

Commonwealth Human Rights Initiative



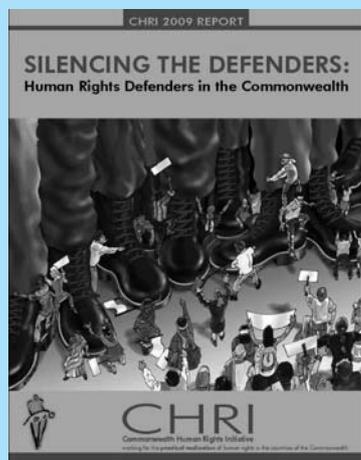
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Newsletter

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Promises, Promises

R. Iniyan Ilango

Consultant, Human Rights Advocacy Programme, CHRI

This year's Commonwealth Heads of Government Meeting (CHOGM) takes place in the 60th anniversary year of the Commonwealth. For the past six decades, notably since the 1970s, every CHOGM has seen the Commonwealth taking progressive stands on human rights. Eighteen years ago, at the 1991 CHOGM in Harare, the Commonwealth reiterated past promises and enshrined them in the Harare Declaration as a "fundamental political value" of the Commonwealth. Four years later in 1995, the CHOGM in New Zealand created the Millbrook Action Plan to operationalise the Commonwealth's fundamental values and ushered in the Commonwealth Ministerial Action Group (CMAG) that is mandated to act on serious and persistent violations of the Commonwealth's fundamental values. Fourteen years have passed since then, yet much of the Commonwealth, which contains about a third of the world's population, is still bedevilled by egregious human rights violations and lack of freedoms. The CHOGM promises nevertheless have continued unceasingly throughout the 90s up till now.

Upholding human rights commitments is a fundamental imperative for any partnership that aspires to create equitability and sustainability in the future. The Commonwealth's record in this regard is disheartening. For example, while the 2007 CHOGM at Kampala and the 1999 Law Ministers Meeting underlined the importance of Access to Information, so far only 15 Commonwealth countries have access to information laws in place. Twelve years ago in 1997, the CHOGM at Edinburgh expressed the belief that an International Criminal Court (ICC) would be an important development in the international promotion of the rule of law, yet more than 20 Commonwealth countries have yet to ratify or acceded to the Rome Statute.

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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 Commonwealth.

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Two years ago in 2007 at Kampala, the heads of government pledged to end impunity for perpetrators of genocide, crimes against humanity and war crimes. Throughout 2008 and most of 2009, numerous allegations of serious international humanitarian law violations were made against Sri Lanka, and serious doubts were raised about the way the country had conducted its campaign against the Liberation Tigers of Tamil Eelam. Yet despite these doubts the country continued to sit as a CMAG member for a third consecutive term against the decision of the 1999 CHOGM in Durban that countries should be allowed to sit on CMAG for only two consecutive terms.

The 1999 CHOGM at Durban, the 2002 CHOGM at Coolum, the 2003 CHOGM at Abuja, the 2005 CHOGM at Malta and the 2007 CHOGM at Kampala have all reiterated the importance of civil society participation. However, the Commonwealth's own meetings are yet to achieve even the degree of transparency and civil society participation that has become the norm at the United Nations and other intergovernmental organisations. In the meanwhile, civil society in Commonwealth countries continues to suffer. Human rights defenders in particular find their activities restricted and curtailed by sometimes subtle, sometimes draconian legal regulations that target their ability to engage in activities to promote and protect human rights. Drawing attention to human rights violations, calling for change through peaceful assembly and documenting and disseminating information on human rights violations are central to the work of human rights defenders, yet these activities are often criminalised in the Commonwealth. The latest outburst from the President of the Gambia, calling for human rights defenders to be killed, indicates what civil society in the Commonwealth has to deal with. So far, reaction from the Commonwealth to the President's statement has ranged from muted to non-existent.

On 21 October, as in years past, the Committee of the Whole (CoW) will meet in London to set the agenda for CHOGM. It is of utmost importance that CoW takes into account the fact that as long as human rights commitments remain unfulfilled it will be impossible to build partnerships for equitable and sustainable futures. CHOGM should recognise this and create necessary infrastructure to practically achieve past promises in a quantifiable manner. Benchmarking and reporting mechanisms which have so far been scanty in the Commonwealth may be useful in such an endeavour, as well

as providing a standard against which applications for membership of the Commonwealth can be objectively assessed. Rwanda's application for membership will be considered at this year's CHOGM, but there has been a failure to judge the country against the highest human rights benchmarks in the enthusiasm for Rwanda's membership.

2009 to 2011 is a historic time for the Commonwealth, as 2009 marks the 60th anniversary of the organisation and 2011 marks the 20th anniversary of the Harare Declaration, and the Commonwealth should use this period to demonstrate that its human rights promises really do hold water. ■

Commonwealth People's Forum

Alongside the official gathering of the Commonwealth Heads of Government at their biennial meeting, there are other key unofficial meetings that are held parallel or immediately prior to the meeting of the Heads of Government. These include the Commonwealth People's Forum (CPF), Commonwealth Youth Forum and Commonwealth Business Forum where statements from participants are prepared and forwarded to CHOGM for consideration. Such events offer important avenues to these varied groups to showcase their work, network and campaign. CPF provides a valued space for civil society to dialogue with government representatives and to feed the ideas, issues and concerns of Commonwealth citizens into the CHOGM process.

The 2009 Commonwealth People's Forum will be held in Trinidad and Tobago from November 22 – 26 and the theme for 2009 is 'Partnering for a More Equitable and Sustainable Future'. There will be eight assemblies including the human rights assembly which will be led by CHRI, as part of CPF 2009. The human rights assembly at CPF will network human rights activists and those affected by human rights violations in order to consolidate strategies on Commonwealth engagement. The assembly intends to make a strong statement on partnerships between governments and civil society to lobby the CHOGM. This assembly will offer a platform for victims of human rights violations in the Commonwealth to voice their concerns. ■

An Open Letter from CHRI to the Commonwealth Secretary-General Concerning President Jammeh's Comments on Human Rights Defenders

It is with deep concern that I draw your attention to the recent statements attributed to the President of the Gambia on the eve of his departure to New York for the UN General Assembly last Monday. It states as follows:

“I will kill anyone, who wants to destabilise this country. If you think that you can collaborate with so called human rights defenders, and get away with it, you must be living in a dream world. I will kill you, and nothing will come out of it. We are not going to condone people posing as human rights defenders to the detriment of the country. If you are affiliated with any human rights group, be rest assured that your security and personal safety would not be guaranteed by my Government. We are ready to kill saboteurs.”

The statement appears to go on to repudiate the necessity to adhere to the rule of law or rely on the judicial process when it goes on to say: “From now on, we will kill anyone trying to sabotage this country. Don't be fooled by Human Rights Groups. They cannot save you from dying. We will kill you, and nothing will come out of it.” This also appears to assure impunity for murder.

The President's words have been widely quoted in concerned circles and reported by the BBC (dateline 25 September 2009) and in many African newspapers and news services.

CHRI condemns this irresponsible and callous statement as a serious violation of the fundamental principles of the Commonwealth to which the Gambia has publicly committed itself in accordance with the Harare Declaration, 1991 and subsequent CHOGM declarations. The statement also amounts to a clear repudiation of the understanding under which the African Commission on Human and Peoples' Rights operates out of Banjul. The statement puts in doubt the safety of the Commissioners and users of the Commission and undermines its ability to function.

At the 2007 CHOGM in Kampala, CHRI had drawn the attention of the Heads of Government to the Gambia's dismissive attitude to the demand for mounting an inquiry into the deaths of several Ghanaians and others in Gambia.

Since then a UN and ECOWAS inquiry has reaffirmed CHRI's stand and found the Gambian government responsible for failing to protect the lives of these people who were in its jurisdiction. The joint inquiry has also urged payment of compensation: to date compensation has not been provided. The human rights situation in the Gambia remains a matter of serious concern to the CHRI and other human rights organisations.

As you know, the Gambia remained on the agenda of CMAG for many years on account of human rights violations. The Government has been given more than adequate time by CMAG to open the political space in the Gambia, incorporate international and regional human rights standards into its national legislation and improve its human rights record. Failure to show clear progress and meet the expectations of the international community, and more importantly the demand of the people of the Gambia for genuine democracy makes a strong case for reinstating the Gambia on the formal agenda of CMAG without involving the usual good offices process, as provided in the revised mandate of CMAG adopted at the 2002 Coolum CHOGM.

CHRI therefore requests you to take up this matter urgently with the Commonwealth Foreign Ministers as well as CMAG Ministers who are meeting in New York this weekend in the wings of the UN General Assembly. CMAG should be urged to condemn the above mentioned statements: and for making such clear and unequivocal threats to human right defenders from the highest political office and for engaging in serious and persistent violations of the Harare Principles, CMAG must inscribe the Gambia once again onto its formal agenda.

We also urge you to recommend to the Prime Minister of Trinidad and Tobago as the host of the next CHOGM to withdraw his Government's invitation to the Gambian President unless the highly offensive statement is publicly repudiated, withdrawn and satisfactory clarification provided.

Sincerely,
Sam Okudzeto
Chair, International Advisory
Commission, CHRI.

Maja Daruwala
Director, CHRI ■

Commonwealth Should Reconsider Rwanda's Application for Membership

Heather Collister

Consultant, Human Rights Advocacy Programme, CHRI

At the 2009 CHOGM, Heads of Government will make a decision on whether to admit Rwanda to the Commonwealth. The criteria for membership of the Commonwealth derive from the establishment at the 2005 CHOGM in Malta of a Committee on Commonwealth membership. The Committee's recommendations were adopted by the 2007 CHOGM in Kampala and they clearly state that to be admitted as a member of the Commonwealth the applicant country should comply with the fundamental political values of the Commonwealth including human rights.

Although the Commonwealth Secretariat has prepared a report on Rwanda's application, presumably including an assessment of Rwanda's compliance with the Commonwealth's human rights standards, that report has never been made public. Concerned to ensure that information about Rwanda's human rights record is available in the public domain, in order to assist Member States in reaching a decision on whether to admit Rwanda, CHRI sent a mission to Rwanda in May 2009.

An interim report containing its findings was released at a press conference held in London towards the end of July 2009. The reaction to the interim report suggested that there was considerable misunderstanding, or at least confusion, about Rwanda's history, the politics of the genocide of 1994, and the record of the government led by the Rwandese Patriotic Front (RPF) since the end of the genocide. This prompted the preparation of a fuller report that examines the evolutionary factors which have shaped Rwanda's present politics, particularly because the RPF evokes strong emotions of both approval and dislike. CHRI trusts that this detailed report will enable both the governments and the peoples of the Commonwealth to assess the merits of Rwanda's application. (Extracts from this report follow below. The full report can be

accessed from CHRI's website at the following link: http://www.humanrightsinitiative.org/publications/hradvocacy/rwanda%27s_application_for_membership_of_the_commonwealth.pdf.)

Since the release of this report, the Director of the Commonwealth Human Rights Initiative has written to the Secretary-General of the Commonwealth strongly urging him to bring CHRI's report to the notice of the incoming Chairperson in Office, which will be the Prime Minister of Trinidad and Tobago, along with the recommendation that Rwanda's application be kept pending until its full compliance with the criteria for Commonwealth membership is verified against an agreed set of benchmarks, a process that should take place at the next CHOGM in 2011.

Extract of CHRI's Report: Rwanda's Application for Membership of the Commonwealth - Report and Recommendations of the Commonwealth Human Rights Initiative

The situation with regard to human rights within Rwanda has been an ongoing concern for many international agencies and human rights organisations. The provisions of the 2003 Constitution against "genocide ideology", and consequent laws, prohibiting the raising of any doubts about the extent of the killing of Tutsis in 1994, and any discussion of retaliatory killings of Hutus, have been used to suppress freedom of speech and have created a climate of fear in civil society. Censorship is prevalent and the government has a record of shutting down independent media outlets and newspapers, and harassing journalists. General civil society is also severely hampered by restrictive laws governing independent associations. There remain serious concerns about the level of political freedom and the

fact that the independent body in charge of registering political parties is still controlled by the ruling Rwandan Patriotic Front (RPF). Rwanda's judiciary has systemic weaknesses and there are troubling questions about the failure of the judiciary to investigate and prosecute members of the Rwandan Patriotic Army for their involvement in human rights abuses and proven involvement in war crimes in the Democratic Republic of the Congo (DRC).

There are some serious human rights concerns about the operation of the Gacaca courts, set up to deal with the majority of those accused of involvement in the genocide. They do not adhere to basic presumptions of innocence or fair trial procedures. President Kagame has used his power to give immunity from prosecution to some of those suspected of being the most serious perpetrators of human rights abuses. The Rwandan government's ongoing activities in the DRC and its support of Tutsi militias in Kivu have raised grave concerns, and indeed recommendations that senior figures in the RPF ought to be brought before international and foreign tribunals.

CHRI acknowledges that Rwanda has what appears to be a well-deserved reputation for governmental efficiency and for being less corrupt than a number of other countries but its claims about the lack of corruption appear hollow when considering its complicity in the illicit economy of the region, and its plunder of the DRC's natural resources. Furthermore, such attributes are not sufficient for membership of the Commonwealth.

The RPF has used an extraordinary amount of violence, domestically and internationally, in the pursuit of its illegitimate aims. It is responsible for killing almost 500,000 persons, whether citizens or not, and is responsible for the deaths of many times more through displacement, malnutrition and hunger. It has denied hundreds of thousands of children of the opportunity to go to school, and deprived millions of prospects of family and community life.

While CHRI takes into account the extreme violence and suffering that Rwanda's people have been through, it acknowledges the economic and administrative

progress that has been made under the present regime, recognises the potential within its constitution to nurture a democratic polity and accepts that Rwanda has traditional and growing ties with some Commonwealth members in its region. CHRI therefore proposes that CHOGM should not reject Rwanda's application outright, but deal with it in the fashion of the European Union, when considering applications for membership. The Commonwealth should reiterate its values, identify areas where Rwanda falls short, and ask it to remedy deficiencies while offering assistance to resolve these. Once it is satisfied that appropriate laws and, most importantly, practices have been instituted, Rwanda should be welcomed to the Commonwealth. ■

CHRI's Recommendations to CHOGM on Rwanda

CHRI puts forward two recommendations: one is general relating to the process for admission of new members, and the other specific to Rwanda.

I. We propose that an independent commission of eminent Commonwealth statespersons, representatives of leading pan-Commonwealth NGOs, and experts on the applicant country should be set up to review the application and report to the Heads of Government. The commission would subject the applicant to rigorous scrutiny of its record on human rights and democracy, and engage with its civil society, trade unions, political parties, universities and so on, to obtain a sense of public opinion. Unless this is done, there is the danger that the Commonwealth could slide into debased standards, and lose both its attraction to the people of the Commonwealth and its own reputation.

II. The upcoming CHOGM should make no decision on the applicant other than to set up a procedure to examine Rwanda's eligibility for membership and the consequences for the Commonwealth of expansion in its members. ■

Silencing the Defenders: Overview of CHRI's 2009 Report to CHOGM

Heather Collister

Consultant, Human Rights Advocacy Programme, CHRI

In the seventh decade after the adoption of the Universal Declaration of Human Rights too many Commonwealth governments continue to resist fulfilling their human rights obligations. Consequently, there is an ongoing need for people who are ready and willing to stand up and defend human rights. It is, however, only relatively recently that the legitimacy and value of actions done in defence of human rights have been recognised at international and regional levels.

The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly known as the Declaration on Human Rights Defenders (the Declaration), was unanimously adopted by the General Assembly in 1998. The Declaration was born out of two fundamental considerations: one, that promoting human rights is valuable and is the prerogative of everyone; and two, that these activities make the actor vulnerable to reprisal. Although it is a declaration rather than a treaty, and hence not legally binding, the unanimity with which it was adopted gives it a unique strength and places states under a strong moral and political obligation to abide by it.

The Declaration does not provide human rights defenders with new or special rights but brings together previously agreed legal obligations found elsewhere in international human rights law. The non-binding nature of the Declaration does not therefore mean that countries are not legally obligated to ensure that the rights in it are implemented. The Declaration simply reiterates already existing rights as being noteworthy in the context of the work that human rights defenders do and their need to be able to do it unhindered and protected.

CHRI's Advocacy at CHOGM

The biennial Commonwealth Heads of Government Meet is a major target for CHRI's advocacy. Just prior to it, CHRI releases a report on an issue of human rights concern in the Commonwealth, which includes recommendations to further protect and promote human rights. Following on from previous reports which had highlighted trends in the Commonwealth to devalue civil liberties while enhancing state and police power, this year's report examined the particular impact on human rights defenders whose crucial role in the promotion and protection of human rights is undermined by restrictions imposed on the space they have to carry out their activities.

The report will be launched at a pre-CHOGM meeting to be held in London on 13 October 2009. At the CHOGM itself, CHRI will be involved in running the Human Rights Assembly as part of the Commonwealth People's Forum. It will use the Assembly to give a platform to human rights defenders from across the Commonwealth to raise their voice to the Heads of Government in a call for more awareness of their situation and better protection.

That the work of human rights defenders is not popular in many Commonwealth jurisdictions is clear from the frequency with which they are targeted. Whether they are active in a conflict situation or a stable democracy, anything that suggests criticism of government can attract dire consequences. Human rights defenders are likely to suffer a range of abuses from having their activities unreasonably restricted and their organisations unfairly scrutinised, to being spied on or defamed,

denied access to funding, or being subject to arbitrary arrest, physical violence and death, all imposed with the intention of deterring them from pursuing their valuable work. In certain situations these risks are even greater: the period around election time is one such context as are situations of internal armed conflict, coups and states of emergency. National security is a legitimate concern of governments; however the presence of protracted armed conflicts within state borders has prompted the passing of special laws and an increase in police powers which, in some cases, are not well-regulated, enabling them to be turned to ends other than those for which they were intended. There is also a tendency for governments to retain these statutes and continue to use them even after the tensions that prompted their adoption have ended.

However, the state has a duty to protect. Article 12 (2) and (3) of the Declaration underlines that the state has a responsibility to ensure that everyone is protected from violence in the exercise of their right to participate in peaceful activities against human rights violations. This means that the state and its institutions, particularly the justice system and the police, must be able to provide effective safeguards for both the person and the work of those under threat wherever these threats may come from. When non-state and private actors attack human rights defenders the state is bound to bring them to justice through the proper channels. But in many countries state machineries are simply unable to do this or are wilfully neglectful in making sure human rights defenders can go about their work without coming to harm. Indeed, it would be fair to say that all too often the plight of human rights defenders is heightened by the active antagonism of the state combined with the protection that it affords its agents either unofficially or through legal mechanisms that assure impunity. The recognition that there is a huge gap between human rights norms and standards on the one hand, and adherence to them on the other, has prompted the creation of special monitoring and protection mechanisms at national, regional and international levels. Each of these mechanisms can provide assistance to human rights defenders; however, of special significance are mechanisms such as the UN Special Rapporteur on the situation of human rights defenders and the regional

Special Rapporteur of the African Commission on Human and Peoples' Rights, along with the Inter-American Commission's Unit on human rights defenders.

The UN Special Rapporteur is mandated to monitor and report on the situation of human rights defenders around the world. The Rapporteur is charged not only with protecting human rights defenders against violations of their rights but also with supporting the creation of conditions favourable to the promotion of human rights. Having limited resources both financially and in terms of staff, the UN Special Rapporteur must rely, for the success of her mandate, on the cooperation of states. That cooperation varies widely across the Commonwealth, but unfortunately tends to be rather less than more forthcoming.

National Human Rights Institutions [NHRIs] are also key institutions. Thirty Commonwealth countries have at least one institution that qualifies as an NHRI, but their quality and the extent to which they cooperate with, and prioritise the protection of, human rights defenders varies considerably. (For more on NHRIs see Commonwealth Forum of National Human Rights Institutions in this newsletter.)

Finally, the UN World Conference on Human Rights in Vienna recommended that governments create National Action Plans [NAPs] on Human Rights, to provide on-the-ground strategies for the realisation of human rights. The Commonwealth Model National Plan of Action on Human Rights urges governments to include within their NAPs measures to create an enabling environment for human rights defenders, most particularly the creation of a legal regime "that balances the legitimate interest of the State on regulating some of the activities of any organisation, with the freedom of these organisations to carry out their work lawfully". However, only a handful of Commonwealth countries have created such a plan and the importance given to the protection of human rights defenders within those plans is limited.

To access the report, please visit our website <http://www.humanrightsinitiative.org> or email at heather@humanrightsinitiative.org. ■

Summary of Recommendations from CHRI's CHOGM Report: Silencing the Defenders - Human Rights Defenders in the Commonwealth

Heather Collister

Consultant, Human Rights Advocacy Programme, CHRI

The report on Human Rights Defenders lists some important recommendations for Commonwealth Heads of Government, Commonwealth Member States, The Special Rapporteur on the situation of Human Rights Defenders, Commonwealth Heads of Police and for human rights defenders themselves. A short summary of the recommendations are provided below:

Commonwealth Heads of Government Should:

- Require member countries to report to each CHOGM on their implementation of Commonwealth commitments, including in particular those undertaken to protect and promote human rights and their defenders.
- Expand the working role of CMAG allowing it to interpret in the broadest manner its mandate to deal with “serious and persistent violations of human rights” in its fullest sense, including the situation of human rights defenders.
- Mandate the Secretariat, through collaborative programmes of work within its various divisions, to partner with member countries to put in place National Human Rights Action Plans and to review progress and achievements at each CHOGM.
- Mandate the Secretariat to actively assist states in adopting legal regimes governing the work of civil society that are progressive and liberal and that recognise the valuable role that civil society and human rights defenders play.
- Go beyond the mere formalities of consultation

with, to genuine engagement and participation by, associations and NGOs at all levels of Commonwealth functioning. In order to underpin this, the Secretary-General should signal his clear and unequivocal support for the unofficial Commonwealth and the importance of these networks.

Commonwealth Member States Should:

- Recognise that the defence of human rights is a premier responsibility of the state.
- Initiate and encourage the creation of national human rights action plans that include detailed human rights education and awareness programmes.
- Ensure that they are signed up to the key international conventions and their optional protocols, and that they are part of regional human rights mechanisms.
- Create independent national human rights institutions that are in conformity with best practices under the Paris Principles.
- Issue standing invitations to Special Rapporteurs and regional oversight mechanisms to make in-country visits; submit timely and substantive replies to their queries, implement their recommendations and report back on the steps taken.
- Review, and repeal or amend, legislative provisions that curb the rights of human rights defenders such as criminal libel laws, vaguely

worded “public order” related legislation and security laws, and create access to information legislation to enable defenders to access information relevant to the human rights situation in a country.

- Remove legislative shields and practical impediments in bringing state actors to justice for their violation of human rights and so reduce the culture of impunity that exists in many countries, and that encourages the targeting of human rights defenders, at the same time ensuring that human rights defenders have effective access to justice.
- Recognise and create special protections for distinctive human rights defenders from particularly vulnerable groups such as women, minorities, LGBTI, the disabled and displaced persons. In particular educational programmes aimed at countering social prejudices should be created for those whose roles affect the administration of justice within institutions of state.
- Publicly condemn acts of violence and other violations against human rights defenders.

The Special Rapporteur on the Situation of Human Rights Defenders Should:

- Take steps to raise awareness of her mandate, particularly in countries from which complaints are less forthcoming.
- Engage National Human Rights Institutions in the protection of human rights defenders, by ensuring that she undertakes country visits in conjunction with them and that they take on a more active role in following up on her recommendations.

Commonwealth Heads of Police Should:

- Ensure the eradication of impunity and initiate policies of zero tolerance for human rights abuse while policing.

- Ensure maximum possible transparency to build public confidence in the police and trust in police-community relationships.
- Ensure whistleblowers, victims and witnesses are well protected and not subject to harassment or threat by police officers, and that such practices receive strict disciplinary action.
- Initiate human rights training that emphasises the value and work of human rights defenders as an essential element of all initial training requirements and a prerequisite for future career advancement within the service.

Human Rights Defenders Should:

- For their own protection and for generating solidarity, create, participate in and strengthen wider networks at both national and regional levels that are inclusive of all human rights defenders, including women, LGBTI, disabled, minorities and displaced persons.
- Collaborate actively with National Human Rights Institutions, where they exist.
- Make full use of existing international and regional protection mechanisms, including the UN Special Rapporteur on human rights defenders.
- Undertake documentation of their activities and any subsequent abuse from the police to assist in prosecutions and in submitting complaints to the Special Rapporteur.
- Enhance and ensure their credibility by acting with professionalism and respecting their obligations to adhere to national law and refrain from violence as set out in the UN Declaration on human rights defenders.
- Educate themselves and others about the rights of human rights defenders contained in the UN Declaration. ■

CMAG Needs to be Reviewed and Strengthened: CHRI to CoW

Maja Daruwala
Director, CHRI

In over a month's time fifty-three Heads of State representing one-third of the world's population will assemble in Trinidad and Tobago from 27-29 November to discuss wide-ranging issues concerning the Commonwealth. The agenda of the biennial Commonwealth Heads of Government Meeting is decided by the Committee of the Whole (CoW) which will meet at London. The meet will be attended by representatives and officials of the Commonwealth countries.

An issue for CoW-flagged several times by many NGOs in the Commonwealth and repeatedly by the the Commonwealth Human Rights Initiative has been the need to strengthen the Commonwealth Ministerial Action Group (CMAG) which presently consists of rotating Foreign Ministers of Ghana, Malaysia, Namibia, New Zealand, Papua New Guinea, Sri Lanka, St Lucia, Uganda and the United Kingdom.

CMAG is the watchdog body of the Commonwealth. It is mandated to deal with “serious and persistent violations” of the Commonwealth's Fundamental Political Values including human rights. It came into existence in the backdrop of the execution of human rights activist Ken Sara Wiwa in 1995 by the military-backed Nigerian government. Today, it must be able to deal quickly and unequivocally with situations of constant threats to human rights values by Commonwealth states and open challenges encapsulated in statements like the latest one by President Jammeh of the Gambia where he is unequivocal in his opposition to the Commonwealth's fundamental political values when he declared on the eve of his departure to New York for the UN General

Assembly meeting:

“I will kill anyone, who wants to destabilise this country. If you think that you can collaborate with so called human rights defenders, and get away with it, you must be living in a dream world. I will kill you, and nothing will come out of it. We are not going to condone people posing as human rights defenders to the detriment of the country. If you are affiliated with any human rights group, be rest assured that your security and personal safety would not be guaranteed by my Government. We are ready to kill saboteurs.”

(The Gambia, incidentally hosts the African Commission on Human and Peoples' Rights which may like to relocate its headquarters in light of this clear averment.)

But 14 years on from CMAG's birth, it is yet to go beyond scrutinising cases where there have been unconstitutional overthrows of governments and fully operationalise its mandate to include situations where there are persistent human rights violations. It has not been able to bring Cameroon, which on joining the Commonwealth had made promises of improving its human rights situation up to the mark; nor been inclined to overtly come to the rescue of human rights defenders imperilled in their own countries; nor insist on benchmarks for the whole Commonwealth by which year on year improvements in governance and human rights can be clearly evidenced.

While CMAG has its share of successes, lately there have been instances where it has not lived up to

expectations. For example, in the case of Sri Lanka, reports of large scale civilian deaths, impunity and stifling of human rights in Sri Lanka continued to emerge throughout 2008 and 2009, but CMAG has refused to put Sri Lanka in its agenda. The additional irony is that Sri Lanka itself continues to serve as a member of CMAG during this period for a third consecutive (two-year) term, contrary to the 1999 Durban Communique that limits a country to a maximum of two consecutive terms.

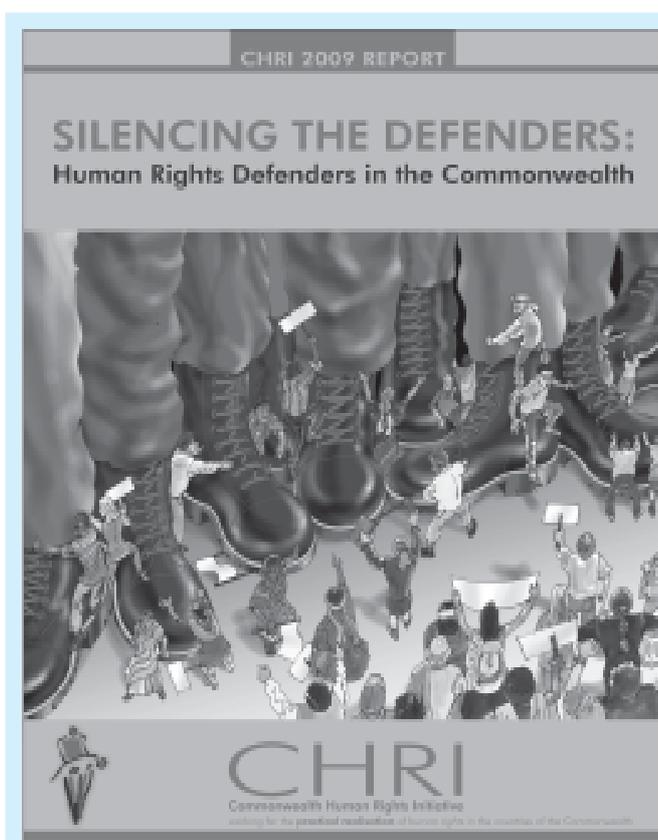
While no one knows for certain, why CMAG has been silent on the human rights abuses in Sri Lanka, it is an unsurprising conjecture that its over-stayed presence in CMAG may have stymied any efforts to put itself on CMAG's agenda.

Even as we write, Sri Lanka still continues to serve as a CMAG member while hundreds of thousands of ethnic minorities remain confined indefinitely in ill-maintained internment camps amidst uninvestigated claims of war crimes and reports of widespread danger to human rights defenders and dissenters. CMAG has also been silent on other parts of the Commonwealth: for instance during the post election violence in Kenya in 2007; when freedom of assembly was curtailed in Malaysia in 2007; and for a long while on the Gambia where many basic human rights are heavily curtailed.

It is worrying to note that CMAG has by and by interpreted its mandate very narrowly to focus only on the unconstitutional overthrow of governments, albeit selectively. While CHRI welcomes the recent suspension of Fiji from the Commonwealth as well as the earlier suspension of Pakistan in 2007, CMAG's non-action on Bangladesh when there was an army backed government in 2006 has left political activists and civil society organisations monitoring CMAG meetings wondering about its yardsticks.

Whatever be the reasons for its failings and despite the successes it has had, it is obvious that if the

Fundamental Political Values of the Commonwealth are to become a genuine guiding light for the association and the signature value added that the Commonwealth brings to the international community, there must be an honest review of CMAG's mandate, powers, composition and functioning in order to strengthen it further. The association is now mature enough to impose on itself a proactive monitoring body. Serious initiatives to make this happen must be taken up by CoW when they meet on 21 October in London to set the agenda of CHOGM 2009. ■



CHRI's 2009 Report to CHOGM will be launched in London on 13th October at a Roundtable Consultation on Partnering for Human Rights at the Commonwealth. For an overview of this report and a summary of recommendations, see pgs. 6 - 9 of this newsletter. ■

Commonwealth Forum of National Human Rights Institutions (NHRIs)

Heather Collister

Consultant, Human Rights Advocacy Programme, CHRI

The Commonwealth Forum of National Human Rights Institutions (NHRIs) will meet in the shadow of this year's CHOGM in Trinidad and Tobago. NHRIs are independent bodies created by governments with the mandate of implementing human rights standards at the national level. The first meeting of the Commonwealth Forum of NHRIs took place at the 2007 CHOGM in Kampala. Its conclusions stressed the need for all NHRIs in the Commonwealth to respect and function in conformity with the Paris Principles, which are a set of criteria against which the independence of an NHRI can be judged. The International Coordinating Committee for NHRIs (ICC), which was established out of a concern to ensure that only the most credible NHRIs are accredited to speak at UN meetings, assesses NHRIs against the benchmark of these Principles. Of the thirty-two NHRIs in the Commonwealth, sixteen have an A-rating, four a B-rating, and two are rated non-compliant. The rest had not applied for an ICC rating.

At their upcoming meeting all Commonwealth NHRIs should renew their commitment to satisfying the Paris Principles in full. Even those NHRIs rated A by the ICC continue to face threats to their independence from governments concerned to suppress opinions and actions that they find threatening. In the face of these difficulties NHRIs need to recognise and reaffirm the value of a partnership with human rights defenders. The Malaysian NHRI, SUHAKAM, in reporting on its struggle to retain its A-list status, emphasised the work being done on its behalf by NGOs who felt that the Commission was a valuable partner for the promotion of human rights in the country and who were lobbying the government to honour its commitment to ensuring that SUHAKAM retained its A status. The extent to which NHRIs in the Commonwealth currently partner with human rights defenders varies considerably, from Sri Lanka's Human Rights Commission, which has lost the confidence of civil society as a whole resulting in a loss of credibility for the Commission (a fact reflected in its downgrading from an A to a B in 2007), to Great Britain's Equality and Human Rights Commission, which is required by its statute to consult and collaborate with civil society with regard to its strategic plan, its progress reports, and its

codes of practice. Moreover it holds an annual stakeholder conference as well as making efforts to keep track of and respond to public opinion. Such an overtly inclusive process projects a clear statement that civil society is being treated as a partner and ensures that it will be onside with an NHRI which takes steps to distance itself from government.

While there is a need to keep in mind that part of the strength of an NHRI is its quasi-governmental status, serving as a bridge between civil society and the government, and that an NHRI should not allow itself to be absorbed into civil society, creating a partnership with human rights defenders will nevertheless give an NHRI the leverage it needs to distance itself from government and thus put it firmly on the path towards satisfying the Paris Principles. At the same time, an NHRI should recognise and respond to the difficulties that human rights defenders face and work towards increasing their capacity to operate effectively, so that a strong and mutually respectful partnership can develop.

To develop partnerships with human rights defenders, as a basis for satisfying the Paris Principles, CHRI urges the Commonwealth Forum of NHRIs to commit to:

- I. Putting in place explicitly articulated and widely known policies that are designed to protect human rights defenders and encourage their work.
- II. Creating within their establishments a defenders' cell and develop and submit to national and international bodies regular status reports on the functioning of human rights defenders and their treatment by state agents, and immediately come to their aid when they are unjustly targeted.
- III. Creating formal and informal cooperative ways of working with human rights defenders, designed to increase mutual effectiveness, spread awareness of human rights and prevent and punish violations.
- IV. Requiring governments to fulfil international obligations in general and in particular as they relate to human rights defenders. ■

The Gay Old Commonwealth

Lucy Mathieson

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When, during March 2009, Bruce Golding Prime Minister of Jamaica, dubbed by Time Magazine as the “Most Homophobic Place on Earth”, stated that “[w]e are not going to yield to the pressure, whether that pressure comes from individual organisations, individuals, whether that pressure comes from foreign governments or groups of countries, to liberalise the laws as it relates to buggery”, it reinforced the marginalisation of human rights defenders (HRDs) in Jamaica who advocate for equal rights free from discrimination based on sexual preference. Jamaica is not alone in this respect. Eleven Caribbean Commonwealth nations have legislation criminalising consensual same-sex sexual acts including Antigua and Barbuda, Barbados, Bahamas, Belize, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago. HRDs in these nations working to promote lesbian, gay, bisexual, transgender and intersex (LGBTI) rights and bring change to the outdated legislation face hostility from authorities, limitations to freedom of expression and of the press, homophobic violence, denial of access to services and are forced to work clandestinely due to homophobic mob attacks. This is not solely a regional dilemma. Many other Commonwealth jurisdictions also maintain equivalent sections of these old colonial laws as a means to harass, prosecute and persecute LGBTI organisations and individuals.

The influence of importing Victorian morality to the colonies is clear in the spread of laws across Africa, Asia and the Caribbeans. However, New Zealand (in 1986), Australia (state by state and territory by territory), Hong Kong (in 1990, before the colony was returned to China), and Fiji (by a 2005 high court decision) have put that legacy, and the sodomy law, behind them. England and Wales decriminalised most consensual homosexual conduct in 1967. That came too late for the majority of Britain's colonies, which

won independence in the 1950s and 1960s. With sodomy laws still in place, judges and public figures have, in recent decades, defended them as citadels of nationhood and cultural authenticity while at the same time complaining that homosexuality comes from the colonising West. They forget it was the West that introduced the first laws enabling governments to forbid and repress it.

The overlapping relationship of colonial and post-colonial identity formation is perhaps best illustrated from within Commonwealth African nations. In Buganda (the former Kingdom of Uganda) in 1886, the Kabaka (King) Mwanga, executed more than 30 of his pages within his royal court, apparently for refusing sex with him following their conversion to Christianity. The “reinscribing of certain corporeal intimacies between King and subject as sex (homosexual sex), in tandem with the more usual suspects (trade and Christianity), effectively delegitimised local political institutions” (Hoad, “African Intimacies: race, homosexuality and globalization”). These events created new forms of African agency and facilitated the implementation of colonial rule. A century later, the controversy arose around the “un-Africanness” of homosexuality, prompted perhaps with the 1995 event in Zimbabwe, where Mugabe expelled GALZ (Gays and Lesbians of Zimbabwe) from a Zimbabwe International Book Fair. Calling homosexuals “sodomists” [sic] and “sexual perverts” the President banned their exhibition.

He then went on to make his notorious pronouncement: “If dogs and pigs don't do it, why must human beings? Can human beings be human beings if they do worse than pigs?” His statement was then widely echoed through similar pronouncements in Kenya (September 1999), Uganda (July 1998) and Namibia (1996).

President Mugabe's abhorrent statement marks a strong intervention in this terrain, where imperial legacies and

African/Caribbean/Asian/Pacific authenticities struggle to imagine the relationships between themselves as a normative and exclusive framework and “homosexuality”. Multiple exclusions enable the debate on the relationship often made between lesbian and gay identity to Western imperialism.

In the 1990s, leaders also began discovering the political advantages of promoting homophobia. Besides Robert Mugabe in Zimbabwe who devoted whole speeches to denouncing homosexuals, Ugandan government officials regularly menace LGBTI groups; and in The Gambia, in 2008, the president vowed to “cut off the heads” of homosexuals. In South Africa the lack of political will to enforce laws legalising homosexuality also has ripple effects across the continent.

At the same time, institutional change offers signs of hope. Some NGOs and national human rights institutions (NHRIs) have slowly moved to address issues of sexual orientation and gender identity. Independent rights groups in Kenya and members of the Kenyan National Human Rights Commission have spoken in defence of LGBTI people there. Also promising is the slow integration, in a few countries such as Uganda, of sexuality and sexual-rights issues into legal education.

The combination of an intensely repressive environment in families, communities and public places, and antiquated laws on sexuality that are still enforced, keeps people underground and sometimes kills those who emerge.

Post-independence democratic governments have shown deep resistance to any suggestion of repeal of sodomy laws. Indeed, the repeal of these draconian codes appears to be more controversial than their imposition. As a result, organisations are unable to operate openly, jobs and homes lost, and police refuse to protect people against day-to-day violence. While such governments do not go around arresting people who are suspected to be gay, a climate of fear and intolerance prevails.

Reported religious values and fears of “open[ing] the door to homosexuality, bestiality, child abuse and every

form of sexual perversion being enshrined in the highest law of this land”, justify essentially discriminatory legislation. Even where decriminalisation has occurred or is discussed, such as recently in the Delhi High Court Judgment in *Naz Foundation v. Union of India*, delivered on 2 July 2009, the argument for decriminalisation is often based formatively around health considerations, such as making HIV/AIDS treatment more accessible to LGBTI people. Whilst arguments can be raised as to why the universality of human rights should not be at the core of such arguments, the Delhi Judgment did go on to base its ratio on constitutional morality as opposed to popular or public morality, triggering an understandably euphoric and wonderful celebratory response from the LGBTI community, as well as from the wider activist community.

In Jamaica, there have been some initial signs that it may soften its approach. Jamaica's ruling party elected the nation's first female Prime Minister, Portia Simpson Miller, a progressive, who gay-rights supporters hope will eventually move to decriminalise homosexuality. However, even if the repeal of sodomy laws is achieved there is still a range of other provisions, such as moral policing of public behaviour, which enables police abuse, as has occurred in the Dominican Republic. In such situations, the hard fact remains that sexual cleansing is just as real as ethnic cleansing. These kinds of “cleansings” are bound up in questions of purity and dominance. It is all about cleansing the “other” wherever it is found. And it is about making the “other”, in this case, the homosexual person, the so-called enemy of the state, the family and the individual. Borders are of no consequence.

And, this was true two years ago at CHOGM 2007, where a Ugandan LGBTI group was forced out of the People's Space at the People's Forum and were beaten with sticks by plain-clothed police officers. Foreign visitors to CHOGM and the People's Space, including committed Commonwealth activists who attempted to intervene, were also excluded from the Space. Now, some two years later, CHOGM 2009 is rapidly approaching and its theme, including that of

“equitable partnership”, raises the question of partnership with whom and inclusive of whose concerns, particularly when a sector of Commonwealth civil society will at the very least be constructively excluded.

The positions of gay and lesbian Africans/ Asians/ Caribbeans (and to a certain extent Pacific Islanders) are not easily articulable in the confrontation, precisely because questions of sexuality are used to police both national and racial authenticity. And, this is exactly why there is a need to enforce the universality of human rights.

Homophobia and heterosexism are core aspects of patriarchy used through the control of sexuality, the assertion of identity, exclusion and the perpetuation of gender roles to gain retain and mobiles political power.

Criminalising LGBTI people ensures they remain vulnerable as they seek to break out from their seclusion and invisibility. But outdated laws also repress those engaged in the defence of human rights globally as the laws are in direct contradiction with human rights law particularly, the right to privacy, the right to freedom of association, freedom of expression, and the right to freedom from discrimination. The presence of such laws also justifies hate, provides the legal basis for abusing one section and creates a culture of impunity via which all those promoting human rights or in dissent from the mainstream are targeted.

LGBTI persons are a part of the Commonwealth, they are a part of each of the 53 Commonwealth nations. The Judiciary in all Commonwealth jurisdictions must follow the lead shown in the recent New Delhi High Court Judgment, and become institutions committed to the protection of those who “might be despised by a majoritarian logic” by respecting the universality of human rights. Implicit within this stance must be the creation of protected space for LGBTI groups and their defenders if the concept of equitable partnerships is even to be considered a possibility within the Commonwealth, let alone the Commonwealth Peoples Forum. ■

Upcoming Commonwealth Events

Commonwealth Finance Ministers Meeting

30 September 2009 - 2 October 2009

Pacific Drafters' Technical Forum on Legislative Drafting

13 October 2009 - 15 October 2009

60 Not Out

14 October 2009 - 14 October 2009

Commonwealth Civil Society Consultation

16 October 2009 - 16 October 2009

Pacific Colloquium on Gender, Culture and the Law

17 October 2009 - 24 October 2009

Committee of the Whole (COW) (CHOGM)

21 October 2009 - 22 October 2009

Commonwealth Ministerial Action Group on the Harare Declaration

(CMAG)

25 November 2009 - 25 November 2009

Foreign Ministers Meeting

25 November 2009 - 26 November 2009

Commonwealth Heads of Government Meeting (CHOGM) 2009

27 November 2009 - 29 November 2009

CHRI Calendar: July - September 2009

CHRI Headquarters (New Delhi)

- CHRI's report 'Feudal Forces: Reform Delayed - Moving from Force to Service in South Asian Policing', was launched by Union Minister of Human Resource Development, Kapil Sibal, at the India International Centre.
- CHRI in collaboration with Shehri-CBE and Liberal Forum Pakistan organised a two-day capacity building workshop on Pakistan's Freedom of Information Ordinance 2002 in Karachi, Pakistan.
- CHRI along with Centre for Peace and Development Initiatives (CPDI) in Pakistan launched the Urdu version of "Our Rights Our Information" in Islamabad.
- The Director and Access to Information team met with a team of government officials from Bangladesh who came to India to learn about the implementation of India's Right to Information Act.

- The prison reforms programme organised a consultation "Imprisonment and the law" in collaboration with the West Bengal Correctional Services Department on 22 August 2009.

Africa Office

- Nana Oye Lithur and Florence Nakazibwe met with the Cabinet Secretary of Ghana to discuss initiatives for advancing the RTI Bill before the Cabinet.
- CHRI in collaboration with Media Foundation for West Africa and Amnesty International, organised a Press Forum on the Gambia expressing dissatisfaction with repression of the media and inaction of the case of extra-judicial killings and disappearances in the Gambia.
- CHRI along with other rights groups met the Vice President of Ghana to express concerns on the case of the extra-judicial killings of 50 Africans in the Gambia in 2005.
- CHRI staff coordinated a sensitisation workshop on Freedom

of Information (FOI) for members of the Islamic Council.

- CHRI launched its publication on Ghana's Right to Information Bill on International Right to Know Day.
- CHRI staff had an experts meeting with members of the Commission on Human Rights and Administrative Justice and other stakeholders to draw up a National Human Rights Plan of action for Ghana.

UK Office

- CHRI launched its report on Rwanda's entry into the Commonwealth titled "Rwanda's Application for Membership in the Commonwealth - Report & Recommendations of CHRI".
- CHRI's London office relocates to its new home in Senate House.
- CHRI starts human rights training in the Pitcairn Islands

The Commonwealth Human Rights Initiative was founded in 1987 and is currently constituted by the Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association. These sponsoring organisations felt that while Commonwealth countries had both a common set of values and legal principles from which to work, they required a forum from which to promote human rights. It is from this idea that CHRI was born and continues to work.

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