



# CHRI

COMMONWEALTH HUMAN RIGHTS INITIATIVE

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# NEWSLETTER

## CHOGM 2011: The EPG Report

Get an inside perspective on the EPG Member report  
by Hon. Justice Michael Kirby



Colourful CHOGM flags flying in Perth City  
Source: ComSec

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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 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

### **The Commonwealth: Time to Postpone Postponement**

R. Iniyan Ilango, Strategic Initiatives Programme, CHRI

**Page 4**

## Cover Story

### **An Inside Perspective on the Report of the Commonwealth Eminent Persons Group to CHOGM 2011**

The Hon. Michael Kirby AC CMG

**Page 6**

### **The Report of the Eminent Persons Group: A Commentary**

Richard Bourne, Senior Research Fellow, Institute of Commonwealth Studies

**Page 10**

## Special Story

### **The Perils of Consensus: Human Rights Negotiations at the UN General Assembly**

Zachary Abugov, Strategic Initiatives Programme, CHRI

**Page 12**

### **Commonwealth Civil Society and the Friends Network**

Ashley Johnson, Royal Commonwealth Society

**Page 14**

### **Nigeria's Same-Gender Marriage (Prohibition) Bill: A Bad Case of Déjà Vu**

Sanyu Awori and Rithika Nair, Strategic Initiatives Programme, CHRI

**Page 16**

### **Bridges and Buffers: Regional and National Human Rights Mechanisms – 11th informal ASEM Seminar**

Jennifer Kishan, Strategic Initiatives Programme, CHRI

**Page 18**

## Feature

### **Malawi: A State in Decline**

Sanyu Awori, Strategic Initiatives Programme, CHRI

**Page 20**

## Fact Sheet

### **Annual Report of the Central Information Commission (India) for the Year 2010-2011: Findings**

**Page 22**

## Advertisement

**Page 23**



## The Commonwealth: Time to Postpone Postponement

R. Iniyana Ilango, Strategic Initiatives Programme, CHRI

As CHOGM 2011 approached, several crucial questions hung over the Commonwealth. Would it accept much needed reforms? Would it stand by its fundamental values and promote human rights? Several commentators warned that decisions taken at CHOGM 2011 might mean a new lease of life or certain death for the ailing Commonwealth. CHOGM 2011 has come and gone and the Commonwealth seems to have said that even life and death would have to go through the tyranny of official Commonwealth processes before they could be verified, ascertained and, if found necessary, be recognised as such.

When heading towards Perth, the Commonwealth had before it, well laid out and insightful reform proposals from the Group of Eminent Persons and of a study by the Commonwealth Ministerial Action Group on reforming itself. This is a body of knowledge that emerged from about four years of targeted civil society deliberations and a history of over three decades that is replete with important lessons. All of them, including CHOGM 2009's communiqué, appeared clear that the Commonwealth had to change or fade away. When the Commonwealth actually sat

down at Perth to consider all this, it passed a few reform proposals and shelved the majority for further deliberation.

The consequences facing the Commonwealth are very clear and have been explicitly under debate since the two years that preceded CHOGM 2009. However at CHOGM 2011, it appeared that the Commonwealth was not prepared and needed more time. About four years of debates and two years of expert study and analysis led by a Group of Eminent Persons was ultimately inadequate at Perth.

To an independent observer, the situation was clear: reforms are a bitter pill for the Commonwealth; several influential Commonwealth countries do their best to avoid fundamental Commonwealth values, such as human rights, and dislike increased international scrutiny in this area; official organs of the Commonwealth such as the Commonwealth Secretariat have not shown excessive interest in reforming themselves.

As the host, Australia wanted a clean CHOGM and was anxious to tread softly on "sensitive"





Colourful CHOGM flags flying in Perth City  
Source: ComSec

issues, while countries such as Sri Lanka openly threatened to break up the Commonwealth if important reform proposals went ahead. Large developing countries such as India and South Africa chose to discourage sweeping reforms and scrutiny on human rights violations, while influential developed countries such as the UK preferred to remain publicly silent while claiming to speak up behind the scenes.

The manner in which the venue for CHOGM 2013 was handled is a good indicator of the grim direction the modern Commonwealth intends to take. Despite active civil society advocacy and a strong media spotlight on the issue, without any scrutiny, the Commonwealth allowed Sri Lanka to proceed with its plans of hosting CHOGM 2013. No official mention was made in this context on allegations of human rights and humanitarian law violations against Sri Lanka – even though

they have been found credible by independent UN experts.

Most worrying is the fact that new processes to review reform proposals do not mention any form of civil society participation. It is feared that if left entirely to governments and the Commonwealth Secretariat, important reform proposals such as the one for the establishment of a commissioner for democracy, rule of law and human rights might die a slow death or become diluted beyond recognition.

The current solution that will see Commonwealth ministers and officials going through reform proposals might buy time, but how much time can be bought from death? Current postponements and decisions already signal that the Commonwealth has begun to wane. We can only hope that the Association will realise that before long it will have waned too much to ever wax again. ■

# An Inside Perspective on the Report of the Commonwealth Eminent Persons Group to CHOGM 2011

The Hon. Michael Kirby, AC CMG



At the Commonwealth Heads of Government Meeting (CHOGM) Port of Spain, in Trinidad, which preceded the recent CHOGM meeting in Perth, Western Australia, the leaders resolved to establish an Eminent Persons Group (EPG). Its purpose was to advise CHOGM on a number of organisational questions affecting the future of the Commonwealth of Nations. But it was also to look into the future and to provide ideas for action that CHOGM might take to assure that

the Commonwealth of Nations has a future.

Although the motives for creating the EPG were not entirely clear, the decision was apparently made towards the end of the meeting in Port of Spain. It may have been influenced by a feeling, expressed in Commonwealth journals and institutions, that the Commonwealth was in urgent need of reform; that its handling of human rights complaints against

member countries was seriously defective; that the conduct of its operations by the Secretariat, based in London, was lacking in transparency; that coverage of the Commonwealth's achievements in the international media was poor; that several urgent problems, especially facing Commonwealth countries, were not attended to; and that a new broom was needed if the Commonwealth was to survive.

The appointment of members of the EPG was assigned to the Secretary-General (SG) of the Commonwealth (Mr Kamallesh Sharma, an Indian diplomat), selecting from the nominees of Commonwealth governments.

to the SG in July 2011. It was circulated to the Heads of Government thereafter and discussed at the meeting of Commonwealth Foreign Ministers in Perth (chaired by the Hon. Kevin Rudd MP, Australia's

The EPG's 106 recommendations cover a wide range of issues relevant to the future of the organisation and the improvement of its organisation, programme and methodology. Amongst the major proposals, of chief

The title of the EPG report, *A Commonwealth of the People: Time for Urgent Reform (2011)* indicates the high priority the EPG placed on action by the Heads of Government.

Ultimately, the SG appointed Tun Abdullah Badawi (past Prime Minister of Malaysia) as Chairman of the EPG. He named ten other Commonwealth citizens to serve on the EPG, including the writer. The members included Prof Emmanuel Akwetey (democracy expert, Ghana), Patricia Francis (international organisations, Jamaica), Ms Asma Jahangir (human rights lawyer and President of the Supreme Court Bar in Pakistan), Sir Malcolm Rifkind QC (past Foreign Secretary of the United Kingdom), Senator Hugh Segal (Canada), Sir Ronald Sanders (diplomat, Guyana) and Sir Ieramia Tabai (first Prime Minister of Kiribati) Dr Graca Machel (human rights advocate), Samuel Kavuma (youth leader, Uganda). The EPG met five times face-to-face, four times at Marlborough House in London and once in Kuala Lumpur, Malaysia. It was assisted by the Secretariat. But the members decided at the outset to write their own report. That report, containing 106 unanimous recommendations, was delivered

Foreign Minister) and at the meeting of the Heads (chaired by the Hon. Julia Gillard MP, Prime Minister of Australia).

The title of the EPG report, *A Commonwealth of the People: Time for Urgent Reform (2011)* indicates the high priority the EPG placed on action by the Heads of Government. During work towards the EPG report, much assistance was given to the writer by the Department of Foreign Affairs in Canberra. However, they studiously respected the independence of the Group. In preparing the report, there were close consultations with Ministers and with the Leader of the Opposition (the Hon. Tony Abbott, MP), the Coalition Spokesperson on Foreign Affairs (the Hon. Julie Bishop, MP) and the Leader of the Australian Greens (Senator Bob Brown). Generally speaking, there are few differences in the policies of the major Australian political parties about Australia's engagement with the Commonwealth.

interest to lawyers, were the following:

- ★ Adoption of a Charter of Commonwealth Values, expressed in the name of the peoples of the Commonwealth rather than (as at present) declarations of Heads of Government decided at the conclusion of CHOGM meetings;
- ★ Improvement in the functioning of the Commonwealth Ministerial Action Group (CMAG), an elected body of Commonwealth Foreign Ministers, which makes important decisions about the organisation between the biennial CHOGM meetings;
- ★ Creation and appointment of the post of Commissioner for Electoral Democracy, the Rule of Law and Human Rights. This office was intended to enhance the engagement of the Commonwealth and its Secretariat with human rights concerns in Commonwealth countries and to ensure that these were not swept under the carpet or ignored, but tackled openly and candidly;





The Hon. Michael Kirby, AC CMG addressing a seminar organised by CHRI during CHOOGM 2011  
Photograph by Iniyan Ilango

★ Reform of laws enforced in many Commonwealth countries that impede successful strategies to tackle the HIV epidemic. That epidemic was shown by

★ Revision of the procedures for Commonwealth meetings, including consideration of applications by new states to join the Commonwealth;

★ Recognition and extension of the liberating use of free access to Commonwealth judicial decisions and statutes through the Australian initiative of AustLII, CommonLII, BaiLII and other legal information institutes.

Members of the EPG who were in Perth, were invited to attend and address the Foreign Ministers' Meeting and they also met the Heads at their retreat in Kings Park, Perth. It was soon apparent that several countries of the Commonwealth were hostile to the idea of the appointment of a Commissioner. However, the proposal had support from civil society which held forums in Perth

Of the 106 recommendations, 43 were immediately adopted by the leaders at the Perth CHOOGM, with another 43 to be considered further, while eight recommendations concerning CMAG were substantially adopted.

United Nations submissions to be at least twice as prevalent in Commonwealth countries as elsewhere in the world. A partial explanation of this grave situation, affecting millions of Commonwealth citizens, is the retention of laws criminalising adult, consensual, private sexual conduct between persons of the same sex, in many Commonwealth countries. Such laws remain in force in 41 of the 54 countries of the Commonwealth. They stigmatise homosexual people and groups in these countries and make the task of addressing the AIDS epidemic effectively very difficult;

★ Improvement in the arrangements for Commonwealth citizens to secure visas or visa-free entry to other Commonwealth nations in place of the frequent difficulties currently faced;

★ Attention to special issues of concern for women and youth, including the establishment of a Commonwealth Youth Corp to tap young volunteer resources across the Commonwealth;

★ Special attention to climate change which threatens the safety and even the existence of several small island states in the Commonwealth; and

to coincide with CHOOGM. Many members of civil society were critical of the decision to hold the next CHOOGM meeting in Colombo, Sri Lanka, as long as there was no resolution of the demands for an independent enquiry into the bloody circumstances surrounding the conclusion of the civil war in that country between government troops and the LTTE (Tamil Tigers). The next meeting of CHOOGM is scheduled to occur in Colombo in 2013.

The EPG's recommendations are now being reviewed by officials, Ministers and



Heads of Government of the Commonwealth. Of the 106 recommendations, 43 were immediately adopted by the leaders at the Perth CHOGM, with another 43 to be considered further, while eight recommendations concerning CMAG were substantially adopted. These may help to make that body more effective in addressing challenges to Commonwealth values between CHOGM meetings. Till now, CMAG has been reasonably effective in responding to military coups and the removal of elected governments. But it has been ineffective in responding to serious or persistent abuses of human rights in Commonwealth countries. According to the Commonwealth SG, 95 of the 106 recommendations were adopted or taken forward for further consideration. However, the fate of the sensitive proposals is uncertain, including the urgent steps necessary to respond to the disproportionate impact of HIV and to remove the laws inherited from colonial times that impede that effort.

An unfortunate feature in the run up to the Perth CHOGM was the failure to release the EPG report before the meeting, so that it could be available to civil society organisations and citizens throughout the Commonwealth. Release in advance of CHOGM was the course taken in the only other EPG created by the Commonwealth 25 years earlier concerning the transition from

apartheid in South Africa. The former Australian Prime Minister (Rt. Hon. Malcolm Fraser ACCH), who served on the earlier EPG, delivered an address at Murdoch University in Perth, during CHOGM week, strongly criticising the failure to release the report. The report was not even released before the first phase of the CHOGM meeting. This led members of the EPG to release their own copies of the report to the national and international media at a press conference. The result was a general release of the report, which is now available on the Commonwealth Secretariat's website.

The Commonwealth of Nations is a remarkable institution. It is the most successful post-colonial association of nations, joined together voluntarily to uphold stated values and to share ongoing experience. In the 54 member countries of the Commonwealth, situated in all parts of the world, 2.3 billion citizens live. Many of them have access to each other through the Internet, the use of the English language and parliamentary, judicial, academic, sporting and scientific institutions. Opening the Perth CHOGM, Queen Elizabeth II, as Head of the Commonwealth, commended the EPG report to the attention of the Commonwealth leaders, reminding them that the Commonwealth was not only an organisation of governments and nations, but of people. This was the same message emphasised throughout the EPG report.

The jury is still out on the extent to which the central recommendations of the EPG will be taken up. Defeat or prevarication on the proposed Commissioner and failure to act with resolution on the steps necessary to address the urgent problems of HIV/AIDS, will constitute serious failures that undermine the potential and reputation of the Commonwealth of Nations. Till the next meeting of Commonwealth leaders in Colombo in 2013, the Prime Minister of Australia will be the "Chairperson in Office" of the Commonwealth. It will therefore be an important responsibility for Australia to give leadership to the Commonwealth at a time of significant challenges to its capacity to address the human rights, environmental, developmental and other problems reviewed in the EPG's report.

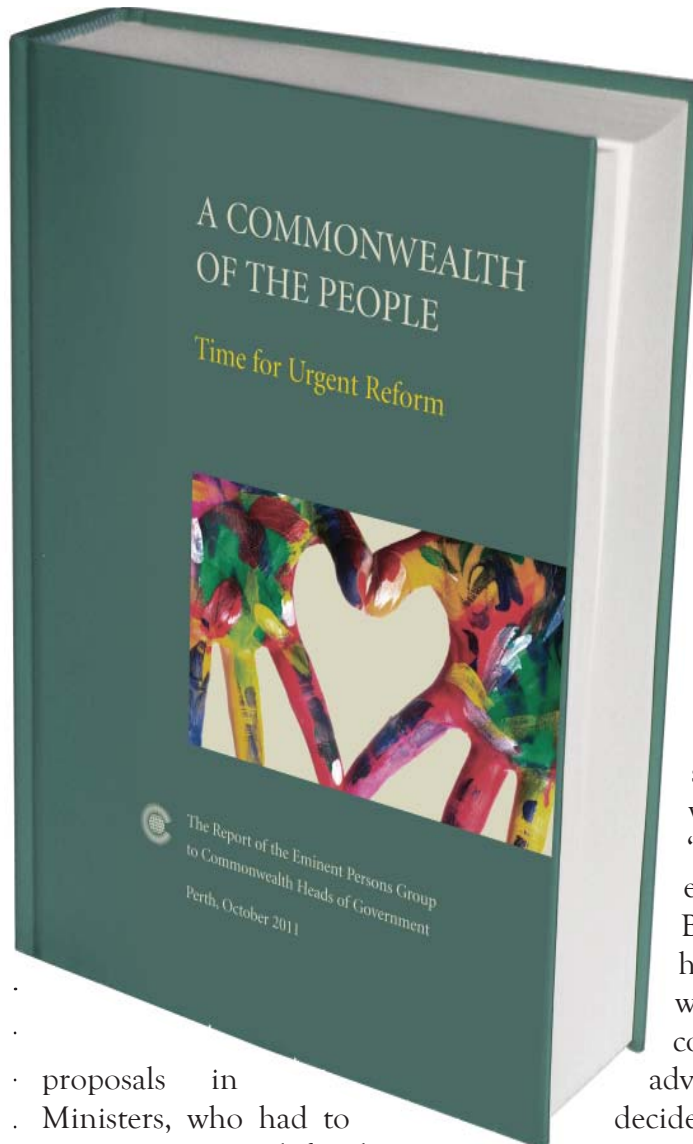
The Queen's Diamond Jubilee, commencing on 6 February 2012, will afford many opportunities to reflect on the international organisation over which she has presided as Head for 60 years. The age of the British Empire has passed. The Commonwealth evolved seamlessly out of the Empire. It overcame earlier challenges, such as the claim to republican status and the divisive issue of apartheid. But unless it can reform itself for a very different time in global affairs, its long-term survival as a relevant player must be doubtful. ■

# The Report of the Eminent Persons Group: A Commentary

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

Will the report from the Eminent Persons Group (EPG), chaired by Abdul Badawi, former Prime Minister of Malaysia, propel the Commonwealth into a new era of relevance and activity in the twenty-first century? Or will historic divisions among the 54 member nations continue to hobble a body which, although not always recognised, has brought useful benefits to its peoples and governments?

That was the sub-text of the rather hasty discussion in Perth, Australia, at the recent summit which analysed the EPG's 106 recommendations. The Commonwealth has suffered from existential angst since the 1960s: what is it for, where is it going? But the context for the EPG was harsh and immediate. A global survey, conducted by the Royal Commonwealth Society in 2008, discovered that few of its citizens know anything about it; in Jamaica, a substantial number thought that President Obama was their head of state, although it is actually the Head of the Commonwealth, the Queen who is represented by a Jamaican Governor-General. Aid agencies of both the United Kingdom and Australia recently produced damning reports on the inadequacy of the Commonwealth Secretariat's development work, a key interest for the majority of members.



proposals in Ministers, who had to accept, reject or defer the 106 items, in a meeting which lasted till midnight, had not even read the document earlier.

Discussions at Perth focused on only two ideas from the EPG – the proposal for a Commissioner for Democracy, Rule of Law and Human Rights, which was deferred to the Commonwealth Ministerial Action Group and the Secretary-General, to look into “relevant factors”, and the Commonwealth Charter, which was accepted subject to detailed negotiation. Only 11 recommendations were instantly rejected and 43 were handed over to a Ministerial Task Force, chaired by Kevin Rudd, the Australian Foreign Minister, that will meet in April and conclude

A perceived lack of dynamism in the Commonwealth led to two intergovernmental reviews earlier, in 1989-91 and 1999-2002. Neither led to much change. But this time, harking back to the EPG which sought an end to South African apartheid in 1986 (it pulled out when the apartheid regime bombed three neighbouring Commonwealth states) the task was given to “independent” experts, chaired by Mr Badawi. This meant, however, that there was no governmental commitment to their advance. Several Foreign Ministers decided quickly whether to

their work by September 2012.

The EPG covered a wide range of topics. It suggested a new strategy to deal with reform of the international financial architecture; climate change; migration and development; the special needs of small states; and youth, where it hoped for a Commonwealth Youth Corp. It wanted to pep up the Commonwealth Secretariat and Commonwealth Foundation, and to see more linkages with Commonwealth civil society bodies. It advocated a more pre-emptive approach for CMAG, which paralleled CMAG's own

civil society, and a sharp attack on a suggested Northern bias in the outcome was published on 20 November by *The Statesman*, Kolkata, over the signature of Krishan Srinivasan, former Deputy Secretary-General of the Commonwealth and, before that, India's Foreign Secretary. Yet historically, the dialectic between different Commonwealth governments has been one of its creative strengths. The original EPG was in fact a compromise outcome of such a conflict.

Several observers consider that the existing Commonwealth is quite

in all international organisations, there are passengers. An ambitious development programme suggested by the EPG, in which the Secretariat should have a catalytic role in several tricky and long-lasting international negotiations, could be checkmated because the Australian, British and Canadian aid agencies do not recognise the Commonwealth as a significant player.

There is little doubt that as matters stand now, the Secretariat would have to drop some activities if it was, for example, to start to engage seriously with issues of food security and marine resources, or with issues

## Why don't the leaders request reputable civil society organisations, including the Commonwealth Human Rights Initiative or the Commonwealth Business Council, to carry out work for the Commonwealth?

recommendations (strangely CMAG's 2011 report has, unprecedentedly, not been made public) which were accepted by the leaders.

But even if all or most of the proposals passed to the Ministerial Task Force are approved, will the totality make the Commonwealth fit for purpose in the twenty-first century? It is obvious that several ideas of the EPG need more work – including the proposal for the Commissioner – and some will cost money at a time of international austerity. Disappointment has already been expressed by some donor governments and some in

capable of performing considerably better, if the will and the money were available, and that the suggested Charter is a redundant diversion. The small size of the Commonwealth Secretariat, the intergovernmental tool for political and economic cooperation, is plainly a handicap. It cannot offer competitive salaries. The staff complement is no larger than that of the United Nation's canteen in New York, and it is said to have only 60 persons of diplomatic and professional status, currently. Individuals who are good at their work are overloaded at all levels and tend to look elsewhere after their first contract is completed; inevitably, as

of migration and development. It might also need different people. But why should this be a zero sum game? Why should everything be left to the Secretariat? Why don't the leaders request reputable civil society organisations, including the Commonwealth Human Rights Initiative or the Commonwealth Business Council, to carry out work for the Commonwealth? This would leave the Commonwealth Secretary-General and his small Secretariat with the role of liaison and coordination; not frustrated by the impossibility of doing everything himself. The EPG report has presented a challenge to civil society as well as governments. ■



# The Perils of Consensus: Human Rights Negotiations at the UN General Assembly

Zachary Abugov, Strategic Initiatives Programme, CHRI

UN General Assembly  
Photograph by: Patrick Gruban



In November, the Third Committee of the UN General Assembly (UNGA) – the Committee tasked with handling most of the General Assembly’s human rights workload – adopted its biennial resolution on Human Rights Defenders. The draft resolution, which closely resembled past UNGA resolutions on human rights defenders, was introduced by Norway and underwent a series of negotiations and revisions before being adopted by consensus. The resolution recognised the important work done by human rights

defenders and noted the often dangerous situations in which they operate. According to the Norwegian representative who introduced it, the resolution was meant to support the implementation of the 1998 UN Declaration on human rights defenders by calling on States to protect Human Rights Defenders and promote the Declaration domestically.

While this resolution was a slightly improved version of the resolution on human rights defenders adopted

by the Third Committee in 2009, notable positive improvements to the resolution contained in an earlier draft were weakened significantly during the negotiation process.

Successive drafts of the resolution offer a clear picture of where it was diluted. An early draft noted grave concern with “reports that human rights defenders, including journalists, are often targeted for investigating, monitoring and reporting on human rights

abuses". After negotiations, the final resolution adopted, included a similar concern, but left out the word "journalists", suggesting that certain countries do not view journalists' work as equivalent to that of human rights defenders. The omission comes despite the definition in the UN Declaration on Human Rights Defenders being commonly interpreted to include journalists who work to bring human rights issues to the fore. Journalists, for example, were included in a recent report presented to the Third Committee by the Special Rapporteur on human rights

important tools for human rights defenders. According to those familiar with the negotiations, certain countries fought against the inclusion of a strong action clause because the clause did not give equal space to language on limitations of the right to freedom of expression.

One of the most contentious paragraphs in the earlier draft called on States "to ensure that human rights defenders can operate freely in the context of peaceful protests, inter alia to enable them to perform their monitoring and reporting role, and in this regard to refrain from

resolution. The earlier draft called on all States to "promote a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity, and to publicly acknowledge the importance and legitimacy of their work". Without being privy to the negotiations, we can only speculate on why this clause did not make it into the final resolution. However, it would be difficult to imagine that some of the world's most repressive governments would consent to publicly acknowledging the importance and legitimacy of the work of human rights defenders,

...seeking consensus, while laudable, often means compromising on fundamental human rights with governments that do not respect them.

defenders. Furthermore, the words "investigating" and "monitoring" were replaced in the final draft by "seeking information", a narrower term than "monitoring", which is standard language used to describe the work of human rights defenders and should have been included in the final resolution.

The earlier draft also included an action clause calling on States to "... ensure that human rights defenders can exercise their freedom of opinion and expression through any means of communications, including mobile communication, social media and digital networks". By the final draft, that clause was significantly diluted so that States no longer had a responsibility to ensure these freedoms, but merely to recognise that new forms of communication can serve as

excessive and indiscriminate use of force, arbitrary arrests and detention, ill-treatment and torture, enforced disappearance and abuse of criminal and civil proceedings or threats of such acts". The final resolution retained some of that language, but removed the requirement that human rights defenders should be able to "operate freely" and added in a qualifier stating that peaceful protests should be "in accordance with national legislation consistent with the Charter of the United Nations". At one point, there was a concern that an amendment would be proposed to qualify peaceful protests as "lawful", but that further amendment thankfully did not come to pass.

Finally, one very positive addition by Norway in the earlier draft was entirely deleted from the final

who are sometimes viewed by such governments as enemies of the state.

The dilution of the original resolution would not surprise those familiar with negotiations on human rights issues at the UN-level. Past UNGA resolutions on human rights defenders have historically been adopted by consensus and Norway fought hard to maintain this trend. Unfortunately, this resolution is evidence of another less desirable trend: that seeking consensus, while laudable, often means compromising on fundamental human rights with governments that do not respect them. This trend has the potential to stunt human rights norm-setting in the future, and, even more worryingly, erode decades of past work on already-established norms. ■

# Commonwealth Civil Society and the Friends Network

Ashley Johnson, Royal Commonwealth Society



**[www.commonwealthfriends.org](http://www.commonwealthfriends.org)**

“Be idealistic, be visionary... Our ambition is no less than to change the world”.

These were the Australian Prime Minister, Julia Gillard’s words, imploring hundreds of civil society representatives to be bold as they began three days of discussion and debate at the Commonwealth People’s Forum.

The audience that afternoon came to Perth with hopes for Commonwealth reform embodied by the report of the Eminent Persons Group (EPG). Its creation was initiated in part by the work of the Royal Commonwealth Society (RCS) and was designed to bring a louder voice and sharper teeth for the Commonwealth on human rights issues.

Of course, by the end of CHOGM 2011, the majority of the EPG’s

recommendations simply proved too intimidating for Commonwealth leaders; but that is not to say the issues contained within it were undisputed.

Before the Heads of Government retreated to their Summit, the arguments for and against reform were presented, and tensions between different member states, and indeed, between member states and civil society organisations, were on display at the Foreign Ministers’ engagement session with civil society:

“I believe that the next time we have an important report about the future of the Commonwealth, it should be published in advance, circulated to civil society and media and we would come to these meetings in order to receive your detailed views about it in advance of our deliberations rather than you being unable to give

those views because you haven’t seen it in detail.” William Hague, British Foreign Secretary and First Secretary of State, referencing the suppression of the EPG report

“[CSOs] tend to depend on assistance from outside and therefore outside international NGOs can insist on certain things, certain values and certain practices that sometimes are not consistent with the practices in Africa.” Arthur Peter Mutharika, Minister for Foreign Affairs of the Republic of Malawi

“There is no denying that we need a Commonwealth that can respond to violations of human rights.... However, we are concerned about the possibility of overlap with existing international mechanisms.... Such overlap would create confusion among member countries, especially if it is subjected



to multiple international inquiries with different jurisdictions over similar issues.” Datuk Seri Syed Hamid Albar, Minister of Foreign Affairs of Malaysia

“I am beginning to find [the priority of civil society] is not in the pursuing of their objectives but more to look for an opportunity to get a free trip overseas.... If you do not take care of your governance, then you are going to come in and meet with us and we are going to look at you with pity.” Tuilaepa Aiono Sailele Malielegaoi, Prime Minister of Samoa

“I understand the critical role that civil society plays and in fact, as I listen to some of my counterparts, I am happy to say I have seen the evolution of the relationship with civil society in Barbados and the Caribbean where, over time, it has grown less adversarial and more collaborative.” Maxine McClean, Minister of Foreign Affairs of Barbados

## Friends of the Commonwealth: Mobilising the Commonwealth Network

The Commonwealth’s comparative advantage is its commitment to shared values and principles. But as these values are continuously undermined, by flagrant human rights abuses in member countries, or by the silence of an overly-cautious Secretariat, it is increasingly obvious that there is not one Commonwealth, but two: one of the governments, and one of the people.

Rather than continuing to knock on the door of the institutional Commonwealth, the Association’s civil society must press on. We can act as though a new Commonwealth contract has been signed, as though the EPG’s report has been implemented, and we can be bold and idealistic in improving the developmental performance – and the reputation – of the Commonwealth.

Global moral authority has been relocated and global governance has new paramount actors: civil society.

To adapt to this changing power dynamic, the RCS has re-imagined its international network, partnering with Friends of the Commonwealth to form an online community of information and action, which will be the primary vehicle through which the RCS interacts with international contacts.

Sir Colin Shepherd, Chair of Friends of the Commonwealth, introduced the new network at a reception in Perth: “With the Internet as it is, it has never been so easy to be an engaged citizen of the Commonwealth. But Friends won’t be just a one way channel used to transmit Commonwealth news; rather as a network it will enable the active involvement of members in Commonwealth affairs and projects. Together we can realise the potential of Friends of the Commonwealth, ensuring that ‘Friends’ is a modern, flexible tool with scope to influence and deliver”.

Peter Kellner, Chair of the RCS, saw the creation of Friends as the moment “civil society grew teeth” and likened the network to “a virtual Tahrir Square”.

The network aims to be accessible, accurate and active, empowering individual members to make a significant impact on intergovernmental and national affairs, while also offering practical information on programmes, scholarships, jobs and grants.

In a world of increasing complexity and competing narratives, Friends hopes to become the coherent voice for the passionate but disorganised Commonwealth civil society.

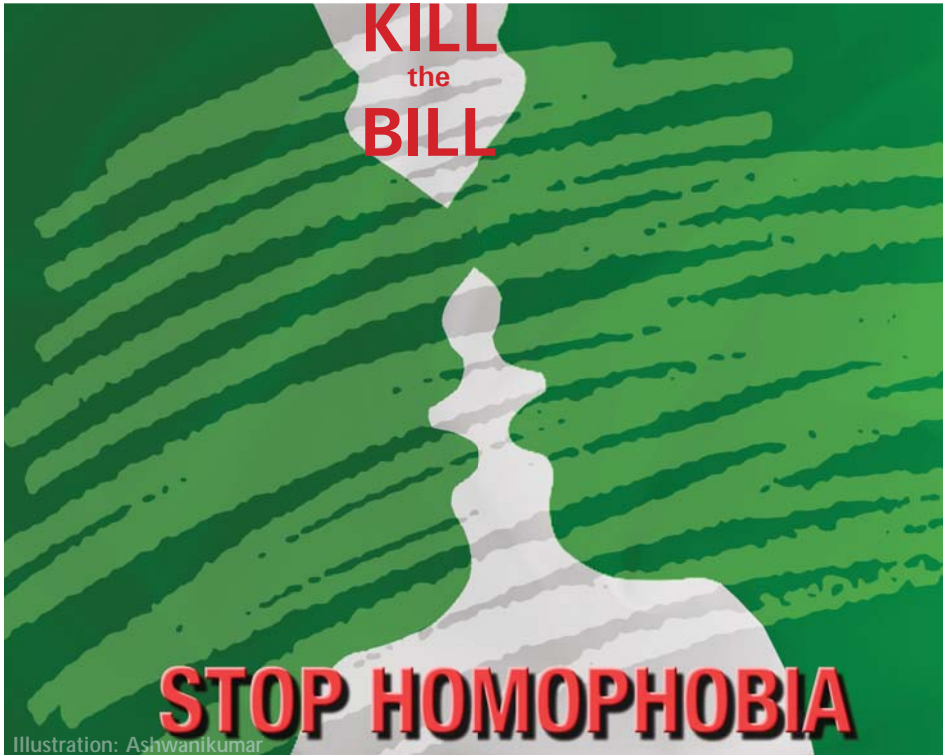
Friends will speak up when the institutional Commonwealth falls silent. This almost Gandhian sentiment was invoked in Julia Gillard’s speech at the People’s Forum when she said, “When people call for change and ask where it will come from, we already know. It will come from us”.

At a time when donors, media and governments are losing faith in the Association, the onus is now on Commonwealth civil society to realise the ambition – and salvage the reputation – of the entire Commonwealth project.

We are encouraging Commonwealth civil society to join Friends as individuals by visiting [www.commonwealthfriends.org](http://www.commonwealthfriends.org). ■

# Nigeria's Same-Gender Marriage (Prohibition) Bill: A Bad Case of Déjà Vu

Sanyu Awori and Rithika Nair, Strategic Initiatives Programme, CHRI



Lawmakers in Nigeria are subjecting the lesbian, gay, bi-sexual, transgender and intersex (LGBTI) community to a bad case of déjà vu. On 31 October 2011, the Nigerian Senate began public hearings on legislation intended to criminalise same-sex conduct. The Same Gender Marriage Prohibition Bill, spearheaded by Senator Domingo Obende imposes sanctions on persons who enter a “same-gender marriage contract”. This is defined as the “coming together of persons of the same sex with the purpose of living together as husband and wife or for other purposes of same-sex relationship”. Couples can be convicted to serve three years

of imprisonment. Individuals or groups that “witness”, “abet” or “aid” such a relationship also risk a fine and/or five years of imprisonment. This expansive approach also has the potential to criminalise human rights defenders who work to promote and protect the rights of sexual minorities – who are recognised by the international community through the UN Declaration of Human Rights Defenders. The proposed bill is broad and ambiguous and can easily lead to arbitrary arrests and harassment of sexual minorities and those who defend their rights.

Unfortunately, this is not the first anti-homosexuality legislation to be

introduced in Nigeria. Bills were proposed twice before, in 2006 and in 2008. The draft legislation in 2006 proposed to take an even stronger stance and ban organisations, clubs and societies for sexual minorities. It also intended to forbid any media to show same-sex relations. However, local and international actors responded in protest, and their outcry prevented both the draft bills from becoming law.

Adult same-sex conduct is already prohibited under the Nigerian Criminal Code and carries 14 years of imprisonment. In some regions in the North, where Sharia law applies, same-sex conduct is punishable by death. It must be questioned why the Nigerian senate is debating legislation on already criminalised conduct.

The Same Gender Marriage Prohibition Bill serves to undo the rights enshrined in the national Constitution and human rights instruments that Nigeria is a state party to. Human rights standards as expressed in the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, amongst others, clearly prohibit such discrimination. By acceding to these instruments, Nigeria has pledged to protect the dignity and equality of all persons. Nigeria's obligations render the draft bill superfluous and it needs a clear signal that the

criminalisation of same-sex conduct grossly impinges on the dignity and rights of sexual minorities.

While the LGBTI community has spoken out against the proposed bill, homophobia remains deeply entrenched within Nigerian society. Sexual minorities are marginalised and vulnerable to threats and harassment, abuse and violence. In solidarity with local LGBTI activists, the NGO forum at the recently concluded 50th African Commission on Human and Peoples' Rights (ACHPR), adopted a resolution condemning human rights violations against the

Nigeria's proposed bill comes at a time when the UK government has threatened to cut foreign aid to countries that restrict the rights of sexual minorities and discriminate on the basis of sexual orientation and/or gender identity. UK's position is intended to pressure African governments, in particular, to repeal legislation that criminalises same-sex conduct. Instead of bowing to this pressure, political leaders such as those in Ghana, Tanzania and Zambia have publicly vowed not to give in to what they deem as coercive measures. The Nigerian government, by re-introducing this bill, appears to harbour sentiments

is illegal in 41 out of 54 countries of the Commonwealth. The Commonwealth Heads of Government Meeting (CHOGM) 2011, held at Perth recently saw Kamallesh Sharma, Secretary-General of the Commonwealth, allude to the human rights gaps created by discriminatory laws based on sexual orientation and gender. Commonwealth Heads however delayed adopting a proposal made by the Commonwealth Eminent Persons' Group (EPG) in their report, *A Commonwealth of the People: Time for Urgent Reform*, wherein they recommended the "repeal of discriminatory laws that

## Homophobia in Africa is no secret...while the LGBTI community has spoken out against the proposed bill, homophobia remains deeply entrenched within Nigerian society.

LGBTI community, including the proposed bill in Nigeria, and called on ACHPR to take a strong, visible and proactive stance.

Homophobia in Africa is no secret. The Ugandan Kill the Gays Bill submitted by parliamentarian David Bahati, resurfaces periodically like a dormant volcano awaiting a potential eruption. In Malawi, President Mutharika pardoned a young gay couple that was sentenced to 14 years of imprisonment, owing to international pressure, but his regime still does not support nor accept homosexuality. Former President of Botswana, Festus Mogae, has publicly admitted that he did not take up LGBTI rights when in office, for fear of losing national elections.

similar to its African counterparts.

It however would be incorrect to call such rigid positioning a pan-African phenomenon. Some African countries, such as Rwanda and Mozambique, have spoken out against the criminalisation of homosexuality. South Africa goes even further, and its Constitution protects the rights of persons to be free of discrimination based on their sexual orientation. South Africa also became the first African country to propose a resolution to the UN Human Rights Council defending the rights of LGBTI persons.

The criminalisation of same sex conduct is endemic to the Commonwealth. Homosexuality

impede the effective response of Commonwealth countries to HIV/AIDS epidemic..." This proposal has instead, been deferred to a Task Force of Ministers for deliberations. The CHOGM Communiqué makes no mention of LGBTI rights, nor does it condemn alarming legislation, abuse and attacks faced by LGBTI persons in the Commonwealth.

As the dust settles after CHOGM, Commonwealth government leaders need to rise to fulfil their fundamental obligations and responsibilities to the citizens of the Commonwealth to overcome this colossal human rights violation and protect the rights and dignity of all, including sexual minorities. ■



# Bridges and Buffers: Regional and National Human Rights Mechanisms – 11th informal ASEM Seminar

Jennifer Kishan, Strategic Initiatives Programme, CHRI



A Group Photo with the Participants of the 11th Informal Asia Europe Meeting (ASEM) in Vienna  
Photograph: Jennifer Kishan

Commonwealth Human Rights Initiative attended the 11th Informal Asia Europe Meeting (ASEM) Seminar on “Regional and National Human Rights Mechanisms” held in collaboration with the French Ministry of Foreign and European Affairs, the Raoul Wallenberg Institute, the Philippine Department of Foreign Affairs and the Asia-Europe Foundation in Prague, Czech Republic, from 23 to 25 November

2011. Calling for dialogue between key stakeholders – academicians, national human rights institutions (NHRIs), government officials, activists and human rights defenders, the seminar aimed at examining how international human rights architecture can be made stronger and more effective at the national and regional levels.

Human rights start at home. While the primary responsibility for the

protection and promotion of human rights lies with the State itself, national and regional human rights mechanisms provide different levels of accountability and recourse, setting the architecture for a better human rights regime. How then can these mechanisms be strengthened and made effective so as to hold the State accountable to its fundamental responsibility of protection? With 120 civil society and government

representatives from over 48 ASEM members, the seminar convened four working group discussions examining different aspects of human rights architecture to find answers to this.

At the national level, the seminar reiterated the need for domestic mechanisms and procedures to operationalise human rights. The Paris Principles are guidelines fleshing out the minimum requirements from NHRIs to ascertain their better functioning. The dialogue centred on viewing

possible, including jurisdiction over armed forces, police and other state machinery as they have both a promotion and protection mandate. Viewing resources as fundamental to establishing the independence of these mechanisms, it also advocated for States to allocate adequate funds for NHRIs to enable them to carry out their agendas effectively. Another important role envisaged for the State was that of legally mandating NHRIs to follow a system of monitoring and reporting to ensure accountability and inform the legislature and the public.

better partnerships with such entities must be encouraged. Additionally, National Human Rights Action Plans (NHRAPs) were discussed as an important tool that could systematise the human rights roles played by different stakeholders. In this regard, the central role of NHRIs in the development of NHRAPs was strongly encouraged during discussions.

A strong need was identified to strengthen coordination mechanisms at all levels and regional mechanisms were seen

**NHRIs must be given as broad a mandate as possible, including jurisdiction over armed forces, police and other state machinery as they have both promotion and protection mandates.**

the Paris Principles as an organic document that provides a foundation to be built on, but not necessarily in need of review, given the difficulties of reaching consensus on new normative standards for NHRIs. Certain core areas were identified where states could enable better functioning of their respective NHRIs. Firstly, it was advocated that NHRIs must be given as broad a mandate as

It was also asserted at the seminar that there was a strong need for NHRIs to establish better working relationships with other national authorities. It was recognised that since NHRIs do not generally have binding decision-making powers. The implementation of their recommendations is often aided by other stakeholders including media, civil society organisations, and UN human rights experts. Therefore

as a bridge between domestic and international mechanisms. Regional frameworks were considered helpful in setting minimum standards, developing contextual solutions and having the potential to improve domestic law by imposing higher standards. It was noted that regional treaties and frameworks could bring added scrutiny to domestic affairs, demanding greater accountability and efficiency at the national level. ■

## Working with CHRI

CHRI is currently seeking a dedicated and self-motivating staff-person for its London office. The successful candidate will be responsible for managing the London office and will be the sole professional representative of the organisation in the UK. The post will combine liaison, project management, fundraising and research activities apart from administration. The position is on a part-time basis.

Remuneration: A stipend will be negotiated with the successful candidate.

The candidate will:

- liaise with and act as a conduit of information between CHRI, CHRI Delhi headquarters and official Commonwealth bodies such as the Commonwealth Secretariat/Foundation and High Commissions and the FCO.

[Contd to pg...21](#)

# Malawi: A State in Decline

Sanyu Awori, Strategic Initiatives Programme, CHRI



Anti-riot police vehicle in Blantyre during the peak of Malawi protests

The human rights situation in Malawi is degenerating rapidly. This year saw the government led by President Bingu wa Mutharika, become an authoritarian regime openly resistant to criticism and human rights governance. In particular, Bingu wa Mutharika has cracked down on protestors, civil society, human rights defenders, academics and the media – allegedly because he does not like what they say about his government.

In July, the citizens of Malawi took to the streets in Blantyre, Lilongwe, Mzuzu and Karonga to protest against fuel shortages, the high cost of living, unemployment, repressive legislation and poor governance. This anti-government demonstration, organised by human rights and religious groups, was marred with violence. Contrary to international standards, the police opened fire on unarmed protestors, allegedly resulting in the death of 18 people. Journalists

in particular were singled out, and were arrested, harassed and beaten. Mass arrests were carried out and an estimated 500 people were detained and later released without charge. A media

blackout was ordered and it was banned from airing live broadcasts of the protests.

Since the demonstrations in July, there has been no independent and impartial investigation into the excessive and lethal use of force by the police authorities. Although the President promised to launch a commission of inquiry, no concrete steps have been taken. Instead, in an extraordinary move, police officers that participated in the bloody crackdown were rewarded with a

cash equivalent of two nights pay whilst government critics, civil society actors and human rights defenders were blamed for the bloodshed.

The President regularly threatens voices critical of his government. Malawian society is penetrated by fear, as the President openly vowed to “smoke out” dissenters. He publicly declared a “war” against his critics. Human rights defenders are subjected to threats, intimidation and harassment, with the offices and homes of some activists being petrol bombed and journalists receiving death threats. The authorities, however, continue to drag their feet and fail to conduct independent and thorough investigations. As state-sponsored harassment continues unabated, activists have gone into hiding. The Mutharika government’s actions are reminiscent of the dark days of the



Police chasing protestors in Lilongwe on 20 July 2010 at the peak of Malawi protests



Banda dictatorship that ruled Malawi till 1994.

The government also introduced repressive laws to control the media, amending the penal code to allow a minister to ban publications deemed not to be in the public interest. Alarming, police authorities have been granted broad powers to search private property without a warrant and to shoot to kill. Furthermore, new measures also require anyone wishing to protest to pay a hefty fee of about \$13,000. As a stark example, five activists who peacefully protested for a referendum and government accountability in October have since been arrested and detained. They are now facing trial for their alleged illegal demonstration.

Malawi is a party to the African Charter of Human Rights and the International Covenant on Civil and Political Rights. Both treaties enshrine the rights to life, expression, association and assembly. The onus is on the government to translate its obligations into action – to make sure that these basic fundamental human rights are observed in Malawi. Yet, tellingly, the government has failed to submit state reports on the steps it is taking to implement its human rights obligations at a local level. The state report on the realisation of the International Covenant on Civil and Political Rights is 16 years late.

It is a regime that has become increasingly resistant to human rights and accountability. In response, foreign donors, including the British, German and US governments have suspended aid to Malawi. The African Commission on Human and Peoples' Rights recently passed a resolution calling on the government to end the campaign of intimidation against civil society. A collective of human rights organisations and actors have also called on the Special Rapporteur for Human Rights Defenders to visit the country.

The Mutharika regime must respect the rights of those defending the principles of human rights and democracy which are fundamental values of the Commonwealth, to which Malawi belongs. Unless the government takes its human rights obligations seriously, it will plunge Malawi deeper into decline. ■

#### Contd from pg...19

- Network with relevant civil society agencies, governmental and international bodies
- prepare project funding application, maintain budgets, monitor project expenditure and be responsible for financial reports
- commission and oversee UK-based research projects on behalf of the organisation
- undertake research, education, and/or advocacy projects where conditions and resources permit
- provide program support to the CHRI group, especially the Delhi office
- provide administrative support to the London-based Executive Committee
- attend to the day-to-day running of a small office and human rights archive.

#### Essential Qualifications:

- Candidates are required to have:
- A commitment to human rights and an active interest in their promotion within the Commonwealth;
- A first degree in law, the social sciences or a related field;
- strong research, analysis, writing and organisational skills;
- Ability to prioritise tasks, and to work effectively with others in a group situation
- Good oral communication skills
- A demonstrable ability to work without direct supervision and with initiative and dedication.

#### Preferred candidates may have:

- A second degree specialising in human rights law and/or advocacy, or a closely related field;
- A first degree in law, the social sciences or a related field;
- Experience in the NGO sector, preferably with a human rights NGO;
- Experience supervising or mentoring volunteer staff and interns;
- Experience travelling or working in the developing world.

This is an ideal position for a young graduate, interested in the Commonwealth and committed to a career in human rights advocacy, and in need of professional exposure to the work of an international non-governmental organisation OR an individual with professional experience from related fields. Past CHRI staff and interns have moved into positions of responsibility within the organisation, as programme coordinators, have found work in human rights organisations in the UK, Canada, and Australia, and have won major scholarships to pursue academic research and higher degrees.

Candidates must have permission to live and work in the UK. Candidates are strongly advised to apply as soon as possible. Interviews are being conducted on a rolling basis. The successful candidate will be expected to start immediately. Due to the high volume of interest we anticipate in this position, we regret that only short-listed candidates will be contacted.

Location: Russell Square, London Last date: 31 March 2012

# Annual Report of the Central Information Commission (India) for the Year 2010-2011: Findings

➤ The percentage of Co-operative Societies which submitted the required data was at a high of 85 per cent, even better than government departments and public sector enterprises.

➤ There is a decline to the tune of about 11 per cent in the number of information requests. However, this could be due to fewer public authorities reporting their statistics.

➤ The number of instances of information requests being rejected came down from 6.43 per cent in 2009-10 to 5.14 per cent in 2010-11.

➤ The Ministry of Communication and Information Technology received more than 70,000 requests, the highest amongst all ministries. The Ministry of Railways received only around 40,000 requests. India has the largest rail network in Asia.

➤ A total of 8 million rupees (\$ 160,000) were collected as fees from applicants and as penalties.

➤ A quarter of the rejections were based on the exemptions contained in Section 8 and 9 of the Act; another 14 per cent of requests were rejected by organisations partially excluded under the RTI Act.

➤ An astounding 57 per cent requests was rejected for other reasons such as information not being available in material form. The Commission has recommended a detailed study of rejections.

➤ All “Public Authorities” are mandated under the Right to Information Act to submit reports annually to the Central Information Commission on the number of information requests received by them and the action taken on such requests. Only little more than two-third of public authorities submitted their report during the year 2009-2010.



# CHRI Publications





# Opportunities with CHRI



## Interns and Stipendiary 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 careers 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

various 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 vital to ensure 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. 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 the 54 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 and 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

Please send your full postal address with PIN code and contact numbers to:

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