

**THE COMMONWEALTH HUMAN RIGHTS INITIATIVE'S
[CHRI]
SUBMISSION TO THE EXPERT GROUP ON DEMOCRACY
AND DEVELOPMENT**

LONDON, NOVEMBER 11TH 2002

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The Commonwealth Human Rights Initiative (CHRI) welcomes the creation of the Expert Group on Democracy and Development and values the opportunity to present before it. CHRI's mission statement is "to work for the *practical* realization of human rights in the lives of ordinary citizens across the Commonwealth."

As you may be aware, every two years CHRI produces a report to the Commonwealth Heads of Government Meeting which concentrates attention on an area of human rights concern across the Commonwealth.

Last year's report concentrated attention on poverty eradication. Called "*Human Rights and Poverty Eradication - A talisman for the Commonwealth*," it advocated a rights-based approach to poverty eradication. In the report, CHRI analyzed the nature of poverty; reasons for its continuance and advocated that an approach which centralizes human rights is not merely a moral stance but is a practical road map by which to address the problem of widespread and endemic poverty.

The time provided for this submission before the expert committee does not permit a detailed elucidation of the nature and causes of poverty. However, CHRI does believe that in a time of such plenty across the world the presence of so much and such abject poverty in the Commonwealth is a violation of human rights. We cannot also detail what is meant by a rights-based approach, or detail the practical steps that need to be taken by the Commonwealth and its organs if the issues of poverty, democracy and development are to be successfully addressed. However, CHRI commends its report to the Expert Group and hopes that many of its prescriptions will be taken on board in the recommendations that the Group makes to CHOGM 2003.

It is gratifying to note that, the background paper provided for the Commonwealth Secretariat by Dr. S. K. Rao, former Director of the Strategic Planning and Evaluation Division of the Commonwealth Secretariat, goes over much of the same ground and rationale when setting out issues for consideration of the Expert Group.

While we agree with much of Dr Rao's analysis we note the lack of emphasis on human rights as a *central* value and would again urge that human rights form the core perspective and underpinning for the Expert Group to formulate its opinions and implementation strategies for furthering democracy and development in the Commonwealth.

Without defining the word, Dr. Rao's paper indicates that electoral 'democracy' is not necessarily enough to ensure 'development'; and that more than a given political ideology, the sine qua non for poverty eradication is good governance and human development. At the heart of both these lie the values of human rights- both civil and

political freedoms and the values of economic justice, social inclusion, and cultural rights. These are the same fundamental values articulated in the Harare Declaration, the Commonwealth's agreed charter. At the core to these values are transparency, participation, accountability, inclusiveness, accommodation of diversity and dissent, and equity of status, opportunity and benefit.

Dr Rao's paper enumerates threats to democracy and development. We would add some other important threats that it is crucial to recognize if social conflict is to be avoided, individual potential realized, development is to be equitable and democracy is to become truly consultative and participatory rather than merely electoral process.

Threats:

Traditional Practices: A fundamental threat to the ability of democracy to deepen and accelerate development and reach the most vulnerable is contained in traditional practices - these are well demonstrated for example, in the denial of status, opportunity, and benefit to women. If reviewed against the benchmark of women's status and condition, democracy and good governance in most of the Commonwealth countries have not fulfilled their promise.

CHRI urges the Expert Group to break out of the mold of functioning that purports to address large questions such as democracy and development without centralizing at the very outset the individuals for whom prescriptions are being sought. These comprise, in the main, women. Globally, nearly 51 percent of all citizens are women - or should be. If the percentage is less in the Commonwealth than the global biological norm, this, in itself, is an indication of the discrimination women face from 'womb to tomb' - a cliché that indicates the status of women in the association.

The face of poverty is the face of a woman. The large majority of the abject poor consists of women; the most uneducated in any country are women; the deepest sufferers from the effects of conflict are women; the most hungry are women; the most unhealthy are women, and the least free citizens, lacking rights, mobility, work, or homes, are women. Evidence of this is overwhelming.

Violence Against Women: Violence against women forms a threat to democracy and development. Freedom from fear and assured personal security is the birthright of every citizen and the minimum justification for the State. Yet many women's lives are circumscribed by fear, incapacitating them from realising minimum citizen hood. They cannot participate in development for fear of transgressing traditional norms. Frequently prevented from work, deprived, harassed, beaten or even killed for pursuing average aspirations, women have their rights curtailed by the threat of physical violence from within and without the family. If directed against men, so much violence, would be cause for a national emergency. Yet, based on the level and quality of official responses, violence against women is widely accepted within cultures of the Commonwealth - and within the organs of the Commonwealth.

Prescriptions which fail to acknowledge the centrality of women to any discourse of democracy and development are doomed to fail, yet there is great reluctance to acknowledge that it is women that must come first on any agenda for bettering

democracy and development. The need to particularize solutions to address their condition remains un-addressed and we urge the Expert group avoid this consistent error. Any evaluation of whether democracy is functioning must take into account the ability of women to participate fully and fearlessly in development and democracy and share in the benefits.

Closing Civil Liberties Spaces: A more recent threat to democracy and development emanates from the undifferentiated responses to "terrorism" that are being used to curb civil society activities and restrict democratic space. The so called 'war on terror' and the rhetoric that requires a single right or wrong response, is creating a culture of intolerance, impunity, and un-freedom that are all deleterious to healthy democracy or development. A monochromatic view of terrorism ignores the fact that there are many free radicals for violence in society. Not all emanate from outside the State, nor are all in developing countries, nor are they all located in one culture. The roots of violence are various and each locus of 'terror' demands a graduated response beyond being "with us or against us." The nuanced response required of democratic functioning cannot be exchanged for a mere articulation of power.

The Expert Group needs to reiterate the democratic belief in the accommodation of dissent and the provision of space for the articulation and nurture of variegated cultures without compromising minimum standards of human rights and equity.

Non-adherence to Internationally Accepted Normative Standards: A constant threat to democracy and development comes from a global power elite who refuse to adhere to their own expressed notions of human rights. Rather, they bring the rights discourse into disrepute by selectively using it to gain economic advantage or achieve foreign policy ends. In the process, they corrode the rule of law as well as the internationally accepted normative system.

Lack of Political Will: Finally, there is also the threat that comes from national leaderships who resist civil society involvement in governance. We need to recognise that there is no lack of ideas, nor availability of global resources to put an end to poverty. There is only a lack of real political will in governments and global elites to implement well known remedies for poverty because it serves them well to do so. This is the issue that perhaps needs the greatest attention of the Expert Group.

Possibilities

If there are threats, there are also opportunities to hasten development and deepen democracy. Of the many that find usual mention, technology and modern communications are offered up as welcome means to harness in their service. But increasingly the market is thrown up as the main means to secure both. CHRI believes that this reliance on the profit motive to create sustaining societal values is misplaced. At best, it can accelerate economic growth, but it cannot ensure that benefits will reach the most vulnerable.

The Rights Approach: Instead CHRI believes that the rights-based approach offers a firm bedrock on which to base democracy and development and assure stability and real progress.

CHRI advocates that human rights values best underpin poverty eradication because:

- a) the Commonwealth has international and national legal obligations to conform to the rights regime; and,
- b) human rights provides a practical method by which to formulate policy, monitor progress and measure performance.

How does it do this?

A rights based approach recognizes poverty not as an inevitable condition but as an aberration and a violation of human rights.

The rights-based approach bases development on the fundamental principle of equality of all human beings. It makes a distinction between economic growth and human development. It takes away any notion that the poor are charity cases but insists that persons are made up of a bundle of rights. This notion of a person being a bundle of rights creates the idea of minimum entitlements including the right to food, health, housing, education and environment. The non-provision of these becomes a violation. A right assures accountability by creating a duty holder on the one hand and the beneficiary of a legal entitlement on the other. This assures there is a legal remedy in the beneficiary for non-compliance. This gives the beneficiary a status beyond being a beggar for crumbs - a notion implicit in the trickle down theory.

A rights based approach points the way not only to the content of development but also indicates its priorities and the processes by which it can be prosecuted.

It gives primacy to the participation and empowerment of the poor and insists on the recognition of the role of citizens in governance.

The priorities of a rights based approach identify the most vulnerable as early targets; the value of participation insists that affected people are included in the making of policy or legislation - this increases the possibility of its success.

A rights-based approach helps in evaluating the effectiveness of policies and their implementation by insisting on the creation of benchmarks and indicators based on such criteria as whether women and children have benefited; whether their safety is better assured; whether more resources are being allocated for food than for arms, and so on. By ensuring participation, the rights based approach assures that programs are grounded in reality and hence better targeted and nuanced; there is more community involvement in programs and therefore more ownership and more knowledge about the trajectory of the program, its stages, budgets, etc. and hence more local ability to monitor, fine tune, measure performance, and ensure accountability.

Just as the rights approach clothes the citizen at home, it provides both sword and shield to nation states - especially the more vulnerable ones - when negotiating with more powerful ones for trade, aid and intellectual property rights in international multilateral fora. Aid and trade often regarded as charity and largess become grounded in commitments for international cooperation that have been solemnly entered into by all countries but are nowhere properly implemented.

One of the most important reasons for using the rights based approach as a practical tool at home and abroad is that the language of rights is now common currency and has the ability to change power relationships by ensuring that all actors act within a common normative frame.

Ironically, the ideology of globalisation and the effects of the market are so powerful that they can only be countered by the ideology of human rights, which is more commanding because it has been accorded a universal pre-eminence that has developed over years through debate, refinement, and consensus. It is only by reiterating the primacy of human rights and strengthening its sinews at all levels that the more deleterious effects of globalisation can be controlled and contoured to preserve the promise of human dignity.

Promoting Democracy and Development in the Commonwealth

Though the Commonwealth has committed to human rights and also to poverty eradication, the value of human rights in eradicating poverty has not been central to its prescriptions and its commitment to the actualisation of human rights, though oft repeated, has been lukewarm. Rather the Commonwealth's support for managed globalisation has been given more weight than its commitment to eradicate poverty, and again there is no sense that its concern for the poor is informed by an appreciation of the value of economic social and cultural rights.

In the absence of a clear mandate, the Commonwealth Secretariat has generally given a low priority to human rights as a whole and its actions to eradicate poverty have not gone beyond discrete programs, stopping short of what is needed: a full-scale assault on poverty from all angles.

With the force of the rights framework behind it, the Commonwealth, as an association of predominantly poor nations, must demonstrate its unity of purpose to eradicate poverty by effectively amplifying the voice of the poor in international fora.

The Commonwealth must now make explicit its recognition that the persistence of poverty in a world of plenty is a serious violation of human rights of all kinds - civil, political, economic, social and cultural- and provide its official organs, especially the Secretariat, with an unequivocal mandate to: prioritise poverty elimination through a rights based approach; provide leadership to member states in crafting rights based approaches to poverty eradication within their borders; and as an association of largely poor nations, act to give strong voice to perspectives of the poor.

This requires more than the incremental approach that has so far been favoured. It requires the Secretariat and other official Commonwealth mechanisms to be, not in the service of ruling governments, but in the service of governance, serving the sovereign

peoples of the Commonwealth. The organs of the Commonwealth need to be faithful to the underlying political values of the Harare Declaration, rather than to transient holders of the reigns of power.

CMAG: As mentioned above, CHRI views the presence of abject poverty as a violation of human rights and therefore urges that The Commonwealth Ministerial Action Group assist in poverty eradication by fulfilling its true mandate. CMAG is the only instrument for monitoring the Commonwealth's adherence to its fundamental political values. Not only a guardian of fundamental values, CMAG is also a custodian and spokesperson for all the human rights of Commonwealth citizens, including their socio-economic rights. CHRI urges that it be equipped to monitor civil and political rights more closely and also to monitor fulfillment of socio-economic progress. It must equip itself and keep under scrutiny the continuing existence of poverty on a large scale. And it must treat the lack of significant progress by member states in eradicating poverty, as a serious and persistent human rights violation. Its consideration of a country could be prompted by civil society reports and should continue identifying responsible duty holders until such violations end.

For example, Zimbabwe provides a good candidate for scrutiny not merely in terms of violation of civil and political rights but also for the threats posed to food security by government policies. It is a candidate for the good offices of the Secretary General and his team; for smart sanctions and incentives; for reports back by governments and civil society to CHOGM about the government's progress toward millennium goals. It is worthy of comment by CMAG and CHOGM which must encourage civil society expression in these fora.

Tracking Performance: Though international development targets have been widely adopted and are well acknowledged as not being on track, and though Fancourt and Durban talk of economic justice, Commonwealth countries are not required to report to their own citizens what they have achieved. Nor is there any means to examine their adherence to international commitments articulated over the decades. There must be a clear procedure for systematically monitoring the implementation of pledges made by heads of Government to halve the proportion of people living in poverty by 2015. Without this, empty pledges can ignore empty stomachs with impunity. CHRI urges the Expert Group to recommend that CHOGM become an occasion for peer review and comment.

A Commonwealth High Commissioner for Human Rights: Additionally, CHRI has for many years recommended the post of a Commonwealth High Commissioner for Human Rights which could strengthen the processes of CMAG; be at the right hand of the Secretary General assisting in his good offices role; act to profile the value afforded to compliance with human rights commitments in the Commonwealth; and monitor adherence to the Harare principles, including the ones that relate to sustainable development. We urge this mechanism as a means of having an internal advocate for democracy and development within the Commonwealth.

The Human Rights Unit: The Human Rights Unit offers another instrument by which to promote a rights based approach both within the organs of the Commonwealth and its constituent countries. It was set up to promote human rights and to ensure that the Secretariat itself takes due account of human rights considerations. For several years CHRI has been urging the Commonwealth to expand the resources and abilities of the HRU.

The HRU has now been brought under the direct supervision of the Secretary General. It has new personnel but its influence within and outside the Commonwealth Secretariat is yet to be felt. While a lack of financial resource is used to explain the slowness of revitalising the HRU, private money, and government bilateral and multilateral funds available for improving governance and rights records have yet to be leveraged. The HRU's fortunes can be considerably changed provided it is permitted to take bold initiatives.

Along with the Commonwealth Foundation, which is close to situations on the ground and has a depth of experience and understanding of civil society, the HRU must assist in mainstreaming an understanding of human rights within the Secretariat itself.

CHOGM & Other Meetings: A key element of the human rights framework is the people's right to participate in all forms of governance and development. This includes participation in planning processes, implementation, and evaluation. It includes participation in decision-making. The Heads have called upon non-governmental Commonwealth organisations to play their full part in promoting Commonwealth objectives in a spirit of mutual support and have affirmed the need for direct participation in decision-making. The sustained relevance of the Official Commonwealth to its peoples will only be enhanced if it can harness the participation of the Commonwealth's unofficial organisations. However, the Official Commonwealth has been distinctly reluctant to implement participation. There is some movement in opening up ministerial meetings and ones such as the present meeting to civil society views. However, this is not enough.

Summits offer a rare opportunity for purposive communication between civil society and officials of the Commonwealth, country delegates, and Heads. This could take the form of:

- ▶ question and answer sessions;
- ▶ regional and thematic meets;
- ▶ opportunities to speak at plenary sessions or
- ▶ to make presentations to working groups;
- ▶ observer status for members of each group at other groups' meetings; and
- ▶ joint communiqués from CHOGM which include the outcomes of deliberations of government and civil society and that set out programs of action which can then be jointly progressed and monitored.

This would go a long way toward democratizing and revitalizing Heads of Government Meetings and need not in any way detract from the privacy and collegiality that the Heads value so highly. While these appear to be radical departures relative to what has gone

before in the Commonwealth, other international fora such as the UN routinely include civil society voices in deliberations at all levels.

The Commonwealth must demonstrate in its working, its desire to further democracy and hasten development. The recommendations of the NGO forum at its last meeting in Durban came out of the shared experiences of 10,000 poor people in 54 countries and should have formed the backbone of the statements of the Heads. Instead it was merely noted and hardly reflected in the final communiqué. The value afforded to the NGO forum's statements was nugatory and disrespectful. There needs to be an explicit understanding that once the forum's views are presented to the Heads, they will impact upon future directions and find matching expression in Communiqués. Indeed, apart from the various statements generated at CHOGM there is great value in a tripartite statement between business, civil society and Heads coming together to lay down a plan of action for poverty eradication. This will ensure sustained in-country monitoring and compliance as well.

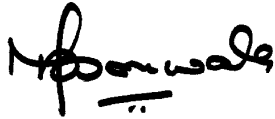
Explicit Open Government Policy at the Commonwealth Secretariat: In order to demonstrate democracy at work within its own structures the organs of the Commonwealth need to set an example by adopting a stated policy on open governance within the Commonwealth Secretariat and other organizations of the Official Commonwealth that not only makes information readily available but actively disseminates it in the interests of democratic functioning.

The Commonwealth Foundation: The Commonwealth Foundation is mandated to deal with the unofficial Commonwealth. Rather than being the occasional medium for civil society's opinions, the Foundation needs to assist the Secretariat to be more inclusive and participatory. For example, it could monitor the Secretariat's fulfillment of the Commonwealth citizens' right to participation. In cooperation with the HRU it could ensure that each division of the Secretariat integrates the notion of civil society participation in its work.

A Guaranteed Right to Access Information: Countries keen to promote democracy and development can be assisted a great deal by the adoption of in-country open governance policies. These must be underpinned by guaranteed access to information in the form of laws that assure information is not secreted away but is proactively made available to citizens so that people can partner intelligently with governments in pursuit of stated goals. CHRI urges the Expert Group to recommend that guaranteed access to information be assured to citizens in all the countries of the Commonwealth through liberal laws made through participatory processes. The model laws suggested by the Secretariat need to be widely debated and discussed in-country before being adopted so that they can become known, owned, and adapted to the circumstances of each jurisdiction.

We believe that if the Commonwealth is serious about poverty eradication, democracy and development, time is of the essence. The first item on the agenda of the 2003 CHOGM should be a review and assessment of the efforts of the official and unofficial Commonwealth to eradicate poverty through a right-based approach. This will safeguard democracy and maximise the possibility of development. If prescriptions from the

Expert Group are to succeed they must set a time line for action or this will be only another unfulfilled hope.



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The following is an email sent from CHRI's Director, Maja Daruwala, to the members of the Expert Group after the above submission:

Thank you for the opportunity to present to the Expert Group on Democracy and Development. With just 10 minutes for all the ills and challenges of Democracy and Development in the Commonwealth, our presentation and ensuing submission dealt with just one aspect of what is a very large area. Therefore I would like to mention a couple of others to you - curbs on civil society; and access to justice.

One issue central to D and D is that of curbs on civil society. All the communiqués of the Commonwealth to the Secretariat, as well as its reinvigorated mandate, talk about partnering with civil society as central to development and using the vibrancy of civil society as a measure of democracy. This is also reflected in the statements from many recent international conferences; and in donor policies. However, the reality is a steady erosion of these efforts - a deliberate and malign shrinkage of space in which groups can function. This restrictive environment is created through: society's acts; legislation pertaining to charities; the regime of permissions by which foreign money can be accepted; reporting requirements; curbs and permissions needed for research; refusal to provide information; and sweeping powers of search and seizure. In cities at least, many NGOs have reasonable access and collective support to counter some of this. But in rural areas, civil society is frequently held hostage to the local administration and often becomes collusive. Any kind of advocacy work or attempts to monitor and keep the government accountable are quickly inhibited, leaving NGOs with two options: fall in with corrupt administrations or avoid attending to root causes and implement welfare schemes to the extent that this is permissible by the government.

I do hope that the Expert Group will discuss this aspect and recommend that the Commonwealth Secretariat monitor the situation. We cannot premise the health of democracy or development on an assumption that there is a vibrant partnership between government and civil society when in fact there is a very unequal

relationship of survival through adversity, and cooption and even collusion caused by existing legislative and policy regimes. While good practices no doubt exist in many countries and dissemination of these is to be recommended, in reality it is rare for good practice to be replicated and the method often wastes precious time. Instead, monitoring is needed, with countries required to report back to the Commonwealth on steps taken to enhance the functioning capacity of their avowed helpmates in furthering democracy and development.

Another crucial issue is access to justice. The rule of law may be a central tenet to democracy and development, but we cannot start with a presumption that there are currently working mechanisms of recourse available that create any dependable law based matrix. This is most certainly not the case in South Asia and much of Africa, as well as many other Commonwealth countries. Let us take South Asia as an example, an example of a region with no significant access to justice. The reasons for this are multiple, and at a court level include: too few judges and courts; poor legal education; minimal professional development training for judges during their careers; and too little accountability inevitably leading to wide scale corruption at all levels of the court system - among staff, recorders, keepers of files, writers of records, bailiffs and process servers. They are all part of a system that works to a tune that has nothing to do with rule of law. Physically, courts are far from most people and are too expensive, and psychologically the court is not seen as a means of redress for any conflict, whether it be civil or criminal.

Many lawyers have little legal education and very poor ethics - many are a law unto themselves, wielding enormous power over clients. I speak not only from the knowledge gained through years of research by CHRI, but also as a former practicing lawyer who left due to disgust with the system. Clients in the wrong in a civil case are advised to "go to court", so that all liability is deferred by being tied up in legal red tape for decades. In civil cases only the rich can litigate to the end. In criminal cases advice to the accused, whether innocent or guilty, is to never allow the case to get to court but to "manage" the matter "by any means". Again the rich get bail and the poor go to jail. In this context it is important to remember that overcrowding is around 65% and over 80% are unconvicted persons awaiting trials.

I have spoken much about the court system but the access to justice system fails well before any journey to court. The police are the first port of call for dispute resolution and complaints of victimisation and violation of human rights. Here the situation is neither positive nor neutral - it is malign. There are so many studies in this area all showing the same thing, that one wonders if they are continued to be conducted simply to procrastinate. Each of these studies show that the police are biased in favour of the most powerful, wherever they may be located; and that they are corrupt, inefficient and prey to illegitimate political and extraneous control. In addition they are disliked, badly paid and work under conditions that create a siege mentality amongst themselves, translating into a complete distrust and resentment of the people they are meant to serve and protect. In turn this isolates them and forces them to depend on third degree methods to extract information to solve any kind of crime, whether it be petty theft or terrorism. Rule of law is not even a presumption, let alone a reality, in most of their work. Their methods are successfully challenged at court wherever this is possible and as a consequence, convictions have become as

low as 6%. Many cases, however, do not even get as far as the courts - as police cannot deal with the burden of work under their present conditions, many simply refuse to write down complaints and are therefore spared the need to investigate.

As always, limits to access to justice are particularly felt by certain sections of society - minorities, women and youth. In their social contexts in many countries, they cannot physically approach a police station to talk about their complaints and are not in any position to go to court. Recourse is simply not available for property deprivation; domestic violence; child support; gender discrimination; or rape and all the common ills of being a woman, child or labourer (93% in the informal non unionised sector). If we break down the ability of sectors to access justice, one can see that most of the population simply can not seek redress through the law.

At the root of all this is the fact that women - and men - are not aware of their equality and fundamental rights as written into the Constitution and international instruments. This concept of equality is a new and radical one in the sub-continent where most social relations are based on acceptance of status and subordination. In the absence of an alternative mental paradigm based on legal equality, all relationships and individual and collective beliefs are based on a system of values built on inequality that is agreeable to the subordination of gender or discrimination due to caste and station in life. This is clearly reflected in the functioning of the bureaucracy.

I believe that the very design of development, at the moment at least, is posited on the inability of most of the population to seek redress. It is based on the assumption that there is a biddable and pliant (or just helpless) population upon whom power can be wielded without any fear of accountability for damage, failure or lack of benefit. This presumption grounds the policy designs of not only governments, but also international agencies who need never fear the consequences of harsh experimentation or feel the pain of human tragedy.

I am sure that you are much more knowledgeable on these issues than I and are very au fait with all this. However I felt that highlighting our concerns may be of assistance to you; and do hope that some of this will be reflected in your own prescriptions for the future course of democracy and development in the Commonwealth.