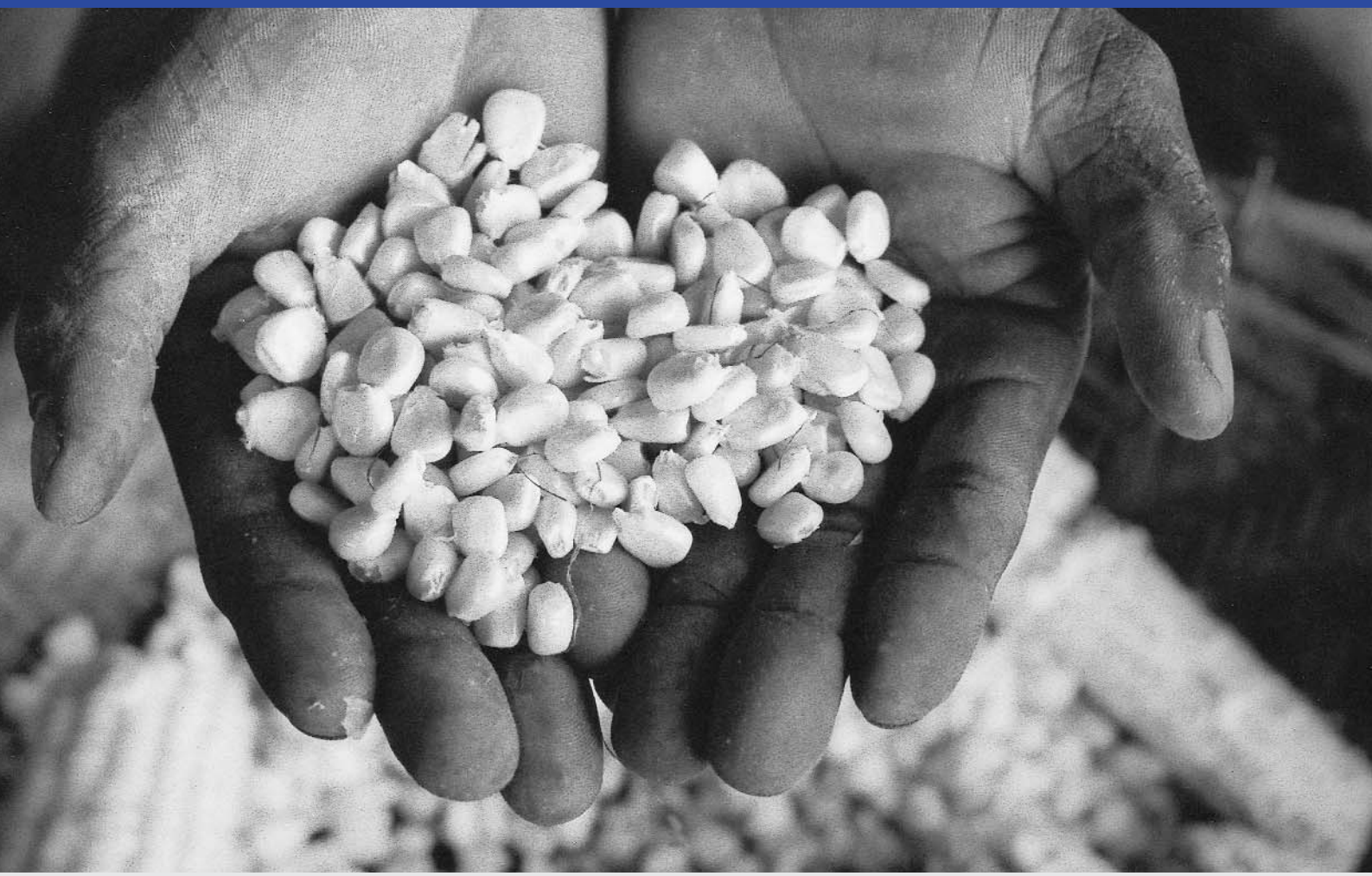
CHAPTER 5

MAKING RIGHTS COUNT FOR THE POOR



The persistence of poverty indicates that despite this elaborate framework, much remains to be done before economic, social and cultural rights can become a reality for all Commonwealth people. The framework for economic, social and cultural rights is not yet strong enough, nor have all duty-holders demonstrated sufficient commitment. Though the intellectual and practical elaboration of rights is fairly comprehensive, the evolving context requires a process of fine-tuning, which continues. More importantly perhaps, what is needed is a commitment to rights, which goes beyond rhetoric. What has not been achieved in most, if not all countries is the imbuing of every section of government and society with the tools, institutions, knowledge and will to ensure that rights are actually achieved as a matter of course.

Reinforcing The Framework

There needs to be a significant clarification of the language and elaboration of the content of economic and social rights in order to improve their enforceability.

Conflict or Care

- **World military expenditures have been on the rise since 1998 with the steepest increase being recorded in Africa and South Asia - two continents not only hosting most of the Commonwealth member states, but also the poorest members of the Commonwealth. Nigeria, where 90% of the population does not have access to essential drugs, reduced public expenditure on health from 1.0% of the GDP in 1990 to 0.8% in 1998. By contrast, Nigeria spent 1.4% of its GDP on military expenditure in 2000, almost double what it had spent on military expenditure the year before.**
- **India, where only 31% of the population has access to adequate sanitation and 35% to essential drugs, military spending increased from 2.2% (387 billion Rupees) in 1998 to 2.4% (464 billion rupees) GDP in 1999.[142]**

Clarifying the Language

A major obstacle to making use of social, economic and cultural rights to fight against poverty is the fact that the language in which they are formulated is such that it is difficult to draw precise obligations from them. Because the International Covenant on Economic, Social and Cultural Rights (ICESCR) commits member states to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its *available resources*, with a view to *achieving progressively* the full realisation of the rights recognised in the present Covenant by all appropriate means,"[139] some national courts have taken the view that the Covenant is not directly applicable in their states, but requires national legislation. It is therefore necessary to disaggregate the various strands of this argument.

The provision that these rights are to be implemented to the maximum of a state's available resources has been used to argue that a state's obligations depend on its resources, and may not be binding if the state claims that it has no resources for a particular right. However, the Committee on Economic, Social and Cultural Rights (CESCR) has stated that regardless of resources, a minimum core obligation to ensure the satisfaction of, at the very least, minimum levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is *prima facie* failing to discharge its obligations under the Covenant.[140] The opinion of a group of eminent jurists is that a state is obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all and that in the use of the available resources due priority shall be given to the realisation of the Covenant's rights.[141] Certainly a state which pays out vast sums for armaments while its people starve, is in breach of its obligations.

It is often assumed that without economic development and resources, there can be no provision of economic and social rights. Many states, reluctant to divert resources from the well off, have taken refuge behind this assumption. However, while there is no doubt that increased economic resources can facilitate better enjoyment of these rights, there is no necessary connection between resources and rights. There are significant pockets of poverty in the richer Commonwealth states like the UK, Canada and Australia. On the other hand, relatively poor countries like Sri Lanka, Fiji and the state of Kerala in India have been able to provide a creditable record of economic and social services. We must remind ourselves that economic and social rights are not about

handouts or gratuitous payments, but policies and institutions that enable people through their own efforts to realise their livelihoods. Therefore, we can conclude that justifications for denying rights which are based on the lack of 'available resources' cannot be sustained.

It is also often argued that the provision in the ICESCR about implementing the rights 'progressively' is evidence of their non-binding nature. However, the jurists meeting at Limburg concluded that this provision requires a state to move as expeditiously as possible towards the realisation of the rights; that it is no warranty for a state to defer indefinitely efforts to ensure the full realisation of these rights. The obligation of progressive realisation does not depend on any increase in resources but instead requires the effective use of whatever is available.[143] It should also be noted that some rights are not subject to 'progressive' or 'resource availability' qualifications, but must be implemented immediately, such as the right to non-discrimination, the rights of children in the Convention on the Rights of the Child (CRC) and some social and economic rights that are entrenched in national constitutions.

Elaborating the Content

In order to overcome some of this ideological opposition, much work needs to be done to imbue economic and social rights with measurable content so that the rights become tangible and therefore, more easily enforceable. Indicators measure the extent to which the right is being implemented and enjoyed. Indicators can give content to rights and sharpen definition. For example, they can clearly lay down what is an acceptable standard of literacy, nutrition or shelter. Indicators and benchmarks have not traditionally been used in human rights - in part because the study of human rights has lain largely in the domain of lawyers, accustomed more to developing norms and case law, than to a statistical measurement of the enjoyment of rights, and in part because the emphasis has hitherto been on those civil and political rights which do not lend themselves easily to a statistical analysis. The interaction of human rights and development policies has encouraged the greater use of indicators, and the emerging focus on economic and social rights has brought their value to light.

In a rights based approach to development, indicators provide the hard measurements while the principles of human rights provide the framework for formulating policy, judging methods of implementation, and the means by which to evaluate outcomes in terms of what the impact has been on the realisation of rights. In other words, indicators provide the hard data by which to judge if equities are being observed and rights realised.

Statistics help to determine how resources need to be allocated in order to realise the different rights. They can provide proof of who are the most

disadvantaged groups in a population and compel affirmative action policies. Setting targets based on human rights principles allows policy-makers to create realistic frameworks for achieving rights and making informed evaluations of the effectiveness of a particular policy. In this way, they encourage time-bound programmes for the achievement of rights.

Indicators are also useful for fine-tuning implementation. The presence of hard data can expose the poor administration of a policy and weak links in its implementation, or prevent an ineffective policy from continuing indefinitely. As such, they provide an important means of accountability, by clearly indicating what is expected in terms of outcomes, whether a policy has been successfully implemented and an objective achieved. To deepen accountability, comparisons with other localities, countries or regions can provide clear benchmarks by which to judge a government's performance in fulfilling human rights.

Indicators require further refining in order to better define the contours of economic and social rights. The UNDP report has identified effective benchmarks as those which are specific, time bound and verifiable, "not set too low", and reassessed independently at their target date.[144]

Targeting Poverty

Even where targets have been set for poverty reduction, many are unrealistic and not underpinned by action plans, budgets or institutional behaviour. These elements are key to their success or failure. The five-year review of poverty reduction commitments made by countries at the 1995 Social Summit in Copenhagen came up for examination at the UN General Assembly Special Session in June 2000. Countries had committed to make estimates of poverty, set targets for eliminating or reducing it and start toward the implementation of plans. While most countries had attempted estimates so that poverty now is less hidden and more amenable to careful targeting, few had gone as far as time-bound action plans for implementing anti-poverty programmes while far too many were content with incorporating these measures into general national development plans.

Unpacking Food Rights

It is useful to situate this discussion of the ways to revitalise economic, social and cultural rights in the analysis of a particular right, the right to food.

Food inadequacy is perhaps the most immediately obvious concomitant of poverty. But the notion of 'food needs' or even 'right to food' requires considerable 'unpacking' in order to understand how it can best be realised.

What is there a right to?: Article 2 of the ICESCR refers to the "fundamental right of everyone to be free from hunger." Hunger itself, in the sense of absence of food, is evidently something which should be eliminated, but those who do not feel hunger pangs are not necessarily adequately fed. The emphasis, therefore, must be upon the *adequacy* of food, which has been analysed into

several aspects: food must be nutritious, safe and culturally acceptable. Food must have sufficient nutritional content to ensure the physical and mental development of the human person, depending on his or her special needs. For example, a pregnant or lactating woman will have different needs from a man engaged in hard physical labour. Food safety requires that it contain no harmful elements, such as poisons or harmful bacteria. Cultural acceptability requires that the food be suitable in terms of cultural beliefs and taboos.

Access to food, like many other rights, is a continuous need, and the notion of food simpliciter has therefore been expanded to embrace 'food security'. Food must be procurable, that is readily available and affordable and food supplies must be sustainable. This requires long-term and contingency planning to cope with possible shortages or distribution bottlenecks.

What is the responsibility?: Given the three-fold obligation of the state to respect, protect, and fulfil rights, the state is obliged to ensure food adequacy and food security. A full conceptualisation of the right to food involves recognising that lack of food will have a negative effect on the realisation of other rights. For example, lack of adequate food may force a child into dangerous unsuitable work and remaining out of school and illiterate. The obligation to 'respect' will involve *recognising* the needs and the realities of food production and consequently, *refraining* from measures which will undermine food security. For example, ensuring availability of inexpensive seeds on the one hand and avoiding policies that diminish land used for food crops in favour of exportable cash crop alternatives. Protecting requires *preventing* distortions (between regions, for example), and *developing* protective legislation to ensure, for example, that in a time of scarcity food is not hoarded by profiteers. Fulfilling the right will involve *incorporating* aspects of food culture into development, (like ensuring large vegetarian populations with a nutritious alternative to meat), *establishing* food control mechanisms and so on.

Another important aspect of economic and social rights are that they are to be progressively realised. This does not mean that the state can indefinitely put off or delay the realisation of these rights. True, a state is not expected to fulfil all needs

The Right to Food Enforced

A prisoner in Fiji was sentenced to six months imprisonment for escaping from custody. As additional punishment the prison authorities reduced his food rations according to the Prisons Act. The prisoner challenged this in court. Listening to his appeal the court said that any treatment or punishment that impinged on the inherent dignity of the individual went against the Constitution. Fijian courts can take account of international instruments when interpreting the Bill of Rights. Drawing on Art.11 of the ICESCR on the right to food, the Court held that "any reduction in rations as was meted out to the appellant was not consonant with the Republic of the Fiji Islands' undertaking to provide its people with adequate food." The court went further and said that although it was not mandatory for the state to follow its obligations under this covenant the action taken by the prison commissioner in using food as a means of control went against the spirit of the ICESCR and therefore violated the prisoner's right to food and could not be allowed.

Finally the court said:

"Food is a basic necessity for daily sustenance. To reduce prison rations, as a form of punishment is a concept that is offensive in principle. Not only may it affect a person's capacity to survive but also it deprives him/her of a portion of rations that are at best adequate. The amount of reduction is not of any importance. The very idea that the state would employ such means is intrinsically unacceptable for the reason that it uses what is a necessity of life as a means to punish proscribed behaviour. This devalues persons such as the appellant because it assumes their status as prisoners justifies such sanctions. The short answer to that proposition is that they are no less human for being incarcerated with an entitlement to an inherent dignity no bars or walls can violate. The rationale for such treatment harks back to a time when prisoners were not considered deserving of much consideration as human beings. The court is respectfully of the opinion that section 83(1)A(vi) of the Act contravenes section 25(1) of the Constitution as amounting to degrading and inhuman treatment and is null and void."[145]

simultaneously, but there is an obligation to tackle urgent needs first. It also means that the state cannot stop when it has satisfied the most urgent needs; the process of satisfying obligations is one of continuous re-evaluation and re-assessment of entitlements. Moreover, states are required, by the terms of Art. 11(2) of the ICESCR to embark immediately on the process of achieving the right, within the limits of available resources.

Precisely how the state is to carry out its obligations will depend upon the factors, which hinder the realisation of the right to food within its own territory. The CESCR has recommended that states should develop national strategies for food: these include identifying resources and needs, framing objectives, setting benchmarks, and assuring people's participation in a democratic, transparent and accountable process.[146] The strategy must take particular account of the need to avoid discrimination (especially in the light of the position of food disadvantage experienced by women in many societies). In case of severe constraints, care should be taken to protect vulnerable groups and individuals. Various bodies have urged the importance of systems of national indicators that take into account data on nutrition needs, and national circumstances. This can be used as a way of maintaining continuous monitoring of needs and achievements, so that the state can know whether it is moving towards the achievement of the right.

As food is a right it becomes incumbent upon the state to have a policy and legislative framework that will ensure not only food security but also that legal, social, geographical or other factors, as diverse as the status of women, farming subsidies or intellectual property regimes, do not impinge on the right.

Whose is the responsibility?: There is no suggestion that the right to food means substituting state activity for the fundamental assumption that people feed themselves. The obligations of others come into effect only due to the inabilities of the individual, or family, within society, to fulfil the need. The primary holder of obligations towards its own citizens is the state. But in an interlocking world there may be others who are responsible. States should recognise the interests of other countries and citizens: food should not be used as a weapon in times of war or as an international sanction; states should be conscious of the possible impact of their trade and aid policies on the right to food elsewhere; states should provide food and other relevant aid where required; and fulfiling the right to food should be one focus of debt relief measures.

Much of this 'unpacking' of the right to food has already been done by international organisations. The Food and Agricultural Organisation (FAO), the CESCR and the UN Sub-Commission on the Promotion and Protection of Human Rights, the World Bank and World Commission on Environment and Development, have elaborated on the right to food. There is also the experience of Commonwealth members to draw on: the National Food Strategy of

Botswana is a useful example. Many Commonwealth states are already parties to international declarations, such as the Declaration on Food Security and a Plan of Action adopted at the World Food Summit in 1996, which commits them at the very least to recognise the needs of their own citizens and others. All this goes a long way towards giving greater definition to the right to food, and needs to be replicated for all social and economic rights, to improve their enforceability.

Revising the Framework

Even with an extensive elaboration of rights there are ways in which the rights framework requires some rethinking and reformulating in order to maximise its potential for poverty eradication, as there are still those who feel that they fall outside the framework. There needs to be a reconceptualisation of some of the fundamentals of the rights regime.

Duty-Holders

In a world in which corporations are as powerful as many states, where investment decisions are made by foreign countries and by international bodies, and where so much importance is given to the market which is independent to a considerable extent of the actions of any state, duties and responsibilities need to be re-thought out as much as the rights.

For example, Multilateral Lending Institutions (MLIs) have interpreted their charters very narrowly, insisting that they are specialised international organisations devoted exclusively to the economic aspects of relations between member states; they are neither standard setters nor enforcers of human rights. The farthest they would like to go would be to help create economic conditions, which contribute towards the fulfilment of human rights, which they maintain essentially, belong to the domain of relations between states and their individual citizens.

In the light of such pronounced positions, there needs to be an unequivocal recognition that MLIs are duty-holders. We must question the idea that the line of accountability for human rights runs from the state in favour of the citizen, as it absolves MLIs from any responsibility for the consequences that their policies may have on human rights. The World Bank, the IMF and the WTO are more than mere aggregates of member states possessing legal personality, privileges and immunities essential for the exercise of their functions. Having been created in accordance with the general principles of international law these institutions must respect the fundamental principles of human rights law which themselves form part of those general principles. Both international economic law and international human rights standards are creatures of the

same *jus cogens*. It is incumbent upon MLIs to avoid adverse human rights effects resulting from their own policies following the dictum - "Any actor should in principle be held accountable for the effects of his/its actions."[147]

The fact that MLIs are duty holders must become a common perception both from within and from outside these institutions. Such an explicit recognition would obligate these institutions to actively search for ways of realising their policy objectives so that they are in compliance with international human rights standards. Oloka-Onyango and Udagama have recommended that human rights standards must become the embarking point for the formulation of poverty reduction policies by MLIs. In consonance with the consensus spelt out in the Declaration on the Right to Development, the process of development must recognise and protect all human rights without privileging any single right or class of rights. The principle of 'non-retrogression' must be incorporated within the human rights obligations of MLIs. This implies MLIs have a duty to ensure that they do not advise macroeconomic policy measures that would cause a reversal of the social achievements already made in countries adopting poverty reduction strategies. Instead they should take pro-active measures that will further promote those sectors of the economy such as health, education, shelter and environment protection where positive achievements have been made. Periodic Human Rights Impact Assessment (HRIA) would help minimise threats to positive achievements in these sectors.[148] Such institutional accountability would also involve issues of transparency in functioning, independent evaluation of policies and drawing up of adequate and effective remedial measures within MLIs. MLIs have a duty not to advise states to adopt policies that would handicap the realisation of the economic and social rights of their citizens. In short, MLIs must make a renewed commitment to social responsibility informed by the universal standards recognised in various international human rights instruments.

Another prominent example of an influential set of actors who currently evade much of their responsibility is the private sector, which must be made to fulfil its responsibilities for human rights. Given the difficulty that states have in regulating the ever-increasing power of the private sector, the question of the direct applicability of international law to this sector arises.

Hitherto, the international (and domestic) human rights regimes have been largely ineffective in regulating companies. Corporations claim to be, and under most legal systems are, the beneficiaries of rights, but they resist obligations to respect the human rights of others. Imposing obligations on corporations to respect rights runs counter to the traditional notion of rights, which are protected only as against the state.

As the Union Carbide Bhopal Gas Tragedy case amply illustrates, ordinary civil actions against corporations for injuries to others or damage to the environment, face numerous difficulties. Most large corporations operate

through subsidiaries, whose liabilities are hard to enforce because most of the assets from which damages may be claimed are vested in faraway parent corporations, which can disown the liabilities of its subsidiaries. Litigation against corporations is usually biased in favour of the corporation, since it has huge resources, can purchase the best legal talents and prolong proceedings or delay the implementation of the judgement. Victims of its conduct are often the poor and are unable to mobilise access to lawyers or courts. Others who may wish to take up their cause may not have legal standing to institute proceedings. And there is constant fear of reprisals if litigation or other remedies are pursued against a corporation - dismissal from employment, social victimisation and more.

However, there are effective ways of holding corporations accountable. Companies are starting to see that their own interest is served by taking a proactive approach to human rights. Being ethically, environmentally and socially responsible is good for business. Consumer boycotts, embarrassing questions from shareholders (some of whom may have acquired their shares precisely in order to be able to use the position in this way), and general adverse publicity, all persuade companies of the good business sense of pro-poor behaviour.

For example, in order to protect high profits from the sale of HIV/AIDS drugs a cartel of powerful pharmaceutical companies recently took the South African government to court for seeking to get cheaper drugs for its people. However, they backed off from taking the challenge to South Africa's patent law any further, after massive adverse publicity which showed how they were willing to prevent cheaper drugs from reaching HIV infected people.

In these days of mass consumption, consumer boycotts can bring great pressure on corporations, as they have an immediate impact on their profits. Consumer boycotts have had considerable success in discouraging corporations from; employing child labour in carpet and football manufacturing industries in Pakistan and Bangladesh; paying low wages as with campaigns against Nike and other firms outsourcing parts of their production to sweatshops; and marketing genetically modified food.

United Nations Global Compact

In 1998, the United Nations Secretary-General, Kofi Annan, proposed to the world business leaders at the World Economic Forum in Davos, a global compact of shared values and principles, to give a human face to the global market. He called on them to embrace, support and enact a set of core values in three areas: human rights, labour standards and the environment.

The nine principles of the Global Compact are:

Human Rights:

- **to support and respect the protection of international human rights within their sphere of influence;**
- **to make sure their own corporations are not complicit in human rights abuses.**

Labour:

- **freedom of association and the effective recognition of the right to collective bargaining;**
- **the elimination of all forms of forced and compulsory labour;**
- **the effective abolition of child labour;**
- **the elimination of discrimination in respect of employment and occupation.**

Environment:

- **to support a precautionary approach to environmental challenges;**
- **to undertake initiatives to promote greater environmental responsibility;**
- **to encourage the development and diffusion of environment friendly technologies.**

Though a voluntary non-binding agreement, the Compact specifically challenges companies to incorporate universal values in mission statements; to change management practices to achieve these goals; and to share learning experiences. It has currently been signed by firms and supported by business associations all over the world.

For this reason, corporations themselves are beginning to talk about human rights. Many have agreed to voluntary codes of conduct, in respect of quality, labour standards, wages policy and environmental protection. A wide range of bodies have in recent years been working on what might be described as the 'how' of corporate human rights responsibility. The common approach is the development of codes of responsible practice.[149] The principles underlying these are two-fold. Firstly, those companies will perceive that there is comparative advantage to be gained by their public adherence to these guidelines. Secondly, that there is an efficiency gain for companies to be able to adopt principles and guidelines established by others.

However, it may be less straightforward to draw up guidelines for *proactive* corporate initiatives, such as offering skills training for non-employees, giving time off to employees to help NGOs, or searching out disabled or disadvantaged people to employ. Nor will the shame or praise techniques work so well with essentially covert behaviour like corruption.

On the whole, the success of initiatives for corporate human rights responsibility has been limited. Corporations and governments of poor countries have a common interest in exploiting cheap labour and in dispensing with international labour standards. The activities of corporations are hard to monitor, especially when there is a considerable element of outsourcing. Individual corporations or even individual states cannot do much on their own, given global conditions of competitiveness - as is illustrated by the way in which Japanese companies have in recent years reduced or stopped corporate welfare policies, for which they were so famous.

The way forward must rely on legal regional and international regulation of the policies and conduct of corporations which impact negatively on human rights. There is no theoretical or practical reason why corporations cannot be subjected to the regime of rights. In fact a general principle is enunciated in the preamble of the Universal Declaration of Human Rights (UDHR), which requires that "*every individual and every organ of society* [emphasis added]....shall strive...to secure their universal and effective recognition and observance." But obligations imposed on states for the protection and promotion of human rights may only be adequately discharged if the international community regulates the conduct of companies. Sometimes a treaty may expressly require states to regulate that conduct, as with the Convention on the Elimination of Discrimination Against Women (CEDAW) which requires states "to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise."[150] In relation to the right to food the ICESCR states that "State Parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food."[151]

Beneficiaries

There are currently particular groups whose rights are not adequately recognised by texts which form part of the international human rights framework. Two such groups are the elderly and indigenous peoples.

The specificity of the condition of the elderly, especially those living in poverty, must become the concern of international law. Presently there is no convention on the rights of the elderly. In 1991 the UN drew up a set of non-binding principles for older people. Poverty alleviation has been prioritised and targets for reducing poverty amongst the elderly by half by 2015 have been set.[152] In preparation for the World Assembly on Ageing in 2002 the concept of 'productive ageing' has been proposed as the basis for evolving norms particular to the rights of the elderly. This would primarily require that they be treated not as passive victims but as contributing members of society, guaranteed the particular care and rights relevant to their situation.

Internationally, the rights of indigenous peoples are governed by the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1991). Although an advance on the 1957 Convention, the 1991 Convention has been criticised for being 'paternalistic',[153] and its negotiations involved only a limited participation by indigenous peoples. These deficiencies were meant to be addressed in another exercise in standard setting: the Draft UN Declaration on the Rights of Indigenous Peoples.[154] It proclaims their right to self-determination, under which they may "freely determine their political status and freely pursue their economic, social and cultural development."[155] The principle of self-determination gives them the "right to autonomy or self-government in matters relating to their internal and local affairs," which include social, cultural and economic activities, and the right to control the entry of non-members.[156] It recognises their 'collective rights'[157] and the right to maintain and strengthen their distinct political, economic, social and cultural characteristics.[158] This Draft Declaration, much potential as it has, is currently under consideration, awaiting ratification.

In the Harare Declaration, the Commonwealth Heads of Government reaffirmed that "The special strength of the Commonwealth lies in the combination of the diversity of its members with their shared inheritance in language, culture and the rule of law." Yet only one Commonwealth country, Fiji has signed the 1991 ILO Convention and few Commonwealth governments have participated in the adoption process of the UN Draft Declaration on the Rights of Indigenous Peoples.

While other major international organisations have been working hard to define and protect indigenous peoples' rights and cultures, and to combat racism and racial discrimination against them, the Commonwealth with about one-third of the indigenous peoples of the world living in it, does not yet have an explicit position with regard to indigenous and tribal peoples. While a

number of Commonwealth countries have developed individually specific policies to combat discrimination and racism against indigenous peoples, there remains no Commonwealth-wide commitment to eliminating racism and racial discrimination against these groups. Nor has the Commonwealth any specific theoretical framework that could encourage, support and help member states in formulating appropriate indigenous policy at the local level. There is no official Commonwealth publication describing the current economic, social and cultural status of the indigenous peoples in member states and there is no administrative mechanism within the Commonwealth Secretariat to channel specific enquiries, advocacy or support.[159]

This indifference translates to low support for the agreement. For example, only nine Commonwealth states attended the 6th session of the Working Group, 2000, in Geneva, namely: Australia, Bangladesh, Canada, India, Malaysia, New Zealand, Pakistan, South Africa and the UK. In their approaches to the Declaration at the 6th session, Commonwealth Government delegations can be divided into the following three blocs: those which support the adoption of some or all of the articles under discussion as drafted (Pakistan); those which support the principles contained in particular articles, but insist on amendments to the current text, (New Zealand, Bangladesh and Canada); and those which challenge fundamental principles underlying the Declaration, in particular, the concept of self-determination, language of indigenous peoples and/or the recognition of collective rights (Australia and UK). The most active Commonwealth states at the 6th session were: Canada, New Zealand, and the UK. Bangladesh and Pakistan were far less active, while India and South Africa remained silent. Government delegations from Fiji, Kenya, and Nigeria, who participated in previous sessions, did not attend the 6th session.

Committing to Poverty Eradication

Building the Mechanisms

A clear signal of commitment to human rights is given when countries sign on to international treaties without restrictive declarations and caveats and subject themselves to their discipline by changing laws at home to conform to those obligations, report regularly and agree to sign on to their protocols, which allow individual complaints to be entertained against the state. Too many Commonwealth countries however still shy away form formal commitments to international obligations, particularly from the ICESCR.

Institution-Building

The supervisory work of the CESCR in particular requires the commitment of states to strengthen its hand. It suffers from a lack of resources and expert staff.

The Committee cannot receive individual complaints. The International Committee of Jurists has said that "a system for the examination of individual cases offers the only real hope to move towards the development of a significant body of jurisprudence which is absolutely indispensable if economic, social and cultural rights are ever to be taken seriously. An individual complaints procedure will be the best opportunity, by means of developing case law, to define the precise meaning and the limits of economic, social and cultural rights." The 1993 World Conference on Human Rights called for the consideration of an Optional Protocol to the ICESCR, which would enable individuals to submit complaints.[161] A draft protocol has been prepared and the UN Commission for Human Rights is currently considering it.[162] The signing and ratification of the protocol is essential in order to enhance the effectiveness of the international supervisory system for economic, social and cultural rights. If the Commonwealth as an organisation is serious about tackling poverty in member states, it should advocate for its early adoption of this optional protocol.

Signing On

As of 14th June 2001, the following Commonwealth countries had neither signed nor ratified the ICESCR: Antigua and Barbuda, the Bahamas, Botswana, Brunei Darussalam, Cook Islands, Fiji, Kiribati, Malaysia, Maldives, Mozambique, Nauru, Pakistan, Papua New Guinea, Samoa, Singapore, St Kitts and St Nevis, St Lucia, Swaziland, Tonga, Tuvalu and Vanuatu.

While on the same date, both South Africa and Belize had signed, but not ratified it.[160]

A number of Commonwealth countries have signed the ICESCR with reservations or declarations. A number of the reservations concern maternity benefits and equal pay for men and women (Barbados, Kenya, New Zealand, United Kingdom).

In order to be an effective supervision mechanism the Committee system requires political backing.[163] States must make every effort to contribute to the influence of the Committee's decisions and reports. That means submitting regular reports to the Committee, responding positively to criticism and indeed inviting the Committee's evaluation as a means to monitor the implementation of economic, social and cultural rights in their country. This is not always the case.

Resisting The Rights Regime

States once they sign on must submit themselves to the discipline of a treaty body.

In March 2000, the Committee on the Elimination of Racial Discrimination criticised the Australian government in relation to the rights of Aboriginals. The criticism highlighted the government's failure to apologise for the past forced removal of Aboriginal children from their families and the fact that the government had also refused permission to the Committee to visit Australia for the preceding two years.

Far from viewing it as the *raison d'être* of the Committee, the Australian government reacted with contempt for the treaty system. Foreign Minister Alexander Downer said: "People who are critical of the Australian Government need to reflect on this point: do they really think it's right for a United Nations committee, which includes people from Cuba and from China and Pakistan, to start getting involved in a debate about whether the Prime Minister should say sorry or not for the stolen generation?" The Australian government went as far as threatening its withdrawal from the Convention and began an internal review of the operation of the United Nations treaty body system.[164]

Here too, the Commonwealth has a role to play. Its Human Rights Unit (HRU) can ensure that general comments of the Committee and remarks made on country reports receive the widest possible publicity and that suggestions and

recommendations made in the context of reports are kept under scrutiny and states encouraged to conform more closely to agreed upon standards.

The Commonwealth's own supervisory mechanism is presently under review. Made up of foreign ministers and with no permanent secretariat or expertise readily available to it, the Commonwealth Ministerial Action Group (CMAG) has chosen not to speak out in the case of violations of social and economic rights. In doing so CMAG has neglected the Commonwealth's fundamental principle that points to the "importance and urgency of economic and social development to satisfy the basic needs and aspirations of the vast majority of the peoples of the world, and seek the progressive removal of the wide disparities in living standards amongst...members." Having reaffirmed these principles, the Harare Declaration had promised that the Commonwealth would work with "renewed vigour" concentrating especially on "extending the benefits of development within a framework of respect for human rights." As the High Level Review Group (HRLG) goes toward re-examining CMAG's mandate, it should seek to enhance CMAG's ability to monitor the implementation of economic and social rights in member states. Since it does not consist of experts in the field it cannot itself make evaluations of states' compliance with the Fundamental Principles. To this end the HLRG should recommend to the Heads of Government at Brisbane that the Secretariat provide CMAG with periodic reviews of member states' fulfilment of their commitments to satisfying the basic needs of their people. A mini-secretariat for CMAG would be composed of the HRU and led by a Commonwealth High Commissioner for Human Rights (CHCHR), or, in the absence of this, the Secretary-General himself.

While the international and regional rights framework as well as CMAG are very valuable, they can never be more than an exceptional or last ditch approach to the fulfilment of rights. More important is the operationalisation of rights at the domestic level. The means to promote economic and social rights at home include creating effective and accessible human rights commissions and putting in place ombudsmen to look into corruption. All this goes to create a strong rights framework - as does generally a transparent and participatory system of government and administration.

It is vital that countries also enshrine economic, social and cultural rights as fully justiciable human rights in their founding documents or integrate them into law through innovative judicial interpretation.

For many, especially the poor, access to the courts may still be a last resort, but efforts should be made, by means of legal aid and other measures, to ensure that the courts, as the appropriate forum for the enforcement of rights, are available to all.

The courts too must play their part. The common law system, which is applicable to a greater or lesser extent in all Commonwealth countries, depends for its effectiveness upon the judiciary. They normally set out the procedural criteria. We have seen over the last 20 years the courts of a number of countries dramatically expand the circumstances in which the poor and oppressed sectors of society can approach them. The 'public interest litigation' movement begun with the Supreme Court of India, has extended to lower courts in that country and been taken up by the courts of several other countries including Bangladesh, Pakistan, and Sri Lanka. Some of its most valuable principles have come to be enshrined in the Constitution of South Africa.

The growth of human rights commissions in the Commonwealth is both a sign of the growing centrality of human rights to the image of a country and the occurrence of too many violations. Human rights commissions are independent constitutional or statutory bodies established with the primary aim of protecting and promoting human rights of people within their national boundaries. Human rights commissions, depending on their mandates, can contribute in a number of ways to the eradication of poverty by: investigating and providing a remedy for violations of economic, social and cultural rights; creating and enhancing public awareness and monitoring the government's policies and programmes to discover the extent to which these promote rather than derogate from these rights. This is all the more important in countries where courts are remote, law complex and processes slow and expensive. Strong and accessible commissions can provide a great service to the poor.

The Ghana, South African, Zambian and Namibian Human Rights Commissions, among others are explicitly mandated to investigate in the areas of socio-economic rights. Strong commissions do a great deal towards the realisation of socio-economic rights. The majority of cases received by the Ghana Human Rights Commission, for example, relate to deprivation of socio-economic rights or discrimination. In pursuance of its mandate to uphold socio-economic rights the Commission has investigated environmental rights violations resulting out of the massive degradation of large areas due to gold mining. Water sources had been polluted, farmlands blasted and communities rendered homeless. The Commission has collaborated with NGOs and trade unions to hold public hearings to formally determine the scope and extent of the degradation, offer a voice to affected people and explore remedial and preventative courses of action.

It has also consistently drawn attention to the extent to which Structural Adjustment Programmes (SAPs) have devastated health care and advocated for the repeal of the 'cash and carry' system that deprives the poor of adequate health care. Recent access to pronouncements that the system would be overhauled points to the ability of a credible commission to safeguard socio-economic rights. As an anti-corruption body the Ghana Commission views

corruption as a violation of social and economic rights because such acts deprive government, especially in developing countries where state resources are already scarce, of money which should be used for social services to the poor.

The secure constitutional position of the South African Human Rights Commission provides it with a strong role in safeguarding economic and social rights and one that is worth emulating. The South African Constitution requires that organs of state must annually provide the Commission with information about the measures that they have taken toward the realisation of the rights to housing, health care, food, water, social security, education and the environment.[165] The Commission has powers to enforce this accountability through judicial means. The Commission has begun the practice of sending questionnaires, referred to as 'protocols,' to organs of the state requiring detailed information on measures taken to promote socio-economic rights. The protocols particularly asked about the measures taken toward the realisation of socio-economic rights of vulnerable groups living in rural areas, or informal settlements, homeless persons, female-headed households, persons with disabilities, women, children, older persons and those with HIV/AIDS, as well as formerly disadvantaged racial groups. Through these reports the Commission assesses performance, publishes findings and makes government accountable for continually improving performance.

The international community under the aegis of the UN has done a great deal to set up human rights commissions across the world, including in Commonwealth countries. The Paris Principles, a set of internationally agreed guidelines, lay down clear principles which if followed would go a long way to assuring the autonomous functioning of commissions, free from overt or covert government control.

However, most Commonwealth human rights commissions are fragile entities. For the most part created by reluctant governments - after 5 years of deliberation there is still no Bangladesh human rights commission in place - commissions are often kept in close check by the executive through methods such as budgetary controls, lack of independent staff, little investigative machinery, restricted mandates and most of all by the presence of pliable commissioners, whose appointments are made by private treaty rather than any impartial public process.

The mere creation of a national human rights commission cannot be equated with enhanced respect for human rights or even genuine commitment to this goal. In an already brittle human rights environment, weak commissions too often become an obstacle to human rights realisation, because they create despondency and disbelief in the system and throw the notion of human rights into disrepute in much the same way that delay and corruption have destroyed belief in the ability of the court system to provide justice in some countries.

Calling the Tune

- **In Cameroon, the Commission's funding was dramatically reduced for two years after it criticised government abuses in a confidential report on the state of emergency in the North-West Province in 1992.**
- **In Zambia, the Commission, already short on funding, lost the government premises promised to it after it commented on torture of coup detainees in 1996.[166]**

The Commonwealth has a role to play in the in-country process of setting up a human rights commission to help ensure that its mandate, terms of reference, composition and criteria for appointments conform strictly to the Paris Principles so as to ensure maximum effectiveness.

This is a function that could be performed by a revitalised HRU. The HRU was set up to "promote human rights within the Commonwealth" and to "ensure that in the Secretariat itself due account is taken of human rights considerations." This mandate to promote human rights inside and outside the Secretariat is limited enough, yet in its present condition the unit has neither the stature nor the resources to fulfil its mandate.

Because the HRU has in the past done good work especially in providing training and human rights education to government agencies, it has a regular stream of requests for its services, which it is often unable to meet. Starved of resources, the HRU has, ironically in the name of mainstreaming, been steadily downsized until it now has only two posts. A substantial evaluation of the HRU in 1993, while critical of aspects of a training scheme for public officials, strongly urged that the HRU should be developed. At one time linked to the Political Affairs Division, the HRU is now a part of the Legal and Constitutional Affairs Division. Its lowly status belies the Commonwealth's commitment to human rights.

CHRI believes that the HRU has great potential for making Commonwealth rhetoric a reality and has already produced a detailed report, *Rights Must Come First*, which outlines how this may be done. CHRI's recommendations include that the HRU should: have a separate annual core budget with a fixed minimum figure; be pro-active; significantly increase and upgrade its present financial allocations by seeking funds elsewhere amongst the community of donors and similarly augment personnel resources by using consultants and advisors; assure its stature by being made a free-standing entity within the Secretariat that is directly responsible to the Secretary-General and has direct access to all divisions; make its own human rights assessments and feed these into CMAG and act as a constructive critic; be a mechanism that ensures that human rights are orienting all the Secretariat's programs throughout its divisions and evaluate the Secretariat's own performance and commitment to human rights against the same criteria of good governance to which all democratic functioning is held. The HRU would effectively be responsible for and have the capacity to genuinely institutionalise a human rights culture in the Secretariat and would play a role in instigating the same throughout the Commonwealth.

Building a Culture of Rights

The importance of this 'culture' of human rights cannot be overstated. The aims of truly good governance are not achieved simply by having just efficient or incorrupt government or even democratic government. To be fully effective democracy requires the supporting concepts of human rights. The norms of freedom of information, free press, freedom of expression and association, the assurance of widespread citizen participation in public affairs, and an active civil society are essential for the full realisation of the norms of democracy - and of a system of government responsive to the issue of poverty.

Governance that is founded on a regime of rights and that is pervaded by the common value of respect for every individual's dignity, can respond most effectively to solving all the urgent human problems identified in the earlier parts of this report. For this reason, it is essential that human rights do not remain in the preserve of a small set of actors and institutions in remote locations, but are factored into a state's national and international policy-making processes and embedded in the consciousness of its people. Yet, what remains to be achieved in most countries is the imbuing of every section of government and society with the values, knowledge and tools necessary to ensure that rights are actually achieved.

There are many ways of creating a culture of human rights in a country. There ought to be a specifically targeted effort geared at making government and its agencies more responsive to human rights, internalising it into their everyday work and creating the spaces for genuine citizen participation in decision-making. This must include the expectation of, and mechanisms for, transparency and accountability, backed up by a legislated right to information. Information must not only be freely available, but disseminated in the population at large, both as part of the right to information and in the form of educating all of society about human rights. In all this, there is a major role for civil society to play in supporting and reinforcing the human rights framework.

Mainstreaming

No Need to Know

Country representatives who walk into important negotiations on trade and aid with powerful adversaries lose the shield of human rights

"... one state was very candid. It said that it did not mention the Covenant in its negotiations with IFIs. Why not? Because the state's negotiators with IFIs did not know about the Covenant. Foreign Affairs knew about the Covenant. Maybe the Ministry of Justice knew about the Covenant. But neither Foreign Affairs nor Justice negotiated with the World Bank and the IMF. Who negotiated with these? Treasury. But Treasury had not heard of the Covenant"

- Anecdote, Professor Paul Hunt, a member of the CESCR

It is important and necessary for not only the civil servants but also the MLIs/IFIs to know about international human rights obligations. Lack of knowledge about rights means that the common matrix of globally accepted human rights values is under-utilised in international trade, aid and debt negotiations. This prevents unequally matched countries from establishing a level playing field, so essential to getting equitable terms for their countries. Similarly within the nation-state, bills of rights provide commonly assumed principles of fair play between government and citizen, yet they are little regarded or internalised by those who rule.

The challenge is to ensure that all civil servants understand not only their powers but also their responsibilities in terms of human rights and human development. Civil servants, everywhere within the Commonwealth come from cultures which are not particularly inclusive or alert to the values of human rights and therefore need to be especially targeted for human rights training. If they were formally educated about human rights as rigorously as they are about administrative procedure, it would fundamentally change the basis upon which they represent their countries abroad and would transform their implementation of development policy at home.

Once practice is institutionalised it becomes easier, less time-consuming and expensive than when it is new. Prevention is of course better than cure. In the area of the environment the international community has to some extent accepted the 'preventative principle' as more effective and efficient than dealing with later harm. Similarly, with human rights and poverty eradication it is far more difficult to re-tool institutions on lines of justice and equity than it is to get them right in the first place. Immediate and targeted measures are also needed to bring on board strategic groups such as the media, judges, teachers, police, lawyers and more. Using mid-career training and retraining as an incentive for promotions and rewards would be an effective way of ensuring that constitutional values are inculcated into resistant systems.

A number of years ago the UK government prepared a document for the civil service called '*The Judge Over Your Shoulder*', that was designed to alert the public service to what they needed to do to remain on the right side of the law and to avoid successful actions for judicial review. However, not only policy-making and implementation but substantive law itself should be subject to scrutiny in terms of compatibility with a newly focused regime of rights. Some states when introducing human rights norms into substantive law, have embarked upon a systematic attempt to evaluate the existing law in terms of its compatibility with those norms.

Participating

Presently, even when formulating social legislation which has a direct impact on the community, the political culture of most Commonwealth countries relies on

People Power

In a small drought prone village, in Rajasthan India, the government had put in place food for work schemes on which the majority of the poor depended for their livelihood. Villagers contracted by the government worked for subsistence wages, as daily labourers on local development projects such as building roads, community halls and schools, digging wells and small canals. However, contractors hand-in-glove with the local administration were systematically cheating them. While they knew of the corruption in the system they had no way of proving it or getting their due entitlements under the various benefit schemes of the government. In time, however, and with the assistance of a local NGO, the villagers began questioning the administration and sought details of employment rolls, development works undertaken and expenditure earmarked and incurred. The villagers demanded information stating that it was their right to know what the government was doing with money that belonged to the people. The local administration resisted this questioning, but after persistent demands was forced to provide documentary proof of expenditure and employment records. The villagers soon found proof of ways in which money was being siphoned off: by inflating employment records with false names, and claiming expenditure for completed projects which had never begun. The villagers took to holding a series of public hearings to expose the wrongdoing and force a return of the large sums that had been misappropriated. They demanded back wages and a return of development money. In some cases the threat of public humiliation acted as a deterrent and officials returned money that they had wrongfully taken. Little by little, the demand for information spread and grew into a state-wide movement until the government was forced to pass a law guaranteeing the people's right to information. However, the struggle goes on, as even today, despite the law, the inherent culture of secrecy prevalent in government prevents the free flow of information to citizens.

'expert' consultation, or input from 'eminent people,' coupled with some parliamentary deliberation. Broad consultation with the public at large or with affected communities is considered burdensome and impracticable. The assumption is that the educated elite will know what is best. Not surprisingly, these exclusive processes often result in laws that are inadequate and unworkable, fail to resonate with the public, undermine respect for the law and alienate citizens from their representatives.

A wide consultative process has in fact been undertaken by some Commonwealth countries, notably South Africa, and Uganda prior to important legislation. The process itself is an important part of learning human rights. It demonstrates the principle of inclusiveness and values a diversity of views. It accommodates dissent and lets free expression flow. In the run up to becoming law, the process educates the public about limits and license and the surrounding debate grounds acceptance of compromise, so that in the end the law becomes owned by the people and accepted as a consensus solution to knotty problems. One of the poorest countries in the world, The Gambia, after return to civilian rule in 1997, launched its national poverty alleviation program with its cornerstone being the promotion of participatory communications processes.[167]

However, these experiments are few and far between. Too many countries continue on the old paths of command and control models of development and shore up rotten and hollow interiors with unjust laws and exclusion. Whether it is poor management or lack of political will, governments need reform.

Beyond consultative participation, governments need to accept that there must be real accountability and transparency in governance, as part of the process of deepening democracy. However, there is enormous resistance to more accountability and transparency from the elite at all levels, whether they are international financial interests or national and local elites. Presently in Commonwealth countries much information is in the public domain but unavailable and a deal of it is stored away from the public for reasons of privacy, commerce, or security. But much of it is also kept away because information in the hands of the population at large would fundamentally alter power relationships.

You've Made Your Mark, Now Have Your Say.

Law making whether it is to create or review constitutions or to simply make new legislation should involve people at all levels and from as varied backgrounds and interests as possible.

When turning from Apartheid to democracy, South Africa consciously embarked on a very complex people-oriented process for creating its Constitution. The first challenge was to enhance the capability of the poor, unlettered, and remote populations unused to being consulted about anything. Just before the work of the Constituent Assembly began, a media campaign was launched to carry the message that an important process was unfolding, the outcome would affect everyone and the unique opportunity to take part should be embraced by all. Community based political networks, school meetings, church gatherings, popular TV and radio programmes, essay competitions, traditional dance and drama helped to spread the message. A brand name, 'Constitutional Talk' labelled various activities and a widely distributed newsletter. Database containing minutes, drafts, opinions and submissions to the Assembly were put on a website. The response was overwhelming. 10,000 people called in on a toll-free Constitution hotline. 1.7 million submissions were received of which about 11,000 were substantive. 5 million copies of the working draft in user-friendly format were distributed throughout the country and another media campaign was launched to ask people to comment on specific areas. Again the Constituent Assembly received 250,000 submissions. Finally when the text was done a multi-media campaign was designed to focus on socio-economic and political issues. Advertising slogans like "Securing your freedom. Securing your Rights. The New Constitution, and One Law for one Nation. The New Constitution", educated people on rights in the new law. Finally when the Constitution was ready the meaning of the whole exercise was brought home to a people proud of what they had created together during National Constitution Week. A national assessment showed that media efforts had reached 65% of all adult South Africans.

Uganda spent a whole year just to find out if people believed a new constitution was required and what it should contain. In order to help people understand the issues the existing constitution was reprinted along with guidelines on constitutional issues and a booklet explaining how to submit a memoranda to the Constituent Assembly. Women were particularly targeted. Women leaders were trained in all 167 counties to reach out to other women. 25,000 submissions were received from them. Every submission was summarised and translated for the Commissioners and a common women's memorandum was also submitted to them. In order to make the process as transparent as possible the Ugandan government published three volumes containing submissions, an analysis of these, subsequent recommendations and the draft Constitution.

For the poor, information is a survival need. Lack of information certainly impinges on their ability to access opportunities and benefits and be free of oppression and corruption. Access to information is a major tool for accessing other rights.

Informing

Creating an enabling environment for participation requires that Commonwealth governments guarantee an effective right to information law in each country. Many Commonwealth countries already have such laws and practices of openness and information management that could be emulated. Others are extremely reluctant to pass such laws or would do so as a means to regulate journalists and fetter media freedom as is feared in the case of Zimbabwe. The Commonwealth Law Ministers Conference back in 1980 recognised the importance of Freedom of Information and stated that:

"Freedom of Information has many benefits. It facilitates public participation in public affairs by providing access to relevant information to the people who are then empowered to make informed choices and better exercise their democratic rights. It enhances the accountability of government, improves decision-making, provides better information to elected representatives, enhances government credibility with its citizens, and provides a powerful aid in the fight against corruption. It is also a key livelihood and development issue, especially in situations of poverty and powerlessness."

Nearly two decades later in 1999, the Law Ministers Meeting adopted the Commonwealth Freedom of Information Principles. These principles were noted by the Committee of the Whole at the 1999 Durban CHOGM and the Secretariat has since then drafted a model legislation.

Human Rights Education

In most Commonwealth countries there has been little effort to give the public information about their rights. This is a particularly significant failure in view of the fact that in the majority of countries the monopoly of radio and television is with government. Given the plethora of commitments on rights that governments have signed up to, it is not a matter of choice but of duty, that airtime is used in part to inform people of their rights. Most governments, with some honourable exceptions, are presently content to work with NGOs to disseminate human rights in small initiatives but assiduously avoid using mass communications as a means of vigorously promoting rights. It is not too uncharitable to say that this easy option is deliberately not used, as bureaucrats resist the idea of rights being widely disseminated because they mistakenly see it as creating confrontation with society, rather than as a foundation for peace and justice.

The decade from 1995 to 2004 is the UN Decade for Human Rights Education. Governments are required to draw up plans and expend funds for educating the public at large about human rights. The Decade is now in its 6th year and a mid-term review of in-country efforts makes uninspiring reading. Apart from the work of a very few human rights commissions, little systematic work has been undertaken or can lay claim to significant success. If this is anything to go by, Commonwealth states are a long way from embracing a culture of rights. Only a handful of governments even bothered to respond to the review and overwhelmingly the largest number of responses came from NGOs.

Human rights education for the population at large would provide populations long accustomed to being subjects with an alternative paradigm from which to view their situation. This in itself is empowering and transformative. Human rights commissions, which almost always have the mandate for public education, need to insist that governments use their media power and their law making processes as a means of creating respect for the law rather than fear of it. The incorporation of human rights into school curricula is part of the long-term solution and a sound investment in a rights based culture.

For ultimately, the most important factor in developing a culture of human rights is that everyone internalise it. Moral individuals use moral standards as a constant monitor of their behaviour. Similarly a human rights perspective needs to be internalised into the collective psyche. The truly substantial changes in the lives of poor people will only come about when governments no longer have to stop and say "now we must look at human rights", but operationalise it as a matter of course. Governments should always be thinking about human rights simply because this is one of their principal *raisons d'être*.

The Role of Civil Society

Civil society has a crucial role to play in advancing human rights and poverty eradication in the Commonwealth. While the promise of human rights remains unrealised and the framework is not fully effective, civil society must work to fill in the gaps in the framework and to bridge the gap between rights-holders and duty-holders.

Many civil society groups are in the forefront of efforts to improve the living conditions of the poor and less powerful. Yet civil society groups that work on humanitarian, welfare or development issues often do not know about rights or if they do, do not use a rights based approach to further their agendas. Frequently equating rights with the legal process and often disappointed at its ability to provide justice, such groups resist the notion of rights. They must overcome a suspicion of human rights as being a legal instrumentality, irrevocably linked to a distrusted institution - namely the legal profession. In a

sense, they must reclaim human rights from the law, while recognising the potential which law may have for enforcing rights. They must be aware that the human suffering they witness is not merely morally unacceptable but is legally indefensible and neglect of public duty leads to consequences for violators and compensation for victims.

There are many things that civil society can do to ensure the realisation of human rights, as well as to ensure the adoption and implementation of pro-poor policies. Firstly, they help to develop a consensus on human rights and subsequently assist in the elaboration of human rights norms. For example, the conventions against torture, minority rights and the draft declaration on indigenous peoples owe a great deal to the initiatives and enthusiasm of NGOs. The adoption of optional protocols would scarcely be possible without their interventions and lobbying.

The democratic process requires that civil society work to make duty-holders fully accountable for rights. Once norms are in place, they can usefully monitor the compliance of duty-holders. Civil society groups regularly create alternative reports to submit to the UN treaty monitoring bodies, such as the CESCR; assist special rapporteurs in researching and compiling reports; and prepare alternative budgets at home which track social expenditure and demonstrate how governments can produce a budget that is both socially and fiscally responsible and complies with their human rights obligations. In the context of the Commonwealth, they can make submissions to the CMAG with information and positions on the human rights record of different Commonwealth regimes.

Alternative Budgets In Canada

In Canada, the process of preparing an 'Alternative Federal Budget' began in 1994. An assembly of representatives from 40 national labour, social and environmental organisations, plus many community groups, has produced annual budgets up to the year 2000. The associated groups began this effort because they believed that the federal and other levels of government were putting too much emphasis on cutting social programmes in efforts to balance their budgets. The coalition contended that these budgets typically represented concerns of the business elite, rather than the interests of the general population. Through a widespread process of consultation, the coalition has developed alternative budgets that take into account the need to decrease debt and yearly deficits, yet respect economic, social and cultural human rights.

Typically, the Canadian Alternative Budgets have been designed to promote more job creation than the federal government's budgets promised to achieve. Independent expert reviews of the Alternative Budgets suggested that while respecting human rights, the budgets were also economically realistic. In 1998, the Alternative Federal Budget was reportedly endorsed by more than 150 economists, including some of the most widely respected financial analysts in Canada.[168]

Civil society organisations can mobilise public opinion and people around campaigns. Whether at home or abroad, the most successful social movements

use the language of human rights to campaign and lobby for justice and reform. Claims of rights have constituted forms of protest and challenges to authority. In so far as one function of rights is the empowerment of vulnerable groups, mobilisation is crucial. In this way the disadvantaged and marginalised are given a voice, and their participation is promoted. Human rights have made them effective agents of change. Raising awareness effectively multiplies the number of human rights activists and enhances the possibilities of really developing a critical mass that will entrench rights deep within society.

Human rights have been particularly valuable in the creation of global, regional and thematic networks. The universal language of rights helps to create a common means of communicating for campaigners across geographic areas and cross-cutting themes and helps to link up even very small groups with the larger world of activism. Women and environmentalists have been particularly successful in networking.

Civil society does not always enjoy a comfortable relationship with government. Happy to partner with them as implementers of welfare schemes, governments are wary and downright restrictive of advocacy groups or those that work to create a demand for rights.

They will often refer pejoratively to the 'human rights industry,' to refer to the self-interest of the above groups and the way they organise the production, dissemination and implementation of rights. It suggests that their primary commitment is to their organizations and their dominance of the system, not the protection of rights.[169] There is no need to buy into all of this cynicism, but there is little doubt that the human rights movement has become highly bureaucratised, hierarchical, and even narrow.[170] These organisations must be careful to take stock and ensure that they incorporate a human rights approach into their own structures and institutional processes. For the most part, they are less concerned with mobilising mass social movements around rights than advocacy and lobbying. The framework of human rights will serve the agenda of the eradication of poverty only if it is carried to the people, they realise that their own oppression is clearly linked to the violation of rights, and they are organised to claim their rights and to base their agenda and organisation on them.