



## **Submission to the Commonwealth Heads of Government Meeting 2013**

*The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international NGO working for the practical realisation of human rights in the countries of the Commonwealth.*

In anticipation of the 2013 Commonwealth Heads of Government Meeting (CHOGM) CHRI requests the consideration of the following issues:

### **I. A Commonwealth Commissioner for Human Rights**

The Commonwealth's existing mechanisms to hold Members States to account over their human rights record are inadequate. This puts the new Commonwealth Charter at grave risk of not fulfilling its promise. By establishing an independent expert Commissioner for Human Rights, the Commonwealth can be better equipped to identify, investigate and respond to breaches of the organisation's values, and through which governments and citizens can engage effectively with the organisation.

A Commonwealth Commissioner is an essential prerequisite to a renewed, relevant and sustainable Commonwealth:

- There is no existing Commonwealth mechanism capable of monitoring, identifying and investigating human rights abuses.
- The Commonwealth requires an early warning alert system for human rights violations.
- The Commonwealth Ministerial Action Group requires independent, politically neutral and uncensored dedicated expert advice.
- To secure financial contributions at a time of global financial crisis the Commonwealth must deliver value for money by clearly demonstrating that its actions are consistent with its proclaimed values.
- The predominant public image of Commonwealth inaction and indifference to human rights violations must be erased.
- There is a need for a Commonwealth mechanism that can support human development through the monitoring and championing of human rights.

#### **Recommendation: A Commonwealth Commissioner for Human Rights**

**CHRI urges Heads of Government to re-consider establishing a Commonwealth Commissioner for Human Rights. CHRI, as a first step, requests that Heads appoint a group of experts and leading Commonwealth activists to examine the issue in depth and report on the modalities for establishing and maintaining such an office.**

### **II. A human rights based approach to the post-2015 development agenda**

The UN Secretary-General, in the global consultations summary document *A Life of Human Dignity for All*, asserts that a post-2015 era demands a new vision and a responsive framework where sustainable development is enabled by the integration of economic growth, social justice and environmental stewardship. CHRI believes that such an enabling environment is best provided by a human rights-based approach to development, now endorsed and practised by a growing number of states.

A rights-based approach means acknowledging that citizens have a right to sustainable development and a right to meaningfully participate in the development process. A rights-based approach also necessitates the promotion of non-discrimination, equality and equity in the distribution of cost and benefit. The new development agenda must embrace freedom from fear as well as freedom from want. This means explicitly aligning the new development framework with the international human rights framework – including civil, cultural, economic social and cultural rights as well as the right to development.

This can be best achieved by instituting a strong accountability framework to the post-2015 development formula, which as well as setting targets and indicators, should clearly identify rights-holders and corresponding duty-bearers for each mandated action. There is also a need for political, administrative, and judicial mechanisms at the international, national and local level to ensure relevant institutions have clear responsibilities and are held accountable should there be delivery failure.

**Recommendation: A Human Rights-Based Approach to Development**

**CHRI urges Heads of Governments to ensure that the post-2015 development framework is effective, transparent and inclusive by collectively endorsing a rights-based approach to development which is aligned with the international human rights framework and includes rule of law, access to justice and equality indicators.**

### III. Sexual Orientation and Gender Identity

A majority of jurisdictions across the Commonwealth contain laws that criminalise same-sex sexual conduct between consenting adults. These laws, whether they are enforced or not, entrench homophobia and transphobia and reinforce prejudice based on sexual orientation and gender identity. This discrimination, accompanied with pervasive stigma, negatively impacts on the realisation of human rights and development targets, including civil and political rights, as well the right to health, education and work.

Lesbian, gay, bisexual and transgender (LGBT) people are vulnerable to threats, harassment and violence at the hands of both state and non-state actors. Incidents of violence are often not promptly or thoroughly investigated and occur within a context of impunity. Arbitrary arrest and detention based on a person’s real or perceived sexual orientation and gender identity are common, often accompanied with the abuse of due process safeguards. Those detained face heightened risks of ill-treatment and violence.

We welcome the progressive and oft repeated statements of the Secretary-General that, discrimination based on sexual orientation is at odds with Commonwealth values. The Commonwealth Charter affirms that member states are “implacably opposed to all forms of discrimination.” Equality and non-discrimination are core Commonwealth values.

**Recommendation: Zero Tolerance to Discrimination**

**CHRI urges Heads of Government to express a Commonwealth position of zero tolerance to discrimination based on sexual orientation and gender identity. This would strongly encourage member governments to condemn the marginalisation of sexual minorities. CHRI urges governments to address violence against LGBT people and be proactive in protecting the rights of those that work on sexual orientation and gender identity issues.**

### IV. Expert Group on Policing

Commonwealth Member States face common policing issues. The Commonwealth has within it some of the best policing in the world, which can inform good practice. However, many States are too often cited for the inability of the police to protect citizens and for the impunity afforded to the police’s unlawful actions. Much of policing in the Commonwealth is not suitable for democratic societies. In order to reduce such allegations, enhance real security - both in everyday life and under emergency situations - and provide greater access to justice to its people a coordinated pan-Commonwealth approach would be the most

efficient and effective way to assist Member States to improve the quality of their policing and would make the Commonwealth a world leader in police reform.

**Recommendation: Expert Group on Policing**

**Heads of Government are urged to give serious consideration to establishing a Commonwealth Police Expert Group to examine the advancement of police reform across a range of issues, including developing better understanding and relations between the police and citizens. Police reform within the Commonwealth will significantly further the realisation of declared Commonwealth values in relation to access to justice.**

## Annex

### CHRI's 2013 Report to CHOGM The Missing Link: A Commonwealth Commissioner for Human Rights

#### Executive Summary

In 2013, the Commonwealth finds itself in a crisis of conscience. This crisis has been building slowly and steps have been taken to respond to it. The Eminent Persons Group (EPG) was created in 2009 to “build a stronger, more resilient and progressive Commonwealth and to make it more relevant to its times and to its people in the future”. Several of the EPG’s recommendations were put in place between the 2011 and 2013 biennial heads of state meetings. A Commonwealth Charter consolidating the Heads of Governments’ commitment to human rights was adopted, the Secretary-General’s Good Offices role was strengthened, and the mandate of the Commonwealth Ministerial Action Group (CMAG) was amended. However, the EPG’s recommendation to appoint a Commissioner for Democracy, the Rule of Law and Human Rights was dropped because no consensus could be reached between member states.

In the interim, since the 2011 Commonwealth Heads of Government Meeting (CHOGM), human rights standards in the Commonwealth continue to be a cause for alarm. Countries that should be on CMAG’s watch list have got a free pass and those that ought to be on CMAG’s agenda have been assisted in avoiding accountability for past actions. There has never been a greater need for an independent expert to better advise Commonwealth mechanisms on human rights issues.

Despite EPG prompted reform efforts, CMAG’s potential has remained unfulfilled because it continues to interpret its mandate narrowly, choosing to focus on threats to democracy - to the exclusion of human rights issues. Moreover, the need for a politically neutral independent adviser to CMAG is apparent from the recent decision of the Secretary-General to withhold legal opinions from CMAG on the impeachment of the Sri Lankan Chief Justice. This demonstrated a lack of cooperation which will cripple the Commonwealth’s ability to uphold its values. The Secretary-General remains largely unaccountable and his approach to ‘behind the scenes’ diplomacy has allowed human rights abusers to repeatedly violate Commonwealth values while the Commonwealth looks on silently. This conflict between the quiet diplomacy of the Good Offices and the need to denounce human rights violations has not been addressed by the reform process.

The Human Rights Unit (HRU), the only Commonwealth body dedicated to addressing human rights on a full time basis has been mandated to both *promote* and *protect* human rights within all Commonwealth member states. The HRU however, does not have the capacity or capability to monitor or investigate human rights abuses and it continues to be captive to the political currents of the Secretariat.

In sum, the Commonwealth has not been able to hold its member states to its professed core values because its current mechanisms are not adequate for protecting human rights and it does not use the mechanisms it has to optimum effect. Experience shows that in the absence of an independent entity able to keep human rights under review the promise of the new Charter, adopted in March 2013, will not be fulfilled.

Despite the evident necessity for a Commonwealth Commissioner for Human Rights, several unmeritorious arguments have blocked its creation, hindering the operationalisation of the Charter. One objection was that the Commonwealth should focus on development rather than human rights. In fact, human rights and development are inextricably linked. Sustainable development can only flourish in countries where human rights are protected. In this manner, by applying a rights-based approach to development, a Commissioner would enhance the development goals of the Commonwealth.

Another argument is that a Commissioner would create financial burdens on the Commonwealth. However, the benefits of a Commissioner, in terms of reputation, visibility and effectiveness, far outweigh any small cost implications.

Moreover, some States also contend that establishing a Commissioner would provide an excuse for interference in the domestic affairs of a State. It is now well established that when governments oppress their people, the sovereignty versus outside interference argument has no legitimacy. Moreover, when

States join an international association that has values they open themselves up to being questioned about those values.

A further objection to a Commissioner was that it would be a duplication of the functions of the Secretary-General and CMAG. The Commonwealth Human Rights Initiative calls for the establishment of a Commonwealth Commissioner for Human Rights, who would not be a replication of what is already present in the Commonwealth, but a much needed complement that will help the Commonwealth live up to its new Charter.

A Commonwealth Commissioner would be a full time specialist, independent from the Commonwealth Secretariat and equipped with suitable infrastructure and a mandate that would enable review of a Member State's human rights compliance. Such a mechanism would reduce the onerous responsibilities the reform process placed upon the Secretary-General, enabling him to focus on his core functions. A Commissioner mandated to monitor and investigate human rights abuses would have the expertise and facilities to ensure that CMAG was given an early warning of human rights violations occurring in Member States and would also advise on the range of options available to CMAG to positively affect country situations.

In this manner, a Commissioner entrusted to provide politically neutral country information would facilitate the adoption of transparent procedures and would make obvious the Commonwealth's commitment to human rights and thus the dignity of its citizens. This would in turn lend to reviving the relevance of the Commonwealth to the international community. Moreover, a Commonwealth Human Rights Commissioner who can easily be accessed by, and communicate with, citizens of the Commonwealth would go some way to addressing the isolation of the Commonwealth from its people.

The hosting of CHOGM in Sri Lanka, a country the United Nations High Commissioner for Human Rights has described as 'heading in an increasingly authoritarian direction', has led to a credibility crisis regarding the Commonwealth's response to human rights abuse. The Commonwealth must counter this by demonstrating that it has the will and machinery to fiercely protect its values. At a time of global financial crisis and widespread growing demand for people's participation in their own democracies, the Commonwealth needs to assure itself of financial support from its member governments. Vitally important for this is the belief of the citizens of those countries in the organisation's relevance to their lives. Without a Commissioner to aid the coming alive of Commonwealth values, this appears unattainable.