

CHRI 2014

Easier Said than Done



Pursuing Promises at the United Nations Human Rights Council

KENYA



CHRI

Commonwealth Human Rights Initiative

working for the **practical realisation** of *human rights* in the countries of the Commonwealth

COMMONWEALTH HUMAN RIGHTS INITIATIVE

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work, and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Commonwealth Charter, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth Member States.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI works with the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's aim is to act as a catalyst for reform.

The nature of CHRI's sponsoring organisations ensure it has a national presence and an international network.* These professionals can also steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups bring local knowledge, can access policymakers, highlight issues and act in concert to promote human rights.

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Easier Said than Done 2013

A Report on the Commitments and Performances of the
Commonwealth Members of the UN Human Rights Council

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I. Introduction



Easier Said than Done



I. Introduction

What is the *Easier Said than Done* series of reports?

The Commonwealth Human Rights Initiative (CHRI) has been monitoring the behaviour of Commonwealth countries at the United Nations Human Rights Council (UN Human Rights Council) since the Council's inception in 2006. CHRI has used the *Easier Said than Done (ESTD)* series to report on the performance of Commonwealth Members of the UN Human Rights Council with their domestic and international human rights obligations.

The focus of the *Easier Said than Done* series are the pre-election pledges made by each country while standing for election to the Council. These pledges frequently include commitments to promote and protect human rights internationally, domestically and, specifically, at the Council. The reports analyse the extent to which Commonwealth Members of the Council comply with these pre-election pledges.

The *ESTD* reports are principally published for an audience comprising diplomats, government officials, civil society organisations and international policymakers. They are designed to be used while formulating policy and advocating for greater respect for human rights, both domestically and through their foreign policy. The *ESTD* reports are also intended to demonstrate the unrealised potential of pre-election pledges as a result of the limited attention they receive during a country's tenure on the UN Human Rights Council.

Why do the *Easier Said than Done* reports focus on Commonwealth countries?

The Commonwealth as a block is an under-assessed component of the Council. During any particular year, about a quarter of the UN Human Rights Council would comprise Commonwealth States. The Commonwealth has a diverse membership which spans the entire globe. All Commonwealth Members have demonstrated a commitment to the fundamental principles of human rights on numerous occasions through a variety of organisational documents and communiqués. Most recently, this commitment was demonstrated in 2013 with the signing of the Commonwealth Charter (Charter). The Charter makes a specific commitment to the protection and promotion of human rights:

We are committed to the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. We are committed to equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just and stable societies. We note that these rights are universal, indivisible, interdependent and interrelated and cannot be implemented selectively.

We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds.

With this background, the Commonwealth should be a force to further the mandate of the UN Human Rights Council. However, taken as a whole, the Commonwealth block cannot be viewed objectively in this light. The promotion, protection and realisation of human rights still do not

regularly factor into the behaviour of Commonwealth countries at the UN Human Rights Council. Failure to comply with such a fundamental organisational commitment jeopardises the integrity of the Commonwealth as an organisation and has the potential to negatively impact the work of the UN Human Rights Council.

How is this report structured?

This report differs from its predecessors in one major way. This *Easier Said than Done* will be a series of reports rather than one large report. Each report in the 2013 series will focus on one Commonwealth Member of the Council during this period. There will be eight reports, covering Botswana, India, Kenya, Malaysia, Maldives, Pakistan, Sierra Leone and Uganda.

Each report in the 2013 series will begin with an examination of the Commonwealth's performance as an intergovernmental body and as a grouping within the Council. This section of the report also includes a series of recommendations directed at Official Commonwealth bodies. The level of cooperation of the Commonwealth Members of the UN Human Rights Council is then presented using a variety of tables in Section III of the reports. The tables focus on four aspects: ratification of the core UN human rights treaties; compliance with treaty reporting obligations; engagement with the UN Human Rights Council's UPR mechanism; and cooperation with the UN Human Rights Council's Special Procedures Mandate Holders. The next chapter will differ between reports. It will assess the performance of the country under review during the reporting period. The first section of each country chapter sets the scene regarding the country situation and Council membership. The second section details the country's performance and voting patterns at all the Council sessions that occurred during the reporting period. The third section summarises the domestic human rights situation in the country during the reporting period and compares the performance of each State with the human rights-related pledges and commitments it made before its election to the Council. The country section concludes with recommendations to that country on how to increase compliance with their pledges going forward. All the reports conclude with a compilation of recommendations made to the official Commonwealth, all Commonwealth Members of the Council and the country under review. The reports will have two Annexes, one of which will list the links to the countries' pledges for reference, while the other is a table that sets out Commonwealth voting patterns during the review period.

What is the reporting period and which countries are under consideration?

This edition of the reports summarises and analyses the human rights performance of the eight Commonwealth countries that were Members of the UN Human Rights Council during 2013. The reporting period includes: the 22nd Session of the Council which was held from 25 February to 22 March; the 23rd Session, from 27 May to 14 June; and the 24th Session, from 9 to 27 September.

The eight countries under consideration during this reporting cycle are Botswana, India, Kenya, Malaysia, Maldives, Pakistan, Sierra Leone and Uganda.

What are the reports' inherent limitations?

As in the earlier editions, two main challenges were faced during the drafting of the 2013 reports. The first was to measure the often vague, generalised and un-quantifiable pledges made by many Commonwealth governments which, in some cases, resulted in equally vague compliance indicators. In other instances, the report assesses specific pledges in consequently specific

terms. This pattern highlights an inherent problem with the current discretionary pledge-making process. It also reveals the continuing lack of efficient standards to measure and govern this process. Though the Office of the High Commissioner for Human Rights (OHCHR) has published guidelines on pledge-making, these are non-binding and most countries do not follow them to the letter.

The second challenge was the inability to obtain human rights information for each country on an equal scale. This led to a variation in the quantity of information used to tally compliance with pledges. The limited availability of reliable, objective and/or quantified information is in itself an indication of the lack of infrastructure to monitor human rights situations in many Commonwealth countries. It highlights the urgent need for increased technical assistance to those countries and a reinforced commitment to human rights from Commonwealth governments. When using the report, it is advisable to take these factors into consideration and to avoid direct comparisons between country situations and/or pledge compliance.

What sources of information were used to compile these reports?

These reports use research based almost exclusively on secondary sources. Care was taken, to the maximum extent possible, to ensure that information on domestic human rights situations came predominantly from local sources. Recognised and reputable international sources (newspapers, governmental and non-governmental organisations) were also included where relevant to specific issues. The section on “Human Rights During the Reporting Period” was reviewed by at least three external individuals chosen on account of their knowledge of the concerned country. The information contained in the sections that deal with State behaviour at the Council was obtained from primary sources: daily press releases on the Council’s proceedings released by the UN; official voting records; and country statements. Full sources and references are included for each of the above. Every care has been taken to ensure the accuracy of the information contained in this report.

II. The Commonwealth and the United Nations Human Rights Council



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II. The Commonwealth and the United Nations Human Rights Council

II.I Q & A on the United Nations Human Rights Council

What is the United Nations Human Rights Council?

The United Nations Human Rights Council (UNHRC or the Council) is an intergovernmental body within the UN system comprising 47 elected Member States. The Council was established in June 2006 to replace the former UN Commission on Human Rights. The Council has the primary responsibility for the promotion and protection of human rights at the UN. The Council holds three regular sessions annually and special sessions as required by pressing human rights situations that require urgent attention. Unlike its predecessor, which was a subsidiary body to the Economic and Social Council, the Human Rights Council is a subsidiary organ of the UN General Assembly. The Council has absorbed mechanisms of the former Commission, such as the Special Procedures¹ and Complaints Procedure,² while including new mechanisms: the Universal Periodic Review (UPR)³ and the Advisory Committee.⁴ In another departure from the practices of its predecessor, the Council has a re-formulated regional division of seats that provides for greater representation of Southern States. Its election process is also different; States may release pre-election pledges and then must secure an absolute majority of votes in the General Assembly (held by secret ballot) to be elected.

Why was the Council established?

The Council was established to replace the discontinued and largely discredited United Nations Commission on Human Rights (the Commission) that was established in 1946. Despite several contributions and decades of setting international standards on human rights, the erstwhile Commission was criticised for being an overly political and selective body. Numerous states with poor human rights records were able to sit on the Commission, and, once there, work to block meaningful action on serious human rights abuses. The importance of the Council's pre-election pledges is therefore evident.

How are countries elected to the Council?

The Council's 47 seats are allocated by regional grouping (13 for Asian States, 13 for African States, six for Eastern European States, eight for Latin American and the Caribbean States and seven for Western European and Other States) for three-year terms. Every year new countries vie for seats within each regional grouping – the number is decided by the number of countries from each grouping that depart the Council. Countries may only run for two consecutive three-year terms. A country must obtain an absolute majority of votes from the UN General Assembly to be elected to the Council. If no country within a regional grouping receives an absolute majority of votes, then a second round of voting takes place between high-scoring candidates. Recently, however, there has been a trend of regional groupings running closed slates – with the number of countries running matching the number of open seats – to avoid embarrassing countries that lose out to other countries from the same region.

What is a pledge and what does a pledge usually entail?

A country running for election to the Council can submit pre-election pledges while presenting their candidature. Ideally, the pledge document is intended to be used by voting countries to determine which candidate best fits the criteria for election to the Council, i.e. which country has made the greatest contribution to the promotion and protection of human rights and is willing and capable of playing an effective role at the Council. Pledges usually list a country's past contributions to the promotion and protection of human rights, and future voluntary commitments towards the same. The commitments made in each country's pre-election pledge are also intended to be used as a partial basis for that country's Universal Period Review. For reference, electronic links to these pledges can be found in Annex 1 of this report.

Is the pledge-making process regulated?

The Office of the High Commissioner for Human Rights (OHCHR) has published a document that outlines suggested elements for voluntary pledges and commitments, but the document is not binding; nor is it exhaustive. The suggested elements include national and international human rights contributions, pledges and commitments, and can be found at: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/Pledges.pdf>. Because the pledge-making process is neither regulated nor standardised, there is little consistency between countries, although pledges to support the work of the Council and its subsidiary mechanisms are common, as are pledges to uphold the highest standards of human rights domestically. Unfortunately, pledges also tend to be vague and unquantifiable, making the measurement of achievements and benchmarking especially difficult.

Are countries bound by their pre-elections pledges?

There is currently no accountability mechanism to ensure compliance with pre-election pledges. That being said, the General Assembly does have the ability to suspend Council Members who have seriously and consistently breached their international human rights obligations. In reality, however, there has been little progress in holding governments accountable for their pledges. Libya was suspended from the Council in March 2011 as a result of a violent crackdown on anti-government protestors; however Libya had not made any specific pledges regarding its domestic human rights situation before its election to the Council. There is therefore no example of a State's membership of the Council being affected as a direct result of violating an election pledge.

What is the position of the Commonwealth at the Council?

Since the establishment of the Council in 2006, about one quarter of the body's Members have consistently been Commonwealth countries. However, the Commonwealth has yet to realise its full potential at the Council. The Commonwealth, through its Secretariat, has undertaken several initiatives with respect to technical assistance on the UPR, but is yet to play a major role in promoting and protecting human rights at the Council. The Commonwealth has established a "Small States" office in Geneva in order to provide subsidised office space to its smaller Members who do not have a permanent presence in Geneva, thereby facilitating their participation at the Council.

Is the Council an effective mechanism to promote respect for human rights and to address major abuses?

To date, the Council appears to be battling issues similar to the ones that plagued the Commission. During a speech at the celebrations for the sixtieth anniversary of the Universal Declaration of Human Rights in December 2008, UN Secretary-General Ban Ki Moon urged the Council to “rise above partisan posturing and regional divides” and to “address human rights abuses wherever they occur”.⁵ For the most part, this plea has not been borne out. A majority of Member States continue to vote in accordance with block affiliations, on the basis of regional or political groupings. Major human rights abusers still sit on the Council, and several serious human rights abuses have been ignored by the Council for political expedience. Though many Commonwealth countries voluntarily pledged to promote and work positively to support the Council before their election, Commonwealth Members tend to be a part of the negative trends identified above.

Voting on controversial country-specific and thematic resolutions continues to be divided along regional voting lines. Despite the increase in cross-regional initiatives during the sessions – a clearly encouraging factor – the effect and dynamics of block politics continue to dominate the Council’s functioning to date. A number of Commonwealth countries are openly opposed to country-specific scrutiny at the Council, an attitude that is translated into negative voting on such resolutions.

Despite this bleak picture, the Council has achieved numerous successes and can hold itself out as a best practice model for facilitating the engagement of civil society in its processes. The Council has managed to unite its Members around several key concerns and has passed resolutions on various human rights priorities, calling for action or expressing commitment to a range of issues from the protection of human rights defenders to calling on governments to hold people to account for human rights abuses.

II.II The Commonwealth at the Human Rights Council: An Analysis of Trends

The findings of the 2013 reports continue to demonstrate the discouraging picture highlighted by its predecessors regarding the performance of Commonwealth Members as a whole at the Council. The potential for Commonwealth Members to actively contribute to the promotion, protection and realisation of human rights, both at home and at the Council has still not been fulfilled.

These reports demonstrates four important trends by Commonwealth Members at the Council.

1. An alarming lack of adherence to commitments that related to domestic human rights situations

A disconnect between pre-election pledges and domestic human rights situations is clearly demonstrated in these reports. Once again, no Commonwealth Member fully complied with its pledges. Instances of torture and police brutality; undue restrictions on freedom of expression, association and peaceful assembly; extrajudicial killings; enforced disappearances; judicial corruption; impunity of supra-constitutional forces; the trafficking and enslavement of women and children; child labour; forced marriages; discrimination against people with HIV/AIDS, persons with disabilities as well as members of the LGBT community; acts of violence against journalists; harassment of human rights defenders; and censorship of digital content are a few examples of practices present in States that had pledged to uphold the highest standards of human rights domestically.

2. Several attempts by certain Commonwealth countries to dilute the functioning of the Human Rights Council

It was also evident that several Commonwealth countries remained reluctant to take positions on individual country situations. This approach significantly impeded the Council from effectively responding to the most egregious human rights violations.

Of particular concern was the position taken by the Commonwealth bloc when the situation of one of its Members came under the scrutiny of the Council. During the vote on Sri Lanka at the first session of 2013, only two Commonwealth countries, India and Sierra Leone, voted in favour of the resolution designed to promote reconciliation and accountability in the country. This position mirrors the organisation's general approach towards Sri Lanka. Despite various egregious breaches of Commonwealth values, including impunity for gross human rights violations, the weakening of the rule of law and undermining the independence of the judiciary, on-going restrictions on civil liberties, intolerance for dissent, intimidation of the media and inaction in the face of extremist attacks against minorities, Sri Lanka has evaded a formal referral on to the agenda of the Commonwealth Ministerial Action Group (CMAG), the enforcement arm of the Commonwealth.

In general, the Commonwealth Members of the Council had a positive effect on the Council's thematic resolutions. However two resolutions were a particular cause for alarm. On the question of the death penalty, every member of the Commonwealth united to either vote against or abstain on the decision to establish a high-level panel to discuss the issue of abolition. There is clearly no consensus within the Commonwealth on the question of the death penalty. The worrying aspect of this vote, however, was that it was in effect a vote to prevent a discussion. Any attempt by a

Member of the Council to stifle debate is extremely worrying. The second worrying position was that five out of the eight Commonwealth Members abstained from voting on a resolution related to protecting human rights defenders who cooperate with the United Nations, its representatives and mechanisms in the field of human rights. This position corresponds with the gradual shrinking space for civil society within a majority of Commonwealth nations and at official Commonwealth fora.

3. A near-complete lack of consensus among Commonwealth countries at the Council

During the 2013 sessions, lack of consensus between the Commonwealth Members was the norm. Where votes related to affirmation of generic principles, there was generally a favourable consensus adopted by Commonwealth voters. However, as soon as a resolution was related to a specific situation or highlighted tangible measures for advancement of a situation, the positive consensus was lost. On such issues, the Commonwealth Members did not vote in accordance with their pledges, or even in accordance with Commonwealth values. Instead, voting was predominately determined in accordance with regional and political alliances.

4. A lack of commitment to promoting Commonwealth values at the Council

Membership of the Commonwealth presupposes the will to act together in order to promote, protect and realise human rights. The new Commonwealth Charter, signed in 2013, sets out the values of the Commonwealth, committing its Members to the ideas of peace, democracy, justice, development, equality, human rights and inclusiveness, especially of the most vulnerable. Deplorably, the perception promoted at the Council during this reporting period did not correspond with these values, in fact an indifference to human rights abuses and a desire to shelter strategic partners was the image portrayed of the Commonwealth.

Every vote or stance by a Commonwealth member at the Council directly affects the Council's ability to protect human rights. Moreover, positions adopted by Commonwealth Members individually, directly affect the Commonwealth's ability to hold itself out as a values-based organisation. Frequently, the voting patterns and public positions adopted by Commonwealth countries at the Council did not correspond with Commonwealth values. The Commonwealth however does not question its Members about the decisions they take at the international level. Without a rigorous collective review mechanism, the Commonwealth's commitment to its core values will remain empty rhetoric.

II.III The Role of the Official Commonwealth at the UN Human Rights Council

II.III.I Engagement

The Commonwealth mandate to engage with the Council was initiated at the 2007 Commonwealth Heads of Government Meeting (CHOGM), when – after some prodding by the Commonwealth Human Rights Forum, a meeting of civil society groups – the Heads of Commonwealth Governments decided that the Commonwealth Secretariat could, through the Council, play a facilitating role in strengthening dialogue on, and raising awareness of, human rights in Commonwealth countries.

Since the Human Rights Council began operating in 2006, CHRI has urged the Commonwealth and its Members to actively support the Council in the fulfilment of its mandate. The earlier reports in the *Easier Said Than Done* series have noted that the Council should be considered one of the most important global fora for the Commonwealth, outside its own internal dialogues and to this end identified two important avenues through which the Commonwealth could make a serious impact at the Council:

1. By providing technical assistance to Commonwealth countries who wish to engage with the Council and its mechanisms;
2. By building consensus among like-minded countries during deliberations at the Council.

To date, Commonwealth engagement with the Council has largely focused on the first avenue, with a predominant emphasis on providing technical assistance to Commonwealth countries as they engage with the Universal Periodic Review mechanism. Since early 2008, the Human Rights Unit of the Commonwealth Secretariat has run several UPR capacity-building training sessions across the Commonwealth for governments, parliamentarians, national human rights institutions and civil society. These meetings have primarily been a forum to share best practices and experiences. Best practices taken from a selection of these meetings were compiled into two volumes by the Human Rights Unit: *Universal Periodic Review of Human Rights: Towards Best Practice*, which shared early experiences with the UPR; and *Universal Periodic Review: Lessons, Hopes and Expectations*, which provided an update half-way through the first cycle. Work to further contribute to the UPR has continued during the second cycle of reviews. During 2013, the Commonwealth Secretariat held a Caribbean Regional Seminar for Members of Parliament on “The Role of Parliamentarians in the Promotion and Protection of Human Rights”. Its main outcome was the establishment of The Commonwealth Caribbean Parliamentary Human Rights Group, which went on to make a Statement at the Council in 2013.

Support for the capacity-building work of the Human Rights Unit was reaffirmed by the Heads at the 2009 CHOGM in Trinidad and Tobago. However, at the 2011 CHOGM in Australia, the Heads merely noted that Commonwealth Members should share best practices and lessons learned from the Universal Periodic Review Process, without establishing a way forward for the Commonwealth to give further technical assistance. The trend of diminishing focus in the CHOGM communiqué continued in 2013 where no reference to the Council or the UPR was made. The 2013 communiqué was heavily focused on development. The UN human rights mechanisms only received a sweeping mention wherein Members were encouraged to accelerate efforts towards the ratification of all major international human rights instruments to strengthen the implementation of rights and freedoms as enshrined in the Universal Declaration of Human Rights.

The Commonwealth's presence at the Council itself has traditionally been minimal, except for an annual speech by the Commonwealth Secretary-General. The current Secretary-General, Kamallesh Sharma has spoken during the Council's high-level segment every year since 2010. His speeches differ markedly from those of his predecessor. Whereas former Secretary-General Don McKinnon once noted in an address to the Council that if the Council "shields just one jurisdiction which displays a blatant abuse of human rights, it will discredit itself forever", Secretary-General Sharma's speeches seem to suggest that naming and shaming rights-abusive regimes, one of the Council's most important tools, is not a useful activity, and should be avoided. For example: in 2010, he said that there was "greater value in raising a helping hand, than in raising a wagging finger"; in 2012, he said that the "Commonwealth approach is not to chide or rebuke, but to agree to shared goals"; and most recently in 2013 Mr Sharma noted that "our hallmark... [is] to seek advances in a climate of respect and trust with our member states". These statements directly mirror the approach taken by the Secretariat in responding to human rights violations within their jurisdiction. A leaked memo from the Commonwealth Secretariat revealed that the Secretariat was of the view that it "has no explicitly defined mandate to speak publicly on human rights" and that "such crude megaphone diplomacy would be simply counterproductive – we'd rather proffer a helping hand". Despite such a position regarding country-specific action the Secretary-General has taken up the rights of LGBTI persons in his last three speeches to the Council. Many Commonwealth countries still criminalise homosexuality, making Mr Sharma's comments all the more laudable.

The Secretary-General's annual speeches alone are insufficient engagement between these two important organisations. The Commonwealth considers itself a values-based organisation, citing the principles of democracy, human rights, peace, tolerance and respect for the rule of law as some of those values. If Commonwealth countries do not uphold these values, domestically or during their international engagements, the Commonwealth should be aware of this and take appropriate action. It is therefore essential that the Commonwealth should monitor action at the Council and work towards increasing the positive impact made by Commonwealth States at the Council. Initial moves in that direction were completed in January 2011, when the Commonwealth opened an office in Geneva that offers space and a business centre at subsidised rates for Commonwealth missions and visiting delegations that participate in international deliberations, including at the Council.

Initial indicators are positive that this new presence in Geneva will increase the participation of the Commonwealth at the Council. The Secretary-General confirmed in his 2013 statement that the organisation's strategic plan for the next four years included the objective of deepening the partnership between the Commonwealth and the OHCHR; and to assist Commonwealth States to successfully implement UPR recommendations. In 2013, the Commonwealth took the step of contributing to a specific thematic panel discussion held at the Council on the role of parliamentarians in the work of the Council. During discussions, the Chairperson of the Commonwealth Caribbean Parliamentary Human Rights Group took the floor on behalf of the Commonwealth to share experiences and make recommendations related to requiring States under review to present UPR outcomes and reports to their parliament. Moreover, the staff of the Commonwealth contributed, to specific thematic reports prepared by the Office of the High Commissioner for Human Rights (OHCHR). The reports, to which the Commonwealth contributed, included the policing of peaceful protests; strengthening judicial systems and the administration of justice; the right to development; and the protection of journalists.

While these commendable advancements in engagement are to be welcomed, it is interesting to note that Commonwealth engagement continues to be heavily focused on capacity building surrounding the UPR, and where it relates to thematic reports, the staff of the Commonwealth appear to be working independently from their Members. There have been no moves by the Commonwealth, or any of its Members, to work towards building a consensus among Commonwealth countries at the Council on interventions designed to advance human rights objectives or to hold Members to account for their actions and statements in the international arena. For an organisation that constantly seeks to raise its own profile, one would imagine that a Commonwealth-sponsored resolution at the world's most important human rights forum on an issue that Commonwealth countries agree upon would be exactly the kind of publicity that the organisation desires. It would also be proof of the organisation's relevance on the global stage. Moreover, the Commonwealth Secretary-General should be able to call on Commonwealth Members to make statements on behalf of the organisation, as other regional and political groupings frequently do.

The Commonwealth provides an opportunity to all Members, regardless of traditional dominance in international affairs, to sit as equals during discussions and decision-making. Thus the Commonwealth, as a unique grouping of 53 Member States, which together comprise approximately a third of the world's population and usually around a quarter of the membership of the Council, has the potential to achieve innovative positive advancements. The organisation is large enough to have an important influence on international affairs, yet it has not pursued the angle of working together at the Council. Much of the Commonwealth's potential remains underutilised, potentially as a result of internal fractionation regarding the organisation's purpose, enforcement of values and conservative functioning regarding the role of non-state actors. The risk of encouraging such an organisation to work together is clear. Currently, many Commonwealth countries openly violate the values of the organisation, with impunity. Examples of grave violations of human rights law that have not been publicly addressed by the Commonwealth include impunity for credible allegations of war crimes committed by both sides in Sri Lanka's civil war; widespread reports of limitations on fundamental freedoms and the commission of torture by state security officials in Uganda; and the continuing constriction of constitutional guarantees in Swaziland. Till the Commonwealth is able to enforce human rights values amongst its Members, an active grouping of Commonwealth States at the Council is likely to do more harm than good to the advancement of human rights globally. It would be disastrous for the Council if the Commonwealth became another voting bloc attempting to stifle public debate about their own poor human rights situations, or those of their allies.

It is this worrying feature that makes it imperative for the Commonwealth reform process to take serious note of the manner in which Commonwealth States interact with the Council. A clear test of this in the coming year will be the way in which the Commonwealth will respond to its Chair in Office, the President of Sri Lanka, if Sri Lanka decides to continue with a position of non-cooperation with the resolution passed by the Council in 2014 authorising the United Nations High Commissioner for Human Rights to investigate allegations of serious violations of human rights and humanitarian law. The Commonwealth must consider the association's human rights heritage, past leadership in international fora, including at the UN, on issues such as Apartheid and the role desired of the organisation going forward. It is extremely disappointing that the Commonwealth at present is not able to realise its potential to strengthen human rights dialogue at the Council in a positive manner.

II.III.II Recommendations to the Commonwealth Secretariat

In the spirit of working together to ensure the realisation of Commonwealth values, as enshrined in the Commonwealth Charter and to comply with commitments to support the UN as enshrined in the Harare Declaration, the Singapore Declaration, the Nassau Declaration and the Trinidad and Tobago Affirmation of Commonwealth values, CHRI makes the following recommendations:

1. CHRI recommends that before every session of the Council the Secretariat produces a briefing on matters of importance to be considered at the upcoming Council session. The briefing should clearly indicate the minimal response required from all Commonwealth Members to be in compliance with Commonwealth values.
2. CHRI counsels Heads of Government to issue clear policy directions to set up a system of intergovernmental consultations before each Council session to adopt common Commonwealth positions where a consensus that corresponds with Commonwealth commitments and values has been identified.
3. CHRI calls on the Secretariat, following each session of the Council, to review the stances taken by Commonwealth Members and to take action if stances have contravened Commonwealth values and brought the organisation into disrepute.
4. CHRI strongly encourages the Commonwealth to be proactive in securing support for strong country-specific initiatives and Special Procedure mandates which allow the Council to focus on human rights situations that require close and consistent attention from the international community.
5. CHRI calls on the Secretary-General to share information with the United Nations High Commissioner for Human Rights on specific operational activities and outcomes of his Good Offices interventions in order to prevent duplication of work or misunderstandings regarding the level of Commonwealth engagement in a situation relevant to the work of the Council.
6. CHRI urges a close partnership between the Commonwealth Ministerial Action Group, the Commonwealth Secretary General's Good Offices and the Council. In particular, this should be facilitated where a UN expert is in the position to brief CMAG on a Commonwealth country of concern.
7. CHRI urges the Heads of Commonwealth governments to work towards the creation of a referral mechanism to the Human Rights Council. The mechanism would work to officially refer a chronic situation of human rights abuse occurring within the Commonwealth to the Council for consideration.
8. CHRI notes the large volume of discussions, debates and resolutions at the Council that directly relate to Commonwealth values. CHRI urges the Secretariat to work with its Members to build consensus in order to secure a unified, positive Commonwealth position on such matters.

9. To consider the need to appoint an independent expert advisor on human rights, as recommended by the Eminent Persons Group and the Commonwealth Human Rights Initiative in their report to the 2013 CHOGM. Such an expert could work in close collaboration with relevant UN bodies, support the formulation of positive Commonwealth positions and monitor the performance of Commonwealth Members at the Council.
10. CHRI calls on the Commonwealth Heads of Government to state clearly in the Malta CHOGM communiqué, practical steps to strengthen the Commonwealth's engagement with the Council. This is a vital step to implement Heads of Government's past promises to support the UN and to build positive international consensus on human rights issues.
11. The Human Rights Unit of the Commonwealth Secretariat is expected to provide technical assistance to Commonwealth countries to fulfil their obligations under the UPR process. However, CHRI notes that the Unit's level of resources is quite low and calls on Commonwealth Heads of Government to provide necessary resources, mandates and directions to the Human Rights Unit, so that it can build on its current efforts towards more comprehensive results.
12. CHRI calls on the Commonwealth Heads of Government to unequivocally welcome and support civil society involvement at the Council and in the Special Procedures. This would honour their own commitments made at several Commonwealth Heads of Governments meetings, which privilege the participation of civil society in governance at home and in the international arena.
13. CHRI urges the Commonwealth Secretariat to assist countries in forging effective and transparent civil society friendly national human rights action plans. CHRI further urges the Secretariat to respond to in-country developments that have the potential to negatively impact the operation or safety of civil society and human rights defenders.

III. The Commonwealth Members of the Human Rights Council and the United Nations Human Rights Mechanisms



**Easier Said
than Done**



III. The Commonwealth Members of the Human Rights Council and the United Nations Human Rights Mechanisms

Do Commonwealth Members of the HRC comply with major UN human rights instruments?

The four tables below are designed to illustrate the extent to which the eight Commonwealth members sitting on the Human Rights Council comply with core UN human rights instruments, mechanisms and processes. The tables focus on the ratification status of international human rights treaties (Table I); compliance with respect to reporting obligations under the UN human rights treaties and the established treaty bodies (Table II); and engagement with the UPR mechanism (Table III). Adherence to such instruments and mechanisms varies, proving that the international legal framework established for the promotion, protection and realisation of human rights is not uniformly implemented across the eight Commonwealth members of the Human Rights Council.

List of Core UN Human Rights Treaties

The core UN human rights treaties that the tables focus on are:

- ICCPR: International Covenant on Civil and Political Rights (1966)
- ICCPR – OP 1: Optional Protocol to ICCPR (1966)
- ICCPR – OP 2: Second Optional Protocol to ICCPR aiming at the abolition of death penalty (1989)
- ICESCR: International Covenant on Economic, Social and Cultural Rights (1966)
- ICESCR – OP: Optional Protocol to ICESCR (2008)
- CERD: International Convention on the Elimination of All Forms of Racial Discrimination (1966)
- CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- CEDAW – OP: Optional Protocol to CEDAW (1999)
- CAT: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

- CAT – OP 1: Optional Protocol to CAT (2002)
- CRC: Convention on the Rights of the Child (1989)
- CRC – OP AC: Optional Protocol to CRC on the involvement of children in armed conflict (2000)
- CRC – OP SC: Optional Protocol to CRC on the sale of children, child prostitution and child pornography (2000)
- CRC – OP CP: Optional Protocol to CRC on a communications procedure (2011)
- ICMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
- CRPD: Convention on the Rights of Persons with Disabilities (2006)
- CRPD – OP: Optional Protocol to CRPD (2006)
- CED: International Convention for the Protection of All Persons from Enforced Disappearance (2006)

Table I: Adherence of Commonwealth Countries to the UN Human Rights Treaties (Ratification Status)

Key: R: Ratification A: Accession S: Signed

UN Human Rights Treaties	Botswana	India	Kenya	Malaysia	Maldives	Pakistan	Sierra Leone	Uganda
ICCPR	R	A	A	Not Signed	A	R	A	A
ICCPR-OP1	Not Signed	Not Signed	Not Signed	Not Signed	A	Not Signed	A	A
ICCPR-OP2	Not Signed	Not Signed	Not Signed	Not Signed	Not Signed	Not Signed	Not Signed	Not Signed
ICESCR	Not Signed	A	A	Not Signed	A	R	A	A
ICESCR-OP	Not Signed	Not Signed	Not Signed	Not Signed	S	Not Signed	Not Signed	Not Signed
CERD	A	R	A	Not Signed	A	R	R	A
CEDAW	A	R	A	A	A	A	R	R
CEDAW-OP	A	Not Signed	Not Signed	Not Signed	A	Not Signed	S	Not Signed
CAT	R	S	A	Not Signed	A	R	R	A
CAT-OP1	Not Signed	Not Signed	Not Signed	Not Signed	R	Not Signed	S	Not Signed
CRC	A	A	R	A	R	R	R	R
CRC-AC	R	R	R	A	R	S	R	A
CRC-SC	A	R	S	A	R	R	R	A
CRC-CP	Not Signed	Not Signed	Not Signed	Not Signed	S	Not Signed	Not Signed	Not Signed
ICMW	Not Signed	Not Signed	Not Signed	Not Signed	Not Signed	Not Signed	S	A
CRPD	Not Signed	R	R	R	R	R	R	R
CRPD-OP	Not Signed	Not Signed	Not Signed	Not Signed	Not Signed	Not Signed	S	R
CED	Not Signed	S	S	Not Signed	S	Not Signed	S	S

Source: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last accessed 2 April 2014)

Table II: The Compliance of Commonwealth Countries with Reporting Obligations Under the UN Human Rights Treaties

**Key: OD: Overdue as of the end of the reporting period
UTD: Up to date with reporting obligations**

UN Human Rights Treaty Bodies (Reporting Status)	CCPR	CESCR	CERD	CEDAW	CAT	CRC	CRC – OP AC	CRC – OP SC	CMW	CRPD	CED
Botswana	OD 2012	N/A	OD 2009	UTD	OD 2001	OD 2007	OD 2006	OD 2005	N/A	N/A	N/A
India	OD 2001	OD 2011	OD 2010	UTD	N/A	UTD	UTD	UTD	N/A	OD 2010	N/A
Kenya	UTD	UTD	UTD	UTD	UTD	UTD	OD 2004	N/A	N/A	UTD	N/A
Malaysia	N/A	N/A	N/A	OD 2008	N/A	OD 2012	UTD	UTD	N/A	OD 2012	N/A
Maldives	UTD	OD 2008	UTD	UTD	OD 2005	UTD	UTD	UTD	N/A	OD 2012	N/A
Pakistan	OD 2011	OD 2010	OD 2012	UTD	OD 2011	OD 2012	N/A	OD 2013	N/A	OD 2013	N/A
Sierra Leone	UTD	OD 1998	OD 2006	UTD	OD 2010	UTD	UTD	UTD	N/A	OD 2012	N/A
Uganda	OD 2008	UTD	OD 2005	UTD	OD 2008	OD 2011	UTD	UTD	OD 2004	UTD	N/A

Sources: <http://www.unhchr.ch/tbs/doc.nsf/RepStatfrset?OpenFrameSetand>; <http://www.unhchr.ch/tbs/doc.nsf/NewhvVAlISPRByCountry?OpenView&Start=1&Count=250&Collapse=23#23>; <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> (last accessed 3 April 2014)

Table III: Invitations to Special Procedures Mandate Holders

Special Procedures	Botswana	India	Kenya	Malaysia	Maldives	Pakistan	Sierra Leone	Uganda
Standing Invitation	No	Yes	No	No	Yes	No	Yes	No
Visits during the reporting period (2013)	None	Violence against women	None	food	Independence of judiciary	None	Freedom of religion	None
Pending requests	Safe drinking water and sanitation	Torture Racism Enforced disappearances Indigenous people Water and sanitation Independence of judiciary Trafficking	HRDs Independence of judiciary Extreme poverty Minorities Torture Enforced disappearances Promotion of truth and justice IDPs	HRDs Freedom of religion Migrants Counter-terrorism Minorities Racism Independence of judiciary Freedom of assembly	Violence against women HRDs	HRDs Extrajudicial executions Racism Freedom of religion Counter-terrorism Adequate housing Independence of judiciary Freedom of expression IDPs Freedom of assembly	IDPs Arbitrary detention Mercenaries Freedom of expression	Freedom of expression Freedom of assembly

Sources: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>; <http://www.ohchr.org/EN/HRBodies/SP/Pages/Invitations.aspx>; <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx> (last accessed on 6 April 2014)

IV. Kenya at Home and in Geneva



**Easier Said
than Done**



IV. Kenya at Home and in Geneva

IV.I Background

IV.I.I Context

Kenya gained independence from the United Kingdom in 1963. The following year the Republic of Kenya was formed, with Jomo Kenyatta as President. President Kenyatta died in office in 1978 and was succeeded by Vice-President Daniel Arap Moi. During President Moi's term, which lasted till 2002, the National Assembly officially declared Kenya a one-party state and suppression of opposition groups, political arrests and human rights abuses characterised the domestic situation.

In December 2002, Kenya went to the polls to elect Mwa Kibaki in a landslide victory. This election ended 24 years of President Moi's rule and four decades of power by the Kenya African National Union. President Kibaki's election victory resulted in some promising reform proposals, including a new Constitution and an anti-corruption commission. However, the Constitution was not enacted during this term of the President.

In December 2007, Kenya went back to the polls where President Kibaki secured a second term. The election result was disputed and violence broke out as a result, which lasted till February 2008. More than 1,500 people lost their lives, there were widespread reports of sexual violence and thousands of people were displaced from their homes. The Waki Commission released a report in October 2008, recommending that those responsible for the violence be tried by the international community. Following this, in 2010, after the government was given a year to instigate domestic investigations, the International Criminal Court (ICC) opened an investigation

Following the violence, a power sharing agreement was signed between President Kibaki, and the leader of the opposition, Raila Odinga, which had the effect of significantly altering the institutional makeup of Kenya by creating an office of Prime Minister, to which Mr Odinga was subsequently appointed. Kenya got its Constitution in 2010, following a countrywide referendum. The new Constitution significantly reduced the scope of Presidential power by devolving power to the 47 political and administrative counties of Kenya.

In the first Presidential elections to follow the violence of 2007, a largely peaceful election was held in 2013. The outcome of the elections was challenged, but upheld by the Supreme Court, which confirmed the narrow victory of Mr Uhuru Kenyatta, the son of Kenya's first President, over former Prime Minister Odinga. In April 2013, the decision was taken to formally abolish the post of Prime Minister.

IV.I.II Election to the UN Human Rights Council

Kenya was one of five African countries that stood for election to the Council in 2012. Kenya's place on the Council was uncontested as five States stood for the five seats available for the African States.

Kenya received 180 votes and will serve on the Council from 2013 till 2015.

IV.I.III Pre-Election Pledges

Before its election to the Council, Kenya made specific pre-election pledges in relation to advancing human rights at the regional, international and domestic levels.

Summary of key pledges:

Advancing human rights at the regional and international levels

- Kenya pledged to continue to play an active role in the mediation and resolution of conflict in Africa.
- Kenya undertook to pursue a policy of promoting and protecting human rights at the United Nations.
- Kenya committed itself to strengthening its working partnership with the United Nations and other intergovernmental organisations in order to further development and human rights goals.
- Kenya promised to continue cooperating with the Special Procedures mechanisms.
- Kenya pledged to honour all treaty reporting obligations.
- Kenya declared its full support for the Universal Periodic Review mechanism.

Advancing human rights at the national level

- Kenya declared that it would pursue a development agenda based on equitable social development founded on democracy, rule of law and respect for human rights and fundamental freedoms.
- Kenya pledged to continue to reform its judicial system, furthering the principles of equitable and timely access to justice, efficiency, effectiveness and coherency.
- Kenya undertook to continue strengthening its institutions of governance in order to further entrench respect for the rule of law.
- Kenya affirmed its commitment to play a role in ensuring the safety and protection of refugees in the country.

IV.II Voting Patterns and Performance at the Council

IV.II.I 22nd Regular Session (25 February – 22 March 2013)

Kenya did not take the floor to make any statement during the debates of this session.

During the session Kenya **voted in favour** of the following resolutions:

- Resolution on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation;
- Resolution on the composition of the staff of the Office of the High Commissioner for Human Rights;
- Resolution on the situation of human rights in the Syrian Arab Republic;
- Resolution on the right of Palestinian people to self-determination;
- Resolution on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem;
- Resolution on follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem;
- Resolution on the intergovernmental working group on the effective implementation of the Durban Declaration and Programme of Action;
- Resolution on the open-ended intergovernmental working group to consider the possibility of elaborating an international framework on the regulation, monitoring and oversight of activities of private military and security companies; and
- Resolution on education as a tool to prevent racism, racial discrimination, xenophobia and related intolerance.

Kenya **voted against** the creation of a high-level panel to discuss the question of the death penalty.

Kenya **abstained** from voting on the following resolutions:

- Resolution on human rights in the Occupied Syrian Golan;
- Resolution on promoting reconciliation and accountability in Sri Lanka;
- Resolution on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem and in the Occupied Syrian Golan;

- Resolution on the situation of human rights in the Islamic Republic of Iran; and
- Resolution on the follow-up report of the United Nations independent international fact-finding mission on the Gaza conflict.

The following resolutions were **passed without a vote** during the session as they did not face any opposition from any member of the Council:

- Resolution on the promotion and protection of human rights in the context of peaceful protests;
- Resolution on a panel on the human rights of children of parents sentenced to the death penalty or executed;
- Resolution on the situation of human rights in Democratic People's Republic of Korea;
- Resolution on the situation of human rights in Myanmar;
- Resolution on the contribution of parliaments to the work of the Human Rights Council and its Universal Periodic Review;
- Resolution on the promotion and protection of human rights in post-disaster and post-conflict situations;
- Resolution on assistance to the Republic of Mali in the field of human rights;
- Resolution on technical assistance for Libya in the field of human rights;
- Resolution the work and employment of persons with disabilities;
- Resolution on rights of persons belonging to national or ethnic, religious and linguistic minorities;
- Resolution on the question of the realisation in all countries of economic, social and cultural rights;
- Resolution on protection of human rights defenders;
- Resolution on birth registration and the right of everyone to recognition everywhere as a person before the law;
- Resolution on the protection of human rights and fundamental freedoms while countering terrorism: mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;
- Resolution on the right to food;
- Resolution on freedom of religion or belief;

- Resolution on torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims;
- Resolution on the prevention of genocide;
- Resolution on combating intolerance, negative stereotyping and stigmatisation, and discrimination, incitement to violence and violence against, persons based on religion or belief;
- Resolution on the rights of the child: the right of the child to the enjoyment of the highest attainable standard of health;
- Decision on Human Rights Council webcast; and
- Decision on enhancement of international cooperation in the field of human rights.

IV.II.II 23rd Regular Session (27 May – 14 June 2013)

Kenya did not take the floor during any of the debates of this session.

Kenya **voted in favour** of the following resolutions:

- Resolution on the effects of foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights;
- Resolution on human rights and international solidarity;
- Resolution on access to medicines in the context of the right of everyone to the enjoyment to the highest attainable standard of physical and mental health;
- Resolution on the promotion of the right to peace; and
- Resolution on the deterioration of the situation of human rights in the Syrian Arab Republic and the need to grant immediate access to the commission of inquiry.

Kenya did not **vote against** any resolutions during the Session.

Kenya **abstained** from voting on the resolution on the situation of human rights in Belarus.

Kenya was **absent** from the vote on the deteriorating situation of human rights in the Syrian Arab Republic, and the recent killings in Al-Qusayr.

The following resolutions were **passed without a vote** during the session as they did not face any opposition from any member of the Council:

- Resolution on technical assistance to Central African Republic in the field of human rights;
- Resolution on national policies and human rights;

- Resolution on the role of freedom of opinion and expression in women's empowerment;
- Resolution on the enhancement of international cooperation in the field of human rights;
- Resolution on the right to education;
- Resolution on trafficking in persons, especially women and children: efforts to combat human trafficking in supply chains of businesses;
- Resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers;
- Resolution on the elimination of discrimination against women;
- Resolution on the mandate of the Special Rapporteur on the human rights of internally displaced persons;
- Resolution on the negative impact of corruption on the enjoyment of human rights;
- Resolution on the promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity;
- Resolution on attacks and discrimination against persons with albinism;
- Resolution on national institutions for the promotion and protection of human rights;
- Resolution on the human rights of migrants;
- Resolution on the situation of human rights in Eritrea;
- Resolution on technical assistance to Côte d'Ivoire in the field of human rights;
- Resolution on strengthening technical cooperation and consultative services in Guinea;
- Resolution on technical assistance and capacity-building for South Sudan in the field of human rights;
- Resolution on accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence; and
- Decision on assistance to Somalia in the field of human rights.

IV.II.III 24th Regular Session (9 – 27 September 2013)

On 24 September 2013, during the high-level interactive dialogue on assistance to Somalia in the field of human rights, Kenya registered concern with respect to Somalia's ability to handle its security at home or abroad, as demonstrated by the terror attack in Nairobi. It also thanked delegations that had expressed sympathy in the wake of that attack. Other than this, Kenya did not take the floor during this session of the Council.

Kenya **voted in favour** of the following resolutions:

- Resolution on the right to development;
- Resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination;
- Resolution on a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance;
- Resolution on the impact of arms transfers on human rights in armed conflicts; and
- Resolution on human rights and unilateral coercive measures.

Kenya did not **vote against** any resolutions during this Session.

Kenya **abstained** from voting on the following resolutions:

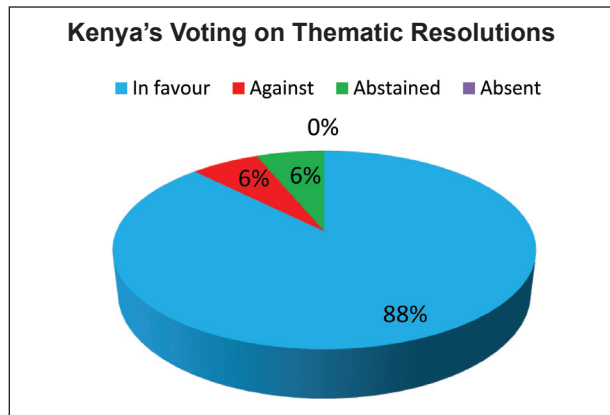
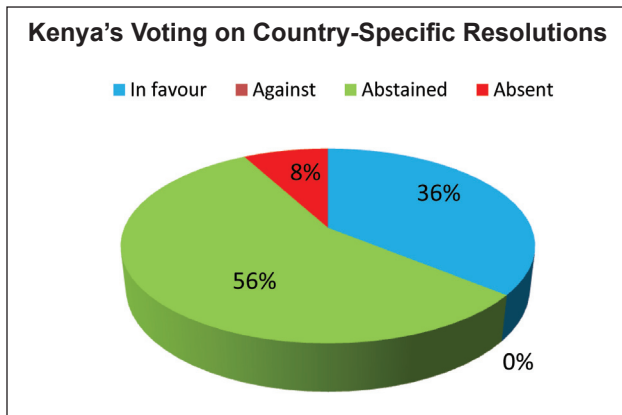
- Resolution on cooperation with the United Nations, its representatives and mechanisms in the field of human rights; and
- Resolution on the continuing grave deterioration of the human rights and humanitarian situation in the Syrian Arab Republic.

The following resolutions were **passed without a vote** during the session as they did not face any opposition from any member of the Council:

- Resolution on promoting human rights through sport and the Olympic ideal;
- Resolution on local government and human rights;
- Resolution on the Special Rapporteur on contemporary forms of slavery, including its causes and consequences;
- Resolution on the rights to freedom of peaceful assembly and of association;
- Resolution on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- Resolution on arbitrary detention;
- Resolution on equal political participation;
- Resolution on human rights and indigenous people: mandate of the Special Rapporteur on the rights of indigenous people;
- Resolution on human rights and indigenous people;
- Resolution on preventable mortality and morbidity of children under five years of age;

- Resolution on human rights in the administration of justice, including juvenile justice;
- Resolution on strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps;
- Resolution on the Social Forum;
- Resolution on technical assistance and capacity-building for human rights in the Democratic Republic of Congo;
- Resolution on technical assistance for the Sudan in the field of human rights;
- Resolution on advisory services and technical assistance for Cambodia;
- Resolution on assistance to Somalia in the field of human rights;
- Resolution on the enhancement of technical cooperation and capacity-building in the field of human rights;
- Resolution on technical assistance and capacity-building for Yemen in the field of human rights;
- Resolution on technical cooperation for the prevention of attacks against persons with albinism;
- Resolution on technical assistance to the Central African Republic in the field of human rights;
- Resolution on the World Programme for human rights education;
- Resolution on the role of prevention in the promotion and protection of human rights;
- Resolution on conscientious objection to military service;
- Resolution on the human right to safe drinking water and sanitation;
- Resolution on regional arrangements for the promotion and protection of human rights;
- Resolution on the human rights of older persons;
- Resolution on civil society space: creating and maintaining, in law and in practice, a safe and enabling environment;
- Decision on the postponement of renewal of the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context;

- Decision on a panel discussion on the safety of journalists;
- Decision on the establishment of a Special Fund for the participation of civil society in the Social Forum, the Forum on Minority Issues and the Forum on Business and Human Rights; and
- Decision on a high-level panel on the identification of good practices in combating female genital mutilation.



IV.III Core UN Human Rights Treaties

IV.III.I Ratification

Kenya is a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All forms of Racial Discrimination (ICEARD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and its optional protocol on the involvement of children in armed conflict and the Convention on the Rights of Persons with Disabilities (CDP).

Kenya has signed, but not ratified, the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography and the International Convention for the Protection of All Persons from Enforced Disappearance (CED).

Kenya has not signed the two Optional Protocols to ICCPR, the Optional Protocol to ICESCR, the Optional Protocol to CEDAW, the Optional Protocol to CAT, the Optional Protocol to CRC on a communications procedure, the Optional Protocol to CDP and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).

IV.III.II Reporting Obligations

Kenya has complied with most of its reporting obligations, although two reports are overdue.

Kenya has fulfilled its reporting obligations under ICCPR, ICESCR, ICERD, CAT, CRC and CDP.

Kenya has submitted seven rounds of reports to CEDAW, although its eighth report from 2005 is overdue. Kenya's first report under the Optional Protocol to CRC on the involvement of children in armed conflict was due in 2004 and remains due during the reporting period.

Kenya has not extended an open invitation to the UN Human Rights Council's Special Procedures.

IV.IV Human Rights in Kenya During the Reporting Period

Throughout 2013, **impunity** for extrajudicial killings and other serious human rights violations were issues of concern in Kenya. Shortly after the outbreak of violence following the Presidential elections in 2007, a Commission of Inquiry on Post-Election Violence (the Waki Commission) was established in February 2008 to investigate allegations of dereliction of duty, excessive use of force, extrajudicial executions and sexual violence including gang rape by police officers.⁶ By 2012, the Director of Public Prosecutions (DDP) claimed to have opened approximately 5,000 files, involving cases against members of the police department and the Ministry of Justice.⁷ According to the DDP, by the end of 2013, 500 of these cases ended in conviction.⁸ Despite these convictions, the low proportion of prosecutions was criticised by the Head of Kenya's Judicial Service Commission.⁹

During the reporting period, the ICC was actively investigating the situation which led to the post-election violence of 2007-2008. The trials of Deputy President Ruto and a well-known radio personality Mr Sang commenced in September 2013.¹⁰ In October 2013, a Kenyan journalist, Walter Osapiri Barasa, was accused of offering bribes to prosecution witnesses at the trial of Deputy President Ruto and a warrant for his arrest was issued.¹¹ The issue of the ICC trying high-ranking leaders has been controversial throughout the region. In September 2013, Kenya's parliament voted in favour of a motion to introduce a bill that would effectuate Kenya's withdrawal from the Rome Statute, the first time such a move has been proposed by a Member State.¹² The following month, the African Union passed a resolution that stipulated that no sitting African Head of State should appear before an international court.¹³

The Kenyan Truth, Justice and Reconciliation Commission created to investigate and recommend appropriate action on "human rights abuses" that occurred between 12 December 1963 and 28 February 2008 released its report in May 2013.¹⁴ One of its recommendations was the prosecution of senior government officials and politicians, such as the President and his Deputy, a Senator, Members of Parliament and senior military and police officers, for their involvement in the 2007-2008 post-election violence.¹⁵ The release of the report was plagued by irregularities; procedural requirements were not complied with and three of the Commissioners issued a joint statement of dissent on the grounds that their findings were altered before publication.¹⁶ Moreover, following publication Parliament passed a Truth, Justice and Reconciliation (Amendment) Act,¹⁷ which removed the obligation to implement all of the Commissions recommendations, and in its place creating an obligation to implement only the recommendations approved by the National Assembly.¹⁸

Impunity extended beyond accountability for past abuses to include isolated examples of **excessive use of force and extrajudicial killings** by the security services during the reporting period. The Kenya National Commission on Human Rights (KNCHR) and the Independent Medico-Legal Unit (IMLU) reported that between May and August, 120 people were shot dead by police in ambiguous circumstances and that these incidences had not been referred to the Independent Police Oversight Authority.¹⁹ Moreover, a database prepared by IMLU records 143 deaths as a result of police action in 2013.²⁰ Of those, the database alleges that 98 were summarily executed, 15 shot to protect life and 30 were unexplained. Examples of allegations against the security services include using excessive force to disperse a peaceful gathering, using batons, dogs and tear gas on unarmed lawyers and members of civil society.²¹ A similar incident occurred on 30 March where police officers allegedly killed five people and injured 24 others in Kisumu when residents

protested against the court decision that confirmed Uhuru Kenyatta's victory as President.²² On 4 October, four people, including a prominent Muslim cleric, Sheikh Ibrahim Ismail, were killed by unknown gunmen, resulting in several protests against the security forces who were accused of conducting the assassinations as part of the war on terror.²³ Two weeks later, two pastors were killed in separate incidents in Mombasa.²⁴ Following these incidents the European Union urged Kenyan authorities to fully investigate allegations of extrajudicial killings in the country.²⁵ It is reported that since its establishment in 2012, the Independent Policing Oversight Authority has received more than 1,000 complaints, but only 27 of these have been concluded.²⁶

In May, the attorney general proposed amendments to the National Police Service Act (NPSA) of 2011²⁷ and the National Police Service Commission Act of 2011.²⁸ The legislation, if adopted, would give the Inspector General of Police far-reaching powers over recruitment, promotion and discipline of police officers²⁹ and diminish the external oversight powers of the National Police Service Commission. Moreover the legislation vested the President with the power to recruit the Inspector General of Police, thereby undermining the operational independence of the office, as protected by the Constitution.³⁰ Other worrying proposals included provisions that could potentially allow an extension to the incidences where the use of firearm would be sanctioned.³¹ The proposed amendments were incompatible with international standards³² and provoked condemnation by civil society organisations. The legislation was not tabled in 2013 and has subsequently been amended.

Kenya continued to be affected by **terrorist attacks**. On 21 September 2013 the Westgate shopping mall in Nairobi was attacked.³³ The attack lasted four days and was attributed to the terrorist organisation, Al-Shabaab. At least 67 people died during the incident.³⁴ Such attacks may have contributed to the climate of **racism**, abuse and mistrust towards people of non-Kenyan origin within the country during 2013. The security forces allegedly targeted with impunity ethnic Somalis, particularly in northern Kenya.³⁵ Human rights groups claimed that following a separate attack by suspected Al-Shabaab supporters, security forces used excessive force, torture, rape, arbitrary detention and extrajudicial executions against civilians of Somali descent.³⁶ Moreover, Human Rights Watch denounced the paramilitary wing of the police, the Kenyan General Service Unit, for a similar list of abuses against 1,000 refugees in the Eastleigh neighbourhood of Nairobi between mid-November 2012 and late January 2013.³⁷ Negative attitudes towards refugees were advanced by members of the government linking such communities to the threat of terrorism. The Interior Cabinet Secretary, Joseph Ole Lenku, in October 2013 stated that the country's refugee camps were havens for Somali extremists and called on hundreds of thousands of refugees to return home.³⁸

According to figures released in November 2013 by the UN High Commissioner for **Refugees** (UNHCR) there were a total of 474,483 Somali refugees in camps in Kenya. Somalis make up the largest population group of Kenya's refugees.³⁹ Other refugee groups are mainly from Ethiopia and South Sudan.⁴⁰ In December 2012, the Government of Kenya announced a directive obliging all urban registered refugees and asylum seekers to relocate to the Dadaab and Kakuma camps.⁴¹ A challenge to this directive was concluded on 26 July 2013, when the High Court ruled that the directive was a threat to the rights and fundamental freedoms of the petitioners and other refugees residing in urban areas. The judges described the directive as a violation of the right to freedom of movement, the right to dignity and the State's responsibility towards people in vulnerable situations.⁴² A further positive development that occurred during 2013 was the tripartite agreement signed in November between UNHCR, the Government of Kenya and the Government of Somalia. The agreement established a legal framework and support for Somali refugees in Kenya who might eventually wish to return to Somalia.⁴⁴

Internally Displaced Persons (IDPs) continued to be marginalised during 2013. Persons displaced as a result of the 2007-2008 post-election violence continued to lack any sustainable resettlement solution.⁴⁵ A challenge to the government's response to this population was the subject of ongoing litigation in the High Court during the reporting period.⁴⁶ Inter-community conflict also added to the IDP population during the reporting period.⁴⁷ It is reported that approximately 500,000 people were newly displaced in 2013 as a result of political, inter-communal and resource-based violence.⁴⁸ During the first months of 2013, nearly 1,000 families were forced from their homes in Baringo, a district in Kenya's northern Rift Valley, as result of a recurrent conflict between the local Tugen and Pokot communities.⁴⁹ The Kenyan Red Cross reported that inter-communal violence in the Moyale district caused internal and cross-border displacement of more than 38,000 people.⁵⁰ Sporadic inter-communal clashes between the Garre and Degodia communities in Mandera and Wajir counties also continued to lead to population displacement. As of December 2013, the Office for the Coordination of Humanitarian Affairs estimated that between 40,000 and 72,000 people remained displaced.⁵¹

Mass **forced evictions** represented another concern. In May 2013, in City Carton (Nairobi), the homes of nearly 400 families living in informal settlements and slums were demolished by groups of men armed with hammers, crowbars and machetes and accompanied by the police. The eviction left hundreds of people sleeping in temporary shelters and lacking access to adequate water and sanitary facilities. According to the police, the demolition was authorised by an order of the Milimani Law Court. However, in a study released in October 2013, Amnesty International reported that the Court order did not authorise the demolition of homes; it only allowed the confiscation of moveable property from two people against non-payment of rent. Amnesty International also reported that the residents were not offered effective remedies and that no investigation into the unlawful demolition of homes and destruction of property by private individuals was carried out. The District Commissioner denied any knowledge of the eviction.⁵² In 2013, residents of the Deep Sea informal settlement in Westlands (Nairobi) were also put at risk of eviction due to a road construction project implemented by the Kenya Roads Authority. If carried out, the eviction would affect an estimated 3,000 people. During the reporting period the community was not consulted on alternatives to evictions or resettlement options.⁵³

Despite the Constitution guaranteeing the **right to freedom of assembly** the government banned demonstrations and public meetings on a number of occasions during the reporting period, citing security concerns as justification. During the elections and the challenge to the election results, political rallies, meetings and demonstrations were banned and groups reported harassment and intimidation when gathering in public spaces.⁵⁴

Civil society in Kenya was at risk of harassment and violence during 2013. Illustrative examples of such incidences include a brutal assault on a human rights defender at the forefront of a campaign to challenge the constitutionality of Kenya's 1966 Irrigation Act;⁵⁵ the use of lethal force by a military officer against a human rights defender documenting the excessive use of force by the security services;⁵⁶ the murder of a prominent human rights lawyer;⁵⁷ the arrest of seven members of Bunge la Mwananchi (the People's Parliament) during a protest against a 16 per cent increase in value added tax (VAT);⁵⁸ and a fire in the home of a prominent human rights defender.⁵⁹ In addition to harassment and intimidation, legislative attempts demonstrated the strong momentum in Kenya to restrict the work of civil society organisations. In October 2013, the Kenyan Parliament proposed a Miscellaneous Amendment Bill,⁶⁰ which was reported as imposing restrictions on registration of civil society organisations, imposing a cap on the amount of foreign funds an organisation could accept and requiring all such funds to be channelled through a government body. Speaking publicly, Maina Kiai, UN Special Rapporteur for Freedom of Peaceful

Assembly and Association said: “The goal of this type of legislation is to silence civil society, to eliminate independent voices that might diminish their [government] authority, even if unwittingly.” In a welcome move, the Bill was rejected by the Kenyan Parliament in December.

Kenya was ranked 71st out of 179 countries in the 2013 Reporters Without Borders Press Freedom Index.⁶¹ Attacks, intimidation and threats against **journalists**, media establishments and editors critical of certain public officials undermined freedom of expression in Kenya. Between January and February 2013, 19 journalists received threats and one journalist was found dead under mysterious circumstances.⁶² Bernard Wesonga, a journalist with *The Star*, an independent daily newspaper, was found dead in his home in Mombasa on 30 March 2013. He had been investigating a story on the illegal shipment and sale of fertilizer.⁶³ A study commissioned by the Working Group on the Media, undertaken by the Media Council of Kenya that was released in May found that 50 per cent of the 282 participating journalists received threats more than once during their working life. Of these 50 per cent, 62 per cent claimed to receive at least one threat per month.⁶⁴

Moreover, two controversial bills passed in 2013 are expected to further restrict media freedom in Kenya. The Information and Communications (Amendment) Act, 2013⁶⁵ provides for the creation of a tribunal with the power to recommend revocation or suspension of journalistic accreditation, seize property and impose large fines on journalists and media organisations as a result of anonymous complaints. The Media Council Act, 2013 provides for the establishment of a Media Council of Kenya, which could function as a partially state-appointed tribunal to regulate and enforce codes of conduct and professional standards.⁶⁶ Implementation of these acts was suspended in early 2014 as a result of a constitutional challenge.⁶⁷

Corruption remained endemic in 2013, despite Kenya’s Constitution including measures for increased accountability and transparency.⁶⁸ Transparency International’s Corruption Perceptions Index 2013 ranked Kenya 136th out of 177 countries. During the reporting period, the understaffing and under-financing of the country’s judicial system directly impacted the prevalence of judicial and administrative corruption,⁶⁹ as did lack of accountability.⁷⁰ Transparency International reported in 2013 that Kenya had the 4th most corrupt police force in the world⁷¹ which makes it no surprise that only seven in a hundred Kenyans reported that they would make a corruption related complaint.⁷² However, in a potentially positive move, President Kenyatta launched a website for citizens to directly report incidences of corruption to his office, but it is too early to assess the impact of this initiative.⁷³

Gender-based violence remained a problem during the reporting period. In particular, the indifference shown by law enforcement personnel to allegations of sexual violence and the lack of criminalisation of spousal rape are matters of grave concern.⁷⁴ In May 2013, the High Court of Kenya ruled that the police had “unlawfully, inexcusably and unjustifiably” failed to respond to reports of systematic sexual abuse of 160 girls between the ages of 3 and 17 by various members of their community and ordered the police to re-investigate the allegations.⁷⁵ The Court issued a warning about the creation of a culture of tolerance around sexual assault.⁷⁶ Despite this judgement, six men accused of brutally raping a 16-year-old girl were released after being ordered to cut grass by local police. After international outcry on 2 November 2013, Kenya’s Chief Justice ordered immediate action and sent the matter to the National Council for the Administration of Justice.⁷⁷

Female genital mutilation remained widely practised, especially in rural areas, despite the adoption of a new law in September 2011 effectively banning the practice.⁷⁸ The United Nations Population Fund's most recent study released in October 2013 showed that 27 per cent of women aged 15-49 in Kenya had undergone some form of genital mutilation.⁷⁹

Carnal knowledge against the order of nature continued to be an offence in Kenya⁸⁰ as did "indecent practices between males, in public or private".⁸¹ Discrimination on the grounds of **sexual orientation and gender identity** (SOGI) was widespread during the reporting period. According to the Gay and Lesbian Coalition of Kenya (GALCK) there was an underreporting of acts of intimidation and aggression against members of the lesbian, gay, bisexual and transgender (LGBT) community during the reporting period, as a result of a perception of hostility from the police. Examples of such incidences reported by GALCK include: a homosexual man in Nairobi being sexually assaulted and struck on the head with a hammer; two men from the LGBT community in Mombassa, being slashed with a machete which caused the death of one of the men; and a series of physical attacks against transgender women, one of which was fatal.⁸²

Child labour remained a serious issue,⁸³ despite the Employment Act of 2007 prohibiting the employment of children under the age of 18 in the "worst forms of child labour" and setting the minimum age for light work at 13. During 2013, the Basic Education Act, 2013⁸⁴ was passed, reinforcing the right to free and compulsory basic education and stipulating penalties for parents who fail to send their children to school and employers who prevent a child from attending school.⁸⁵

IV.V Compliance

IV.V.I Compliance with Pre-Election Pledges

As part of Kenya's pre-election pledges, it had committed to actively promote and protect human rights internationally. However, Kenya was not amongst the most active Members of the Council in 2013. One particularly notable attribute of Kenya's membership during the reporting period was the country's silence during debates regardless of the topic of discussion and positions taken by other Member States. Kenya neither advocated for the advancement of human rights during these discussions, nor defended the principles of human rights while some States advocated for a restrictive approach by the Council. Aside from one statement in response to the terrorist attacks in Nairobi, the only verbal contribution that could be partially attributed to Kenya was during the statements presented on behalf of the African group. Kenya's inaction extended beyond silence, to include a failing to co-sponsor any resolution except those co-sponsored as part of the African group.

Kenya was however, an active voter during 2013, failing to vote on only one resolution. In terms of voting pattern, Kenya generally had a positive record in promoting respect for human rights through the Council's thematic resolutions, voting in favour of a wide range of resolutions. It is to be welcomed that the delegation, in general, supported the work of the Council on thematic issues of importance. The only example of Kenya voting against a thematic resolution was on the request for a high-level discussion on the question of the death penalty. As a country that retains the death penalty, Kenya's position is somewhat understandable, however the resolution in question merely called for a discussion on the question of abolition, and the sharing of best practice in this regard. Thus Kenya's vote only sought to thwart the progression of a legitimate discussion on a thematic human rights issue of importance.

Kenya's most alarming thematic position however was a decision to abstain from voting on a resolution that sought to respond to a threat to civil society. The resolution on cooperation with the United Nations, its representatives and mechanisms in the field of human rights sought to address the threat of a closing space for civil society at the UN. It affirmed the importance of ensuring that civil society has unhindered access to all mechanisms of the UN and that they do not experience reprisals as a consequence of cooperation with the UN. The Council, the Special Procedure Mechanism and the UPR all rely on cooperation with civil society for their success. By failing to support this obligation Kenya demonstrated its lack of commitment to protecting these mechanisms. The year 2013 was also a challenging one for civil society in Kenya. Attacks were frequent and there were attempts by the government to reduce the space for civil society domestically. By the end of 2013 Parliament had prevented the passing of a particularly restrictive Bill, it is therefore hoped that 2014 will see Parliament positively affecting Kenya's foreign, as well as domestic, policy with regards to civil society.

Moreover, despite Kenya's position on thematic resolutions its commitment to protecting human rights internationally is brought into question starkly by its position on country-specific resolutions. The delegation failed to assist the Council to respond to some of the most egregious violations of human rights and situations of conflict. Resolutions which Kenya failed to support included attempts to respond to impunity in Sri Lanka for human rights violations, the use of chemical weapons against civilian population in Syria, extending the mandate of the Special Rapporteur to Iran, illegal Israeli settlements in the occupied Palestinian territories and the limitations on civil

and political rights and persecution of human rights defenders and journalists in Belarus. Kenya demonstrated a clear unease with country-specific resolutions, as 2013 progressed. Despite not voting against any country resolutions Kenya failed to support all but one such resolution which was designed to demand access for the Commission of Inquiry into Syria.

An assessment of the prevailing human rights situation in Kenya during 2013 leads one to question the government's commitment to its pledge to protect human rights domestically. During the reporting period, fundamental freedoms came under considerable threat. Of particular concern were the measures designed to significantly reduce the space for civil society in Kenya. As with the measures linked to freedom of expression and external oversight of the police, the restrictive proposals led to a response by the democratic institutions. The measures that would have significantly restricted civil society were not approved by Parliament. Implementation of the restrictive media provisions was suspended by the higher judiciary while it reviewed the provisions and the amendments to police oversight and use of force, which met with considerable opposition, were not tabled. It can therefore be concluded that Kenya's institutional mechanisms are functioning to protect the populace, despite being placed under considerable strain.

Be that as it may, impunity for serious violations of human rights remained the norm, despite institutions working to address this. The higher judiciary ordered re-investigations and referrals in particular cases of inappropriate response by the police and the Truth Justice and Reconciliation Commission published a report on responding to human rights abuses. While the release of such a report provided the government with an opportunity to strengthen respect for the rule of law, this opportunity was not taken. None of the recommendations in the report were implemented during the reporting period. In fact, the only action Parliament took was to pass a Bill to enable Parliament to alter the recommendations that must be implemented. The failure to hold people to account for grave violations of human rights is perpetuating a culture of impunity within the country, and undermining respect for the rule of law, in direct violation of Kenya's pledge to entrench respect for the rule of law.

Kenya also failed to adhere to its pledge to actively protect refugees. Refugees continued to face harassment and abuse by the security services during the reporting period and a culture of mistrust and discrimination was perpetuated by government ministers' statements on the dangers posed by this community. Moreover, the extent of displacement in Kenya fails to demonstrate a commitment to a development process based on social equity and inclusion.

IV.V.II Country-Specific Recommendations

The year 2013 was the first of a three-year term for Kenya on the Council. While Kenya's position regarding thematic resolutions was on the whole commendable, there is scope for increasing compliance with the country's pre-election pledges. To that end, CHRI calls on the Government of Kenya to:

1. Engage actively in debates and discussions during Council sessions, in the spirit of advancing respect for human rights.
2. Consider all country-specific resolutions on their merits, and where appropriate assist the Council to respond to grave violations of human rights, through positive voting on country-specific resolutions.

3. Halt all attempts to limit the space for civil society domestically and to cooperate with the UN to ensure a safe and conducive environment for all human rights defenders.
4. Immediately cease all attempts to undermine the independence of the police service.
5. Actively prevent and respond to all abuses by the security forces, including allegations of extrajudicial executions, excessive use of force, torture, sexual violence and arbitrary detention by ensuring the operation of an effective, independent oversight mechanism that corresponds with international standards, to hold officers to account for abuse.
6. Prevent a culture of impunity from setting into the country by ensuring that all persons responsible for human rights abuse, including abuses that occurred during the post-election violence of 2007/2008 are held to account for their actions.

V. **Compilation of Recommendations**



**Easier Said
than Done**



V. **Compilation of Recommendations**

In the spirit of working together to ensure the realisation of Commonwealth values, as enshrined in the Commonwealth Charter and to comply with commitments to support the UN as enshrined in the Harare Declaration, the Singapore Declaration, the Nassau Declaration and the Trinidad and Tobago Affirmation of Commonwealth values, CHRI makes the following recommendations:

1. To the Commonwealth Heads of Government and Secretariat

- 1.1 CHRI recommends that before every session of the Council, the Secretariat produces a briefing on matters of importance to be considered at the upcoming Council session. The briefing should clearly indicate the minimal response required from all Commonwealth Members to be in compliance with Commonwealth values.
- 1.2 CHRI counsels Heads of Government to issue clear policy directions to set up a system of intergovernmental consultations before each Council session to adopt common Commonwealth positions where a consensus that corresponds with Commonwealth commitments and values has been identified.
- 1.3 CHRI calls on the Secretariat to review the stances taken by Commonwealth Members, following each session of the Council and to take action if stances have contravened Commonwealth values and brought the organisation into disrepute.
- 1.4 CHRI strongly encourages the Commonwealth to be proactive in securing support for strong country-specific initiatives and Special Procedure mandates which allow the Council to focus on human rights situations that require close and consistent attention from the international community.
- 1.5 CHRI recommends that the Secretary-General shares information with the United Nations High Commissioner for Human Rights on specific operational activities and outcomes of his Good Offices interventions in order to prevent duplication of work or misunderstandings regarding the level of Commonwealth engagement in a situation relevant to the work of the Council.
- 1.6 CHRI urges a close partnership between the Commonwealth Ministerial Action Group (CMAG), the Commonwealth Secretary General's Good Offices and the Council. In particular, where a UN expert is in a position to brief CMAG on a Commonwealth country of concern, this should be facilitated.

- 1.7 CHRI encourages the Heads of Commonwealth governments to work towards the creation of a referral mechanism to the Human Rights Council. Such a mechanism would enable a chronic situation of human rights abuse occurring within the Commonwealth to be referred to the Council for consideration.
- 1.8 CHRI calls on the Commonwealth Heads of Government to state clearly in the Malta CHOGM communiqué practical steps to strengthen the Commonwealth's engagement with the Council. This is a vital step to implement Heads of Government's past promises to support the UN and to build positive international consensus on human rights issues.
- 1.9 The Human Rights Unit of the Commonwealth Secretariat is expected to provide technical assistance to Commonwealth countries to fulfil their obligations under the UPR process. However, CHRI notes that the Unit's level of resources is quite low and calls on Commonwealth Heads of Government to provide necessary resources, mandates and directions to the Human Rights Unit, so that it can build on its current efforts towards more comprehensive results.
- 1.10 CHRI recommends that the Commonwealth Heads of Government unequivocally welcome and support civil society involvement at the Council and with the official mechanisms of the Commonwealth. This would honour their own commitments made at several Commonwealth Heads of Governments meetings, which privilege the participation of civil society in governance at home and in the international arena.
- 1.11 CHRI urges the Commonwealth Secretariat to assist countries in forging effective and transparent civil society-friendly national human rights action plans. CHRI further urges the Secretariat to respond to in-country developments that have the potential to negatively impact the operation or safety of civil society and human rights defenders.
- 1.12 CHRI reiterates its call to consider the need to appoint an independent Commonwealth expert advisor on human rights, as recommended by the Eminent Persons Group and the Commonwealth Human Rights Initiative in their report to the 2013 CHOGM. Such an expert could work in close collaboration with relevant UN bodies, support the formulation of positive Commonwealth-wide positions and monitor the performance of Commonwealth Members at the Council.
- 1.13 CHRI notes the large volume of discussions, debates and resolutions at the Council that directly relate to Commonwealth values. CHRI urges the Secretariat to work with its Members to build consensus in order to secure a unified, positive Commonwealth position on such matters.

2. To all Commonwealth Council Members

- 2.1 CHRI urges all Commonwealth Member States to base their participation at the Council solely on human rights considerations and to abjure from all other considerations, which have the effect of weakening adherence to human rights and impugning and dishonouring commitments made at Commonwealth fora.
- 2.2 CHRI calls on Commonwealth Council Members to support strong country-specific initiatives and Special Procedure mandates which allow the Council to focus on human rights situations that require close and consistent attention from the international community.
- 2.3 CHRI recommends that Commonwealth Member States desist from any attempt to undermine the work of civil society, both internationally and domestically. All Commonwealth Member States have acknowledged the importance of the work of civil society, as confirmed in the Commonwealth Charter. They are therefore obliged to ensure a safe and conducive working environment for these organisations and support Council initiatives which further these objectives.
- 2.4 CHRI calls on Commonwealth Members to support human rights defenders who engage with the Council and to desist from undertaking any form of reprisal for such engagement.
- 2.5 CHRI urges Commonwealth Council Members to support the Office of the High Commissioner for Human Rights and other affiliated mechanisms, such as the Special Procedures, the Advisory Council, the Complaints Procedure and the Universal Periodic Review.
- 2.6 CHRI recommends that Commonwealth Council Members extend open invitations to the Council's Special Procedures, ratify all core international human rights treaties and submit timely reports to treaty bodies.
- 2.7 CHRI urges Commonwealth Members when standing for election to the Council to issue clear and quantifiable pledges. CHRI further calls on all Commonwealth Members to demonstrate tangible steps taken to comply with these commitments.
- 2.8 CHRI recommends that Commonwealth Council Members put in place credible national monitoring and oversight bodies that report independently on progress towards upholding their pre-election pledges.

- 2.9 CHRI calls on Commonwealth Council Members to adopt, or strengthen and implement legislation that promotes human rights and public participation, in particular, access to information, freedom of speech, expression and association laws that enables citizens to effectively participate in human rights policymaking processes associated with the Council.
- 2.10 Finally, CHRI urges Commonwealth Council Members to participate actively at the Council and minimise absences and silences during sessions.

3. To the Government of Kenya

- 3.1 Engage actively in debates and discussions during Council sessions, in the spirit of advancing respect for human rights.
- 3.2 Consider all country-specific resolutions on their merits, and where appropriate assist the Council to respond to grave violations of human rights, through positive voting on country-specific resolutions.
- 3.3 Halt all attempts to limit the space for civil society domestically and to cooperate with the UN to ensure a safe and conducive environment for all human rights defenders.
- 3.4 Immediately cease all attempts to undermine the independence of the police service.
- 3.5 Actively prevent and respond to all abuses by the security forces, including allegations of extrajudicial executions, excessive use of force, torture, sexual violence and arbitrary detention by ensuring the operation of an effective, independent oversight mechanism that corresponds with international standards, to hold officers to account for abuse.
- 3.6 Prevent a culture of impunity from setting into the country by ensuring that all persons responsible for human rights abuse, including abuses that occurred during the post-election violence of 2007/2008 are held to account for their actions.

Annex - I

Links to Country Pledges

Pledges

Botswana: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/65/732&Lang=E

India: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/65/758&Lang=E

Kenya: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/546

Malaysia: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/64/765

Maldives: 2010 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/64/657
2013 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/359

Pakistan: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/486

Sierra Leone: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/531

Uganda: No written pledges are available.

Annex - II

Voting Records of Commonwealth Countries at the UN Human Rights Council in 2013

Key: “YES” = **A vote in favour**
 “NO” = **A vote against**
 “ABST” = **Abstention**
 “-” = **No vote cast**

I. 22nd Regular Session (25 February – 22 March 2013)

Resolution	Asian Group				African Group			
	India	Malaysia	Maldives	Pakistan	Botswana	Kenya	Sierra Leone	Uganda
Resolution on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on human rights in the Occupied Syrian Golan	YES	YES	YES	YES	YES	ABST	YES	YES
Resolution on the composition of the staff of the Office of the High Commissioner for Human Rights	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on promoting reconciliation and accountability in Sri Lanka	YES	ABST	NO	NO	ABST	ABST	YES	NO
Resolution on the situation of human rights in the Islamic Republic of Iran	ABST	ABST	YES	NO	YES	ABST	YES	ABST
Resolution on the situation of human rights in the Syrian Arab Republic	ABST	YES	YES	YES	YES	YES	YES	ABST
Resolution on the follow-up of the report of the United Nations independent international fact-finding mission on the Gaza conflict	YES	YES	YES	YES	YES	ABST	YES	YES

Resolution	Asian Group				African Group			
	India	Malaysia	Maldives	Pakistan	Botswana	Kenya	Sierra Leone	Uganda
Resolution on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem and in the Occupied Syrian Golan	YES	YES	YES	YES	YES	ABST	YES	YES
Resolution on the right of Palestinian people to self-determination	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on the follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on the intergovernmental working group on the effective implementation of the Durban Declaration and Programme of Action	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on open-ended intergovernmental working group to consider the possibility of elaborating an international framework on the regulation, monitoring and oversight of activities of private military and security companies	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on education as a tool to prevent racism, racial discrimination, xenophobia and related intolerance	YES	YES	YES	YES	YES	YES	YES	YES
Decision on the high-level panel discussion on the question of the death penalty	NO	NO	ABST	ABST	NO	NO	ABST	NO

II. 23rd Regular Session (27 May – 14 June 2013)

Resolution	Asian Group				African Group			
	India	Malaysia	Maldives	Pakistan	Botswana	Kenya	Sierra Leone	Uganda
Resolution on the deteriorating situation of human rights in the Syrian Arab Republic, and the recent killings in Al-Qusayr	ABST	YES	YES	YES	YES	-	YES	ABST
Resolution on the effects of foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on human rights and international solidarity	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on access to medicines in the context of the right of everyone to the enjoyment to the highest attainable standard of physical and mental health	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on the situation of human rights in Belarus	NO	ABST	YES	ABST	YES	ABST	ABST	ABST
Resolution on the promotion of the right to peace	ABST	YES	YES	YES	YES	YES	YES	YES
Resolution on the deterioration of the situation of human rights in the Syrian Arab Republic and the need to grant immediate access to the commission of inquiry	ABST	YES	YES	ABST	YES	YES	YES	ABST

III. 24th Regular Session (9-27 September 2013)

Resolution	Asian Group				African Group			
	India	Malaysia	Maldives	Pakistan	Botswana	Kenya	Sierra Leone	Uganda
Resolution on the right to development	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on cooperation with the United Nations, its representatives and mechanisms in the field of human rights	ABST	ABST	YES	ABST	YES	ABST	YES	ABST
Resolution on from rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on the impact of arms transfers on human rights in armed conflicts	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on human rights and unilateral coercive measures	YES	YES	YES	YES	YES	YES	YES	YES
Resolution on the continuing grave deterioration of the human rights and humanitarian situation in the Syrian Arab Republic	ABST	YES	YES	YES	YES	ABST	YES	YES

End Notes

- ¹ For more information on the Special Procedures of the Human Rights Council, please visit: [http://www.ohchr.org/ EN/ HRBodies/SP/Pages/Welcomepage.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx).
- ² For more information on the Human Rights Council Complaint Procedure, please visit: <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>.
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CHRI PROGRAMMES

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives there is a need for functional mechanisms of accountability and participation within the Commonwealth and its member countries. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to information and access to justice.

STRATEGIC INITIATIVES PROGRAMME

CHRI monitors Member States' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the United Nations, the African Commission for Human and Peoples' Rights and the Commonwealth. Ongoing strategic initiatives include: advocating for and monitoring the Commonwealth's reform process; monitoring the performance of Commonwealth countries at the United Nations Human Rights Council; engaging with the United Nations Universal Periodic Review process; advocating for the protection of human rights defenders and civil society space; and monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening. CHRI is also involved in monitoring the work of IBSA – the India, Brazil and South Africa Dialogue Forum – through a human rights lens. CHRI promotes civil society engagement with government on foreign policy issues with the aim of democratising this niche policymaking area.

ACCESS TO INFORMATION

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation and assists partners with implementation of good practice in relation to freedom of information. In relation to freedom of information, CHRI works collaboratively with local groups and officials, building government and civil society capacity, as well as advocating with policymakers. CHRI is active in South Asia, most recently advocating for a national law in Maldives and Pakistan; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to encourage interest in access to information legislation.

ACCESS TO JUSTICE

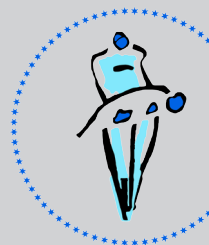
Police Reforms: In too many countries the police are seen as oppressive instruments of State rather than as protectors of the rights of citizens. This attitude is linked to widespread rights violations and the denial of justice. CHRI thus promotes systemic reform so that police act as upholders of the rule of law. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability and political interference with the police.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major focus area is highlighting and intervening in the failures of the legal system that result in systemic overcrowding, intolerably long pretrial detention periods and prison overstay. Another area of concentration is reforming failed prison oversight mechanisms. CHRI aims to improve the administration of prisons and is of the view that this will have a positive effect on the administration of justice overall.

The *Easier Said than Done* series of reports are designed to lift the mask on rhetoric at the United Nations Human Rights Council (the Council). The reports do this by assessing whether countries that are members of the Council are actively working, at home and in Geneva, to protect and promote human rights.

The 2013 edition of *Easier Said than Done* comprises a series of eight reports, each dealing with one Commonwealth Member of the Council: **Botswana, India, Kenya, Maldives, Malaysia, Pakistan, Sierra Leone and Uganda.**

Easier Said than Done identifies that human rights practices in a number of Commonwealth countries continued to be a cause for alarm in 2013. Yet the promises made by these States provided hope to the millions of citizens directly affected by the decisions and stances adopted by their leaders. A lack of focus on the implementation of these promises has allowed countries, unobserved by domestic watchdogs, to repeatedly thwart attempts to strengthen human rights protections. It is critical to alert the international community and domestic organisations to this tendency, in order to prevent the Commonwealth, not only from failing to comply with its values, but also from becoming a force for human rights regression on the global stage.



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