



CHRI

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NEWSLETTER

The Commonwealth is About Human Rights or it is About Nothing

Can The Perth Summit really strengthen the Commonwealth?



PERTH SKYLINE
Photograph: Steve

[For private circulation only]

The Commonwealth Human Rights Initiative (CHRI) is an independent international NGO mandated to ensure the *practical realisation* of human rights in the countries of the Commonwealth

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CHRI was founded in 1987 and is currently constituted by the

Commonwealth Journalists Association

Commonwealth Lawyers Association

Commonwealth Legal Education Association

Commonwealth Parliamentary Association

Commonwealth Press Union

and

Commonwealth Broadcasting Association

These founding organisations felt that while Commonwealth countries had both a common set of values and legal principles with which to work, they required a forum to promote human rights. It is from this idea that CHRI was born and continues to work.

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CONTENTS

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Editorial

CHOGM 2011: Breaking a Fall

R. Iniyar Ilango, Strategic Initiatives Programme, CHRI

Page 4

Cover Story

The Perth CHOGM

Richard Bourne, Senior Research Fellow, Institute of Commonwealth Studies

Page 6

Special Story

Breaking the Commonwealth Logjam Over Sexuality Issues

The Hon. Michael Kirby AC CMG

Page 8

The 18th Session of the UN Human Rights Council: A Sampling of Commonwealth Stances

Zachary Abugov, Strategic Initiatives Programme, CHRI

Page 11

Fact Sheet

Some Members of the Commonwealth...

Page 14

NHRIs and National Inquiries: Bringing Rights to the Fore While Going Back to the Roots

Sanyu Awori, Strategic Initiatives Programme, CHRI

Page 16

FAQs: Sri Lanka as the Host of CHOGM 2013

Page 18

Body Without a Soul: Human Rights Commission of Sri Lanka

Jennifer Kishan, Strategic Initiatives Programme, CHRI

Page 20

Feature

Right to Know the Commonwealth? Maybe Not

Michelle Gurung, Access to Information Programme, CHRI

Page 22

A Partnership for Human Rights: An Overview of CHRI's 2011 Report to CHOGM

Sanyu Awori and Jennifer Kishan, Strategic Initiatives Programme, CHRI

Page 24

CHOGM 2011: Breaking a Fall

R. Iniyan Ilango, Strategic Initiatives Programme, CHRI



PERTH SKYLINE
Photograph: Kirk Hille

Commonwealth Heads of Government Meetings are seldom more than ho-hum affairs. But this October's meeting at Perth may prove to be a make or break occasion for the organisation.

Sensing that its relevance and worth were being increasingly questioned, the last meeting at Trinidad and Tobago in 2009 decided to ask an Eminent Persons' Group (EPG) to outline reforms that would signal its future and reinforce the Commonwealth's *raison d'être*. Now at Perth; the Heads must decide whether to follow EPG's hundred or so recommendations entirely, some of them or none.

Thereport has barely whipped around official circles, and there are indications that its strong medicine will stick fast in the gullet of a very reluctant patient. Several progressive recommendations by EPG, such as the establishment of a Commonwealth Commissioner on Rule of Law, Democracy and Human Rights have alarmed governments who

have for decades managed to stall any kind of effective Commonwealth scrutiny of human rights violations and downgraded the organisation's ability to deal with them. The suggestion of such a mechanism that could undertake country specific scrutiny has led to acute discomfort and many threats of shattering the quiet and comfy club-like manner of Commonwealth negotiations by countries which claim that such "punitive" measures are not Commonwealth-like.

Yet, country specific scrutiny coupled with stringent action on erring member states is not a new concept for the Commonwealth. The organisation created the Commonwealth Ministerial Action Group (CMAG) in 1995 for precisely this reason and deliberately charged it with powers to recommend expulsion or suspension of states that seriously or persistently violated Commonwealth fundamental political values, including human rights and democracy. However CMAG's narrow self-interpretation of its mandate to mean action against only those

states that faced an unconstitutional overthrow of government is one of the major contributors to public disenchantment with the Commonwealth. The 2009 CHOGM had specifically asked CMAG to review its mandate and determine ways to implement it to the fullest remit.

The proposed Commissioner and a CMAG that acts robustly to fulfil its mandate are in fact the heavily delayed implementation of a scheme that was put in place sixteen years ago to follow up on an iconic declaration of Commonwealth values made twenty years ago at Harare. The new Commissioner recommended by EPG, will go a long way in helping CMAG realise its full mandate by being an independent spur and advisor. Currently, this role is played by the Commonwealth Secretariat which sees itself as politically accountable to member states, making it an uneasy player, fallible to the vagaries of geopolitics. An independent Commissioner will provide more robust support to CMAG, while shielding the Secretariat from the machinations of realpolitik interests.

The surges of clamour and clatter brought about by the Commonwealth's impotence before its own values, are likely to be further compounded by the looming spectre of Sri Lanka as the chosen host of the next CHOGM in 2013. It was supposed to be host this year, but the 2009 CHOGM deferred Sri Lanka's proposal to play host to 2013. In the nearly two years that followed the 2009 decision to postpone Sri Lanka as host, several horrific allegations have been made by UN and

international experts on Sri Lanka's human rights record and the state of democracy in the country. During the final months before the run up to Perth, the allegations have only become louder. But the Commonwealth, studiously oblivious to international concerns, has sailed silently towards CHOGM 2011 to face an issue that increasingly appears destined to become a monumental faux pas and may very well be the last nail on the organisation's coffin.

As an uneasy air of acrimony threatens to cloud Perth this month, Commonwealth governments are busy fumbling with strategies, procedures and technicalities – attempting desperately to mitigate, mask, sugar-coat, dilute and stage-manage difficult decisions as they suit each of their own political expediencies.

But in the end this expensive meeting of fifty-four Heads of Governments will require the Commonwealth to take a stand on these issues – Sri Lanka, appointing the Commissioner, a new Commonwealth charter, and a really effective CMAG. Pre-

CHOGM official meetings seem to indicate that the debates will split along the lines of the “old” and “new” Commonwealth, rather than along lines of principle. Quite typically also, no one will want a row but will prefer to reduce decisions to the lowest common denominator of clever compromise under that old veil of “consensus”. But however much dissensions are papered over, every decision will have its consequence and can end as much with a whimper as with a bang.



The Perth CHOGM

Richard Bourne, Senior Research Fellow, Institute of Commonwealth Studies, First Director, CHRI



Photograph: Ashwanikumar

The real issue before the Commonwealth summit in Perth, Australia, is whether its fifty-four member governments want this body to play a more important role in the world, or whether they will be accomplices in its continuing marginalisation. Few international organisations die or get killed: plenty just fade away.

Most unbiased students of international affairs would say that so far in the twenty-first century, the Commonwealth has done too little to justify its existence. This applies right across its core claimed commitments to democracy, the rule of law and human rights, as well as to the development of the majority of

its poor states and citizens. Its reaffirmation of values in Trinidad in 2009 has passed unobserved. Its rejig of subscriptions then merely strengthened the financial hold of the UK, Canada and Australia, at a time when economic power is moving across the globe, and a neo-colonial split between “developed” and “developing” is increasingly anachronistic.

The Perth summit will see the Australian government in the chair for the second time in a decade, with a report from the Eminent Persons Group (EPG) chaired by the former Malaysian Prime Minister, Abdullah Badawi. This will be the third serious attempt to modernise the Commonwealth

in thirty years. Attention will focus on its proposed Commissioner for Democracy, the Rule of Law and Human Rights, and its suggestion that there should be a Charter for the Commonwealth. Yet, equally important, are its proposals to raise the profile on development, radically overhaul the information service and, implicitly, increase the funds at the disposal of the Commonwealth.

Already a few governments, either afraid for their own records or worried that the Commonwealth may try to live up to its rhetoric, have been grumbling about the Commissioner. Although the remit looks dangerously wide and could be sabotaged in detail, the post does

have potential as an objective source of qualified advice to the Secretary-General and the Commonwealth Ministerial Action Group (CMAG, the rules body of Foreign Ministers). The Commonwealth Human Rights Initiative (CHRI) proposed a Human Rights Commission in 1991; a Human Rights Commissioner in 1993; and worked with the Commonwealth Policy Studies Unit which put forward a scheme for a qualified human rights adviser to CMAG in 2003. All bodies concerned for democracy, the rule of law and human rights will be looking closely at the remit, financing and independence of this new instrument. If properly established, it will need their help.

Although the host government is keen to see this Commissioner approved, the debate at Perth may turn on whether EPG is suggesting enough for development in return or may get caught in the backwash of a row about Sri Lanka's suitability to host a summit as soon as 2013. One possible compromise might see the Commissioner required to visit Sri Lanka soon after his or her appointment.

The Commonwealth Fund for Technical Cooperation is now very tiny, and in recent years the small Commonwealth Secretariat has found it difficult to play a persistent, catalytic role in development; a strong statement from Perth could be carried forward to the G20 meeting in Cannes, and the Commonwealth could take some initiatives on managing international migration,

as proposed by the Ramphal Commission on Migration and Development.

The idea of a Commonwealth Charter stems from Mr Badawi's success in launching a Charter for ASEAN. But early indications are that it would lack the rule-making quality of the UN Charter, be hortatory and aspirational (just like the Trinidad and Tobago Affirmation of Values), and its only possible benefit would be descriptive. The EPG suggests that it would be put together as a result of large-scale civil society consultations in all fifty-four countries which, though they might have the advantage of reminding citizens of the Commonwealth's existence, present organisational and financial challenges. The Commonwealth Foundation, which has just undergone a turbulent reorganisation, would need help to support such an exercise, and citizens would need persuasion to take part.

The EPG wishes to separate the civil society forum and its meeting with Foreign Ministers, which now take place during the week before the summit, to the year between summits. This idea was suggested earlier, and would break the myth that the Peoples Forum can have much last minute impact on the deliberations of the leaders. One of the problems with the short summit itself is that its agenda is crowded anyway and with so much other international activity, it has lost the convivial if

often argumentative quality that distinguished the Commonwealth in the past.

But the crucial question remains: Do its key nations want the Commonwealth to do more? It is a major disappointment to the hosts that India, so important in global economic and political evolution, will not be represented by its elderly Prime Minister, Manmohan Singh. He has prioritised attendance at G20 and SAARC summits instead. This exemplifies the manner in which the Commonwealth is out-competed. Those leaders who do go to Perth will have to do more than just approve the EPG report, and perhaps look again at the way future Secretaries-General are recruited, if Commonwealth summits are to become "must go" events in future.

In 1999, Derek Ingram, doyen of journalistic commentators on the Commonwealth, wrote in a report for CHRI stating that "the Commonwealth is about human rights or it is about nothing". Since then there have been several setbacks for those, like myself, who took heart from the 1991 Harare Declaration and the pioneering Commonwealth Ministerial Action Group. Both with the Commissioner and CMAG there is a chance now in Perth to take the Commonwealth forward once more. But if it fails, in an abyss of realpolitik, much Commonwealth rhetoric will disappear forever.

Breaking the Commonwealth Logjam Over Sexuality Issues

The Hon. Michael Kirby, AC CMG



The whole world knows that the Commonwealth of Nations has a problem securing action on the legal issues of sexual orientation and gender identity.

It is a specific Commonwealth problem, let there be no mistake. Of about eighty countries of the world that still criminalise same-sex adult, private, consensual conduct, more than half (forty-one) are members of the Commonwealth. Given that there are fifty-four Commonwealth countries in total, it means that three-quarters of them still impose

criminal penalties on gay people. The fact that such laws exist leads to stigma, discrimination and violence and extensive personal misery.

In the last year, there have been a considerable number of reports of physical and verbal violence in several Commonwealth countries including: Cameroon, Ghana, Jamaica, Malawi and Uganda. Although all of the original Commonwealth countries have abolished such laws (UK, Canada, New Zealand, Australia and South Africa) and India has witnessed

a strong court decision [*Naz Foundation v Delhi* (2009)] holding them unconstitutional, most of the “New Commonwealth” has ignored or rejected reform. This includes even modern Singapore, where a Law Society committee recommended change, but a bill was defeated in parliament in 2008. So how do we move the logjam so that the river of reform begins to flow again?

It will not happen just because proponents of change feel angry, heap abuse on opponents and jump up and down. Nor will it happen because other countries of the Commonwealth have changed their laws. I know this because I saw a similar movement for reform earlier. I witnessed changes in my own country, Australia. They came about, for example, in the area of racial discrimination. It took several years. But the process was definitely helped by the strong voice of leadership from the Commonwealth Heads of Government addressed directly to apartheid South Africa – and inferentially also to Australia and other “settler” countries.

Till 1966, Australia observed the “White Australia” policy. This totally excluded non-Caucasian immigration. We were especially frightened of the Asian “yellow peril”. We even imposed constitutional restrictions on our Aboriginal people, partly repaired

by a referendum in 1967 that changed the Constitution. Till 1992, Australians did not recognise the claim of indigenous peoples to legal recognition of their traditional lands. This reform first came about by a court decision in the Mabo case. It reversed 150 years of discriminatory land law. Australians are still by no means perfect on racial matters, as recent controversies over refugee boat arrivals demonstrate. Still in my lifetime I have witnessed a major change for the better. It came about

blindness of Commonwealth leaders to the similarities between racial and sexual apartheid, what can we do as citizens to hasten change, apart from shouting denunciation, marching in the streets and demanding equal rights? True, big demonstrations in Australia and New Zealand, usually associated with rugby or cricket matches, played a part in capturing the attention of the general population, even if at the time, the sports-obsessed public were upset with the demonstrators.

this is a peculiar British legacy. It is ours, in the Commonwealth, to deal with. But we are making heavy weather and very slow progress.

Especially ironic is the fact that the new Commonwealth leaders who were so strong in denouncing racial discrimination in earlier decades, fail to see that discrimination on the grounds of sexuality is just the same. Bishop Desmond Tutu constantly points this out. But who is listening?

...this is a peculiar British legacy. It is ours, in the Commonwealth, to deal with. But we are making heavy weather and very slow progress.

by quiet persuasion, good example and some international pressure.

So it will be with sexual orientation. It faces, after all, a kind of sexual apartheid. It divides people into strict categories. It ignores their basic natures (sexuality not racial). It imposes harsh legal restrictions. It makes them second-class citizens. It denies them full entitlement as human beings in fundamental matters such as love, sex and identity.

Many people now forget that the original proponents of apartheid found biblical passages to support their evil regime. So it is with discrimination against gays. Passages from the scriptures are taken out of context and hurled in the face of gays. The Bible is used to whip up hatred and fear – just as I saw done on the grounds of race when I was a boy growing up in the Australia of the 1940s and 50s. If we are frustrated and impatient over the

In free societies, peaceful protests are a citizen's right. The Commonwealth of Nations constantly proclaims itself to be a "values-based" organisation. Its leaders repeatedly assert their dedication to universal human rights. So what can be done when they do not see, or choose to ignore, the cruel laws that remain in place from colonial days and are now one of the least lovely legacies of the old British Empire? Laws against gays were not a feature of other European empires. The French, Portuguese, Spanish, Dutch and Belgian empires did not have such laws and nor did their colonies. So

In the moves against apartheid, civil society organisations played a vital part. So this is where the Human Rights Initiative comes in. For years, CHRI has published my articles and those written by several others, calling for action in Commonwealth countries on sexual orientation reform, pointing out that this is a serious failure on the part of the Commonwealth. CHRI's voice, like the similar voice of the Commonwealth Lawyers' Association, has become stronger and more insistent about the urgent need for change. When I went to the Nairobi Commonwealth Law Conference in 2005, a reception

Especially ironic is the fact that the new Commonwealth leaders who were so strong in denouncing racial discrimination in earlier decades, fail to see that discrimination on the grounds of sexuality is just the same.

for LGBTQ advocates attracted only two attendees. They explained that others were afraid to come and stand up for their rights. Black people in apartheid could not easily pretend to be white. But LGBTQ citizens in many Commonwealth countries are expected to cover their faces with a kind of metaphorical whitener and pretend, all their lives, to be heterosexual. This must stop. It is not rational; it is not natural; and it is cruel and unkind; just as apartheid was.

Some Commonwealth countries such as Australia have already reformed their laws on sexual orientation. They can gently give the lead and example to others. It is a small minority who are the main focus of attention: only about 4 per cent who are exclusively homosexual throughout life. But the Aboriginals in Australia were never more than 2 per cent. And the Jews in Nazi Germany were 2 per cent. And 4 per cent of gays in a Commonwealth of over 2 billion people are a large number of human souls hiding in the shadows of fear.

I welcome CHRI's call for action on decriminalisation of same-sex conduct. Eliminating the criminal laws is the way to remove the worst aspect of the present logjam. Heterosexual people must ask themselves how they would feel if they were sent to prison simply for expressing their love in private to a consenting adult. Religious opponents of change need to catch up with emerging science. They tend to return to their scriptures which, Darwin showed, cannot forever defy objective knowledge.

Eliminating the criminal laws is the way to remove the worst aspect of the present logjam.

Now the Eminent Persons Group (EPG) has examined many issues of human rights in the Commonwealth. As its transparent process of preparing its report shows, it is lending support to the efforts of the strong civil society organisations that are the backbone of the Commonwealth. It proposes a Charter of Commonwealth values, expressed in the name of the people of the Commonwealth. It recommends structural reform to the institutions of the Commonwealth so that they take serious or persistent infringements of human rights more seriously. It is urging attention to vulnerable groups within the Commonwealth and new initiatives for women and for youth. Just as sexuality is a special Commonwealth problem, HIV/AIDS is also a similar problem. HIV/AIDS is twice as prevalent in Commonwealth countries as elsewhere in the world. This may be partially caused by the difficulty the Commonwealth has demonstrated in tackling issues of sex and sexuality frankly and openly. In the absence of a vaccine or cure for HIV, without doing this, it is virtually impossible to halt this Commonwealth problem. So in this context, giving attention to the discriminatory laws against Commonwealth citizens for no reason other than their sexual orientation, as the EPG recommends, should be a high priority for the Perth CHOGM. The lives of millions of our fellow Commonwealth citizens are at

stake. If the Commonwealth is truly a values-based organisation, it will act and repeal those foolish, ineffective and counter-productive laws quickly.

But how did we change our attitudes to race in Australia, I hear you ask? We listened to rational advocates for change. We met visitors, neighbours and friends from different races. We began to know our own indigenous peoples better. And we had some good political leadership on both sides of party politics.

This is what the Commonwealth needs right now. Good leadership based on its proclaimed values. If the Commonwealth could help to work a revolution and topple the apartheid regime in South Africa (reforming Australian attitudes in the process), we can change similar irrational prejudice against people based on their sexual orientation. As in the case of race, it is something people do not choose and cannot alter. This is why the Perth CHOGM and the EPG report present an important watershed for our unique global family. To break a logjam, one needs the movement of a few obstacles – and then many will move. Those concerned about HIV/AIDS and those dedicated to true equality and dignity for all people will hope that this change finally happens in Perth. And that the EPG report, with civil society support, will be a catalyst for a new era for all Commonwealth citizens. No exceptions. No more excuses.

The 18th Session of the UN Human Rights Council: A Sampling of Commonwealth Stances

Zachary Abugov, Strategic Initiatives Programme, CHRI



Source: UN Photo/ Jean-Marc Ferré

India and Botswana: Someone Old, Someone New

Two Commonwealth countries were elected to the Council this May – India and Botswana – and both took up their seats last month for the Council’s 18th regular session. Whereas India is a Council veteran – it held a seat from 2006 to 2010 – Botswana is a rookie. Both countries made some positive moves during the session, but India mainly regressed to its prior negative behaviour and Botswana showed that it is still finding its feet.

CHRI has monitored the performance of Commonwealth countries at the Human Rights

Council since the body was inaugurated in 2006. It releases reports periodically to compare performance against election pledges each country makes in anticipation of gaining a seat in the world’s most powerful and representative human rights body. Last May, both Botswana and India pledged to work towards ensuring the Council’s efficiency and effectiveness in its mandate to promote and protect human rights globally. One of the Council’s most potent instruments to that end is its ability to mount much needed international attention on rights-abusing regimes that might otherwise be politically avoided. Several country situations were discussed during the 18th session,

including those in Syria, Libya, Yemen and Belarus.

In its first ever regular Council session, Botswana made a few statements of note on country situations. It followed the general tide, criticising Syria and the outgoing regime in Libya. It called the situation in Syria an unfolding human rights and humanitarian catastrophe and said that the clear pattern of violations could amount to crimes against humanity. It went on to say that if Syria abdicated its responsibility to protect its own people, the international community must assume that responsibility. On Libya, Botswana expressed support for the Commission of Inquiry to

conduct full investigations in the country. One of the more positive points made by Botswana during the session was its strong statement on Belarus, pointing out a number of serious human rights violations around last year's election and the lack of access given by Belarus to the Office of High Commissioner for Human Rights (OHCHR). Botswana was the only African

Human Rights to collect and verify information because it had no office in the country. In reality, it was impossible to collect information, because Belarus did not cooperate with OHCHR by refusing access to the country while the report was being prepared, which India did not mention. Likewise on Yemen, India pointed out that the situation in the country was "complex" and

rights violations were ongoing in Libya and urged all parties in the Libyan conflict to cooperate fully with the Commission of Inquiry established by the Council's special session on Libya in February 2011.

Beyond these somewhat positive statements, India did make one very positive move during the Council session when it announced

Special procedures have made twenty-four requests for country visits to India including one from the Special Rapporteur on torture that dates back to 1993, without response from the government.

country to speak critically about the human rights situation in Belarus in frank terms. Botswana's record during its first session was tarnished early however, when it went out of its way to mention that the death penalty was legal in Botswana and that the General Assembly resolutions on the death penalty only called for a moratorium and should not be misconstrued as a prohibition. This statement, which was Botswana's first ever at a regular session, set a sour tone for the country's three-year term, despite later positive statements.

Whereas Botswana made several strong statements on country situations of dire concern, in most cases India's stances were limp, as usual. Referring to a report by OHCHR on the human rights situation in Belarus, India noted that it had challenged the Office of the High Commissioner for

that some of the assertions and allegations made in the OHCHR report on the human rights situation required further examination and verification. This tepid response is all India could muster to a situation that has allegedly seen the killing of hundreds of people by government security agencies and allied gunmen at largely peaceful protests.

India made better statements in response to the situations in Syria and Libya. On behalf of the India-Brazil-South Africa Forum, it expressed grave concern at the human rights situation in Syria, regretted that OHCHR was not granted access to the country for a fact-finding mission and called on the Syrian government to cooperate with a Commission of Inquiry established by the Council during its special session on Syria in August. Speaking on behalf of the same Forum, India noted that human

its decision to extend a standing invitation to the Council's Special Procedures. This is a welcome announcement, but it is inadequate. Special procedures have made twenty-four requests for country visits to India including one from the Special Rapporteur on torture that dates back to 1993, without response from the government. India must not use this announcement merely as a deflection of criticism; it must move quickly to operationalise the standing invitation and urgently expedite processing requests for visits to reduce the backlog.

Maldives: Punching Above Its Weight

Maldives has shown that being one of the smallest countries in the world, both in size and population, does not make it irrelevant on the world stage. A

case in point: the country was recently ranked among the most influential countries at the Human Rights Council in a Human Rights Watch report examining developments at the Council from June 2010 to June 2011.¹ Maldives was commended for take protective action collectively. During a dialogue on the human rights situation in Libya, Maldives put pressure on the National Transitional Council to conduct independent and impartial investigations into violations address, the representative from Maldives stated that Sri Lanka was undergoing a difficult transitional process from war to peace during which it needed support from the international community. Referring to the oft-criticised Lessons Learned

LLRC was roundly criticised and several large international civil society organisations – Human Rights Watch, Amnesty International, International Crisis Group – declined an invitation to testify before it, citing its “inadequate mandate...”

co-sponsoring several country-specific resolutions and voting in favour of every one of them. The single major blemish on Maldives’ record during that period, however, was its attitude towards Sri Lanka.

Maldives’ performance at the Council last month mirrored its behaviour in late 2010 and early 2011. While there was no major voting on country-specific resolutions at last month’s session – most country-specific resolutions were adopted by consensus – Maldives did make strong statements about situations of concern during the Council’s debates and dialogues. It made a strong statement about the human rights situation in Syria, stating that if a state failed to protect its population, as in Syria, then the international community had the responsibility to step in and

of human rights by all sides of the conflict, quickly implement international human rights treaties and engage constructively with international human rights mechanisms. On Yemen, Maldives called for the end of excessive use of force against civilians and averred that a transparent and meaningful process of political reform leading to free and fair elections was necessary.

Such exemplary statements were however tarnished by Maldives’ stand on Sri Lanka. Sri Lanka has mounted a wide-ranging public relations campaign at the UN to counter criticism of, and calls for, international investigations into its conduct during the final stages and aftermath of its decades-long conflict against the Tamil Tigers. Maldives was co-opted – along with a few of the usual suspects at the Council who deflect attention from rights-abusing states: China, Pakistan, Algeria – to tow Sri Lanka’s line. In its opening

and Reconciliation Commission (LLRC) that has yet to complete its report, it went on to say that steps taken by Sri Lanka to deal with the past and to strengthen human rights in the future, continued to be met with disbelief and criticism. LLRC was roundly criticised and several large international civil society organisations – Human Rights Watch, Amnesty International, International Crisis Group – declined an invitation to testify before it, citing its “inadequate mandate, insufficient guarantees of independence, and lack of witness protection.”²

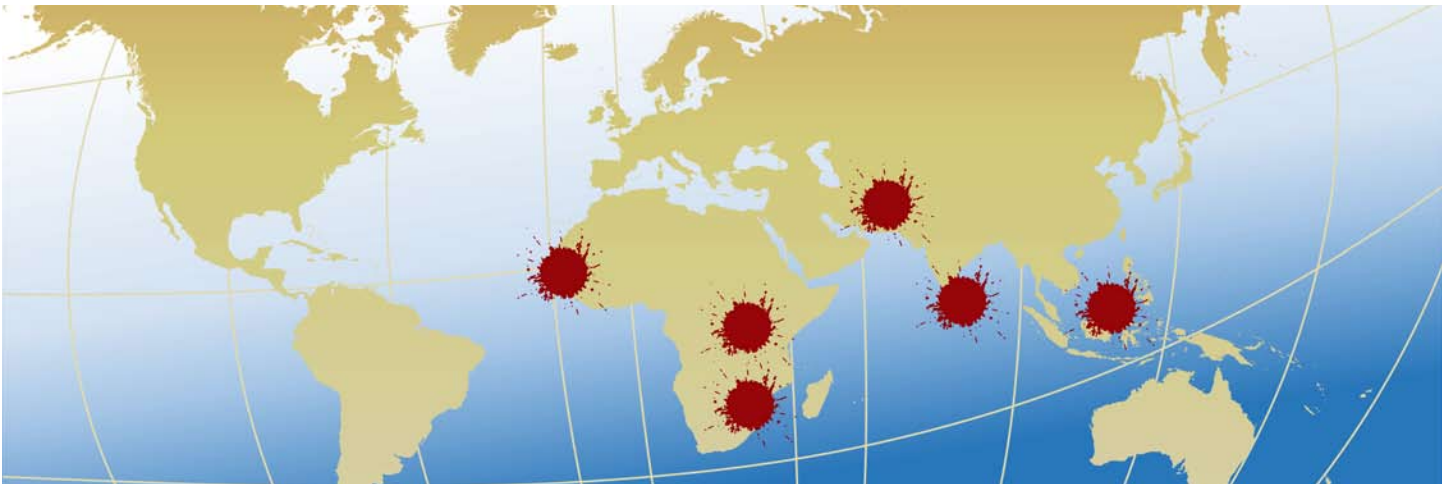
CHRI hopes that Maldives will continue to be an active participant at the Council, but warns that it will never be truly seen as a Council leader till it rectifies its selective blindness on Sri Lanka.

1. Human Rights Watch (September 2011), Keeping the Momentum: One Year in the Life of the UN Human Rights Council: <http://www.hrw.org/sites/default/files/reports/hrc0911ForWeb.pdf>.

2. Amnesty International (September 2011), Sri Lanka: When will they get justice? Failures of Sri Lanka’s Lessons Learnt and Reconciliation Commission: <http://www.amnesty.org/en/library/info/ASA37/008/2011/en>.

Some Members of the Commonwealth...

The Commonwealth prides itself as an organisation based on values such as human rights and democracy. The following is a profile of some of its members who clearly don't seem to share some of these values. This is not an exhaustive list but a random sampling that shows that Commonwealth mechanisms such as the Commonwealth Ministerial Action Group that is supposed to act on members who seriously or persistently violate the organisation's fundamental values are not functioning to meet the expectations of their mandate.



One of the world's few absolute monarchies, Brunei Darussalam has been ruled by the same family for 600 years. Succeeding sultans have ruled Brunei under emergency powers since 1962, which have allowed them to govern with few limits on their power. A number of overly restrictive laws from the colonial era relating to the press, sedition and internal security are

still on the books. Due to large reserves of fossil fuels, Brunei has one of the highest GDP per capita in the world and the royal family is regularly ranked among the world's wealthiest. While Brunei heralds itself as a politically stable country, the inability of its citizens to choose their leaders shows that the country is out of step with one of the Commonwealth's most fundamental values: democracy.



The Gambia has been a Commonwealth hotspot for some time. President Jammeh seized power in a military coup in 1994 and has since periodically made international news with outrageous statements and oppressive behaviour. Of most concern to CHRI was Jammeh's statement in September 2009 when he made death threats to human rights defenders on television. "If you think that you can collaborate with so-called human rights defenders, and get away with it, you must be living in a dream world. I will kill you, and nothing will come out of it...We are not going to condone people posing as human rights defenders to the detriment of the country. If

you are affiliated with any human rights group, be rest assured that your security, and personal safety would not be guaranteed by my Government. We are ready to kill saboteurs.” Jammeh did not attend the 2009 CHOGM in Trinidad and Tobago, perhaps because of international outrage around his statement. Since 2009, Jammeh has continued to make statements which contradict The Gambia’s international human rights commitments, and especially its membership of the Commonwealth, which has democracy and human rights as its most central values. In 2010 he reportedly said: “Whether you like it or not, no coup will end my government, no elections can end my government. By God’s grace I will rule this country as long as I wish and choose someone to replace me.” Beyond these inflammatory statements, Jammeh’s government is extremely restrictive towards human rights defenders and journalists. He has been accused of being complicit in the murder of a journalist in 2004 and the enforced disappearance of another journalist in 2006.



Pakistan has been twice suspended from the Commonwealth. It was most recently readmitted in 2008 after former President Pervez

Musharaff agreed to step down as army chief and implement democratic reforms. Despite its re-admittance, the human rights situation there has seen little improvement. The ability of Pakistan to guarantee the rights and safety of citizens who stand up for human rights and democracy has especially been called into question. One egregious example of this can be found in the poisonous discourse that surrounds the country’s anti-blasphemy laws, which are widely abused to target minorities. Opponents of the law have faced threats, intimidation, abuse and even murder. For example, Salman Tasveer, the Governor of Pakistan’s Punjab province, was murdered by his bodyguard for opposing anti-blasphemy laws. Pakistan’s armed forces and intelligence agencies operate without any real civilian oversight, which affords them near total impunity. Journalists who criticise the government, the armed forces or the intelligence agencies have been a regular target of violence. According to the Committee to Protect Journalists, five Pakistani journalists have already been killed in 2011 because of their work.



There have been serious human rights concerns in Sri Lanka for decades, none have been more urgent than those arising from the end of the country’s civil war in 2009. Adding to the urgency is the fact that Sri Lanka is slated to host the 2013 CHOGM and, consequently, chair the Commonwealth for two years after that. This must not happen. The allegations against the Sri Lankan government are summarised in the report of the UN Secretary-General’s Panel of Experts on Accountability in Sri Lanka and they are damning. The Sri Lankan government is accused of killing civilians through widespread shelling, including of hospitals and humanitarian objects; denying humanitarian assistance; perpetrating human rights violations against survivors of the conflict, including LTTE (Liberation Tigers of Tamil Eelam) cadre; and restriction of press freedom and intimidation of journalists. Since the Panel report’s release, Sri Lanka has unleashed a large-scale public relations campaign at the UN and other international fora, to counter criticism of its conduct during the war. The human rights violations have not ceased, nor has the erosion of democracy, which was accelerated by the passing of the 18th Amendment last year. The Amendment removes term limits for President Rajapaksa and gives him a vice-like grip over appointments to public commissions.

continued on page 27...

NHRIs and National Inquiries: Bringing Rights to the Fore While Going Back to the Roots

Sanyu Awori, Strategic Initiatives Programme, CHRI



Photograph: Ashwanikumar

No matter what the circumstances, motivations or intentions to establish a national human rights institution (NHRI) are, once it is created, there are high expectations for it to perform. While this is a daunting task, one means for an NHRI to fulfil its statutory duty, is to use national inquiries as a strategy to address gaps in human rights protection.

Through a national inquiry, an NHRI can gather evidence from a wide set of actors, including victims, to investigate and publicly analyse the state of human rights on the ground.

National inquiries are not necessarily intended to address individual

allegations of human rights abuse, but instead can unveil systemic violations. Using witness testimony, public hearings, field research and consultations with public and private stakeholders, an NHRI can publish a report with a set of recommendations on how to improve human rights conditions. This evidence-based approach is used as an advocacy tool to push policymakers, particularly government, to respond and redress systemic failings. The public nature of a national inquiry also makes it an effective medium to sensitise and educate the wider public about human rights issues and increase the visibility of the NHRI to broad cross-sections of the society.

Across the Commonwealth, NHRIs have employed national inquiries to tackle a wide range of rights. For example, spurred by civil society reports of the devastating situation of sexual and reproductive health care in the country, the Kenya National Commission of Human Rights (KNCHR) commenced an inquiry in June 2011 to investigate the state of sexual and reproductive health rights. Through the use of regional public hearings, consultations with stakeholders and field visits, it prompted national dialogue on prevalent inequities and injustices in sexual and reproductive health services.

In its inquiries, KNCHR used resources from specialist organisations already tackling deficiencies in sexual and reproductive health care. Such civil society involvement enhances the process of a national inquiry, as an NHRI can benefit from technical expertise and information that it may be unable to access otherwise.

A central purpose of an NHRI is to advocate for the practical implementation of human rights norms. In pursuant of this, NHRIs draft and amend legislation to conform to international human rights principles and standards. National inquiries can go a step further by using human rights standards to measure local practice. Thus, while the Kenyan Constitution entrenches the right

to health, the inquiry referred to regional instruments such as the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol). By taking a broad approach, anchored firmly in human rights obligations, an inquiry can elevate national human rights standards and practice.

The New Zealand Human Rights Commission, for example,

of human rights in farming communities. It engaged with civil society experts on the ground to gather information about abuses and encourage witness testimony from these farming communities.

The Australian Human Rights Commission (AHRC) regularly employs national inquiries to fulfil its mandate. Since the late 1980s, it has carried out inquiries on a host of diverse issues including

examined the root of the problems relating to native customary rights to land and recommend appropriate actions to address this issue. Suhakam is set to publish a report that outlines recommendations to the government to achieve short- and long-term practical solutions.

National inquiries are an effective way for an NHRI to advance the human rights agenda. They also act as a strategic means for it to

National inquiries are also a means to tackle the vulnerabilities of marginalised groups and communities.

conducted a national inquiry into the plight of transgender persons. The Transgender Inquiry received submissions from over 200 individuals, groups and organisations. It examined the discrimination experienced by transgender people, their access to health care services and the barriers to legal recognition of their identities. The inquiry culminated in the report, "To be who I am", that is used as an advocacy tool to increase human rights protection afforded to the transgender community in New Zealand. By providing transgender individuals and support groups a platform to articulate their concerns, the inquiry empowered the community to campaign against inequality and entrenched stigma.

NHRIs can work closely with civil society actors to receive evidence of human rights abuse during an inquiry. The South African Human Rights Commission (SAHRC) for example, launched inquiries to investigate the appalling conditions

racist violence, mental illness and homeless children. Their "Bringing them Home Inquiry" in 1995 for example, examined the forcible removal of indigenous children from their families. This inquiry served to increase public knowledge and raise societal awareness on the issue and its impact on indigenous communities. For the indigenous communities affected by the separation laws, policies and practice, the inquiry was cathartic and helped contribute to national reconciliation. The advocacy garnered from the inquiry's report, civil society campaigns and media attention resulted in the government announcing a \$63 million package and an additional \$54 million later, in support of indigenous communities and the stolen generation.

A national inquiry can also help to confront the underlying causes that lead to patterns of human rights abuse. The Malaysian Human Rights Commission, Suhakam, organised an inquiry into the land rights of indigenous peoples. The inquiry

engage with civil society actors to initiate national dialogue on pressing human rights concerns. This engagement takes different forms ranging from drafting terms of reference of an inquiry, consultation meetings and fora, field visits and public hearings all of which benefit from civil society expertise and networks.

CHRI recently launched its 2011 report to the Commonwealth Heads of Government Meeting (CHOGM): *A Partnership for Human Rights: Civil Society and National Human Rights Institutions*. It focuses on the relationship between civil society and NHRIs in the Commonwealth and illustrates how a strong partnership is a keystone for the effective protection and promotion of human rights, when heralded by international standards and best practice. The report demonstrates how collaboration and consultation have proved to be mutually enhancing and calls on the Commonwealth to champion NHRI-civil society engagement.

FAQs: Sri Lanka as the Host of CHOGM 2013

1. Q: Why shouldn't Sri Lanka host CHOGM 2013?

A: The Sri Lankan government has been implicated in egregious humanitarian law violations by international experts including a UN Panel of Experts appointed by the UN Secretary-General. Several reputed human rights groups have raised similar concerns and hold that the human rights situation remains dire in Sri Lanka. The Sri Lankan government has repeatedly resisted calls for independent international investigations into allegations of humanitarian law violations. Providing Sri Lanka a free pass to host CHOGM 2013 will amount to condoning violations in the country and is against the Commonwealth's fundamental political values of human rights and democracy.

2. Q: Sri Lanka has already formed a domestic inquiry into allegations; why not wait for the outcomes of that process before acting on Sri Lanka?

A: Sri Lanka's domestic mechanism, the Lessons Learnt and Reconciliation Commission has been found by international and UN experts as well as civil society groups to lack both an adequate mandate and the impartiality necessary for credible investigations.

The mechanism will submit its report in November 2011. By then it will be too late to prevent Sri Lanka from hosting CHOGM. Pinning hopes on an internationally discredited mechanism at the risk of losing



the Commonwealth's legitimacy is not acceptable.

3. Q: Why target Sri Lanka when all countries within the Commonwealth are imperfect? Why block a small island state's

first chance to host CHOGM when a large and developed Western player like Australia has held CHOGM thrice?

A: Sri Lanka's human rights situation is one of the most acute cases within the Commonwealth. The nature of entrenched impunity and a long history of unaccounted for and egregious human rights violations in the country makes it a special concern. The next CHOGM could be granted to another small developing country such as Mauritius, which offered to host CHOGM in 2011 and is to host CHOGM in 2015, as an alternative to Sri Lanka in 2013.

4. Q: CHOGM 2009 decided that Sri Lanka would host the CHOGM 2013. Wouldn't it be a major setback if the Heads of Governments re-open the decision?

A: The CHOGM 2009 actually deferred Sri Lanka's proposal to host the 2011 Meet to 2013. In the intervening years between the two CHOGMs there has been little progress in the ground situation in Sri Lanka. Heads of Governments can use their earlier precedent of deferral to set aside their decision to confirm Sri Lanka as the host of CHOGM 2013. Procedural setbacks such as re-

opening a decision cannot be weighed against the disastrous consequences of failing to uphold fundamental values by allowing Sri Lanka to host the CHOGM 2013.

5. Q: Why ask that CHOGM 2013 should not be held in Sri Lanka when there are two years left during which the situation in the country may change? Why not ask for conditions of improvement in the run up to CHOGM 2013?

A: Preparations for CHOGM requires considerable time. It will be impossible to change the venue at a later stage if Sri Lanka is found transgressing conditions. Sri Lanka also has shown little willingness to accept international conditions on its domestic human rights situation and thus there is almost no possibility that it would accept a Commonwealth condition.

6. Q: What will happen if CHOGM 2013 is held in Sri Lanka?

A: Endorsement of Sri Lanka as the host of CHOGM 2013 and the visit of fifty-four Heads of governments to the country will potentially amount to political apathy towards the human rights allegations Sri Lanka faces and may result in the condoning of such violations. The political clout Sri Lanka derives from hosting the meeting may be used to fend off all other international calls for

accountability at forums such as the UN Human Rights Council. Hosting CHOGM 2013 will also allow Sri Lanka to preside over the Commonwealth as its Chair till 2015. The risks and potential consequences of having a country that has been implicated in gross human rights violations Chair the organisation outweighs bleak possibilities of positive engagement.

7. Q: Would attempts not to grant CHOGM 2013 to Sri Lanka make the country work against any consensus on progressive Commonwealth reform proposals that are scheduled to be considered at CHOGM 2011? Would it be better to bargain with the country so that reforms are saved?

A: Bargaining with Sri Lanka on reform proposals is unrealistic. Some of the reform proposals under consideration ask for adequate scrutiny of members and Sri Lanka will resist such scrutiny as it has in other forums such as the UN. This stance was very recently made clear by the Sri Lankan External Affairs Minister after the Commonwealth Foreign Ministers Meeting in New York. Referring to proposals for adequate scrutiny of member states in fulfilment of past Commonwealth promises, the Minister stated that the inclusion of such “punitive” measures could cause a split in the

Commonwealth. [<http://www.mea.gov.lk/index.php/en/news-from-other-media/3038-commonwealth-could-split>]

This is a clear indication that bargaining with Sri Lanka on reforms can only lead to either watered down reforms or no reforms both of which are unacceptable.

8. Q: Why not use the opportunity to engage with the Sri Lankan government and allow international exposure to the situation in the country when hundreds of delegates visit it for CHOGM 2013?

A: The Sri Lankan government has been unwilling to engage with any international bodies that intend to bring about accountability for allegations of violations within the country. If CHOGM 2013 happens in Sri Lanka delegates will only see a stage-managed portion of the country, especially whitewashed for CHOGM. This was the case when the Cricket World Cup was held in Sri Lanka and is the current scenario where hundreds of tourists continue to travel to the country. The political clout Sri Lanka derives from hosting the meeting will be used to fend off all other international calls for accountability. Hosting CHOGM 2013 will also allow Sri Lanka to preside over the Commonwealth as its Chair till 2015. The risks and potential consequences of having a

continued on page 21...

Body Without a Soul: Human Rights Commission of Sri Lanka

Jennifer Kishan, Strategic Initiatives Programme, CHRI

Absolute power corrupts absolutely. With a Hobbesian predicament looming large over the Sri Lankan political landscape, the 18th Amendment introduced last year by the Mahinda Rajapaksa government has upset the balance between the state and the ruled and moved towards a more authoritarian form of government. Not only has the President's term been increased indefinitely, but the 17th Amendment, with its bid to depoliticise public administration, was annulled leading to even more concerns over diluting the powers of the police and the Election Commission. Sri Lanka is already on the international radar for gross human rights violations following the 2009 war, which have not found redress. Fresh human rights violations are further anticipated following the shrinking space of individual freedoms and democracy in the country. These concerns raise questions on the credibility and independence of the Human Rights Commission of Sri Lanka (HRCSL) and how well it plays its role as a protector and promoter of human rights during this critical time.

HRCSL has so far been a muted force in a circus at play. In its role as protector and promoter of human rights, it has failed miserably and does not appear to comprehend its pivotal position in the present circumstances. The new Amendment gives the Commission formal legitimacy in an obscure way, which makes unconstitutional, politicised appointments legitimate. The 18th Amendment has vested the President of Sri Lanka with powers to appoint the Chairperson and members of a flurry of commissions, HRCSL being one of them. The President may seek the observations of the Speaker, the Prime Minister, the Leader of the Opposition; two Members of Parliament each nominated by the Prime Minister and the Leader of the Opposition, when making appointments; this is not obligatory; it is only advisory in nature. Earlier, in the immediate

aftermath of the war, this lack of legitimacy inhibited civil society organisations (CSO) from engaging with the NHRI. Following this strange turn of events, civil society is trying to test the waters once again, by agreeing to engage with it, though with some scepticism. Engagement however can only be welcome when it is meaningful and substantial.

Engagement between civil society and national human rights institutions is not only good practice, it is essential to furthering the human rights agenda. Both have a considerable amount to contribute to each other's efforts and work. Creating formal platforms where NHRIs and civil society interact is considered international best practice in catalysing sustained engagement. Several of Sri Lanka's neighbouring NHRIs created NGO network forums to substantiate their efforts towards better engagement. The Sri Lankan NHRI is not far behind in following its south Asian counterparts, conducting national-level civil society forums as a part of the UNDP capacity building project – the Human Rights Joint Programme. Unlike other networks, HRCSL's civil society forums are ad hoc and may well dissolve on the conclusion of the UNDP project. At present, the more pertinent question remains: Is this is more or less a cosmetic exercise meant to avert international scrutiny and rope in donors?

The experience of the last one year has a lot to say for itself. The three meetings that took place under the UNDP project were only geared towards identifying common action plans for NHRI-CSO collaborations, while the issues and concerns that led to widespread dissent in civil society, preceding this engagement, were allegedly swept under the carpet. No appointments of the Commission's Executive Members were made in 2010, and all meetings were convened by the Commission's senior staff. HRCSL staff, we are

informed, appeared reluctant to engage with civil society except in this minimal manner, seeing no value for engagement on a regular basis. The forum meetings were allegedly held without much dialogue and follow-up meetings. The platform therefore does not seem to be viewed by the Commission as a forum to create more transparent, accountable and reviewable patterns of intervention. This is not surprising given the background to the situation. More often than not, formal platforms become merely box-ticking exercising leading to generic discussions and no follow-ups. The present scenario points at these very deficiencies, especially when they are viewed as the end of the road and not its beginning.

Earlier this year, the UN Secretary General's Expert Panels on Sri Lanka found credible allegations that the government may be involved in several human rights violations amounting to war crimes and crimes against humanity. In its overall exploration of the human rights situation, the panel found HRCSL weak and not independent enough to deal with the human rights situation. The panel saw the Commission as having potential but no political will or resourcefulness to bring the state to account for its human rights abuses. There are no quick-fix solutions to the absence of public confidence in this protection mechanism. This weak Commission, another body with its soul shanghaied, needs to step up and engage with civil society and rebuild its legitimacy by dealing with the present and the past. Robust measures need to be taken towards transforming Sri Lanka's embedded culture of impunity and bring about a sense of accountability towards the past. This requires continuous efforts towards transparency through amplified dialogue with civil society. Effectively using potent platforms such as civil society forums can generate substantial and effective engagement towards changing the course of the building wind of disapproval. Only then can a Commission such as this find public legitimacy and truly live up to the human rights values it promotes. Otherwise, with its declining significance, it is yet another pawn in the political checkmate.



...continued from page 19

country that is implicated in gross human rights violations far outweigh the miniscule possibility of positive engagement.

9. Q: Can Sri Lanka host any CHOGM at all?

- A: Sri Lanka should be confirmed as a host for a future CHOGM only after the Commonwealth Ministerial Action Group reviews the country's performance and is satisfied after assessing it against the following minimum benchmarks that require the government to:
- i. Ensure meaningful domestic implementation of the international human rights treaties to which the Government of Sri Lanka is party and bring all legislation in line with international human rights standards;
 - ii. Treat all people within Sri Lanka with dignity and respect as equals, while allowing them to live in an environment in which they enjoy all fundamental rights guaranteed by the Constitution of Sri Lanka and international human rights laws;
 - iii. Restore constitutional provisions that guarantee separation of powers and re-instate the independence of the three wings of government;
 - iv. Restore the independence of key government institutions, such as the National Human Rights and Police Commissions;
 - v. Institute effective mechanisms to protect journalists, civil society groups and human rights defenders who work for the promotion and protection of human rights;
 - vi. Support and cooperate with independent and credible domestic and international investigations into all allegations concerning violations of international humanitarian and human rights laws in the country, especially relating to the conduct of the armed conflict which ended in 2009; and
 - vii. Commit to collaborate with the Office of the UN Secretary-General and initiate the implementation of all recommendations set out in the report of the UN Secretary-General's Panel of Experts.

Right to Know the Commonwealth? Maybe Not

Michelle Gurung Access to Information Programme, CHRI

This October, fifty-four Heads of Governments of the Commonwealth will meet in Perth, Australia to discuss and shape their collective future. A Big Moment for Big People.

This brings to mind the last CHOGM in Trinidad and Tobago and the objectives set forth therein. During CHOGM 2009, the Heads of Government reaffirmed their commitment to the Universal Declaration of Human Rights (UDHR), human rights covenants and instruments and to the Commonwealth's fundamental values and principles of democracy, human rights, rule of law, freedom of expression and good governance – the Trinidad and Tobago Affirmation on Commonwealth Values and Principles. The Commonwealth Secretariat's strategic plan for 2008/9 -2011/12 is based on these very values and principles.

The Trinidad and Tobago Affirmation, emphasises the “free flow of information” to enhance democratic traditions and strengthen democratic process. During the same CHOGM, the Heads of Government also called for “strengthening of efforts to improve the Secretariat's governance, its responsiveness to changing priorities and needs and also its public profile”. In the two years since these exhortations, the Commonwealth Secretariat is yet to demonstrate any moves to promote transparency in the countries of the

Commonwealth and to become more open.

As long ago as 1980 during the Commonwealth Law Ministers Meeting in Barbados, the Law Ministers recognised the importance of “access to official information” for the promotion of public participation in a democratic governmental process. Nineteen years later, an expert group was finally set up to lay down principles and guidelines that should ground freedom of information laws within the Commonwealth. The principles laid down freedom of information as a “legal and enforceable right” that should “permit every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions”. The principles also included “a presumption in favour of maximum disclosure”, “narrowly drawn exemptions” subject to “public interest override” and “provisions for independent review to ensure compliance”. The guidelines require governments to enact freedom of information legislations based on the above mentioned principles to promote a culture of openness.

In 2002, the Secretariat went a step further and developed a model law to assist member states in their effort towards adopting such a law. This was soon followed

by a Heads of Government commitment to promote the “right to know” in the Aso Rock Declaration on Development and Democracy during CHOGM, 2003. The Commonwealth's promising measures, however, are yet to have any significant impact on the much needed shift towards the adoption of information access legislations within the Commonwealth. At that time, there were eight Commonwealth countries with access to information laws in place – Belize, Pakistan, South Africa, Australia, Jamaica, UK, Canada and New Zealand. Since then, eight other countries enacted access to information laws – Antigua & Barbuda, Bangladesh, India, St. Vincent & the Grenadines, Trinidad & Tobago, Malta, Nigeria and Uganda, while thirty-eight countries either don't have any such law or are struggling to get one.

Member States: Of the fifty-four countries in the Commonwealth only sixteen have freedom of information laws, six have Bills tabled in parliament and are currently at the committee stage, thirteen have FOI bills that are yet to be introduced in parliament, while nineteen have no access to information legislation. Campaigns around information access legislations in some of these countries have been arduous and long drawn extending to several years. The campaign for a Right to

Information law in Ghana has been on for more than a decade now, while Nigeria passed its Freedom of Information law in May 2011 after twelve years of lobbying by civil society groups.

The Commonwealth has declared its commitment to assist member states in promoting democratic culture and practices and stopped at that. Its programme of work at the Secretariat and within the Foundation has to demonstrate its ability to actively promote the passing of liberal access to information laws in tandem with each other. With the Secretariat perhaps looking to capacitate governments while the Foundation encourages civil society to promote the right to participation, transparency and accountability – all glorious attributes member states always possess but are not seen often enough to hold belief in their existence.

Commonwealth Secretariat: In its own functioning the Secretariat has been shy of moving forward with alacrity to put systems of transparency and information giving in place. As a latecomer to the concept, it has excellent practices of multilateral organisations to model itself on. Intergovernmental bodies such as the European Union (EU) and United Nations Development Programme (UNDP) have adopted regulations and information disclosure policies based on international best practice principles and on the principles of “transparency”, “accountability” and “participation”. The EU Regulation for public access to European

Parliament, Council and Commission states: “Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.”

The UNDP adopted its Public Information Disclosure Policy in 1997 with the principal objective of enabling public participation through public access to information in the human development process. Its disclosure policy also rightly highlights the need for transparency and accountability in such publicly funded bodies: “As a custodian of public funds, UNDP is



directly accountable to its member Governments and indirectly accountable to their parliaments, their taxpayers, and the public in donor and programme countries.”

The disclosure policies of these bodies impose an obligation to disclose information proactively and allow citizens to access information through requests, while providing adequate safeguards for sensitive information related to security and defence matters, refusal of which are required to be accompanied by reasons. The General Assembly of the Organisation of American States (OAS) is also preparing to adopt a disclosure policy by 2012 in line with other multilateral organisations.

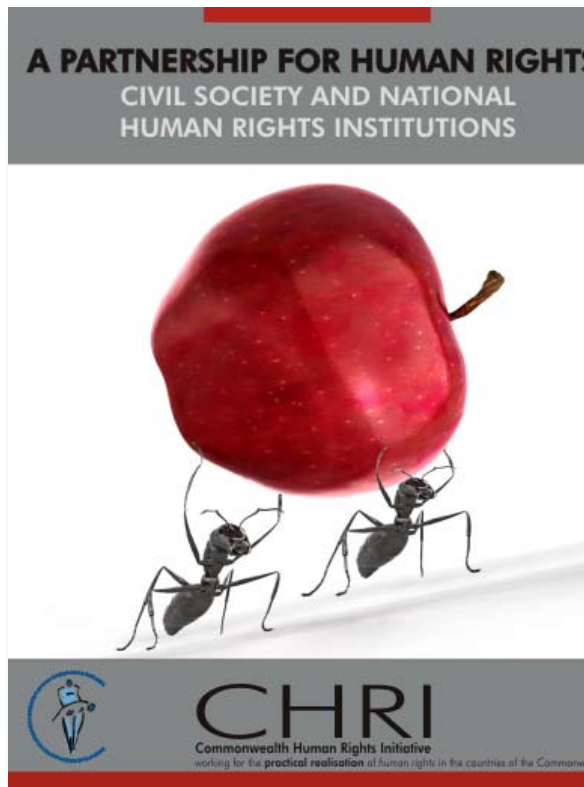
In contrast, the Commonwealth Secretariat’s current practice is to disclose selective information through its website above or beyond which there is no right of access. The Commonwealth is a publicly funded organisation of its people and needs to realise that it is accountable to its member governments and to the people that form it.

The Commonwealth Secretariat’s Strategic Plan for 2008/09-2011/12 seeks to strengthen democracy and development by promoting and ensuring participation in democratic process, good governance through transparency and accountability, strengthening public institutions for proper service delivery and strengthening anti-corruption and integrity measures. It is now widely known and accepted that freedom of expression – including the freedom to seek, receive and impart information, as enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), is the key to the realisation of all these.

Keeping this in mind, the Commonwealth has to move forward with its commitment and assist member countries be a part of the global trend towards legally recognising people’s right of access to information. But before that, the Commonwealth must take quick measures to ensure transparency within its own organisation, failing which it would lose any moral or authoritative ground to uphold the democratic values it seeks to.

A Partnership for Human Rights: An Overview of CHRI's 2011 Report to CHOGM

Sanyu Awori and Jennifer Kishan, Strategic Initiatives Programme, CHRI



Partnerships are essential when it comes to improving human rights in the Commonwealth and the relationship between a national human rights institution (NHRI) and civil society is no exception. There are now over thirty NHRIs in the Commonwealth – domestic bodies with a legal mandate to protect and promote human rights. On the other hand, civil society in the Commonwealth continues to rise. Civil society organisations (CSO)

are self-mandated, self-defined actors working to improve the state of human rights. For human rights to progress there is an urgent need for effective engagement between civil society and NHRIs.

CHRI's 2011 report, *A Partnership for Human Rights: Civil Society and National Human Rights Institutions* showcases an array of examples from the Commonwealth, where collaboration and consultation have

proved to be mutually enhancing. The report asserts that a strong partnership between NHRIs and CSOs is a keystone to the effective protection and promotion of human rights. A robust engagement with civil society is also an important requirement under international standards and best practice on NHRIs.

Despite the obvious benefits of cooperation, the sometimes inimical environments in which both these actors work – not to mention misconceptions each harbours about the other's role and nature – can keep engagement superficial or stifle it completely. For an NHRI, engaging with civil society is a complex and time consuming process, especially in countries that have thousands of civil society groups. While NHRIs must be judicious in deciding with which organisations to engage, many are bound to feel excluded.

Yet in any national environment, inimical or responsive to human rights, obstacles must be overcome as building partnerships between NHRIs and civil society is more important for the protection and

promotion of human rights than working in isolation.

NHRI-civil society engagement in Commonwealth countries has manifested through both formal platforms and informal means. NHRIs and civil society have partnered while conducting national inquiries on human rights issues, collaborated while visiting and monitoring prisons, used each other's expertise to impart human rights education, advised on legislation through joint consultations, and jointly advocated on a range of human rights issues at both domestic and international platforms.

It is increasing these points of intersection that CHRI commends. With the following recommendations, CHRI offers a means through which that end can be achieved.

Commonwealth Heads of Government

- Reaffirm the value of civil society participation in all Commonwealth activities and specifically urge Commonwealth NHRIs to engage meaningfully with civil society.
- Mandate the Human Rights Unit (HRU) of the Commonwealth Secretariat to work with the

Commonwealth Forum of National Human Rights Institutions (CFNHRI) towards:

- The development of a formal platform to engage with civil society at CFNHRI meetings.
- Create a formal platform for the “A” status members of CFNHRI to engage meaningfully with Commonwealth Heads of Government.
- Provide additional funding to bolster the HRU's capacity to involve civil society in its work on NHRIs (including its work as the Secretariat of the Commonwealth Forum and in facilitating and advising governments on the creation of new Commonwealth NHRIs).
- Urge all member states to establish NHRIs which are compliant with the Paris Principles and follow best practice guidelines such as those in the Asia Pacific Forum's (APF) Kandy Programme of Action and the *Commonwealth's National Human Rights Institutions: Best Practice*.

Commonwealth Forum of National Human Rights Institutions

- Undertake a substantial review of its operations to pinpoint

new avenues for engagement with civil society in all its work.

Including by:

- Widely publicising and advertising the dates, locations and agendas of its meetings. Giving priority to update its websites more frequently and improving documentation.
- Inviting civil society to make submissions to its meetings, ensuring that this opportunity is widely advertised and those submissions are duly shared and debated among members.
- Inviting civil society representatives to attend meetings and allowing them opportunities for meaningful oral interventions.
- Encouraging increased adherence among its members to the *Commonwealth publication: National Human Rights Institutions: Best Practices*, in addition to the standards in the Paris Principles. Additionally, the Commonwealth Forum should explore ways of using the publication to conduct a peer review among members.
- Establish a specific programme to share best practices on civil society engagement within the Commonwealth and to assist members to carry out

activities stemming from such best practices.

International and Regional Networks of NHRIs

- Facilitate the sharing of best practices as regards civil society engagement among members and assist them to carry out activities stemming from those best practices.
- Create and nurture multiple avenues through which civil society can input into the network's own operations and functions.

Commonwealth Secretariat and the Human Rights Unit

- Continue to encourage and assist Commonwealth governments to create Paris Principle-compliant NHRIs in partnership with civil society.
- Provide political will and practical resources, and channel energy into transforming the Commonwealth Forum into a stronger network that can become a leader on civil society engagement.
- Begin a dedicated programme to nurture Commonwealth best practices in NHRI-civil society engagement and encourage

their use in all parts of the Commonwealth.

Commonwealth Governments

- Ensure that civil society is fully involved in the creation of an NHRI through meaningful and substantial consultations that are broad-based, with a diverse range of civil society groups and other stakeholders from across the country. Governments should also ensure that the outcomes of such consultations are duly considered and incorporated into the design of an NHRI.
- Ensure that the mandate of an NHRI includes specific and substantial avenues for effective civil society engagement.
- Make the process through which members of an NHRI are appointed, transparent and participatory, and advertise vacancies widely.
- Allow civil society to nominate members of an NHRI and include representatives of a broad cross-section of civil society groups on the panel which makes the final selection.
- Ensure that the members of an NHRI reflect the country's civil society community adequately.

- Encourage, initiate and work with multiple stakeholders, including the NHRI and civil society, to create time-bound, benchmarked National Human Rights Action Plans.

Commonwealth National Human Rights Institutions

- Whether mandated to do so by its founding legislation or not, engage with civil society in a substantial and substantive way.
- Ensure that it meets the standards of civil society engagement as laid out in the Paris Principles, the higher Commonwealth standards set out in the publication, *National Human Rights Institutions: Best Practice* and the Kandy Programme of Action.
- Aspire to the "A" status at the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and not be content with "B" or "C" status. This would necessarily require ensuring that civil society engagement is not cosmetic.
- Go beyond informal contact to create formal platforms for civil society engagement that ensure regular, substantial, inclusive and consultative interaction

with a diverse range of civil society actors.

- Consult and collaborate with civil society actors in fulfilling their mandates, including in the review of legislation, expanding outreach, educating the public on human rights, reporting to UN and regional bodies, responding to human right emergencies and undertaking national inquiries.
- Appoint a Focal Point Person for Human Rights Defenders and, in doing so, recognise them as a special and vulnerable category of civil society that has specific needs.
- Encourage and work with their governments and multiple stakeholders, including civil society, to create time-bound, benchmarked National Human Rights Action Plans.

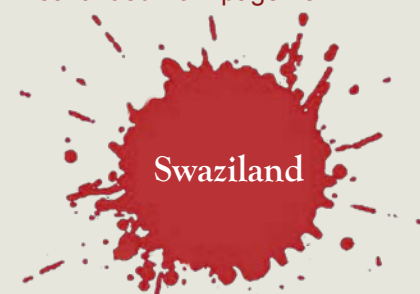
Commonwealth Civil Society

- Advocate for a participatory, inclusive and transparent process in the establishment of Paris Principle-compliant NHRIs in jurisdictions without them.
- Proactively engage with their NHRI and use formal and informal means to improve access to the policymaking processes of the government.

- Assist victims of human rights violations in accessing the NHRI and support them through the process of filing a complaint.
- Facilitate their NHRI's outreach by providing networks to spread awareness of its role and functions as a mechanism for redress.
- Work with their NHRI in its role as civilian oversight mechanisms on prisons and detention areas where human rights violations are rife.
- Lobby and work with their NHRI, government and other stakeholders to develop time-bound, benchmarked National Human Rights Action Plans.
- Submit reports on the performance of their NHRI to the International Coordinating Committee of the National Institutions for Promotion and Protection of Human Rights.

- Work closely with their NHRI inter alia, in reporting to both international and regional human rights mechanisms and in implementing education programmes.■

...continued from page 15



Swaziland is one of the world's last absolute monarchies. To say that the country is in dire need of democratic reform would be an understatement – besides being impoverished to the point of having the world's lowest life expectancy and among the highest rates of infant mortality, Swaziland is a member of the Commonwealth, which has democracy as one of its most fundamental principles. Swaziland has been under emergency rule since 1973, when three opposition members were elected to Parliament, to the king's dissatisfaction. Despite the introduction of a more lenient Constitution in 2005, those who criticize the government have reportedly been victims of harassment, arrest and torture. In September 2010, pro-democracy activists were threatened with torture by the Prime Minister. In April 2011, protesters were met with teargas, water cannons, beatings by police and hundreds of arrests in a bid to quell discontent over governance in a country where the economy is in crisis and corruption is rife.

Opportunities with CHRI



Interns and Stipendary Positions in Research and Advocacy

There are frequent opportunities at CHRI to work with us at our headquarters in Delhi, our Africa office in Accra, Ghana and liaison office in London.

- Students reading law or social sciences may intern with us at any of our three offices for short-term or long-term internships of up to a year.
- Graduates in law, social sciences or other relevant disciplines are welcomed on a volunteer basis to intern with us for periods ranging from three months to a year.
- Graduates in law, social sciences or other relevant disciplines, willing to commit for up to one year at headquarters may apply for a stipendiary position as programme assistants and researchers.
- Graduates with a minimum of two years work experience may apply for programme officer positions, if willing to commit for two years or more. Salaries are local and shared accommodation (at headquarters only) may be provided to candidates from abroad, if available.
- Mid-career or senior professionals wishing to take time off from their mainstream work to do meaningful work in a new setting are also welcome to explore working on issues of accountability and transparency, as well as assisting with fund-raising, as associates or consultants on mutually agreeable terms.

We are an independent, non-partisan, international non-governmental organisation, working for the practical realisation of human rights of ordinary people in the Commonwealth. CHRI promotes awareness of, and adherence to, the Harare Principles, the Universal Declaration of Human Rights and

other internationally recognised human rights instruments and declarations made by Commonwealth Heads of Governments, as well as other instruments supporting human rights in the Commonwealth. CHRI believes that the promotion and protection of human rights is the responsibility of governments, but that the active, informed participation of civil society is also vital to ensuring rule of law and the realisation of human rights.

There are four programme areas at CHRI – Access to Justice, Access to Information, Human Rights Advocacy and Prison Reforms Programmes. As such, our present work focuses on police reforms, prison reforms and promoting access to information. We also overview the human rights situation in all fifty-four countries of the Commonwealth, looking especially at the situation of human rights defenders, compliance with international treaty obligations and monitoring the performance of Commonwealth members of the United Nations Human Rights Council.

CHRI's work is based on relevant legal knowledge, strong research and dissemination of information to both civil society and governments. Policy-level dialogue, capacity building of stakeholders and broad public education are standard activities.

As an organisation, our endeavour is to be one of the best South-based resources on policing and access to information.

Please inquire about specific current vacancies or send job applications with a CV, statement of purpose, references and a short original writing sample to info@humanrightsinitiative.org. To know more about us visit us at www.humanrightsinitiative.org.

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