

**THE  
RIGHT  
TO A  
CULTURE OF  
TOLERANCE**

**A Report by the Advisory Commission  
The Commonwealth Human Rights Initiative  
Chaired by Dr Kamal Hossain**

**1997**

## **Members of the Advisory Commission**

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The Hon. Margaret Reynolds, Australian, is the nominee of the Commonwealth Parliamentary Association; Senator for Queensland in the Australian Parliament; and is Senate Team Leader (1984-1996); Minister for Local Government (1987-90); and Minister Assisting the Prime Minister for the Status of Women (1988-90). She is actively involved in aboriginal and women's issues.

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Mr. Soli Sorabjee, Indian, is the nominee of the Commonwealth Lawyers Association. A constitutional expert, he has served as Solicitor-General and Attorney-General of India. His areas of professional interest are administrative law and human rights.

## FOREWORD

In the two years since the Commonwealth Human Rights Initiative published its last report the Advisory Commission has been encouraged by the increasing emphasis being put on the human rights dimension of Commonwealth activities.

The Millbrook Programme of Action and the setting up of the Commonwealth Ministerial Action Group on the Harare Declaration (CMAG), which were adopted by Heads of Government during their New Zealand Meeting, are major steps forward. They provide a regime of self-discipline that once again signifies the Commonwealth as a pioneering international body.

The meeting of Commonwealth African Heads of Government on Democracy and Good Governance in Africa, held in Kasane, Botswana, (26-27 February 1997) and the Roundtable meeting in Gaborone that immediately preceded it and was attended by government and opposition politicians from 18 countries, was another new concept we hope can be repeated in other regions.

However, abuses of human rights remain widespread in the Commonwealth despite the fact that all 53 member governments endorse the Harare Declaration.

Nothing has improved in human rights and democratic aspects in Nigeria. The Advisory Commission is continually concerned at the plight of one of its members, Dr. Beko Ransome-Kuti, who was given a life sentence by a military tribunal soon after the CHRI's mission to Nigeria in 1995. He has been held in solitary confinement for 23 hours a day ever since. His daughter is allowed to visit him only once a month for 20 minutes.

A CHRI team of three<sup>1</sup> undertook a mission of inquiry to Zambia in August 1996 in advance of the country's second election since it returned to multiparty rule in 1991. Their report, ***Zambia: Democracy on Trial***, found that a fragile experiment in democracy was under threat. Unfortunately, boycott of the election resulted in a low poll and a near one-party situation again. The Commission is grateful to the team for carrying out the mission. It continues to be concerned at the failure of multipartyism to take deeper roots in Zambia.

This fourth CHRI report again looks at particular issues of human rights that we believe should receive the priority attention of Heads of Government. We have identified ethnic and religious intolerance as an evil that afflicts just about every Commonwealth member country and about which all governments, with the support of civil society, urgently need to take strong counter measures.

The Edinburgh CHOGM is to focus on trade and development. This gives Heads of Government an excellent opportunity to spell out an innovative Commonwealth approach consistent with the commitments they made in Harare and Auckland to human rights-centred sustainable development.

We have returned to the question of freedom of expression and freedom of information because we believe it is appalling that Commonwealth governments have still not been prepared to make

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<sup>1</sup> Dr. Kamal Hossain (Bangladesh), Senator Raynen Andreychuk (Canada), Dr Neville Linton (Trinidad and Tobago).

an unequivocal declaration on something that is fundamental to the exercise of democracy. Members of our Advisory Commission located across the Commonwealth, continue to be in almost monthly contact with each other. Since the Auckland CHOGM they have held two major meetings - in London and Cape Town.

We are especially indebted to the Canadian International Development Agency (CIDA) for their help in funding the Zambia mission and the CHRI-workshop on national human rights commissions held in Dhaka, Bangladesh, in March 1997. We also have to thank a number of generous donors for supporting our work - the Ford Foundation, the British Foreign and Commonwealth Office, the Australian Government's Departments of Foreign Affairs, Defence and Trade and the Friedrich Naumann Stiftung.

I would like to thank especially Professor Yash Ghai, of the University of Hong Kong, for all his work in compiling the main section of this report on ethnic and religious intolerance and for the assistance of Jill Cottrell, also of the University's Faculty of Law. I would also like to thank Mr. Derek Ingram for the preparation of this report.

The Commission expresses again its appreciation to all members of the Executive Committee in New Delhi, chaired by Mr. Soli Sorabjee, for their time and help and to the members of the Trustee Committee in London, chaired by Mr. Richard Bourne.

Special thanks go to our new Director, Ms. Maja Daruwala, who is putting enormous energy and drive into our expanding affairs. We were sad to say farewell to her predecessor, Ms. Malti Singh, but are delighted that she is continuing to help us by becoming a member of the Executive Committee. Thanks also go to Ms Benita Sharma of CHRI, Delhi, for her valuable inputs in assisting with the editing and co-ordinating all activities towards publishing this report.

Kamal Hossain

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# 1. INTRODUCTION

## **From Harare to Edinburgh: how much real action?**

Since the Commonwealth Human Rights Initiative was founded ten years ago, the Commonwealth has made considerable strides in furthering human rights among its members. The association of countries has gained in international prestige. In recognition of this, more countries are knocking at its door to join.

The dramatic events in West Africa during the last Commonwealth Heads of Government Meeting (CROGM) in New Zealand put the Commonwealth to the test on human rights as sharply as South Africa had done many years earlier. As a result of the standards set by the firm declarations, the Commonwealth and its individual member states are on trial to prove their credibility as a force for furthering the human rights agenda.

The commitment of the Commonwealth to certain fundamental political values - democracy, rule of law, independence of the judiciary, respect for human rights and just and honest government - was affirmed by the Heads of Government in Harare (1991). Their Cyprus (1993) and Auckland (1995) communiques spelt out more specifically what this meant.

### **Despite explicit declarations on Human rights and good government gaps between compliance and commitment continue to exist.**

Reiterating the consensus reflected in the Rio Declaration on Environment and Development (1992) and the Vienna Declaration on Human Rights (1993), the Cyprus communique recognised:

- that all human rights are universal, indivisible, inter-dependent and inter-related;
- that “democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing”;
- and that the right to development, as stated in the United Nations Declaration on this subject, is “a universal and inalienable right and an integral part of fundamental human rights”.

The Cyprus CHOGM urged member governments which had not already done so to make every effort to become party to the International Covenant on Economic, Social and Cultural Rights and on Civil and Political Rights by 1995, and by that year to ratify the Convention on the Elimination of all Forms of Discrimination against Women.

Expressing serious concern at the continuing trend of ethnic chauvinism, xenophobia, racism and other related forms of intolerance, the Commonwealth Heads pledged jointly and severally:

*to combat discrimination in all its forms in their own countries, with  
emphasis on maintaining the rule of law and measures to promote the  
development of human rights institutions.*

The special theme of the Cyprus CHOGM had been “The Emergence of a Global Humanitarian Order” centred around the realisation of human rights. The secretary-general was asked to set up a high-level intergovernmental group, It was to examine ways in which the Commonwealth could make the fullest contribution to the international community’s work on this theme.

The Cyprus CHOGM, while considering Cameroon’s application to join the Commonwealth, made adherence to, and compliance with, the Harare principles a requirement for admission. The Heads resolved “to welcome Cameroon to their next Heads of Government meeting in 1995, and into membership of the association at that time, provided that the current efforts to establish a democratic system, consistent with the Harare Declaration, would by then have been completed”,

The Auckland meeting was able to celebrate the birth of the new South Africa and the participation of President Nelson Mandela, symbolising a historic vindication of human rights and the ending of apartheid. But the celebration was clouded by the disturbing developments in Nigeria.

The CHRI fact-finding mission led earlier that year by Canada’s former Foreign Minister, Flora MacDonald, had in its report<sup>2</sup> to that meeting catalogued the continuing repressive actions and gross human rights violations being committed by the unconstitutional military regime.

Rapid corroboration of these findings came when the regime executed writer Ken Saro Wiwa and other leaders of the Ogoni people in callous disregard of appeals of restraint from the Heads of Government just assembled in Auckland and from others allover the world. In the shadow of these events, which directly challenged the Harare principles, the Auckland summit adopted the Millbrook Commonwealth Action Programme on the Harare Declaration. Heads of Government saw it necessary to do more than reiterate and reaffirm their commitment to those principles: they provided for measures to promote observance, deal with violations and set up machinery for implementation. The Millbrook Action Programme on the Harare Declaration aimed to:

- advance fundamental political values of the Commonwealth.
- promote sustainable development; and
- facilitate consensus-building among members.

Millbrook was designed to put teeth into the Harare pledge. Members’ compliance must be more than something on paper; they must strengthen national institutions and national capacity to protect the Harare principles.

The Commonwealth would provide support in constitutional and legal matters, in the democratisation process, in the electoral field, in strengthening the rule of law and the independence of the judiciary, and in promoting “good government” and administrative reform.

Measures in response to violations of the principles, such as the unconstitutional overthrow of a democratically elected government, would include:

<sup>2</sup> Nigeria - Stolen by Generals: Report of a mission. Published by CHRI 1995

- \* public expression by the secretary-general of the Commonwealth's collective disapproval;
- \* sending a special envoy or mission;
- \* pending restoration of democracy, exclusion of the government concerned from participation in ministerial level meetings, including Heads of Government meetings;
- \* suspension from participation in Commonwealth and from receiving Commonwealth technical assistance if the government concerned records no acceptable progress after two years.

If, even after those two years, violations continued, further measures would be adopted which could include limitation of government-to-government contacts, trade restrictions and, in appropriate cases, suspension from the Commonwealth.

A standing machinery to deal with serious violations was set up: the Commonwealth Ministerial Action Group on the Harare Declaration (CMAG).

### **The test of credibility**

The credibility and effectiveness of Millbrook will be on test in a whole range of matters at the Edinburgh CHOGM. These will include:

- \* Commitment to sustainable development in the context of the policy discussion on trade and investment;
- \* Continued violation of the Harare Principles by the military regime in Nigeria;
- \* Military intervention in Sierra Leone;
- \* Flawed elections in Cameroon;
- \* Gaps between commitment and compliance with Harare principles and related commitments by members.

### **Sustainable development, good governance, trade**

In October 1997, when the Edinburgh CHOGM discusses trade and investment, CHRI would expect Heads of Government to keep their pledge to promote sustainable development centred around the realisation of human rights.

The Commonwealth commitment is echoed in the Implementation Programme of Agenda 21 adopted by the Special Session of the UN General Assembly (the Earth Summit) last June. The summit affirmed:

***Democracy, respect for all human rights and freedoms, including the right of development, transparent and accountable governance in all sections of***



***society, as well as effective participation of civil society, are also an essential part of the necessary foundation for the realisation of social and people-centred sustainable development.***

Examples abound of the negative impacts of globalisation and aggressively espoused market-oriented models of development on the poor and vulnerable, and on fragile democracies. These are the result of the absence of strategies to protect the rights of the poor and the vulnerable, in particular of women.

Developments since Rio have given rise to considerable concern. The Earth Summit notes that:

***while growth has allowed some countries to reduce the proportion of people in poverty, marginalisation has increased for others. Too many countries have seen economic conditions worsen and public services deteriorate; the total number of people living in poverty has increased. Income inequality has increased in many countries and also within them; and the gap between the least developed countries and other countries has grown in recent years.***

It is increasingly being said-as voiced by President Clinton in the Seattle Asia Pacific Summit - that we are moving towards a paradigm shift from development through aid to development through trade and investment. It is critically important that such a shift should not result in the attainment of sustainable development, [which called for “the fullest realisation of all human rights for all,”] being surrendered to the exigencies of the market.

If Commonwealth Heads are to be true to the Harare principles while dealing with trade, investment and development issues, their countries must frame collective and individual policies and agreements in strict consonance with the obligations they have undertaken under international human rights covenants and in global conferences. They must reaffirm, as the Earth Summit did, that:

***Economic growth can foster development only if its benefits are fully shared, and must therefore be guided by equity, justice and social and environmental considerations.***

The economic transition which often proceeds in tandem with a political transition towards democracy challenges the creativity of political leadership. Experience shows that economic liberalisation and democratisation need careful nurturing. Neither the market nor the state alone can sustain the process of orderly change, which can carry a society forward towards stable democracy and sustainable development. Coordinated efforts and the contribution of an active civil society are needed.

The 1997 World Development Report, noting that “the pendulum had swung from that state-dominated development model of the 1960s and 1970s to the minimalist state of the 1980s”, observes that:

the lesson of a half-century’s thinking and re-thinking is that the state’s role is more nuanced. State-dominated development has failed, but so will stateless development. Development without an effective state is impossible. Market failure and the concern for equity provide the economic

rationale for government intervention. But there is no guarantee that any intervention will benefit society. Government failure may be as common as market failure. The challenge is to see that the political process and institutional structures get the incentives right, so that their interventions actually improve social welfare.

The World Bank President recognised that “building a more effective state to support sustainable development and the reduction of poverty will not be easy. In any situation many people will have a vested interest in keeping the state as it is, however costly the results for the country as a whole. Overcoming their opposition will take time and political effort.”

The Harare principles, now re-enforced in Auckland and Millbrook, showed the Commonwealth leading the way in fashioning an integrated approach towards promoting democracy and development, based on respect for human rights.

At the Edinburgh CHOGM the Commonwealth as an association of both developed and developing states and peoples has a unique opportunity to envision policies and processes and implement action plans on the road to prosperity which are firmly grounded on the twin foundations of human rights and good governance by undertaking the furthering of investment, trade and development in a way which will always ensure the fullest realisation of human rights, women’s rights, civil liberties and fundamental freedoms, transparency, accountability and informed participation.

**Policies and action plans to enhance economic growth  
must be firmly grounded on the twin foundations of  
HR and good governance**

State and civil society together, with a state sensitive to human rights and women’s rights and to the imperative of maintaining the rule of law, can create the environment in which markets can begin to deliver what is expected of them: increased efficiency through competition, growth with equity, and equal opportunities and sharing in the benefits of the growth by all women and men in society.

To do this, member states must agree to co-operate internationally and inter se to:

- nurture an environment for democracy and sustainable development so that traditional bureaucratic approaches yield to a situation where the state would draw on reformed structure;
- harness professional expertise and active participation from women and men, and civic, labour and non-governmental organisations;
- empower these individuals and organisations through the assurance and greater awareness of guaranteed and enforceable rights and responsibilities.

Members of the Commonwealth while promoting trade and investment are urged therefore to :

- \* translate the economic and social rights, women’s rights and the rights of children, embodied in the international covenants (to which they have adhered or are expected to

adhere) into programmatic , goals and to set performance targets for achieving these goals.

- \* promote awareness of the rights and of the obligation to implement them through programmes of human rights education and other measures, at all levels of the state, in the business community and corporations, and among members of civil society.
- \* monitor compliance with the obligations by national governments, by treaty bodies, by members of civil society (including NGOs), and by Commonwealth machinery established by Millbrook. For this purpose the machinery should be further strengthened.
- \* prepare human rights, and social and environmental impact assessments of development projects, and of relevant aspects of market operations (e.g. insider trading, and other practices occurring in emerging capital markets and in international financial transactions).
- \* promote participation of people in planning, policy-making and implementation and carry out administrative and law reform in areas touching on trade and investment. They should incorporate these elements: freedom of information and transparency, nondiscrimination, participation, accountability and the right to redress, if any rights are denied or violated.
- \* establish independent national institutions, such as human rights commissions properly staffed and equipped to promote awareness, to monitor compliance, and to devise and implement practical strategies to realise human rights and the goal of sustainable development.
- \* enhance international economic co-operation and co-operation within the Commonwealth in pursuing the goals of human rights-centred sustainable development (sustainable human development in UNDP parlance). This should be done through mutually agreed international covenants.

## **Corruption, good governance and human rights**

Human rights abuse and corruption are inextricably linked. Corruption corrodes good governance, diminishes levels of accountability and inevitably leads to repressive policies and regimes which seek to limit transparency and thereby prevent effective participation in governance.

In this context, it is difficult to overstate the importance and significance of the Harare Declaration. The central tenets of the Declaration affirm, inter alia, the rule of law, promotion and protection of human rights, just and honest government, equal opportunity for all, the promotion of sustainable development, sound economic management, the freest flow of multilateral trade on terms fair and equitable to all, and effective and increasing programmes of bilateral and multilateral co-operation aimed at raising living standards.

**“Corruption is theft from the poor”**  
***Dr Oscar Avias, Nobel Laureate***

Where corruption flourishes there are inevitable direct human rights violations, with free speech, freedom of assembly and the rule of law all falling victim. It is not without significance that Nigeria is perceived as the most corrupt country in the world.

The impact of corruption is most vicious and most direct on the poor and it is a matter of great concern for both good governance and development that many of the poorest countries in the world such as Pakistan, Kenya, Bangladesh, Cameroon, India and Uganda find themselves amongst the top twenty nations perceived to be most corrupt.<sup>3</sup>

Growing worldwide attention to corruption has uncovered its global dimensions and inter-linkages. Corruption is not only the problem of the poor. In the words of the co-chairperson of the Global Coalition for Africa, Frene Ginwala of South Africa: "Let us be honest and admit that there are two parties to the transaction, the giver and the recipient, the corrupt businessman or company, and the equally corrupt politician or official." Present legal anomalies in developed countries which allow bribes to be written off as legitimate necessary business expenditure in many of the OECD countries, for instance, promote corruption in the developing world. This anomaly, which compels citizens in developing countries to subsidise big businesses bribes, is being addressed - but not without considerable resistance from vested interests - by the OECD, which is trying to outlaw tax deductibility and to promote international regimes in which the bribing of foreign officials is a criminal offence as, for example, it is in Britain. Long term and unassailable Swiss secrecy laws held up as icons of good banking practice for years are rightly coming under increasing attack as unjustifiably protecting the proceeds of those who have benefited unconscionably through abuse of power and crime.

In the developing world examples of early experiments such as the President of Tanzania's personal example in making full disclosure of assets and commissioning and then widely disseminating a damning report on corruption within the country need to be carefully studied and emulated.

In Southern Africa, a Ministerial Group has been established under the chairmanship of the South African Minister of Justice to develop regional methodologies to help combat corruption. These events have opened the way for discussion within the Commonwealth on measures to counter corruption.

Recent studies indicate that the cost of corruption amounts to increasing the taxation base of that country to the extent that it acts as a serious disincentive to international investment and domestic entrepreneurship.

Given that the theme for the 1997 CHOGM is international trade other actions at the international level merit Commonwealth support and attention:

- (a) The Organisation of American States has signed a regional treaty which on implementation will effectively prevent fleeing foreign officials from seeking to escape liability under the laws of political asylum and diplomatic immunity.
- (b) OECD members have recommended an end to deducting foreign bribes for taxes, and

<sup>3</sup> Transparency International Corruption ranking, 1996

criminalising the act of bribing abroad. Efforts at effective co-ordinated action are presently being crystallised.

- (c) The World Bank and IMF chiefs have made significant policy statements and issued guidelines addressing corruption. These include blacklisting offending corporations and requiring disclosure of all agency commissions and pressing for anti-corruption reforms when lending.
- (d) In December 1996, the UN General Assembly has made an historic Declaration against corruption and bribery in international commercial transactions. The resolution ensures that the UN will report back to the General Assembly on action taken by itself and member states.

The UN Drug Control Programme has led to a recognition of the artificiality of trying to distinguish between illicit drugs money and the proceeds of other kinds of corruption and so to drop the attempted distinction between drugs profits and other dirty money.

CHRI recommends that:

- (a) Commonwealth Heads of Government should unequivocally align themselves with the growing international consensus on fighting corruption and initiate a co-operative, concrete and practical action agenda on a pan-Commonwealth basis.
- (b) Commonwealth countries should formally endorse the OECD anticorruption initiative, support its objectives and develop mechanisms for immediate collaboration.
- (c) The scope for enlarging present mutual legal assistance inter se arrangements should be reviewed to ensure that these meet the needs for a vigorous anti-corruption campaign within the Commonwealth. Commonwealth extradition arrangements should be reviewed to ensure that these do not provide loopholes which hinder bringing all corrupt and corrupting persons to justice; nor protect officials who plead that corruption charges brought against them after they have fled the country are “political” and not subject to extradition laws.

## **Nigeria: not getting any better**

Heads of Government are reminded that Paragraph 10 of their Auckland communique called for the release of Abiola and 43 prisoners being held for involvement in an alleged coup attempt. It further said that **(Heads of Government had decided that if no demonstrable progress was made towards fulfilment of these conditions “within a time frame to be stipulated,” Nigeria would be expelled. None of the conditions** set down in Paragraph 10 has been fulfilled.

In April 1997, CHRI submitted a written representation (see Appendix IV) to Commonwealth Ministerial Action Group (CMAG) and made oral presentations to its meeting in London on 10-11 June. Points put forward by CHRI are encapsulated below. CHRI recommends the consideration of these by Heads of Government when reviewing the issue of Nigerian membership in the Commonwealth at the Edinburgh CHOGM:

1. There is continuing evidence of human rights violations and repression in the country.

2. A large number of pro-democracy activists and journalists continue to be arbitrarily detained and arrested, including political detainees such as the former Head of State General Olusegun Obasanjo, the elected president Mashood Abiola, and CHRI Advisory Commission member Dr. Beko Ransome-Kuti. Others, added to the list, include two former presidential candidates, the editor of The Week, and Dr. I. Faseun, the representative of the Campaign for Democracy. Prison conditions and repression are creating unattended threats to the physical and psychological health of detainees, many of them still without trial and others who are victims of “mock trials”.
3. Since CHOGM 1995 the situation in Nigeria has worsened. A new report by two special investigators of the UN Human Rights Commission has stated that the rule of law in Nigeria is near collapse. It added that some judges have stopped issuing court orders because of the government’s refusal to obey them.
4. Nigeria is moving inexorably to establish a military group as a political party with the aim of establishing it as an elected government, through a contrived transition process which is designed to yield a predetermined outcome. The selection of the five political parties cast in the role of principal contestants has been so engineered as to marginalise mainstream and established political parties.
5. The so-called transition process now under way in Nigeria, far from creating confidence in the prospects of restoration of democracy through a free and fair election, gives rise to serious misgivings. The recent council elections, the first elections held since the end of the 1993 presidential elections, were held three months later than the promised schedule. Soon afterwards a decree empowered the Head of State to remove any local council head if he “is satisfied that the affairs of the council are not being managed in the best interests of the community or in any way threaten the unity of the people of Nigeria.” Civil courts are barred from entertaining any challenge to the validity of the election or of the decision of special election tribunals.
6. The continued intransigence of Nigeria is nowhere better signalled than in the situation where CMAG itself was given no assurance of being able to see political prisoners on its visit to Nigeria. Its Canadian colleague refused to join the delegation because of lack of adequate guarantees of personal safety. When it did visit Nigeria, the group failed to meet representatives of important Nigerian groups which had been seeking to alert the international community to the situation.
7. In February and March 1997, two UN Special Rapporteurs declined to visit Nigeria because of the unacceptable conditions imposed by the regime, including refusal to allow them to visit prisons.

In view of the above, CHRI believes that a credible standard setting Millbrook Programme of Action requires that there be a clear finding that the so-called “transition programme” does not meet the criterion of “demonstrable progress which would allow for the lifting of the suspension of Commonwealth membership”.

It should also be recorded that the council elections do not constitute a step towards democracy. Infact they represent a subversion of the process towards a truly representative government.

Satisfaction of the Millbrook criteria require urgent steps be taken to be restore democracy, respect for human rights and the rule of law at all levels, in particular by:

- \* Guaranteeing freedom of movement
- \* Guaranteeing freedom of expression and association
- \* Ensuring the independence of the judiciary
- \* Immediately releasing all political prisoners, including granting an amnesty for those who are victims of mock trials, which do not conform to the international minimum standards of a fair trial,
- \* Guaranteeing free and fair access to the political system to all political parties traditionally recognised as legitimate.

It is only through fulfilling these conditions that an environment can be created for holding any credible free and fair elections in the future.

Any presidential election held in 1998 preparatory to a return to civilian rule, as promised by the regime, should be effectively supervised and observed by the Commonwealth. If elections are not held on schedule or are not declared internationally acceptable, Nigeria's membership of the Commonwealth should remain suspended.

### **Sierra Leone: a lesson to be learned**

The military coup in Sierra Leone which aimed effectively to overthrow an elected government clearly attracts the application of Millbrook measures. As a first step, the Commonwealth secretary-general described the coup as "unacceptable", CHRI welcomes CMAG's decision to suspend the regime "from the councils of the Commonwealth" and thus exclude it from the Edinburgh CHOGM. Everything possible must be done to assist the people of Sierra Leone to regain their rights.

A lesson to be derived from this setback is that a successful transition from an authoritarian to a democratic order, especially in the wake of a civil war, requires more than just the holding of an election. A consensus needs to be nurtured among the contenders in a multiparty state to abide by basic democratic norms in order that a democratic political culture can grow and contribute to the building of enduring institutions.

### **Cameroon: a disappointing start**

The admission of Cameroon into the Commonwealth had been through a process that was expected to demonstrate compliance with the Harare principles by successful completion of a process of democratisation. An essential component was the holding of a free and fair parliamentary election.

The report of the Commonwealth observers on the parliamentary elections held on 17 May 1997 records that, due to a number of deficiencies, ranging from the absence of an independent

electoral commission to a defective and incomplete electoral register, “confidence in the conduct of the 1997 National Assembly elections has suffered from a flawed base”. The report indicates that these flaws can be rectified and urges international organisations, including the Commonwealth, to consider providing relevant expertise and technical assistance.

The Millbrook approach calls for insistence that Cameroon take prompt remedial action, including concrete steps to remove electoral deficiencies.

CHOGM must insist on the establishment of an independent electoral commission in fulfilment of an undertaking given when Cameroon sought membership. The Commonwealth must undertake to support Cameroon with technical assistance and monitor and report on progress in implementing corrective measures to a body designated by the Heads of Government.

**A demonstrable commitment to Human rights  
and Women’s rights must be assessed before  
Commonwealth membership can be considered.**

The experience of Cameroon indicates a need for even greater care when considering applications for admission to the Commonwealth. CHRI believes that a thorough assessment based on independent fact-finding must be made before any application is considered for membership.

CHRI recommends that countries applying for membership must be examined for their human rights record in an open transparent process which is not exclusively in the purview of the Commonwealth Secretariat and the member states. As the Commonwealth is an association of peoples as well as countries, the views of NGOs and other components of civil society must be canvassed and form a valuable factor in assessing adherence to international and Commonwealth norms on good governance and human rights. If a country’s human rights record is found wanting it should, before being allowed to join, be required to prove that demonstrable change has taken place to adopt and implement human rights standards not afterwards, as happened in the case of Cameroon.

CHRI recommends the articulation at Edinburgh of an inclusive and transparent process which ensures good governance and human rights.

In view of the reports of serious human rights violations published by Amnesty International and other independent observers, there should be no consideration of applicants’ such as Yemen being admitted by the Edinburgh CHOGM.

It is pointed out that a fundamental factor relating to all countries, but in particular to applicant countries, is the status of its women and compliance with the recognition that women’s rights are human rights. This requires that women be treated equally and equitably and have all freedoms and equal access to the benefits of development, equal access to opportunity, and equality before the law.



## **Gaps between commitments and compliance**

If properly implemented, the Millbrook process could significantly improve compliance with the Harare principles and related CHOGM resolutions. A regular regime for demonstrable progress must be monitored with the assistance of civil society associations of the Commonwealth including, where appropriate, the CHRI. Persistent failure to comply with the Harare principles should attract the application of the Millbrook measures.

CHRI draws particular attention to the necessity of applying a strict approach to compliance with such targets as adherence to the major UN Human Rights Covenants, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by 1995 (as urged by CHOGM 1993), ILO conventions and the Covenant against Torture, (which has one of the lowest and most unjustifiable ratification rates by Commonwealth countries). CHRI also urges the Edinburgh CHOGM to commit itself to ensuring the practical realisation of human rights within national jurisdictions by assisting in the establishment and strengthening of independent and effective national human rights institutions, offices of ombudsman, women's rights commissions or similar institutions that underpin the promotion of the rule of law and the independence of the judiciary.

1998, the year of the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights, offers a special opportunity to Commonwealth countries to strengthen their practical work for human rights. At their 13<sup>th</sup> meeting in Botswana in July 1997, Commonwealth Education Ministers said that to celebrate the anniversary all countries should "review the teaching about human rights in their schools". CHRI calls on Heads of Government in Edinburgh to endorse this proposal, initiate a programme of work and commit financial and intellectual resources towards its fulfilment.

To be true to its own commitment the Commonwealth must provide fiscal support and technical assistance. Effective programmes of human rights and women's rights education, voters' education, electoral reforms and administrative reforms aimed at promoting transparency and accountability, require significantly expanded co-operation among member countries.

Experience and expertise, material and technical resources, must be concretely committed and contributed generously if success is to be achieved. Fundamental political values of the Commonwealth should be advanced by the compilation of "best practices" and sharing these among members. Workshops involving those engaged in national human rights institutions as well as NGOs and Judges colloquia have proved their value and need to become a regular feature.

## **2. ETHNIC AND RELIGIOUS INTOLERANCE**

### **The Challenge to the Commonwealth**

In common with numerous individuals, organisations and states, the Commonwealth Human Rights Initiative is concerned to note the resurgence of intolerance in the Commonwealth and is alarmed at its horrible consequences. There are many bases on which communities are subordinated, discriminated against or attacked - religion, race, colour, caste, language, region, culture and history. The phrase used in this report "religious and ethnic intolerance" is intended to cover all these types of intolerance. Women, when viewed as a community suffer endemic violations from both within and outside the group they belong to. They are in double jeopardy and at greater risk of violence both by virtue of being part of a community which is itself being abused and also by virtue of being a subordinated part of their own communities. Communities which aggressively assert their ethnic identity frequently announce their own exclusivity and identity through restrictive interpretations of religion and tradition that disadvantage women.

As a uniquely multi-religious, multi-ethnic and multi-cultural association of peoples and states, the Commonwealth has special reasons to be troubled by the resurgence of intolerance<sup>4</sup> and to consider its role in combating it. CHRI urges the governments and peoples of the Commonwealth to reaffirm their commitment to religious and ethnic tolerance and to political and cultural pluralism.

This section of the report analyses the resurgence of religious and ethnic intolerance and persecution, suggests some appropriate policies for religious and ethnic relations, and offers proposals for what the Commonwealth, its member states, governments and NGOs can do to fight the evil of intolerance. It does not attempt an analysis of the underlying causes of intolerance. It is a call for action on the part of the Commonwealth and its member states and organisations.

### **A growing problem**

Today the major causes of war or conflict are not inter-state rivalries, but domestic discord over ethnic and religious issues. There has been no more potent and alarming threat to civilised society, national peace and stability, and international amity and co-operation than conflicts generated by ethnic hatred or incitement to religious persecution. No other factor in this century has caused so much misery to so many people as religious and ethnic intolerance. No other single factor is responsible for such extensive and protracted violation of rights as ethnic conflict.

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<sup>4</sup> Such a broad use of "ethnic" is not accepted everywhere, though it is now common in academic writing. Another caveat is that the reasons for and the consequences of discrimination or persecution on the various bases of intolerance mentioned are not always the same, although there are many common characteristics in the way intolerance is mobilised and manifested.

## **Domestic discord over ethnic & religious issues is a major cause of human rights abuse and a potent threat to economic growth and equitable development**

People, the majority of them women and children, have been uprooted from their homes, forced into internal displacement and external exile. Millions have been slaughtered in the name of religious or other bigotry. Dialogue and reason have been displaced by coercion and violence. Riots become a more potent instrument for the expression of people's insecurities than a democratic process, in turn breeding personal and group paranoia and defensiveness.

### **Commonwealth examples**

There is a high incidence of ethnic or religious violence in Commonwealth countries and many have had to deal with these problems. For example: Britain, in regard to Northern Ireland; India, in Kashmir and the north eastern provinces; Tamil Tigers and other forms of sectarian violence in Sri Lanka; the Bougainville crisis in Papua New Guinea; ethnic violence/ cleansing in Kenya; derailment of democracy in Nigeria and violence against Ogoni and other communities; Pakistan (attacks against the Mohajirs and Ahmediyyas and the general violence in the streets of Karachi); South Africa, particularly Natal; Canada has yet to find a just and satisfactory accommodation with their francophonie and the first nations; Australia and New Zealand have to come to terms with real multiculturalism in addition to dealing with just claims of the aboriginal peoples; Uganda's problems in the past have been due to diverse ethnic claims. Across the board there are no adequate policies or instruments to deal with indigenous peoples - whether in Malaysia, India or Bangladesh; the problems of transition to democracy are compounded by ethnic factors (Kenya, Zambia, Pakistan); and ethnic conflict is endemic in the long political stalemate in Cyprus. Even if there is no ethnic violence in a member state, it may be affected by ethnic tensions in neighbouring states (e.g. Tanzania by refugees from Rwanda, Uganda and Burundi; India has refugees from Tibet and Bhutan; Pakistan is affected by conflicts in Afghanistan).

### **Plumbing the depths**

The full horror of intolerance and hatred is not yet understood. Intolerance puts into jeopardy all the values that humankind has cultivated and nourished over centuries. It prevents citizens from living in dignity and peace. It retards the realisation of human rights and the establishment of our common humanity and destiny. It destroys civil society as well as the capacity of governments to govern. Democracy and fair procedures for the representation of people are a first casualty of religious and ethnic intolerance; the voice of those who struggle for sanity and communal peace is effectively silenced. The promotion of ethnic hatred leads to the decay of secular ideas and democracy and ultimately to the loss of legitimacy of state and its institutions. The consequence is the militarisation of societies; the demise of the rule of law; and increasing derogation from human rights and freedoms.

### **The few against the many**

It is our firm belief that the millions desire peace, and it is a few who carry on vendettas against fellow beings and prevent negotiations for peace and settlement of differences. Today, rendering societies ungovernable is relatively easy for those who do not respect the rights and culture of

others, and wish to impose their own orthodoxy on them. This is greatly facilitated by a brisk trade in weapons that is carried on with the connivance of governments and the arms industry. Governments and political parties bear a heavy responsibility for the deterioration of relations between members of different religious and racial groups. The global media, which flashes pictures of massacres around the world in a matter of seconds, gives vastly exaggerated importance to small groups of bandits. If present trends of ethnic intolerance and violence continue, no country or city will be safe from its evil. The culture of intolerance and violence is already pervasive everywhere.

Religious intolerance and ethnic conflict in every sense are a worldwide phenomenon. Every country today is multi-religious and multi-ethnic. The phenomenon known as globalisation has increased contacts among the peoples of the world, but it has also produced xenophobia, particularly in Europe. State boundaries are porous in the face of ethnic disruption and violence; globally, diasporas of every community foment conflict in their host countries. There is a global network of those committed to hatred and violence. The effects of ethnic conflict in one state spill over into its neighbours, in the form of refugees, and sanctuaries for rebels, aggravating the problems of the neighbours.

### **Inadequate responses**

Yet neither the international community generally nor the Commonwealth seems willing or able to take effective action against those who make a creed of religious hatred and violence. **Many states actively promote their activities, with financial, material and moral support.** The terrible ravages in the former Yugoslavia have alerted governments to the need to establish a check on ethnic hatred and some forms of international collaboration have emerged often under the auspices of the United Nations Security Council.

The most dramatic UN action is humanitarian intervention, of a civil and military nature. But these are desperate measures for a desperate situation, normally too late and too little. Ad hoc and unpredictable, they are bedevilled by state politics and the hegemony of a few powers. The international community has done relatively little to develop norms and rules for preventing the emergence of problems that arise from the propagation of religious and racial hatred and discrimination, or for dealing with its consequences like ethnic cleansing.

Some regional associations, particularly the Organisation of European Security and Co-operation (OSCE), have taken some preliminary and tentative steps to establish norms and institutions to fight the spread of religious and racial hatred and to develop rules and procedures for the protection of minorities. Members of other regional organisations have been deterred, by what they perceive to be the sensitivities of the situation, from taking any formal action or even to acknowledge the problem, although in their policies and behaviour, these factors are never far from the surface.

### **Fundamental norms and political values of the Commonwealth: rhetoric and reality**

The Commonwealth as an international organisation has not played a clear or positive role in combatting intolerance.

Yet the Commonwealth is solemnly committed to combat religious and ethnic intolerance. It has established norms which oblige member states to take action to promote tolerance and to take action against those who incite others to religious or racial hatred and who commit aggression against others. Member states are signatories to several international conventions which oblige them to do the same. Yet the reality is that many states, far from combatting intolerance, actually promote it. Politicians are among the most effective mobilisers of ethnic or religious hatred and state security forces are among the most notorious perpetrators of ethnic violence.

## **The Rhetoric**

Commonwealth leaders have declared themselves against religious and ethnic intolerance and have pledged collectively to fight against it. The Declaration of Commonwealth Principles made in Singapore in 1971 says:

***We recognise racial prejudice as a dangerous sickness threatening the healthy development of the human race and racial discrimination as an unmitigated evil of society. Each of us will vigorously combat this evil within our own nation. No country will afford to regimes which practice racial discrimination assistance which in its own judgement directly contributes to the pursuit or consolidation of this evil policy.***

***We oppose all forms of colonial domination and racial oppression and are committed to the principles of human dignity and equality. We will therefore, we all our efforts to foster human equality and dignity everywhere, and to further the principles of self-determination and non-racialism.***

Twenty years on these principles were reiterated in the Harare Declaration (1991), This condemned racial discrimination as “an unmitigated evil”. Once again at Limassol, in 1993, the Heads of Governments renewed their commitment to these principles, and declared their intention to support efforts to protect the human rights and fundamental freedoms of indigenous peoples and to ensure respect for diversity of their cultures and identities. The Heads of Government expressed “serious concern” at the continuing trends of ethnic chauvinism, xenophobia, racism and other related forms of intolerance, particularly in their contemporary manifestations, which posed increasingly grave threats to peace and communal harmony.

Commonwealth states reiterated the importance of the fight against intolerance by subscribing to the Vienna Declaration and Programme of Action adopted 'at the World Conference on Human Rights (1993), paragraph 15 of which reads:

Respect for human rights and for fundamental freedoms without distinction of any kind is a fundamental rule of international human rights law. The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organisations and individuals are urged to intensify their efforts in co-operating and co-ordinating their

activities against these evils.

In Harare the Commonwealth committed itself to a programme of action to implement the Declaration. It stated that to “give weight and effectiveness to our commitments we intend to focus and improve Commonwealth co-operation in these areas” through strengthening the capacity of the Commonwealth to respond to requests from members for assistance in entrenching the practices of democracy, accountable administration and the rule of law. Heads of Government called on all the inter-governmental institutions of the Commonwealth to seize the opportunities presented by these challenges, pledging themselves to “assist them to develop programmes which harness our shared historical, professional, cultural and linguistic heritage”. Heads invited the Commonwealth Parliamentary Association and Commonwealth NGOs “to play their full part in promoting these objectives, in a spirit of cooperation and mutual support”.

In Limassol they “pledged their commitment jointly and severally to combat discrimination in all its forms in their own countries, with emphasis on maintaining the rule of law and other enduring strengths of pluralistic society”. In the Millbrook Commonwealth Action Programme (1995) Heads of Government took a major step towards establishing an “enforcement machinery” to safeguard “Commonwealth fundamental political values” (among which must be included religious and racial amity and equity). The commitment was to a major programme of technical assistance in the democratisation of member countries, and exchange of visits and expertise within the Commonwealth. It agreed on a “good offices” role for the Commonwealth, through the appointment of an envoy or a group of eminent persons.

The Commonwealth also agreed that sanctions may be imposed on a member in violation of the Harare principles, including its exclusion from CHOGM and other ministerial-level meetings and, when necessary, suspension of its membership, suspension from technical assistance programmes, and trade and other sanctions. It established a Commonwealth Ministerial Action Group (CMAG) to deal with serious or persistent violations of the Harare principles, and to recommend measures for collective Commonwealth action.

Moreover, the Commonwealth agreed to use its “global reach and unique experience of consensus building” to assist the wider international community in building bridges across international divides of opinion. By subscribing to various international, regional and national instruments on human rights and the rights of minorities (discussed here later), member states, and indirectly the Commonwealth as an institution, have assumed legally and morally binding obligations to protect minorities, uphold their dignity and culture, promote ethnic and religious tolerance and combat bigotry and incitement to hatred and violence.

## **The reality**

Most Commonwealth governments have signally failed to live up to these obligations. Indeed, in numerous instances leaders of governments and political parties have actively participated in fomenting religious or ethnic hatred and have organised or facilitated violence against members of communities. State complicity in several Commonwealth countries in atrocities against members of ethnic or religious communities, in the form of “ethnic cleansing”, or even of genocide, is a matter of lasting shame for the association.

State agencies promote or exacerbate ethnic tensions and conflicts in numerous ways: by discriminatory policies; by calling in doubt the loyalty of minorities; by unequal and selective

enforcement of the law (in which atrocities committed by members of one community against another are connived at by the state); by official ideologies and propaganda disseminated frequently, with impunity, by state owned media; by the use of agents provocateurs; and by arming vigilantes and “dissidents”, whether in their own or neighbouring countries or by arming states which are known to engage in the violent repression of ethnic groups. In the name of protecting or accommodating one or other community states create resentment among communities by discriminating against their women and in the process prevent them from having equal rights or equal opportunities. By doing so they effectively prevent the efflorescence of a population segment who, playing the part of full citizens, could be a potent force for communal amity.

### **In one or more ways, almost every Commonwealth state is implicated in promoting or facilitating ethnic hatred and oppression**

Still less have they been involved in what ought to be their roles: taking positive steps, nationally and internationally, to improve understanding and tolerance. Some examples of the complicity of Commonwealth states in promoting ethnic hatred and violence are provided here. However, many more states are equally culpable. Examples here merely illustrate a general pattern.<sup>5</sup>

#### **Kenya: ethnic cleansing**

The government of Kenya organised wide-scale violence against members of ethnic groups assumed to be opposed to the regime of President Daniel Arap Moi. The background to this state-sponsored ethnic violence lies in the international pressure which forced the President (who had long resisted demands of local groups) to amend the constitution in late 1991 so as to establish a multi-party system. However, he opposed the amendment, arguing that it would undermine the stability of the state by polarising the country along ethnic lines.

Before and after the amendment, major “ethnic clashes” broke out in areas occupied by the President’s supporters (the Rift Valley, Western and Nyanza Provinces), principally against settlers from the western (Luo and Luhya) and central parts of the country (Kikuyu). Bands of “Kalenjin warriors” (Kalenjin being the President’s ethnic group) attacked farms belonging to Luo, Luhya and Kikuyu with the intention to drive them away from their farms and out of the area. The Kalenjin supported the President while members of the groups attacked by them constituted the main opposition to him. It is estimated that 1,500 persons (including women and children) were killed and 300,000 expelled from their homes. In many cases temporary camps set up to accommodate those expelled were raided by security forces, and attempts to return them to their farms have been frustrated by government action. Civil groups (including churches) which have tried to ameliorate the conditions of these internal refugees, or journalists who have tried to expose the truth, have alike been harassed by the government.

Although these clashes were officially presented as spontaneous tribal clashes, there is ample evidence from official inquiries forced upon the government, investigations by civil society groups, and reports by journalists that the government (and particularly its security forces) instigated the attacks and were deeply implicated in their implementation. Government

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<sup>5</sup> Drawn from a report by the Human Rights Watch, *Playing the “Communal Card”: Communal Violence and Human Rights* (1995)

politicians from the area held public rallies where they incited local residents (the “true” Rift Valley residents) to attack the settlers if they did not voluntarily quit the area, and reclaim the “motherland”. They also spread false rumours of impending attacks by the settlers on the Kalenjin.

A parliamentary select committee reported in September 1992 that the attacks had been orchestrated by Kalenjin and Maasai politicians close to the President, including the then Vice-President. The committee cited evidence that the “Kalenjin warriors” making the attacks had been paid by these officials for each person killed or house burnt down, and that government vehicles had transported the warriors to and from clash areas.

There has been ample corroboration of these accusations. No action has been taken against those involved, although many have been identified.

These acts, in a most cynical and unprincipled exercise of state power, were intended to foment ethnic antagonism in the country, to displace citizens from their lawful homes and to discredit multiparty democracy. They resulted in widespread death and suffering. They aggravated political and ethnic bitterness. They also represented continuities with the past practice (colonial as well as post-colonial) of using state violence for political purposes. To this day extensive state force is used against peaceful demonstrators and to suppress lawful claims. These forms of state violence were in large part responsible for the serious economic and social problems that Kenya faces today.

## **Nigeria: oppression of minorities**

The example illustrates the collusion between a state and a multinational corporation in the exploitation and oppression of an ethnic minority.<sup>6</sup>

Dominated by three or four ethnic groups, Nigeria’s minorities have considered themselves victims of official discrimination. One of the more vocal has been the Ogoni, living in the Niger Delta, which is rich in oil deposits. Their lands have been taken from them without adequate compensation for the exploration and production of oil, undertaken by Royal /Dutch Shell. Their environment has been degraded by oil production. The waters around them are poisoned and they suffer from acid rain. It has become increasingly hard to eke out a living in these conditions. Nor, do they feel that they get a fair share of the oil revenues. Little revenue has been used to improve facilities for their existence.

**The Ogoni and other groups in the Niger Delta organized protests against these harsh conditions. Their protest against Shell were regularly suppressed by the police and other security forces, at Shell’s request.**

The Ogoni and other groups in the Niger Delta organised protests against these harsh conditions. Their protests against Shell were regularly suppressed by the police and other security forces, at Shell’s request. Several deaths resulted. In 1990 the Movement for the Survival of the Ogoni

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<sup>6</sup> The following account is based substantially on two reports of Human Rights/Africa. Nigeria, The Ogoni Crisis: *A Case Study of Military Repression in South-eastern Nigeria* (Washington: July 1995) and *Nigeria, “Permanent Transitions”: Current Violations of Human Rights in Nigeria* (Washington: September 1996).



People (MOSOP) was established. It sought to negotiate with the government and oil companies for the rights of the Ogoni people. Instead, the leaders of MOSOP, including Ken Saro-Wiwa, were repeatedly arrested and detained. Ogoni protests continued, as did the reprisals.

There were also fights among the Ogoni themselves and allegedly with other groups. The government claimed that the outbreaks of violence were the result of ethnic clashes between the Ogoni and neighbouring ethnic groups. However, as Human Rights Watch reports,

***“evidence now available shows that the government played an active role in fomenting such ethnic antagonism, and indeed that some attacks attributed to rural minority communities were in fact carried out by army troops in plainclothes.” (p. 11)***

The troubles in Ogoniland escalated with the murder of four leaders of a breakaway group from MOSOP in May 1994. Although there was little evidence for it, two leaders of MOSOP, including Ken Saro-Wiwa, were arrested and eventually charged with the murders. Meanwhile, security forces embarked on a series of raids on Ogoni villages, punishing whole communities collectively for allegedly supporting MOSOP. More shockingly, at least 50 Ogoni were reportedly executed extra judicially by the security forces. Hundreds of young Ogoni were detained, beaten and tortured. Wide-scale rape of Ogoni women and girls was also reported. Security forces committed massive looting and extortion.

The trial of Saro-Wiwa and his co-accused was a travesty of justice. The military government appointed a special three-person tribunal, one member being a senior military official. The tribunal's judgment was not subject to an appeal to a higher court but only to confirmation by the Provisional Ruling Council, chaired by the Head of the federal government. This hardly independent or competent tribunal had the power to sentence to death (contrary to Article 6 of the International Covenant on Civil and Political Rights).<sup>7</sup> Challenges by the defence to the composition of the tribunal and the lack of an appeal, which are contrary to international norms of fair trials (and acknowledged as such by the prosecution), were rejected by the High Court. These irregularities were compounded by the failure to provide the accused free and sufficient access to their counsel. They were ill-treated in detention.

During the trial, there was considerable evidence of bias on the part of the tribunal, in particular in the way it admitted evidence for the prosecution and rejected that of the defence. The defence repeatedly objected to these and other alleged deviations from normal court rules, without avail. Predictably the accused were found guilty and sentenced to death. Although President Sani Abacha gave assurances that they would not be executed, they were executed on 10 November 1995, during the CHOGM meeting in New Zealand. The executions traumatised the Ogoni and strengthened their resolve to carry on the struggle of those who were executed. The government has continuously prevented foreign delegations, NGOs and journalists from meeting with human rights and minority rights activists in the region. The situation continues to be tense, with several hundred Ogoni fleeing abroad to escape persecution.

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<sup>7</sup> In countries which have not abolished the death penalty. . . this penalty can only be carried out pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

## **India: State Complicity in Ethnic Massacres**

In recent years a serious resurgence of ethnic or communal violence in India has caused many deaths, displacement of people and destruction of property. There is considerable evidence that much of this carnage has been sponsored by official bodies or political parties. These developments arise from, and in turn feed, the emergence of religious fundamentalism and intolerance. Nothing poses a more serious challenge to the unity of India or the security of its people than this fundamentalism, which is promoted by politicians.

**Those commonly known to have engineered  
the killings remain at large to stalk communities  
already victimised by having seen their  
kin killed before their eyes**

The massacre of Sikhs in Delhi following the murder of Mrs. Indira Gandhi, the then Prime Minister in October-November 1984, was largely orchestrated by leading politicians in her Congress Party. The report of a judicial inquiry into the killings was not published for a long time. Little action has been taken even 10 years after the killings of a large number of people. These killings have greatly complicated the task of bringing to an end the communal violence in the Punjab, the reconciliation of different communities there, and of ending the sense of alienation of Sikhs from the Indian states.<sup>8</sup>

State-sponsored ethnic violence has similarly complicated the relationship between Hindus and Muslims, and put Muslims in great jeopardy. The present wave of violence against Muslims can be traced to the incitement by a leading political party, the Bharatiya Janata Party (BJP), "along with various reactionary Hindu organisations, Rashtriya Swayamsevak Sangh (RSS): Vishwa Hindu Parishad (VHP) and Shiv Sena, for the destruction of the Babri mosque in Ayodhya, allegedly built on the site of a temple commemorating the Hindu deity, Rama. The destruction has been justified as essential for the establishment of Hindutva or Hindu rule<sup>9</sup>. After some unsuccessful attempts to occupy the mosque, it was destroyed on 6 December 1992 when 150,000 supporters of the BJP converged on Ayodhya, reducing the mosque to rubble with pickaxes and hammers. After the destruction, the hooligans rampaged through Ayodhya's

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<sup>8</sup> The engineered holocaust needed at least a day to get organised. And there is enough evidence available to indicate complicity in the overall plot of the Congress-I, complicity of the police and complicity of local administration- Rahul Kuldip Bedi, Politics of a Program, in Shourie et al, The Assassination and After (New Delhi: Roli Books, 1985).

<sup>9</sup> Neeladri, Bhattacharya sums up the objectives of BJP's Hindutva thus: "The new face of Hindu communalism is characterised by its violent opposition to secularists - to all those who are opposed to the politics of religious intolerance. Such an opposition has always been a part of communal politics, but now it is one of its defining characteristics. The communal argument is simple: experiments in modernity have failed; rationalism and secularism has led to a civilisational crisis in India; assertive Hindutva alone can provide the possibility of the nation's survival. Secularism, we are told, "is draining away the nation's 'elan vital' of Hindu spirit'. Secularists are identified as "Hindu baiters", traitors, Muslim communalists. They are the "Trojan horses" who "weaken Hindu strength from within". These "traitors" have to be attacked to defend the Hindu nation. "The politics of Ramjanrnabhumi is thus part of a wider communal politics which seeks to forge a combative unity among Hindus. It seeks to reconstitute Hindu identity as an aggressive, masculine identity. It speaks the language of vengeance and retributive justice." (at p.131: Myth, History and Politics of Ramjanrnabhumi' in Sarvepalli Gopal (ed.) Anatomy of a Confrontation: the Babri Masjid-Ramjanrnabhumi (New Delhi: Penguin Books 1990)

Muslim neighbourhoods, attacking and killing Muslims and looting and burning their property.

At the time the BJP was the ruling regime in Uttar Pradesh, where the temple was located and one of the most populous provinces in India. **It was well known to the Central government in Delhi that under its auspices there would be an attack on the mosque**. However, the national government did little to prevent the attack, although BJP supporters had begun to gather in Ayodhya several weeks before the destruction with that express intention. No protection was offered to the Muslim community from attacks on their person and property. Instead the provincial security forces were directly involved in the attacks.

No attempt was made to arrest any of those who had desecrated the mosque or killed Muslims or destroyed their properties; instead their departure from the town was facilitated by the provincial authorities. The Ayodhya incident was followed by widespread communal clashes in different parts of India, in which for the most part the victims were Muslims. The worst clashes took place in Bombay where more than 1000 Muslims and a number of Hindus were killed. Muslim property was massively looted. Tens of thousands had to flee their homes and take shelter in refugee camps. Here again the police offered Muslims little protection.

In the face of the authorities' failure to take any action to punish the perpetrators of these atrocities, the (unofficial) Indian People's Human Rights Commission established the Indian People's Human Rights Tribunal, chaired by two retired Bombay High Court judges, to inquire into the Bombay riots. The report is detailed, impartial and harrowing in its description of the horrors. The Tribunal blamed the provincial and national governments for -lack of any effective measures to prevent the riots or to offer protection, especially to the Muslims, and demonstrated the complicity of leading politicians in the riots.<sup>10</sup>

No steps were taken to bring the perpetrators to trial, despite numerous complaints to the police. The Human Rights Watch report concludes:

"The impunity enjoyed by those explicitly involved in acts of communal violence was illustrated by the failure of the state to charge Bal Thackeray, the leader of the Shiv Sena, despite the considerable body of evidence available to establish a case against him. The state's failure to hold individual Shiv Sainiks accountable for their actions follows a consistent, pattern of state failure to hold the Shiv Sena more generally accountable for its role in communal violence' (p. 27).<sup>11</sup>

## **Sri Lanka: State Propagation of Ethnic Nationalism**

The state has promoted ethnic violence in the protracted civil conflict in Sri Lanka also.<sup>12</sup> The

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<sup>10</sup> The People's Verdict: An inquiry into the Dec '92 and Jan '93 riots in Bombay by The Indian People's Human Rights Tribunal Conducted by Justice S.M. Daud and Justice H. Suresh (Bombay: Indian People's Human Rights Commission, 1993)

<sup>11</sup> Time magazine of 25.1.1993, writing that Shiv Sena admitted that they were involved in the riots, quoted Bal Thackeray as saying, "I want to teach Muslims a lesson".

<sup>12</sup> The following account is based on Patricia Hyndman, Sri Lanka: Serendipity Under Siege (Nottingham: Spokesman, 1988); Virginia Leary, Ethnic Conflict and Violence in Sri Lanka: Report of a Mission to Sri Lanka in July-August 1981 on behalf of the International Commission of Jurists, with a supplement by the ICJ staff for

conflict itself resulted from official policies of the first Bandaranaike government to privilege the language of one ethnic group over those of others and confer other advantages on the same group. When the minority Tamil community resisted these policies the state organised violence against its members. The government provided no protection to Tamils attacked by the hooligans. There is evidence that the government instead armed the hooligans. Ethnic violence escalated in the 1980s, reinforced by the burning of the Jaffna library, one of Tamil Sri Lanka's most important cultural institutions, by the police. The worst ethnic riots occurred in mid-1983, leading to full scale civil war.

The following account of these events is provided by Human Rights Watch:

*On July 23 1983 Tamil militants ambushed a patrol of soldiers near Jaffna, killing 13. The next day soldiers went on a rampage in Jaffna, killing 41 people. Violence in Colombo broke out early in the morning of July 25. Rioting by organised gangs of Sinhalese paralysed Colombo and quickly spread to other areas, claiming hundreds of lives, mostly Tamil, and destroying Tamil neighbourhoods and businesses. In Central Sri Lanka, nearly all Tamil-owned shops in the town of Nuwara Eliya were burnt, many with army-supplied gasoline, some by army personnel Matale was devastated and a large portion of Badulla was destroyed.*

*In Colombo, police and soldiers stood by and watched as Tamils were attacked. In some cases they perpetrated the attacks themselves. The violence was well organised and politically supported. High-ranking officials, including government ministers, were accused of orchestrating the violence.*

Eye-witnesses identified government ministers and officials of the ruling party (United National Party) leading the murderous gangs. The Watch report says: "Thugs who worked regularly for the leaders of the UNP, the Ministers of State and Party Headquarters, and in some cases uniformed military personnel and police, were seen leading the attack".

### **A fourteen year old civil war sparked by discriminatory official policies and fuelled by state organised violence resists solution today**

The consequences were extremely serious in the suffering caused to Tamils: hundreds of deaths, maiming, destruction of homes and other property, and displacement. Statements by officials included no acknowledgement, much less condemnation, of the oppression of Tamils. Instead President Jayawardene introduced constitutional amendments effectively barring Tamil parliamentarians from further representation of their constituencies, and referred to anti-Tamil rioting as a "mass movement by the generality of the Sinhalese people," adding: "The time has come to accede to the clamour and the national respect of the Sinhalese people"(Watch report pp.

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the period 1981-1983 (Geneva: August 1983); and Human Rights Watch, Playing the "Communal Card" (op cit)

89-90).

Without doubt these acts of the government and security forces were the cause of the militancy and success of the Tamil Tigers and the civil war, which 14 years later still ravages Sri Lanka.

## **A Common Phenomenon**

It is hard to exaggerate the culpability of politicians and governments in the promotion of ethnic violence for narrow political gains. Cases of state-sponsored ethnic violence in India, Kenya, Nigeria and Sri Lanka illustrate a phenomenon that characterises an overwhelming majority of Commonwealth countries. Equally harrowing examples can easily be provided of the policies or activities of past or present governments in South Africa, Zimbabwe, Pakistan, Uganda, Papua New Guinea, Bangladesh, and so on. The pattern is the same. It is in the narrow political interest of a government or party to mobilise support along ethnic lines. This is most easily done by attacks on a vulnerable minority community. First gains in intimidating a segment of the population leads the government or the party sponsoring or supporting ethnic violence to repeat and extend these activities of using hired and organised thugs for the purpose of attacks on other opposition groups or dissenters to themselves.

More frequent is the use of security forces to kill, maim or kidnap members of ethnic minorities. This leads to the massive politicisation of the police and the military and the undermining of their primary obligations to maintain law and order and protect the public interest. The government fails to provide protection against violence or other infringements of attacks against them. At the same time those who perpetrate these atrocities are safe from arrests or prosecution. There is a sharp escalation of tensions and violence. Politicians and their parties in many parts of the Commonwealth have profoundly and shamefully failed the people and have brought “democracy” into disrepute.

A final case-study shows that violence in the sense of deliberate killing is not the only form of ethnic/religious destruction.

## **Indigenous Peoples of Malaysia**

It is not the sword alone which threatens the existence, or the defining culture of peoples. The experience of the indigenous peoples of Malaysia, both on the peninsula and the island of Borneo, shows that concepts of “development” coupled at best with insensitivity, and at worst as the racism, may lead to the destruction of ways of life.

The Orang Asli are the original inhabitants of the Malaysian peninsula. Their traditional homelands are the rain forests, where they were hunters and gatherers. The Malays, who came to the area about 2,000 years ago, pushed the Orang Asli into the interior. They thought of the latter as barely human, worthy of being hunted and enslaved. The colonial government tried to resettle the Orang Asli - a policy literally fatal to several thousands of them.

The independent government set up a department of Aboriginal Affairs, which had a strongly paternalistic, in egalitarian and non-participatory style of administration, and did little for its “client” population. Teachers provided by the Department were Malays who thought of their charges as primitive and childlike, and there was an element of religious chauvinism. Officers of the Department destroyed churches and pressed conversion to Islam. The health of the

community is worse than that of the Malays, and they also have no recognition in the Constitution and no protected land rights.<sup>13</sup>

The indigenous peoples of Borneo, on the other hand, the Dayak (a broad term including a number of communities such as the Iban and the Penan), have in theory the same constitutional rights as the Malays. But they, too, find their ways of life threatened, especially from the rapacious logging of the forests which have been their home. The Penan are nomads and the Iban traditionally subsistence farmers.

The individual rule of the Brooke family, and then the colonial government took control of land away from the native peoples. The process has hit the nomad Penan particularly hard. The main beneficiaries of policies of the Malaysian government have been Malays, and a few wealthy Sarawak people. Logging is widely considered to be unsustainable as carried out in Sarawak. As the native people began to appreciate the destruction of their communities which this was bringing about, they organised protests and blockades of logging. The government arrested and charged many, and amended the law to introduce new offences of obstructing logging.

The government has shown little sympathy with or understanding for local ways of life and concerns. Schooling has served no purpose other than to persuade pupils that their traditional way of life is to be despised, and has persuaded them to move to towns where they are likely to be unemployed, having inadequate skills for town life. The- government has blamed traditional farming practices, unjustifiably, research suggests, by and large for deforestation, and has pushed people to move to plantations.

Again, there has been pressure to accept Islam, though the communities are mostly animist or Christian. Dam projects have also resulted in resettlement, which have destroyed traditional farming methods without replacing them with a workable alternative. The displaced communities have not received adequate compensation, and the land provided on resettlement has gone exclusively to men, destroying women's traditional rights, and the status in society which they used to have.<sup>14</sup>

## **Australia lags behind on land rights**

Within the Commonwealth, Australia shares much of the colonial experience of Canada and New Zealand in adjusting to indigenous campaigns for self-determination, Yet both these countries have adopted reforms which have far outstripped Australia in facing the reality of indigenous native title rights.

Belatedly, Australian land law has been challenged to accommodate the co-existence of aborigines' traditional land rights with those of pastoralists who have long assumed they had virtually sole access rights to large tracts of grazing land.

Aboriginal native title over the vast Australian range lands was originally recognised by the

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<sup>13</sup> Signe Howell, "The Indigenous People of Peninsular Malaysia: It's Now or Too Late" in Barnes et al., eds., *Indigenous Peoples of Asia* (Ann Arbor: Association for Asian Studies, 1995)

<sup>14</sup> Marcus Colchester, *Pirates, Squatters and Poachers: The Political economy of Dispossession of the Native Peoples of Sarawak* (London: Survival International, with INSAN, 1989) and *The Battle for Sarawak's Forests* (Penang; World Rainforest Movement and Sahabat Alam Malaysia, 1990) India: *State Complicity in Ethnic Massacres*

British Colonial Office in the middle of last century, It was given the additional backing of Imperial law and had the strength of both customary and statutory law. At the same time it was recognised that native title could co-exist with a different bundle of rights granted to graziers holding pastoral leases.

These leases were a new form of land tenure created to suit Australian conditions. They provided for the joint use of land by incoming pastoralists and resident aborigines. The parties were to have mutual rights. Pastoralists were able to run sheep and cattle; the aborigines were permitted to pursue their traditional lifestyle. The graziers' rights were new. Those of the aborigines were old but to be preserved in the new era.

The means devised to protect aboriginal rights was the insertion of special clauses- or reservations -in all pastoral leases issued in Australia after 1851. These reservations still exist in pastoral leases in Western Australia, South Australia and the Northern Territory. They were removed from leases in Queensland sometime early in the 20th century. Hence the Wik people in western Cape York Peninsula, North Queensland, have now sought clarification by the High court of their native title rights.

The High Court recognised the intention of the British Colonial Office to preserve and protect Aboriginal rights of access to their traditional lands. But the pastoralists had often ignored indigenous rights by locking gates and conveniently forgetting the lease conditions. Governments, too, had failed to maintain the original intent of the pastoral leases, so in the Wik case the High Court merely restated the fundamental conditions of pastoral leases set in the middle of the 19th Century.

A recent court ruling recognising the co-existence of native title and pastoralists' rights has been welcomed by many indigenous leaders and non-indigenous Australians committed to land rights, justice and reconciliation.

But state governments and farmers' organisations have combined with the new conservative national government to restrict any indigenous advantage gained from the court decision and upgrade and further entrench pastoralists' privilege to negotiate nominal rentals of crown land.

The legislative response to protect pastoralists but marginalise aborigines' property rights is now to be considered by the Australian Parliament. There is considerable doubt that the Senate will agree to discriminatory law which undermines the Racial Discrimination Act, allows for state governments to extinguish native title and restricts aboriginal right to negotiate.

The National Indigenous Working Group on Native Title has produced a position paper, Co-existence-negotiation and Certainty, outlining its fundamental commitments to a just outcome:

***The position recognises the legitimate rights of all parties and confirms the rights of pastoralists and native land holders. Co-existence issues can be best resolved by negotiated agreements.***

Yet the Federal Government legislation actually broadens permitted land uses on pastoral leases under a definition of primary production which will effectively upgrade leases, while blocking and extinguishing native title.

In adopting such a regressive approach to indigenous land rights, Australia risks its reputation in the international community where memories of the White Australian policy and historic persecution of Aborigines linger.

As host of the next Olympic Games, Australia faces international criticism if it is seen to have failed to overcome the paternalism of the past.

As a Commonwealth nation, Australia has an obligation to meet its human rights commitments by protecting with equal vigour the property rights of both aborigines and pastoralists.

## **Signs of hope**

However, it must be acknowledged that in recent years, as the enormous human and economic costs of persistent ethnic conflicts have become obvious, governments have sought solutions through negotiations and constitutional settlements. The most heartening development for the Commonwealth (and the world) has been the peaceful solution of the extremely bitter, difficult and complicated racial situation in South Africa, aggravated by years of apartheid. The most positive aspect of the solution is that it is based on fundamental principles of human rights, democracy and social justice.

Australia and New Zealand have made considerable progress in redressing past injustices to their indigenous peoples and establishing a basis of national reconciliation (although the record of the present Australian government is a matter of continuing concern). Canada has been engaged in intense discussions, among numerous relevant groups, to find an accommodation of the claims of the francophones, the first nations, women and more recent immigrants.

Under its present government, Sri Lanka has made major attempts to end ethnic conflict, opened a dialogue with the Tamil Tigers and other groups, welcomed external mediation, and prepared new constitutional proposals for devolution and language policies.

In actions reflecting an attitudinal change India has taken the initiative to defuse the long running conflict in Kashmir. It has recently held elections there, welcomed external monitoring, and opened up a dialogue with Pakistan which has the potential to ease some ethnic problems at home. In addition to already existing Commissions that look at the rights of disadvantaged castes and tribes and minorities it has also set up national high-powered commissions on human rights, and the rights, of women which are slowly finding replication in the states of that vast country.

In Britain, the government has taken an important initiative in conjunction with the Irish government to end the religious and social conflicts in Northern Ireland. The return to democracy in a number of states in recent years, including Bangladesh, Uganda and Malawi has provided a more congenial framework for the resolution of ethnic differences.

Particularly gratifying has been the resolution of serious ethnic differences in Fiji, where the overthrow of the constitution by an ethnically-based military in a repudiation of multi-racialism in 1987 led to its departure from the Commonwealth. In July 1997 the Parliament of Fiji adopted unanimously a new constitution to come into force in 1998 that provides for a multi-party government in which the participation of the leaders of all ethnic groups is expected. It also provides for a strong protection of human rights and the accountability of the government.



## **Commonwealth intervention**

The record of the Commonwealth in dealing with gross violations of the rights of minorities in a member state is uneven. Paradoxically, it has eschewed the politics of religion or ethnicity precisely because they are so central to several of its member states as well as to bilateral or multilateral relations among its member states. However, it took a strong stand on racism in Rhodesia, Namibia and South Africa (and in its refusal to readmit Fiji to its membership because of the religious and political discrimination against Indo-Fijians).

Where the Commonwealth has acted collectively it was able to bring considerable pressure to bear on efforts to end racism. It can take much credit for the establishment of democratic, non-racial and pluralistic regimes in these countries. Its initiatives and their success were perhaps owed to the colonial nature of these racist regimes. It attempted to mediate in the Bougainville crisis, which stems in part from ethnic differences in Papua New Guinea and organised a Commonwealth presence to oversee the cessation of hostilities.

A number of Commonwealth states have benefited from the assistance of the Secretariat or individual members. The constitutional settlement in Fiji was facilitated by assistance given to the government and the constitutional review commission by several Commonwealth states. In mid-1997 the New Zealand government took an important initiative in promoting a dialogue among the different groups in Bougainville (an action contrasting sharply with the earlier attempt by the Papua New Guinea government to use foreign mercenaries to quell the protest movement in Bougainville).

On the other hand, in general the Commonwealth has not played or sought to play a role in numerous other incidents of racial or religious oppression in member states (and has seldom even condemned the most oppressive of policies, such as the expulsion of Ugandans of Indian origin, or ethnic cleansing in some other member states). Outside the colonial context, the Commonwealth has not been a forum for discussion of, or action on, minority issues. Consequently no clear practicable Commonwealth policies on the treatment of religious or ethnic groups or minorities is discernible.

## **The Role of NGOs in the Commonwealth**

Due to the failure of governments to stop incitement to racial or religious hatred and to protect vulnerable ethnic groups, a number of NGOs have tried to take responsibility to do so. Some typical roles performed by NGOs include: promoting tolerance; enhancing knowledge and understanding of different religions and culture; fighting incitement to religious or ethnic hatred; safeguarding human rights, particularly those of vulnerable groups; providing shelter and relief to the victims of ethnic violence and helping in their physical and psychological rehabilitation; investigating crimes against ethnic groups; monitoring the performance by officials and security forces of their functions; and promoting reconciliation among warring groups. These groups also help to emphasise that the responsibility for peace and toleration belongs also to the people and gives them a sense of their own power.

The role of the NGOs in South Africa in fighting apartheid and promoting peace and justice is well known. A number of key NGOs promoted interethnic dialogue which led eventually to the constitutional settlement dismantling apartheid. Indeed, a particular source of the strength of South African society (which has facilitated the democratic transition to nonracial form of

government) is the NGO community which is committed to standards of human rights, recognises cultural diversity of its people, and seeks to build a nation from this diversity. The informal policing of and conciliation services by community organisations reduced the excesses of racial and ethnic violence in the pre- as well as post-apartheid period.

Similarly, NGOs in India have promoted several levels of dialogue between policy makers, intellectuals, community leaders, and collaborated with Pakistani counterparts to organise exchange visits between a large cross section of ordinary people interested in peace. NGOs have investigated causes of ethnic riots, held public hearings to identify perpetrators of ethnic violence, facilitated the empowerment of women, and brought attention to patterns of violation of minority rights and the rights of traditionally disadvantaged castes and tribes by public and security officials.

NGOs in Sri Lanka have carried out important relief work and women's groups have sought to organise to draw attention to the futility of the violence. Religious groups in Fiji have co-operated in fighting religious bigotry that was one reason for the 1987 coup. A citizens' forum facilitated constitutional reform and is now engaged in promoting inter-ethnic harmony. NGOs played a crucial role providing shelter and relief during "ethnic cleansing" in Kenya. These examples can be multiplied many times over.

## **The Challenge for the Commonwealth**

### **Paradox and Threat**

Ethnicity defines the paradox of the Commonwealth. The association catches public imagination because of its multi-ethnic character. The Commonwealth is a fine example of co-operation between people of diverse races, religions and cultures. Many who work for Commonwealth causes in different capacities and institutions are driven by this image of multi-ethnic co-operation and harmony. Yet the states of the Commonwealth are sites of some of the most acute ethnic and religious conflicts.

The Commonwealth appears able to overcome some acute ethnic problems across states, but are unable to solve similar problems in individual states. The Commonwealth emerged as an association not only of states but of diverse ethnic, religious, cultural communities, yet the roots of many religious and ethnic conflicts lie in the formation and dissolution of the British Empire as well as post-colonial political settlements.

The Commonwealth as an association will pay a heavy price for indifference to ethnic and religious intolerance. Its unity is under threat from the persistence of religious or ethnic animosities, which create tensions between member states (e.g. India and Pakistan over Kashmir and Hindu / Muslim relations generally; India and Sri Lanka over the Tamil separatists; and Papua New Guinea and Solomon Islands over Bougainville).

### **Commonwealth values**

Ethnic conflict threatens the major goals and objectives of the Commonwealth: democracy, the optimal realisation of rights, elimination of poverty, economic development and social justice. In recent decades the Commonwealth has given priority to economic and social development to

satisfy the basic needs and aspirations of the vast majority of the peoples of the world (as manifested in both the Singapore and Harare Declarations). The Commonwealth recognises that “only sound and sustainable development” can offer the prospect of escape from crushing poverty; in the face of ethnic violence these goals become impossible to achieve. Commonwealth values are totally antithetical to the factors that give rise to ethnic conflict and the way they are often dealt with: intolerance, discrimination, ethnic hegemony, denial of rights and violence.

Most Commonwealth countries are now multi-religious and multi-ethnic themselves. With each state becoming a microcosm of Commonwealth, ethnic intolerance has become a common concern. As a multi-racial and multi-cultural organisation, the Commonwealth has undoubtedly the capacity to help in the fight against ethnic bigotry.

The Commonwealth is uniquely placed to provide world leadership in developing norms, institutions and procedures to promote religious and ethnic tolerance, and measures to combat intolerance (as the Heads of its Governments have frequently recognised). The Singapore Principles recognised the ability of the Commonwealth as a multi-national association encompassing peoples of different races, languages and religions (with a variety of cultures, traditions, and institutions) to expand human understanding and understanding among nations, assist in the elimination of discrimination based on differences of race, colour or creed, maintain and strengthen personal liberty, contribute to the enrichment of life for all, and provide a powerful influence for peace among nations.

The Commonwealth also has the responsibility to ensure that relations between its member states are not marred by religious or ethnic intolerance.

It must, as well, actively facilitate attempts to eliminate or reduce religious or ethnic discord and conflict in member states. One compelling reason for the Commonwealth to have a policy is that it can make a difference. There is no inevitability about ethnic conflict or its persistence. Preventive as well as remedial measures, towards which a Commonwealth should be directed, are possible.

The Commonwealth can turn to advantage its experience, institutions, common traditions to solve ethnic problems among its member states. There is a rich variety in the constitutional experiences of member states on ethnic accommodation, in areas as diverse as electoral systems, regional autonomy, regime of personal laws, justice to indigenous peoples, and minority or language commissions.

Member states with successful experiences could provide assistance to other member states which are grappling with problems of ethnic peace (as South Africa is starting to do). It should also be possible to draw on traditions of community dispute resolution in the form of mediation or conciliation which were a feature of the ways of life in, for example, the Pacific Islands (the “Pacific Way”) and Africa.

**“The Commonwealth as an association of hugely diverse states and people joined together by a common set of values must lead in devising effective interventions and initiatives that ensure religious and ethnic tolerance”**

A specific role for the Commonwealth is suggested by the fact that religious and ethnic problems in many member states have a Commonwealth dimension and require the assistance or co-operation of other member states or the Secretariat to solve them satisfactorily. Examples of the Commonwealth dimension are the phenomenon of the so-called “kin state”, where a minority may have historical or cultural links with a neighbouring state or the existence of diasporas of one Commonwealth country in other Commonwealth states.

The Commonwealth is also well placed to play a positive role because it has elaborated fundamental political values, procedures and institutions, developing machinery to strengthen them, and for dealing with serious violations of rights, which would be strengthened by extending them to deal with religious and ethnic intolerance. Additionally, it has a relatively successful history of mediation and conciliation in member states (as, for example, in the former Rhodesia, South Africa, Papua New Guinea and Mozambique).

Many problems of religious and ethnic persecution arise from internal (and sometimes external) conflicts that could be solved by such mediation. The Commonwealth can also capitalise on its rather low-key style. Commonwealth initiatives have tended to be undertaken without the fanfare associated with United Nations interventions. This is something attributable to a number of factors, including tradition, and to the fact that Commonwealth initiatives are not, these days at least, perceived in reality as those of one dominant state, in the way that UN actions tend to be viewed as those of the US.

## **IV A Policy for Religion and Ethnicity in a Multiracial World**

### **Problems of formulation**

It is extraordinarily difficult to formulate appropriate public policies for multi-religious and multi-ethnic societies. Some of the most pressing problems and issues of our time, such as human rights, self-determination, nationalism and nation building, identity, international security and cooperation are connected with religion and ethnicity. Human rights, self-determination and nationalism both sustain and are threatened by the resurgence of religious and ethnic consciousness.

Knowledge of the causes of resurgence of chauvinism and fundamentalism is fragmentary; scholarly research in this area has for long been neglected (and is today dominated by western perspectives which are not sensitive enough to the dynamics of many Third World countries). For long we have been imprisoned in our paradigms of the nation state. It is now necessary to come to terms with a more fluid situation: the new politics of identity which fragments society, or at least presents fresh and specific claims for recognition; globalisation which pulls the world closer together, mixes cultures, and establishes new frameworks for dealing with old problems in which the capacity of the state to make and implement policy has diminished; and new technologies which increase communication as well as the capacity to create disorder and destruction.

We suggest that it is possible to design a policy on the basis of three considerations: an understanding of the phenomenon of the rise of ethnic consciousness; lessons from experiences of ethnic conflicts and their resolution; and international norms on the rights of religious and ethnic minorities.

## **Forms of fundamentalism**

In a literal sense fundamentalism need not be divisive or destructive. A search for fundamental virtues is desirable, but the word has become associated with a sort of assertiveness and exclusivity which has little to do with genuine root values. Fundamentalism takes many forms and is directed at many targets. It may be directed against members of other groups or the “revisionist” within its own group.

Its aim may be to seek to return to some pristine form of faith, but more often it has a clear political agenda as it seeks to shape other people to its version of the truth. Sometimes it is promoted by the state, in the name of a religion, language, or culture and designed to privilege a particular community or group (or in the pursuit of cultural homogenisation). There are several examples of this in the Commonwealth.

Such coloration of the state represents a major shift from the values and institutions espoused by many Commonwealth countries at the time of independence - those of secularism, equality of citizenship, with constitutionalism and the rule of law as dominant ideologies. Sometimes fundamentalism is supported by private groups, either with the connivance of state authorities or in opposition to them. Whether state or privately promoted, such efforts are often linked to external factors, sometimes to internationalise the situation (mostly in the latter case) or to seek legitimacy from foreign, like-minded states (in the former).

If promoted by the state, it provokes a reaction from those groups which are excluded from opportunity or suffer discrimination. If promoted by private groups, it results in violent suppression by the state. In either case it creates ethnic or religious antagonisms, destabilises the political system, produces a culture of violence and almost inevitably disadvantages and subordinates women.

## **Varieties of explanations**

Scholars are divided as to whether differences underlying antagonisms are primordial or constructed. Are they what people are born with, or are they manipulated? Those who explain conflict by reference to primordialism argue that human groups are characterised by certain features, such as language, religion, or race, with which they are endowed by the accident of birth or history, and which constitute the primary form of identity and loyalty. The second school believes that fundamentalism is promoted by political entrepreneurs, who have a stake in mobilising these narrow identities, and that the easiest way to mobilise is by creating anxiety among their followers, promoting a sense of grievance, and blaming other communities for their disadvantaged position. The truth lies in both positions. Primary characteristics of language or religion are important defining characteristics and culture is concerned largely with preserving our differences from others. But these are not necessarily negative preoccupations. Over long periods of history communities with distinct religious or cultural traditions have been able to maintain friendly or even cordial relations with their neighbouring communities, as indeed in most Commonwealth countries.

However such differences lend themselves to political manipulation. Most- modern ethnic or religious conflicts can be traced to colonial policies of divide and rule, and in more recent times to the activities of a few intellectuals or politicians (for whom the rewards of access to political

or state power are high). Often there is not even a deeply felt antagonism through which to mobilise ethnic conflict. Outwardly the support of a community for such causes does not represent a genuine emotional commitment but is purchased through intimidation or violence. Nonetheless, once a cycle of suspicion, or even more of violence, has been set in motion, it will be far harder to put out the fire than it was to ignite it.

Attempts to manipulate identity are likely to be successful only in special circumstances: where a community has genuine reasons to fear the unjust policies or activities of other communities, or their economic or social position is clearly inferior to those of others with little prospect of amelioration. The process of globalisation has also created a new set of conditions for the successful manipulation of identity by disempowering many communities and exposing their economic vulnerability.

Not all assertions of identity are to be condemned; one particular difficulty in formulating policies is that assertions of religious or ethnic claims and identities are not always negative. The condemnation of ethnic claims can just be a way to harass minorities, while assertions of the claims can be a device to secure more justice and equity. Secondly, just concession to these claims may help to allay fears of minorities and to give them a sense of security and belonging. Thirdly, religious and ethnic affiliations may be very important to the psychic and moral well-being of individuals and communities -which it would be wrong to deny them. Thus a balance has to be struck between ethnic/religious affiliations and national loyalties and values, between the nourishing of differences and the prevention of their destructive potential. A fundamental challenge of our times is the re-conceptualisation of the state, and of state and nation-building. There will be no stability or justice unless we find a way to accommodate a diversity of cultures, religions and languages within and across states, in our present multi-cultural and globalising world, with multiple identities of individuals and groups. Rigid and narrow views of nation-building have been responsible for many conflicts that we see today.

## **Conflicts of values**

Sometimes the difficulty in agreeing on a policy arises from disagreement on values. Tensions often arise between those who espouse individual's claims and preferences and those who support the recognition of religious and ethnic communities. For example, the acceptance of group rights, which can help in resolving some claims, is problematic from the point of individual rights. In several Commonwealth countries problems have arisen in an acute form. The position that women occupy under group (customary) law is subordinate to those of men; they suffer great violence and many discriminations, disabilities, whether in relation to the care and custody of children, marriage laws, division of labour, entitlement to property, or inheritance (as in India, South Africa, Canada and many other states which recognise personal or customary laws).

So an insistence on group rights may seem to be essential for the survival of cultures and sense of identity, and this may be at the price of injustice to sub-sectors of the community. Difficulties can also arise in relations between members and non-members of groups which are given special recognition (as in Quebec). Some may not want peace! Even when a clear and effective policy can be discerned, its implementation may be frustrated by a small dissident armed group intent on preventing or upsetting a settlement of differences. A prime illustration is the persistent opposition to or frustration of a settlement in Sri Lanka by the Tamil Tigers. Armed groups in Northern Ireland on either side of the communal divide have also hitherto frustrated a settlement.

The Bougainville Revolutionary Army has exercised a similarly negative influence in Papua New Guinea.

These considerations suggest that there is no easy solution to the problems of a multi-ethnic society. The situation varies from country to country and, even within one country, from one historical period to another. Policies have to be alert to the exigencies of particular national or regional contexts. If so, the primary responsibility must lie with states, not the Commonwealth as a collective body.

However, some principles may be applicable generally, and here the role of the Commonwealth in searching, explicating and implementing these principles can be of global value. A review of the experiences of dealing with ethnic conflicts assists in the formulation of these principles or guidelines.

### **Lessons from experience of member states**

From the experience of conflict, and/or successes in resolving conflict in Commonwealth countries, we can learn a good deal about how problems arise, and what can be done to solve them or prevent them from arising.

Ethnic assertions or conflicts do not arise spontaneously, nor is it enough to explain them as based on “old animosities”. For the most part, ethnic consciousness is stimulated and mobilised by individuals or organisations which wish to use it to advance their interests, whether they are priests, politicians, merchants, professionals, etc. The repeated demoralisation of a community, the distortions of history, and constant incitements to ethnic violence, aided by new means of communication (as witnessed, for example in Bosnia, Rwanda, Sri Lanka and India) are the prelude to ethnic conflict.

Persistent discrimination against a community creates conditions in which such mobilisation becomes possible and easy given the uncertainties of our times. It follows therefore that responsible behaviour of leaders, restraint by the media, and fair treatment of all communities are essential to preserve peace. Once ethnic hatred has been fanned, it is hard to bring it under control, emphasising the importance of preventive action.

Violence (whether of the dissident ethnic community or of the government) however protracted, seldom succeeds. After numerous deaths, displacements of people, economic destruction, etc., parties have to negotiate, and they often negotiate on the basis of assumptions and conditions that could have settled the problem in the first instance, without all the misery. The violence makes it harder to reach an agreement, leaves deep scars, and breeds suspicion. Discussions and negotiations are more productive of peace and social justice than confrontation and violence.

State tolerance offers a better hope: A state which recognises the multiple identities of individuals and groups is more likely to ensure peace, stability and development than a state which espouses narrow sectarian ideologies. Respect for a regime of human rights and freedoms is absolutely essential to ensure ethnic peace and justice. This remains so even when the state is taking steps to cope with problems arising from a conflict. In the fight against fundamentalism, values of tolerance and fairness must not be compromised. The accused must be given a fair trial, with all the necessary procedures. Nor can the fight against racial/religious intolerance be fought within national boundaries alone. There is a need for international cooperation and action.

External mediation can be useful and indeed sometimes it is essential.

When ethnic differences emerge, intervention at an early stage, through dialogue and negotiations, is desirable. In general, prevention of differences, through a fair treatment of all communities, is more effective than attempts to deal with a conflict which has involved communities and their leaders.

### **International, regional and national norms .to combat intolerance and protect minorities**

CHRI believes that the policies and programmes of the Commonwealth should be based on the international norms as well as on their progressive development. These norms are important for at least two reasons. First, they point to the obligations of states. Second, they reflect principles of fairness, social justice and good practice. International norms have developed through both the elaboration of general norms of human rights and the enunciation of specific instruments dealing with minorities or groups or anti-discrimination.

The first major instrument to deal with religious and ethnic bigotry and persecution was the Convention on the Prevention and Punishment of the Crime of Genocide (1948) intended to “liberate mankind from such an odious scourge”. It declared genocide a crime under international law (art. I). Genocide is constituted by following acts committed with a view to “destroy, in whole or in part, a national, ethnic, racial or religious group as such: (a) killing members of a group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent birth within that group; or (e) forcibly transferring children of the group to another group (art. 11). These offences may be punished in the courts of the state where the offence was committed or by an international penal tribunal.

Another instrument which penalises under international law conduct directed against another ethnic group is the Convention on the Suppression and Punishment of the Crime of Apartheid (1973). Apartheid is defined as the establishment and maintaining of “domination by one racial group of persons over any other racial group of persons and systematically oppressing them” by (a) denial to members of the second group right to life and liberty of person (including murder or other forms of inhuman treatment); (b) deny to the group rights to participate in the political, social, economic and cultural life of the country, and restrictions on work, trade union activities, movement, freedom of expression, etc; (c) the division of the population along racial lines, including the prohibition of mixed marriages; (d) exploitation of the labour of one group, in particular through forced labour; and (e) persecution of groups and individuals who oppose apartheid (art. II). Such offences may be tried by the courts of any signatory state which may acquire jurisdiction over the accused or by an international penal tribunal (art. V).

These two conventions are supplemented by the more general concept of crimes against humanity as part of customary international law (which constitute, inter alia, the jurisdiction of the Yugoslavia and Rwanda Tribunals). These instruments and rules essentially prohibit extreme forms of persecution, in which they have not been particularly successful. Nor do they provide any positive rights to minorities. The development of international law has been marked by great ambivalence on the positive obligations of states to persons or communities belonging to minority languages, religious or ethnicity.



There has been a reluctance, on the one hand, to recognise these communities, as such, preferring to talk of the rights of persons belonging to such communities (which may not be sufficient to accommodate all the needs of the community). On the other hand, there has been a reluctance to impose any positive obligations on the state to protect the interests of these communities, it being deemed enough that there should be a general prohibition of discrimination against them (an attitude typified by article 27 of the ICCPR, the International Covenant on Civil and Political Rights).

All UN and regional instruments on rights proclaim the equality of all persons, regardless, *inter alia*, of race or religion; prohibit discrimination in the enjoyment of rights and freedoms; and guarantee the freedom of religion and conscience. The horrendous persecution on the basis of religion or ethnicity has changed perspectives somewhat (as also a growing concern, particularly in the West, with identity politics).

### **More positive approaches**

First, the UN Committee on Human Rights “positive” orientation to article 27 of the ICCPR<sup>15</sup> now holds the view that, in some instances, the state must take positive steps to ensure the effective enjoyment of rights guaranteed in the article. In some cases at least the identity of a community can only be preserved by the recognition of what may be called the collective rights of the community.<sup>16</sup> Secondly, in realising that negative obligations on the state to protect minorities is not enough in all instances, the international community has fashioned specific instruments for minorities. One of the earliest specific instruments is the international Convention on the Elimination of All Forms of Racial Discrimination (1965), which condemns racial discrimination of any kind that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life<sup>17</sup>. The signatory states condemn all propaganda and all organisation based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin or which attempt to justify or promote racial hatred and discrimination in any form; they have to take immediate and positive steps to eradicate all incitement to or acts of such discrimination.<sup>18</sup> The state has to ensure not only that its own laws and practices comply with this obligation but also that it does not sponsor, defend or support racial discrimination by any persons or organisations.<sup>19</sup>

It includes the positive duty on states to encourage, where appropriate, integrationist multiracial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.<sup>20</sup>

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<sup>15</sup> In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities should not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. Article 27 ICCPR

<sup>16</sup> see its General Comment on Article 27 (1994).

<sup>17</sup> Art. 1

<sup>18</sup> Art. 4

<sup>19</sup> Art. 2(a) and (b)

In 1981, the General Assembly adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.<sup>21</sup> The expression “freedom of religion or conscience” is given a broad meaning to encompass “worship and to assemble for purpose of worship; establish and maintain appropriate charitable or humanitarian institutions; publication; instruction in belief; and to establish contact with individuals and institutions in matters of religion or belief at the national and international levels”.<sup>22</sup> The Declaration prohibits discrimination on grounds of religion, any infringement of the right to religion or conscience, or coercion which would impair a person’s freedom to have a religion or belief.<sup>23</sup> It requires that parents should bring up children “in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of belief and belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men”.<sup>24</sup>

**The regime of equality and equity guaranteed by the  
Convention on the Elimination of All forms of Discrimination  
Against Women (CEDAW) 1979 established standards on  
womens rights inconsistent with narrow and intolerant  
religious belief or practice**

The Declaration makes clear that the duty of the state is not merely the negative one to prevent discrimination, but also positive to ensure that conditions in which intolerance can flourish do not exist.

The 1960 UNESCO Convention Against Discrimination in Education not only prohibits discrimination in access to education on grounds of inter alia race or religion, but has wider aims. It says: Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial and religious groups.<sup>25</sup> It also requires states to permit members of minorities to have their own schools, etc.<sup>26</sup>

An instrument of particular significance is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979). Although not directly concerned with discrimination or persecution on religious or racial grounds, its norms establish standards for the treatment of women (particularly, but not only, in equality with men) which have profound

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<sup>20</sup> Art. 2(e). Convention on the Elimination of All Forms of Racial Discrimination

<sup>21</sup> “Religion or belief, for anyone who professes either, is one of the fundamental elements in the conception of life  
Preamble Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

<sup>22</sup> Art 6. Ibid.

<sup>23</sup> Art 1. Ibid.

<sup>24</sup> Art 5(3). Ibid.

<sup>25</sup> Art 5(1)(a). Ibid.

<sup>26</sup> Art 5(1)( c). Ibid.

effects on religious dogma and practice. Its implementation is inconsistent with a narrow or intolerant view of religious belief or practice. It guarantees to women equal rights with men, in the “recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” .<sup>27</sup>

States have undertaken, inter alia, to refrain from engaging in any act or practice of discrimination against women and to ensure that all public authorities and institutions act in conformity with this obligation.<sup>28</sup> States have to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women.<sup>29</sup>

Women must be guaranteed the same legal capacity as men,<sup>30</sup> and right to freely choose a spouse and to enter into marriage only with their free and full consent, and equal rights in marriage.<sup>31</sup>

The point has been made earlier that more efficient, and globally available means of communication have both made it possible for individuals and groups in one country to influence developments in another, and made us all more aware of the impact of hatred and prejudice in terms of human suffering - at least to the extent that these remain news worthy, for the rather limited attention span which the media tend to attribute to their audiences.

The influence of the media has been recognised in the UNESCO Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and countering Racism, Apartheid and Incitement to War (1978).

Article III(2) of the Declaration on Mass Media says: “In countering aggressive war, racialism, apartheid and other violations of human rights which are inter alia spawned by prejudice and ignorance, the mass media, by dissemination of information in the aims, aspirations, cultures and needs of all peoples contribute to eliminate ignorance and misunderstanding between peoples, to make nations of a country sensitive to the needs and desires of others, to ensure the respect of the rights and dignity of all nations, all peoples and all individuals without distinction of race, sex, language and religion or nationality.

Unfortunately, the influence of the media has not always been so benign, and this great power places upon them corresponding responsibilities. Attempts have been made in recent years to give some over-arching unity or coherence to these developments for the protection of minorities.

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<sup>27</sup> Art. 1 CEDAW

<sup>28</sup> Art. 2(d) CEDAW

<sup>29</sup> Art. 5(a) CEDAW

<sup>30</sup> Art. 15 CEDAW

<sup>31</sup> Art. 16 CEDAW

Two are noteworthy. The more general is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the UN General Assembly on 18 December 1992. In the Preamble the General Assembly states that the “promotion and protection of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of states in which they live” as well as strengthening of friendship and co-operation among peoples and states.

The Declaration requires that minorities be allowed full participation in public affairs. Special emphasis is put on the rights of minorities to practice and develop their culture. The Declaration establishes specific obligations on states:<sup>32</sup> they are, for example, required to “take appropriate measures so that, whenever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue (art. 3). States are also required to take “measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of minorities”<sup>33</sup> of their culture.

The other major initiative is the protection of the rights of indigenous peoples. A convention for the protection of indigenous peoples was adopted as early as 1959 under the auspices of the ILO. However, with the growing consciousness of and pride in their culture among indigenous peoples, the 1959 convention began to be resented for its patronising and assimilationist approach. Consequently a new ILO instrument, the Convention Concerning Indigenous and Tribal Peoples in Independent Countries, was adopted in 1991. The principal objective of the Convention is to ensure equal rights for indigenous peoples with the rest of the population of the country. However, this equality is to be achieved “in a manner compatible with their aspirations and way of life”.<sup>34</sup>

Throughout, there is an emphasis on the preservation and integrity of their culture and way of life. The participation of indigenous peoples in decisions which affect them is another principal theme of the Convention. These objectives flow from a recognition of the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind.

The World Conference on Human Rights recognised the importance of tolerance and fair treatment of minorities, including indigenous peoples, particularly to ensure political and social stability of states where they live.<sup>35</sup>

## **The approach of the Council of Europe**

Of regional instruments, the most significant is the Framework Convention for the Protection of National Minorities of the Council of Europe (1994). It is based on assumptions that:

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<sup>32</sup> An 1 (1) 1992 UN Declaration on Minorities (states shall) protect the existence and the national or ethnic, cultural and religious identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.

<sup>33</sup> Art 4. Ibid.

<sup>34</sup> Art 2. ILO Convention on Indigenous and Tribal Peoples

<sup>35</sup> Paras: 19 and 20 of the Vienna Declaration, 1993

- (a) “upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace;”
- (b) “a pluralistic and genuinely democratic society should not only respect the ethnic, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity”;
- (c) “the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment of each society”; and
- (d) protection of minorities forms an integral part of the international protection of human rights (and thus of international co-operation).

Its substantive provisions emphasise the guarantee of individual rights as well as collective rights; equality, including special measures if necessary; culture and identity, prohibiting forcible assimilation; promotion of cultural understanding and tolerance, particularly in education, media and culture; civil and political rights, including rights to establish institutions, associations; media for freedom of expression; the right to use minority languages; education about minority cultures; and the right of minorities to establish contacts with kin groups in other states. It provides for the regional supervision of these provisions in member states.

## **Towards a Commonwealth Policy**

Increasingly, a national framework is no longer sufficient or appropriate for the resolution of ethnic conflicts. The context of the conflicts is often international, constituted by diasporas, kin states, collaborators, arms merchants, etc. Nor are the negotiating parties purely national. Several key settlements of ethnic conflicts in recent years have involved foreign governments, the UN or regional organisations, and independent mediators. Sometimes their role is to facilitate a settlement; frequently it is also to help to keep to the settlement. Given these developments, there is an obvious role for the Commonwealth as an institution. From a review of the previous section, we recommend that a Commonwealth policy be based on the following themes and principles:

1. The protection of minorities forms an integral part of the international regime for the protection of human rights including women’s rights (and thus of international co-operation).
2. Protection of minorities should be based on a recognition of both individual as well as collective rights.
3. The basic principles of equality, especially gender equality, must be maintained, while ensuring that special measures for the protection of specific interests of a minority are necessary and valid.
4. Preservation of the culture and identity of religious and ethnic groups must be ensured. There should be no forcible assimilation; and the state should recognise the value of tolerance, diversity and multi-culturalism.

5. Minorities should enjoy the right to use their languages in their dealings with their members and the facilities to learn them at school.
6. The state should promote knowledge and understanding of the culture of all communities, particularly through education and the media.
7. There should be a prohibition of all forms of propaganda against any ethnic group or incitement to discrimination, victimisation or violence of or against it. Political parties which are based on narrow sectarian interests and incite disaffection towards members of ethnic communities should be outlawed.
8. Minorities should have full civil and political rights, including rights to establish institutions and associations; and should have access to the media for freedom of expression and culture.
9. Minorities should have the right to establish contacts with kin groups in other states.
10. The protection of the rights of minorities is the responsibility of states, the international community, and where appropriate, of regional organisations.
11. There is also an important role for civil society institutions, NGOs, churches, trade unions, etc. in the promotion of ethnic tolerance, national reconciliation, protecting minority cultures, and social justice.
12. Efforts of officials and non-officials should be directed towards the prevention of ethnic hatred and conflict.

## **Ingredients of a Commonwealth policy**

A Commonwealth policy should recognise the distinct contributions of member states, the Commonwealth Secretariat, non-governmental organisations, educational and research institutions in assisting to promote pluralism and ethnic harmony.

## **Recommendations**

- (i) The Commonwealth should take the first steps at the Edinburgh CHOGM towards adopting a charter on the rights of ethnic communities. A preparatory group could consider contents based on the preceding principles, emphasising in particular the value of tolerance and the multi-ethnic and multi-cultural foundations of all states. The charter shall be called the Commonwealth Charter on Religious and Ethnic Peace and Harmony and prepared for launching at the 1999 CHOGM.
- (ii) The Commonwealth should develop capacity for dealing with ethnic disputes, for both preventative action as well as the settlement of conflict. It should establish a roster of experts and mediators. Member states should undertake to allow mediation by the Commonwealth in appropriate cases.

- (iii) The Commonwealth should promote studies of ethnic conflicts, and ways to overcome them, including by assisting the work of existing institutions. It should promote a review of constitutional arrangements that have been successful in defusing ethnic conflicts, such as federalism, regional autonomy, electoral systems, social justice and affirmative action.
- (iv) The Commonwealth should sponsor fellows and exchange programmes to promote ethnic understanding.
- (v) The Commonwealth should help ministries of education to develop educational programmes that emphasise amity and condemn bigotry and violence; do not distort history to demonise particular religious or ethnic communities, etc.

### **What can Member States of the Commonwealth Do?**

The Commonwealth as an organisation is severely limited as to what it can do to, combat intolerance. Its essential role is to establish and disseminate norms and standards, help in conciliation and mediation; and facilitate greater understanding of issues and exchanges.

The primary responsibility for ensuring ethnic harmony and protecting minority rights lies with member states. It is there that social and economic policies which affect ethnic relations are formulated and implemented. Constitutional arrangements and national ideologies affect ethnic relations; these are largely domestic matters. So, too, are educational and language policies which determine in important respects relations between different communities and the emergence of common loyalties.

States in which there are ethnic conflicts should review their constitutions to ensure that all communities are given proper recognition and representation. Constitutional reform is often a pre-condition of a settlement. A just and fair constitution prevents the emergence of ethnic hostility. Given the multi-cultural and multi-ethnic nature of most states, a constitution based on a secular vision of society is more likely to ensure national unity and stability than one based on the dominance of the ideology and practices of a single religion or ethnic group.

### **Further recommendations**

- (vi) States should prohibit political parties which advocate the superiority or a dominant status of some ethnic groups over others. Candidates for elections to national or local bodies who engage in such advocacy or denigrate members of other communities should be disqualified.
- (vii) States should pass and enforce legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
- (viii) States should undertake not to support any movement or group which is committed to violence, by military or other assistance.
- (ix) States should review their educational policies to ensure their appropriateness for multi-cultural societies. The importance of education arises from the fact that:
  - (a) it is a resource for communities and must be equally accessible to all;

- (b) it can promote inter-cultural understanding and must be used as a means for assuring respect for diversity;
- (c) it can erode or consolidate cultures but must ensure wide understanding of varied cultures; and
- (d) it has the potential to unite or divide the people and must therefore ensure tolerance.

With this in mind educational systems, including the curriculum and textbooks must be geared to the better understanding of different religions and cultures and avoid the social construction of ethnic hostilities by distorting history.

- (x) In a state with several linguistic groups, language policies are an important determinant of ethnic relations. A group's language is important to its identity, while a common language is necessary to promote inter-ethnic contacts and understanding. A state may be justified in pursuing a common language policy but this should not be done at the expense of minority languages, whose development must also receive state support.
- (xi) In a multi-religious state all religious and secular beliefs should be equally respected. There should be no attempt to impose the norms and values of one religion over the whole country.
- (xii) The state has a special responsibility to promote and protect the distinct interests of the more vulnerable members of its people. Often these are women within and across communities or persons who belong to minorities or other groups (such as constitutionally recognised caste and tribal groups in India) which have been the subject of systematic discrimination in the past. Individual as well as inter-ethnic equity is essential to social peace and justice.
- (xiii) States in which there are serious ethnic conflicts should make fresh efforts or intensify their existing efforts to settle them peacefully. All parties to the conflict should agree to accept offers of mediation by the Commonwealth Secretariat or individual states in the Commonwealth where such intervention is likely to facilitate agreement. Conflicts should be settled within the framework and in the spirit of the proposed Commonwealth Charter on Religious and Ethnic Peace and Harmony.
- (xiv) Member states should ratify relevant conventions and take immediate steps to implement educational and other aspects of those conventions.

## **The precious role of the NGOs**

CHRI continues to stress the role of civil society - professional, corporate, non-governmental and other bodies - in realising human rights. As the Commonwealth becomes increasingly committed to human rights it is time to recognise the vital role of civil society and in particular human rights NGOs as defenders and promoters of human rights. In order to realise human rights in terms of practical everyday application to ordinary lives, it is not enough to rely on law or political rhetoric unless there is a real sense of understanding and ownership of human rights among the public at large. NGO campaigns for better human rights standards and against violation and



abuse of power serve to educate the population about the value of human rights as a mechanism for ensuring minimum standards of equity, equality and non-discrimination and therefore are of great assistance in creating conditions for peaceful pluralist societies.

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All voluntary bodies do contribute, by their existence and democratic practices, in strengthening freedom of association and expression. They demonstrate civil and social responsibilities in action. But the role of human rights NGOs is especially precious. They not only monitor abuses but can promote a knowledge of rights and demonstrate a willingness to undertake responsibilities. They should be more used than they are by schools, the media and governments for consultation.

### 3. DEMOCRACY'S CORNERSTONE

#### Freedom of expression

In its 1995 report to CHOGM, **Rights Do Matter**, CHRI called on Heads of Government to make a clear statement of commitment to freedom of expression as a human right to be enjoyed by every Commonwealth citizen. When the Heads met in Auckland in 1995 they reinforced the Singapore and Harare Declarations with the Milbrook Action Programme to further democracy. But they still made no commitment to ensure that citizens have a right to the cornerstone of any genuinely democratic state - freedom of expression.

The many pressures and constraints on media independence which continue to exist, and which include the personal and sometimes physical harassment of journalists in the conduct of their duties, are incompatible with the two Commonwealth Declarations. Although a declaration on freedom of expression is still not forthcoming from the 53 Heads, a regional step forward was taken by the African Commonwealth Heads of Government at their Roundtable on Democracy and Good Governance in Africa held in Botswana during 23-27 February. Leaders from 16 of the 19 member countries attended (Nigeria being excluded and Mauritius and Sierra Leone being absent).

The paper prepared for the meeting by the Commonwealth Secretariat spelled out "four essential ingredients in all democracies regardless of national circumstances".

- \* The first is free choice, the right of the people to choose their own government and under the law, to change it.
- \* The second is freedom of expression and association, again within the constraints set in law, to express their political views including criticising the performance of the government without fear of retribution.
- \* The third ingredient is the rule of law itself; for unless all citizens are subject to the same law and the law is respected, there can be no genuine free speech or free choice. The rule of law, therefore, necessarily implies that the judiciary and the courts will not merely be impartial, but will be seen to be so.
- \* The fourth essential ingredient is the transparency and accountability of the government.

The Roundtable was in two parts. The summit was preceded by a meeting in Gaborone of 48 opposition and ruling party representatives from 18 countries - a unique event for Africa and for the Commonwealth. From that first meeting a report was sent to the Heads of Government Meeting, which was held separately and immediately afterwards in Kasane.

It set out the four ingredients as in the paper and recommended that they be entrenched in the constitution of member countries.

Though the Kasane statement differed in some respects from the Gaborone statement it nevertheless stressed in particular the universally accepted ingredients of democracy which concluded the right of a people to elect freely their government; the primacy of the rule of law and the independence of the judiciary; the right of freedom of expression and association; and

the transparency and accountability of government”.

Apart from the fact that freedom of expression seemed to move from second to third place in this process, the firm commitment was there in a Heads of Government statement for the first time. However, although the Gaborone report had said: “Equitable access for all political groups and shades of opinion to the media is essential for democracy”, this thought disappeared from the Heads’ statement.

There was also no mention in the Heads’ statement of human rights, although the Harare Declaration already commits all governments to fundamental human rights. However, the statement to the Heads from Gaborone had called for the setting up of a human rights commission and this was apparently ignored or discarded.

The conclusion from all this must be that there continues to be ambivalence and some holding back by African governments on freedom of expression. Equally, outside Africa there is plainly still no willingness to make a firm commitment, even though Article 19 of the Universal Declaration of Human Rights of 1948 states unequivocally that “everyone has the right to freedom of opinion and expression” and to receive and impart it “through any media and regardless of frontiers”. Furthermore, freedom of expression is entrenched in the constitutions of many Commonwealth countries. The overall picture in the Commonwealth on freedom of expression thus still does not reflect the spirit of the 1971 Singapore Declaration and the 1991 Harare Declaration nor the standards set by them. The CHRI requires an unequivocal statement by the Commonwealth on freedom of expression.

A Commonwealth declaration should:

- \* explicitly echo the wording of Article 19 of the International Covenant on Civil and Political Rights (ICCPR) since that is the most developed articulation of freedom of expression which also encompasses freedom of information;
- \* state explicitly that the right is crucial to the exercise of democracy because it allows citizens access to official information by means of Freedom of Information legislation enabling them to hold their elected representatives to account and giving them the freedom to criticise without fear;
- \* any limitations on the right to freedom of expression - for example, on grounds of national security - should be only such as are prescribed by law, must be strictly construed and subject to independent judicial review.
- \* refer to the obligation of governments to foster plurality in the media as a means of protecting freedom of expression. This includes an independent and transparent process for allocating licences to private broadcasters and effective guarantees of the independence of any broadcasting system which is funded out of public money;
- \* eschew any statutory licensing requirement on the print media.

The declaration should refer to freedom of association as an essential aspect of freedom of expression. This should mean, for example, that governments could not impose any licensing requirement on public meetings.

It is recommended that governments should sponsor a review of best Commonwealth practices in public access to radio and TV broadcasting, especially during election campaigns.

**If governments are to be seen to be fully committed to good governance and democracy and to free and fair elections they must not put restrictions on the freedom of the media but recognise a free and independent press as an essential pillar of democracy**

In particular, Heads of State must emphasise that free and fair elections require that the media is able to report freely at every stage of the polling process. And at all other times it must be able to evaluate and criticise when necessary, the workings of the government machine and the justness and honesty of the administrators at all levels.

Freedom of information is equally vital to the development process. If the people are uninformed they and the media cannot ask the right questions and cannot provide the right answers.

In India the right to free speech and expression has been held to include the right to be informed and receive information. A Freedom of Information Bill 1997 has been drafted which is expected to be enacted in Parliament later this year. The Bill is a step towards promotion of open and transparent government. As a precursor to this, State administrations and those of small district localities are also experimenting through local legislation to address the demand for more open government which is arising all across the country. Enactments are uneven and often restricted to obligating just a few government departments to provide information. However, as recently created local level elected village government becomes entrenched and more self confident the demand for freely available information as of right will grow apace and underpin effective participation in democracy of individual citizens and civil society actors.

A new Broadcasting Act 1997 has also been enacted to set up an autonomous broadcasting corporation. According to some, both Bill and Act are half-hearted measures which do not go far enough towards achieving the objective of ensuring the dismantling of the present culture of secrecy that pervades bureaucratic functioning nor of freeing the airways from political interference and monopoly so as to ensure that the widest possible spectrum of opinion is reflected on radio and in television.

### **The media has responsibilities too**

If governments have responsibilities, the journalists must have them too. It is their duty to report in the media with thoroughness and operate at the highest professional standards. The fact that in many cases journalists cannot always perform well in countries which have moved to better democratic systems is not altogether their fault but is the inevitable result of the political history of their countries and the flawed systems of government from which they have long suffered.

The problem goes back to colonial days. There were then often severe restrictions on the media and many old laws imposing them are still in place. In many cases, immediately after independence one-party rule and authoritarian forms of government became the norm and existing legislation proved useful.

During the long periods of one-party rule or military government journalists were harassed or frequently physically threatened in the performance of their duties. As a result, in some Commonwealth countries many of them became disenchanted with journalism and turned to other occupations. Some moved into public relations work or government information jobs. Others left the profession altogether. In small developing countries the media field is limited in size and scope. In one-party days it was entirely government-controlled - in Malawi, for example, there was for many years just one newspaper directly controlled by the president and state controlled radio.

In these circumstances many journalists had little option but to stay in their jobs and practice self-censorship and write or broadcast under instruction. To do otherwise could have deprived them of their livelihood.

The high turnover of journalists that resulted from these circumstances led the media to be staffed by increasing numbers of inexperienced journalists.

The effect of training courses provided under development assistance programmes was in those days nullified to some extent by the editorial restrictions imposed and the constant drain of talent.

When therefore political change took place, and independent newspapers and later radio stations began to be established, too few experienced journalists were available. Journalists were not in a position to adapt or cope with the new opportunities that suddenly opened up for them. Their natural response was to exploit the freedom to the limit.

At the same time independent newspapers and radio stations were now appearing on the scene, most of them under-funded and with a weak infrastructure. These developments have resulted all too often in publication of stories lacking in balance, under-researched and not rigorously checked. There has been a failure to take the normal safeguards regarded as good journalistic practice. Scant attention has been paid to the laws of libel or good ethical standards. This understandable over-reaction by the media to the freeing-up has in some cases proved counterproductive. Governments have found themselves unable to stand the heat and tried to reintroduce the pressures they had pledged to eliminate on coming into office.

**A serious threat to the quality of journalism  
in many countries also arises from signs of  
increased corruption in the media.  
Better training can help in eliminating this danger**

Freedom of expression is being jeopardised as a result of this lack of experience of some journalists and lack of training.

A positive factor is that seminars and workshops about all aspects of press freedom, including the dangers of corruption, are being widely and openly debated in, for example, East and Southern Africa under the auspices of bodies like the Media Institute of Southern Africa (MISA) and the Association of Journalists and Media Workers (AJMW) in Tanzania. Journalists are being increasingly vocal and outspoken on the need for a better and more independent media.

If freedom of expression is to be safeguarded more resources must be made available for the training of journalists and special courses devised on coverage of elections and constitutional matters, on reporting on parliament and on the legal aspects of their work - for example, the laws of libel and contempt.

### **Better training - better journalism**

The right vehicle for this is the Commonwealth Media Development Fund (CMDf) which was launched as the result of an Australian initiative at the Lusaka CHOGM in 1979. The Fund's activities are, to quote the Commonwealth Secretariat, "directed towards raising the competence of journalists and of production staff in broadcasting service; support is also given to improve management skills".

Although this Fund has been in operation for nearly 20 years only two governments have ever contributed to it - Australia and Britain - and the total made available each year stands at only about £160,000. This is a ludicrously small figure and cannot begin to make an impact on the problem. The Australian contribution this year is some £30,000 and even this tiny amount was withdrawn a year or two ago for a spell and restored only after pressure.

Freedom of expression is the basic human right. Without it people cannot even ask for the food on which they must live. If governments really believe in freedom of expression and recognise that a strong media is an essential pillar of democracy they must play their role in buttressing it.

The CMDf needs to be substantially strengthened with contributions from several more movements so that training courses may be made more intensive. Currently most courses last only a few days without any follow-up. To succeed they need to be longer and followed by refresher courses.

Nor is it just the editorial aspect that needs attention. However good the content of their publications and broadcasts, a newspaper or radio station cannot survive for long without efficient administration and management, as well as experience in advertising and circulation and distribution techniques. The terms of reference of the CMDf include help in all these areas. The expertise can be provided by the Commonwealth media NGOs, most notably the Commonwealth Journalists Association (CJA), the Commonwealth Press Union (CPU), the Commonwealth Broadcasting Association (CBA), the Thomson Foundation and other news organisations that run specialist training programmes such as Gemini News Service.

The CHRI would like Heads of Government to invite these NGOs concerned with media and freedom of expression, together with the Commonwealth Association for Education in Journalism and Communication (CAEJAC) to institute a biennial Commonwealth Media Freedom Award which can be presented by the leader hosting the CHOGM at a ceremony at each CHOGM.

NGOs should also be invited to institute a system of fellowships to support journalists and broadcasters in the Commonwealth who have lost their jobs due to flagrant interference in freedom of expression by official agencies, advertisers or their employers.

## **The harassment goes on**

The situation of the Commonwealth media has notably improved in recent years in a few member countries-Pakistan, Ghana, Uganda, Malawi, and Guyana are examples-but government interference, sometimes to a most serious extent, remains in many others.

In some countries there has been a deterioration -for example, Papua New Guinea, Zambia and Zimbabwe-and the record in a new Commonwealth member, Cameroon, is deplorable, despite its government's assurances to the Commonwealth over several years that human rights shortcomings were being remedied.

The 1997 report of the Paris-based Reporters Sans Frontieres said that in the area of press freedom Cameroon was the most repressive country in French-speaking Africa. Freedom of expression is included in the preamble to the Constitution, but confiscation of privately owned newspapers is a frequent occurrence in Cameroon. In 1996 one journalist was beaten up, seven others jailed and 13 arrested or questioned by the police.

Local and international pressure has led to the deferment of plans to set up a media council in Zambia with powers to reprimand, suspend or withdraw accreditation from journalists. But the independent media has had a particularly stormy ride and actions have been taken against the press that run totally counter to the assurances given by the President in a speech in Washington on 19 February 1992 four months after he had won the country's first multi-party election. Then he said that his government had "decided that Press freedom must not only be observed, press freedom must be promoted so that whatever we are trying to bury under the carpet will not escape the notice of society, and society must call us to account for it if the Press remains free."

In 1996 seven journalists continued to be legally harassed, often personally threatened and sometimes held in jail. Newspaper offices have been raided (in one case bombed) and letters and diskettes confiscated. For the first time in Zambian history publication of an issue of a newspaper was banned.

## **Media suffering in Nigeria goes on**

As with other matters concerning Nigeria referred to elsewhere in our report, the intimidation and persecution of the media has continued unabated. In 1996 two journalists allegedly "disappeared" - Bagua Kaltho of The News and Chinedu Offoaro, of The Guardian. Four others, Kunle Ajibade, Chirs Anyanwu, George Mbah and Ben Charles Obi, are held in jail after trials by a secret military tribunal for "being accessories after the fact of treason:" In connection with the alleged" coup plot." Life sentences were reduced to 15 years, but all are reportedly in bad health, Anyanwu with severe malaria and hypertension, Obi with malaria and diarrhoea, Mbah with head injuries after a 1993 motor accident, and Ajibade with Kidney problems.

Journalists have been physically assaulted on many occasions. A senior editor of The News was shot. Closures and banning of three newspaper groups in 1995 were rescinded after a year or so, but the military regime's action had delivered an uncompromising message. Remarkably, at great personal risk journalists are continuing to produce independent newspapers on an underground basis.

Article 19, in its report Unshackling The Nigerian Media, has listed in detail numerous cases of

media harassment and the CHRI supports its calls for radical reforms and the repeal of the many military decrees that are denying the people of Nigeria freedom of expression and their human rights. Yet more decrees curbing the press are planned. The Newspaper Registration Decree imposes a non-refundable newspaper application fee, an annual review of “responsible behaviour,” government approval of editorial appointments and a press court “collectively constitute a conveyor belt to prison for the independent press.”

## **Taking the wrong road**

A cause for real concern is the fact that press freedom now shows signs of becoming an issue in countries such as Botswana, Trinidad and Tobago, Samoa and Papua New Guinea, where there have been few problems in the recent past. For the first time since the seventies a threat has arisen in Trinidad and Tobago. The country’s Constitution enshrines freedom of thought and expression, freedom of association and assembly and the freedom of the press.

In January 1996 Prime Minister Basdeo Panday called for the dismissal of the editor of the Trinidad Guardian, Jones Madeira, on grounds that he was “racist, vicious and spiteful”. He said his government would not speak to the newspaper’s reporters until the editor was dismissed. Eight executives of the paper resigned at the way the publisher handled events. Three Caribbean publishers intervened and met the Prime Minister who withdrew the boycott. A complaints mechanism was set up in the form of a Press Council. But later the government issued a Green Paper entitled Reform of Media Law Towards a Free and Responsible Media. Paragraph 1.3A reads: “The law should provide the media with machinery for accessed information and for it to be encouraged to expose corruption and malfeasance while at the same time providing the Government with power to punish or stop media behaviour which imperils national security or undermines the democratic fabric.”

A law is now being proposed to put controls in the hands of the politicians which, as the publisher of the Trinidad Express has pointed out, “they never had before and which clearly the Constitution never designed them to have”. Alarming, the Prime Minister said on June “Nobody but nobody will attack my government and escape unscathed.” As a region the Commonwealth Caribbean has a good record on media freedom and it would be a serious setback if this was now in jeopardy.

A new threat to free journalism has also arisen in Botswana, where since independence, government has had one of the best records in Commonwealth Africa. Government and press have had few serious quarrels, yet proposed legislation includes plans for the setting up of a state-appointed press council with punitive powers to which local and foreign journalists would have to be accredited. CHRI strongly urges the dropping of such legislation.

In Samoa, the daily Samoa Observer and Sunday Samoan, the only independent newspapers in a country where the government heavily controls news on radio and TV, the Prime Minister threatened to change the law so that their licence could be taken away “for stirring up trouble.” The papers have often been legally harassed and government advertising has been switched from other non-government media into the government controlled media.

The Samoan government was quick to point out that the Prime Minister had simply made an off-the cuff remark not intended to be taken seriously. But threats to the media in the Pacific Commonwealth have increased in recent years and the Pacific Islands News Association has



been moved to appeal for international support to defend journalists in the region. Pressure has had some effect. In Papua New Guinea three controversial media bills have been shelved.

The continued dominance of the state broadcasting media severely limits the amount of real freedom of expression in many Commonwealth countries. In Sri Lanka a broadcasting bill giving civil servants unrestricted control was rejected by the Supreme Court as inconsistent with the Constitution, but new legislation is being prepared and new attempts to subvert and control freedom of speech and information are feared. Government pressures are also again being put on the independent TNL Television station.

Overall the current media picture in the Commonwealth is rather better than it has been for some years. It must be emphasised that control of the media in Singapore and Malaysia through self-censorship and other more subtle means, described two years ago in **Rights Do Matter**, continue unchanged. This violates the spirit of the Commonwealth declarations to which both countries subscribe.

## 4. WHAT MUST BE DONE

The last report of CHRI stated that four years on from the Harare Declaration many Commonwealth governments were paying little attention to the pledges they had made. Two years further on, it can be said that some progress is being made. There is certainly a greater awareness within and outside the Commonwealth of some of the stands that are beginning to be taken.

**The credibility of the Commonwealth is still very much on trial. Real, practical and timely action on issues of good governance, human rights, sustainable development, social justice, equity and equality is needed from the Heads of Government Meeting in Edinburgh to ensure the Commonwealth is continuing validity**

Yet in too many instances the Harare principles are still being blatantly disregarded, as our section on ethnic and religious intolerance so vividly illustrates. The credibility of the Commonwealth is still very much on trial. Real, practical and timely action on issues of good governance, human rights, sustainable development, social justice, equity and equality is needed from the Heads of Government Meeting in Edinburgh to ensure the Commonwealth is continuing validity.

### **Our main recommendations**

#### **1. Trade and Development**

All discussions and arrangements on trade and investment, must be based on realising the pledge to promote sustainable development centred around the realisation of human rights. Heads of Government should:

- a. Adopt only such policies, processes and institutional structures that further the realisation of all human rights including economic and social rights, with particular regard to women's rights as human rights and the rights of children;
- b. Enhance international co-operation and co-operation within the Commonwealth on trade and investment in pursuit of human rights goals for sustainable development.
- c. Adopt policies and practices in trade and investment which ensure that goals of equity and distributive justice are met and furthered.
- d. Promote the accountability and social responsibility of national and multinational businesses through domestic policies, laws and practices as well as through international co-operation, and inter se; and ensure the adoption of common regimes to ensure codes of corporate responsibility that privilege the realisation of rights and sustainable development;
- e. Adopt policies and practices which ensure transparency in the creation and implementation

of trade and investment policies;

- f. Promote the awareness of economic and social rights through programmes of human rights education at all levels of the state, in the business community and in civil society.
- g. Undertake and encourage independent evaluations, socio-economic audits and assessments to be made of the human rights, social and environmental impact of development programmes and market operations;
- h. In particular endorse the OECD anti-corruption initiative seeking to outlaw tax deductibility and make bribing of foreign officials a criminal offence.
- i. Review Commonwealth extradition arrangements to prevent fleeing officials pleading that corruption charges against them are “political” and not extraditable.

## **2. Nigeria**

Heads of Government are recommended to:

- a. Declare that the so-called Nigerian transition programme to civilian rule does not meet the criterion of progress that merits any lifting of its suspension from the Commonwealth.
- b. The Commonwealth must insist more strongly on the release of all political prisoners, guarantees of freedom of movement, expression and association in Nigeria, and free access to the political system of all parties traditionally recognised as legitimate.
- d. In the continued absence of any positive steps by the regime, member states should apply sanctions against Nigeria similar to those imposed on apartheid South Africa, as recommended by CMAG in April 1996.
- e. Commonwealth countries should at once end all sporting links with Nigeria and suspend the country from the 1998 Commonwealth Games.
- f. Further steps against Nigeria should be taken as set out in the CHRI memorandum to CMAG on 30 April 1997 (see Appendix 4)

## **3. Sierra Leone**

- a. The Commonwealth should continue to recognise President Ahmad Kabbah as the democratically elected head of government of Sierra Leone. He should be invited to Edinburgh in that capacity.

## **4. New members**

- a. Cameroon should be pressed to implement the reforms in the electoral system suggested by the Commonwealth election observer group report of 1997.
- b. Refuse admission to the Commonwealth to Yemen until a thorough examination has been made of the state of human rights and particular the rights of women and democracy in the

country.

- c. Outside bodies and NGOs should be used and encouraged to monitor member countries' compliance with the Millbrook process.

## **5. Human Rights teaching**

- a. CHOGM should endorse the proposal of the Commonwealth Ministers of Education conference in Botswana to review human rights teaching in schools.

## **6. Ethnic and religious tolerance**

- a. The Commonwealth should begin work on the production of a charter on the rights of ethnic communities to be called the Commonwealth Charter on Religious and Ethnic Peace and Harmony.
- b. The Commonwealth should set up a roster of experts and mediators to deal with ethnic disputes.
- c. The Commonwealth should promote studies of ethnic conflicts and ways to overcome them.
- d. The Commonwealth should sponsor fellows and exchange programmes to promote ethnic understanding.
- e. Education ministries should develop educational programmes emphasising amity and condemning bigotry and violence.
- d. States should prohibit political parties which advocate the superiority or a dominant status of some ethnic groups over others.
- e. States should legislate against any advocacy of national, racial or religious hatred.
- f. States should undertake not to support any movement or group committed to violence.
- g. States should review their educational policies to ensure their appropriateness for multi-cultural societies.
- h. A common language policy should not be pursued at the expense of minority languages.
- i. No attempt should be made to impose the norms and values of one religion over a whole country.
- j. The state must recognise that it has a responsibility to look after the special interest of the more vulnerable members of its people.
- k. States with serious ethnic conflicts should accept offers of mediation by the Commonwealth Secretariat or individual member states.
- l. Member states should ratify relevant conventions.

## **7. Freedom of expression**

- a. The Commonwealth should match the Harare Declaration with an unequivocal statement on freedom of expression echoing the wording of Article 19 of the ICCPR.
- b. At election time the media must be allowed to report freely at every stage of the polling process.
- c. Longer and better training programmes should be available to equip journalists with greater experience in coping with the introduction in many countries of a more varied and independent media.
- d. To this end member governments must signal their commitment to promoting freedom of speech by contributing adequately to the Commonwealth Media Development Fund.
- e. Management expertise should also be given to newly launched independent and under-resourced newspapers and radio stations.
- f. Governments should recognise that a healthy democracy is possible only with the help of a free and varied media and should put an end to all harassment of journalists.

## **A Decade of the Commonwealth Human Rights Initiative 1987-1997**

The Commonwealth, which started life when an association of self-governing nations succeeded the British Empire in the mid-20th Century, is increasingly seen as committed to human rights. There was always an implicit connection. Struggles for self-determination and against racism, for women's rights and against one-party and military dictatorships, for sustainable development and against poverty and corruption, for religious tolerance and against controls on the media, have characterised many Commonwealth countries.

But only in the last few years has the Commonwealth itself, an association of states and peoples, taken a convincing stand for human rights. The year 1991 saw its Heads of Government agree the Harare Declaration, a commitment to the fundamental political values of the Commonwealth, as well as to socio-economic development. In 1994 South Africa, a former member in which apartheid denied the rights of a majority of its citizens, transformed its constitution and rejoined the Commonwealth after multiracial elections. The following year the Commonwealth suspended the membership of Nigeria, ruled by military governments for most of its independent existence, after outrageous executions, a quashed election, and a catalogue of human rights abuse. Central to this change of direction has been a non-governmental coalition, the Commonwealth Human Rights Initiative. This is what it did.

How it all started

The first step towards a Commonwealth Human Rights Initiative was taken at a conference in May 1987 at the Cumberland Lodge residential centre in Berkshire, England. The conference took place nearly a year after the boycott of the 1986 Commonwealth Games in Edinburgh, caused by anger at the then British Government's unwillingness to join sanctions against the apartheid regime in South Africa. Its theme was Britain and the Commonwealth. Most present were keen to see the British continuing as active participants in Commonwealth affairs.

Workshop groups were asked to suggest what might be done to make the Commonwealth idea more popular in Britain. A key proposal was that the Commonwealth should become more active for the human rights of its own citizens. It was felt that this would negate the white South African propaganda that Commonwealth countries were in some cases military and one-party states, trampling on their people. It could also bring a rather distant international association closer to the aspirations and needs of the public in member countries.

The nature of such an initiative was unclear. Also, the Cumberland Lodge perspective had been exclusively British. However, two meetings at the Commonwealth Institute, Kensington, were arranged that summer which put the idea to representatives of Commonwealth NGOs, international human rights NGOs (such as Amnesty and Survival International) with offices in London and a handful of observers from Commonwealth High Commissions and the Commonwealth Secretariat. The upshot was a document largely drafted by Dr. Campbell McLachlan, a New Zealander then editing *The Commonwealth Lawyer*. This proposed an initiative which would rely on the support of interested Commonwealth NGOs, and which would

start by asking a prominent international group to survey the human rights scene in the Commonwealth and make recommendations.

Participants in the meetings had little confidence that the inter-governmental Commonwealth was yet ready to address human rights seriously. The Commonwealth summit in New Delhi in 1983 had not mentioned the issue in its communique; there had been considerable delays in setting up a small Human Rights Unit in the Commonwealth Secretariat, whose posts were about to remain unfilled for a year; and there was nervousness about human rights among many Commonwealth governments.

Nevertheless, in representations to the Commonwealth summit of 1987 in Vancouver three Commonwealth NGOs - the Commonwealth Journalists Association, the Commonwealth Trade Union Council and the Commonwealth Lawyers Association - commended the initiative and pledged their support.

Over the next two years two more bodies joined what was now called the Commonwealth Human Rights Initiative - the Commonwealth Legal Education Association and the Commonwealth Medical Association. The Initiative was still purely voluntary, and progress was being coordinated by Richard Bourne, then Deputy Director of the Commonwealth Institute. By the end of 1989 it was ready for some publicity, and by then the Hon Flora MacDonald, former External Affairs Minister of Canada, had agreed to chair an Advisory Group to chart the problems. Other members of this group were: Dr George Barton QC of New Zealand, nominated by the Commonwealth Lawyers Association; Professor Yash Ghai of Kenya, nominated by the Commonwealth Legal Education Association; Miss Billie Miller, of Barbados, an MP, who was coopted; John Morton of Britain, nominated by the CTUC; Dr. Beko Ransome-Kuti of Nigeria, nominated by the Commonwealth Medical Association; and George Verghese of India, nominee of the Commonwealth Journalists Association. Crucially, too, the Initiative had obtained some funding, especially from the Canadian International Development Agency, which was willing to provide long-term support; and also from the European Commission and philanthropic sources. This enabled Richard Bourne to be paid as the rust Director of CHRI, from the beginning of January 1990. He opened a small office in Russell Square, where CHRI became a tenant of the Institute of Commonwealth Studies.

## **Put Our World to Rights and Harare 1991**

The Advisory Group met three times - in London, New Delhi (at the time of a World Human Rights Conference) and Auckland (at the time of the Commonwealth Law Conference). Its report, **Put Our World to Rights**, was a 232-page document. It proposed a strategy for strengthening rights, duties and democratic civil society within the Commonwealth. This should involve governments, the inter-governmental institutions, and NGOs. The group, greatly assisted by a number of specialists, devoted special sections to detention, freedom of expression and information, indigenous and tribal peoples, refugees, women, children, workers and trade unions, and the environment.

In her foreward, Flora MacDonald wrote: "Human rights must be accorded higher priority on the agenda of Commonwealth relations than they presently occupy." The introduction explained that such a focus would provide a greater coherence for Commonwealth activities, would diminish the risk of ethnic conflict within states, and would compensate for abuse and oppression in the recent past, For the report stated bluntly:

Another reason for the Commonwealth to take human rights seriously now is that, on the whole, its members' record on human rights is poor. It is difficult to generalise across a range of states. Some states are distinguished by their scrupulous regard for human rights and others have made courageous efforts in difficult circumstances to uphold human rights. But it has to be admitted that in some countries the record has been deplorable and often appalling, shocking especially to those of us who were brought up to think of the Commonwealth and its members as marked by just and humane administration.

The Initiative lobbied hard for its views in the run-up to the Commonwealth leaders summit in Harare in October 1991. The previous summit, in Kuala Lumpur in 1989, had set up an appraisal group to chart new paths for the Commonwealth in the 1990s and beyond. The Berlin Wall had come down. The Cold War was over. The era of decolonisation was passing into history. And a new Commonwealth Secretary-General, Chief Emeka Anyaoku of Nigeria, was speaking out about the need for the Commonwealth to reassert its fundamental political values, the rule of law and human rights. Just prior to the Harare summit, but in the same Zimbabwean capital, human rights NGOs from 15 African Commonwealth countries met together. Their communique expressed impatience with civil restrictions and economic failures in so many states, just when the freeing of Nelson Mandela made possible a negotiated end to apartheid in South Africa. The upshot of the Harare summit was a Commonwealth declaration which appeared to give more edge to the Commonwealth Principles pronounced in Singapore in 1971. It seemed to give more importance to democratisation and human rights, while not abandoning the Commonwealth's commitment to socio-economic development.

But, at the time, the CHRI and other human rights NGOs were not sure how much faith to put in the Harare Declaration. The inter-government Commonwealth had a reputation for making rhetorical statements which lacked commitment or active follow-up. Although the long-standing President Kaunda of Zambia was toppled in elections ten days after the Harare summit - and by a coalition which mirrored the interests supporting CHRI - it was far from clear that the Commonwealth as a whole was changing.

The Initiative becomes permanent, and moves its office to India. Funding for the CHRI had always been difficult to come by - the main funding source had been the Canadian International Development Agency - and to begin with its office was financed for the two years 1990 and 1991. After Harare the five supporting bodies were asked to consider whether this ad hoc coalition should be made permanent, and if so how. Their feeling was that there was a long-term job to do, that governments are inevitably swayed by short-term political considerations and interests, and that a Commonwealth non-governmental body wholly focussed on human rights could make an important contribution.

The CHRI took a series of decisions. It decided to establish itself by means of a Memorandum of Understanding (it was already a UK registered charity). It decided that its office should rotate around the Commonwealth, in principle at five-yearly intervals, so that no one should say that it was in the pocket of anyone country, or viewed human rights from only one national pocket of anyone country, or viewed human rights from only one national perspective.

And it adopted a structure which reflected its origin and purpose: an executive, Director and office in one country (the executive to include affiliates of the founder NGOs, and human rights activists in the country concerned); an international Advisory Commission, offering policy



guidance; a London-based trustee committee, composed of representatives of the founder NGOs, with residual powers; and a Commonwealth human rights NGO conference, to meet once every five years, to stimulate networking and accountability to the wider NGO community.

With the aid of Mr. Mahendra, formerly Deputy Director of the Commonwealth Foundation, the CHRI drew up a constitution and started negotiations to transfer its office to New Delhi. India was a good choice. In addition to being home to over half the population of the Commonwealth it has active human rights NGOs, and has made notable contributions both in philosophic terms - as with Mahatma Gandhi's "duty-based rights" - and in practical redress, as with the public interest litigation derived from the Indian constitution. In August 1993 the CHRI opened in India, in office space supplied by the Indian Medical Association, an affiliate of the Commonwealth Medical Association. Its first Director in India was Kailash Prakash, formerly permanent secretary of the Communications Ministry. He was followed in early 1994 by Ms. Malti Singh, who had earlier chaired the Amnesty national section in India.

The new Advisory Commission was headed by Dr. Kamal Hossain, formerly Law and Foreign Minister of Bangladesh and a key contributor to the independence constitution of his country. Professor Yash Ghai and Dr. Beko Ransome-Kuti carried on from the MacDonald group. The others were Soli Sorabjee (who chaired the CHRI Executive in India) Sithembiso Nyoni of Zimbabwe, Derek Ingram from Britain, LeRoy Trotman from Barbados and Senator Margaret Reynolds of Australia. Shortly after the office moved to India - it was inaugurated in the presence of the Vice President - the Initiative published another biennial report, **Act Right Now**, just before the Commonwealth summit in Limassol. This took account of the UN conference on human rights in Vienna, and urged the Commonwealth to keep up the momentum of Harare. In particular it suggested that the Commonwealth might appoint a Human Rights Commissioner on the analogy of the UN Human Rights Commissioner proposed in Vienna. In September 1993 the Initiative also organised a workshop for NGOs in Kenya, at the Refugee Studies Centre of Moi University. This aimed to equip African NGOs working with refugees with a greater knowledge of their rights under international law, and how to protect them in practice.

### **The CHRI's work, 1993- 97**

Since it moved to New Delhi, in mid-1993, the CHRI has consolidated its work and become more widely known and respected. There are four aspects to highlight: its direct contribution in the Indian sub-continent; its biennial reports published before Commonwealth summits; its fact-finding missions (to Nigeria in 1995 and to Zambia in 1996); and its wider influence in the Commonwealth.

Over the last four years the Initiative has embarked on three large blocks of work - on prisons and policing in the subcontinent, on the situation of indigenous tribal peoples (where it ran a workshop in New Delhi with the Ministry Rights Group in early 1996), and on problems of child labour, children's rights and schooling, which resulted in a book entitled *Restoring Childhood* by Sumi Krishna (Konark Publishers Pvt. Ltd. 1996, with a foreword by Chitra Naik). The Initiative has been particularly tenacious over prisons and policing. Following a New Delhi workshop in December 1994 (the report was entitled **Behind Prison Walls**) it has run follow-up events in several locations around India. For many Delhi-based events the Initiative has sought to involve people from other Commonwealth countries in South and South East Asia. Although it has never had a large staff it has been able to contribute to a stronger awareness of human rights in India in the 1990s, a movement stimulated also by increased respect for the new National Human Rights

Convention and its analogues in the states. But the Initiative has never lost sight of its wider Commonwealth commitments. In the course of 1997, for example, it has run events in Bangladesh, Mozambique and Britain, as well as in India. In September 1996 Ms. Maja Daruwala, who had been the human rights programme officer for the Ford Foundation in India, took over from Malti Singh. It was agreed then that, due to the unexpected turnover in the position of Director, the life of the office in India should be extended from five years (to August 1998) to six and a half (to December 1999). It was thought that the office would move next to an African country.

At the same time as the Initiative has been consolidating in India it has continued the practice of publishing biennial reports on human rights in the Commonwealth. These have been the special concern of the Advisory Commission. In 1995, in **Rights DO Matter**, the commissioners turned away from a survey approach and concentrated on two issues only - freedom of expression and recommendations arising from the work on prisons and policing. The introduction also referred to the grave situation building up on human rights in Nigeria, ruled by its military dictatorship. The Nigerian member of the Advisory Commission, Dr. Beko Ransome-Kuti, had been the subject of cat-and-mouse arrests for years. In July 1965, he was condemned to 15 years' jail on the trumped up charge that he had faxed a defence speech in another trial to friends outside Nigeria.

For the 1997 summit, to be held in Edinburgh, CHRI planned to focus on the threat posed by ethnic and religious conflict to human rights in several Commonwealth countries. A third area of activity developed in 1995, when the Initiative was invited by three Nigerian NGOs to send a human rights fact-finding mission to their country. After some difficulty in obtaining visas, Flora MacDonald, Dr. Enoch Dumbutshena (former Chief Justice of Zimbabwe) and Dr. Neville Linton, (a Trinidadian and formerly a senior diplomat with the Commonwealth Secretariat) spent a fortnight in Nigeria in July. They travelled and consulted widely across the country.

Their report **Nigeria-Stolen by Generals**, showed that the Nigerian regime was failing to observe the commitments of the Harare Declaration. This was true of civil and political rights, of economic, social and cultural rights, and even of children's rights.

On the cover of the report was a harrowing picture of children held behind barbed wire in Lagos. The report was influential in the build-up to the Auckland Commonwealth summit of November 1995. When the regime executed Ken Saro-Wiwa and other Ogoni activists within hours of the opening of the summit, in defiance of undertakings given to several Commonwealth leaders, the revulsion was dramatic. The Nigerian military regime was suspended from Commonwealth membership and a Ministerial Action Group of Foreign Ministers was set up to monitor compliance with the Harare principles in member states.

In the second half of 1996 the CHRI was invited by two Zambian NGOs to send a mission to examine preparations for the second multi-party election. There were fears of manipulation of the electoral register, censorship of the media, serious corruption at cabinet level, and of an electoral playing field that sloped sharply in the government's favour. This time the CHRI sent D. Hossain, Senator Reynell Andreychuk of Canada and Dr. Linton. The report **Zambia-Democracy on Trial**, supported most of these concerns. However, it was less immediately effective than the Nigerian exercise had been, in that Zambia's presidential election went ahead despite such flaws, and its outcome was accepted by the Commonwealth as a whole. Nevertheless, in spite of the difficulties in arranging such missions, the CHRI agreed that it

should continue to offer this service where it was justified. Indeed it proposed to the Commonwealth Ministerial Action Group that, where independent nongovernmental fact-finding could be useful, it would be ready to respond to requests from the Group.

Finally, the Initiative has had a wider influence in the 1990s. It has helped persuade many international NGOs that the Commonwealth is a serious arena for the promotion and defence of human rights. This was not a view commonly held in the 1980s. However, the suspension of Nigeria from membership - an act that could not easily be followed by a regional body such as the Organisation of Africa Unity, or the United Nations as a global organisation - suddenly put the Commonwealth in a vanguard position. Subsequent problems faced by the Ministerial Action Group have not taken away the fact that the Commonwealth had defined a military regime as pariah and membership of its association as a badge of good citizenship. Representatives of the Initiative regularly reported to the Commonwealth NGOs which founded it. The British House of Commons Foreign Affairs Committee praised its work, and urged that ways should be found to provide it with financial support. And in 1997 the Commonwealth Parliamentary Association, one of the most respected of Commonwealth bodies, joined the Initiative as a sixth sponsor.

### **3. Rights Do Matter 1995**

This report, like its predecessor, took two main themes - freedom of expression and the need for major reform in prisons, with an Introduction that looked at the two transitions taking place simultaneously in the world: a political transition from authoritarian to democratic political order and an economic transition from planned to market economies within an increasingly globalised world economy. It was 80 pages and contained 17 main recommendations. Three of its most important recommendations can be said to have been met.

1. The report said that if the regime in Nigeria did not free the political prisoners, lift its bans on the media, end all harassment of journalists, and produce a firm timetable to restore civilian rule within a year, Nigeria should be suspended from membership and sanctions imposed. The executions of Ken Saro-Wiwa and eight others just hours after CHOGM had opened in Auckland led to the suspension.
2. The report called for a contact group of foreign ministers to be set up to monitor the situation in West Africa. The Commonwealth Ministerial Action Group (CMAG) of eight foreign ministers set up in Auckland has been doing just that.
3. The other call, repeated from the first report, was for Britain to grant citizenship to British nationals of the ethnic minorities in Hong Kong and prevent them from becoming stateless. Shortly before Britain handed Hong Kong back to the Chinese this was done. The 1995 report also reiterated a long and deeply felt need - the enlargement of the Human Rights Unit in the Commonwealth Secretariat - and pointed to a passage in the 1993 Cyprus communique which remained quite unfulfilled. It still does.

Another main recommendation was for a Charter of the Rights for Prisoners to be drawn up. It should set an example by making a concerted effort to reform and, where necessary, re-educate police forces to respect human rights.

Steps to be taken included:

- a. A ministerial conference to exchange ideas on prison reform drawing on experiments already going on in many member countries.
- b. Governments to treat as a priority the elimination of all forms of torture.
- c. They should eliminate ill-treatment of children in prison, their detention with adults, and the holding of mothers with babies.
- d. Prison crowding to be reduced by speedy trials and cutting time whereby prisoners are held awaiting court appearance.
- e. Human rights education to be made compulsory for police and other law enforcement officers in all Commonwealth countries.
- f. NGOs were to be more involved, stepping up prison visits, pursuing public interest litigation.
- g. Human rights to be taught in all schools.

On freedom of expression, the report called for a statement from Heads of Government. It wanted the status of journalists raised and called for more resources for training, another unfulfilled objective.

Other recommendations included:

- a. Adequate budgetary resources to ensure the independence of the judiciary from the executive.
- b. Colloquia of judges should be convened to exchange ideas on judicial and law reform.
- c. The impact on human rights of development programmes should be appraised.
- d. Human rights commissions and economic and social commissions should be set up.

## Summary of previous recommendations by the Commonwealth Human Rights Initiative

### 1. Put Our World to Rights, 1991

This comprehensive report of 232 pages, prepared by an international Advisory Group chaired by Flora MacDonald, former External Affairs Minister of Canada, was published prior to the Commonwealth Heads of meeting in Harare. It was subtitled, **Towards a Commonwealth Human Rights Policy**, and addressed to governments, non-governmental organizations and the Commonwealth at large. It was the first independent survey of the state of human rights in the then 50 member countries, focusing on issues affecting large numbers of citizens, and providing practical guidance on how to use international machinery for redress. Altogether it made nearly 140 recommendations of which the following are the most important:

- (a) The Commonwealth Heads of Government at Harare should adopt a Declaration of Principles on Human rights as a first step in making a Commonwealth Human Rights Policy; this would include a commitment to enforce international and national provisions, to set an agenda, and to outline the responsibilities of the Commonwealth Secretariat and other institutions (pp. 176-7).
- (b) The Commonwealth should mediate when there is a threat to internal peace due to ethnic conflict, should establish a fund to support human rights activities and recognise the valuable role of NGOs in promoting and implementing human rights. No member state would arm or in other ways aid another in furtherance of the violation of the rights of its people (pp. 177-8).
- (c) Member governments should devise and implement national policies for human rights, including ratification and implementation of the international covenants and conventions; law officers including the Attorney-General should scrutinise new and existing legislation to ensure that it is compatible with provisions for human rights; officials, including police and prison staff, should be educated to observe human rights standards, judges and lawyers should be qualified and independent, and relevant NGOs should be able to bring actions on behalf of individuals or in the public interest; education in human rights should begin in primary schools; governments should recognise the legitimate function of human rights NGOs and the major role of a free press; administrative detention should be the last resort and governments should strengthen safeguards against arbitrary administrative detention; development projects must be carefully assessed to determine their impact on the land rights and economies of indigenous and tribal peoples; governments should incorporate women in decision-making, spotlight adverse sexual discrimination, and exchange views with religious and NGO bodies on religious and cultural obstacles to human rights for women; workers should participate in policies which affect them, workers right should be extended to export processing zones and rural areas, the right to strike should be provided for in legislation and Commonwealth states should permit independent trade unions (pp. 178-182).

- (d) Commonwealth Heads of Government should appoint a Standing Commission on Human Rights of ten or so independent experts to advise them on general issues affecting human rights, publishing a report prior to each Heads meeting; there should also be machinery for investigation and adjudication on human rights matters, with standing for NGOs the Secretary-General should implement a human rights policy through the official commonwealth agencies, and mediate in conflicts between or within member states which threaten human rights (pp. 183-4).
- (e) The resources of the Commonwealth Secretariat Human Rights Unit will have to be increased significantly; with the Legal Division it should disseminate judicial and other human rights developments, be involved in education and networking support for resource centres and NGOs; prior to establishment of a substantial fund for human rights work both the Commonwealth Fund for Technical Cooperation and the Commonwealth Foundation should assist this, and support NGOs; the Commonwealth of Learning should give priority to human rights education (pp. 184-5).
- (f) more specific suggestions (pp. 185-189) included:

***Detentions:*** The Human Rights Unit should prepare a paper on the international, regional and best Commonwealth standards on administrative detentions, including the grounds and procedure for detentions.

***Expression and information:*** The Commonwealth should advise member governments on constitutional and legal provisions guaranteeing freedom of expression and information; should study internal security, prevention of terrorism and similar acts with a view to developing acceptable guidelines, as also other media regulatory acts so that editorial independence and diversity may be ensured, consistent with legitimate national interests; studies should also be launched on media ownership, newsprint availability, and the licensing and registration of journalists and newspapers.

***Refugees:*** The Commonwealth Secretariat should prepare a comprehensive report on the state of refugees in Commonwealth countries, and should increase awareness of the 1951 Convention and its 1967 Protocol.

***Indigenous peoples:*** The Commonwealth should prepare a report on the various approaches to issues involving indigenous and tribal peoples, especially land rights and cultural autonomy, and make this a contribution to the ongoing work of the UN Working Group on Indigenous Populations; it should facilitate the participation of such peoples within Commonwealth bodies, states and initiatives and encourage exchanges and awards for them; and it should respond to the UN Year of Indigenous Peoples with a special conference.

***Women:*** The Commonwealth Secretariat should provide a follow up report to Engendering Adjustment to be made available to Ministers Responsible for Women's Affairs no later than 1995, focusing on how their changing economic situation affects the rights of women; such Ministers deserve more support - with Law Ministers and NGOs they should exchange views on domestic violence, and with Education Ministers they should examine the impact of formal education systems on human rights for women; all Commonwealth programmes and reports should include an assessment of their impact on

women.

**Children:** The Commonwealth should assist member governments to carry out their duties under the Convention on the Rights of the Child, and should compile information regularly on the state of children in the Commonwealth.

**Workers:** Commonwealth member states should consider the adoption of a charter regulating the activities of multinational companies in order to eliminate forms of competition which undermine workers human rights.

**Environment:** The Commonwealth should exchange information in the field of environmental protection, and Education Ministers could consider how best to educate ordinary citizens about environmental issues.

- (g) NGOs have an indispensable role to play in the protection and advancement of human rights, and should give special attention to education about human rights; in every country there should be at least one legal resource centre which could provide legal aid to other NGOs and individuals involved in human rights litigation; it would also undertake education in the legal rights of specialised groups, remind governments of deadlines for submitting reports to international monitoring bodies and help coordinate NGO submissions; there should be networking between such centres in Commonwealth states (pp. 189-90).
- (h) Commonwealth professional NGOs should adopt and where relevant review their codes of conduct to ensure that they conform to international standards; sponsoring organisations of the Commonwealth Human Rights Initiative and other suitable NGOs should stimulate networking; human rights-oriented NGOs should organize a Commonwealth conference on human rights every two years, in advance of the meeting of the Heads of Government and in the same place, focusing on current needs and forwarding recommendations to the Heads; there should be research into the roles of NGOs and the obstacles they face, including legislation such as the Societies Acts; Commonwealth NGOs should collect information on attacks on journalists and restrictions on newspapers; such NGOs should incorporate women into their own decision making processes ( pp. 190-1).
- (i) On the future of the Commonwealth Human Rights Initiative the group stated, “We propose that the sponsoring organisations of this Initiative should consider how best they might continue their support for human rights in the future, in collaboration with other, more grassroots NGOs”. (p. 191)

## **2. Act Right Now, 1993**

Subtitled “To Fulfill the Promise of Harare” this report was briefer than the first, being only 42 pages long with 12 main recommendations. Its purpose was to update the picture following the Harare Declaration, in terms of progress and setbacks within the Commonwealth, and it also took account of the UN World Conference on Human Rights at Vienna in June 1993. It reiterated some recommendations from 1991, but modified others- for example recommending a High Commissioner post instead of the earlier Commission proposal - and welcomed the progress in democratisation after Harare, in 1992 the Initiative had institutionalised itself by means of a Memorandum of Understanding and this report, which urged the Commonwealth to move

forward further at the Limassol submit, was prepared by its permanent Advisory Commission chaired by Dr. Kamal Hossain, formerly Law and Foreign Affairs Minister in Bangladesh. The following is a summary of the recommendations:

- (a) That an independent body should be established within the Commonwealth to look into allegations of violations of human rights, recommend appropriate redress and provide general advice on the promotion and protection of human rights. A suitable title might be the Commonwealth High Commissioner for Human Rights; this office could provide a lead to the world community which was unable to reach consensus on a UN Human Rights Commissioner at Vienna (p. 36).
- (b) That the half of Commonwealth states which had not yet ratified the two key international conventions - the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights -should do so. Commonwealth states which had ratified these and other human rights conventions should improve their record of reporting (p. 37).
- (c) That the Commonwealth should do more to secure democracy in states which have moved from one-party or military regimes to multi-party civilian systems. Only an elected, civilian Nigerian administration should be allowed to participate in the Cyprus Heads meeting (p. 37).
- (d) That the Commonwealth should do more to protect the rights of women, children, refugees and migrants, workers, indigenous peoples and minorities and the disabled. Specifically the Commonwealth should undertake a comprehensive study of the position of its indigenous and tribal minorities as a contribution to the 1993 International year of the World's Indigenous People's should promote a programme of study and exchange with regard to ethnic tolerance; and it should urge the British Government to grant full UK citizenship to British nationals in Hong Kong who, as members of ethnic minorities, would not be entitled to Chinese citizenship from July 1997 (pp. 37-38).
- (e) That the Commonwealth and member states should do more to respect rights which are frequently infringed- personal liberty, freedom of expression and association, the independence and protection of journalists, right to work and employment -if necessary by provision of special machinery. (p. 38)
- (f) That violators among state officials and security forces should be promptly brought to justice (p. 38).
- (g) That the Commonwealth should pay "more attention to economic and social rights, since relatively little regard is paid to the plight of the poor and disadvantaged, and to their basic needs. Workers and women should be more involved in planning and implementing social and economic programmes; more commitment is needed to sustainable development; resources released from disarmament should promote social, economic and cultural progress; and Ministries of Finance should accompany their budget proposals with analysis of their effect on socio-economic and labour rights (p. 38).
- (h) The Commonwealth should seek the active cooperation of human rights activists and NGOs. Their right to promote and protect human rights, through criticism of



governments, educational work, distribution of literature, meetings and litigation should be respected. Harassment is contrary to the Harare Declaration and the Cyprus CHOGM should acknowledge the contribution of such activists and guarantee their defence and safety. The Commonwealth Fund for Technical Cooperation, the Commonwealth Foundation and any special fund for human rights, should assist such organisations (p. 39).

- (i) The Secretary-General should offer his good offices in disputes between member states, or in ethnic or similar strife within a state which threaten human rights. The Secretariat should identify and disseminate good human practices within the Commonwealth (p. 39).
- (j) The Commonwealth should commit significantly increased resources to human rights activities and the special fund established at the time of the Harare CHOGM on the initiative of The Gambia and Canada should be strengthened (p. 40).
- (k) The additional human rights mandate for the Secretariat and the availability of fresh funds should lay the basis for a Commonwealth Action Plan for Human Rights with goals, targets, policies and concrete measures (p. 40).

### **3. Rights Do Matter, 1995**

This report, like its predecessor, took two main themes - freedom of expression and the need for major reform in prisons, with an Introduction that looked at the two transitions taking place simultaneously in the world: a political transition from authoritarian to democratic political orders and an economic transition from planned to market economies within an increasingly globalised world economy. It was 80 pages and contained 17 main recommendations.

Three of its most important recommendations can be said to have been met

- 1. The report said that if the regime in Nigeria did not free the political prisoners, lift its ban on the media, end all harassment of journalists, and produce a firm timetable to restore civilian rule within a year, Nigeria should be suspended from membership and sanctions imposed. The executions of Ken Saro-Wiwa and eight others just hours after CHOGM had opened in Auckland led to the suspension.
- 2. The report called for a contact group of Foreign Ministers to be set up to monitor the situation in West Africa. The Commonwealth Ministerial Action Group (CMAG) of eight Foreign Ministers set up at Auckland has been doing just that.
- 3. The other call, repeated from the first report, was for Britain to grant citizenship to British nationals of the ethnic minorities in Hong Kong and prevent them from becoming stateless. Shortly before Britain handed Hong Kong back to the Chinese this was done.

The 1995 report also reiterated a long and deeply felt need - the enlargement of the Human Rights Unit in the Commonwealth Secretariat - and pointed to a passage in the 1993 Cyprus communique which remained quite unfulfilled. it still does.

Another main recommendation was for a Charter of the Rights of Prisoners to be drawn up. It should set an example by making a concerted effort to reform and, where necessary, re-educate

police forces to respect human rights.

Steps to be taken included:

- a. A ministerial conference to exchange ideas on prison reform, drawing on experiments already going on in many member countries.
- b. Governments to treat as a priority the elimination of all forms of torture.
- c. They should eliminate ill-treatment of children in prison, their detention with adults, and the holding of mothers with babies.
- d. Prison crowding to be reduced by speedy trials and cutting time prisoners are held, awaiting court appearance.
- e. Human rights education to be made compulsory for police and other law enforcement officers in all commonwealth countries.
- f. NGOs were to be more involved, stepping up prison visits, pursuing public interest litigation.
- g. Human rights to be taught in all schools

On freedom of expression, the report called for a statement from Heads of Government. It wanted the status of journalists raised and called for more resources for training, another unfulfilled objective.

Other recommendations included:

- a. Adequate budgetary resources to ensure the independence of the judiciary from the executive.
- b. Colloquia of judges should be convened to exchange ideas on judicial and law reform.
- c. The impact on human rights of development programmes should be appraised.
- d. Human rights commissions and economic and social commissions should be set up.

# APPENDIX III

## Ratifications or Signatures of International Instruments

	O ICESCR	N ICCPR (+OP)	M CERD	A APARTHEID	V TORTURE	P REFUGEES	U WOMEN	D GENOCIDE	W CHILDREN	C ILO 87	E ILO
TOTAL	30	30	41	25	21	30	44	28	53	22	29
53											
Antigua & Barbuda			X	X	X	X	X	X	X	X	X
Australia	X	X+OP	X		X	X	X	X	X	X	X
Bahamas			X	X		X	X	X	X	X	X
Bangladesh			X	X			X		X	X	X
Barbados	X	X+OP	X	X			X	X	X	X	X
Belize			X		X	X	X		X	X	X
Botswana			X			X			X		
Brunei Darussalam									X		
Cameroon	X	X+OP	X	X	X	X	X		X		X
Canada	X	X+OP	X		X	X	X	X	X	X	
Cyprus	X	X+OP	X		X	X	X	X	X	X	X
Dominica	X	X				X	X		X	X	
The Gambia	X	X+OP	X	X	S	X	X	X	X		
Ghana			X	X		X	X	X	X	X	X
Grenada	X	X	S				X	1	X		X
Guyana	X	X+OP	X	X		X		X	X	X	X
India	X	X	X	X			X	X	X		
Jamaica	X	X+OP	X	X		X	X	X	X	X	X
Kenya	X	X		S		X	X		X		X
Kiribati	1	1				1			X		
Lesotho	X	X	X	X		X	X	X	X	X	X
Malawi	X	X+OP				X	X		X	S	X
Malaysia							X	X	X		X
Maldives			X	X			X	X	X		
Malta	X	X+OP	X		X	X	X		X	X	X
Mauritius	X	X+OP	X		X		X		X		X
Mozambique		X	X	X		X		X	X		
Namibia		X+OP	X	X	X		X	X	X		
Nauru									X		
Pakistan			X	X			X	X	X	X	X
Papua New Guinea			X			X	X	X	X		X
St. Kitts & Nevis							X		X		
St. Lucia		1	X			1	X	1	X	X	X
St. Vincent & the Grenadines	X	X+OP	X	X			X	X	X		
Samoa						X	X		X		
Seychelles	X	X+OP	X	X	X	X	X	X	X	X	
Sierra Leone		X	X		S	X	X		X	X	X
Singapore							X	X	X		X

Solomon Island	1		1		X	X	S		X		
Sri Lanka	X	X	X	X	X		X	X	X		X
Swaziland			X			X			X	X	X
Tonga			X					X	X		
Tirinidad & Tobago	X	X+OP	X	X			X		X	X	X
Tuvalu						X			X		
Uganda	X	X+OP	X	X	X	X	X	X	X		X
United Kingdom	X	X	X		X	X	X	X	X	X	X
United Repub. of Tanzania	X	X	X	X		X	X	X	X		X
Vanuatu						X	X		X		
Zambia	X	X+OP	X	X		X	X		X		
Zimbabwe	X	X	X	X		X	X	X	X		
New Zealand	X	X	X		X	X	X	X	X		
Nigeria	X	X	X	X	S	X	X		X	X	X
South Africa	S	S	S		S	X	X	X	X		

## **Written submission to the Commonwealth Ministerial Action Group (CMAG) by the Commonwealth Human Rights Initiative.**

The Commonwealth Human Rights Initiative (CHRI) has taken special interest in the situation in Nigeria since 1989, when Dr. Beko Ransome-Kuti was invited to join its Advisory Group which produced out initial survey *Put our World to Rights*, in advance of the 1991 Commonwealth Heads of Government meeting.

CHRI was concerned at the frequent arrests of Dr. Ransome-Kuti and others working for human rights and democracy.

In 1993 it recommended that only a duly elected Nigerian president should be allowed to attend the Limassol Commonwealth summit In 1995, CHRI'S fact-finding report *Nigeria-Stolen by the Generals* demonstrated that conditions were widely at variance with the 1992 Harare Declaration.

Dr. Ransome-Kuti has now been held for more than two years for his stand on democratic rights and has suffered several bouts of ill-health. He is in solitary confinement for 23 hours a day and is allowed one visit a month by his daughter of 20 minutes duration. Six officials are always in attendance at these meetings.

Other prisoners are also held in humiliating circumstances. It is particularly appalling that General Olusegun Obasanjo, joint chairman of the Commonwealth Eminent Persons Group mission to South Africa in 1986, which played such a vital role in paving the way for democratic rule in South Africa and who visited Nelson Mandela in jail, is now himself held under much worse conditions than was the South African President Furthermore, the presumed winner of the aborted 1993 elections, chief Mashood Abiola, has been held for three years without trial.

Although Commonwealth Heads of Government called for the release of all Nigerian political prisoners at Auckland in November 1995, most still remain in jail.

Nigeria has now been under military rule for 12 years. The Commonwealth Lawyers Association statement that 60,000 people are being held in prison unlawfully is truly shocking viewed against the Commonwealth's Harare commitment.

Some 200 Ogoni people are held without trial in appalling conditions, many of them subjected to whipping and torture. Another 18 await trial, a 19th having died in prison. The UN special Rapporteur on torture has likened Nigeria to South Africa under apartheid. In addition, the damage to the environment of Ogoniland as a result of oil operations, undertaken with government acquiescence, has been a grave violation of human rights.

## **CHRI puts before the Ministerial Action Group [CMAG] the following points for consideration:**

We believe that CMAG should express its continuing grave concern at evidence of repression of

human rights by the government of Nigeria. We fear for the physical and psychological health of the detainees and regret that CMAG did not refer to them adequately during its Nigeria visit. The regime should never be allowed to rest easy in this respect.

A regular pattern of detention and arbitrary arrest of pro-democracy activists and journalists continues unabated. Within the last few weeks these have included two former presidential candidates, the editor of *The Week*, and Dr. F. Faseun, a representative of the Campaign for Democracy. Token releases at the time of the CMAG visit in November 1996 have been overshadowed by subsequent events, including harassment of ordinary civilians under the guise of Operation Sweep in Lagos. The regime has shown a cynical readiness to dally with international opinion.

CMAG should assess very critically the so-called transition process now under way in Nigeria. The recent council since the 1993 annulment, were held three months later than the promised schedule, and shortly afterwards a decree empowered the Head of State to remove any local council head if he is satisfied that the affairs of them are not being managed in the best interest of the people of Nigeria. It was also said that no civil court could challenge the validity of the election or the decision of a special election tribunal.

CHRI believes that, far from there being any real improvement in the situation since CHOGM 1945, matters have worsened. A new report by two of the special investigators of the UN Human Rights Commission says the rule of law in the country is near collapse. It adds that some judges have stopped issuing court orders because the government refuses to obey them.

We believe Nigeria is moving inexorably to establish a military group as, or in, a political party which if not checked would encourage the reprehensible practice of perpetuating illegally gained power.

The current Nigerian transition process is undemocratic. Selection of the five political parties has been so engineered as to marginalise mainstream and established political parties, and known democratic personalities-all in flagrant breach of the Harare Principles.

We much regret that CMAG went to Nigerian without first being assured that its members could see the political prisoners and without securing the presence of their Canadian colleague. When in the country the group failed to meet representatives of those groups which have sought to alert the international community to what is going on and to the potential for crisis, illustrated by the recent spate of explosion. It is vital that CMAG should meet such groups and CHRI would be willing to facilitate such meetings.

By contrast with CMAG, two UN Special Rapporteurs cancelled plans to visit Nigeria in February-March because of the conditions imposed by the regime, including refusal to admit them to the prisons.

In any even, we hope that before CMAG reports to Heads of Government in Edinburgh, it will hold oral hearings with expert Commonwealth groups with an interest in its work. As set up by the Millbrook Plan of Action, CMAG is a highly significant new device, with a wider remit than the West African military regimes to which it was asked to give first attention. CHRI supports CMAG and would like it to succeed.

In conformity with the Millbrook Plan of Action, CHAG should point out that the so-called transition programme does not meet the criterion of demonstrable progress: which would allow for the lifting of suspension of Commonwealth membership. It should declare that the council elections cannot be regarded as a step towards democracy and represent in fact a subversion of the process towards a truly representative government.

To satisfy the Millbrook criteria, urgent steps should be taken to restore democracy, respect for human rights and the rule of law at all levels, in particular by:

- guaranteeing freedom of movement
- guaranteeing freedom of expression and association
- ensuring independence of the judiciary
- immediately releasing all prisoners not formally charged with any crime or sentence by tribunals on political charges
- guaranteeing free and fair access to the political system by all parties which would traditionally be called legitimate.

The immediate release of General Obasanjo and Dr. Ransome-Kuti and others arbitrarily detained would be widely welcomed as the initiation of a process towards meeting the above expectation.

In the run-up to the Edinburgh summit, member states should apply vigorously and totally sanctions similar to those imposed on apartheid South Africa, as recommended by CMAG in April 1996.

CHRI believes Commonwealth countries should at once end all sporting links with Nigeria and suspend the country from the 1998 Commonwealth Games.

The Commonwealth should call on other countries and international groups, especially the United States, the Organisation of African Unity, and the European Union, to build pressure through sanctions. It should act in solidarity with states which agree to sanctions but which require compensation in order to stand against Nigeria.

It should recognise the particular role of the oil companies such as Shell, AGIP, and Elf in the Nigerian context and call on them and their host governments to initiate verifiable practices that uphold human rights and the rule of law in their countries.

The Commonwealth at large has been disheartened, and the Nigeria dictatorship encouraged by the lack of robust determination in many capitals. By contrast, in the early 1990s, Commonwealth nations pursued a policy of sanctions and dialogue with apartheid South Africa and only gradually lifted its sanctions in response to verified progress towards human rights and democracy.

The Nigerian government has successfully exploited a weakness of resolve within the Commonwealth and threatens to undermine the credibility of the Harare Declaration and the Millbrook Plan of Action-and indeed of the commonwealth itself.

We believe the Commonwealth is heading for profound international embarrassment unless it toughens its stance in advance of CHOGM, marshals world pressures against the regime and

implements sanctions. The Harare principles are being betrayed-in the first instance when the Commonwealth failed to protest about the abortion of the 1993 election. Ultimately, the Commonwealth is more important than Nigerian membership.

CHRI deplores the failure of the CMAG to make any impact on the Nigerian government in terms of its remit under the Millbrook Plan of Action.

As CHRI deplores the failure of the CMAG to make any impact on the Nigerian intransigence from the Commonwealth stand taken in Auckland and by the Group itself at its fast meeting after CHOGM in January 1996. The resolve to visit Nigeria immediately was frustrated; Nigerian insistence on meeting the group outside the country was conceded, and finally CMAG went to Nigeria without seeing any of the prisoner. Threatened sanctions have never been implemented.

Paragraph 10 of the Heads of Government Auckland communique said Heads of government had decided that if no demonstrable progress had been made towards the fulfilment of conditions that included compliance with the principles of the Harare Declaration and the release of prisoners Nigeria would be expelled from the association within a timeframe to be stipulated.

We believe that Nigeria must now be asked for firm pledges that elections will be carried out on schedule in 1998 under Commonwealth supervision and with teams of Commonwealth observers.

It should be clearly laid down that if such pledge have not been kept by the end of 1998 or that the observers declare that elections have not been properly carried out and Nigeria should be expelled.

The Commonwealth can do no less if it is to retain its credibility.



## CHRI mission to Zambia - August 1996

### Terms of Reference

In the Harare Declaration Commonwealth governments committed themselves to protect and promote:

- \* democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government;
- \* fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief.

It is generally acknowledged that a prime test of the development of democracy in new emerging systems would be the conducting of the next general election after the installation of a government based on the multiparty democracy. Zambia should hold such an election before the end of October 1996 and there has been deep concern, both domestic and international, about serious charges of corruption at all levels of government, major restrictions on press freedom and recent constitutional changes which are seen as specifically undermining human rights.

Against this background and following specific invitation the Commonwealth Human Rights Initiative has decided to send a fact-finding mission to Zambia to:

a) review conditions in Zambia in the light of that country's long established recommendations of the CHRI Zambia mission:

- \* A dialogue on the issues is needed between the ruling MMD, the opposition UNIP and other parties - chaired by a respected Zambian personality of neutrality
- \* It should focus on formulae for an early election, adjustments to provide more fairness and equal rights in the registration process and the qualification of Presidential candidates.
- \* The government should acknowledge the need for proper national debate on the 1995 constitution commission proposals in a recommendations of the CHRI Zambia mission:
- \* A dialogue on the issues is needed between the ruling MMD, the opposition UNIP and other parties - chaired by a respected Zambian personality of neutrality
- \* It should focus on formulae for an early election, adjustments to provide more fairness and equal rights in the registration process and the qualification of Presidential candidates.
- \* The government should acknowledge the need for proper national debate on the 1995 constitution commission proposals in a constituent assembly.
- \* To go into an unpopular election might force it into escalating authoritarianism.

Government should not risk suspension of aid, especially as this could trigger domestic unrest

- \* To build confidence the Electoral Commission should be delinked from the Vice-President's office, allow equitable access to radio and TV for parties fighting the election, reduce time to secure a permit to hold a public meeting; ensure ministers and MMD must not use public service personnel, state funds and resources for electioneering.
- \* The President should distance himself from ministers whose behaviour has led to charges of corruption, even by donors.
- \* Ways should be found to provide some resources for parties from public funds.
- \* The media should set up its own self-regulating mechanisms and agree on a code of practice.
- \* All parties should subscribe to a Code of Conduct for the elections.

Note: In the event elections were held on 18 November and were boycotted by UNIP. MMD took 131 of the 150 seats. Turn out was low 58.23% of the registered electorate, which was 2.5 million in an adult population of 4.5 million.

## **The Millbrook Commonwealth Action Programme on the Harare Declaration.**

1. At Harare in 1991, we pledged to work for the protection and promotion of the fundamental political values of the association, namely democracy, democratic processes and institutions which reflect national circumstances, fundamental human rights, the rule of law and the independence of the judiciary, and just and honest government. We agreed at the same time to work for the promotion of socio-economic development, recognising its high priority for most Commonwealth countries. During our Retreat at Millbrook, we decided to adopt a Commonwealth Action Programme to fulfil more effectively the commitments contained in the Harare Commonwealth Declaration. This Programme is in three parts:
  - (i) advancing Commonwealth fundamental political values;
  - (ii) promoting sustainable development; and
  - (iii) facilitating consensus building.

### **Advancing Commonwealth fundamental political values**

#### **Measures in Support of Processes and Institutions for the Practice of the Harare Principles.**

2. The Secretariat should enhance its capacity to provide advice, training and other forms of technical assistance to governments in promoting the Commonwealth's fundamental political values, including:
  - \* assistance in creating and building the capacity of requisite institutions;
  - \* assistance in constitutional and legal matters, including with selecting models and initiating programmes of democratisation;
  - \* assistance in the electoral field, including the establishment or strengthening of independent electoral machinery, civic and voter education, the preparation of Codes of Conduct, and assistance with voter registration;
  - \* observation of elections, including by-elections or local elections where appropriate, at the request of the member governments concerned;
  - \* strengthening the rule of law and promoting the independence of the judiciary through the promotion of exchanges among, and training of the judiciary;
  - \* support for good government, particularly in the area of public service reform; and
  - \* other activities, in collaboration with the Commonwealth Parliamentary Association and

other bodies, to strengthen the democratic culture and effective parliamentary practices.

### **Measures in Response to Violations of the Harare Principles.**

3. Where a member country is perceived to be clearly in violation of the Harare Commonwealth Declaration, and particularly in the event of an unconstitutional overthrow of a democratically elected government, appropriate steps should be taken to express the collective concern of Commonwealth countries and to encourage the restoration of democracy within a reasonable time frame. These include:
  - (i) immediate public expression by the secretary-general of the Commonwealth's collective disapproval of any such infringement of the Harare principles;
  - (ii) early contact by the secretary-general with the de facto government, followed by continued good offices and appropriate technical assistance to facilitate an early restoration of democracy;
  - (iii) encouraging bilateral demarches by member countries, especially those within the region, both to express disapproval and to support early restoration of democracy;
    - \* appointment of an envoy or a group of eminent Commonwealth representatives where, following the secretary-general's contacts with the authorities concerned, such a mission is deemed beneficial in reinforcing the Commonwealth's good offices role
    - \* stipulation of upto two years as the time frame for the restoration of democracy where the institutions are not in place to permit the holding of elections within, say, a maximum of six months;
    - \* pending restoration of democracy, exclusion of the government concerned from participation at ministerial-level meetings of the Commonwealth, including CHOGMs;
    - \* Suspension of participation at all Commonwealth meetings and of Commonwealth technical assistance if acceptable progress is not recorded by the government concerned after a period of two years; and
    - \* consideration of appropriate further bilateral and multilateral measures by all member states (e.g. limitation of government-to-government contacts; people-to-people measures; trade restrictions; and, in exceptional cases, suspension from the association), to reinforce the need for change in the event that the government concerned chooses to leave the Commonwealth and/or persists in violating the principles of the Harare Commonwealth Declaration even after two years.

### **Mechanism for implementation of Measures.**

4. We have decided to establish a Commonwealth Ministerial Action Group on the Harare Declaration in order to deal with serious or persistent violations of the principles contained in that Declaration. The Group will be convened by the secretary-general and will comprise the

Foreign Ministers of eight countries<sup>36</sup> supplemented as appropriate by one or two additional ministerial representatives from the region concerned. It will be the Group's task to assess the nature of the infringement and recommend measures for collective Commonwealth action aimed at the speedy restoration of democracy and constitutional rule.

5. The composition, terms of reference and operation of the Group will be reviewed by us every two years.

### **Promoting sustainable development**

6. We reaffirmed our view that the Commonwealth should continue to be a source of help in promoting development and literacy and in eradicating poverty, particularly as these bear on women and children. With a view to enhancing its capacity in this area, we agreed on the following steps:
  - (i) to strengthen the Secretariat's capacity for undertaking developmental work through support for its various Funds and especially by restoring the resources of the CFTC to their 1991/92 level in real terms; and to provide adequate resources to the Commonwealth of Learning and to the Commonwealth Foundation;
  - (ii) to support a greater flow of investment to developing member countries through such schemes as the Commonwealth Private Investment Initiative;
  - (iii) to work for continued progress in assisting countries with unsustainable debt burdens and to promote enhanced multilateral concessional financial flows to developing countries; particularly, to support new and innovative mechanisms for relief on multilateral debt, such as the one proposed by the British Chancellor of the Exchequer at the 1994 Commonwealth Finance Ministers Meeting in Malta, and reiterated subsequently;
  - (iv) to support the Secretariat in facilitating the adoption by more Commonwealth countries of successful self-help schemes, with non-governmental agencies and others acting as a catalytic agents, for mobilising the energies of people in alleviating poverty;
  - (v) to support the efforts of small island developing states to mitigate the effects on their development of environmental change, natural disasters and the changing international trading system; and to combat the spread of HIV/AIDS, which threatens a large part of the younger population of many countries, recognising that the effective exploitation of economic opportunities requires a healthy and educated population; and to provide further resources to renew the core funding of the Southern African Network of AIDS Organisations (SANASO), along with increased funding for UNICEF initiatives in Southern Africa.

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<sup>36</sup> It was subsequently announced that the Group would comprise the Foreign Ministers of Britain, Canada, Ghana, Jamaica, Malaysia, New Zealand, South Africa and Zimbabwe.

## **Facilitating consensus building**

7. We were convinced that the Commonwealth, with its global reach and unique experience of consensus building, was in a position to assist the wider international community in building bridges across traditional international divides of opinion on particular issues. We therefore agreed that there was scope for the association to play a greater role in the search for consensus on global issues through:
  - (i) use of their government's membership of various regional organisations and attendance at other international gatherings to advance consensual positions agreed within the Commonwealth;
  - (ii) use, where appropriate of special missions to advance Commonwealth consensual positions and promote wider consensus on issues of major international concern; and
  - (iii) use of formal and informal Commonwealth consultations in the wings of meetings of international institutions with a view to achieving consensus on major concerns.

*12 November 1995*