



# CHRI

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## NEWSLETTER

### THE MISSING LINK

A COMMONWEALTH COMMISSIONER FOR HUMAN RIGHTS



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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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**Commonwealth Lawyers Association**

**Commonwealth Legal Education Association**

**Commonwealth Parliamentary Association**

**Commonwealth Press Union**

**and**

**Commonwealth Broadcasting Association**

These sponsoring 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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# A Commonwealth Commissioner for Human Rights

**Maja Daruwala**, Commonwealth Human Rights Initiative



In this year's report to the Commonwealth Heads of Government Meeting (CHOGM), CHRI once again calls for the establishment of a Commonwealth Commissioner for Human Rights. On earlier occasions too, CHRI called for the establishment of a Standing Commission on Human Rights and a Commonwealth High Commissioner for Human Rights; all this to ensure that the values the Commonwealth espouses on

paper actually improve people's lives on the ground and promote good governance. Human rights compliance must be seen to be done and must be a badge of honour that member states are proud to be seen wearing.

When out of the 2009 CHOGM in Trinidad and Tobago, the Eminent Persons Group (EPG) was appointed to provide advice on how "to build a stronger, more resilient

and progressive Commonwealth", it did appear that the Commonwealth was really going to make an effort to put deeds to words. In 2011, the Heads of Government, in Perth, Australia unanimously accepted the Commonwealth Ministerial Action Group (CMAG) Report: "Strengthening the Role of the Commonwealth Ministerial Action Group", a document that expanded the mandate of CMAG, again showing commitment to

reform. During the same year, on the recommendation of the EPG, the Heads of Government strengthened the role of the Good Offices of the Secretary-General. But what member states resisted and rejected was a main pillar of the EPG's recommendation – a human rights commissioner for the Commonwealth.

The situation after the past two years, when fine reports and impressive sounding changes were put in place has underlined the need for a human rights commissioner and to

of several worrying practices across the Commonwealth. Yet, no new countries have come under CMAG's scrutiny despite its intention to shore up its ability to bring erring countries to book. The Secretary-General's Good Offices remains opaque and indefinitely prevents derelictions from coming home to roost, while the small Human Right Unit continues in its limited mandate of promoting rights without being able to fulfil any protective role. The unseemly controversy between the Secretary-General and CMAG over his

that can monitor, investigate and advise on human rights. Yet we are told that the appointment of a Commonwealth Human Rights Commissioner is dead in the water, it is off the table, it cannot be considered. CHRI believes the creation of a Commissioner is necessary now more than ever before; and urges its reconsideration. The House of Commons' Foreign Affairs Committee noted that the appointment "goes to the heart of what the Commonwealth is about". It is only this that will fill the gap between promise and practice. ■

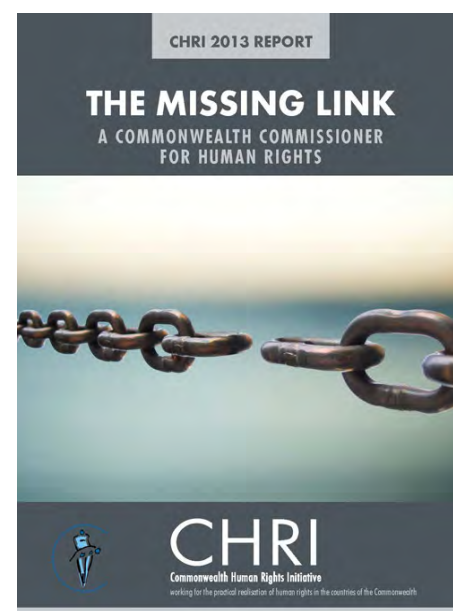
**The situation after the past two years, when fine reports and impressive sounding changes were put in place has underlined the need for a human rights commissioner and to say that hopes of real commitment to core values have been dashed would be to say too little.**

say that hopes of real commitment to core values have been dashed would be to say too little.

Human rights in the Commonwealth continue to deteriorate: credible allegations of war crimes in Sri Lanka remain to be investigated and punished; State security officials in Uganda are accused of torture and limiting fundamental freedoms; and the authoritarian State policy in Swaziland and The Gambia weigh down on the rights of their people. Elsewhere, discriminatory legislation has targeted minority groups and civil society space is being constrained and narrowed. These are only a few illustrations

withholding legal opinions related to the illegal impeachment of the Sri Lankan Chief Justice can only harm the potency of the Commonwealth to uphold human rights. The signals of avoidance and apathy in protecting wrongdoers must gladden the hearts of all those who believe that human rights are an obstacle to their use of power.

In 2013, as the Commonwealth goes to Colombo, Sri Lanka, for its Heads of State Meeting, it finds itself in a crisis of conscience and credibility. The experience of the last two years, since the 2011 CHOGM, makes a compelling case for the Commonwealth to acquiesce to having an independent specialist





# The Commonwealth's Approach to the Question of Sri Lanka

**Senator Hugh Segal**, Canada's Special Envoy to the Commonwealth



Senator Hugh Segal, CM is a former member of the Eminent Persons Group which authored "Commonwealth of the People: Time for Urgent Reform" and is currently Canada's Special Envoy to the Commonwealth.

This past March, Her Royal Highness Queen Elizabeth II formally signed the Charter of the Commonwealth, a document that brought together all the Commonwealth declarations and aspirations of the previous several decades. All countries of the Commonwealth were represented at this ceremony and all countries of the Commonwealth celebrated the new Charter as a road map and reminder of what it is we strive for as a voluntary association of countries, not bound by treaty or contract. No country is perfect, including my own, but the basic tenets of democracy, rule of law, good governance, human rights, freedom of the press and judicial independence are the cornerstones

on which all Commonwealth countries should abide. The advocacy and protection of these values is the foremost task for the Commonwealth Secretary-General and his staff.

Democracy is more than just elections. In November 2003, the Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government (the Principles) were endorsed by all Commonwealth Heads of Government. These principles emphasised the need for the separation of powers between branches of government in order to guarantee the rule of law and good governance by protecting the independence of the judiciary, thereby allowing people to hold their governments to account and ensure transparency. So when, in January 2013, Sri Lanka, a Commonwealth country, moved to impeach its Chief Justice; when the international community, the United Nations and the European Union questioned the legitimacy of the proceedings; when the Legal and Bar Associations of the Commonwealth, of Asia, of Canada, of South Africa, of the United States and of Sri Lanka denounced the move as unconstitutional, it was incumbent on the Commonwealth of Nations to scrutinise these actions via the Commonwealth Ministerial

Action Group (CMAG), the body charged with examining possible breaches of Commonwealth values and principles. After Sri Lanka's government ignored the country's Supreme Court and Court of Appeals ruling that the impeachment motion was unconstitutional, the Parliament of Sri Lanka removed Chief Justice Shirani Bandaranayake. Immediately afterward, the Secretary-General of the Commonwealth released a statement saying: "The dismissal of the Chief Justice will be widely seen, against the background of the divergence between the Judiciary and the Legislature, as running counter to the independence of the Judiciary, which is a core Commonwealth value."

In Perth, Australia in 2011 at the Commonwealth Heads of Government Meeting (CHOGM), the Heads reviewed and agreed to many of the recommendations put forward by the Eminent Persons Group (EPG) in their report entitled "A Commonwealth of the People: Time for Urgent Reform". More importantly, they accepted unanimously and without reservation the CMAG Report, "Strengthening the Role of the Commonwealth Ministerial Action Group". As the Heads pointed out in Trinidad & Tobago in 2009, the Commonwealth was in serious

danger of becoming irrelevant in the twenty-first century. It needed reform and renewal to regain its place in the world as a meaningful and significant player for its Member Countries by not turning away from difficult situations and acting swiftly in response to human rights, democratic or good governance difficulties. If problems were not addressed, other Commonwealth countries would question their investment of time and money in an organisation that stands for little. Both the EPG Report and the CMAG Report highlighted this challenge and put forward recommendations to save the organisation from a slow death.

Diplomacy is always the first and best way forward to resolve difficulties. But diplomacy without results is worse than ineffectual; it is dangerous. The Secretary-General has, I am sure, by virtue of his Good Offices, worked tirelessly with the government of Sri Lanka to rectify its tarnished image as a result of the impeachment. But there comes a point when the body specifically charged with dealing with breaches of core Commonwealth values or principles, namely CMAG, must be briefed. And CMAG members, armed with all available information, must then make their own determination as to how the situation will play out.

Commissioning outside legal opinions regarding the impeachment proceedings of Chief Justice Bandaranayake was absolutely the right thing for the Secretary-General

to do. Keeping the opinions from CMAG when, this past April, the Secretary-General was aware that Sri Lanka would come up in discussion at the CMAG meeting, was absolutely the wrong thing to do. As we now know, the late former Chief Justice of South Africa Pius Langa issued a scathing report on the impeachment which labelled it as “unconstitutional and sowing the seeds of anarchy”. Justice Langa stated unequivocally that the impeachment was a “direct violation of Commonwealth values”. CMAG is the decision-making body of the Commonwealth in dealing with serious or persistent violations of Commonwealth values and should have been privy to this information, even confidentially. Why would the Secretary-General, whose duty it is to defend all that is laid out in the Commonwealth Charter, feel it unnecessary to share the commissioned opinions with CMAG? The Good Offices of the Secretary-General do not, in my mind, extend to shielding a recalcitrant country from thoughtful Commonwealth initiatives. This failure on the part of the Secretary-General puts into question whether the Commonwealth Secretariat supports CMAG or acts for an individual country that might be a subject of CMAG discussion. Why does CMAG exist if it is not privy to pertinent information relating to issues within its purview? The fact that Sri Lanka will be hosting the 2013 Commonwealth Heads of Government Meeting should not, in any way, give it special status. But the question does remain: If Sri

Lanka were not hosting CHOGM, would the situation have played out the same way?

Whether on the situation in Rhodesia, apartheid South Africa, a military coup in Nigeria, the temporary suspension of Pakistan (in part for firing members of its Supreme Court) and currently the suspension of Fiji, it is the defence of the Commonwealth values of democracy, rule of law, human rights, freedom of the press and good governance that makes the difference. This is when the Commonwealth is at its best. The failure to do so on the issue of Sri Lanka weakens the Commonwealth by making it clear that Commonwealth values are, in special circumstances, negotiable and, when flouted, results in no real consequence. The contagion risk of “no consequence” to the Commonwealth itself should trouble all who care about the mission and relevance of the Commonwealth of Nations.

Like everything else in the real world, balance and leadership are part of the toolkit by which progress takes place and historic wrongs are addressed. Sri Lanka is not a private client of the Commonwealth Secretariat. Sri Lanka is a full and founding member of the Commonwealth of Nations. That status is not permanent for any Commonwealth member. Membership does have its privileges; it also has obligations and duties. ■

# Shrinking Democratic Space in Commonwealth Africa

**Sanyu Awori**, Commonwealth Human Rights Initiative



Photograph by Maik Meid

Recent developments across Commonwealth countries in Africa, indicate shrinking spaces for human rights. Governments are passing draconian legislation that restricts the enjoyment of fundamental freedoms; and human rights defenders, journalists and government critics are reporting increased harassment and intimidation.

In an alarming move, for example, this August, Uganda's Parliament passed the Public Order Management Bill a law that aims to curtail civil liberties. Worryingly, the final version of the Bill as it was passed by Parliament has still not been made public, despite requests from civil society to do so. The version that is available, the 2011 draft Bill, requires that

three or more people who wish to peacefully demonstrate must obtain police permission to do so. Police approval is required at least seven days in advance. The Bill also gives the police the discretion to ban peaceful protests. This is despite the Constitutional Court of Uganda holding similar provisions in another law that gave the police the discretion to



limit public assembly, as void and unconstitutional in 2008.

Worse still, while President Museveni is yet to sign the Bill into law, it appears to have given the police authorities the green light to clamp down on rights. Those that have attempted to mobilise and peacefully protest against the Bill, report being arbitrarily detained and harassed by police authorities.

The Bill must be seen within the context of an emerging pattern of repression in Uganda. Leaders of the political opposition face repeated harassment from the

of the political opposition. There have also been attempts to close independent media houses.

In July 2013, access to the *Zambia Reports*, a news website, was blocked. This was perceived to be at the hands of the State. The *Zambia Watchdog*, an independent online newspaper based outside the country but which publishes content by local journalists, also had domestic access to their website blocked in June 2013. The Vice President, Guy Scott, in response to this lack of access stated that he was glad about the move, as the *Zambia Watchdog* was

of having links to the *Zambia Watchdog*, was arrested a few weeks later. Their charges range from sedition to possession of obscene material and military pamphlets.

Muzzling the critical voice of the media demonstrates a pattern of restricting freedoms in Commonwealth countries in Africa. Cameroon provides another example. Ahead of parliamentary elections in September 2013, eleven media houses were suspended by the National Communications Council, citing unprofessional and unethical behaviour. These outlets include newspapers, radio stations

## Restricting the ability to report and criticise the actions and policies of public and government officials is incompatible with the right to freedom of opinion and expression.

police and are often placed under “preventive arrest”; civil society organisations face threats from the government as a result of their work; and in May 2013, the police raided and shut down four media houses for ten days. The passing of the Public Order Management Bill is a further set-back for democracy in the country.

Similarly, the democratic space in Zambia is shrinking too. A particular target is free speech and expression that is critical of the Michael Sata government. Journalists are often harassed, especially those that attempt to report on the activities

“denting our image abroad”. The Minister of Tourism expressed similar sentiments last year, when he reportedly called for the banning of the *Zambia Watchdog* to protect the country’s image.

Journalists are also targeted for their contribution to the *Zambia Watchdog*. In July 2013, two journalists, Thomas Zyambo and Clayson Hamasaka, suspected of contributing to the newspaper, were arrested and detained. The police raided their homes and confiscated computers, digital equipment and documents. Another journalist, Wilson Pondamali, also accused

and a television station that have been critical of the government.

Restricting the ability to report and criticise the actions and policies of public and government officials is incompatible with the right to freedom of opinion and expression. Under international law, States can only restrict this right under clear and specific conditions and any restriction must be both necessary and proportionate.

There is a litany of laws in The Gambia that fail to meet this standard. The country has gained notoriety for targeting human

rights defenders, journalists and government critics with harsh legislation. In July 2013, legislators passed another law that clamps down on free expression, this time, on the Internet. The Gambia's National Assembly passed an amendment to the Information and Communication Act, making it an offence to use the Internet to "spread false news" against government or public officials. If convicted, a person faces 15 years in prison and/or has to pay a hefty fine.

Laws that ban "false news" are problematic. The UN Special Rapporteur on Freedom of Opinion and Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, have both expressly stated that laws that criminalise "false news" are a threat to freedom of expression, particularly as "false news" offences inhibit critical reporting on matters relating to the government.

Another stark example where civil liberties are systematically gagged is Swaziland. Largely forgotten by the international media, the country was brought to the spotlight, when prominent South African, Jay Naidoo, formed part of a Global Inquiry Panel that, in September 2013, tried to investigate labour rights violations in Swaziland.

The inquiry was obstructed by the police who prevented public hearings and meetings from taking place and Jay Naidoo, the Chair of the panel of experts, was briefly detained. The General Secretary of the Trade Union Congress of Swaziland, Vincent Ncongwane, was also shadowed by the police and placed under house arrest to prevent any public assemblies from taking place.

Such action is typical in Swaziland. Pro-democracy activists and human rights defenders are targeted via blanket legislation. Political parties are banned and expressions critical of the monarchy are not tolerated. Political gatherings are regularly dispersed and peaceful demonstrations are often quelled by a heavy-handed police force.

While these countries are members of regional community groupings on the continent, they are also members of the Commonwealth. The Commonwealth is an Association of sovereign nations that prides itself on a shared set of values and has expressed its aspiration in the recent Commonwealth Charter, to be a "strong and respected voice in the world".

All Commonwealth nations, including Cameroon, The Gambia, Swaziland, Uganda and Zambia subscribe to the Commonwealth Charter. The Charter expresses the

commitment of Member States to protect human rights as enshrined in international and regional instruments. It also explicitly recognises the right to freedom of expression and commits to ensuring a free media, "open dialogue" and the "free flow of information". It goes further to recognise the "role of civil society", as partners in promoting Commonwealth values that include the freedom of association and assembly.

Given that Commonwealth governments have pledged to respect human rights and fundamental freedoms, the Commonwealth Heads of Government Meeting this November, should take note of the disturbing patterns of shrinking democratic space and develop ways for their words to mean something palpable for the people of the Commonwealth. ■



# New Voices on Policing and Reform: Civil Society Coalitions

**Police Reforms Programme,** Commonwealth Human Rights Initiative



Coalitions can formulate policy positions, draft legal opinions and analysis, spread public awareness, galvanise people, disseminate information, and open dialogue with the police and governments.

as frameworks of police reform. Where these have been established, civil society coalitions have impacted reform debates and drafted laws and policies. CHRI shares below the experience of creating civil society coalitions on police reform in the East African countries of Kenya and Tanzania, and the prospects of a new initiative in Pakistan.

## CHRI EXPERIENCES FROM EAST AFRICA

One of the main motivators to form the Network for Improved Policing in South Asia (NIPSA) was to bring civil society's voice to policing and police reform debates. It was felt that in South Asia particularly, there is an urgent need to question and challenge police reform agendas which are State-driven and State-centric. While policing is a state institution and undoubtedly, reform has to come from the State, the major problem with State-driven reform agendas is that they often neglect or dilute human rights, civil liberties and accountability standards. Perhaps this is why reform initiatives are often carried out behind closed doors and keeping the public at bay.

In view of this, the need for civil

society coalitions to influence police reform is highlighted, particularly in a region like South Asia where civil society is strong, diverse and vibrant, while police reform debates are largely State-led. Organisations with expertise on a range of social, legal and human rights issues can join hands to build a collective voice for better policing. Coalitions can formulate policy positions, draft legal opinions and analysis, spread public awareness, galvanise people, disseminate information and open dialogue with the police and governments. CHRI strongly believes that civil society coalitions hold the promise of countering the often undemocratic reform agendas that are pursued, and thereby compel the State to widen and democratise processes as well

One of the first policing and security coalitions formed in East Africa was the Usalama Reforms Forum in Kenya. This forum was established by CHRI and two other groups, but has now grown into a coalition of 14 local and international civil society groups. The original purpose of the Usalama Reforms Forum was to provide a stronger, coordinated advocacy position on the police reform process occurring in Kenya. As part of this process, the forum made critical inputs in the various commissions of inquiries on policing, the draft Constitution (promulgated in 2010) and the subsequent new police laws. It is now recognised as one of the leading forums working on policing and security issues in Kenya, and has in fact grown to become self-

reliant – receiving funding and implementing large policing-related projects.

Following on the success in Kenya, last year, CHRI met several civil society bodies in Tanzania and raised the idea of forming a criminal justice and human rights coalition. The Tanzanian groups agreed, as currently there is no specific focus on criminal justice matters such as policing in civil society. To assist the coalition in growing and to learn from Kenya, CHRI prepared a report on “Coalition Building in Tanzania: Lessons Learnt from Kenya”. These lessons are likely to be applicable in South Asia as well. The new Tanzanian coalition, Haki na Usalama Forum (Justice and Security Forum), has, to date, made some important submissions on relevant laws and conducted media advocacy. It is hoped that the coalition will expand and become self-reliant in the future, as the Kenyan one has.

### EXPERIENCES FROM SOUTH ASIA

Closer to home, Rozan, an Islamabad-based non-governmental organisation, spearheaded an initiative to bring together various civil society representatives vested in systemic reforms of the police. The coalition, known as the Pakistan Forum on Democratic Policing, was formed in 2011 with the purpose of catalysing demand and public support for better policing and synergising policy advocacy. In its pilot phase, which lasted for about

ten months, it focused on two provinces of Pakistan – Balochistan and Sindh – where the coalition carried out the following activities:

- Held a series of meetings with local civil society organisations (CSOs) working with the police in some capacity
- Held eight policy dialogues
  - two in Islamabad and three each in Sindh and Balochistan
  - involving media, civil society, government, police and legal professionals on police reforms
- Wrote articles in the local press on the state of policing and reform initiatives
- Organised signature campaigns in both provinces to garner support and demand among the public for better policing – the campaigns collected a total of 4,000 signatures from both the provinces
- Formulated a Citizen’s Charter of Demands by drawing from various consultations, to summarise people’s expectations on the role, duties, functioning and accountability of the police, which was presented to the government and policymakers.

While it is too soon to comment on the coalition’s success and impact, its formation is a major step forward. It represents a great beginning towards institutionalising a forum to carry forward civil society’s concerns on police reform to the police and provincial governments. In its composition too, the coalition has wide and diverse representation

from across the country which is a key factor for its credibility. For its next phase, the coalition, with support from CHRI, will focus on guidelines on working arrangements in order to enable more systematic functioning. At present, Rozan serves as the secretariat, and the coalition will now collectively set rules and processes around the frequency of meetings and allocating tasks. We look forward to seeing the coalition develop and grow.

### BUILDING COALITIONS

Building coalitions is a long-term and continuous effort. These coalitions should aim at developing an identity and voice of their own. The means to do so may vary and ultimately depends on what the members want for their collective. Some coalitions thrive by remaining fairly loose groupings of like-minded people and organisations that come together regularly to strategise and plan their work. Others may prefer to get financial support, dedicated staff and office space as a means to convert the coalition into a more formal organisation.

In view of the example in Pakistan, it would be encouraging to see more civil society coalitions come together on police reform in South Asian countries. There is a definite need for civil society coalition-building in this area, particularly as advocacy on police reform requires inputs on several fronts, most importantly on human rights and civil liberties perspectives. ■



# The Good Offices of the Commonwealth Secretary-General

Interview with Stuart Mole



Stuart Mole is the Chairman of “The Round Table: A Commonwealth Journal of International Affairs” and is a Senior Research Fellow at the Institute of Commonwealth Studies at the University of London. He is a former Director-General of the Royal Commonwealth Society and a former Director of the Secretary-General’s Office in the Commonwealth Secretariat.

## 1. What are the Commonwealth Secretary-General’s Good Offices?

The Secretary-General’s Good Offices are taken to mean all third-party interventions by, or under the authority of, the Secretary-General, which are designed to address situations of actual or

threatened conflict, within or between countries. This is done by helping mediate differences through dialogue, persuasion and moral authority, with the aim of brokering a viable and sustainable solution, acceptable to all parties. The Secretary-General’s Good Offices, supported by his private office and by a Good Offices section in the Political Affairs Division, form an important part of the Commonwealth Secretariat’s flagship democracy and human rights programme.

It is now normal practice for the Secretary-General to use special envoys, advisers and senior staff when deploying his Good Offices. There may also be occasions when the Secretary-General will ask others – the Chair of the Commonwealth Ministerial Action Group (CMAG) or of a Commonwealth Election Observer Group, or a Head of Government – to assist in a process of mediation on which he has already embarked. In these circumstances, the involvement of such individuals can be regarded as part of the Secretary-General’s Good Offices, even though their responsibilities

would normally be defined otherwise.

A notable achievement of the Commonwealth’s Good Offices was the ground-breaking intervention in South Africa in 1986, through the mission of the Commonwealth Eminent Persons Group. Though the Secretary-General was largely in the background, he played a key role in guiding the group and in drafting and promoting their report thereafter. While the initiative – to negotiate an end to apartheid – did not succeed in the short-run, it made a decisive contribution to the process which eventual saw the peaceful demise of apartheid, about eight years later.

It was the resolution of the apartheid issue with the creation of a democratic, non-racial South Africa in 1994, which, paradoxically, helped set a new democracy and human rights agenda for the Commonwealth and gave greater visibility to the Good Offices interventions of the Commonwealth Secretary-General. After 1991, there are many examples where the Secretary-General intervened to help

Commonwealth countries resolve contentious issues peacefully and facilitate the process of democratic development.

## 2. How has the role of the Secretary General's Good Offices changed over the years?

The Secretary-General's Good Offices has expanded considerably over the years. It emerged into the light after the 1991 Commonwealth Harare Declaration and was embodied in the Millbrook Commonwealth

of CMAG agreed at the Perth CHOGM (2011).

The scope for the Secretary-General's intervention broadened substantially, as the Commonwealth grew and as the primacy of respect for the Commonwealth's fundamental values has overridden the now much-qualified principle of non-intervention in the domestic concerns of sovereign nations.

While the current Secretary-General, Kamallesh Sharma, has attracted considerable criticism for

over their commitment to democracy and human rights (save for opposition to Idi Amin in Uganda and later, the 1987 coup in Fiji). Apart from anything else, there were few mechanisms or sanctions open to them to do so. As a result, the Commonwealth had a fair share of military and one-party regimes in its membership. This changed when Anyaoku was the Secretary-General, with around 20 per cent of the membership moving, over time, to multi-party democratic systems. But this process did not extend

... in two years time, the Commonwealth Secretariat, and the office of the Secretary-General, will be fifty years old. In that time, what is expected of a Secretary-General – and what is possible – has changed dramatically.

Action Programme, which also established CMAG. Along with the Secretary-General, CMAG is viewed as the custodian of Commonwealth values. The relationship between CMAG and the Secretary-General's Good Offices was further refined by the adoption of the six-step Coolum Procedure (2002), the codification of the Commonwealth's fundamental principles contained in the Affirmation of Commonwealth Values and Principles (2009), and the enhancement of the role

failing to act robustly in the face of recent challenges, it is worth adding one qualification: in two years time, the Commonwealth Secretariat, and the office of the Secretary-General, will be fifty years old. In that time, what is expected of a Secretary-General – and what is possible – has changed dramatically. Arnold Smith and Sonny Ramphal, with their in-trays full of the challenges of racism in Southern Africa, very rarely confronted member governments

to some of the Commonwealth's most traditional societies, with few democratic structures, such as Tonga, Swaziland or Brunei Darussalam. It was only in the time of Don McKinnon – and now Kamallesh Sharma – that the agenda has broadened to encompass these countries also. In some ways, these can be regarded as the most challenging of all.

3. Fiji is the only country that has been suspended twice

from the Commonwealth, and its suspension is still ongoing. Has the exercise of the Commonwealth's Good Offices and the action by the Commonwealth Ministerial Action Group (CMAG) had a positive impact in encouraging respect for Commonwealth principles in Fiji?

As matters currently stand, the indicators are not encouraging. A military government, under Commodore Bainimarama, continues to rule Fiji by decree. While the Public Emergency Regulation (PER) was lifted in January 2012, it was soon replaced by the Public Order (Amendment) Decree, which reinstated many of the PER's provisions. Human rights continue to be constrained. While there is an on-going process of public consultation about a new draft constitution, there has been no agreement to date. Elections have been promised by September 2014 and voter registration has begun but expectations that Fiji will resume the democratic path by the target date are not high.

In the twenty-five years under study, Fiji has suffered four military coups, only limited democratic rule and prolonged periods of military dominance, political instability and economic contraction.

Taking the broadest measure, the Commonwealth has been largely ineffectual in addressing Fiji's deep-rooted political problems.

However, a more detailed assessment of the three phases of Fiji's crisis provides a rather more positive outcome. During the first interruption to democratic rule (1987-97), the Commonwealth, through its Secretary-General, can claim to have played a significant role in the adoption of the 1997 Constitution and the return to democracy that followed. During the second phase of crisis (May 2000 to August 2001), there was a similarly positive impact by the Commonwealth in encouraging respect for the 1997 Constitution, and fresh elections. Then Secretary-General, Don McKinnon, must also be given due credit for his role in the release of the hostages held by George Speight. The third phase of unconstitutionality (2006 to the present) offers less evidence of any lasting impact by the Commonwealth in finding a solution acceptable to all the Fijian people, which would also be consistent with Commonwealth principles.

**4. It was recently revealed that the Secretary-General refused to disclose independent legal opinions regarding**

**the impeachment of the Chief Justice of Sri Lanka to CMAG. Are communications related to the Good Offices privileged in nature? Do you think the Secretary-General's discretion and effectiveness would be compromised if such communications were disclosed to CMAG?**

Regular reporting mechanisms by the Secretary-General or his Special Envoys involving CMAG and the annual meeting of Commonwealth foreign ministers in New York, are established where relevant. That said, there has been a paradoxical decline in the availability of public information on the work of the Secretary-General's Good Offices.

From 1991, there were regular reports on the work of the Secretary-General's Good Offices in his biennial report to Heads of Government. This practice has latterly been discontinued and indeed no biennial report appeared at all in 2011.

More disturbingly still, the *Colombo Telegraph* recently reported that Gordon Campbell, the Canadian High Commissioner in London, asked the current Secretary-General Kamalesh Sharma, that the independent legal opinions of two eminent Commonwealth jurists on

the constitutionality of the dismissal of the Sri Lankan Chief Justice be made available to CMAG.

Under the new criteria agreed at the Perth CHOGM for enhancing CMAG's role, one of the circumstances specified, which might cause the Secretary-General to seek CMAG's involvement would be: "The abrogation of the rule of law or undermining of the independence of the judiciary." (Report by CMAG 2011)

The disclosure of these documents would thus seem an entirely proper request from a CMAG member and Commonwealth government so that CMAG, as the custodian of Commonwealth values, might be able to reflect on the issue in full possession of all the relevant facts.

Sharma's decision to decline the request to make the two legal opinions available to CMAG is all the more perplexing because he cites in his defence: "a longstanding practice of successive Secretaries-General that communications in support of Good Offices engagement are privileged." He continues: "Indeed, it would be injurious to the discretion, trust and ultimately the effectiveness of the Secretary-General's Good Offices if the sources and nature

of privileged communications were to be compromised." (As quoted in the *Colombo Telegraph*, 15 August 2013)

Of course, it has always been the case that there will be material and communications, whether involving Good Offices interventions or not, which a Secretary-General will wish to keep confidential.

It is far less obvious that Sharma's predecessors established "a longstanding practice" that all communications relating to their Good Offices work are automatically regarded as "privileged". Even less plausible is the notion that, given CMAG's enhanced role in upholding Commonwealth values, a Secretary-General would not wish to make available to the group something as pertinent as a commissioned legal opinion from eminent Commonwealth jurists. It is also difficult to believe that the jurists concerned would consider their positions compromised if their opinions were discretely shared with a group of Commonwealth governments.

Indeed this is especially so, since I gather that one of the jurists consulted has now been revealed as the late Justice Pius Langa of South Africa, who was himself a Special Envoy of the Secretary-

General some ten years ago.

Commonwealth Heads of Government have repeatedly expressed their support for the Secretary-General's Good Offices work. There are now a variety of reporting mechanisms available to the Secretary-General in briefing member governments and CMAG. Under the enhanced mandate given in Perth in 2011, they also expect him to speak out periodically where Commonwealth values are seen to be under assault. All this may create tension and difficulty between the various functions but it cannot invalidate the necessity, in a careful and considered way, to provide proper and regular public reports of Good Offices work.

A mystical faith in the value of Good Offices, without sufficient regard to evidence of their impact, is no longer sufficient. A public dimension to the Secretary-General's accountability to governments is now a central ingredient of Commonwealth reform. ■



# Ethical Tourism and Jamaica's HIV Epidemic

Maurice Tomlinson, AIDS-Free World



Doctor's Cave Beach Club, Montego Bay, Jamaica

Jamaica's Minister of Tourism and Entertainment, the Honourable Dr Wykeham McNeill, was recently elected to serve as chair for the United Nations World Tourism Organisation (UNWTO), which describes itself as the "leading international association with the decisive and central role in promoting the development of responsible, sustainable and universally accessible tourism". In responding to the news of the Jamaican Minister's selection,

the head of the Jamaica Hotel and Tourism Association said that UNWTO's objective of promoting "inclusive development" is a goal that is clearly aligned with Jamaica's philosophy.

That's certainly not been the experience of our organisation, AIDS-Free World. Over the past four years, AIDS-Free World has worked with local lesbian, gay, bisexual and transgender (LGBT) and HIV/AIDS groups on the

island to implement a multi-pronged approach aimed at unravelling the Gordian knot of Jamaican homophobia and HIV. And for a significant section of the tourism market – gay travellers, Jamaica is not universally accessible. In fact, the environment in Jamaica could not be more hostile to gay travellers.

All across the Caribbean, tourism ministries are gearing up for the

highly lucrative and critical winter tourism season. Enticing ads and marketing campaigns have already begun in earnest. Agents have been dispatched across the Global North to lure winter guests to the South. In light of the increased discourse about LGBT human rights, many Caribbean countries are now marketing themselves as “gay friendly” destinations to tap into the estimated US\$140 billion annual “gay-tourism” bonanza.

However, Jamaica’s reputation for hostility towards LGBT individuals has at different times earned the country the designation of the

musicians have produced over 200 homophobic songs that call for, among other things, the shooting of gays and the “corrective” rape of lesbians. Further, in 2011, Jamaica introduced a Charter of Fundamental Rights and Freedoms that deliberately excludes protection on the grounds of sexual orientation. The Charter also introduced a constitutional ban on the recognition of any form of same-gender relationships.

The summer of 2013 saw a sharp increase in reported anti-gay attacks across Jamaica.

them. There were also mob attacks on the homes of LGBT persons who had to be rescued by police on 1 August and 22 August. On 10 August, a cross-dresser in St. Catherine was attacked by a mob and had to be rescued by police. On 26 August, two gay men in the town of Old Harbour had to flee from the scene of an accident when onlookers realised they were gay.

On 22 August, I met the Jamaican High Commissioner to Canada and urged her to impress the Jamaican government on the need to promote and protect

## However, Jamaica’s reputation for hostility towards LGBT individuals has at different times earned the country the designation of the most homophobic place on earth.

most homophobic place on earth. This is a function of a toxic mix of legislation (a British colonial-era law that sentences consenting adult males to prison for up to 10 years at hard labour for acts of intimacy even if done in the privacy of their bedrooms); fundamentalist religion (recently, religious leaders mounted massive island-wide anti-gay parades and said that they are willing to die to prevent the recognition of human rights for LGBT); and cultural intolerance. Jamaican

On 22 July, 17-year-old cross-dresser Dwayne Jones was stabbed, shot to death and thrown into some bushes near a public street-dance close to the resort city of Montego Bay. The Minister of Justice condemned the barbaric act. Even agents of the state are not immune from such attacks. On 1 August, as reported on CVM TV, a suspected gay police officer was mobbed in downtown Kingston and fellow officers had to fire gunshots into the air and teargas into the crowd to disperse

the human rights of LGBT citizens aggressively, as one way to reduce the national HIV burden. Unfortunately, it was clear from our meeting that human rights and public health considerations were less important than ensuring “sensitive” persons were not put off from visiting Jamaica by the of news of anti-gay violence in the country. As members of the LGBT community, we were somehow blamed for the negative publicity the country received. There was

little, if any acknowledgment of the government's role in creating or sustaining the anti-gay hostility, much less any need for them to attempt to end it.

It is normally assumed that Jamaica's notorious anti-gay violence is directed against locals while visitors to the island are immune. It is probably true that few gay tourists will encounter the type of attacks described above. Most simply remain in all-inclusive resorts, only leaving when it is time to head back to the airport. But, surely there is an ethical question to raise: should gay tourists (and their allies) really be visiting a country where their privilege insulates them from attacks while local LGBT individuals are vulnerable?

I am advised that there is already an unofficial boycott of Jamaica's tourism industry by many LGBT individuals and their allies. So, one then has to wonder why the Jamaican government deliberately undermines its own tourism product by refusing to protect gays proactively. This forces the Jamaican government to use scarce tax dollars to produce expensive image-saving marketing campaigns – when that money could be used to fight HIV and AIDS especially when The Global Fund to Fight

AIDS, Tuberculosis and Malaria indicated that Jamaica will no longer qualify for funding for part of its HIV and AIDS response.

UNAIDS and Caribbean ministers of health have all identified homophobia as a major contributor to the region's high prevalence of HIV. In Jamaica, men who have sex with men (MSM) have an HIV prevalence rate of 32.9 per cent, which is the highest rate among any population of MSM worldwide. Unpublished research by Professor Peter Figueroa, Head of Public Health at the University of the West Indies, Mona, indicates that close to 60 per cent of these men also have sex with women, many in order to mask their sexual orientation. This creates a bridge for HIV to pass between the populations.

In response to the government's refusal to address LGBT abuses, AIDS-Free World launched legal challenges aimed at promoting tolerance for LGBT persons and addressing the discriminatory anti-gay laws in Jamaica, which provide license for homophobic attacks. These cases form part of an overall strategy to eliminate homophobia across the region. This strategy involves public advocacy campaigns, documentation training for LGBT groups on how to record and report human

rights abuses, high-level diplomacy, research into the levels and drivers of Caribbean homophobia, and police LGBT sensitivity training.

There have been some positive results from our advocacy, including very supportive editorials in local media, greater visibility of the vulnerable LGBT community, unprecedented public engagement on the human rights of homosexuals, and supportive statements by Caribbean leaders.

There is much work that remains to be done. However, the trajectory is clear. The Government of Jamaica can either work to support our efforts to eliminate the discrimination that sustains the HIV epidemic in the region, or persist in spending scarce foreign exchange to do damage control in the tourism sector. ■

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# Kenya: In Pursuit of Justice

**Samane Hemmat**, Commonwealth Human Rights Initiative



The International Criminal Court (ICC) was first granted jurisdiction over Kenya in March 2005, when Kenya ratified the Rome Statute, the ICC's founding treaty. The ICC could, as a result, exercise authority over war crimes, crimes against humanity and genocide committed by Kenyan nationals or on Kenyan territory. But the ICC could only exercise its power if the government proved unwilling or unable to investigate and prosecute those alleged crimes.

Following a disputed presidential election in December 2007, large-scale violence erupted in Kenya which resulted in the death of over 1,000 people while over 600,000 were forcibly displaced. In January 2008, the two disputing parties

agreed to negotiate and the following month the Commission of Inquiry into Post Election Violence (CIPEV) and the Independent Review of the Elections Commission (IREC) were created. Both CIPEV and IREC recommended that the government establish a special tribunal to investigate and prosecute alleged perpetrators of the post-election violence. The proposal was made under the threat that any failure to immediately comply with it would result in "a list containing names of and relevant information on those suspected to bear the greatest responsibility for crimes falling within the jurisdiction of the proposed Special Tribunal" be forwarded to the ICC Prosecutor.

In February 2009, the Kenyan

Parliament voted down a bill concerning the establishment of a special tribunal to deal with the post-election violence. Ironically, it was William Ruto who stated: "Kofi Annan should hand over the envelope that contains names of suspects to the International Criminal Court at The Hague so that proper investigations can start." In 2008, as the Chair of the African Union Panel of Eminent African Personalities, Annan had participated in mediating a solution to the crisis. With no positive movement by the Kenyan leadership, Kofi Annan, in July 2009, forwarded a list of key suspects to the ICC Prosecutor. The Prosecutor for the first time exercised his proprio motu powers to investigate the situation in Kenya, in its fifth ever investigation. Presently, the trials of Deputy President William Ruto and radio broadcaster Joshua Arap Sang are ongoing before the Court. Ruto faces charges under the Rome Statute for the alleged crimes against humanity of murder, persecution and deportation or forcible transfer of population. Sang is alleged to have contributed to the commission of those crimes. President Kenyatta's trial is due to start on 12 November 2013. He is the first ICC indictee to be elected as head of state and faces charges as an indirect co-perpetrator for alleged crimes against humanity on the counts of murder, deportation or forcible transfer, rape, persecution and other inhumane acts.



## Withdrawal from the ICC

In March 2011 the Kenyan government challenged the jurisdiction of the ICC, arguing that pursuant to Article 19 of the Rome Statute, the two cases before the Court should be declared inadmissible, in light of the adoption of the new Constitution and associated legal reforms by Kenya that have opened the door for the country to conduct its own prosecutions for the post-election violence. Article 19 of the Rome Statute permits the Court to determine that a case is inadmissible if it is being investigated or

rejected the challenges of the Kenyan government, stating that no credible evidence justifying referral to the State had been provided and that national proceedings must involve the same suspects as well as substantially the same conduct as those investigated by the ICC.

Another attempt by Kenya to dissuade proceedings before the Court was made on 9 May 2013, when Kamau Macharia (Kenya's permanent representative to the UN) sent a letter to the UN Security Council (UNSC) asking it to terminate the ICC cases against the President and Deputy President.

of this vote. However, a reading of the Rome Statute makes it clear that the motion and any potential legislation will not impact the Ruto and Sang trial or the Kenyatta trial. Nevertheless, the motion is already having a decidedly negative impact on the Prosecution's case with an unprecedented number of witnesses withdrawing reportedly as their safety can no longer be guaranteed once Kenya ceases to be a member of the Rome Statute.

The move to withdraw by Kenya has cast the country in bad light internationally, attracting criticism from governments and civil society

## A withdrawal could strip the Kenyan people of one of the most important human rights protections and potentially allow crimes to be committed with impunity in the future.

prosecuted by the State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution. "Unwillingness" to carry out an investigation envisages a situation in which proceedings against the accused at the national level have commenced but are being conducted or have been conducted in a manner that suggests that the accused is being shielded from justice. Article 17(2) of the Statute, lists several factors that can be used to determine the unwillingness of a State to prosecute and in Kenya's case, Article 17(2)(b) applies best: "if there has been an unjustified delay in the proceedings which in the circumstances is inconsistent with the intent to bring the persons concerned to justice." The ICC

While the UNSC can ask for a case to be deferred for a year, it does not have the authority to order the ICC to drop a case entirely. Nonetheless, the letter appealed to "friendly nations to use their good offices and prevail upon the International Criminal Court to reconsider the continued process".

A last ditch attempt to derail proceedings before the Court was made just a few days before Deputy President Ruto's trial was due to begin. On 5 September, 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 ever move by any member country. It is expected that the bill will be introduced within 30 days

worldwide. A withdrawal could strip the Kenyan people of one of the most important human rights protections and potentially allow crimes to be committed with impunity in the future. It also sets a dangerous precedent for the future of justice in Africa. The African Union that has long accused the ICC of "race hunting" is also considering a collective withdrawal from the Court and is due to meet for a special summit in Addis Ababa on 13 October to take a stand on the matter. It is the argument of the African continent that the ICC is biased, since it has only indicted Africans while global powers such as the United States and China refuse to accept the Court's jurisdiction. Kofi Annan has emphasised that the Kenyan trials are the "first

steps toward a sustainable peace that Kenyans want, deeply". It is important to portray that no one is above the law in Kenya. Public opinion appears split between those seeking justice for victims and those who claim the Court is neo-colonialist and "anti-African."

### Adequacy of National Legislation

The question remains, if the ICC was not trying Sang, Ruto and Kenyatta, would the Kenyan judicial system be able to effectively carry out their trials and why isn't the Kenyan judicial system already investigating other suspects of the post-election violence (PEV)?

So far, national attempts at addressing PEV in Kenya have resulted in the establishment of the Kenyan Truth, Justice and Reconciliation Commission (TJRC). The TJRC, mandated to investigate and recommend appropriate action on "human rights abuses" committed between 12 December 1963 and 28 February 2008, published its final report in the Government of Kenya Gazette on 7 June 2013. The Report has however, not been tabled in Parliament, as required, within 21 days of the official release. Nor has an implementation committee been established to provide quarterly reports on progress – all steps set out by the TJRC. Instead, the Parliament is currently considering the Truth, Justice and Reconciliation (Amendment) Bill, that if approved will give Members of Parliament the power to alter any sections of the report including recommendations. The report has recommended the prosecution of

hundreds of senior government officials and politicians for their involvement in the 2007-08 PEV.

At present, it appears that there is no credible alternative to the ICC. The current political climate does not seem to allow existing judicial institutions to carry out a process in which central members of the political elite and high ranking officials can be tried in a fair and impartial manner. Moreover, owing to "constitutional immunity", President Kenyatta could only be tried in Kenya if he resigned from office, an unlikely scenario.

In January 2012, the Kenyan government argued before the ICC that it would prefer that the ICC suspects be prosecuted in national courts, the East African Court of Justice or the African Court of Justice and Human Rights. But neither of the latter two courts are mandated or have resources to conduct such trials. Moreover, on 17 August 2012, a multi-agency task force, established by Kenya's Director of Public Prosecutions (DPP), which was mandated to review PEV cases and make recommendations to the DPP on how to process them, concluded that most PEV cases were unsuitable for prosecution due to a lack of evidence. At the same time, however, the DPP stated that some of the PEV cases could be prosecuted as international crimes, but implied that this would happen only if a special division of the High Court in Kenya was established to deal with the cases.

On the one hand, the government challenges the admissibility of the ICC cases, making references to

Kenya's ability and willingness to prosecute the organisers of the post-election violence. But on the other hand, some sections of Kenya's leadership have for months pushed the UNSC to defer the ICC cases, arguing that the trials pose a threat to peace and security. These simultaneous efforts imply that the main objective of the action taken is not to bring to justice the masterminds of Kenya's post-election violence, but rather to prevent accountability altogether.

### Addressing Impunity

Amid the government's struggle with the ICC over admissibility, serious crimes were committed on a large scale in Kenya. In late 2012 and early 2013, violence occurred in Mombasa, Kisumu, Tana River and Baragoi. A commission established to investigate the Tana River clashes, which claimed the lives of more than a hundred people, was told that two Members of Parliament, one minister and other leaders were responsible for the violence. This violence highlights the need to address the impunity gap in Kenya.

Owing to the ICC's limited jurisdiction, finite resources and the prosecutor's policy to target only those persons bearing the greatest responsibility for the gravest crimes, the ICC investigated only a handful of persons. A vast majority of victims have still not seen justice. It is time the Kenyan government focuses its resources towards genuine and credible domestic investigations and prosecutions and breaks the long-standing cycles of impunity. ■

# Inclusive Development Includes Human Rights

**Malcolm Rodgers**, Commonwealth Human Rights Initiative



The eight Millennium Development Goals

In September 2000, the world community met at the United Nations Millennium Summit in New York to pledge its determination to end poverty. All 189 UN member states (then) and 23 international organisations formulated eight Millennium Development Goals (MDGs) to be achieved by 2015, setting numerical indicators to measure progress.

The MDGs were recognition of the stark reality of widespread human deprivation and growing environmental degradation. They sought to galvanise support to reduce poverty, achieve basic education and health, and promote gender equality and environmental sustainability.

The eight MDGs were a formidable challenge to greater global cooperation:

1. Eradicating extreme poverty and hunger
2. Achieving universal primary education
3. Promoting gender equality and empowering women
4. Reducing child mortality rates
5. Improving maternal health
6. Combating HIV/AIDS, malaria and other diseases
7. Ensuring environmental sustainability
8. Developing a global partnership for development.

The current poverty target of MDG 1 – to halve the proportion of people whose income is less than one dollar a day between 1990 and 2015 – has been met and other MDGs have driven substantial change.

There are half a billion fewer people in extreme poverty. About three million children's lives are saved each year. Four out of five children are now vaccinated for a range of diseases.

Maternal mortality gets the focused attention it deserves. Deaths from malaria have declined



by a quarter. Contracting HIV is no longer an automatic death sentence. In 2011, 590 million children in developing countries – a record number – attended primary school.

Much of the MDG success however, is driven by improvements in a few big countries, most notably China. Despite the large gains in economic growth and poverty reduction, many countries still face severe challenges.

Economic growth is not creating enough jobs, livelihoods and opportunities for large segments of societies. Despite the MDGs, there is a growing gap between the rich and the poor. India is a shining example.

A fresh debate is now underway on what the “the post-2015 development agenda” should embrace. There is a new report or conference on the subject somewhere in the world almost every day, yet it’s not in the news, nor is it on the lips of poor people.

What will Commonwealth countries contribute? Leaders at the forthcoming Commonwealth Heads of Government Meeting (CHOGM) in Colombo in November 2013 will debate the same issues, under the title “Growth with Equity: Inclusive Development”. But how inclusive will that development be?

CHRI believes the post-2015 development architecture requires two primary components:

- 1) A more inclusive growth process that generates equal opportunities so that everyone can participate and benefit; growth, which will address inequality.

- 2) The new development framework must explicitly align with the international human rights framework that includes civil and political rights with economic, social and cultural rights as well as the right to development in the post-MDG formulation.

In other words, inclusive development can be achieved by taking a human rights based approach to development.

In an open letter to world leaders in June this year, the UN High Commissioner for Human Rights, Ms Navi Pillay, called for a human rights based approach to the post-2015 development agenda.

What does such an approach mean?

It means taking seriously the rights of poor people and communities to free, active and meaningful participation in the development process.

It means government by social contract, where duty bearers (governments) are accountable to rights holders (the people), especially the most vulnerable, marginalised and excluded.

This requires a focus on non-discrimination, equality and equity in the distribution of costs and benefits.

Commonwealth leaders at CHOGM might well espouse such lofty aspirations in their final communiqué. But how will they become a reality without an accompanying and binding framework of accountability? The framework must identify clear

rights holders and corresponding duty bearers for each mandated action; it must establish measurable benchmarks and indicators for development goals like the MDGs; reflect the full spectrum of human rights and have an agreed structure of monitoring. It has to align the post-2015 agenda with existing international obligations and link accountability assessments to existing international treaty bodies, special procedures and the UN’s Universal Periodic Review.

The absence of such a framework for some is likely to signal the patent insincerity of the endeavour.

Consider the following:

Does it not seem obvious that poor people should be included in a global discussion to end poverty? The Commonwealth Foundation has promoted some regional consultations with Commonwealth Associations but not with poor people themselves. How will the world’s poor participate in their own development when they do not even have a voice in the debate?

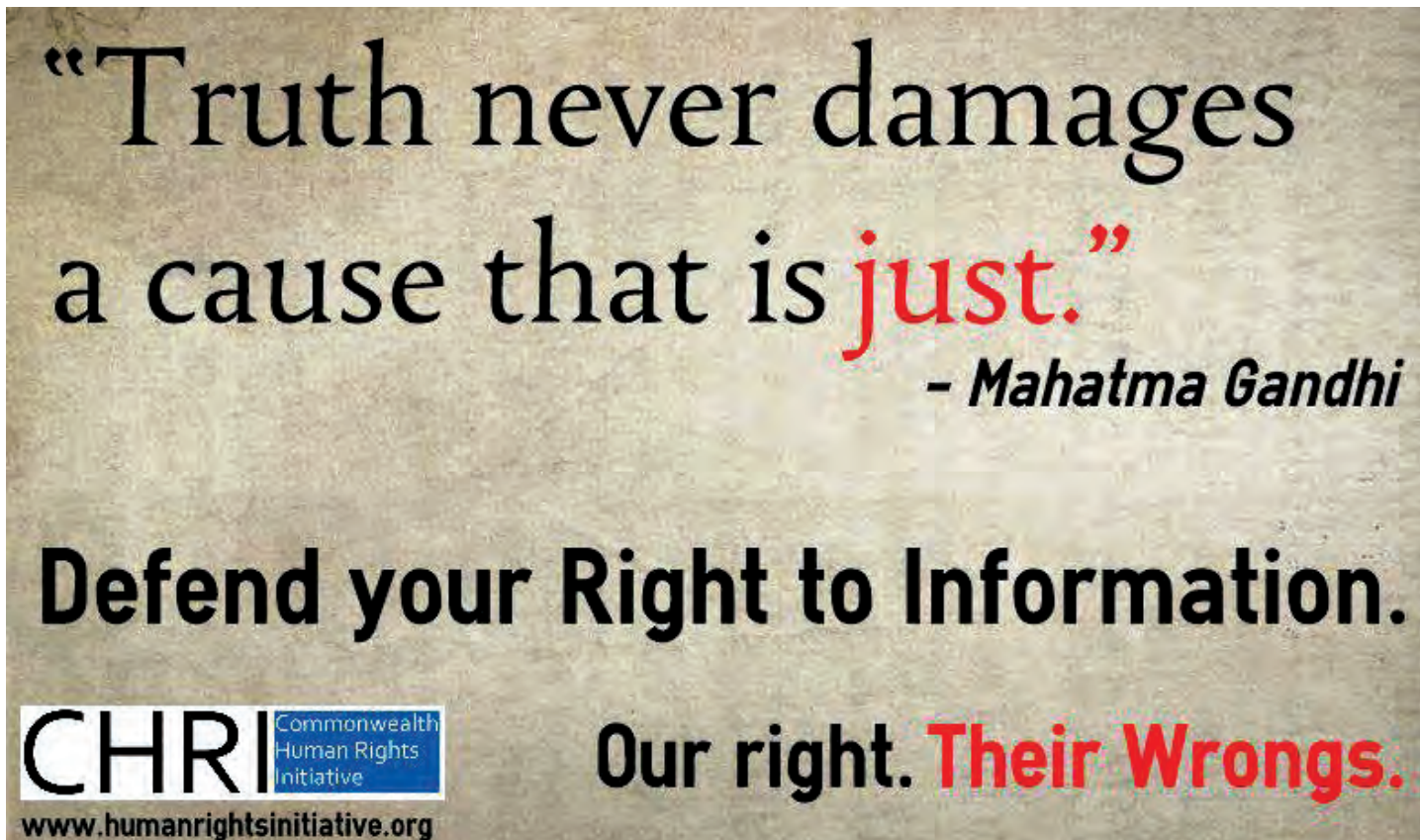
Despite the seminars and the learned papers on econometrics, the new dispensation will reach their dusty villages only when the decision-making is over and the spoils have been divided. This discussion is too important to be reduced to its technical aspects. It should be on the front page of every newspaper. Civil society organisations have a special responsibility to take it to the grass-roots level and to build a platform for a multitude of voices.

It’s a debate we all have the right to know about and be a part of. ■



# Opportunity Knocks but Once

Satbir Singh, Commonwealth Human Rights Initiative



“Truth never damages  
a cause that is **just.**”  
– *Mahatma Gandhi*

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**Our right. **Their Wrongs.****

CHRI seeks support in defence of India's RTI Act

The Government of India's attempts to amend the Right to Information (RTI) Act to exempt political parties from its purview have drawn concern not just in India but across the world. In its ceaseless assault on civil society, the present coalition in power, the UPA, is stripping India of the democratic credentials which are so vital to Indian influence abroad.

Perhaps more than any government in recent history, the UPA has sought to project Indian power beyond its own shores. Banking

on a wave of feel-good coverage of India at home and abroad, the image of a burgeoning middle class, a large and well-armed military and a surging economy, with all its trappings has been peddled across the globe by every Indian diplomat, politician and businessman. From Davos to Durban, Rio to Rangoon, the travelling road-show has sought to depict an India that leads the emerging world, snaps at the heels of the northern powers and ought to be viewed as an emerging superpower – a democratic China.

The economy story has been over for some time and it will be years before India can realistically match the military capabilities of the Americans or the Chinese. India's influence can thus only be guaranteed through the exercise of soft power. By providing enlightened leadership within the Global South, India could secure more long-lasting alliances based, not just on the exchange of treaties and hardware, but on a deeper partnership with the peoples of these countries in the shared pursuit of democracy. Yet in the

battle for friends and proxies, hearts and minds, this government has failed to capitalise on its most valuable asset: its democracy.

In every developing country I have visited, the people I meet tell me that it is India, not China that they admire. For all the highways, ports and anti-aircraft missiles Beijing has bestowed upon their nations, it is India's sixty-five years of relative peace and uninterrupted democracy, respect for basic fundamental rights and the strength of a vibrant, chaotic civil society to which they aspire.

mediation of village elders – have joined the pantheon of democratic experiments which have gained an almost iconic status in policy circles and social science classes around the world. Yet, it is the Right to Information in which India has truly led the pack. India's RTI law is one of the strongest access to information laws in the world and the success of both government and civil society in generating interest has been breathtaking, drawing adulation from all corners of the world. The protagonists of the Indian RTI movement – Aruna Roy, Shekhar Singh, Nikhil

every turn to narrow the space in which these actors can operate.

Since 2007, activists and practitioners from Commonwealth countries in South Asia have visited India on an annual basis to study India's RTI law and its implementation. The programme is run by the Commonwealth Human Rights Initiative and has helped stimulate the emergence of RTI movements and laws across the region. Sanjida Sobhan from Bangladesh's Manusher Jonno Foundation was a key player in the drafting of Bangladesh's RTI

**India's RTI law is one of the strongest access to information laws in the world and the success of both government and civil society in generating interest has been breathtaking, drawing adulation from all corners of the world.**

From neighbouring Pakistan and Bangladesh to countries as far as Brazil, Fiji and Liberia, India is seen as a role model for developing democracies and it is for this reason that community organisers, technocrats, academics and journalists flock to India to study the Indian experience and identify best practices to take home.

India's grass roots democracy practised through the Panchayati Raj system, social audits of welfare programmes and the lok adalats – settlement of disputes through the

Dey, to name but a few – are in constant demand from foreign governments, multilateral agencies and academic institutions seeking to tap into their experiences. At home, these activists help to build and strengthen India's democracy, exposing scandals and giving citizens a real claim on their government. Abroad, they help build the image of an India as the vanguard of governance and development, accumulating soft power on which the government can capitalise in its foreign adventures. Yet that same government seeks at

law. She credits a considerable degree of Bangladesh's success in adopting an RTI law to the precedent set by India and the knowledge gleaned from India's RTI practitioners. Shifu Omar of Transparency Maldives cites the Indian RTI Act as the catalyst for the Maldives' RTI movement, referring to her experiences while studying the impact of RTI in India as "inspirational". In Pakistan, newspapers and activists indulge in friendly rivalry, laughing "If India has the RTI, why can't we?" At a time when we seek to make

friends with our neighbours, what better foundation for friendship could there be than the sharing of successes? Yet the government is willing to turn back the clock and accept failure.

Farther afield, in Sub-Saharan Africa, civil society groups see India's RTI Act as a benchmark against which to measure their own successes. The last three years have seen high-level delegations from Tanzania, Liberia, Nigeria and Rwanda visiting New Delhi to study the RTI, taking home best practices. Norris Tweah, Liberia's Minister of Information, describes the Indian experience as "extraordinary", while Adetokunbo Mumuni, director of Nigeria's influential Socio-Economic Rights Accountability Project (SERAP), encourages Nigerians to "borrow from the Indians" in the implementation of their own 2010 law. The appellate system, the strong provisions for proactive disclosure and the hitherto unwavering ability of the information commissions to ensure compliance are among the many attributes of India's RTI experience that are admired across the world.

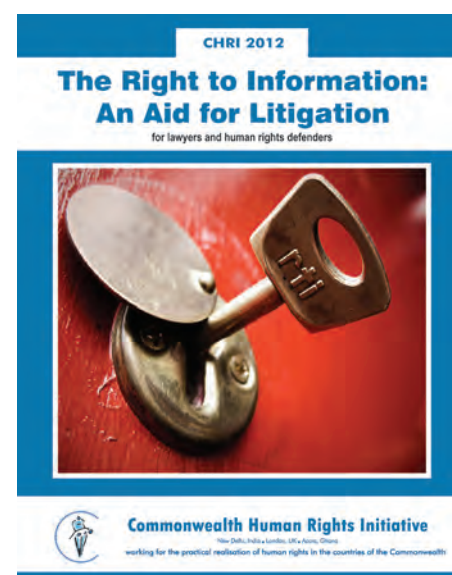
By attempting to amend the RTI Act to exclude political parties from its purview, the government opens the floodgates for further dilutions to the Right to Information. On

3 June 2013, India's Central Information Commission (CIC), the appellate body for RTI matters, ruled that six Indian political parties come under the scope of the transparency Act. This order by the CIC has prompted a rare show of unanimity among political parties, whose leaders have been falling over one another to voice their opposition to this order. With elections imminent at both the state and the national levels, civil society actors were looking forward eagerly to use the law to address issues of rampant political corruption in India. Activists are most concerned that the CIC order will provide political cover for a much broader rollback of key sections of the Act, shielding not only political parties but also public-private partnerships from public scrutiny.

In doing so, the government undermines not just its citizens, but itself. Dayo Akinlaja, Nigeria's Attorney General, prays for the Indian government to recognise that "it stands to benefit more than the downtrodden, hapless masses from the global acclaim and repute that RTI has won for the country", lamenting that "it would be a tragedy if anything should unduly stultify the potency of the RTI Act in India".

This is just the latest output from a government which is willing to

cut its nose to spite its face. Fearful of being bound to international standards, India refuses to join the Open Government Partnership (OGP), a multilateral forum promoting transparency and civic participation in which India would no doubt have been the darling and natural standard-bearer for developing nations. In a short-sighted attempt to evade accountability, the political class has relentlessly targeted civil society and the one effective tool it has to improve governance. In the contest over who is bigger, democracy is perhaps the one playing field on which India unambiguously trumps China and the one area in which India could effectively lead, but at home and abroad, this government has not missed an opportunity to miss an opportunity. ■





# Opportunities with CHRI

## Internship 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 either a volunteer basis to intern with us for periods ranging from three months to a year, or may apply for a stipendiary position as programme assistants or 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](mailto:info@humanrightsinitiative.org). To know more about us visit us at [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org).

# For copies of our publications

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