

COMMONWEALTH HUMAN RIGHTS INITIATIVE

MECHANISMS OF THE COMMONWEALTH TO ADDRESS VIOLATIONS OF  
COMMONWEALTH VALUES – THREE PART SERIES

PAPER TWO: HUMAN RIGHTS UNIT

## ACKNOWLEDGEMENTS

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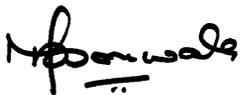
No one more so than Anna Hood and Monique Cormier whose, comprehensive research, skilled writing and professionalism allowed CHRI to produce its 2013 report to the Heads of Government Meeting at Colombo. Their yearlong efforts, reviews, editorial refinements and patient reiterations proved indispensable to bringing out the report.

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Thank you to Stuart Mole, for enriching this series with an in-depth paper on 'The Good-Offices of the Secretary General'.

This series, which dedicates separate papers to each mechanism that can support human rights compliance in the Commonwealth, is based on the original document and supplements our 2013 report. Vrinda Choraria, Kirsty Welch, Sanyu Awori and Samane Hemmat - our Strategic Initiatives team, also deserve much appreciation for converting the original into the present format.

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## PREFACE

This paper is part of a three paper series which is dedicated to mechanisms in the Commonwealth that can support human rights compliance. The series includes an overview of – Secretary General’s Good-Offices, Commonwealth Ministerial Action Group and Human Rights Unit. The papers seek to elucidate the functioning of the mechanisms and highlight the need for a Commonwealth Commissioner for Human Rights.

At the Commonwealth Heads of Government Meeting (CHOGM) in Perth in 2011, the Eminent Persons Group (EPG) recommended the appointment of a Commissioner for Democracy, the Rule of Law and Human Rights. By the end of 2012, the Heads had approved various EPG recommendations but the recommendation relating to the creation of a Commissioner was dropped since no consensus could be reached.

However, events since the 2011 CHOGM in Perth, make it clearer than ever that the Commonwealth must consider, and this time agree, to create an independent specialist who can monitor, investigate and advise on human rights. Human rights standards in the Commonwealth have continued to be a cause for alarm, despite implementation of reforms - efforts intended to address the Commonwealth’s oft criticised lack of response to violations of its values. After well reasoned reports and impressive sounding changes were put in place, to say that hopes of real commitment to core values have been dashed would be to say too little.

CHRI’s report to the Commonwealth Heads of Government in 2013 calls for the appointment of a Commissioner for Human Rights. The call is based on the fact that Commonwealth’s existing mechanisms are inadequate to hold Members States to account over their human rights records – as illustrated in the present series of papers. A full time independent expert with functions that will compliment that of existing Commonwealth mechanisms will effectively assist Member states comply with Commonwealth Values and rebuild the confidence of its people and ensure a renewed, relevant and sustainable Commonwealth.

## HUMAN RIGHTS UNIT

The primary human rights organ within the Commonwealth Secretariat is the Human Rights Unit (HRU). When the HRU was first established in 1985, its mandate was “to promote human rights within the Commonwealth”.<sup>1</sup> Despite its mandate being amended in January 2002 to include *protection* of human rights<sup>2</sup> the vast majority of its work has remained focussed on the promotion, not protection, of human rights and it does not possess any investigative or enforcement powers. As the Commonwealth Secretariat’s website explains, the HRU “develops promotional and assistance programmes to support Commonwealth members’ stated human rights commitments”.<sup>3</sup>

Over the course of its life, the HRU has engaged in several programmes and initiatives to promote human rights throughout the Commonwealth. One of its hallmark projects is its training programmes. The HRU has developed training manuals on a range of human rights issues and delivered human rights training and assistance to public officials throughout the Commonwealth. It has acquired particular expertise in delivering human rights workshops to police training institutions and by the end of 2009 it had conducted police training workshops in 40 Commonwealth countries.<sup>4</sup> Other training workshops have covered topics such as the work of human rights defenders in Africa<sup>5</sup> and human rights training for prison officials and foreign ministry staff.<sup>6</sup>

Another key activity of the HRU is encouraging the ratification of international human rights instruments. Since its infancy, it sought to persuade member states to sign and ratify international human rights treaties by creating accession kits that guide states through the ratification process. It also held conferences to inform members of the steps involved in ratifying human rights treaties. For example, the Human Rights Unit held workshops in the Pacific and Caribbean that educated leaders on the processes and consequences of ratifying the ICCPR and ICESCR.<sup>7</sup>

In a similar vein, the HRU held a number of seminars to educate states on the Universal Periodic Review procedure that the UN Human Rights Council introduced in 2006. The Universal Periodic Review examines the human rights records of all member states and the HRU’s seminars are designed to ensure that the process is understood by all those affected by it in the Commonwealth including government officials, national human rights organisations and members of civil society.

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<sup>1</sup> Human Rights Unit, “The Work of the Commonwealth Secretariat’s Human Rights Unit” (1989), para 4.

<sup>2</sup> Report of the Commonwealth Secretary-General: Development and Democracy (2003) 14.

<sup>3</sup> The Commonwealth, Human Rights: <http://www.thecommonwealth.org/Internal/151469/hru/>.

<sup>4</sup> Report of the Commonwealth Secretary-General: Equity, Sustainability, Partnership (2009) 15.

<sup>5</sup> Report of the Commonwealth Secretary-General: Networking for Progress and Prosperity (2005) 13.

<sup>6</sup> Duxbury, Alison, “Rejuvenating the Commonwealth – the Human Rights Remedy”, *International and Comparative Law Quarterly* (1997) 359.

<sup>7</sup> Report of the Commonwealth Secretary-General: Transforming Societies, Changing Lives (2007)13.

Furthermore, the HRU has invested significant time in supporting the establishment and development of National Human Rights Institutions in countries throughout the Commonwealth. In 2001, it produced Best Practice Guidelines for National Human Rights Institutions. In 2007, it set up the Commonwealth Forum of National Human Rights Institutes to enable Commonwealth states to come together and learn from one another on how to build effective human rights institutions. In addition to these measures, the HRU has worked closely with several states, including Bangladesh, Papua New Guinea, the Seychelles, the Solomon Islands,<sup>8</sup> Cameroon, Swaziland and Malawi<sup>9</sup> to develop National Human Rights Institutions.

A large part of the Unit's work involves promoting human rights awareness and education through producing and distributing "best practice" guidelines and publications. It 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.<sup>10</sup> It regularly publishes a newsletter entitled *Human Rights Update* and more recently has begun to produce *Human Rights Status Reports*. These publications detail the HRU's own activities and provide information on positive measures Commonwealth states have taken in the human rights field, such as ratifying treaties. These reports do not, however, monitor Commonwealth states' *de facto* compliance with human rights standards or identify where they have violated human rights principles. Besides these regular publications, the HRU also produces ad hoc reports on specific human rights issues. Examples of the HRU's reports include *Universal Periodic Review of Human Rights: Towards Best Practice* (2009), *Child Rights in the Commonwealth: 20 Years of the Convention on the Rights of the Child* (2009) and *Without Prejudice: CEDAW and the Determination of Women's Rights in a Legal and Cultural Context* (2010).<sup>11</sup> Like the newsletter and *Human Rights Status Reports*, these other HRU reports do not focus on breaches of human rights standards; they merely discuss the overall human rights situation.

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<sup>8</sup>Report of the Commonwealth Secretary-General: Equity, Sustainability, Partnership (2009) 17.

<sup>9</sup> Human Rights section under Commonwealth in Action, on the Website – [commonwealthofnations.org](http://commonwealthofnations.org).

<sup>10</sup> HRU section on Commonwealth Secretariat's website.

<sup>11</sup> A full list of the HRU's publications on specific human rights issues can be accessed at <https://publications.thecommonwealth.org/human-rights-36-c.aspx>.

The HRU's amended mandate:

- Work within the Commonwealth Secretariat to integrate human rights activities into a wide range of Secretariat work across all Divisions.
- Develop programmes designed to support the Commonwealth's commitment to the promotion and protection of fundamental human rights and in particular, develop educational, legislative and administrative programmes to achieve this aim on the understanding that civil, political, economic, social and cultural rights are indivisible.
- Publish for the use and information of member countries literature on human rights developments, jurisprudence and such other material as will assist in the promotion, protection and justiciability of human rights, including educational material.
- Collaborate and cooperate with both Commonwealth and non-Commonwealth governmental and non-governmental organisations working in the field of human rights and interact with the UN human rights system (in accordance with the Memorandum of Understanding concluded with the UN Commissioner for Human Rights) and that of other international organisations.
- Provide advice to the Secretary-General (including on CMAG issues from time to time).

In 2002, the HRU's remit was expanded to include development of programmes to support the Commonwealth commitment of *protection* of fundamental human rights. Significantly, it was given the power to provide advice to the Secretary-General, including on CMAG issues.<sup>12</sup> Consequently, the HRU has the potential to contribute, in a very preliminary way, to instigating a process that may lead to the Commonwealth recognising and addressing gross violations of human rights. However, as the HRU does not have monitoring or investigative powers, the extent to which it can ensure human rights violations are consistently identified and reported to CMAG is limited. Additionally, the HRU is severely under-resourced and under-staffed, which significantly limits its ability to contribute to the protection of human rights. Furthermore, to date, there is little reporting on the operation of this power and little evidence to suggest that it has had any great impact.

It is thus apparent that while the HRU has developed several significant programmes and initiatives that educate members of the Commonwealth about human rights, build the capacity of Commonwealth states to engage with human rights issues and assist states to adopt and adhere to international human rights measures and procedures, it has very little capacity to protect the human rights standards articulated in the Commonwealth documents and statements.

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<sup>12</sup> Human Rights Update, January 2003 edition (4).