report indicates that it also “relates to” the Inter American commission on Human Rights and the African Commission on Human and Peoples Rights.

Heads of Government and the Secretariat have recognised the role that non-governmental organisations play in this area, with the mandate of the Human Rights Unit including collaboration and cooperation with NGOs.⁴⁵ The High Level Review Group reported in 2002 that the Commonwealth would be “invigorated” by a more focused partnership between civil society and governments.⁴⁶ The Commonwealth has responded to these calls by stating that it “welcomes, encourages and values participation in all its programme areas by effective civil society organisations with relevant expertise and experience.” Such involvement can include participating in ministerial meetings or election monitoring, contributing to activities on fair trade agreements or increasing women’s representation in parliament.⁴⁷ Civil society consultations and focus groups,⁴⁸ and the role of the Commonwealth Foundation as an intergovernmental organisation to strengthen civil society,⁴⁹ indicate a recognition of the importance of the ‘unofficial’ Commonwealth. In the past, the organisation has been criticised for a failure to allow opportunities for sustained dialogue between the official and unofficial Commonwealth and maintaining a conservative vision when it comes to more progressive arrangements for constructing a relationship between the two levels.⁵⁰ However, there is evidence that this is changing. The ability of civil society to provide input to various Commonwealth meetings in practice depends on the dynamics of the meeting itself. The proposed civil society consultations with Foreign Ministers to be held prior to the Malta CHOGM provide an example of the way in which governmental institutions can interact with the ‘informal’ Commonwealth.

5. Mainstream Human Rights Across Secretariat Programmes

Not only has the Commonwealth recognised the need to coordinate its activities in the field of human rights with other organisations, it has also explored the possibility of mainstreaming its human rights activities more effectively within the Secretariat. In support of this objective two reports have been produced: an *Evaluation Study of the Commonwealth Secretariat’s Role in the Promotion of Human Rights*, and *A Report on Mainstreaming Human Rights in the*

⁴² The Lusaka Declaration of the Commonwealth on Racism and Racial Prejudice (1979).

⁴³ Harare Commonwealth Declaration (1991), para 11.

⁴⁴ *Report of the Commonwealth Secretary-General* (2003), 15.

⁴⁵ See Harare Communiqué (1991), para 16; and Commonwealth Secretariat, ‘Human Rights Unit – Mandate and Strategy’.

⁴⁶ *Report by the Commonwealth High Level Review Group to the Commonwealth Heads of Government* (2002), para. 8 (‘*Report of the High Level Review Group*’)

⁴⁷ “The Commonwealth’s Commitment to Civil Society”, available at <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=143213> [accessed on 20 May 2005].

⁴⁸ Ibid.

⁴⁹ For further information about the Commonwealth Foundation see the Foundation’s website, available at <www.commonwealthfoundation.com> [accessed 23 September 2003].

⁵⁰ Amanda Shah, ‘Partners or Protagonists? The Commonwealth of Nations and Civil Society’ (2002), 9, available at www.cpsu.org.uk [accessed on 23 September 2003].

Commonwealth Secretariat. The first report, the *Evaluation Study*, recommended the mainstreaming of human rights across the Secretariat's programmes.⁵¹ In April 2004, Chaloka Beyani and Paul Hunt prepared a second report for the Secretariat on mainstreaming, with specific attention to poverty alleviation and sustainable development.⁵²

In order to facilitate the mainstreaming of rights across the Secretariat's programmes, Beyani and Hunt have suggested that both a programmatic and an operational response need to be undertaken. The programmatic response involves mainstreaming human rights across all the Programmes in the Secretariat's Strategic Plan. Such an approach is evident in the Good Offices for Peace Programme Statement in the latest Strategic Plan where one of the results is expressed in terms of enabling an environment for "increased ownership and respect for ... the rule of law and human rights" in selected countries.⁵³ Gender mainstreaming (as an element of women's human rights) has already achieved wide support in the Strategic Plan, as well as in earlier Secretariat work. In terms of the operational response, the authors suggested eight "Basic Steps towards Human Rights Mainstreaming", including the need to identify and explicitly recognise the relevant national and international human rights framework; identify people living in poverty and design an initiative to reach the poor; identify appropriate indicators and benchmarks; and ensure the active and informed participation of those affected by an initiative.⁵⁴ The authors also point to the importance of both a monitoring arrangement and an accountability mechanism to ensure that the aims of the project are in fact met.⁵⁵ It is too early to determine whether human rights mainstreaming will be successfully implemented in the Secretariat. A further report has now been commissioned on the application of human rights mainstreaming in the Secretariat – it has yet to be seen whether it will be as successful as the gender mainstreaming programme that is already in place.⁵⁶

6. Assist governments with the ratification of international instruments

The Heads of Government have frequently called on states to ratify international instruments on human rights, including the ICCPR, the ICESCR and other human rights conventions. For example, at Durban in 1999, they welcomed the adoption of the Convention on the Worst Forms of Child Labour and urged its ratification by member governments.⁵⁷ One of the strategic objectives of the Commonwealth Secretariat's human rights programme is to assist governments to ratify international instruments. The Secretariat accomplishes this task by preparing accession kits to aid governments in the ratification of human rights conventions. This year it has also published a guide to assist countries in the implementation of the Rome Statute for the International Criminal Court.⁵⁸ The results of this programme are to be measured by the increase in the number of treaty ratifications by member governments.⁵⁹

Some Commonwealth countries have yet to ratify the basic international instruments, such as the International Covenant on Civil and Political Rights ('ICCPR'), and the International Covenant on

⁵¹ Chaloka Beyani, *Evaluation Study of the Commonwealth Secretariat's Role in the Promotion of Human Rights 1997-2000*, referred to in Chaloka Beyani and Paul Hunt, *A Report on Mainstreaming Human Rights in the Commonwealth Secretariat: A Human Rights Approach to Poverty Alleviation and Sustainable Development* (2004) ('Beyani and Hunt (2004)').

⁵² Beyani and Hunt (2004).

⁵³ Strategic Plan, 19.

⁵⁴ Beyani and Hunt (2004), 16-19.

⁵⁵ Beyani and Hunt (2004), 19-20.

⁵⁶ It is understood that this report is due in the next 2-4 weeks.

⁵⁷ Durban Communiqué (1999), para 35.

⁵⁸ Ben Brandon and Max du Plessis, *The Prosecution of International Crimes – A Practical Guide to Prosecuting ICC Crimes in the Commonwealth* (2005).

⁵⁹ Strategic Plan, 22.

Economic, Social and Cultural Rights ('ICESCR').⁶⁰ The Commonwealth Secretary-General and the Secretariat is working on this lacuna with the goal of encouraging 18 member countries to ratify these two important instruments by 2008. Many Commonwealth members are reluctant to subject themselves to the various procedures for individual petition under these treaties, such as the Human Rights Committee, pursuant to the Optional Protocol to the ICCPR, and the Committee on the Elimination of Racial Discrimination pursuant to Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination. On the positive side, all Commonwealth members are a party to the Convention on the Rights of the Child, and nearly half of the member states are parties to the newer instrument, the Optional Protocol on Children in Armed Conflict. The recent initiatives on the ICCPR and the ICESCR are to be welcomed – this should be backed up with stronger mechanisms for encouraging states to implement their precepts into domestic law, such as the programme designed to promote National Human Rights Institutions. This last point is particularly important given that it is through national implementation that human rights conventions are realised at the local level.

7. Build the Secretariat as a model of open governance

CHRI has called on the Secretariat to adopt a policy on open governance within the Secretariat and other organs of the official Commonwealth. The *Round Table* also identified the need for greater transparency in the Secretariat's operations in its response to the Report of the High Level Review Group.⁶¹ The most recent Secretary-General's Report indicates that since new governance arrangements were introduced into the Secretariat there has been increased "accountability and transparency of the Secretariat by strengthening governments' direction and oversight of the total resources they contribute to the Secretariat's activities". It is also stated that this has "enabled the Secretariat to better assess progress in implementation."⁶² The availability of key Secretariat documents, such as the Operational Plan and Budget and more recently the Strategic Plan, is evidence of a more transparent approach to Secretariat operations and initiatives. Furthermore, the Secretariat has indicated that a new disclosure policy will be initiated in the Secretariat, as part of a broader effort to reorganise the information management and storage system. But as yet action on this objective appears to have been slow.

8. Take action to promote equality

The last three commitments included in this report relate to the implementation of specific rights advocated by the Heads of Government as Commonwealth values. These include promoting the Commonwealth's fundamental political values, taking action to implement people-centred development and promoting equality. This last commitment will be examined at the outset.

Two issues can be included within the broad commitment to promote equality – first, the prohibition on racial discrimination, and secondly gender equality. The Secretariat's activities in ending racial discrimination are arguably the foundation of the Commonwealth's human rights programme given the long-running campaign to eradicate apartheid in South Africa. In the Singapore Declaration of 1971, the Heads of Government described racial prejudice as a "sickness threatening the healthy development of the human race" and racial discrimination is an "unmitigated evil of society".⁶³ Similar sentiments are found in the Lusaka Declaration on Racism and Racial Prejudice and the Commonwealth Statement on Apartheid in Sport. Certainly one of the Commonwealth's main achievements has been its opposition to racial discrimination in South

⁶⁰ Since the World Conference on Human Rights it is noteworthy that a number of Commonwealth countries have ratified the ICCPR. See, CHRI, 'Commonwealth Ratifications of the Other human Rights Treaties' (2005).

⁶¹ See Response of the Round Table to the High Level Review, available at <http://www.moot.org.uk/submissions.asp> [accessed on 8 June 2005].

⁶² *Report of the Commonwealth Secretary-General* (2003) 40

⁶³ The Declaration of Commonwealth Principles (1971).

African and the re-admission of South Africa to the organisation at the end of the apartheid regime. The Commonwealth's involvement in eliminating racial discrimination did not end at that point, and more recently it has continued a "good offices" role to reduce ethnic communalism in Fiji and Ghana.

The second major issue to be included within the ambit of "equality" is the Secretariat's work in promoting equal opportunities for women. The relationship between women's rights and other aspects of the Commonwealth's work was recognised in the High Level Review Group's Report with the statement that "[g]ender equality is a fundamental value of the Commonwealth. It contributes not only to the advancement of political rights and empowerment of women, but also to peace-building, poverty reduction and economic and social progress."⁶⁴ The Commonwealth has undertaken a number of activities in this area, including the organisation of workshops on topics such as the Elimination of Violence Against Women, and a Judicial Colloquium on the promotion of human rights of women and the girl child through the judiciary.⁶⁵ Together with the Caribbean Community, the Commonwealth has also developed model laws on issues such as domestic violence, citizenship, equal pay, sexual harassment and sexual offences.⁶⁶ The Commonwealth Plan of Action for Gender Equality 2005-2015 lists the four "critical areas" for the Secretariat as 'gender, democracy, peace and conflict', 'gender, human rights and law', 'gender, poverty eradication and economic empowerment', and 'gender and HIV/AIDS', indicating the broad reach of its programmes.⁶⁷ Recently, the Commonwealth recognised the importance of increasing the number of women parliamentarians and the need to appoint more women to executive roles within political parties in the Latimer House Principles.⁶⁸ Gender mainstreaming has been a very successful aspect of the Commonwealth's work in the promotion of women rights, with the Secretariat publishing a number of manuals on the topic and having successfully integrated gender issues into its own programmes.⁶⁹

9. Enhance the Commonwealth's capacity to promote its fundamental political values and deepen democracy

Since the Heads of Government Meeting in 1991, support for democratic government has been a significant part of the Commonwealth's agenda. The Harare Declaration indicates a broad approach to the definition of democracy within the Commonwealth, with an emphasis on members' belief in the 'individual's inalienable right to participate by means of the free and democratic political processes in the framing of the society in which he or she lives.'⁷⁰ The Declaration also affirms the need to promote and protect fundamental political values, including democratic processes which reflect national circumstances, the rule of law, the independence of the judiciary and just and honest government.⁷¹ On a number of occasions since the Harare CHOGM the Heads of Government have advocated the need to strengthen the Commonwealth's capacity to respond to members' requests of assistance in areas such as democracy, accountable administration and the rule of law.⁷² In 1995, more specifically the leaders stated

⁶⁴ *Report of the High Level Review Group*, para 25.

⁶⁵ *Report of the Commonwealth Secretary-General* (2003), 29.

⁶⁶ Commonwealth Secretariat, 'Gender and Human Rights', available at <http://www.thecommonwealth.org/Templates/Colour.asp?NodeID=34008&int2ndParentNodeID=33895&int3rdParentNodeID=33899> [accessed on 11 June 2005].

⁶⁷ See Plan of Action for Gender Equality 2005-2015, available at www.thecommonwealth.org [accessed on 11 June 2005].

⁶⁸ Commonwealth (Latimer House) Principles on the Three Branches of Government, 'Section IV: Women in Parliament'.

⁶⁹ See for example, Strategic Plan, 21, where one of the strategies in the Rule of Law Programme is to "[i]ntegrate the gender dimension in legal, judicial and constitutional reforms and training."

⁷⁰ Harare Commonwealth Declaration (1991), para 4.

⁷¹ *Ibid*, para 9.

⁷² Coolum Declaration: The Commonwealth in the 21st Century – Continuity and Renewal (2002).

that the Secretariat should enhance its capacity to provide advice, training and other forms of technical assistance to governments in promoting the Commonwealth's fundamental political values⁷³

The Commonwealth Secretariat has undertaken a number of initiatives in promoting democracy. Within the 'Deepening Democracy' programme, it has convened workshops on themes such as the Role of the Opposition, Domestic Election Observers, Gender and Democracy, and Accountability, Scrutiny and Oversight.⁷⁴ One of the most substantial Secretariat activities in the democracy programme, and perhaps the most significant, involves the supervision of elections by Commonwealth Observer Groups.⁷⁵ The 2003 Secretary-General's Report states that between July 2001 and June 2003 Commonwealth Observer Groups were sent to nine countries.⁷⁶ Observer Groups are preceded by Secretariat assessment missions, and sometimes a longer term Commonwealth engagement with the process of democratic development in the country.⁷⁷ The Secretariat also provides technical assistance to strengthen democracy in the form of visits by experts, including specialists in media and voter registration.⁷⁸ The use of these monitoring initiatives within the Commonwealth is to be welcomed. But there are still issues that need to be resolved regarding the relationship between the Secretariat's work on democracy on the one hand, and CMAG's role in the enforcement of the values enshrined in the Harare Declaration on the other. For example, an election observer group to the 2004 Cameroon Presidential Election concluded that "there were so many [shortcomings in the election], and they were so important, that the process lacked credibility in a number of key areas."⁷⁹ Despite this conclusion, Cameroon does not feature in the latest concluding statement of the Commonwealth Ministerial Action Group.⁸⁰

The Report of the Commonwealth Observer Group into the problems during the elections in Zimbabwe in 2002 led to the convening of the Commonwealth Chairpersons' Committee and ultimately the decision to suspend Zimbabwe from the Councils of the Commonwealth. Zimbabwe's subsequent withdrawal from the Commonwealth leads to questions as to the way in which the Secretariat can assist the people in that country to return to democracy. Prior to Zimbabwe's decision to leave the organisation, the Commonwealth issued a Statement on Zimbabwe in which the Heads of Government declared their intention to "encourage and assist the process of national reconciliation".⁸¹ In a press release, the Secretary-General stated that "Commonwealth organisations should treat Zimbabwe as a non-member state", but at the same time suggested that "members of the Commonwealth will continue to seek to engage Zimbabwe to promote national reconciliation".⁸² This limits the role of organs such as the Secretariat in dealing with issues in Zimbabwe and raises questions as to the responsibilities of Commonwealth

⁷³ Millbrook Commonwealth Action Programme on the Harare Declaration (1995).

⁷⁴ See reports of the relevant workshops, including *Commonwealth Workshop on the Role of the Opposition* (1998); *Commonwealth Workshop on Domestic Election Observers* (1999); and *Commonwealth Workshop on Gender and Democracy* (2000).

⁷⁵ See Amanda Sives, *Adding Value to the Commonwealth Democracy Programme – A CPSU Submission to the High Level Review Group* (2001) for a list of Commonwealth Election Observer Groups prior to May 2001.

⁷⁶ *Report of the Commonwealth Secretary-General* (2003), 9.

⁷⁷ Workshop for Commonwealth Chief Electoral Officers in Asia and the Indian Ocean, 'Election Observation: The Commonwealth Experience' (1997), 3.

⁷⁸ *Report of the Commonwealth Secretary-General* (2003), 9.

⁷⁹ *Cameroon Presidential Election 11 October 2004 – Report of the Commonwealth Observer Group* (2004), 42-3.

⁸⁰ See Twenty-Fifth Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration – Concluding Statement, 11 February 2005.

⁸¹ Commonwealth Heads of Government Meeting, 'CHOGM Statement on Zimbabwe', 7 December 2003.

⁸² Commonwealth Secretary-General, 'Zimbabwe's Withdrawal from the Commonwealth' (press release), 12 December 2003.

bodies in similar areas. Given the statements made at the time of Zimbabwe's withdrawal it would seem appropriate for the Commonwealth to provide more support to the Zimbabwean people, as was the case when South Africa was outside the Commonwealth during the apartheid era.

10. Take action to promote people-centred development

The Secretary-General's 2003 Report states that "[t]he twin goals of sustainable development and poverty alleviation stand at the heart of the Commonwealth Secretariat's work".⁸³ The need to take action to alleviate poverty and promote people-centred development has been reinforced in a number of declarations by the Heads of Government, including the Harare Declaration, the Fancourt Declaration on Globalisation and People-Centred Development, and most recently the Aso Rock Declaration on Development and Democracy. The Commonwealth's programmes in the broad area of 'development' encompass Sustainable Development, support for the 'New Partnership for African Development', and Public Sector Development.⁸⁴ In 2003 the Expert Group on Democracy and Development, established by the Secretary-General produced a report entitled *Making Democracy Work for Pro-Poor Development*. In this report the Experts acknowledged the role of the Secretariat in a number of areas, including its assistance to members in developing their debt management capacity. The Experts recommended that the Secretariat expand its programmes by providing technical support to developing countries to increase their "capacity to negotiate and implement their obligations within the WTO system in ways that are consistent with their development interests."⁸⁵

The extent to which human rights issues have been mainstreamed into these development programmes has yet to be determined. The Aso Rock Declaration links development, democracy and human rights, but the most recent Strategic Plan does not evidence a people-centred approach to development. For example, although gender issues are mainstreamed in a number of the Secretariat's development programmes in the Strategic Plan, the same is not true of broader human rights concerns. The Strategic Plan tends to separate the two issues by suggesting that the Secretariat's first goal (peace and democracy) will be achieved through four programmes (one of which is human rights), and its second goal (supporting pro-poor growth and sustainable development) is to be realised through a further nine programmes, varying from international trade and investment to health and young people. To some extent human rights issues may in fact be incorporated into these later programmes,⁸⁶ but once more the importance of comprehensive human rights mainstreaming in the Secretariat is highlighted.

Conclusion

In examining the Secretariat's record in implementing the Commonwealth's human rights pledges since 1991, two observations are immediately apparent. First, that both the depth and breadth of the pledges made by Commonwealth Heads of Government in the area of human rights has expanded since the Secretariat was established 40 years ago. And secondly, that although the Secretariat has progressed far with the implementation of these promises, the limitations established in the Agreed Memorandum still influence its ability to undertake additional activities when it comes to monitoring Commonwealth goals in the field of human rights and undertaking further protection work.

⁸³ *Report of the Commonwealth Secretary-General (2003)* 34.

⁸⁴ See Commonwealth Secretariat, 'Sustainable Development', <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=36152> [accessed 10 June 2005]; and 'Governance and Institutional Development Division', <http://www.commonwealthextranet.net/> [accessed on 10 June 2005].

⁸⁵ *Report of Expert Group*, para 36.

⁸⁶ See for example, Commonwealth Youth Programme, *Strategic Plan 2003-2006*, where human rights are listed as one of the fundamental values.

Although the Singapore Declaration heralded the importance of a 'rights' approach to the Commonwealth, arguably it was not until the promulgation of the Harare Declaration 20 years later that a more proactive stance was taken. The Commonwealth has moved beyond the prohibition of racial discrimination as the focus of its early human rights work, and has encompassed a broad range of values in its human rights programme, particularly in areas relating to democracy and equality. Not only has the range of rights included within the ambit of "Commonwealth fundamental values" increased, but the Heads of Government have also given depth to Commonwealth commitments by providing greater detail in their various declarations and communiqués as to the meaning of key terms, such as democratic government and development. The adoption of these pledges at Commonwealth meetings indicates that the Commonwealth sees itself as an organisation dedicated to human rights principles. It is in this context that the Heads of Government called on Commonwealth institutions to "seize" the opportunities at the Harare Meeting in 1991.⁸⁷

This paper has not dealt with all the aspects of the Secretariat's work in the human rights field, but has demonstrated that in recent years the Secretariat's role in implementing human rights has been given a greater profile in order to match the pledges made by the Heads of Government. The Secretariat has also coordinated its work more effectively with the many Commonwealth civil society organisations, and has examined the issue of mainstreaming human rights comprehensively throughout its own programmes. The problem for the Commonwealth is that these declarations are not always met with substantive action. The greater profile given to human rights in Commonwealth statements has not always resulted in increased resources for the Commonwealth's human rights work. The insistence that countries joining the Commonwealth have adequate human rights' records is not backed up by consistent monitoring through the procedures established by the Commonwealth Ministerial Action Group. There are other areas for improvement, particularly when it comes to monitoring the commitments that governments have entered into and enhancing the Secretariat's ability to undertake further activities in the area of protection. Both these goals would be assisted by a Commonwealth Human Rights Action Plan. In this way, the Commonwealth would come closer to the goal of achieving a comprehensive human rights system.

It is true that the primary obligation for implementing human rights lies with national governments, rather than international organisations – the Commonwealth has recognised this by working to enhance the realisation of human rights within member states. It is through such national implementation that citizen's rights will be more fully realised. It is the role of international organisations, such as the Commonwealth, to ensure that this is accomplished.

⁸⁷ Harare Commonwealth Declaration (1991), para 11.