

COMMONWEALTH SECRETARIES-GENERAL AND HUMAN RIGHTS: A RETROSPECTIVE

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“Our shared values of peace, democracy, development, justice and human rights – which are found in our new ‘Commonwealth Charter’ – mean that we place special emphasis on including everyone in this goal, especially those who are vulnerable.”

HM Queen Elizabeth II, Commonwealth Day Message 2013

Since its earliest days, the Commonwealth – in its various guises and forms – has been instrumental in directing greater attention and importance to human rights both within and outside itself. Yet, given that much of its work is undertaken behind the scenes, the great force of good it has been in this regard has not always been adequately acknowledged. This essay shall highlight, firstly, the often forgotten role played by the Commonwealth in enshrining fundamental human rights and freedoms both in the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948). Then, it shall focus in greater detail on the office of the Secretary-General in particular and explore how each of the five Secretaries-General the Commonwealth has had so far engaged with human rights and security during their time in office. By serving primarily as a compilation of relevant anecdotes, it is hoped that this short essay will elucidate how each Commonwealth Secretary-General responded to the challenges of a changing world with the limited resources they had at their disposal at the evolving Commonwealth Secretariat.

As Sir Peter Marshall, a former Commonwealth Deputy Secretary-General, reminds his readers, “The Charter of the United Nations, adopted in San Francisco in 1945, marked a new approach to international relations—a break with the concept of balance of power and the beginning of a new era of global interdependence.”¹ Its famous Preamble “reaffirm[ed] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Nevertheless, despite its significance, the Commonwealth contribution to the UN Charter remains largely forgotten. Yet, as Sir Peter notes, “[The Charter]’s essence is embodied in the 200 words of the Preamble, which was incorporated largely due to the efforts of Jan Smuts, a former Prime Minister of South Africa and a pioneer of the concept of Commonwealth.”² Indeed, when Commonwealth Ministers met in London on the eve of the San Francisco Conference, Smuts complained that the Dumbarton Oaks texts read as a dry, legalistic document and was not as universally inspiring as such a key document, produced right after a period when fundamental human rights had been at stake,

¹ Peter Marshall, “Smuts And The Preamble To The UN Charter”, *The Round Table* (2001), Vol.90, No.358, p.55.

² Peter Marshall, “Smuts And The Preamble To The UN Charter”, *The Round Table* (2001), Vol.90, No.358, p.55.

ought to have been. He presented a draft Preamble he prepared and included a first chapter that included references to human rights and the four freedoms - freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear – the US President Franklin Roosevelt had prioritised. After some deliberation, his draft Preamble gained high-level support from Australia, Canada, India, New Zealand, South Africa and the UK; and at the San Francisco Conference, it was agreed by acclamation to adopt it as the basis for the Preamble.

Likewise, in 1946, when the United Nations Economic and Social Council appointed a Commission on Human Rights to produce the Universal Declaration of Human Rights, three of the 18 members on the Commission were tied in some way to the simultaneously evolving Commonwealth: Australia, India and the United Kingdom.³ That same year, John Peters Humphrey, a Canadian legal scholar, was appointed the first Director of the UN Division of Human Rights within the UN Secretariat; and in that capacity, in consultation with the executive group of the Commission, chaired by Eleanor Roosevelt, he prepared the first draft of the UN Declaration. It was during a trans-Atlantic journey Humphrey, the Canadian in the Secretariat, and Geoffrey Wilson, the British delegate on the Commission, had undertaken together that Wilson recommended privately that when the Secretariat had already included something in its draft, it made it harder for governments to raise objections, as the burden of proof would fall on those delegations that sought to delete a provision. Interpreting this comment to be about social and economic rights, Humphrey included these in his first draft, numbered E/CN.4/AC.1/3 of 4 June 1947.⁴

Then, in 1947, two of the 8 representatives appointed to the Drafting Committee were from Australia and the UK.⁵ Among the four documents each delegate received were Humphrey's Draft Outline of International Bill of Human Rights, the lengthier Documented Outline put together by Humphrey and his staff, the more concise Plan of the Draft Outline of an International Bill of Rights outlined by Humphrey, and a proposal by the UK for an international bill of rights that assumed the shape of a legally-binding covenant.⁶ Once Humphrey's outline was chosen as a basis for discussion, a Temporary Working Group comprising the delegates from France, Lebanon and the UK, along with the Chairman, was appointed to facilitate the logical arrangement and, where necessary, redrafting of the articles in the Draft Outline.⁷ During the Second Session of the Commission, the other 38 members of the UN had the opportunity to shape the bill; and Australia, Canada, India, New Zealand, Pakistan, South Africa and the UK were among the 20 governments that contributed suggestions and comments to the revised draft produced at Geneva.⁸ Then, in 1948, when this cumbersome draft was chopped down during the Third Session of the Commission, this was done chiefly in response to joint proposals pushed forward by the UK and India. After further hiccups, the UN Declaration was finally adopted following the debate in the Plenary Session of the Third General Assembly on 10 December 1948.

In both instances – the drafting and adoption of the UN Charter and the Universal Declaration of Human Rights, the strength of the Commonwealth connection could not be any clearer. Almost as if it were a befitting tribute to that connection, the President of the General Assembly at the time the UN Declaration was adopted was the head of the Australian

³ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999), p.4.

⁴ Morsink, *The Universal Declaration of Human Rights*, p.6.

⁵ Morsink, *The Universal Declaration of Human Rights*, pp.5-7.

⁶ Morsink, *The Universal Declaration of Human Rights*, pp.7-8.

⁷ Morsink, *The Universal Declaration of Human Rights*, p.8.

⁸ Morsink, *The Universal Declaration of Human Rights*, p.10.

delegation to the UN, Dr Herbert Vere Evatt, who had previously served as the Attorney-General and Minister for External Affairs in Australia. Evatt noted that this “was the first occasion on which the organised community of nations had made a declaration of human rights and fundamental freedoms. That document was backed by the body of opinion of the UN as a whole and millions of people, men, women, and children all over the world would turn to it for help, guidance and inspiration.”⁹ The two instances also reveal how, since its earliest days, there has been a focus on human rights within the Commonwealth and how the Commonwealth has sought to draw attention to human rights on the global stage. Of course, as history makes obvious, various member states of the Commonwealth have had their own internal struggles in relation to human rights, which warrants, hence, a focus on the challenging role played by each of the five Commonwealth Secretary-Generals as a champion of Commonwealth values both within and outside the Commonwealth.

The first two decades since the establishment of the Commonwealth Secretariat and the office of the Commonwealth Secretary-General in 1965 saw apartheid in South Africa and the Unilateral Declaration of Independence (UDI) in Rhodesia dominate the discussions at the key Commonwealth meetings. At the initiative of the Nigerian Prime Minister, Sir Abubakar Tafawa Balewa, a special Commonwealth Prime Ministers’ Conference was convened in Lagos in January 1966. That Arnold Smith, a Canadian diplomat who served as the first Commonwealth Secretary-General from 1965 to 1975, was seen to be promoting the conference himself, and with the aid of the Secretariat, caused some concern, prompting Lester Pearson, the Canadian premier, to caution him – presumably, with the urging of officials at the Commonwealth Relations Office – that the Secretariat ought to be seen as impartial and simply representing the consensus there may be.¹⁰ However, committed to defining the role of the office as its first incumbent, Smith was of the conviction that “a consensus had to be built around credible commitments”.¹¹ The Lagos conference was to be, as Smith reported retrospectively, the first convened to discuss a single particular topic, the first to be held outside London at least since the early 1930s, and the first to be organised and serviced by the Secretariat.¹² Furthermore, in order to overcome the episodic nature of previous Commonwealth meetings and to plan for collective future action, the Prime Ministers in Lagos, following the multilateral consultations facilitated by the Secretariat, established for the first time two continuing committees: the Sanctions Committee, which served as a monitoring mechanism to keep the situation in Rhodesia and the progress of sanctions under review, and the Committee on Assistance for Training of Rhodesian Africans, which served to provide Commonwealth assistance in training Rhodesian Africans to occupy senior positions in the Rhodesian administration.¹³

By preparing a memorandum for the Prime Ministers about the sorry state of education levels among Rhodesian Africans and recommending a special assistance programme, which was then approved, Smith notes that he was also able to establish that “the Secretary-General could put his own recommendations on the table and speak on them, rather than follow the previous line by which the British Cabinet Secretary sat mute at the main meeting and simply chaired the meetings of officials.”¹⁴ The negotiations between Arnold Smith and Harold Wilson behind the scenes, and the heated discussions between leaders at the Commonwealth Prime Ministers’ Meeting in London in September 1966, also led Britain to agree to a policy of ‘No Independence Before Majority Rule’ (NIBMAR) and to seek mandatory sanctions through the

⁹ Cited in Morsink, *The Universal Declaration of Human Rights*, p.12.

¹⁰ Smith, A., Sanger, C., *Stitches in Time* (London: Andre Deutsch, 1983), p.55.

¹¹ Smith, A., Sanger, C., *Stitches in Time* (London: Andre Deutsch, 1983), p.55.

¹² Annual Report of the Commonwealth Secretary-General, 26 August 1966, p.6.

¹³ Annual Report of the Commonwealth Secretary-General, 26 August 1966, pp.7-8.

¹⁴ Smith, A., Sanger, C., *Stitches in Time* (London: Andre Deutsch, 1983), p.57.

UN, if, over the next three months, it could not strike a settlement with the minority regime in Rhodesia that was acceptable to Rhodesians as a whole.¹⁵ After the Rhodesian Cabinet rejected the proposals put forward by Wilson, Britain accepted its commitments (but not without further oscillations and controversies), resulting – on the bright side – in Resolution 253 of the UN Security Council and the setting up of a UN supervisory committee.¹⁶ Thus, even in the years right after the office was established, the Commonwealth Secretary-General had also served as an advocate of human rights and human security across and beyond the Commonwealth and not just as Chief Executive of the Commonwealth Secretariat.

Nevertheless, at the first Commonwealth Heads of Government Meeting convened in Singapore in 1971, the government of Edward Heath, Prime Minister of the UK from 1970 to 1974, insisted on carrying on British arms sales to South Africa and allowing the Royal Navy to use the Simonstown Naval Base, while most Commonwealth member states opposed any such activity that would offer support to the apartheid regime. Building on the initiative of Sir Abubakar Tafawa Balewa of Nigeria five years earlier, Sir Kenneth Kaunda of Zambia recommended that all Commonwealth member states should subscribe to a declaration of basic principles, which led to the adoption of The Declaration of Commonwealth Principles at the Singapore CHOGM in January 1971.¹⁷ The historian William McIntyre recounts that Heath was so enraged by the Singapore CHOGM that he made clear to Smith his desire for the next such meeting to be held only after a long interval. Yet, Smith is supposed to have arranged with Pierre Trudeau, then Prime Minister of Canada, to convene the next meeting in Ottawa in two years, a CHOGM where, as McIntyre notes, “Heath went only reluctantly and left early.”¹⁸

The relationship between New Zealand and the majority of Commonwealth Africa, likewise, proved somewhat volatile. Although Norman Kirk, Prime Minister of New Zealand from 1972 until 1974, expressed support at the Ottawa CHOGM of 1973 for the position of most African Commonwealth member states on the issue of military aid to African guerillas in Rhodesia, an All Black tour of South Africa in 1970, as McIntyre notes, was to go against a UN General Assembly resolution against sports contacts and also include matches in Southwest Africa and Rhodesia.¹⁹ The policy of his successor, Robert Muldoon, of ‘keeping politics out of sport’ meant that New Zealand would not discourage the 1976 All Black tour of South Africa either, but that the tour should coincide with the Soweto riots provoked such great international outrage that there were efforts to leave New Zealand out of the Montreal Olympic Games. As these efforts did not succeed, nearly every African state, with the exception of two non-Commonwealth African countries, boycotted the Olympics. To prevent a similar boycott at the Edmonton Commonwealth Games in 1978, especially after efforts by Shridath Ramphal, the former Minister of Foreign Affairs of Guyana who served as the second Commonwealth Secretary-General from 1975 to 1990, to reach an agreement with Muldoon fell to pieces, the London CHOGM of 1977 saw Ramphal push through with the greatest tact and urgency a general agreement among Commonwealth Heads of Government about sports contacts.²⁰ It was through Ramphal’s deft use of the Retreat at Gleneagles, Scotland, during the same CHOGM that Commonwealth Heads of Government also reached the Gleneagles Agreement against sporting links with apartheid South Africa.

¹⁵ Smith, A., Sanger, C., *Stitches in Time* (London: Andre Deutsch, 1983), pp.62-8.

¹⁶ Smith, A., Sanger, C., *Stitches in Time* (London: Andre Deutsch, 1983), pp.53, 59, 68-70.

¹⁷ W. David McIntyre, “From Singapore to Harare: New Zealand and the Commonwealth”, in Bruce Brown (ed.), *New Zealand in World Affairs III: 1972-1990*, pp.89-90.

¹⁸ W. David McIntyre, “From Singapore to Harare: New Zealand and the Commonwealth”, p.91.

¹⁹ W. David McIntyre, “From Singapore to Harare: New Zealand and the Commonwealth”, p.92.

²⁰ W. David McIntyre, “From Singapore to Harare: New Zealand and the Commonwealth”, p.92.

When Bernard Galvin, head of the New Zealand Prime Minister's Department, expressed the concerns Muldoon might have, Ramphal is believed to have evoked the attitude of the Queen as Head of the Commonwealth. Irrespective of where her sympathies lay, the Queen, he said, was upset that the excessive intransigence over the sports question was interfering with the Silver Jubilee.²¹ By also appealing to Muldoon's pragmatism, Ramphal succeeded in getting him to participate in the Gleneagles Meeting and endorse the Commonwealth Statement on Apartheid in Sport (The Gleneagles Agreement).²² Muldoon even went so far as to endorse the Maputo Declaration which supported the liberation movements in Southern and Southwestern Africa, and his contributions, as Thatcher's main supporter, may have had some influence in moving the British Prime Minister towards a settlement on the UDI question at the Lusaka CHOGM of 1979.²³ Nevertheless, his posture on persuading, but not ordering, the Rugby Union to abide by the Gleneagles Agreement and cancel the New Zealand tour of a South African rugby team in 1981 severely damaged New Zealand's reputation overseas and even resulted in the High Commissioners meeting as the Commonwealth Committee on Southern Africa, set up by Ramphal, changing the venue of the Commonwealth Finance Ministers' Meeting from Auckland to The Bahamas. It was amidst this climate of recurring tensions that Muldoon scoffed at the Melbourne CHOGM of 1981 that Ramphal, as Secretary-General, should stick to keeping the minutes.²⁴ However, for Ramphal, as for Smith, the Secretary-General was not simply a note-taker, and he too sought to widen and establish the mandate of the Secretary-General so he could also build consensus on, galvanise support for, and push for action in defence of, Commonwealth values.

When Ramphal assumed office, his role at the Secretariat had been clear: he was "to ensure adherence to the 'six principles' which were by then the Commonwealth's credo on Rhodesia".²⁵ For this, he knew advocacy alone would prove insufficient; and he committed the Secretariat to undertaking a meticulous analysis of the 'Zimbabwe-Rhodesia' Constitution, the findings – generally negative – of which he conveyed to Commonwealth Heads of Government through the Commonwealth Committee on Southern Africa (formerly, the Sanctions Committee).²⁶ His most commendable achievement, however, was the key role he played in 1979-80 in the processes that led to the Lusaka Accord, the Commonwealth Declaration on Racism and Racial Prejudice, the Lancaster House agreement, the appointment of a team of election observers representing the Commonwealth collectively, and eventually, the independence of Zimbabwe.²⁷ By the early-1980s, once Zimbabwe had secured independence, the Commonwealth focused its efforts on ending apartheid in South Africa. It was during the Retreat at Lyford Cay during the Nassau CHOGM in 1985 that Ramphal brought together key leaders to secure agreement on the Nassau Commonwealth Accord on South Africa.²⁸ Then, it was through the close links the Secretariat, under Smith and later Ramphal, maintained with leaders of the Anti-Apartheid Movement (AAM) that the AAM could lobby Commonwealth members to oppose the sale of arms to South Africa, support the call for UN sanctions against that country, push for the release of political prisoners therein and demand the ending of the Simonstown Agreement.²⁹ The Okanagan Statement and Programme of Action on Southern

²¹ W. David McIntyre, "From Singapore to Harare: New Zealand and the Commonwealth", p.93.

²² W. David McIntyre, "From Singapore to Harare: New Zealand and the Commonwealth", p.93.

²³ W. David McIntyre, "From Singapore to Harare: New Zealand and the Commonwealth", pp.93-94.

²⁴ W. David McIntyre, "From Singapore to Harare: New Zealand and the Commonwealth", p.95.

²⁵ Ramphal, S., *Glimpses of a Global Life* (Hartford: Hansib, 2014), p.341.

²⁶ Ramphal, S., *Glimpses of a Global Life* (Hartford: Hansib, 2014), p.341.

²⁷ Ramphal, S., *Glimpses of a Global Life* (Hartford: Hansib, 2014), p.344-94.

²⁸ Mole, S., "From Smith to Sharma: The role of the Commonwealth Secretary-General", in Mayall, J. (ed.), *The Contemporary Commonwealth: An Assessment 1965-2009* (Abingdon: Routledge, 2010), p.50.

²⁹ Menezes, D., "50 Years of the Commonwealth Secretariat", *Ministers Reference Book – Commonwealth 2015* (London: Henley, 2015), pp.26-7

Africa (1987) made clear that Commonwealth members were strongly in favour of economic, trade and military sanctions, despite opposition by Britain. In 1985, Smith also established a Human Rights Unit within the Commonwealth Secretariat, with the mandate to “promote human rights within the Commonwealth.”³⁰

The military coup d’etat in Nigeria in January 1966 meant that for the first time the Commonwealth, which had hitherto been an association of democracies, had a military regime among its members. After Nigeria, there were military coups d’etat in Ghana, Sierra Leone, Lesotho, Uganda, the Gambia and other member states. For Chief Emeka Anyaoku, the ex-Minister of Foreign Affairs of Nigeria who served as third Commonwealth Secretary-General from 1990 to 2000, this posed an internal contradiction: while the Commonwealth publicly espoused democracy, it had several members that were military regimes or one-party states. Conscious of this contradiction, Anyaoku, in his acceptance statement at the Kuala Lumpur CHOGM in 1989, pledged to use all the energy and resources available to him to work towards “a Commonwealth whose actions will foster its values”.³¹ The Kuala Lumpur CHOGM had also set up a High-Level Appraisal Group (HLAG) of ten Heads of Government that was assisted by a Working Group of Senior Officials that put forward recommendations for their consideration. Anyaoku was encouraged to engage with the HLAG, and he astutely saw in it a potential ally through whom he could secure the reaffirmation of the Commonwealth commitment to democracy that he so ardently sought. The recommendations of the senior officials had included a draft Commonwealth Declaration; and after Anyaoku highlighted the invaluable role the Commonwealth could play in fostering confidence in the electoral process as a key to democratic governance, the senior officials also recommended a draft Guidelines for the Establishment of Commonwealth Groups to Observe Elections in Member Countries.

When the HLAG finally reconvened just prior to the CHOGM in Harare in 1991, the ten Heads of Government agreed a statement that was then adopted by all Heads of Government during their retreat at Victoria Falls. While the Singapore Declaration of 1971, which had first set out the core political values of the Commonwealth, was generally well received, its article rejecting coercion as an instrument of policy proved problematic as it implied that not even the Commonwealth had the right to enforce its values. This discrepancy was resolved in the Harare Declaration that removed the reference to the opposition to international coercion, while reaffirming the commitment of the Commonwealth to human rights, democracy, equality and the other principles.³² Together, the Singapore Declaration and the Harare Declaration long constituted the most important documents in the Commonwealth’s uncodified constitution. For Anyaoku, the Harare Declaration authorised the Secretary-General to make the pursuit of democracy and good governance key priorities in his agenda, bolstering his role as champion of Commonwealth values; and pursue democracy he did through all the power of advocacy and persuasion he had at his disposal.³³ It also allowed Anyaoku to more actively encourage Heads of Governments to request Commonwealth election observer groups.³⁴

During his tenure, Anyaoku would make effective use of the good offices role of the Secretary-General to intervene for peace in member countries – at times, directly; at other times, through senior members of his diplomatic staff.³⁵ Whether in Kenya and Lesotho in 1992, Bangladesh in 1994, Papua New Guinea in 1997 and Zanzibar between 1996 and 1998, Anyaoku’s efforts

³⁰ Human Rights Unit, “The Work of the Commonwealth Secretariat’s Human Rights Unit” (1989).

³¹ Anyaoku, E., *The Inside Story of the Modern Commonwealth* (London: Evans Brothers, 2004), pp.128-9.

³² Menezes, D., “50 Years of the Commonwealth Secretariat”, p.28.

³³ Anyaoku, E., *The Inside Story of the Modern Commonwealth* (London: Evans Brothers, 2004), p.130.

³⁴ Anyaoku, E., *The Inside Story of the Modern Commonwealth* (London: Evans Brothers, 2004), pp.130-3.

³⁵ Anyaoku, E., *The Inside Story of the Modern Commonwealth* (London: Evans Brothers, 2004), p.183.

eventually met with some success. However, not every intervention was successful: The Gambia was a case in point. Since its independence, it had been one of the two Commonwealth African countries to have had multi-party democracy throughout, and it was its record on democracy and human rights that led African states to have the African Commission for Human and People's Rights headquartered there.³⁶ However, its run for gold came to an end when a young military officer, Lt Yahya Jammeh, overthrew President Jawara in a military coup in 1994. After several attempts at trying to reason with Jammeh amidst his torrid accusations that he and his administration were being dealt with in an unnecessarily hostile fashion, Anyaoku asked Jammeh to see him instead as his African 'uncle' speaking in pain more than anger. Yet, this effort too proved futile, and relations between the Commonwealth and the Jammeh regime only deteriorated over the next years.³⁷

Then, in the mid-1990s, there was the deteriorating human rights climate under the military regime of General Babangida and then General Abacha in Nigeria, which raised the possibility of the country being suspended from the Commonwealth. Being Nigerian, this, in turn, threatened to make Anyaoku's position as Secretary-General untenable. Furthermore, Nigeria had already been facing criticism at the Auckland CHOGM in 1995 when the news arrived that the playwright, Ken Saro-Wiwa, and eight others, for whom some Commonwealth leaders had been pleading with Abacha for clemency, were brutally executed.³⁸ Nelson Mandela, who – on the basis of the reassurances he received from the Nigerian government – had explained to his fellow heads of government that the executions would not be carried out, felt particularly betrayed and advanced the call for Nigeria's expulsion from the Commonwealth.³⁹ Subsequently, at the Retreat in Millbrook, the decision was taken to suspend Nigeria from the Commonwealth. Moreover, the episode fuelled the drive among Heads of Government and the Secretary-General to have a mechanism in place whereby Commonwealth values could be upheld and persistent violations by any member of the principles enshrined in the Harare Declaration could be dealt with.⁴⁰ Moving "from rhetoric to action in the area of promoting democracy", in Anyaoku's words, was the need of the hour; and accordingly, he prepared a memorandum that served as the draft of the Millbrook Statement of Action, which Commonwealth Heads of Government adopted.⁴¹

The Millbrook Commonwealth Action Programme, introduced in 1995 to implement the Harare Declaration, mandated the Secretariat to provide advice, training and other forms of technical assistance to governments in promoting the Commonwealth's core values – democracy, human rights, the rule of law and good governance. When a member state was in clear violation of the Harare Principles, the programme mandated the Secretariat, and especially the Secretary-General, to take appropriate steps to express the collective concern of Commonwealth countries and to encourage the restoration of democracy within a reasonable timeframe. It also permitted suspension and expulsion from the Commonwealth and the employment of further bilateral and multilateral measures by all member states as measures to reinforce the need for change.⁴² The programme also established the Commonwealth Ministerial Action Group (CMAG) to deal with serious or persistent violations of the Harare Principles. While CMAG initially focused its attention on The Gambia, Nigeria and Sierra

³⁶ Mole, S., "From Smith to Sharma: The role of the Commonwealth Secretary-General", in Mayall, J. (ed.), *The Contemporary Commonwealth: An Assessment 1965-2009* (Abingdon: Routledge, 2010), p.54; Anyaoku, *The Inside Story*, p.144.

³⁷ Anyaoku, E., *The Inside Story of the Modern Commonwealth* (London: Evans Brothers, 2004), pp.144-5.

³⁸ Mole, S., "From Smith to Sharma: The role of the Commonwealth Secretary-General", p.51.

³⁹ Anyaoku, E., *The Inside Story of the Modern Commonwealth* (London: Evans Brothers, 2004), pp.144-5.

⁴⁰ Mole, S., "From Smith to Sharma: The role of the Commonwealth Secretary-General", p.54.

⁴¹ Anyaoku, E., *The Inside Story of the Modern Commonwealth* (London: Evans Brothers, 2004), p.146.

⁴² Menezes, D., "50 Years of the Commonwealth Secretariat", pp.28-9.

Leone, which were still under military rule, its remit since 1999 included Pakistan, Fiji, Zimbabwe, the Solomon Islands and the Maldives.⁴³ The decision to suspend or readmit a member state is also taken by CMAG, with five countries suspended from the Commonwealth since the inception of this measure in 1995: Nigeria (1995-1999), Sierra Leone (1997-1998), Pakistan (1999-2004, 2007-2008), Fiji (2000-2001, 2006-2014) and Zimbabwe (2002-2003, when it withdrew from the Commonwealth).⁴⁴ In 2012 the Commonwealth also suspended the Maldives from its Ministerial Action Group.

When Don McKinnon, the former Deputy Prime Minister of New Zealand, assumed office as the fourth Commonwealth Secretary-General in 2000, he found himself flung into the deep end of the Zimbabwean crisis for which he was little prepared. As Stephen Chan observed:

“[I]n an effort to be seen as having hit the ground running, he made early mistakes... In brief, he played his hand too soon. It was a hand that seemed not to be too different from that being played by the British. But the way he played it attracted the scorn of both the Zimbabwean government and the young opposition party.”⁴⁵

After Zimbabwe was suspended from the councils of the Commonwealth in March 2002, McKinnon continued to make every effort to engage with its government, albeit with little positive outcome. Although the Zimbabwean crisis provided McKinnon a challenging start to his tenure, his greatest successes lay in the adept use of his good offices as Secretary-General to promote democracy, the rule of law and human rights. As Matthew Neuhaus, former Director of the Political Affairs Division at the Commonwealth Secretariat and later Australian Ambassador in Zimbabwe, noted:

“Zimbabwe came to define Good Offices, and as a result people have lost sight of a lot of successes. I think first of all McKinnon had a good style for Good Offices. He was very outcomes-orientated, he was very engaged, and he was more than happy at any time to pick up the phone to leaders and opposition people. And being a politician, and I don’t think only politicians are like this, you can have certain diplomats who are sensitive to politics, but being a politician, he really did understand the interplay of government and opposition.”⁴⁶

McKinnon’s 2003 Annual Report explains that “[a]ssistance to member states with adhering to the Harare Commonwealth Declaration is a key component of the Commonwealth Secretariat’s work to promote just and stable government and to prevent internal conflicts”, and that “[t]he ‘good offices’ role of the Secretary-General is the Commonwealth’s primary mechanism for addressing political problems and conflicts when they do arise”.⁴⁷ Although Anyaoku ought to be credited for bringing Good Offices to the fore, it was a little more *ad hoc* under him. Under McKinnon, by contrast, Good Offices grew much more regularised and came to form a central part of the activities of the Political Affairs Division.⁴⁸ At the Coolum CHOGM in March 2002, Commonwealth Heads of Government also approved the conclusions of the High Level Review Group which included a call for more proactive use of the good offices role; and following the CHOGM, a Good Offices Section was established in the Political Affairs Division of the Secretariat, with additional staff and a greater budget.⁴⁹ In pursuit of his good offices role in Swaziland, McKinnon encouraged HM King Mswati III in reaching his decision

⁴³ Menezes, D., “50 Years of the Commonwealth Secretariat”, pp.28-9.

⁴⁴ Menezes, D., “50 Years of the Commonwealth Secretariat”, pp.28-9.

⁴⁵ Chan, S., “An Ornithology of Secretaries-General: The Commonwealth and its Leadership”, *The Round Table*, Vol.94, No.380 (July 2005), p.333.

⁴⁶ Interview with Matthew Neuhaus, Commonwealth Oral Histories Project (July 2014).

⁴⁷ “Promoting peace, preventing conflict”, *Development and Democracy: Report of the Commonwealth Secretary-General, 2003* (2003), p.10.

⁴⁸ Interview with Matthew Neuhaus, Commonwealth Oral Histories Project (July 2014)

⁴⁹ “Promoting peace, preventing conflict”, *Development and Democracy: Report of the Commonwealth Secretary-General, 2003* (2003), p.10.

to allow public input into the Constitutional Review Commission process.⁵⁰ In addition, Commonwealth experts provided assistance and support on the drafting and adoption of a constitution that more effectively protects human rights and fundamental freedoms, and provides a more transparent and democratic political environment. By 2006, the draft constitution was adopted by both houses of Parliament and promulgated by the King.⁵¹ In addition, when visiting Cameroon in 2001 and 2004, McKinnon raised concerns with President Paul Biya with regard to the management of the electoral process, human rights and the rule of law as well as the independence of the judiciary. Commonwealth engagement was subsequently led by two Special Envoys – Hon Christine Stewart, former Canadian Secretary of State for Africa and Latin America, from 2002 to 2004, and the Rt Hon Joe Clark, former Prime Minister of Canada, from 2004 to 2007.⁵² The Special Envoys worked with the Government on the implementation of the reforms to enable the country to comply more effectively with the Harare Declaration.

It was during McKinnon's time in office, in January 2002, that the mandate of the Human Rights Unit within the Commonwealth Secretariat was extended to include the development of programmes to support the protection of human rights, though much of its work has remained in the realm of promotion.⁵³ Its mandate also included producing human rights materials from member countries, collaborating and cooperating with Commonwealth and non-Commonwealth governmental and non-governmental organisations in the field of human rights, and integrating human rights standards within all divisions of the Secretariat. The Human Rights Unit was also empowered to provide advice to the Secretary-General on human rights issues, including those relating to CMAG.⁵⁴ The Secretariat also focused on training youth in human rights and in supporting the establishment of National Human Rights Institutions across the Commonwealth. In 2007, the Commonwealth Forum of National Human Rights Institutions was set up to facilitate dialogue and an exchange of views on how to build effective human rights institutions.⁵⁵ McKinnon observed,

“Respect for fundamental human rights is a core Commonwealth principle, enshrined in the Harare Commonwealth Declaration. Taking human rights seriously means recognising the equal worth of all human beings and respecting every person's fundamental political and civil rights. Human rights are also about social and economic development. It is important to recognise that while millions of people do not have access to clean water, sufficient food, education and proper health care, they will not have the opportunity to realise their potential and rise above the mire of poverty.”⁵⁶

Finally, a distinctive feature of the tenure of Kamlesh Sharma as fifth Secretary-General of the Commonwealth (2008-2016) was the reform of CMAG that included both a widening of its mandate and a greater and more defined role for the Secretary-General. At the Port of Spain CHOGM in 2009, Heads of Government agreed that “consideration be given to strengthening the role of CMAG, in order to enable the Group to deal with the full range of serious or

⁵⁰ “Promoting peace, preventing conflict”, *Development and Democracy: Report of the Commonwealth Secretary-General, 2003* (2003), pp.10.

⁵¹ Pungong, V., “Good Offices: Defusing Tension and Building Peace”, in Green, R. (ed.), *The Commonwealth Yearbook 2006* (London: Commonwealth Secretariat, 2006), p.67.

⁵² *Cameroon Legislative and Municipal Elections: Report of the Commonwealth Expert Team*, 30 September 2013 (London: Commonwealth Secretariat, 2013), p.5.

⁵³ Commonwealth Human Rights Initiative, *Mechanisms of the Commonwealth to Address Violations of Commonwealth Values – Three Part Series, Paper Two: Human Rights Unit*, p.4.

⁵⁴ *Development and Democracy: Report of the Commonwealth Secretary-General* (2003), p.14.

⁵⁵ Commonwealth Human Rights Initiative, *Mechanisms of the Commonwealth to Address Violations of Commonwealth Values – Three Part Series, Paper Two: Human Rights Unit*, p.5.

⁵⁶ *Development and Democracy: Report of the Commonwealth Secretary-General* (2003), p.14.

persistent violations of the Harare Principles”, and not just the unconstitutional overthrows of constitutionally-elected governments, as it had hitherto done. CMAG was also conscious of the perception of the Group as a “punitive body”, which made constructive engagement difficult. Hence, following the 2011-report *Strengthening the Role of the Commonwealth Ministerial Action Group*, Commonwealth Heads of Government assembled at the Perth CHOOGM in 2011 agreed to a series of reforms. Core changes included clearer guidelines and timeframes for engagement, with agreed indicators as to the types of situations and developments that might be regarded as constituting a serious or persistent violation of Commonwealth values. Among the eight situations enlisted was the systematic violation of human rights by the member government and significant restrictions on the media or civil society. The Heads of Government also agreed that the Secretary-General will speak out publicly in expression of collective disapproval of serious or persistent violations, and that CMAG will be the custodian of the 2009 Affirmation of Commonwealth Values and Principles. As Sharma noted in his address to the UN Human Rights Council, “Commonwealth leaders raised the level of expectations they have of themselves by authorising that group to become more proactively and positively engaged.”⁵⁷

The tenure of Sharma as Secretary-General was not without its share of crises. For many Commonwealth observers, the crisis arising from the organisation of the 2013 CHOOGM in Colombo may have marked “the lowest point in the history of the association so far”.⁵⁸ The UN Secretary-General’s Panel of Experts and the UN High Commissioner for Human Rights expressed concern about the human rights situation in Sri Lanka; and respected human rights watchdogs and international media outlets raised concern about the decision to convene a CHOOGM there. Three Heads of Government – those of Canada, India and Mauritius – publicly stated that they would not attend the CHOOGM; and the Prime Minister of Mauritius withdrew his government’s offer to host the 2015 CHOOGM on being told by the Secretary-General that he had to be present in Colombo to be accepted as the host.⁵⁹ The controversy, moreover, led to Sharma being seen as the man responsible for allowing the Commonwealth to face such reputational and integrity risks.

The reality, as Sir Ronald explained, was more complex:

“Sri Lanka had been scheduled to host the 2011 CHOOGM, but before the 2009 Summit... Secretary-General Sharma had recognised that Sri Lanka’s hosting of the CHOOGM would pose a problem for the Commonwealth’s believability as a values-based organisation. Therefore, in mid-2009, he persuaded President Rajapaksa to opt out of his government’s offer to host the meeting, and he wrote to all leaders on behalf of Rajapaksha saying that Sri Lanka had withdrawn given its pressing post-war preoccupations... However, this did not play well among Sri Lanka’s ruling political directorate...they persuaded the president to change his mind. Thus, at the 2009 CHOOGM, the Sri Lanka delegation demanded to be reinstated as a forthcoming host... [and] with a coterie of supporters... demanded Sharma’s resignation, linking their demand to [his] efforts to get [CMAG] to reform itself and to widen its mandate...”⁶⁰

While the Heads of Government rejected the call for Sharma’s resignation, they came up with a new formula of announcing three CHOOGM venues in advance – Australia in 2011, Sri Lanka in 2013 and Mauritius in 2015. As Sir Ronald observed:

⁵⁷ Press Release: Commonwealth leaders agree to strengthen Ministerial Action Group (CMAG), Communications Division, Commonwealth Secretariat, 28 October 2011.

⁵⁸ Sanders, R., “The Commonwealth after Colombo: Can it become meaningful again?”, *The Round Table*, Vol.103, No.1 (2014), p.23.

⁵⁹ Sanders, R., “The Commonwealth after Colombo: Can it become meaningful again?”, p.24.

⁶⁰ Sanders, R., “The Commonwealth after Colombo: Can it become meaningful again?”, p.29.

“Essentially... governments ducked the issue of Sri Lanka hosting a Summit meeting and gave the Secretary-General a basket to carry water... It would have been quite impossible in the circumstances for Sharma again to seek to move the 2013 CHOGM from Sri Lanka in the absence of strong expressions so to do from a majority of Commonwealth governments.”⁶¹

The controversy did not end there. Canada, as a member of CMAG, had tried repeatedly to place Sri Lanka on the agenda, but its efforts had been in vain. Hence, when it became known that the Secretary-General had withheld from CMAG’s consideration opinions by two distinguished Commonwealth lawyers that indicated the unconstitutionality of the removal from office of the Chief Justice of Sri Lanka, Canada grew all the more enraged. Even after the Secretary-General explained to its Foreign Minister that “the material was commissioned in confidence for the purposes of the Secretary-General’s Good Offices (in Sri Lanka)” and that “any Opinion solicited by the Secretary-General can either be protected or public in nature; but not both at the same time”, the Canadian government complained that the materials should have been given to CMAG as withholding them affected its decisions on Sri Lanka. For Sir Ronald, the problem arose in no small part as the Sri Lankan president, by virtue of being host of the CHOGM, would also be the Chair-in-Office of the Commonwealth for the next two years. The problem could have been avoided, he argued, if the position of Chair-in-Office – introduced in 1999 – had been abolished, as had been recommended in the report put forward by the Eminent Persons Group (EPG) established by the Secretary-General in 2009 to ‘undertake an examination of options for reform in order to bring the Commonwealth’s many institutions into a stronger and more effective framework of co-operation and partnership’.⁶²

Like his predecessors, Sharma too sought to expand and establish the scope of his office in relation to the promotion and protection of Commonwealth values. However, his philosophy appears to have been that efforts by an international organisation such as the Commonwealth to promote and protect human rights can be better advanced through the private, behind-the-scenes, high-level and direct engagement of the Secretary-General with the heads of government or ministers. In his view, by not publicly embarrassing a head of government through caustic public statements or referring them to CMAG to be placed on its agenda until the Secretary-General himself felt that all means for private engagement had been exhausted or had unsatisfactory results, a Commonwealth Secretary-General could gain greater influence with the leader so as to make positive changes through private persuasion. The right of access to the Heads of Government, together with the ability to refer a country to CMAG as a last resort, gave the Secretary-General ample scope for constructive engagement, as when there was a problem, “the Secretary-General can often actually do something about it”, but “if the Secretary-General makes strident calls, then he or she loses influence.”

Sharma shared that he very much welcomed the occasions when non-governmental bodies publicly raised concerns about human rights issues as not only did it reflect the health of civil society, but also it drew the necessary attention to the crises, providing him with the opportunity to express his concerns to the parties concerned. However, for Sharma, even when it came to a priority area such as the promotion and protection of human rights, the Commonwealth Secretariat had to capitalise on its assets as an international organisation and allow human rights bodies, whether governmental or non-governmental, to act and build on their own respective strengths. Referring back to the controversial decision to allow Colombo to host the CHOGM, Sharma shared that when he, as Secretary-General, said to the President

⁶¹ Sanders, R., “The Commonwealth after Colombo: Can it become meaningful again?”, p.29.

⁶² Sanders, R., “The Commonwealth after Colombo: Can it become meaningful again?”, p.30.

of Sri Lanka that he wished to observe the elections in the state, Mahinda Rajapaksha accepted his request, because he could not say no after the Secretary-General accorded him respect during his time as Chairperson-in-Office. Even his opponents respected the Secretary-General for it, and many improvements could be ushered in as a result. Sharma's intervention in Guyana and Pakistan also had positive results.

There were also a number of significant developments in relation to human rights under Sharma's tenure. Between 2008 and 2010, Bangladesh and Seychelles had established National Human Rights Commissions; Mozambique, Papua New Guinea and Swaziland had moved significantly in that direction; and Lesotho, Nigeria, Rwanda, Seychelles and Uganda had ratified all eight of the main human rights conventions.⁶³ Between November 2008 and October 2010, 39 Commonwealth states had participated in at least one human rights initiative delivered by the Commonwealth Secretariat; and 22 new ratifications had been made to the main human rights treaties.⁶⁴ Since the UN Convention on the Rights of Persons with Disabilities came into force in 2008, disability rights have also received greater consideration and commitment; and by 2010, 22 percent (23 countries) of the 95 states that were party to CPRD were members of the Commonwealth.⁶⁵ The Commonwealth Heads of Government affirmed in Port of Spain in 2009 their ongoing commitment to human rights as a core value of the association.⁶⁶ Under Sharma, much more work has been undertaken on the intersection of climate change and human rights, especially in developing countries. The Commonwealth Secretariat also ran a number of human rights initiatives, such as workshops on National Human Rights Action Plans for countries in the process of drafting national policies related to human rights; UPR Mid-Term Review Meetings and UPR Seminars to provide support during all phases of the UPR process; and human rights workshops to strength a culture of human rights in policing; and human rights training for youth leaders. The Commonwealth Forum of National Human Rights Institutions (CFNHRI) has also grown to facilitate collaboration and peer-to-peer learning among NHRIs; over recent years, it adopted the Kigali Declaration guiding institutions on strengthening their efforts in ending child, early and forced marriage and the St Julian Declaration on Climate Justice.

Sharma has also been outspoken on LGBT issues, earning him praise from quarters such as the Peter Tatchell Foundation. On the International Day against Homophobia, Transphobia and Biphobia, 15 May 2015, Sharma noted the progress that had already been made on this front:

“It is right to acknowledge and give due credit where there are examples of progress on LGBTI rights protection in the Commonwealth: for instance through the Universal Periodic Review process, with some member states having accepted recommendations to combat discrimination against LGBTI persons through political, legislative and administrative measures. Others have accepted recommendations calling for the improvement of LGBTI access to health care and welfare, or the promotion of tolerance and non-discrimination through education awareness campaigns. There have also been notable judicial decisions which signal progress and positive change. However, much more needs to be done to realise international human rights obligations and to uphold the values of the Commonwealth Charter.”⁶⁷

⁶³ Kamallesh Sharma, “Foreword”, in Dr Purna Sen (ed), *Human Rights in the Commonwealth: A Status Report 2010* (London: Commonwealth Secretariat, 2010), p.6.

⁶⁴ Purna Sen, “Introduction”, in Dr Purna Sen (ed), *Human Rights in the Commonwealth: A Status Report 2010* (London: Commonwealth Secretariat, 2010), p.8.

⁶⁵ Dr Purna Sen (ed), *Human Rights in the Commonwealth*, pp.8, 20.

⁶⁶ Purna Sen, “Introduction”, in Dr Purna Sen (ed), *Human Rights in the Commonwealth*, p.8.

⁶⁷ Statement by Commonwealth Secretary-General Kamallesh Sharma on the International Day against Homophobia, Transphobia and Biphobia, 15 May 2015
<http://thecommonwealth.org/media/news/international-day-against-homophobia-transphobia-and-biphobia>.

Then, again, on 2 March 2016, in his last address to the United Nations Human Rights Council in Geneva as Commonwealth Secretary-General, Sharma stated:

“This year’s Commonwealth theme is ‘An Inclusive Commonwealth’. We decry and reject discrimination on the grounds of race, colour, gender, religious or political belief, language, and national or social origin. We acknowledge that discrimination against persons on the basis of their sexual orientation or gender identity remains widespread, most notably in the form of laws criminalising homosexuality. As I have previously said on many occasions, discrimination on any grounds has no place in the modern Commonwealth. Furthermore, the Commonwealth cannot be truly inclusive if criminalisation of homosexuality and discrimination on the grounds of sexual orientation or gender identity are not addressed. This remains one of our most pressing human rights challenges and we will continue to work with our member states towards inclusiveness.”⁶⁸

Thus, over the past fifty years since the establishment of the office of the Commonwealth Secretary-General in 1965, each of the five office-holders has responded to the challenges of the times with the skills and expertise they brought in from their careers and the resources available to them within the structures and processes of the Commonwealth. By and large, the Commonwealth Secretaries-General saw their role as the captains of the ship, and each actively sought to steer its course in the direction of human rights, democracy and good governance. For the fifth Secretary-General, Kamallesh Sharma, if the Colombo CHOGM in 2013 proved to be the most troubling hour of his tenure, the issuance of the Commonwealth Charter in the same year might have signalled its happiest. The Eminent Persons Group (EPG) he had established in 2009 put forward as one of its recommendations the idea of a charter ‘that would establish a Commonwealth “spirit” – one that is shared by the people of the Commonwealth and their governments’. After months of national and civil society consultations, the Secretariat produced a final draft that was adopted by Heads of Government in December 2012 and signed by Queen Elizabeth II at Marlborough House in March 2013.

The Charter sets out in a single document the core beliefs that unite the Commonwealth and accords human rights its rightfully privileged place as one of the core values:

We are committed to the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. We are committed to equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just and stable societies.

We note that these rights are universal, indivisible, interdependent and interrelated and cannot be implemented selectively. We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds.

⁶⁸ Statement of the Commonwealth Secretary-General HE Kamallesh Sharma to the High Level Segment of the 31st Session of the United Nations Human Rights Council, Geneva, Switzerland, on Wednesday, 2 March 2016.