

SILENCING THE DEFENDERS:

Human Rights Defenders in the Commonwealth



CHRI

Commonwealth Human Rights Initiative

working for the practical realisation of *human rights* in the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations allows for a national presence and an international network.* These professionals can also steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policy-makers, highlight issues, and act in concert to promote human rights.

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foreword

The Commonwealth holds within it some of the most vibrant civil society organisations and human rights defenders and some of the most at risk. First to speak out against the abuse of power and breaches of the rule of law, human rights defenders are a bulwark against the erosion of civil liberties and are advocates of the oppressed and marginalised. By the very nature of their work they further the core principles that the Commonwealth is pledged to uphold.

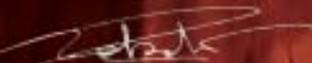
Governments and human rights defenders are therefore natural allies. Yet across the Commonwealth human rights defenders are deliberately suppressed, work under the daily risk of abuse and are the target of both state and non-state actors for nothing more than going about their lawful activities. Many governments continue to see human rights as a brake on their power and the activities of defenders as a defiance of authority. Many would like to silence human rights defenders and many do.

The police, taking their cue from signals of the powerful, are often overzealous in the oppression of human rights defenders, and it is their actions that are the most visible. CHRI has repeatedly pointed out that in many jurisdictions obstacles to bringing illegal and abusive policing to book are prohibitive and allow impunity to flourish. At the same time there is much good policing practice in the Commonwealth. Heads of State would do a great service to their people if they mandated an examination of what common principles go into creating democratic policing. These could guide their operationalisation within Member States. Resistance to more accountable and overall better policing which *upholds* the law rather than merely enforces it holds back democracy and development.

Those who would suppress dissent and peaceful challenges to authority little realise the vast ramifications of their actions. Attacks on human rights defenders severely undermine democracy and hugely increase the risk to national security. Violating their rights may silence the immediate targets but those violations also intimidate others into not speaking out and render voiceless all those on whose behalf human rights defenders dare to advocate. Discrimination is consolidated and the cycle of oppression becomes ever more difficult to break. This process of exclusion can drive people to desperate measures that directly impact security, as CHRI has emphasised in its 2007 report, *Stamping Out Rights*.

True security comes with assured human rights protection, and human rights protection begins with the protection of human rights defenders. The active engaged human rights defender is the surest ally of the security establishment. The UN Declaration on Human Rights Defenders that all Commonwealth Member States have agreed to, recognises the relationship between international peace and security on the one hand and the enjoyment of human rights and fundamental freedoms on the other. It also recognises the crucial role that human rights defenders have to play in realising those goals. But until human rights defenders have the security that they need to promote and protect human rights without fear of repression, universal respect for human rights, and corresponding security, will continue to be elusive.

The purpose of the present report is to urge the Commonwealth and its Member States to recognise and value the work of human rights defenders, afford them the space and protection needed for them to engage with those who govern, and put in place practical measures that will assure their ability to serve the cause of good governance, development and rights. These measures include eradicating impunity, ensuring zero-tolerance for abuse of power, proactively putting in place actionable, time bound national human rights plans and articulating clear policies that indicate that defenders will be afforded both space and real protection when they engage in peaceful activities to promote human rights.



Sam Okudzeto
Chair, Commonwealth Human Rights Initiative
New Delhi, 2009

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Maja Daruwala
Director, CHRI

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Chapter I

UN Declaration on Human Rights Defenders

The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was agreed to unanimously by the General Assembly in 1998. It does not create new rights but rearticulates already existing rights in the context of the activities of human rights defenders. The Declaration was adopted in recognition of two fundamental facts: first, that the activities engaged in by human rights defenders are legitimate and valuable, and second, that by engaging in those activities human rights defenders make themselves vulnerable to reprisals.

Being a Human Rights Defender

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

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

The Declaration describes human rights defenders as “people who, individually and in association with others ... promote and ... strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.

The Declaration describes human rights defenders as “people who, individually and in association with others ... promote and ... strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.¹ This understanding of who a human rights defender is, has since been adopted by other international and regional bodies. The Commonwealth Secretariat describes human rights defenders as “individuals, groups and organisations that promote and protect universally recognised human rights and fundamental freedoms”.² The Council of Europe simply notes that there is no need to go beyond the UN definition,³ thus recognising that there is no advantage in making it any more specific. The European Union (EU), the African Commission on Human and Peoples’ Rights (ACHPR) and the Organization of American States (OAS) have adopted as part of their mandate the implementation

of the Declaration and along with it the same understanding of who is a human rights defender.⁴ This widely accepted activity-based definition of a human rights defender captures the idea that it is simply the *activity* of promoting human rights that makes someone a defender and in need of protection.

The most obvious examples of human rights defenders are non-governmental organisations (NGOs) and activists working with the declared mandate to promote the implementation of human rights standards. However, the term human rights defender is much broader than this and includes anyone whose work tends to promote human rights. This would include humanitarian workers who might generally consider themselves as working in development rather than human rights, such as the staff of the International Committee of the Red Cross, who work without any political agenda, making no judgement as to the rights and wrongs of the actors caught up in the situation, and focus instead on providing access to basic resources such as food, shelter and water. Others whose work puts them in a particularly strong position to promote human rights, but who are not professional human rights workers, include lawyers, journalists, teachers, clergy and trade unionists.

The human rights components of human rights defenders’ work need not be something regular or a necessary part of their everyday work. Celebrities often use their high profiles to promote human rights. They may do this in an official capacity, for example as one of the United Nations’ “Goodwill Ambassadors”, or by exploiting their star status to make widely read statements, give concerts and make appeals that draw mass attention to otherwise barely known but extreme situations. Other people further the cause of human rights simply by incorporating human rights principles into their

work, for example, a police officer who carries out his or her duties in accordance with those principles. Yet others become human rights defenders on the basis of a single action they take, such as participating in a march to protest a wrongful act or policy, lighting a candle in solidarity with those whose human rights are being violated, fasting to highlight the plight of a community, writing a blog, joining a human rights related email listserv, or signing on to a mass letter. The broadness of the definition of a human rights defender ensures that every possible way in which human rights can be promoted peacefully, whether by groups or individuals, by professionals or those acting outside of any employment context, at grassroots, national, regional or international levels, is given protection under the Declaration.

All shapes and sizes

A **musician** in Cameroon uses his song lyrics to highlight infractions of human rights. In 2008 he released an album condemning constitutional amendments that would allow President Paul Biya to extend his rule indefinitely.⁵ As a result of the album he apparently became a target for the authorities⁶ and he is currently serving a three year jail term on grounds that he incited a February 2008 strike in Mbanga, Cameroon.⁷

A **housewife and mother** from the United Kingdom is one of the more active critics of the Serious Organised Crime and Police Act, 2005. She has received more than fifty summons under the Act for protesting without authorisation.⁸

A **hotelier** in Barbados contributes to blogs that expose government misdemeanours and hypocrisy. He has received repeated death threats, including promises to burn down his hotel.⁹

The Rights of Human Rights Defenders

The Declaration does not provide human rights defenders with new or special rights but brings together previously agreed legal obligations found elsewhere in international human rights law.¹⁰ Many of these, for example, can be found within the International Covenant on Civil and Political Rights (ICCPR). Commonwealth countries that have ratified any of the treaties from which the rights in the Declaration derive are already under a legal obligation to implement those rights. Similar but independent obligations to assure their fullest realisation also arise from their presence in many of the constitutions of Commonwealth countries. The non-binding nature of the Declaration does not therefore mean that countries are not legally obligated to ensure that the rights in it are implemented. The Declaration simply reiterates already existing rights as being noteworthy in the context of the work that human rights defenders do and their need to be able to do it unhindered and protected. So, for example, the inclusion of the right to freedom of association recognises the power of organisation as a means of pursuing shared interests, in particular for those marginalised individuals such as women, minorities and the disabled. Through self-help groups, professional bodies, trade unions and any number of other collaborative efforts, individuals can speak with a combined voice, which is a stronger force for the realisation of their rights than disparate, singular dissent. Similarly, freedom of assembly is included within the Declaration because the ability to come together with others, whether in private or in public, enables the process of the exchange of information and ideas, through engaging in debate, airing grievances or highlighting opposition to policies, which is necessary for the promotion and furtherance of the concept of human rights.

The issues that human rights defenders advocate may not be particularly popular or mainstream but this does not make the activity of promoting them any less legitimate. Many rights and principles that are broadly accepted today, such as voting rights for women or the principle of equal pay for equal work, have become commonplace and accepted standards globally only as a result of decades of

struggle. Recognising this, the Declaration specifically protects the right “individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance” [emphasis added].¹¹

While placing no restrictions on which human rights ideas defenders can promote, the Declaration notes that the universality of human rights – the principle that all human rights belong to all human beings – should be respected at all times.¹² In India, two men suspected of disfiguring two young women in an acid attack were killed by the police in what was widely believed to be an extrajudicial killing.¹³ Caught up in the exigencies of the moment, some women’s rights groups, would-be defenders themselves, spoke up in favour of the alleged police action describing it as “instant justice”.¹⁴ In doing so they undermined the suspects’ rights “to be presumed innocent until proved guilty according to law” and to “a fair and public hearing by a competent, independent and impartial tribunal established by law”.¹⁵

Information is the cornerstone of the work of human rights defenders; without it, it is impossible to develop the informed opinions that are the basis of the promotion and protection of human rights. Having full and timely information also facilitates responsible and informed citizen participation in governance. The Declaration reiterates the right to seek, obtain, receive and hold information relating to human rights. States are required to ensure access to domestic legislation and international human rights laws¹⁶ and any other international documents relating to human rights including any periodic reports by the state to the bodies established by the international human rights treaties to which it is a party.¹⁷

Free flow of information requires legal guarantees of access to government-held information. In 1999, the Commonwealth laid down agreed principles that should shape access to information legislation across the association,¹⁸ and in 2002 drafted a model Freedom of Information Act,¹⁹ but, despite global trends to move towards more participatory democracy, to date only fourteen Commonwealth countries have their own freedom of information laws (Antigua and Barbuda, Australia, Bangladesh, Belize, Canada, India, Jamaica, New Zealand, Pakistan, South Africa, Saint Vincent and the Grenadines, Trinidad and Tobago, Uganda and the United Kingdom). Compounding the problem, many Commonwealth countries still have official secrets acts, which are either based on or are identical to the United Kingdom’s Official Secrets Acts of 1889, 1911 and 1920. While these colonial era laws have been revised or repealed in certain countries (including in the United Kingdom) to take account of a global movement towards increased transparency and accountability in government, other countries, such as Barbados²⁰ and the Solomon Islands,²¹ still retain the more repressive versions.

Significantly, the Declaration makes particular mention of the right to “solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means”.²² The receipt of funds is important to sustaining the activities of many human rights defenders and reference to it in the Declaration aims to secure the financial basis that makes those activities possible. Cooperation between organisations in terms of the supply of funding increases the sense of solidarity amongst human rights defenders, as well as increasing possibilities for advocacy, which are particularly valuable goals when achieved across borders. For this reason, several human rights communiqués agreed by the international community exhort cross border support – by way of technical assistance and finances – for the promotion of human rights.²³

Governments, however, tend to be resistant to cooperation of this nature, both within and across their borders, because it provides a basis for stronger and more unified criticism of their own activities. This in turn makes them suspicious of the entry into their countries of funds that could be used to generate that criticism. Although the UN High Commissioner for Human Rights has confirmed that the entitlement to receive funding contained within the Declaration extends to the “receipt of funds from abroad”,²⁴ governments continue to take advantage of the fact that the regulation of funds from abroad is one of the easiest and most effective ways to restrict uncomfortable activities of human rights defenders within borders. After 9/11, on the excuse of monitoring in-flows of funding for terrorism, there has been a growing trend within the Commonwealth to place restrictions on, or

add conditionality to, the receipt of foreign funds by human rights groups. For example, a Sri Lanka defence spokesman recently announced that “aid or grants coming from other foreign countries should not directly go to the INGOs or NGOs and should be channelled through the government’s management and the administration”,²⁵ while the Indian government has sought to further restrict the receipt of foreign funds by the non-profit sector through proposed amendments to the Foreign Contributions (Regulation) Act (1976) that would, amongst other obstructions, increase discretionary powers to refuse registration of NGOs, by introducing a condition that the NGO should have engaged in “meaningful” activities or projects “for the benefit of the people”.²⁶ Such broad wording leaves plenty of room for official subjectivity to come into play and introduces a basic uncertainty which is bound to permeate the workings of the organisation. The Bill would also require the renewal every five years²⁷ of currently permanent permissions and would introduce a registration fee.²⁸

In the process of effecting positive change, the ability to lobby powerful agents is essential. To this end, the Declaration acknowledges the value of engagement with government, for example through making technical submissions, presenting proposals for improved functioning, or drawing attention to “any aspect of [government] work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms”.²⁹ Along with access to the government of the human rights defender’s own country, the Declaration includes reference to the right to communicate with non-governmental and intergovernmental organisations³⁰ and reiterates the right to “unhindered access to and communications with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms”.³¹ This broad wording covers any possible communication that might occur between human rights defenders and human rights mechanisms, from making requests for information, to submitting shadow reports to treaty bodies or complaints to the UN Special Rapporteurs, and emphasises that human rights defenders should be free to access and utilise any procedure that an organisation, at national, regional and international levels, might have. These rights are specific aspects of the right of freedom of association and are essential to the exchange of information that strengthens and promotes the human rights discourse worldwide.

The Declaration requires that states bring their laws into line with international standards, repeal laws that run contrary to the rights of defenders and make laws that maximise defenders’ ability to freely go about their work. Any limit on this must be “solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.³² In turn, human rights defenders must follow the laws of a country, and can promote their causes only by peaceful means.³³ The pursuit of human rights often involves long struggles against enormous intolerance and unchecked power, and the temptation to go beyond constructive engagement to open violence may sometimes be overwhelming. Nevertheless, states are not required to tolerate those who turn to violence. This does not mean that those who resort to violence lose the protection of the law, the right to self defence or the right to fair trial.

Rights and entitlements are only as good as available remedies. The Declaration recognises this by including reference to the duty of states to ensure that human rights defenders should “benefit from an effective remedy and ... be protected in the event of the violation of those rights”.³⁴ An ineffective and non-independent judiciary leaves human rights defenders particularly vulnerable to victimisation at the hands of an unchecked executive. In many Commonwealth countries, however, effective remedies are either non-existent, or are distant and expensive, and long delays in hearing cases frequently result in justice being denied.

An illustration typifies the consequences that await human rights defenders for causing even minor annoyances to those in power. In June 2007, the year before the country held its first fully democratic elections, a journalist in the Maldives was sentenced to life imprisonment *in absentia* on a charge of drug possession, after an interview he gave in which he accused the Maldives Police Services of running a drugs mafia. He received no summons to attend court and only discovered that he had been sentenced four months later when he was prevented from boarding a flight. The law stipulates that in order to appeal one has to be incarcerated, so he voluntarily went to jail to proffer his appeal.

Once there, however, the authorities continually failed to present him in court and it was not until 14 months later, 5 months of which were spent in the Maximum Security Unit of Maafushi Jail, that the High Court finally overturned the verdict of the criminal court.³⁵

These domestic failings are compounded by the inability of the international human rights system to enforce compliance with its rulings. The Cameroonian government was urged by the UN Human Rights Committee, treaty body of the ICCPR, to pay compensation to a human rights defender who had been severely beaten and harassed by the Cameroonian police after he wrote articles critical of their conduct. The Committee also called on the state to immediately investigate and prosecute those persons responsible for his arrest and ill-treatment and to take measures to protect him from further threats and intimidation.³⁶ The government has failed to comply with this ruling.³⁷

The Declaration adds that states must “take all necessary measures to ensure the protection by the competent authorities of everyone...against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action”³⁸ that might follow from the individual’s exercise of the rights iterated in the Declaration. This requires of states not only that they do not harm, but also that they ensure protection to human rights defenders.

After flawed elections in 2008 in Kenya at a moment of high tension and large-scale violence when many were speaking out to condemn all sides, the Kenya government withdrew the bodyguard of Nobel Peace Laureate Wangari Maathai. She was labelled a traitor by many fellow Kikuyu, who supported the ruling party, and received death threats purportedly from the Mungiki gang, a mainly Kikuyu group, whose members had already claimed responsibility for a series of beheadings and other killings.³⁹

Apparently more out of concern for the international condemnation it would face if something were to happen than out of concern for her safety, police protection was reinstated some weeks later.⁴⁰ However, the removal of the bodyguard in the first place, at a time of particular threat to human rights defenders in general is indicative of the lack of concern to ensure their protection as a matter of policy unless there is extraneous pressure or high visibility political fallout involved.

One especially significant duty accorded to states is that they should create independent National Human Rights Institutions (NHRIs).⁴¹ This acknowledges the particular significance of NHRIs for human rights defenders. The basic act of creating an NHRI is an endorsement by the government of the acceptability of promoting human rights, which makes it less easy for the government to at the same time justify repressing human rights defenders. However, twenty-four Commonwealth countries have yet to create an NHRI.

Beyond allowing human rights defenders to be active, states are required by the Declaration to set in motion the process of enabling anyone to become a human rights defender by promoting and facilitating “the teaching of human rights at all levels of education and to ensure that those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme”.⁴² Only through such education can citizens gain the awareness that they need to take the defence of human rights into their own hands. The emphasis on lawyers, police, military and public officials highlights the importance of these figures for the promotion of human rights within a country, the obstacle that they can become to that process if they are not aware of their own obligations to promote human rights, and the steps that they need to take to meet those obligations.

The combination of rights and duties for human rights defenders together with the obligations of states and other key actors, makes the Declaration a comprehensive account of what is required in order to ensure that the right to promote human rights is fully protected. Over ten years after the Declaration was adopted, however, human rights defenders continue to be targeted across the Commonwealth as they carry out their peaceful and law-abiding activities.



The Declaration rests on a basic premise: that when the rights of human rights defenders are violated, all our rights are put in jeopardy and all of us are made less safe.

— Kofi Annan

From speech made by the UN Secretary-General on September 14, 1998 at the NGO/DPI Conference.

Chapter II

The Silencing of Human Rights Defenders

The work of human rights defenders is perennially unpopular. Whenever and wherever groups or individuals speak out against the actions of the state they are vulnerable to a range of abuses, from having their activities unreasonably restricted and their organisations unfairly scrutinised, to being spied on or defamed, denied access to funding, or being subject to arbitrary arrest, physical violence and death. These violations are inflicted with the aim of silencing the defenders by deterring them from pursuing their activities to promote human rights; but that silencing spreads far beyond the individuals and groups targeted to include all those who are deterred from raising their own voices out of fear for the consequences.



That the work of human rights defenders is not popular in many Commonwealth jurisdictions is clear from the frequency with which they are targeted. Whether they are active in a conflict situation or a stable democracy, anything that suggests criticism of government can attract dire consequences. Human rights defenders are likely to suffer a range of abuses from having their activities unreasonably restricted and their organisations unfairly scrutinised, to being spied on or defamed, denied access to funding, or being subject to arbitrary arrest, physical violence and death – all imposed with the intention of deterring them from pursuing their valuable work.

However, the state has a duty to protect. Article 12 (2) and (3) of the Declaration underlines that the state has a responsibility to ensure that everyone is protected from violence in the exercise of their right to participate in peaceful activities against human rights violations.⁴³ This means that the state and its institutions – particularly the justice system and the police – must be able to provide effective safeguards for both the person and the work of those under threat wherever these threats may come from. When non-state and private actors attack human rights defenders the state is bound to bring them to justice through the proper channels. But in many countries state machineries are simply unable to do this or are wilfully neglectful in making sure human rights defenders can go about their work without coming to harm. Indeed it would be fair to say that all too often the plight of human rights defenders is heightened by the active antagonism of the state combined with the protection that it affords its agents either unofficially or through legal mechanisms that assure impunity.

Peaceful Assembly and Protest

Peaceful assembly is a time-honoured means of bringing greater visibility to human rights causes and expressing solidarity with victims.

Peaceful assembly is a time-honoured means of bringing greater visibility to human rights causes and expressing solidarity with victims. Public gatherings, marches, sit-ins, and vigils in support of a cause all fall under the category of assembly and are amongst the more commonly engaged in activities of human rights defenders. Peacefully coming out on to the streets with slogans and banners in large numbers is often the only way to give voice to the feelings and disapproval felt by an otherwise silent majority. The power of this form of activity was

demonstrated in 2007, when thousands of ordinary people joined lawyers to march on the streets of Pakistan in protest at the suspension of the Chief Justice, in what became known as the Lawyers' Movement. The Chief Justice was reinstated a few months later.

In recent times, the character of such assemblies has transcended national boundaries and expanded into coordinated partnership across borders. Fuelled by the instant connectivity of the Internet, global calls for action have brought, not thousands, but millions on to the streets across nations in support of each other in mass, peaceful actions. The wave of support for the Make Poverty History campaign initiated by a coalition of NGOs in the UK spread across more than 100 countries in Africa, Asia, the Americas, the Arab region, Oceania and Europe, under the banner of the Global Call for Action Against Poverty, and saw mass protests in cities such as Edinburgh, Lagos and Toronto, as well as the Live 8 concerts held across the globe in the run up to the G8 summit held in July 2005 in Edinburgh.

International law, reiterated in the Declaration, makes clear that groups and individuals have the right to assemble together peacefully and to participate in peaceful activities against violations of human rights and fundamental freedoms.⁴⁴ States across the Commonwealth grant this right in constitutions but also retain restrictions within their criminal codes aimed at ensuring that large gatherings do not pose threats to others or turn violent and riotous. In addition, special public order laws such as internal security acts and anti-terror legislation, meant to be used in the limited circumstances of heightened threat, either forbid people outright from gathering together in public or require authorisation before such gathering can take place.

While there may be some degree of necessity for laws that restrict and forbid public meetings under certain circumstances, the legislation is all too often used for collateral purposes to minimise visibility for stances that run counter to the government's own by quashing dissent and intimidating opposition. Singapore's Miscellaneous Offences (Public Order and Nuisance) Act⁴⁵ requires that public assemblies of more than five people should obtain police permission. The tight nexus between the police and government means that it is opposition rallies that find it difficult to get permission. When they protest anyway, they are immediately arrested. In 2007, four members of the Singapore Democratic Party protesting against the government's links with Myanmar were arrested and charged with "illegal assembly".⁴⁶ More worryingly, in 2009, this already repressive law was replaced with the Public Order Act under which permits are required for even a one-person protest or for any assembly relating to a cause.⁴⁷ The ostensible purpose of the Act is to deal with the threat of terrorism in connection with the Asia Pacific Economic Cooperation (APEC) meeting in November 2009.

In 2005, the UK Parliament passed the Serious Organised Crime and Police Act (SOCPA). The law restricts the right to demonstrate within a one-kilometre zone of any point in Parliament Square, requiring that those who wish to protest should first gain authorisation from the police who may in turn place conditions on the form the assembly can take. The government claimed that its legitimate aim was to protect the ability of parliament to operate unhindered and to maintain national security.⁴⁸ However, many critics contend that the law was in fact enacted with the intention of providing a mechanism to enable the police to use their powers to regulate anti-war protests. These protests were considered a contributory factor in reducing support for the governing Labour Party after the occupation of Iraq.

The provisions of SOCPA are widely believed to have been brought in as a result of one man's protest. Brian Haw has been protesting in Parliament Square since June 2001 against British and American policy towards Iraq. Nearly four years later, the High Court ruled that the requirement that protests gain prior authorisation from the police did not apply retrospectively to Haw. However, this victory was short-lived, as in May 2006 the Home Office won its appeal and Haw's protest was brought under the new restrictions.⁴⁹ While the protest was authorised as required, the police placed conditions on it, including restricting the area in which he could demonstrate to three metres high by three metres wide by one metre deep. Haw was arrested again for failing to comply with these conditions in August 2007. This time the High Court ruled that the conditions imposed were "so unclear as to be unworkable and a breach of his human rights".⁵⁰

The introduction of the ban on unauthorised protest around Parliament has resulted in many arrests, court cases and a number of convictions. These include two persons arrested opposite Downing Street for reading aloud, and without having gained permission from the police, the names of British soldiers and Iraqi civilians killed in Iraq⁵¹ – their convictions came even though their actions were described as "peaceful", "good-humoured" and "orderly".⁵² A management accountant was also arrested for standing outside the gates of Downing Street with a banner containing a quote from the Magna Carta: "to no-one will we sell, to no-one will we refuse or delay justice or right", and another from Aristotle: "the only stable state is the one in which all men are equal before the law". The protestor was arrested for demonstrating without authorisation in a protected area, but was not charged.

Individual defenders who are particularly active and outspoken often find themselves singled out. In Canada, Quebec's Superior Court, examining the case of a very active anti-globalisation protestor who was repeatedly arrested, but in most cases acquitted at trial and on other occasions not charged at all, agreed that: "... the bail conditions imposed on May 2001 have restrained his right to freedom, opinion, expression and the right of freedom of association as protected by Article 2 of the Canadian Charter of Rights and Freedoms." The bail conditions included being forbidden from playing a leadership or organisational role in any future peaceful protests, being barred from using a megaphone during a protest, and being barred from any demonstration in the Quebec City judicial district.⁵³

To express his indignation at a guilty verdict for defamation, after a summary trial of officials of the Singapore Democratic Party (SDP), (the case having been brought by the Prime Minister and his father) the Assistant Secretary-General of the SDP and two fellow activists wore T-shirts depicting a kangaroo

in judge's robes at the final hearing for assessment of damages. The Assistant Secretary-General was refused entry into the court until he removed his shirt. Although he complied with the request the matter did not end there. He received a police summons to answer a contempt of court charge at the Supreme Court, and was sentenced to fifteen days in prison and ordered to pay SGD3000 (approximately US\$2100) in costs along with his two colleagues, who received a prison sentence of seven days each.

On the other hand, despite a recent global tendency to be less tolerant of protest, the system has in some cases come to the rescue of human rights defenders facing restrictive laws.

Every month for the past twenty-four years the Aldermaston Women's Peace Camp (AWPC), a group that campaigns against the manufacture of nuclear weapons by the United Kingdom, has organised a peace camp outside the Atomic Weapons Establishment at Aldermaston. In 2007, a team of Ministry of Defence police arrested ten women for holding protests and charged them with two offences under recently enacted byelaws. The enactment of the byelaws and the arrests were considered an attempt by the government to stifle public criticism of a nuclear weapons plan to commit £76 billion (approximately US\$126 billion) to replace the Trident nuclear weapons system.

The proposed byelaws would have criminalised almost any form of protest, including processions, assemblies, handing out leaflets and holding placards. But, citing the European Convention on Human Rights, domesticated in the UK by the Human Rights Act, 1998, AWPC had already been successful in ensuring that many of these prohibitions did not make it into the final version of the byelaws. Nevertheless clauses remained that criminalised "camp[ing] in tents, caravans, trees or otherwise", lighting bonfires and "attach[ing] any thing to, or placing any thing [for example, a banner] over any wall, fence, structure or other surface",⁵⁴ all activities in which the women had been engaging as an integral part of their camp for over two decades. In a legal battle, the women insisted that the ban on camping violated their rights to freedom of expression and assembly. Ultimately, the Court of Appeal agreed, the paragraph banning camping outside the weapons facility was quashed and charges against the ten women were dropped.⁵⁵

Notwithstanding the existence of repressive legislation, more worrying perhaps are those cases in which arrest is used in an attempt to suppress dissent even when there is no legal basis.

Notwithstanding the existence of repressive legislation, more worrying perhaps are those cases in which arrest is used in an attempt to suppress dissent even when there is no legal basis. In Trinidad and Tobago in 2007, a noted broadcaster was arrested on the eve of a shut-down of private businesses and a rally that he had called for to protest rising crime levels.⁵⁶ He was picked up under the 2005 Anti-Terrorism Act despite the fact that "an act which disrupts any service and is committed in pursuance of a demonstration, protest, or stoppage of work and is not intended to result in any harm ... is specially exempted from the definition of a terrorist act".⁵⁷ He was subsequently charged under the Summary Offences Act, Section 105, for "failing to print the names and addresses

of the publisher and publicist on a handbill that he allegedly circulated".⁵⁸ The charges were, however, dropped.⁵⁹

At an anti World Trade Organization protest in 2003, the Canadian police arrested 243 protestors. However, 18 months later, every charge was dropped.⁶⁰ A 2005 report by the UN Human Rights Committee on Canada's record under the ICCPR, noted that the police, in particular in Montreal, had been arresting people on a large scale.⁶¹

This tactic of indiscriminately arresting but not following through on the charges suggests the use of the power to harass and intimidate. As the UN Human Rights Committee noted, "[t]he State party should ensure that the right of persons to peacefully participate in social protests is respected, and ensure that only those committing criminal offences during demonstrations are arrested".⁶²

In other cases the police resort to threats. In December 2008 police warned participants in a march in Malta who were protesting against the Israeli bombing of Gaza that if they did not stop shouting slogans such as “Down with the USA” and “Down with Israel” they would end the demonstration.⁶³

Sometimes the consequences for protestors are more severe. In Montréal, Canada – this time on International Women’s Day – several women protestors were assaulted by the police during a peaceful march, when police tried to detain a prominent activist who had been arrested on numerous previous occasions. In the process, the police also hit women who gathered around the activist out of concern for the violent way in which the attempted arrest was proceeding.⁶⁴ Despite demands for investigation none was undertaken and no officer involved faced disciplinary action.⁶⁵

In a similar case from Cyprus, families of long-term detainees from Iran and Afghanistan who had applied for asylum and been rejected and who, having destroyed their travel documents could not be deported, staged a protest in 2008 with the support of a human rights organisation, KISA (Movement for Equality, Support, Anti-Racism). In the course of the protest the head of the organisation was arrested for using loudspeakers in public without a licence. He was detained for some hours before being released. It was reported that in the course of trying to make the arrest police officers assaulted several of the demonstrators who tried to prevent it.⁶⁶

Faced with severe food shortages and rising prices exacerbated by large-scale corruption, on 10 December 2008 – World Human Rights Day – members of the Association for the Defence of Collective Interests (ACDIC), together with farmers, gathered in peaceful protest at their headquarters in Yaounde, Cameroon.⁶⁷ When the police could not persuade the speakers inside the organisation’s headquarters to leave, they attacked those outside. Two ADCIC members were severely beaten while entering a police car for questioning and required medical assistance and stitches.⁶⁸

Whether excess use of force happens as a result of deliberate policy or bad police procedure, the result is the same – peaceful demonstrators are subject to violence and are unable to exercise their rights.

Afraid to protest

A survey conducted in the United Kingdom in 2009 found that 93 per cent of respondents think everyone in the UK should have the right to peaceful protest. Worryingly however almost one fifth (18 per cent) said they would think twice about taking part in a protest.⁶⁹ The survey was conducted in the wake of heavy handed policing of protests around the G20 summit that took place in London in April 2009 in which one bystander died moments after being struck by a police baton. An investigation was carried out by the Independent Police Complaints Commission which has now passed the file on to the Crown Prosecution Service for consideration of whether there is sufficient evidence to prosecute the officer for manslaughter.⁷⁰

Exposing Wrongdoing

Human rights defenders will inevitably be involved in investigating, documenting or otherwise drawing attention to issues that others would perhaps rather keep hidden. In doing so, they draw the ire of those in power. A typical ruse is to use commonplace laws to cover up the real motives behind actions that then look seemingly legitimate. Illustratively, in Bangladesh, a reporter of the *Daily Sunshine* newspaper was arrested, ostensibly on charges of robbery, but at the station was questioned about an article he had written implicating the local police force in alleged corruption and malpractice,

which had resulted in two officers being transferred.⁷¹ Similarly in Belize two human rights lawyers, husband and wife, were arrested and charged with drug-trafficking. The arrests were part of an ongoing low-level but highly intrusive campaign of police harassment suspected to be linked to their human rights activities, which included exposing unlawful police conduct.⁷²

Where activities like honest reporting are well within permissible limits and the state and the police can invoke no pieces of legislation to prevent committed groups or individuals from engaging in activities that might lead to exposure of wrongdoing, the resort to use of force is not infrequent. In Zambia, for example, two people were assaulted by the police for doing nothing more than trying to take photographs of an officer assaulting a third person.⁷³ The officers asked one of them to hand over his camera. When he refused because there was no legal requirement to do so, the officers pepper sprayed him and beat up the other for attempting to stop the assault.

In the Bahamas in 2006 four journalists were beaten by guards when they attempted to enter a refugee camp for illegal immigrants from Cuba in order to investigate allegations of mistreatment. Recording equipment was also confiscated.⁷⁴

Impunity in Vanuatu

Impunity for those involved in attacks against media workers in Vanuatu is commonplace. The Pacific Freedom Forum notes that in many of the Pacific Islands awareness of the role of the media, particularly with respect to the promotion of human rights, remains limited. Even journalists themselves tend to accept that abuse and intimidation is part and parcel of their job with the result that the judicial system tends not to take those attacks seriously and their right to be treated with dignity and respect as any other individual remains unacknowledged. Rather than using public complaints procedures individuals and groups who take offence at what is printed resort to personal attacks against journalists.⁷⁵

In 2009 in Vanuatu, a journalist was beaten up by officers who worked at the country's main prison in retaliation for his paper's coverage of ongoing problems at the facility.⁷⁶ The officers were arrested, after being identified by their victim, but to date they have not been charged. Transparency International's Vanuatu office took up the case and discovered that no action at all had been taken to investigate those arrested.⁷⁷

A reporter with the Lagos-based *National Mirror* was invited by the independent monitoring commission to observe the 2008 local council elections in River State, Nigeria, where there were ongoing allegations of booth stuffing, people being beaten when they tried to cast their vote for the opposition⁷⁸ and other malpractice, supported perhaps by biased policing. When the reporter objected to the police's refusal to allow him to enter the commission's premises he was kicked and punched by around ten officers.⁷⁹ The reporter noted that – unsurprisingly – the assault appeared to be an effort to prevent criticism of the way in which the elections were being conducted.⁸⁰

False News and Defamation

Investigative journalists who dare to make allegations of abuse of position and corruption against influential people, frequently find themselves at the receiving end of broadly worded laws that contain catch-all prohibitions on publishing news that will for example, “disturb public order or public peace”⁸⁴ and find themselves facing “false news” or defamation suits.

The crime of publishing false news persists in many Commonwealth countries, though it has no place in the laws of Australia and the UK, and has been struck down as being contrary to constitutional

guarantees of freedom of expression⁸⁵ in Antigua and Barbuda, and Canada. In striking it down, the Canadian court noted that while section 181 of the Canadian Criminal Code was valuable in limiting the denigration of vulnerable groups, “[i]ts danger ... lies in the fact that by its broad reach it criminalizes a vast penumbra of other statements. The danger is magnified because the prohibition affects not only those caught and prosecuted, but those who may refrain from saying what they would like to because of the fear that they will be caught. Thus worthy minority groups or individuals may be inhibited from saying what they desire to say for fear that they might be prosecuted.”⁸⁶ Other countries have very limited false news provisions, for example, Section 171 (g) of India’s Penal Code makes it an offence to publish false news about the character or conduct of a candidate for election.⁸⁷

Recently after 13 years of disuse of the law, Mauritius, which in fact has a relatively free press environment, arrested and charged three radio and newspaper journalists with publishing false news, on the basis of their coverage of a story about the discovery of a sum of money in the police locker used by the late head of the Major Crime Investigation Team.⁸⁸ The UN Human Rights Committee has in the past expressed concern at the false news provision in Mauritius, indicating that it is not compatible with international rights to freedom of expression.⁸⁹

Cameroon is one country that still actively uses the charge of publishing false news. In 2008, the Publications Director for the weekly newspaper *La D tente Libre* was arrested and charged with “publishing false news” after an article accused the President of limiting the independence of the Supreme Court by attempting to force its president to take early retirement when his term of office came up for renewal.⁹⁰ He was eventually sentenced to three years imprisonment and fined 2 million CFA (approximately US\$4400).

Witness protection?

In September 2007 a witness in a murder case was shot and killed in Trinidad and Tobago. Although the country has a Justice Protection Programme, established under the Justice Protection Act 2007, it has been widely criticised with many witnesses refusing to give evidence at the last minute because of threats.⁸¹ The President of the Crime Watch association commented that “[a] State witness is someone who wants to make a difference, but people will be killed because we do not have a proper witness protection programme. People don’t have that level of confidence (to make reports). Nobody wants to go to a police station and say ‘I see’.”⁸² At least six state witnesses were reported to have been shot dead during 2008.⁸³

Blowing the whistle

Thirty-eight Commonwealth countries have signed on to the UN Convention against Corruption. Its effective domestication requires states to put in place legal and policy architecture that creates real transparency at all levels of government, including assured access to information, protection for witnesses and whistleblowers, and monitoring and accountability structures. Yet only fourteen Commonwealth countries have access to information laws and even fewer have whistleblower legislation; amongst the latter are: Australia, Canada, Ghana, New Zealand, South Africa and the United Kingdom. Whistleblower laws provide protection for insiders who publicly disclose wrongdoing and irregularities, which would otherwise remain concealed. Whistleblower laws vary in their levels of protection, and can include shields that protect confidentiality and give protection from administrative reprisals as well as from civil suits and criminal liability. Laws like whistleblower legislation can be seen as workplace rights in the same way as principles such as equal pay for equal work. Their existence is evidence of a state’s commitment to supporting the efforts of those who are willing to risk a great deal by taking on powerful interests to staunch corruption and other wrongdoing, harmful to the overall public interest.

Unlike the crime of publishing false news, it is widely accepted that civil defamation protects reputation and inhibits irresponsible and unfounded allegations that can destroy character, negatively affect commercial interests and ruin family relationships. However, criminal laws that result in jail sentences and penal fines are a serious restraint on freedom of speech. For a decade now the rapporteurs on freedom of expression from the UN, Organization of American States and Organization for Security and Co-operation in Europe, have jointly called for the repeal of criminal defamation laws.⁹¹ The Coordinating Committee of Press Freedom Organisations which includes the Commonwealth Press Union⁹² has noted that these laws “deprive the public of their right to be fully informed”, thus contravening Article 6 (a) of the Declaration which sets out the right “[t]o know, seek, obtain, receive and hold information about all human rights and fundamental freedoms”, and argued that defamation should always be dealt with by civil rather than criminal courts and punishable by fines rather than imprisonment.⁹³

In 2006 in Malawi, the Minister for Health sued a journalist for alleging he had been implicated in improper accounting.⁹⁴ Given a suspended six-month prison sentence and fined Kwacha 10,000 (approximately US\$100),⁹⁵ the reporter has since been refused interviews with the President or entry to State House functions on grounds that he is a convict.⁹⁶

In Tonga, pro-democracy media has faced defamation and sedition charges for articles critical of the monarchy. A Department for Information, formed at the end of 2007, oversees all media reporting.⁹⁷ Kele’a newspaper was briefly closed down, apparently for operating without a licence in a restricted area on a Sunday, under conditions imposed by a state of emergency; the editor of the paper, however, stated that they were targeted for exposing government corruption.⁹⁸ In 2007 six defamation suits were filed against the paper after an article that accused the Prime Minister of nepotism. Kele’a was subsequently fined 500,000 Tongan dollars (approximately US\$256,000).⁹⁹

Despite the worldwide trend to scrap these laws and the exhortations of experts, of fifty-three Commonwealth countries, twenty-four have both civil and criminal defamation laws, including all seven Commonwealth countries in Asia, two of the three European members, and sixteen of the eighteen African members, no information being available for the Seychelles. Ghana and Sri Lanka abolished criminal defamation laws in 2003. Five Commonwealth countries have only civil defamation laws while for the remaining countries no information was available. (The majority of these countries are in the Caribbean and Pacific.) Although in some countries defamation laws, while retained on the statute books, have fallen into disuse in practice, it is disturbing to see that in other countries criminal defamation laws are in fact being enacted. The Gambia introduced a criminal defamation law in 2004.¹⁰⁰

In 2005, the Kenyan government promised to repeal criminal libel laws after it failed in its attempt to sue a journalist of the *East African Standard* for an article alleging government corruption. The charges were only dropped after the government was taken to the constitutional court. Despite the Attorney General’s assurance that in future those seeking damages for libel would have to do so through the civil courts, criminal defamation laws continue to be used.¹⁰¹

Repression of the press stifles the human rights discourse. It results in self-censorship of the media. In Cameroon, one paper, the *Nso Voice*, shut down operations for fear of reprisals. This followed the 2007 arrest and trial of one of its journalists, on criminal defamation charges, after he reported on corruption amongst local government officials. The journalist was pronounced guilty *in absentia*, sentenced to a one-year prison term and a fine.¹⁰²

The fact that criminal defamation is most commonly used against human right defenders when they “criticised state or other powerful figures, and/or investigated or exposed corruption, or other malpractices by officials”¹⁰³ leads to the “inescapable conclusion that insult is an important weapon in the armoury of the powerful to punish and therefore chill expressions of opposition”.¹⁰⁴

Described as “a stain on our legal system and a terrible example to set in a world where free expression is so often restricted and oppressed”¹⁰⁵ seditious libel and criminal defamation laws

remain on the books in the UK though they are out of use. Their continuing existence has been characterised as serving “only to provide an excuse for modern despots when they jail their critics – they always claim that they are merely using laws that are also on the UK statute book”.¹⁰⁶ However, in July 2009 the UK formally committed to decriminalising defamation.

In Cyprus a journalist who was critical of the lack of investigation by the Attorney-General into the dealings of a local businessman which had had widespread ramifications in the country, faced obstruction, harassment and a criminal defamation charge launched in December 2006 by the Attorney-General.¹⁰⁷ However, weeks later, the Supreme Court revoked the law on criminal defamation, which retroactively freed the journalist of any charges.¹⁰⁸

National security

Arbitrary detention is a frequently used means of curbing criticism in times of supposed increased national security concerns. Freedom from arbitrary arrest and detention is a right under Article 9 of the ICCPR. To detain or arrest someone arbitrarily is to do so without reason in law, that is, to detain or arrest without charge.¹⁰⁹

However, arrest or detention without charge can in principle be justified on grounds of national security under Article 4 of the ICCPR, which reads that a state party to the treaty may take measures derogating from its obligations when faced with a situation of exceptional and actual danger which threatens the life of the nation, the physical integrity of the population, and the political independence of the state.¹¹⁰ In those cases the arrest or detention, albeit without charge, is not arbitrary but can be referred to as preventative.

Across the Commonwealth there are numerous pieces of legislation that give the police wide powers to arrest and detain people without charge. Unfortunately, in many cases those powers are not sufficiently restricted, with the result that they are used in cases where they do not serve the purpose of promoting national security, that is, they end up being used arbitrarily. This can be a design fault of the legislation itself, or the lack of proper regulation of the police’s use of the power.

In Malaysia, the Internal Security Act, 1960 allows the police to detain anyone “for any period not exceeding two years”¹¹¹ where the Home Minister has determined that such detention “is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof”. In 2008, when no particular national security threat loomed, a well-known political commentator and blogger was detained for threatening national security.¹¹² His articles had often been critical of the government and he had consistently called for transparency and accountability to stem corruption in the Malaysian political system.

Released a few weeks later when the High Court allowed his *habeas corpus* petition, the prominent blogger noted: “[n]ot many people challenging ISA detention have succeeded so I did not give it much hope.”¹¹³ According to the court the detention was illegal as there were no grounds for it under section 8(1) of the ISA.¹¹⁴ However, the decision was appealed by the Home Minister. That appeal is still to be heard.

Through making an example of one strong voice, governments can go a long way towards intimidating human rights defenders into keeping silent. On the other hand, these figures can become *cause célèbres* around whose plight issues of injustice can be kept alive.

Binayak Sen, a physician and prominent civil liberties activist of renown had been working in Chhattisgarh for several decades amongst some of the poorest tribal peoples of India. He was detained in 2007 under controversial public security laws¹¹⁵ promulgated in a bid to put down armed militancy afflicting one of India’s poorest tribal areas. The laws have been strongly challenged for being overbroad, lacking sufficient safeguards and being open to abuse.

Amongst other activities, Sen had been documenting land-grabbing carried out on behalf of corporations locked in intense competition to exploit some of India's richest reserves of iron ore, coal, limestone and bauxite; the deaths in custody of tribal peoples; and staged assassinations of suspected insurgents in fake "encounters" with the police.¹¹⁶ In particular, a few months prior to his arrest he, along with People's Union for Civil Liberties, had helped to draw attention to the unlawful killings of twelve Adivasis (tribal people) by the Chhattisgarh Police in a fake encounter.¹¹⁷ On orders from the State Human Rights Commission, the victims' bodies were exhumed from a mass grave and the state government forced to order an investigation.¹¹⁸ The allegations were substantiated by a police inquiry but the state government refused to approve the prosecutions of those suspected of involvement in the killings.¹¹⁹ However, Sen himself was arrested¹²⁰ and held for two years until finally granted bail by the Supreme Court in 2009. The campaign for his release has resonated across the world with a group of Nobel laureates signing public petitions that describe the laws under which he was detained as falling short of international human rights standards.¹²¹ A motion calling for his release was tabled in the UK Parliament and signature campaigns were run by the *Guardian* newspaper during the G20 summit in London. In 2008, Sen was awarded the Jonathan Mann Award for Global Health and Human Rights.

In all these cases of human rights defenders being arbitrarily arrested and detained, the threat to national security is obscure.

In Association with Others

The imposition of strict pre-conditions for registering an NGO can amount to *de facto* prohibition of many organisations.

A worrying trend in recent years has been the restrictions put on the formation and administration of non-governmental organisations and associations in several Commonwealth countries. While a strong and effective system of regulation is beneficial for NGOs, through increasing transparency and improving the credibility of the sector, criminalisation of those who choose to operate informally is unwarranted and when combined with the imposition of strict pre-conditions for registering an NGO can amount to *de facto* prohibition of many organisations.

For instance, Uganda's Non-Governmental Organizations Registration (Amendment) Act, 2006 makes it an offence punishable by fine and imprisonment to operate without a valid certificate of incorporation.¹²² The registration criteria require that the NGO specify its intended geographic and thematic area of operation and submit a chart of its structure, work plan and first year's operational budget; and in the case of local organisations, written recommendations from two sureties, as well as from the chairperson of the executive committee of the sub county council and from the Resident District Commissioner of the area where the organisation intends to work.¹²³ During the certification process, the Board can request alterations in the NGO's operations.¹²⁴ Taken together, this virtually enables the government to micromanage the NGO.

In Zambia, as a consequence of losing a long court battle to deregister an NGO,¹²⁵ the government has readied a widely criticised law that will require NGOs to renew registration every five years. Activists fear the law will "render it very difficult for NGOs, who provide critical analysis and checks and balances on the sitting government, to function properly".¹²⁶

Sierra Leone goes even further and proposes two-year renewal periods and requires the NGO to "register and sign an agreement with the Government of Sierra Leone before they can commence operations".¹²⁷

Cameroon has perhaps created the neatest relationship for itself with its civil society groups. To an outsider the groups including many human rights defenders appear to function freely. In reality they exist in legal limbo and their situation can best be described as fragile. Very few organisations have cleared the largely subjective and discretionary process of being registered as NGOs. The rest - and

vast majority - having handed in information documents to the competent authorities – are allowed to begin functioning as ‘associations’. This half way status makes them very vulnerable and many attempts to clarify the legal environment for the operation of civil society are simply met with silence. In this situation of being “tolerated” human rights defenders live with the knowledge that officials can turn up at any time and prohibit some activity. Obviously any activity that criticises the government, protests a policy or decision, touches on the Constitution or the electoral process, is easily stopped or disrupted on the simple excuse that the organisation has no legal standing to be engaging in it in the first place or that it has not obtained permissions. Attacks by police are excused in the same way and civil servants often use the same rationale - that an organisation is not legally established - to deny them certain documents and facilities.

In Namibia, by contrast, a liberal civil society regime allows groups to operate without registration should they choose to do so. It has been noted that “Namibian law accords with the country’s Constitution and its obligations under international law by providing significant and commendable protection for the fundamental freedoms of expression, association, and peaceful assembly”.¹²⁸

Cross-border solidarity

Human rights solidarity across borders can take the form of supporting country endeavours through training, like the International Service for Human Rights in Geneva; providing legal assistance for comrades in difficulties, as Interights does; or gathering evidence of human rights violations in collaboration with country colleagues, as Amnesty International and Human Rights Watch do. These are all ways in which defenders across the world work together. However, foreigners working to protect human rights are easy prey to suspicious governments, and prolonged questioning, shadowing, arrests and deportation are not infrequent. The government will usually be aware of their arrival and because they are sensitive to international criticism, will often attempt to hinder or prevent their activities. The government has a readily available tactic in these cases – the use of immigration legislation to target foreign human rights defenders. For example, the British managing editor of the *Tribune* paper in the Bahamas was told in July 2006 that his work permit would not be renewed. It was claimed by human rights defenders that the move was in response to several critical articles. After protesting the situation, the permit was eventually granted for a further year.¹²⁹

Deportation of Foreign Human Rights Defenders in Fiji

The use of immigration legislation as an easy means of ridding a country of foreign human rights defenders has been a particular strategy of the government in Fiji.

A journalist from New Zealand was refused entry to the country in June 2007 after his name was placed on a government blacklist of undesirable foreign journalists. He had wanted to cover the expulsion of New Zealand’s High Commissioner from the island.¹³²

The Australian publisher of the *Fiji Sun* newspaper was expelled in February 2008, ostensibly for violating immigration laws, although he believed it was as a result of a story about the tax evasion of the Finance Minister (a former PM).¹³³

The publisher of the *Fiji Times* was deported back to Australia in May 2008. He was described as a threat to national security by the Minister of Defence, National Security and Immigration.¹³⁴ His successor was deported as an illegal immigrant on 27 January 2009.¹³⁵

A journalist with ABC Television in Australia, along with a reporter and cameraman from New Zealand’s TV 3 network, were deported on 14 April 2009 for their reporting on the political crisis. This came just days after the declaration of the latest in a string of states of emergency on 10 April 2009.¹³⁶

The Botswana government went so far as to effectively ban a group of seventeen human rights defenders, who in various capacities were concerned with the situation of the Bushmen in the Central Kalahari Game Reserve. The Bushmen had been evicted from their lands over the course of a number of years after diamonds were discovered in the reserve. Despite a court ruling in the Bushmen's favour, the government continued to make it difficult for them to return to their land.¹³⁰ The human rights defenders in question, including journalists from the UK and Australia, human rights workers with Survival International and ethical diamond traders from the US, were all placed on a list of individuals who required a visa to enter the country, despite all of them being from countries that are generally exempt from such requirements.¹³¹

Alongside the more high-profile non-national human rights defenders, it is all too easy to lose sight of those nationals of a country who assist them. Much more vulnerable for nothing more than being in association with other human rights defenders, they are subject to high levels of scrutiny like the non-nationals, but lack the same protections. While human rights defenders from outside the country generally leave soon after their release from detention, those left behind continue to face problems from the authorities. In August 2008 a US filmmaker, legally in Nigeria to make a documentary on the conflict in the Niger Delta along with his Nigerian translator, were arrested by members of the Nigerian Security Services.¹³⁷ Both were charged with espionage. While the filmmaker was released and flown out of the country, his translator remained in detention facing interrogation¹³⁸ and was believed to be at grave risk of torture, as he was being held incommunicado.¹³⁹ Although he was released after five days without any charges being brought against him he was repeatedly required to report to the State Security Services for the next three weeks.¹⁴⁰

Ongoing problems also afflicted an on-the-ground contact in Nigeria in 2007, when two Amnesty International researchers, one a US citizen and the other from Nigeria, along with a Gambian journalist, were arrested while carrying out research and investigation into conditions of detention, arbitrary arrest and detention without charge.¹⁴¹ All three were interrogated for several hours after which they were released without charge. While the two foreign nationals could leave, their Nigerian colleague faced continuing harassment and threats against his family, and eventually fled to Senegal. Even there, he continued to face threats and on one occasion was subject to an attempted abduction outside his house.¹⁴² Association with foreign defenders, combined with the fact that they are less easily able to leave the country, renders these on-ground contacts extremely vulnerable.

Double Jeopardy

The protections of the Declaration extend to the most marginalised. Human rights defenders, whose lifestyle, sexual preferences, ethnicity, language or religion set them apart in some way, face particular vulnerabilities. They come from groups that are traditionally discriminated against. Those who are active in defence of the rights of these groups are doubly jeopardised – as human rights defenders and as members of marginalised communities. They are likely to find it harder to speak out for their rights in the first place, being fearful of the consequences they will face in a society that has pushed them far out of the mainstream, and they find that the violations they suffer when they do speak up are not taken seriously by the justice system, leaving them without any form of protection.

It would not be wrong to say that in the ordinary course of things, women in most Commonwealth societies have a far more difficult time than men in accessing justice, but when they are also human rights defenders they must work against a patriarchal culture in which only men can legitimately speak out for women.

For example, the Swaziland Constitution recognises women's equality but cultural norms perpetuate discrimination in practice, making it very difficult for women to speak out for human rights. In August 2008, over 1,000 members of the country's women's movement marched in the streets in protest at perceived extravagances on the part of the King. Instead of listening to their concerns, the Governor-General stated that "these women should have voiced out their concerns through their husbands who are supposed to speak on their behalf".¹⁴³ Ironically, the protest and comments came immediately

after the signing of the Gender Protocol at the Southern African Development Community (SADC) heads of state summit, which called for, amongst other things, 50 per cent representation of women at all levels of government by 2015.¹⁴⁴

If a woman takes up cudgels in her own defence or that of others, it represents a failure on the part of her men folk, and a common response is for agents of state, such as judges and policemen, to urge remedies founded on exhortations telling the men to look after “their” women, to take them back into the fold, rather than giving the women defenders the same access to justice as men.

Women human rights defenders may also be more likely than men to be the target of sexual violence. However, the fundamental issue is not the kind of violence they face, but that they are far less likely to get their cases registered, or more likely to have them dismissed as “domestic”.

Papua New Guinea is a strongly patriarchal society. In late 2005 a woman human rights defender was killed after being accused of practising sorcery. The police refused to investigate on grounds that the family of the defender had not requested an investigation and those who did request an investigation had not themselves witnessed the killing. Women’s human rights groups who have since launched their own investigation into the killing have received threats; but strongly believe that taking the initiative to pursue justice in the face of police inaction is the only way to begin to change the system.

The murdered human rights defender had herself earlier intervened in a case in which three girls, aged 7-11, were abducted and raped to avenge a perceived wrong on the part of one tribe against another. The rapes were treated by the police as a “family matter” and none of the perpetrators were charged or faced trial.

In many instances human rights defenders pursuing such cases are working against the victims’ families and a culture that supports violence, particularly against women, as a way of achieving justice. Women find it almost impossible to get the police to take gender-based violence complaints seriously, often being told that their complaints are not of a criminal nature. When complaints are recorded, investigations rarely follow. The police themselves have been directly implicated in perpetrating violence against women. Women have said that they are reluctant to report crimes to the police because they fear being asked for sexual favours or even being raped.¹⁴⁵

Fighting Against Rape

In St Vincent and the Grenadines, two female human rights lawyers assisting the alleged victim of a rape by the Prime Minister had their cars followed. One of them received an intimidating phone call in which her family was threatened and she was warned by a police officer that she was being followed.¹⁴⁶ In attempting to assist women to bring rape cases, lawyers in the country must fight against a culture in which rape cases are rarely properly investigated. The country has the third highest rate of reported rape cases in the world.¹⁴⁷ In 2007 it is reported that the police investigated 47 cases of rape and 8 of attempted rape, but of these only 18 were brought to trial.¹⁴⁸ Although rape is punishable by a maximum penalty of life imprisonment,¹⁴⁹ this is rarely imposed.¹⁵⁰

The same exclusion from justice mechanisms is experienced by human rights defenders from indigenous communities. People from the Ogiek tribe in Kenya are fighting to regain access to their ancestral lands. In 1997, a court ruled in favour of the Ogiek, but the government refused to recognise the ruling and continues to reallocate the tribe’s lands. The Special Rapporteur on the situation of indigenous people reports that “[b]eing considered as squatters on their own land and legally banned from using the forest resources for their livelihood, their attempt to survive according to their traditional lifestyle and culture has often been criminalised and their repeated recourse to the courts has not been successful”.¹⁵¹

The Ogiek experience includes not being recognised as a distinct community, holding no positions in local administration and having no presence in the local police force.¹⁵² This made them easy targets in the post-election violence that broke out in Kenya in December 2007. When a group of Ogiek complained at police headquarters about the police involvement in the violence, the police refused to investigate.¹⁵³ The leader of an NGO that works on behalf of the Ogiek people received death threats in February 2008; for want of police protection he was forced to shut his NGO down for three months.¹⁵⁴

Across India, Dalit men and women are prevented from using village amenities, entering temples, grazing their cattle on common land, taking water from community wells, even walking through village spaces with their shoes and turbans on. Many have banded together to protest their excluded status and to rise above traditional disadvantages. For this they are frequently beaten, humiliated in extreme ways, and chased off their homesteads. Despite special legislation that assures state prosecution for insult or atrocity, their cases are not registered with ease, if at all. Their activists face false charges and imprisonment and the police are constantly accused of doing little to investigate or bring their tormentors to book.

Those who work on their behalf can expect the same difficulties in getting protection from the law. One prominent Dalit activist, himself a high-caste Brahmin, works amidst them, despite constant harassment and threats.¹⁵⁵ In mid-2008 he began receiving threatening calls demanding he stop working with the Dalits. The calls have all been reported to the police, with the latest identified as coming most likely from a person infamous for violent behaviour.¹⁵⁶ Yet, the police have taken little or no action to prevent the threats turning into action or to protect the Dalit communities in which workers for the organisation have been threatened, or to protect the staff themselves.

Across the Commonwealth there is little acceptance for same-sex relations or transsexuals. Homosexuality is a criminal offence in almost every Commonwealth country, the exceptions being Australia, the Bahamas, Canada, Cyprus, Fiji, Malta, New Zealand, South Africa, Vanuatu and the United Kingdom. India has recently taken steps to decriminalise homosexual behaviour. As well as being shunned and mistreated in many cases by their own families and communities, the state justice system is also not sympathetic to their problems. A Jamaican case typifies the police response to violations against LGBTI¹⁵⁷ defenders. When four members of one of the few LGBTI groups in Jamaica that dare to operate relatively openly were attacked by a mob in 2007, they called for police assistance. But when the police finally reached the scene they joined the mob in physically and verbally abusing the men. In addition, they refused to take down the men's complaints.¹⁵⁸

Criminalisation of the LGBTI lifestyle gives the police ample opportunities to arrest activists on grounds that they are behaving illegally, even if they have to stretch the law to some extent to achieve their ends. Two LGBTI activists were arrested in Uganda in 2008, charged with "recruiting homosexuals", which is not a crime defined in the Ugandan Penal Code, although homosexuality is a crime. They were held by the police for seven days without charge in violation of Ugandan law which prescribes an upper limit of forty-eight hours. Although released later, they were required to report to the police at regular intervals.

Overall societal prejudice also results in NGOs working on LGBTI issues being unable to register their associations. For example, in Uganda, LGBTI organisations will not be granted registration given that in the eyes of Ugandan law they are promoting criminal behaviour. Even when properly registered and operating legally, these organisations face problems. In Kenya, an organisation that worked on reproductive health and HIV/AIDS, allowing access to its services without regard to sexual orientation, was closed down on the spurious grounds that it was leading to an increase in homosexuality and commercial sex work in the area.¹⁵⁹

Even in countries where homosexuality is legalised, cultural mores still lag far behind. South Africa legalised homosexuality in 1994 and gay marriage in 2006. Nevertheless, attacks against LGBTI activists remain high. In particular, there has been a spate of attacks against those working on lesbian issues, with three activists being killed and, it is suspected, also raped in July 2007.¹⁶⁰ The police have been accused of doing little to investigate these killings.¹⁶¹



Violations...directed against human rights defenders, have a chilling effect that reaches all other human rights defenders, directly diminishing their possibilities of exercising their right to defend human rights.

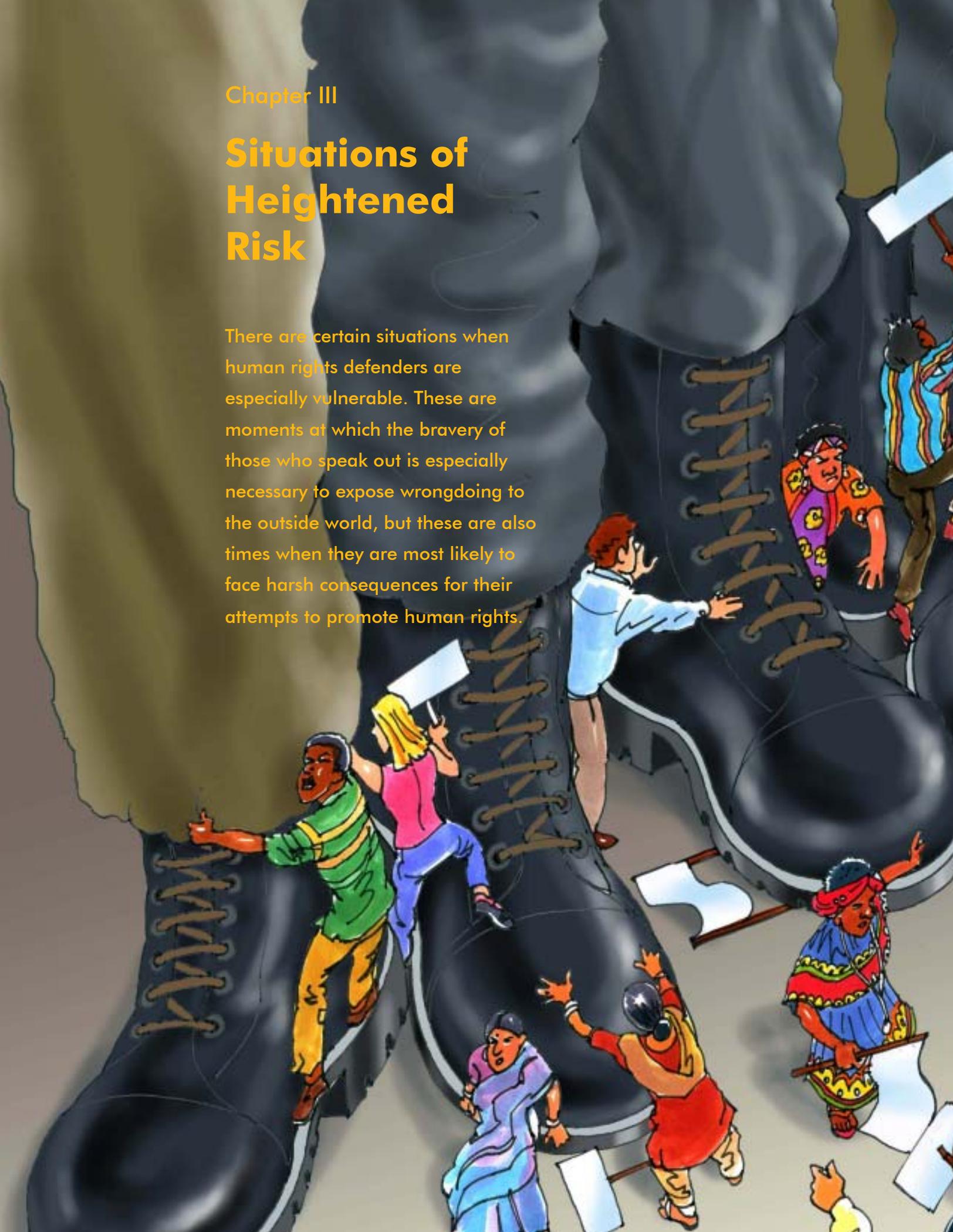
— Inter-American Commission on Human Rights

Report on the situation of human rights defenders in the Americas

Chapter III

Situations of Heightened Risk

There are certain situations when human rights defenders are especially vulnerable. These are moments at which the bravery of those who speak out is especially necessary to expose wrongdoing to the outside world, but these are also times when they are most likely to face harsh consequences for their attempts to promote human rights.





There are certain circumstances and times when human rights defenders are at even greater risk than usual.

Elections

When contestation is intense and the ruling party as intent on winning another term as its rivals are in defeating it, the temptation of those in authority to use all the power of the state machinery at their disposal to stifle criticism becomes in many cases too overwhelming to resist.

Election time is one such moment. It is a time of heightened public awareness: the moment when the often suppressed *vox populi* can make itself heard. For human rights defenders the moment is an especially fruitful one for the promotion of human rights, both in terms of drawing attention to the government's past record, for example by publishing report cards on candidates or highlighting broken promises; by engaging in activities to ensure that the election is free and fair, such as educating voters about the electoral system and how to exercise their democratic rights; assisting often excluded communities to register and take part in voting; monitoring election campaigns to ensure that codes of conduct are adhered to; and pointing out irregularities such as voter intimidation and impersonation, booth capturing and ballot stuffing. It is also a time when human rights defenders are especially hopeful for change and are at their most active in attempting to capitalise on that

potential. When contestation is intense and the ruling party as intent on winning another term as its rivals are in defeating it, the temptation of those in authority to use all the power of the state machinery at their disposal to stifle criticism becomes in many cases too overwhelming to resist.

The media is a particular target for regimes threatened by the possibility of losing power in a free and fair election. The Media Institute of Southern Africa reported, for example, that in Zambia there was a surge of sixteen media freedom violations between September and November 2008, just before the presidential by-elections of October 2008, compared to six between January and August of the same year. The ruling party's candidate went on to win the election.

Criticism of human rights records at election time is felt particularly sensitively and elicits some sharp reactions. In Uganda, during the March 2006 municipal elections the police closed an independent radio station, Choice FM, after it aired a programme that was critical of a ruling party candidate and of the military. Opposition candidates invited to speak on the programme had voiced opinions that the military and civilian authorities were mistreating residents.¹⁶² In Pakistan, similar restrictions were faced in the run-up to planned elections on 18 February 2008.¹⁶³ In early February, for example, *Aaj TV* was taken off the air for twelve hours merely for broadcasting a discussion with a prominent critic of the Musharraf government, who has been outspoken on issues such as press freedom, extrajudicial killings and women's rights.¹⁶⁴ In Nigeria two radio stations were raided and shut down by the State Security Services, and repeatedly warned for freely airing views critical of the ruling party just over a week before the Presidential and National Assembly elections in April 2007.¹⁶⁵

In many cases there is legislation that legitimises unwarranted actions of government and police. Uganda's Electronic Media Act of 1966 bars the broadcast of programmes "likely to create public insecurity or violence".¹⁶⁶ Section 8 of the Act requires broadcasters to adhere to the minimum standards: "A person shall not carry out any broadcasting or operate a cinematograph theatre unless what is to be broadcast or exhibited is in compliance with the provisions of the First Schedule to this Act."¹⁶⁷

Human rights defenders in these cases exercise their right under Article 8 of the Declaration, to draw attention to aspects of official work "that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms".¹⁶⁸ In doing so, they attempt to enforce the

right to free and fair elections by ensuring that everyone has access to sufficient information to enable them to make an informed decision and participate rationally in the democratic process. Lacking that information, individuals cannot be said to have exercised their free will in voting.

The increase in censorship of the media and threats towards and abuses of human rights defenders during election periods clearly demonstrates that governments recognise the capacity of free speech, and of the human rights defenders who attempt to facilitate and promote it, to undermine their own grip on power. But this does not appear to be well-recognised by election observers, who repeatedly declare elections to be free and fair even where there was suppression of human rights defenders. The South African Development Community was urged by Reporters Without Borders not to minimise the importance of restrictions on the media when observing the March 2008 elections in the former Commonwealth member, Zimbabwe.¹⁶⁹ Observers who on short-term observation confined to a few days around the election dates, fail to take account of the suppression of critics, undermine the basic tenets of the Commonwealth and enable the

continued suppression of rights defenders over the next years even as governments can maintain the myth that they are functioning democratically.

Arbitrary Detentions in the Gambia, After the Coup Attempt of March 2006

The editor and managing director of the *Independent* were detained on 28 March 2006; they were given no official reason for their detention.¹⁷⁵

The most senior female member of the Gambian Bar was detained on 6 April 2006, believed to be in connection with her representation of the coup plotters.¹⁷⁶

Another lawyer representing clients who were suspected coup plotters was detained in April 2006.¹⁷⁷

The former head of the Government Treasury was arrested by the National Intelligence Agency in April 2006.¹⁷⁸

A reporter with the *Independent* newspaper was arrested on 6 April 2006.¹⁷⁹

A former reporter for the *Daily Observer* was arrested in May 2006 by NIA officials after his name was found in a list of subscribers to *Freedom Newspaper*, an online paper edited by a journalist from the Gambia living in self-imposed exile in the US.¹⁸⁰

Armed Conflicts, Coups and States of Emergency

Situations of internal armed conflict are another context in which human rights defenders are at increased risk. National security is a legitimate concern of governments and the presence of protracted armed conflicts within state borders has prompted the passing of special laws and an increase in police powers as part of attempts to quell conflict. In some cases, however, the use of this legislation is not well-regulated, enabling it to be turned to ends other than those for which it was intended.¹⁷⁰ There is also a tendency for governments to retain these statutes and continue to use them even after the tensions that prompted their adoption have ended. The power to detain preventatively is a particularly common feature of these laws.

In Malaysia, preventative detention was first used during the period of the armed insurgency by communists. A state of emergency was declared in 1948 and remained in place until 1960. However, the powers of preventative detention that the emergency regulations had granted to security forces were retained through the passing of the 1960 Internal Security Act (ISA) which continues to be actively used to this day. The act was justified by appeal to the need to prevent the resurgence of violence by the communists. Nevertheless, long after all threat of communist insurgency has

disappeared and despite assurances from the highest in the land that the law would “be used solely against the communists”¹⁷¹ and was a measure “aimed at preventing the resurgence of the earlier communist threat to the nation”,¹⁷² the ISA has been retained on the books and has been used in a wide range of contexts, very few of which can be described as “communist threats” or as security threats of any kind.

In the Gambia, the government has not formally revoked military decrees that were enacted after the 1994 military coup, which give the National Intelligence Agency and the Secretary of State for the Interior broad powers to detain individuals indefinitely without charge “in the interest of national security”. The 1997 Constitution allows decrees to remain in effect unless they are inconsistent with constitutional provisions. These military decrees appear to be inconsistent with the Constitution, but they have not been judicially challenged.¹⁷³ After a coup attempt in 2006 the President vowed that “any attempt to unconstitutionally overthrow the government would be crushed without mercy” and that he would “set an example that would put an end to the treachery and sabotage”.¹⁷⁴ Arbitrary detentions of human rights defenders increased immediately after the coup attempt.

Governments too often use such legislation to target those who attempt peacefully to draw attention to human rights violations occurring as a result of a conflict, or who try to offer humanitarian assistance to those caught up in it.

In Sri Lanka, with a view to creating an independent state, a militarist organisation, the Liberation Tigers of Tamil Eelam (LTTE), has been locked in armed conflict with the government for nearly sixteen years. Both sides have been accused of egregious human rights violations, and both have engaged in attempts to suppress criticism of their actions. On the government side, one key tactic has been the use of anti-terror legislation to stifle criticism of the regime.¹⁸¹

The Prevention of Terrorism Act (PTA) was enacted in 1979, as a temporary law, ostensibly to deal with the prevalent threat, and was made permanent in 1982.¹⁸² Dormant from 2002 as part of a ceasefire agreement, it was reactivated in 2006 when fighting resumed although the ceasefire remained officially in place until early January 2008.

The PTA’s wording has been criticised as being overbroad in its definitions and too permissive in the discretions it affords officials, but it is nevertheless typical of much of anti-terror legislation extant in the Commonwealth. It can be used very easily to bring within its net many legitimate activities by criminalising anyone who “by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups”.¹⁸³ In addition, it gives powers to authorised members of the police to arrest individuals without warrant on reasonable suspicion of their being connected with any unlawful activity.¹⁸⁴

Sri Lanka has been under a state of emergency almost continuously since 1983. The President has powers to declare a state of emergency under the Public Security Ordinance, 1947,¹⁸⁵ which also gives powers to issue Emergency Regulations. The state of emergency must be renewed by Parliament every month, and the Emergency Regulations are automatically renewed at the same time. The most recent declaration of a state of emergency came in August 2005, after the assassination of the country’s foreign minister, and along with it came the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 and the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 of 2006.¹⁸⁶ The second set of regulations contains the vaguely worded provision that no one shall “promote, encourage, support, advice [sic], assist, act on behalf of, [any terrorist organisation]”¹⁸⁷ “including contributing, providing, donating, selling, buying, hiring, leasing, receiving, making available, funding, distributing or lending materially or otherwise”.¹⁸⁸ Even after the end of the civil war, in May 2009, Parliament continued to vote for the monthly renewal of the state of emergency. The latest renewal was in August 2009 when seventy-one

members of the 225 member Parliament voted in favour of renewal, seven against, and the main opposition party boycotted the vote.¹⁸⁹

Although ostensibly available for use against extremists, terrorists and subversives, in March 2008, a well-respected journalist was arrested and detained without charge for five months, with no indication given of the reason for his detention, until in August 2008 he was charged under both the PTA and the Emergency Regulations with promoting terrorism through a magazine he edited and a website he maintained,¹⁹⁰ both of which published articles in which he was critical of human rights violations and spoke out for the human rights of all who were caught up in the conflict, regardless of their ethnicity.¹⁹¹ In August 2009 he was found guilty under the PTA of causing “racial hatred” and “supporting terrorism” on grounds of articles he had written that were critical of the government and of raising funds to support the magazine in which the offensive articles were published.¹⁹² He was sentenced to 20 years hard labour.

After his sentence indignation, and solidarity with his plight, was expressed through the announcements that he would be the first winner of the Peter Mackler Award for Courageous and Ethical Journalism in August 2009 from Reporters Without Borders (USA) and the Global Media Forum, awarded for journalists who fight courageously and ethically to report the news in countries where freedom of the press is either not recognised or not guaranteed,¹⁹³ and that he will also receive one of the 2009 International Press Freedom Awards, from the Committee to Protect Journalists.¹⁹⁴

The Sri Lankan government has stood by the sentence, saying that the journalist was given a fair trial, and that his sentence did not affect press freedom in the country.¹⁹⁵ But the sentence has been strongly criticised by journalists and human rights defenders: “It sends a very clear message to journalists who’ve ever criticized a government policy: Anything you’ve ever said could suddenly be evidence against you.”¹⁹⁶

It is too often too easy for those in authority to choose to utilise emergency powers. In Pakistan, the President may declare a state of emergency on the basis of his own judgement alone if he believes the security of Pakistan is threatened by “war or external aggression, or by internal disturbance”.¹⁹⁷ The decision must be laid before Parliament within thirty days of the declaration, failing which the powers will lapse after two months.¹⁹⁸ However, even these powers of Parliament were overruled when President Musharraf declared a State of Emergency in November 2007 on the eve of a ruling by the Supreme Court on petitions that contested whether he had been eligible to put himself forward as a contender in the presidential elections that had been held in October 2007.¹⁹⁹ Musharraf suspended the Constitution, issued a Provisional Constitutional Order (PCO) and removed the power of the courts to question the validity of the Proclamation of Emergency or the PCO.²⁰⁰

In taking steps to secure his own position as head of state, Musharraf clamped down on even the possibility of dissent. Immediately following the Declaration of Emergency, the Special Rapporteur on freedom of religion or belief, who was also Chairperson of the Human Rights Commission of Pakistan (an NGO) was issued a ninety-day detention order and placed under house arrest²⁰¹ on grounds of her engagement in activities “prejudicial to public safety and maintenance of public order”, and “credible information that [she] will deliver inflammatory speeches for instigating the general public”.²⁰² At the same time an arrest warrant was issued for the Special Representative on the situation of human rights defenders who was the Vice-Chairperson of the same NGO. In the following days, with Musharraf appealing to the need to protect citizens from terrorists and radicals, many hundreds of human rights defenders were arbitrarily arrested, including members of the Supreme Court who refused to endorse the suspension of the Constitution.²⁰³

In 2007, in the context of widespread violence in the run-up to proposed elections a state of emergency was declared in Bangladesh. This gave the police extra powers to crack down on dissent with the stated intent of restoring law and order.²⁰⁴ However, the wide latitude that the emergency powers

gave to the police combined with the attitude that any dissent poses a threat to law and order, made human rights defenders vulnerable.

The Principal Programme Coordinator of PROSHIKA, and the Director of the Association of Development Agencies in Bangladesh, both well-known development NGOs, were taken away by members of the Rapid Action Battalion (an elite anti-crime and anti-terrorism force consisting of members of the police, army, navy and air force) in the early hours during January 2007, without reasons being provided. Both were issued with thirty-day preventative detention orders under the Special Powers Act for “prejudicial acts”.²⁰⁵ Neither was given access to a lawyer and it was not until some days later that they were given the reason for their detention, which was their alleged involvement with harmful activities against Bangladesh. (One of them, who worked regularly with slum dwellers, was accused of influencing them against law and order and of being involved in terrorist activities and destructive actions.) Later, another thirty-day detention order was imposed on the two men. In a challenge, the High Court gave the government ten days to show that the detention was legal. When no response was forthcoming the Court ordered both men released. However, the men then immediately faced allegedly fabricated charges for involvement in crimes that had taken place in 2006 even though they had not been named in the original complaints.²⁰⁶ Brought before a magistrate three days later, for the first time since their detention, the men nevertheless remained in detention for several more weeks before being released.

Through the arrest and detention, on vague grounds, of individuals who have roots and who reach into the community, and whose work has brought them credibility in those communities, oppressive regimes are able to remove any rallying points for resistance. Targeting these individuals is an effective means of demonstrating the unpleasant consequences that await those who question authority and of ensuring silence and subservience even in the face of great injustice and abuse of power.

Illegitimate regimes masquerading as democratic have a particular need to silence voices that carry greater credibility. In December 2006, Commodore Frank Bainimarama of Fiji overthrew the elected government. After the coup Bainimarama repeatedly stated that he was, in principle, in favour of early elections, but dismissed questions as to when he would hold them by saying that the country was not yet stable enough. In October 2007, he finally committed to holding elections in early 2009, but in the event, he again reneged on his promise. The post-coup crackdown on human rights defenders who insist on democratic functioning was swift and early, and the tactic of targeting highly visible activists has helped to quell dissent.

In the first days after the coup, the Executive Director of the Pacific Centre for Public Integrity received a phone call believed to be from the military. Later, a senior commander of the Fiji defence forces confirmed that the military was trying to locate her in order to caution her against making public statements critical of the President, the interim government and the military, as such statements were held to be detrimental to the security situation in the country.²⁰⁷ She later brought a case contesting the legality of the coup and of judicial appointments made by the regime, which, given that some of the same judges whose appointments were being contested refused to recuse themselves from the case, she unsurprisingly lost.²⁰⁸ She incurred substantive legal fees, which remain outstanding, as a result of which she has been placed on immigration’s detention list, meaning she will be detained on arrival if she attempts to return to Fiji.²⁰⁹

A few days later on Christmas Eve a pro-democracy activist and businesswoman who maintained a “pro-democracy shrine” at her offices had her offices broken into and her banners torn down. Later she was picked up, taken to a military camp and subjected to verbal abuse, maltreatment and threats. After her statement outlining what had happened to her was made public, she was forced to go into hiding to protect herself from arrest.²¹⁰ She emerged again in February after being assured by the military that she would not be targeted,²¹¹ only to find that she had been placed on a no-fly list when she tried to leave the country in July 2007.

That same night in December, two prominent and internationally well-known and respected members of the Fiji Women's Rights Movement, including a former Commissioner of the Fiji Human Rights Commission and member of the Geneva-based International Commission of Jurists, were among six other pro-democracy activists arrested by the military. The arrests came after Bainimarama issued a warning against them to "stop saying things that could incite civil unrest", implying as well that if they did not comply then the military would take action against them.²¹²

In the months following, arrests and intimidation continued, and in January 2007 the house of a trade unionist and staunch pro-democracy activist was surrounded by soldiers while he was there with his family. He was subsequently taken away to be detained and interrogated.²¹³

Fiji was suspended from the *councils* of the Commonwealth immediately after the coup, though not from *membership*. The Commonwealth continued to attempt to engage Fiji under the terms of the Millbrook Commonwealth Action Programme, which allows for a two-year period within which democracy must be restored to a country. The Commonwealth Ministerial Action Group, which enforces the programme, pursued a strategy of continued engagement with Fiji in order to meet the Commonwealth's own responsibility of supporting the restoration of democracy and protecting and promoting the human rights of the people of Fiji, and called on the Secretary-General to deploy his good offices to the cause. However, after the Court of Appeal declared the 2006 takeover illegal in April 2009, the President, who had been appointed by Bainimarama, suspended the Constitution and dismissed the judiciary, then reappointed Bainimarama as Prime Minister and announced that elections would be deferred for five years.²¹⁴ As a consequence of its failure to hold promised elections by May 2009, Fiji was suspended from the Pacific Islands Forum. It was suspended from the Commonwealth in September 2009 after it failed to commit itself to holding elections in 2010.²¹⁵ The ruling regime is not unduly concerned that it is violating the Harare Principles and falling below standards in terms of human rights compliance. Nor does it appear to be in any hurry to hasten its path to democracy despite its suspension from the Commonwealth.

Along with extra powers, the police also enjoy immunities. In Fiji, the Immunity (Fiji Military Government Intervention) Promulgation, 2007 specifically grants "full and unconditional immunity from all criminal or civil or legal or military disciplinary or professional proceedings or consequences" for all those members of the Disciplined Forces who were involved in the coup, during the run-up to the declaration of the state of emergency on 5 December 2006 until 5 January 2007, which was the day after President Uluivada resumed executive authority over the interim government. The grant of immunity also extends to those acting under the command of those Forces.²¹⁶ This makes it impossible for those human rights defenders who were targeted by the military during that period to get justice for the violations that they suffered.

Competition for Natural Resources

Competition for control over valuable resources coupled with a sense of injustice fuels many low-grade internal conflicts in the Commonwealth. One of the most intractable has been ongoing in the Niger Delta region of Nigeria. The Delta region's oil exploration accounts for 75 per cent of the government's income and 95 per cent of the country's export revenues.²¹⁷ Yet 70 per cent of the region lives below the poverty line.²¹⁸ Royalties that the Niger Delta region receives from its own oil reserves have gone down dramatically from 100 per cent at the time of self-rule in the 1950s to 50 per cent in the 1970s, reaching a low of 1.5 per cent, before being doubled to 3 per cent in 1992 and increased to 13 per cent in 1999.²¹⁹ Several armed outfits operate in the region defying the government and operating an illegal economy based on stealing oil from pipes to sell it illicitly. Estimates of oil stolen in this way range from 30,000 to 300,000 barrels per day.²²⁰

Competition for government office that brings with it control of oil revenues is intense. The local elections in both 2003 and 2007 are widely reported to have been extensively rigged. The side-

effect of the conflict is a region rife with human rights violations. A succession of human rights defenders have been caught in the middle for their attempts to document ongoing violations and to draw attention to the devastating situation in the region and the interests that perpetuate it.

Illustratively, in 2006, a freelance photographer on assignment with *National Geographic* was arrested while photographing an oil facility, accused of doing so without permission. However, journalists in Nigeria were not aware that any such authorisation was required.²²¹ He was first held in the custody of the Nigerian Navy, before being transferred to the Special Security Services. No charges were brought against him.

Two German filmmakers were arrested in 2007 and charged with endangering state security after they photographed and took video footage of “protected places” including oil facilities in the Niger Delta.²²²

In 2008 four US citizens and one Nigerian were arrested and detained ostensibly for travelling without military clearance in the south of the country, where the fighting is taking place. The Americans were legally in the country and had informed the authorities that they intended to make a documentary on the impact of oil production in the Niger Delta.²²³

An illustration depicting human rights defenders standing in front of a massive, dark grey boot. The boot is the central focus, with its laces and sole visible. Three people are shown: a man in a green and yellow striped shirt and orange pants, a woman in a pink shirt and blue pants holding a white sign, and a man in a light blue shirt and brown pants. The background is a mix of brown and grey tones, suggesting a dark, oppressive environment. The overall style is that of a political cartoon or poster.

Human rights defenders stand in the front lines of protection, casting the bright light of human rights into the darkest corners of tyranny and abuse.

— Kofi Annan

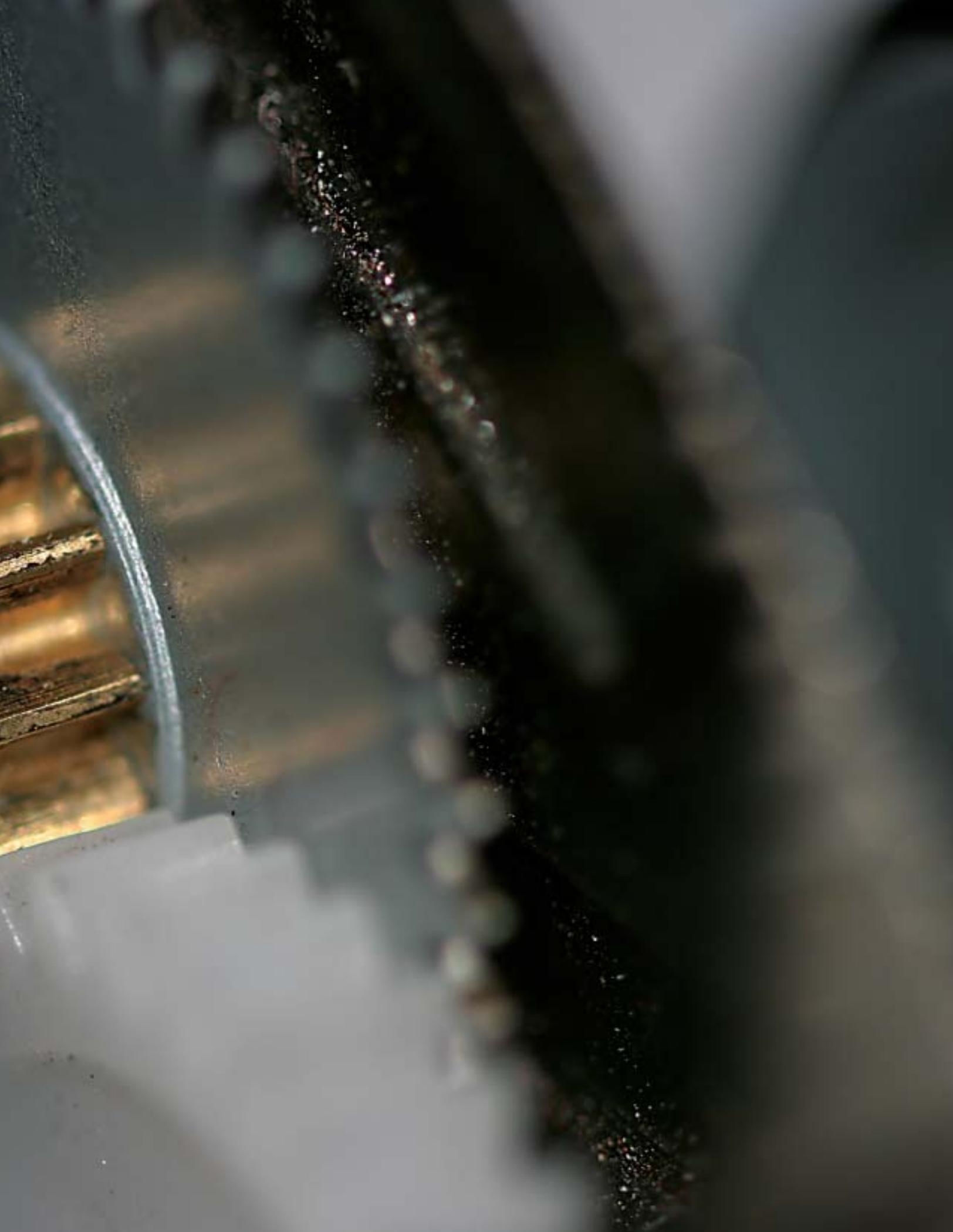
From speech made by the UN Secretary-General on Human Rights Day, December 10, 2003

Chapter IV

Defending the Defenders: Key Mechanisms

In recognition of the difficult circumstances in which many human rights defenders work and of the important nature of the activities in which they engage, there has been a recent effort on the part of the international community to create mechanisms directed towards their protection. The post of UN Special Rapporteur on the situation of human rights defenders was created in 2000 with the broad mandate of implementing the UN Declaration, and subsequently regional bodies and posts have been created with similar mandates. At the national level, National Human Rights Institutions, while not created with the specific mandate of assisting human rights defenders, are invaluable placed to offer protection and to work together with human rights defenders for the promotion of human rights.





The recognition that there is a huge gap between human rights norms and standards on the one hand, and adherence to them on the other, has prompted the creation of special monitoring and protection mechanisms at national, regional and international levels. At the national level they can range from Parliamentary Committees that review legislation to assess whether it conforms to human rights norms, to national and sub-national specialised human rights institutions and ombudsmen. Regionally, there are human rights commissions such as the Inter-American Commission on Human Rights (IACHR) and the African Commission on Human and Peoples' Rights (ACHPR), each of which has its own system of rapporteurs and experts on particular thematic areas. There are also regional courts, for example, the Inter-American Court on Human Rights, the African Court on Human and Peoples' Rights and the European Court of Human Rights. Finally, there are global bodies, such as the UN's Office of the High Commissioner on Human Rights, the UN Human Rights Council and the UN's myriad specialist treaty bodies, expert groups, and Special Procedures appointed to monitor and report back on thematic and country issues of concern.

Each of these mechanisms can provide assistance to human rights defenders; however, of special significance are mechanisms such as the UN Special Rapporteur on the situation of human rights defenders and the regional Special Rapporteur of the ACHPR, along with the Inter-American Commission's Unit on human rights defenders. Their presence indicates both a recognition of the importance of human rights defenders' work, and a special concern for their safety. However, the true measure of that commitment is how effective these mechanisms are in practice, in terms of the resources they are provided with, the extent to which other bodies, such as National Human Rights Institutions, work with them to support their mandate and implement recommendations, and the support they receive from governments.

The UN Special Rapporteur on Human Rights Defenders

The UN Special Rapporteur on the situation of human rights defenders is mandated to monitor and report on the situation of human rights defenders around the world. The Rapporteur is charged not only with protecting human rights defenders against violations of their rights but also with supporting the creation of conditions favourable to the promotion of human rights.²²⁴

The post of a monitor and protector for human rights defenders was established in April 2000²²⁵ as part of the "special procedures" of the UN, which are created to address specific country or thematic situations of concern.²²⁶ Twice renewed under the title of Special Representative, that title was changed to Special Rapporteur when the mandate was renewed in 2008. Although the official position is that the various titles accorded to the Special Procedures do not reflect a hierarchy and are simply a result of "political negotiations" at the time of appointment, Special Representatives are in actual fact considered to be more powerful than Special Rapporteurs, as the former report directly to the UN General Assembly and to the UN Secretary-General. This reportedly gives the mandate-holder better access to UN bodies and governments.²²⁷ The decision to extend the human rights defenders mandate for a further term but to change the title could therefore be seen as a downgrading of the mechanism.

The Mandate

To seek, receive, examine and respond to information on the situation of human rights defenders;

To establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the Declaration;

To recommend effective strategies better to protect human rights defenders and to follow up on those recommendations;

To integrate a gender perspective throughout her work.²²⁸

There are two key aspects to the role of the Special Rapporteur. First, her monitoring of the situation of human rights defenders, which she does through receiving complaints, travelling to countries on invitation, and in each case compiling reports on her findings. Since establishment of the mandate in 2000, there have been nine annual reports to the UN Commission on Human Rights or Human Rights Council, and eight to the UN General Assembly. The former contain complaints received and an analysis of those complaints in terms of regional trends or particularly vulnerable defenders, while the latter tend to focus more on particular areas of concern for human rights defenders, such as the impact of security legislation on their work. On the basis of her monitoring of the human rights situation the Special Rapporteur carries out the second aspect of her mandate, which is her work to implement change at the national level through recommendations made to governments.

The Complaints Procedure

Anyone who feels their rights have been violated because of their activities as a human rights defender can for themselves, or on behalf of another, approach the Special Rapporteur. The complaint must indicate the name of the victim, the activities he or she is engaged in that qualify him or her to be adjudged a human rights defender – because only if this condition is satisfied will the Rapporteur’s mandate be activated – and the link between the violation and those activities. The complaint must detail the violation, indicate the perpetrators and provide information about any action taken by the authorities. After having ascertained that the complaint falls within the remit of her office, the Special Rapporteur takes steps to verify the account by locating confirmatory accounts from NGOs or others working in the country. She then contacts the government in question asking it to investigate the matter and communicate the results to her office.

To reach the Special Rapporteurs office:

Email: urgent-action@ohchr.org

Phone: +41 22 917 1234

Fax: +41 22 917 9006

Post: SPECIAL PROCEDURES BRANCH

C/o OHCHR-UNOG

8-14 Avenue de la Paix

1211 Geneva 10

Switzerland

Website: <http://www2.ohchr.org/english/issues/defenders/index.htm>

Cases of human rights violations could fall under at least one other of the Special Procedures mandates, such as that of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and so on. Submitting complaints to multiple Special Procedures encourages joint action and pooling of resources.

Level of Compliance with the UN Special Rapporteur in the Commonwealth

Depending on the credibility of the complaint received, and subject to confirmation by the Special Rapporteur of the circumstances of the threat made to, or violation suffered by, the defender, the Special Rapporteur sends communications to the authorities in question seeking clarification, indicating concern or requesting action.

Of the seventy-nine countries that received communications from the Special Rapporteur in 2008,²²⁹ twelve were Commonwealth countries (the Bahamas, Cameroon, Fiji, the Gambia, India, Kenya, Malaysia, Nigeria, Pakistan, Papua New Guinea, Sri Lanka and Uganda). Of these, Fiji, the Gambia, Kenya, Nigeria, Papua New Guinea and Uganda failed to respond to any of the communications from the Special Rapporteur. Cameroon responded to one of three communications received, but this entailed no more than acknowledging receipt and seeking a further thirty days to respond in more detail. India responded to four of seventeen; Malaysia to six of seven, of which one was an acknowledgement of receipt; Pakistan to five of seven, of which three were merely acknowledgements; and Sri Lanka to four of ten. The Bahamas responded to all communications it received in 2008, which was just one.

Between 2005 and 2008, only New Zealand, Tanzania and the Bahamas responded to all communications sent by the Special Rapporteur, but these were also countries that received relatively fewer communications, each receiving only one during the four-year period. Nigeria was the worst offender, receiving communications in each of the four years and failing to respond to any of them. Australia, Fiji, the Gambia, Kenya, Papua New Guinea, Sierra Leone, South Africa, Tonga and Uganda received communications in at least one of the four years and all failed to respond to any of them. Of these, Nigeria (2006-09) and South Africa (2006-07 and 2007-10) have been members of the UN Human Rights Council.²³⁰ Their lack of cooperation with that Council's Special Procedures belies the commitments they made in their election to the Council.

If there is a failure to respond in a particularly urgent and serious case the Special Rapporteur will make efforts to follow up with the government, usually via contact with its representation at the United Nations in Geneva. The number of cases that can be pursued is limited, however, by a lack of resources.²³¹

Even where Commonwealth governments have responded, they often "fail to address the specific queries of the mandate in relation to the treatment of human rights defenders, the dialogue that the communications procedure aims at building is of poor quality", and "replies insist on the supposed illegal acts committed by the defenders involved, without any explanation of the action or omission of the Government which is the central concern of the communication. Governments have rarely acknowledged the human rights activities of defenders and their responses usually fail to address or meaningfully comment on the possible link between a human rights activity and reported violations. Replies that repeatedly and exclusively focus on the presumed illegality of the activities of defenders indicate alarming patterns of criminalisation of defenders."²³²

Standard Procedure?

One reply by the Malaysian government over a case involving the NGO HINDRAF, exemplifies the attitudes of many Commonwealth governments to the communications received from the Special Rapporteur. HINDRAF, a coalition of thirty non-governmental organisations, works for the rights of the Hindu minority. This is seen as a direct challenge to the government's pro-Malay affirmative action policies.²³³ In 2007, HINDRAF was targeted by the police in a variety of ways, including the arrest of several members under the Internal Security Act for threatening national security, and the dispersal of peaceful demonstrations with water cannon and tear gas. In its response to the Urgent Appeal issued by the Special Rapporteur, the government emphasised that HINDRAF was a non-registered society, contrary to the Societies Act of Malaysia (1966), but failed to mention that while HINDRAF had applied for registration under the Act it had been banned by the Malaysian Government.²³⁴ The response describes HINDRAF as inciting racial and religious hatred, of initiating smear campaigns, and of having suspected links with the LTTE in Sri Lanka. It is stated that the defenders were arrested not because they were protesting peacefully, but because they were "aggressively inciting [a] feeling of ill-will amongst the races in Malaysia with deeply hurtful racial and religious rhetoric".²³⁵

The treatment of the Special Rapporteur by some Commonwealth governments indicates an adversarial posture in opposition to their commitments under the international human rights regime. Instead of engaging with the Special Rapporteur to resolve issues where there is serious concern about the abuse of power, discrimination or violation of rights as well as fear of loss of liberty and physical harm, the state all too often presents itself as defending its record against 'frivolous' or 'unsubstantiated' allegations.

This uncooperative attitude is further borne out by the failure of many Commonwealth governments to issue invitations for country visits. Without such an invitation the Special Rapporteur cannot make an official visit to assess the situation of human rights defenders in that country. Since 2000, requests for country visits have been made to India (2005), Kenya (2003), Malaysia (2002), the Maldives (2006), Mozambique (2003), Nigeria, Pakistan (2002, 2003, 2008), Singapore (2001), Sri Lanka (2008) and Zambia.²³⁶ Of these ten countries, only the request issued to Nigeria resulted in a visit taking place in 2005; while the Maldives has agreed in principle, a visit has not yet taken place.

To their credit, eleven Commonwealth countries had, as of May 2009 issued a "standing invitation" to all Special Rapporteurs, including of course the Special Rapporteur on human rights defenders: Australia (2008), Canada (1999), Cyprus (2001), Ghana (2006), Maldives (2006), Malta (2001), New Zealand (2004), Sierra Leone (2003), South Africa (2003), the United Kingdom (2001) and Zambia (2008).²³⁷ While South Africa issued a standing invitation to the Special Rapporteur in 2003, it is one of the countries that failed to respond to any communications received in the period 2005-2008, and also one that sits on the Human Rights Council. Apparent cooperation on the one hand, combined with lack of substantive cooperation on the other, reveals a double standard at play which is especially damaging to the cause of human rights in general and of human rights defenders in particular.

Even when a government allows visits from international agents, there are ways in which they can contrive to undermine the process. When in 2007, the United Nations Under-Secretary-General on Humanitarian Affairs and Emergency Relief Co-ordination made a country visit to Sri Lanka, he attempted to meet with civil society and NGOs in a more informal manner. However, this interaction was marred by the heavy presence of military and police forces. On the day before, the government instructed civil society and NGOs to refer only to humanitarian issues and not to the general human rights situation in Sri Lanka. Further, it was the military and government representatives who briefed the Under-Secretary-General on the human rights and security situation, and the situation of internally displaced persons. This precluded any possibility of the visitor hearing any independent or dissident points of view.²³⁸ While the case does not involve the Special Rapporteur directly, it does illustrate the ploys and obfuscations some governments will use to avoid any possible examination of human rights violations.

The Special Rapporteur receives many more complaints than she can attend to, and more than any other of the Special Procedures. In 2008, she received over 500 complaints compared to the little over 400 received by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the fewer than 250 received by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Other special mandate holders all received fewer than 200 complaints during the year.²³⁹ This is perhaps a reflection of the generally higher rate of human rights literacy amongst human rights defenders as compared to the rest of the population.

Complaints come in from several sources including individuals, NGOs, the media, National Human Rights Institutions and other UN agencies.²⁴⁰ But even taking into account all these diverse sources many violations in the Commonwealth do not reach the Special Rapporteur. A regional breakdown of the total number of complaints received from Commonwealth countries from 2000 through to 2009 reveals that of the ninety-two complaints, forty-three came from Asia, thirty-seven from Africa, five each from the Caribbean and Pacific and four from Europe. Of the five received from the Pacific there were one each from Australia, New Zealand and Papua New Guinea and two from Fiji. Arguably, these are the better connected and more internationally aware countries of the Pacific. The more isolated islands of Kiribati, Nauru, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu had no contact at all with the Special Rapporteur during this period.

A similar story holds for the Caribbean, where four complaints were received from Jamaica and one from the Bahamas. The implication is that those living in isolated places are often too disconnected for the most part from international and regional networks to know that the possibility of protection even exists, let alone how to get in touch with a special procedure. Many working to ensure justice and uphold human rights standards may even be completely unaware that their work qualifies them for protection from the state and that there are in fact international mechanisms specially set up for them. Human rights defenders in the Pacific Islands, for example, are often unaware that their own work can be conceived of as human rights work.²⁴¹ Even were they aware of the protection mechanisms available to human rights defenders, they would not necessarily conceive of them as relevant to their own situation. Additionally, the relative isolation of these communities and a lower level of access to communication technologies mean that the rest of the human rights community is far less aware of the work that goes on in the Pacific Islands, as a result of which complaints cannot be made on their behalf.

Two human rights defenders who had previously cooperated with the Special Rapporteur on extrajudicial, summary or arbitrary executions were very shortly thereafter themselves shot and killed.

The distribution of complaints is uneven. Africa with eighteen Commonwealth members accounted for thirty-seven complaints as compared to Asia's forty-two from just eight countries. Eight countries in Africa had no contact with the Special Rapporteur: Botswana, Ghana, Lesotho, Malawi, Mauritius, Mozambique, Seychelles and Swaziland. It is entirely possible that many human rights defenders do not bring complaints to the Special Rapporteur because there are effective redress mechanisms at home or because of the availability of a regional mechanism in Africa for example. However it is equally possible that justifiable fear of reprisals inhibits approach; and understandably so. In Kenya, for example, two human rights defenders who had previously cooperated with the Special Rapporteur on extrajudicial,

summary or arbitrary executions were very shortly thereafter themselves shot and killed. The police have thus far failed to identify those responsible. While a direct link cannot be made between their contact with the Special Rapporteur and their deaths, the proximity in time at least highlights the current lack of protection for human rights defenders who do cooperate with the Special Rapporteurs.

The uneasiness that governments feel at the monitoring and investigation of human rights issues and complaints has spawned a worrying trend of states attempting to limit the remit of the Special Procedures. Illustrative of this attitude were criticisms made against the recently appointed Special Rapporteur for exceeding her mandate after she devoted her first report to the mechanism of Universal Periodic Review (UPR) as being of "strategic value in reviewing and hopefully improving the situation of human rights defenders".²⁴² The report made suggestions as to how the UPR could be used to improve protections for human rights defenders on the ground and called for civil society to be heavily involved in the process of preparing states' submissions for the UPR.²⁴³ For this innovative way of addressing the situation of human rights defenders and attempting to increase the scrutiny that states are under for their treatment of human rights defenders the Special Rapporteur faced criticism from Bangladesh, Cameroon, Malaysia, Nigeria and Pakistan.²⁴⁴ However, Canada, New Zealand, Uganda and the United Kingdom welcomed the report.

The Special Rapporteur on freedom of expression also faced criticism for "exceeding his mandate", after he pointed out in the conclusion of his 2009 report to the Human Rights Council, that there was no room in international standards on freedom of expression for the concept of defamation of religion.²⁴⁵ Amongst those who signed up to statements against the Special Rapporteur were Bangladesh, Cameroon, Ghana, Malaysia, Mauritius, Nigeria, South Africa and Zambia. Going a step further, Malaysia also made an individual statement. The states called on the Rapporteur to be stripped of his mandate unless he conformed to their interpretation of it. These efforts to control the remit of the Special Procedures undermine more than the Rapporteur singled out and are part of concerted efforts to weaken the entire system of Special Procedures by governments reluctant to be named and shamed on the international stage.

Despite all this, the role of the Special Rapporteur on the situation of human rights defenders is crucial and her intervention can be decisive. For example, in August 2008, three members of an organisation that works on behalf of Uganda's LGBTI people, who had been charged with trespassing, were released from prison just days after the Special Rapporteur on the situation of human rights defenders, together with the Special Rapporteur on the independence of the judiciary and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had sent a joint allegation letter to the Ugandan authorities requesting their release.²⁴⁶

Regional Protection Mechanisms

Across the Commonwealth there are several regional mechanisms that enable human rights defenders to seek protection. The Organization of African Unity (African Union), of which all eighteen Commonwealth African countries are members, established the African Commission on Human and Peoples' Rights (ACHPR) in 1986 and appointed a Special Rapporteur on human rights defenders in 2005.²⁴⁷ The mandate is similar to that of the UN Special Rapporteur.

The Inter-American Commission on Human Rights, the human rights mechanism of the Organization of American States (OAS) of which thirteen Commonwealth states are members,²⁴⁸ established a Human Rights Defenders Unit in 2001. Again, the mandate of the unit is similar to that of the UN Special Rapporteur but there is a specific requirement that it should liaise with the UN Special Rapporteur on the situation of human rights defenders.²⁴⁹

Europe has no specific protection mechanism for human rights defenders within Europe. However, under the 2008 Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, the Commissioner for Human Rights of the Council of Europe (to which body all three of the Commonwealth members from Europe belong) is requested to continue to include the monitoring of the situation of human rights defenders as part of his or her mandate, and to meet with human rights defenders and intervene on their behalf with relevant authorities where appropriate. The Commissioner is also asked to collaborate with the UN Special Rapporteur on the situation of human rights defenders.²⁵⁰ Thus the Commissioner is given similar responsibilities with respect to human rights defenders as the Rapporteur of the African Commission and the Human Rights Defenders Unit of the Inter-American Commission, albeit not exclusively.

The European Union (EU) is unique amongst the regional bodies in having developed a set of guidelines for the protection of human rights defenders in countries outside the region.²⁵¹ The Guidelines are directed towards EU missions abroad and their purpose is to provide practical suggestions to support, strengthen and encourage respect for human rights defenders in those countries.²⁵² Again, all three European Commonwealth countries are members of the EU.

Until 2009 there was no single regional mechanism for the Asia-Pacific region. In mid-2009 ASEAN, which has three Commonwealth countries (Brunei Darussalam, Malaysia and Singapore) amongst its members, developed the terms of reference²⁵³ for an Intergovernmental Commission on Human Rights, the most significant step towards the formal establishment of the Commission in October 2009.²⁵⁴ The Commission exemplifies, however, a failure to take into account the concerns of human rights defenders, who have in vain pushed for it to be made stronger, and now describe it as "very weak" and likely to "do little to improve the human rights situation in the region". The process of drafting the terms of reference has been described as "Track One", that is, involving only officials, as a result of which it "lacks legitimacy, lacks people's participation and also ruins the purpose".²⁵⁵ The terms of reference do not provide for thematic procedures, and no mention is made of human rights defenders.

South Asia, which is home to 75 per cent of all the people in the Commonwealth, and the Pacific region, still remain without a regional human rights mechanism, leaving a whole host of countries out in the cold with only distant international protection mechanisms available to them.

Through mutual reliance the regional Rapporteurs and mechanisms, and the UN Special Rapporteur, can seek to mitigate some of the difficulties they face in operating alone, in terms of presenting strong and credible recommendations, following up on those recommendations or accessing information. Closer cooperation in execution of their similar mandates has the potential to create a strong and comprehensive global network for monitoring and responding to the situation of human rights defenders. The idea behind the creation of the mandate for the ACHPR's Special Rapporteur was that it should not overlap with the work of the UN Special Rapporteur but should instead complement it by providing, for instance, regional knowledge to balance the international perspective of the UN Special Rapporteur. When in 2006, Bukari Bello, Executive Secretary of the Nigerian Human Rights Commission, was summarily dismissed from his position the two Special Rapporteurs worked together and issued a joint communiqué.²⁵⁶ Although he was not reinstated, a precedent was set that underscored the value of working together on issues of importance to a region, with each mechanism reinforcing the work of the other.

National Human Rights Institutions

Of the fifty-three Commonwealth countries, thirty have a National Human Rights Institution (NHRI) – organisations that are focused on national implementation of human rights. The United Kingdom has three NHRIs, one each in Great Britain, Northern Ireland and Scotland, making a total of thirty-two NHRIs in the Commonwealth. Of these twenty-four are Human Rights Commissions and eight are Ombudsmen that qualify as NHRIs,²⁵⁷ such as the Office of the Ombudsman in Namibia, which has, amongst other functions, a mandate “to investigate allegations of the breach of fundamental Rights and Freedoms which are set out in the Namibian Bill of Rights” by receiving and investigating complaints and by developing and implementing human rights education programmes.²⁵⁸ Twenty-three Commonwealth countries do not have any NHRI.

Asia with eight Commonwealth countries has four NHRIs.²⁵⁹ Africa with eighteen countries has twelve NHRIs; all three of Europe's Commonwealth members have NHRIs. Eight of the thirteen countries from the Americas have NHRIs, while the Pacific, with eleven Commonwealth members, has only three NHRIs leaving it by far the worst represented region. In 2009, the governments of Nauru and Samoa made commitments to explore the establishment of NHRIs in their countries.²⁶⁰

Whether or not an institution qualifies as an NHRI is decided by the International Coordinating Committee (ICC), a body established by NHRIs in 1993 to coordinate their activities. Concerned to ensure that only credible NHRIs that comply with the standards of independence set out in the Paris Principles²⁶¹ are able to participate in UN human rights meetings, the ICC developed a ranking system. An A-rating is granted to those institutions that fully comply with the Paris Principles. Partially compliant NHRIs get a B-rating, which gives them Observer Status, and a C-rating indicates that the NHRI does not satisfy the Paris Principles at all. Ratings are reviewed every five years.²⁶² Of the thirty-two NHRIs in the Commonwealth, sixteen have an A-rating, four a B-rating, and two are rated non-compliant. The rest had not applied for an ICC rating.²⁶³ Fiji's Commission resigned from the ICC ranking system in 2007. The ICC makes its ranking decisions on the basis of the institution's founding legislation, an outline of its organisational structure and annual budget, a copy of the most recent annual report and a statement from the NHRI detailing how it complies with the Paris Principles.²⁶⁴

| Status with the ICC | Countries |
|-------------------------|--|
| A | Australia, Canada, Ghana, Great Britain, India, Kenya, Malawi, Malaysia, Mauritius, Namibia, New Zealand, Northern Ireland, South Africa, Tanzania, Uganda, Zambia |
| B | Cameroon, Maldives, Nigeria, Sri Lanka |
| C | Antigua and Barbuda, Barbados |
| Not applied for ranking | Bangladesh, Belize, Cyprus, Fiji (resigned from ICC), Guyana, Jamaica, Saint Lucia, Sierra Leone, Scotland, Trinidad and Tobago |

Status with the ICC Countries

No NHRI

Bahamas, Botswana, Brunei Darussalam, Dominica, the Gambia, Grenada, Kiribati, Lesotho, Malta, Mozambique, Nauru, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Seychelles, Singapore, Solomon Islands, Swaziland, Tonga, Tuvalu, Vanuatu

The Paris Principles require NHRIs to “develop relations with the non-governmental organisations devoted to promoting and protecting human rights ... in view of the fundamental role played by the non-governmental organisations in expanding the work of the national institutions”.²⁶⁵ The ICC’s sub-committee on accreditation has emphasised the importance of national institutions maintaining “consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications”.²⁶⁶

The enabling legislation of thirteen Commonwealth human rights institutions requires them to work with, support or coordinate with NGOs.

The earlier the genuine involvement of large numbers of people in the creation of human rights mechanisms the greater the level of awareness about the mechanism and the greater its legitimacy. For example, the recently established Scottish Human Rights Commission was born out of a broad-based consultation process with lawyers, NGOs, the police, academics, and local government officials, amongst others.²⁶⁷ This was designed to determine the Commission’s functions, its remit and structure. Once the Commission formed, it launched a further consultation process, this time to determine the contents of its first strategic plan.²⁶⁸ Such an overtly inclusive process projects a clear statement that civil society is being treated as a partner.

By contrast, the founding legislation of the Bangladeshi National Human Rights Commission that came into being at around the same time was designed by a team of bureaucrats without wide-scale consultations. Subsequent appointments were made by an internal selection committee, which consisted only of government-appointed officials and bureaucrats.²⁶⁹ It presently does not have any formal mechanism to assure it of civil society input or any specific policy on the protection of human rights defenders. The Commission is currently in legal limbo after the repeal of the Ordinance under which it was created and the failure thus far to pass the new National Human Rights Commission Bill (2008) into law.

In recommending the downgrading of Sri Lanka’s national institution from the A to the B-category in 2007 the ICC “noted that the appointment process had caused civil society in the country to question the constitutionality of it, which has affected the credibility of the Commission”.²⁷⁰ In its letter of appeal to the ICC the Sri Lankan national institution conceded “that deterioration in it[s] relationship with segments of civil society has occurred and that there is a need to promote a stronger and more robust relationship with it” and went on to promise initiatives to hold regular meetings to re-engage with civil society.²⁷¹ By contrast, in reporting on its struggle to retain its A-list status SUHAKAM, Malaysia’s NHRI, emphasised the work being done on its behalf by NGOs who still felt that the Commission had a valuable role to play in the promotion and protection of human rights in the country. In its communications to the ICC it “... highlights the actions of Malaysian NGOs to call upon the Malaysian authorities to “honor its commitment to keep SUHAKAM on status A”,²⁷² thereby indicating the value of national institutions and civil society being on the same side as each other.

The relationship between national institutions and civil society, and particularly human rights defenders, who are natural partners of these institutions, need not necessarily be confined merely to seeking the protection of these mechanisms when in difficulties or bringing complaints to their notice. It includes being consulted in the process of creating the body, being appointed to the body as members, acting as *amicus curiae* in court cases brought by the institution, advising the institution as independent experts, participating as external members in committees and task forces and working alongside the

institution to disseminate information, assist with research, or campaign as equal partners in the endeavour of protecting and promoting human rights.

Working Together: NHRIs and Human Rights Defenders

When the House of Lords held that private care homes were not public authorities after there had emerged significant evidence of violation of the human rights of elderly and disabled people, the UK's Equality and Human Rights Commission collaborated with "the BIHR [British Institute for Human Rights], Justice, Liberty, Age Concern, and Help the Aged to influence government to amend the Health and Social Care law to rectify the gap in human rights protection".²⁷³ In addition, in 2008-09 the Commission allocated GBP 11 m or one-seventh of its entire budget to grant-making for grass roots NGOs working on equality and human rights issues.²⁷⁴

The Nigerian Human Rights Commission

Sometimes a non-independent and cynically created NHRI can unexpectedly become a source of protection for human rights defenders. In 1996 the military government of Nigeria set up a Human Rights Commission in an attempt to convince the international community of its commitment to human rights. At the time, the human rights defender community in Nigeria, though well established, was having a difficult time with individuals facing arrest and imprisonment for months or years at a time. International human rights defenders had been refused visas. In this situation, the Human Rights Commission was utterly unable to make any headway, lacking real independence and being under-resourced. However, human rights defenders working in Nigeria undertook to praise its work effusively and to support it whole-heartedly. They cooperated with the Commission and carried out joint work. The result was that the government could not restrict the work of human rights defenders without also restricting the work of its NHRI, which would undermine both its ostensible and actual purpose in setting up that NHRI.²⁷⁵ The fact that NHRIs stand as a government endorsement of human rights, creates some space in which human rights defenders can operate.

As part of the information it provided at its accreditation review in 2009, the Kenya National Commission on Human Rights (KNCHR) pointed out the many ways in which it fulfils its formal mandate to "encourage the efforts of other institutions working in the field of human rights and cooperate with such other institutions for the purpose of promoting and protecting human rights in Kenya".²⁷⁶ The Commission has taken this reference to institutions working in the field of human rights to include NGOs and has devised a referral system of sending complaints onward to relevant civil society institutions. "In particular, the KNCHR refers cases to the Public Complaints Standing Committee, the Federation of Women's Lawyers, the Children's Department, and Kituo cha Sheria (an NGO that provides legal aid and advice)."²⁷⁷

The Kenyan Commission pointed to several campaigns and projects done in collaboration with civil society organisations. These "in particular relate to campaigns for political accountability, campaign to end impunity for economic crimes, establishment of a truth, justice and reconciliation commission, police and penal reforms, review of various bills, laws and policies and in lobbying ratification of human rights treaties and enactment of various laws among others". The Commission's collaboration with civil society organisations is guided by a document known as "*the framework for collaboration between the KNCHR and civil society organizations*".²⁷⁸

Ghana's A-rated Commission on Human Rights and Administrative Justice ensures that civil society is kept on board through regular formalised meetings with a coordinating committee of NGOs to discuss strategy and priority,²⁷⁹ thus giving human rights defenders the assurance that they are viewed as equal partners in the relationship.

The Ugandan NHRI²⁸⁰ noted, "the media usually knows about an issue, but may be scared to report on it. If we make a statement, we can play a vital role in helping to get the message out." Recognising that it cannot do everything by itself, it "has been willing to give moral support and encouragement to the work of NGOs raising concern about Uganda's human rights record".²⁸¹ This reflects the value the Commission attaches to strong partnerships through which an NHRI can provide support to human rights defenders, by using its relatively protected position to push the debate forward, while it also makes use of civil society's greater resources and broad base to enable better monitoring of the country situation and to garner more support behind its recommendations.

In its submission for ICC accreditation Great Britain's Equality and Human Rights Commission (EHRC) indicates the range of engagement with civil society that it is possible for a national institution to have as well as the formal procedures that can facilitate this. Several provisions in its statute require it to consult and collaborate with civil society, specifically to "take account of any representations made in relation to: its strategic plan ... its periodic reports monitoring progress [of the Commission] ... and its codes of practice ..."²⁸² When undertaking these collaborations the Commission is required to invite representations so that "as large a class of persons as reasonably practicable" can participate.²⁸³ Toward implementing these obligations the Commission has created a stakeholder management team²⁸⁴ that is committed to holding an annual stakeholders' conference²⁸⁵ and makes periodic efforts to keep track of public opinion about issues and about itself.²⁸⁶

The ICC itself has begun to allow NGOs to feed into the accreditation process for NHRIs, and the information received is shared with the NHRIs.²⁸⁷ The ICC also consults with regional NHRI networks. There are several such networks, which have themselves taken steps to work closely with NGOs and human rights defenders more broadly.

Regional NHRI groupings

Africa: Network of African NHRIs

Commonwealth members: Cameroon, Ghana, Kenya, Malawi, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Tanzania, Uganda, Zambia.

Americas: Network of the NHRIs of the Americas

Commonwealth members: Canada.

Asia Pacific: Asia Pacific Forum of NHRIs

Commonwealth members: Australia, India, Malaysia, Maldives (associate member), New Zealand, Sri Lanka (associate member).

Europe: European Group of NHRIs

Commonwealth members: Great Britain, Northern Ireland

For example, the concluding statement of the Asia-Pacific Forum of NHRIs at their 2009 Annual Meeting, "encouraged and welcomed the participation and statements of approximately 43 international, regional and national non-governmental organisations"²⁸⁸ and agreed to consider holding full-fledged formal sessions with NGOs at future meetings as opposed to having invited interventions. Most importantly, the Forum accepted the need to pay particular attention to the recommendations made by the NGOs on the protection of human rights defenders.²⁸⁹

However, despite these averments on paper, the operation of a national institution on the ground may be substantively different.

The Commission's non-engagement with NGOs speaks extremely poorly about the putting into practice of the Paris Principle of 'cooperation'.

India's National Human Rights Commission, an A-listed institution, is required as part of its statutory obligations to "[e]ncourage the efforts of non-governmental organizations and institutions working in the field of human rights".²⁹⁰ It records that it created a core group of NGOs – reconstituted in 2006.²⁹¹ However, the Asian NGOs Network on National Human Rights Institutions (ANNI) reports that since 2006 this group has met 5 times: once in 2006, for a total of three days in 2007 and once in July 2008. No meetings had been held in 2009 up to the end of August. The last two meetings of the group were just

prior to the twelfth and thirteenth meetings of the Asia Pacific Forum of NHRIs, which suggests that the NHRC is more concerned with keeping up appearances than with any substantive engagement with NGOs. ANNI concludes: "NHRC's unwillingness to convene the National Core Group of NGOs and the Commission's non-engagement with NGOs speaks extremely poorly about the putting into practice of the Paris Principle of 'cooperation'."²⁹²

While the Paris Principles require human rights institutions to have working relationships with NGOs involved in protecting and promoting human rights, they do not explicitly mention human rights defenders. However, there is increasing regard being paid to the special position and value of human rights defenders and their unspoken inclusion within this requirement seems inevitable, especially as they are the sections of civil society whose aims have most in common with institutional mandates.

In recent times, the work of the UN Special Rapporteur in consistently highlighting the violations against human rights defenders including torture, extrajudicial killings and disappearances, the more localised presence of regional Special Rapporteurs who monitor the situation of human rights defenders, together with the advocacy of civil society groups, have all prompted more attention to the need for NHRIs to have specific policies and programmes to protect human rights defenders. Already, training programmes at the Asia-Pacific Forum for NHRIs focus on the relevant standards and the challenges that face human rights defenders, and encourage the creation of specific action plans to address those challenges.²⁹³ Initiatives such as these have begun to result in pressure for NHRIs to create human rights defender-specific programmes.

However, there remains a reluctance to go forward with certainty and boldness. For example the Maldivian Detainees Network has been pushing for the last three years for the Human Rights Commission in its country to create a human rights defenders programme. The Commission itself maintains that there is no need for such a programme.²⁹⁴

In response to a question whether it has a dedicated human rights defenders desk, the Nigerian Commission mentions that the "organisation does not have a specific unit/policy focused specifically on the protection of HRDs [human rights defenders]. The Commission protects and promotes the rights of all persons including HRDs."²⁹⁵ Such explanations, while seemingly fulsome, indicate an unwillingness to address the particularly parlous situation of human rights defenders and a failure to understand the significance of these groups and individuals for promoting and protecting the rights of others.

Malaysia's SUHAKAM, struggling to maintain a balance between extreme government sensitivity to its work and efforts to maintain its A-list status at the ICC, created several working groups but none with any remit to examine the situation of human rights defenders.²⁹⁶ The civil and political rights group, which had begun to talk about establishing a mechanism to assist human rights defenders, was soon merged into the economic, social and cultural rights group, and while the Commission announced a desk for human rights defenders its functioning has been questioned.²⁹⁷

Apart from the lack of formal and specific programmes that spotlight human rights defenders, many NHRIs have been seen to be less than fully supportive of the plight of human rights defenders even in states of emergency when dangers are heightened. This disregards the requirement of the ICC “that, in the situation of ... a state of emergency, an NHRI will conduct itself with a heightened level of vigilance and independence in the exercise of their mandate”.²⁹⁸ At a time when human rights defenders were being subjected to every kind of intimidation and suppression, the Fiji Human Rights Commission published a report arguing that the 2006 military takeover was in fact legal and justified.²⁹⁹

The Sri Lankan Commission is one of the more powerful commissions in the Commonwealth with the same power to enforce compliance with its requests as the Supreme Court of Sri Lanka.³⁰⁰ Yet in a situation of palpable vulnerability of human rights defenders it has been reluctant to take on their defence or to act quickly or effectuate its orders. The questionable way in which it was reconstituted has contributed to its timidity. It was only as recently as 2008 that it finally broke its silence to condemn a grenade attack on the home of a leading human rights lawyer and civil society activist. Even then, it placed no blame on state authorities and made no recommendations.³⁰¹ The refusal to invoke its powers in the face of arrant impunity sends a strong signal that continued violations will be tolerated and will go unpunished.

In September 2006, Action Contre la Faim asked the Sri Lankan National Human Rights Commission to investigate the killings of sixteen of its staff. This followed a joint statement in the previous month from the Special Representative of the Secretary-General on human rights defenders, the Special Rapporteur on extrajudicial, arbitrary and summary executions and the Special Rapporteur on the right to food, condemning the killings and calling for an independent, impartial, and rapid investigation of the executions.³⁰² Despite these multiple calls, it took until mid-January 2007 for the NHRC to acknowledge receipt of the request for an investigation and to communicate the steps it was taking. Nevertheless, the first steps held promise. The NHRC appointed an investigative team and said that it would collect witness statements and request the police reports. However, throughout 2007, despite assurances, Action Contre la Faim sought information about the progress of the investigation without success. Eventually it was told that the NHRC could not release information about their investigation because the case was now before a presidential commission of inquiry. Later, it emerged that the NHRC had dropped its own enquiries as soon as the commission of inquiry began its investigation, although there is nothing that prevents the NHRC from continuing to investigate a matter in parallel.³⁰³ Moreover, the constituting document of the commission of inquiry made it clear that appointment of the commission was made “without prejudice to ongoing investigations, inquiries, other legal process and legal proceedings”.³⁰⁴

Meanwhile, it transpired that despite the early directions of the NHRC the police had been particularly lax in investigating the killings, only visiting the crime scene two or three days after the killings, refusing to collect victims’ bodies, or to track down potential witnesses. The failure of the NHRC to take a more direct role in the investigation, for example, by summoning the officers concerned to discover what steps were being taken in the inquiry and to direct them how to proceed, particularly given that the NHRC has strong powers to enforce compliance with its decisions, as “[e]very offence of contempt committed against, or in disrespect of, the authority of the Commission shall be punishable by the Supreme Court as though it were an offence of contempt committed against, or in disrespect of, the authority of that Court, and the Supreme Court is hereby vested with jurisdiction to try every such offence”³⁰⁵ sends out a strong signal that impunity will be tolerated, a signal that is particularly harmful in situations of internal conflict when there is a heightened risk to human rights defenders.

Working Together: NHRIs and the UN Special Rapporteur

Special Rapporteurs and national bodies should be mutually supportive and NHRIs can, with little effort, provide valuable, credible information on the status of human rights in the country, assist with the verification of cases, indicate the existence of patterns of violation and suggest and reaffirm recommendations. National institutions can also support invitations to and visits by the Special Rapporteur as well as enrich these visits by accompanying the Special Rapporteur during her time in their country. A deeper understanding and coordination between these mechanisms and in country institutions could also prove crucial to implementing the many recommendations of the Special Rapporteur³⁰⁶ that lie unattended year after year by many Commonwealth governments. The reports themselves could bolster the national institution's own ongoing dialogue with the state. The ICC has made recommendations to the effect that NHRIs should ensure that they interact with international mechanisms, particularly by following up at the national level on recommendations that come from these mechanisms.³⁰⁷

National Action Plans on Human Rights

In 1993, the UN World Conference on Human Rights in Vienna, recommended "that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights".³⁰⁸ These National Action Plans (NAPs) are intended to provide on-the-ground strategies for the realisation of human rights. The idea behind the proposal was that a structured approach to human rights planning, involving creating pragmatic policies and programmes that start from a country's current situation, would facilitate the implementation of international human rights standards. More symbolically, the process of developing a NAP would be an indication of the willingness of governments to embrace change.³⁰⁹

A National Action Plan Will:

- Review a country's human rights needs
- Raise awareness of human rights issues among government officials, security authorities, civil society organisations and the general public
- Mobilise a broad spectrum of society in a cooperative atmosphere
- Propose realistic activities
- Set achievable targets
- Promote linkages with other national programmes, particularly in the areas of development and education
- Generate commitment to action.³¹⁰

The Outcomes of a National Action Plan Will Include:

- Stronger legal frameworks, embracing firmer adhesion to international norms, more effective incorporation of human rights standards in domestic law, and enhanced independence of the judiciary and more effective rule of law
- Better protection for individuals
- A stronger culture of human rights
- Stronger national institutions for the promotion and protection of human rights
- More effective social programmes that enhance the quality of life for all, particularly vulnerable groups
- Improved national harmony, reducing risks of internal conflict.³¹¹

The Commonwealth Model National Plan of Action on Human Rights urges governments to include within their NAPs measures to create an enabling environment for human rights defenders, most particularly the creation of a legal regime “that balances the legitimate interest of the State on regulating some of the activities of any organisation, with the freedom of these organisations to carry out their work lawfully”.³¹²

In addition, governments should secure human rights defenders as partners in the process of developing a NAP, since “[l]ocal NGOs and human rights defenders are often an excellent source of information and opinion. If they are to back up the NAP and become active partners in delivery (and not just critics), their views on what the NAP should deal with should be sought.”³¹³

On the general content of a NAP, the Commonwealth Secretariat identifies three key elements: first, beginning or continuing the process of realising international and regional human rights standards either through ratification of treaties or by devising steps by means of which those treaties can be implemented. The NAP should pay particular attention to developing interaction between the country and the international human rights system, for example, by issuing invitations for country visits to the Special Rapporteurs, and attending meetings of the UN Human Rights Council or seeking election as a member.³¹⁴ Secondly, the NAP should look at national human rights mechanisms and focus at the national level on creating an enabling environment for the realisation of human rights. In terms of NHRIs, the model plan stipulates that they should be involved in the process of developing a NAP and the NAP should clearly set out the role that the NHRI will play in implementing the NAP. The NAP should also include appropriate measures for improving the functioning of the NHRI, for example, in terms of strengthening its mandate or increasing its resources. Additionally, the NAP recommends that the NHRI or another agency be tasked with reporting on how the NHRI is falling short of the Paris Principles, and which steps could be taken to bring it into closer conformity with those Principles. Finally, the NAP could recommend that the country’s NHRI should engage with the Commonwealth Forum of NHRIs, the ICC or the regional bodies for NHRIs.³¹⁵ Where NHRIs do not exist they should be created.³¹⁶

In terms of creating an enabling environment for realising human rights, three key issues are protection, justice and remedies, that is, there should be strong institutions for protection of human rights and access to them, including, police, courts and ministries. In each case a review should be undertaken from a human rights perspective, in order to “adapt, adjust, reform, or strengthen the justice system”, both substantively and procedurally.³¹⁷ This can include: providing adequate resources, in terms of staffing and physical facilities; ensuring that selection and promotion processes, for example for judges, are transparent and independent; undertaking legislative or procedural reform; and creating human rights training programmes for staff, as well as public education services on how to access these justice and complaints procedures.³¹⁸ Finally, given that “it is not enough to have human rights if one is not aware of these rights” a NAP should include provision for creating a systemic programme of civic education and awareness about human rights, for example, through school curricula, developing short training courses in human rights for particular bodies, such as the police, legal professionals, NGOs, the media, trade unions and so on; devising public information campaigns on human rights, for example, around particular days, such as International Women’s Day,³¹⁹ or running longer campaigns about the vulnerability of, or discrimination against, certain groups in society.

National Action Plans in the Commonwealth

While the roadmap has been provided, the lack of commitment to mainstreaming human rights in general is evidenced by the mere handful of Commonwealth countries that have created a NAP, among them Australia, Malawi, New Zealand, Nigeria, and South Africa.³²⁰ None of these plans mention human rights defenders, but many of them do contain commitments to reform that would benefit human rights defenders. For example, in its 1995-1996 NAP the Government of Malawi stated that it “encourages international assistance and cooperation aimed at strengthening Malawian NGOs, including labor unions and professional organizations, which are engaged in facilitating the application or monitoring of the United Nations human rights treaties in Malawi”.³²¹ The plan also

promises to reform and strengthen the administration of justice in the country, in particular by modernising the police force and enhancing the judicial system. Steps will be taken to create human rights education programmes for the police, prison officials, judges and magistrates.³²² One visible benefit of the plan is the establishment of the Malawi National Human Rights Commission, in 1996, in accordance with the commitment to do so in the plan.³²³

In New Zealand the Human Rights Commission was mandated to design and implement a five-year human rights action plan. However, the New Zealand government has yet to endorse the final plan,³²⁴ thus weakening the chance of it being seriously implemented. The development of South Africa's National Action Plan was also led by its Human Rights Commission.³²⁵ In Kenya, the KNCHR is leading the country's current efforts to create a NAP.³²⁶ Australia's NAP, on the other hand, was coordinated by officials from the Attorney-General's Department and the Department of Foreign Affairs and Trade.³²⁷ While Australia's plan again does not mention human rights defenders specifically, it does address particular rights that would be relevant to human rights defenders, such as the right to freedom of expression, the right to freedom of association and assembly, alongside rights not to be arbitrarily detained. In general, however, the plan focuses more on describing how Australia already guarantees these rights rather than making an attempt to identify possible areas of weakness and proposing steps for improvement.

Nigeria's national plan was nearly seven years in the making and involved a series of consultations with government, civil society and individuals involved in the development of South Africa's plan. However, while key agents involved in the process included "Human Rights Defenders, other NGOs, CBOs [Community-Based Organisations], professional bodies and other stakeholders in civil society, government ministries, parastatals [quasi-governmental bodies] and agencies, military, police, and other law enforcement agencies, the judiciary and parliamentarians",³²⁸ the framework and the content did not include the UN Declaration on Human Rights Defenders³²⁹ as one of the international instruments guiding Nigeria's obligations. More significantly, the plan did not go beyond proposals to articulate a set of practical, planned activities that could in fact further the human rights agenda in the country. This defeats one of the purposes of a national plan, which is to set out a coordinated plan of action for various agents.



The protection of defenders is an indispensable element of the social and institutional framework
for the protections of all human rights.

— **Margaret Sekaggya**

UN Special Rapporteur on the situation of human rights defenders

Chapter V

Recommendations: Steps to Protection

Protection for human rights defenders requires a holistic solution incorporating wide-ranging reforms to key bodies such as the police, the judiciary and National Human Rights Institutions; and more support for bodies such as the UN Special Rapporteur and her regional counterparts. Legislative reform, as a means of creating the space for human rights defenders to operate peacefully without fear of the law, is key and should be undertaken alongside the creation of education programmes directed at raising the level of awareness about human rights in general and the role of their defenders in particular. Fundamental to coordinating reform across all these areas is the development by Commonwealth Governments of National Plans of Action on Human Rights.



Everyone Should:

- Recognise that the work of human rights defenders enhances the credibility of the social contract and is a legitimate activity done to support the state in its governance and in pursuit of the fundamental principles of the Commonwealth in which democracy, development and the realisation of human rights are central.
- Acknowledge the distinctive role of human rights defenders, affording them the legal protections required to realise their rights to the fullest, and assuring them the space for their activities, always recognising that certain groups such as women human rights defenders have particular vulnerabilities related to their circumstances and require special attention.

Commonwealth Heads of Government Should:

- Require member countries to report to each Commonwealth Heads of Government Meeting (CHOGM) on their implementation of Commonwealth commitments, including in particular those undertaken to protect and promote human rights and their defenders. Declarations of support and intent are not enough. The Heads of State need to establish a clear procedure for systematically monitoring the implementation of past pledges and mandate the Commonwealth Secretariat to produce information that periodically examines the implementation of those pledges.
- Give the Commonwealth Ministerial Action Group (CMAG) the operational responsibility for implementing the human rights agenda of the Commonwealth.
- Expand the working role of CMAG so as to serve as a custodian and spokesperson for all the rights of the people of the Commonwealth and acknowledge serious and persistent violations.
- Strongly urge CMAG to undertake a thorough review of the impact of the Harare Declaration and the state of country compliance with international human right obligations undertaken by member states prior to the twentieth anniversary of the Harare Declaration at CHOGM 2011.
- Mandate the Secretariat, through collaborative programmes of work within its various divisions, to partner with member countries to put in place National Human Rights Action Plans and to review progress and achievements at each CHOGM.
- Mandate the Secretariat to actively assist states in adopting legal regimes governing the work of civil society that are progressive and liberal and that recognise the valuable role that civil society and human rights defenders play.
- Go beyond the mere formalities of consultation with, to genuine engagement and participation by, associations and NGOs at all levels of Commonwealth functioning. In order to underpin this, the Secretary-General should signal his clear and unequivocal support for the unofficial Commonwealth and the importance of these networks.
- Renew their call to member countries, by the next CHOGM at the latest, to introduce liberal access to information legislation as being *central* to democracy and development and obligate member states to adopt laws that are in conformity with international best practice.
- In order to facilitate the reduction of human rights violations, commit in their communiqué to setting up an expert group on policing. This would examine best practices on policing in the Commonwealth with a view to articulating, for the guidance of member states, principles of

democratic policing that can be used to transform police forces into institutions for the better realisation of human rights.

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

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

Commonwealth Member States Should:

- Recognise that the defence of human rights is primarily the responsibility of the state.
- Initiate and encourage the creation of National Human Rights Action Plans that include detailed human rights education and awareness programmes. These plans should be created in close cooperation with National Human Rights Institutions, civil society and human rights defenders such that the process of creation is itself a means of promoting the value of democracy and human rights, as well as of indicating the special status of human rights defenders.
- Ensure that they are signed up to the key international conventions and their optional protocols, and that they are part of regional human rights mechanisms and have signed on to the relevant conventions, such as the Inter-American Convention against Torture.
- Create and support a multiplicity of independent oversight bodies including effective and independent National Human Rights Institutions that are in conformity with best practices under the Paris Principles and that can maximise the promotion and protection of human rights within a country.
- Issue standing invitations to Special Rapporteurs and regional oversight mechanisms to make in-country visits; submit timely and substantive replies to their queries, implement their recommendations and report back on the steps taken.
- Create credible mechanisms within parliament and national human rights bodies to review all legislation and to ensure that it is compliant with international and national obligations.
- Ensure that regulatory regimes governing the formation and operation of non-governmental organisations are designed in consultation with civil society and are calculated not to impede or restrict the formation of lawful associations, but rather to maximise the space available for human rights defenders to function in concert with a variety of others, both nationally and internationally.
- Repeal legislative provisions that curb freedom of speech and expression such as criminal libel laws.
- Review, and repeal or amend, vaguely worded “public order” related legislation which gives authorities wide, subjective and unfettered discretion and power to curb and control peaceful assemblies in particular.

- Ensure that special security laws, in principle required to deal only with emergency situations of violence and conflict, are not used by agents of state as covers for actions against human rights defenders who espouse causes or adopt stances contrary to or critical of the government of the day.
- Enable human rights defenders to access information relevant to the human rights situation in a country, in particular by creating access to information legislation.
- Remove legislative shields and practical impediments in bringing state actors to justice for their violation of human rights and so reduce the culture of impunity that exists in many countries, and that encourages the targeting of human rights defenders.
- Ensure that human rights defenders have effective access to justice for violations suffered, that they will be guaranteed a fair trial and that punishment for perpetrators will be appropriate.
- Recognise and create special protections for distinctive human rights defenders from particularly vulnerable groups such as women, minorities, Lesbian, Gay, Bisexual, Transgender and Intersex people, the disabled and displaced persons. In particular educational programmes aimed at countering social prejudices should be created for those whose roles affect the administration of justice within institutions of state.
- Publicly condemn acts of violence and other violations against human rights defenders.

Parliamentarians Should:

- Push for the domestication of the UN Declaration, including repeal of repressive legislation.
- Push for human rights defenders to be included directly or indirectly in consultation processes on legislation and policy.

National Human Rights Institutions Should:

- Cooperate with and enhance the work of international and regional human rights bodies and their special mechanisms to protect human rights defenders in all aspects of their work.
- Initiate, and work with multiple stakeholders to create time bound, benchmarked National Human Rights Action Plans and oversee their effective implementation.
- Put in place explicitly articulated and widely known policies that are designed to protect human rights defenders and encourage their work.
- Create within their establishments a defenders cell and develop and submit to national and international bodies regular status reports on the functioning of human rights defenders and their treatment by state agents, and immediately come to their aid when they are unjustly targeted.
- Create formal and informal cooperative ways of working with human rights defenders, designed to increase mutual effectiveness, spread awareness of human rights and prevent and punish violations.
- Ensure that human rights education for all is incorporated into national educational curricula and prioritised as part of the professional training programme for police and other public bodies, with a particular emphasis on the rights of women, disabled people, displaced persons, LGBTI people and other marginalised or disadvantaged groups, and that this training is a mandatory requirement for career advancement.

- Require governments to fulfil international obligations in general and in particular as they relate to human rights defenders.

Commonwealth Heads of Police Should:

- Aver in word and deed that rule of law, human rights and democracy are core values of policing throughout the Commonwealth, and take all necessary steps to integrate these into their vision, policies and procedures.
- In relation to human rights defenders:
 - Initiate policies of zero tolerance for human rights abuse, by having effective and transparent internal mechanisms of accountability, assuring victim redress, and cooperating with, and submitting to, external oversight mechanisms such as dedicated complaints authorities, National Human Rights Institutions and the judiciary.
 - Ensure maximum possible transparency to build public confidence in the police and trust in police-community relationships.
 - Ensure whistleblowers, victims and witnesses are well protected and not subject to harassment or threat by police officers, and that such practices receive strict disciplinary action.
 - Initiate human rights training that emphasises the value and work of human rights defenders as an essential element of all initial training requirements and a prerequisite for future career advancement within the service.

Human Rights Defenders Should:

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



Appendix I:

Methodology

In order to examine human rights abuses suffered by human rights defenders case studies were gathered from numerous sources covering the 53 countries of the Commonwealth. These reports were drawn from either primary or secondary sources. The following general parameters informed the research conducted:

- **Police as perpetrators:** cases where police were either directly involved in violating the rights of a human rights defender or indirectly, through refusing to act to protect the human rights defender etc. ('police inaction') were collected.
- **Human rights defenders:** following the United Nations Special Rapporteur's definition of a human rights defender a broad definition of who is a human rights defender was used. A link must be present, however, between the work the human rights defender was involved in/the event that occurred and the promotion and protection of human rights.
- **Timeframe:** events occurring between 1 January 2006 and 28 February 2009 were collected.

Primary Data

The primary case studies are based on direct contact with human rights defenders across the Commonwealth. A questionnaire was sent via email to an extensive contacts database comprised of over a thousand human rights, media, academic and legal organisations. Once cases were received follow-up interviews were conducted via email or over the phone. Background research was conducted in order to confirm the accuracy of information received and only those cases we were able to sufficiently corroborate were included.

Despite reminder emails and phone calls made to hundreds of organisations the response rate to the questionnaire remained low. This is not surprising, given the fact that the team was restricted to desk based research and outreach as it was not feasible to travel to different regions in the Commonwealth to obtain information directly from contacts. The collection of secondary data therefore forms the basis of the report, supplemented where appropriate by the primary case studies.

Being restricted to desk based research and relying primarily on resources available over the internet also created a bias in terms of the groups the team contacted as smaller organisations that did not have a presence on the internet were not included in the database. This subsequently biased the responses we received as we did not receive narratives from human rights defenders who were not linked to larger organisations and/or who did not have access to the internet.

It must also be noted that this model of a questionnaire and follow-up phone interview is not well-suited to discussing the often intimate and painful violations human rights defenders have suffered. This is especially the case for those who experienced sexual assault. Privacy and security of information was also a concern, as many human rights defenders were not willing or able to share information over email or phone. To address these concerns a confidentiality policy was developed and each interviewee was informed of the policy.

Finally, phone connections of varying quality coupled with differing accents created further hurdles to accurately gaining an understanding of the violations against the human rights defender. We sought to mitigate any potential misunderstandings by sending the human rights defender a copy of the interview notes and requesting that they make any clarifications required.

Secondary Data

Over 500 narrative reports of violations against human rights defenders published by other organisations were collected. The sources of these reports included groups such as the International Federation of Human Rights Leagues (FIDH), the Organisation Against Torture (OMCT), Frontline and Protectionline, and the Asia Pacific Forum on Women, Law and Development (APWLD). These groups collect narrative accounts of human rights abuses against human rights defenders and circulate this information to their networks through urgent alerts and annual reports. The information comes from numerous local organisations that are partners with these larger groups. For example, FIDH has 155 partner organisations across the globe.

Data Collection

Information in the narrative reports was used to develop a series of variables capturing the key aspects of the event, for example, the perpetrator, the violation itself and information regarding the human rights defender and their work. These variables were developed with reference to Human Rights Information and Documentation Systems (HURIDOCS) data management systems. Information from each narrative report was then coded into the separate fields that corresponded to the variables in the SPSS database.

The data collection and collation methodology was shared with the Office of the Special Rapporteur on Human Rights Defenders, for advice.

Data Analysis

Statistical analysis was then carried out using SPSS to draw trends out of the data collected.

Findings

The results of the data analysis were used to inform the subjects discussed in chapters three and four, supplemented by other information. The details of the findings have not been included in the body of the report, due to concerns with the thoroughness of the data collection process, including the bias against organisations with no internet presence and no connection to larger organisations.

Nevertheless analysis of the data that was collected did reveal some interesting findings, which are included here for reference.

The Top Three Violations against Human Rights Defenders

According to the data, the top three ways in which human rights defenders in the Commonwealth are targeted by the police are through arrest, physical assault and arbitrary detention. Isolating women defenders from the sample reveals that while they too are highly likely to face arrest and physical assault, they are much more likely than men to face threats and surveillance. Arbitrary detention is the fifth most common abuse suffered by women human rights defenders, along with police inaction and verbal abuse.

Crimes that Human Rights Defenders are Accused of

The two most common charges made against human rights defenders are defamation-related charges and charges of illegal assembly. These two charges directly relate to the most common activities that human rights defenders engage in to promote and protect human rights, that is exposing and reporting on human rights violations and engaging in protest marches to draw attention to violations.

Perhaps unsurprisingly, in the vast majority of cases it is the media that are targeted under defamation laws. Of the 34 cases collected between January 2006 – March 2009 in which human rights defenders were accused of defamation (including the charge of publishing false news) 30 of those human rights defenders were journalists or broadcasters. A comparison of the crimes with which media employees are charged, with the crimes with which all other human rights defenders are charged, shows that defamation is much more common amongst the media human rights defenders, while it ranks far down the list when all other human rights defenders are considered.

Other common pieces of legislation used to target human rights defenders include anti-terror legislation, NGO related legislation (relating to funding or registration requirements for example) or Internal Security legislation. However, when the legislation used is considered only in the context of non-national human rights defenders it is immediately apparent that immigration legislation is the key tool used. Of the over 30 cases of non-national defenders collected, immigration legislation was the source of the violation in over 25.

Appendix II:

Sources of Secondary Data

Amnesty International

Asian NGO Network on NHRIs (ANNI)

Committee to Protect Journalists

Frontline

Human Rights First

Human Rights Watch

International Crisis Group

International Federation for Human Rights (FIDH)

International Freedom of Expression Exchange (IFEX)

International Gay and Lesbian Human Rights Commission

International Service for Human Rights

International Women Human Rights Defenders Coalition

Lawyers' Rights Watch Canada

Peace Brigades International

Protection International

Reporters Without Borders

Scholars at Risk Network

United Nations Special Rapporteur on the situation of human rights defenders

Urgent Action Fund

World Organisation Against Torture (OMCT)

Appendix III:

United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a nondiscriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, *inter alia*:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

Appendix IV:

Ratification of human rights instruments by Commonwealth countries

| Country | IC CPR | ICC PR OP I | ICC PR OP II | ICE SCR | IC ERD | CE DA W | CE DA W OP I | CA T | CA T OP I | IC PP ED | CR C | CR C OP I | CR C OP II | IC R MW |
|---------------------|-----------|-------------------|--------------------|------------|-----------|---------------|-----------------------|---------|-----------------|----------------|---------|-----------------|------------------|---------------|
| Antigua and Barbuda | - | - | - | - | R | R | R | R | - | - | R | - | R | - |
| Australia | R | R | R | R | R | R | R | R | S | - | R | R | R | - |
| Bahamas | R | - | - | R | R | R | - | S | - | - | R | - | - | - |
| Bangladesh | R | - | - | R | R | R | R | R | - | - | R | R | R | S |
| Barbados | R | R | - | R | R | R | - | - | - | - | R | - | - | - |
| Belize | R | - | - | S | R | R | R | R | - | - | R | R | R | R |
| Botswana | R | - | - | R | R | R | R | R | - | - | R | R | R | - |
| Brunei Darulssalam | - | - | - | - | - | R | - | - | - | - | R | - | R | - |
| Cameroon | R | R | - | R | R | R | R | R | - | S | R | S | S | - |
| Canada | R | R | R | R | R | R | R | R | - | - | R | R | R | - |
| Cyprus | R | R | R | R | R | R | R | R | S | S | R | S | R | - |
| Dominica | R | R | - | R | - | R | - | - | - | - | R | R | R | - |
| Fiji | - | - | - | - | R | R | - | - | - | - | R | S | S | - |
| Gambia, the | R | R | - | R | R | R | - | S | - | - | R | S | S | - |
| Ghana | R | R | - | R | R | R | S | R | S | S | R | S | S | - |
| Grenada | R | - | - | R | S | R | - | - | - | S | R | - | - | - |
| Guyana | R | R | - | R | R | R | - | R | - | - | R | - | - | R |
| India | R | - | - | R | R | R | - | S | - | S | R | R | R | - |
| Jamaica | R | D | - | R | R | R | - | - | - | - | R | R | S | S |
| Kenya | R | - | - | R | R | R | - | R | - | S | R | R | S | - |
| Kiribati | - | - | - | - | - | R | - | - | - | - | R | - | - | R |
| Lesotho | R | R | - | R | R | R | R | R | - | - | R | R | R | - |
| Malawi | R | R | - | R | R | R | S | R | - | - | R | S | S | - |
| Malaysia | - | - | - | - | - | R | - | - | - | - | R | - | - | R |
| Maldives | R | R | - | R | R | R | R | R | R | S | R | R | R | - |
| Malta | R | R | R | R | R | R | - | R | R | S | R | R | S | - |
| Mauritius | R | R | - | R | R | R | R | R | R | - | R | R | S | - |
| Mozambique | R | - | R | - | R | R | R | R | - | S | R | R | R | - |
| Namibia | R | R | R | R | R | R | R | R | - | - | R | R | R | - |
| Nauru | S | S | - | - | S | - | - | S | - | - | R | S | S | - |
| New Zealand | R | R | R | R | R | R | R | R | R | - | R | R | S | - |
| Nigeria | R | - | - | R | R | R | R | R | - | - | R | S | S | - |
| Pakistan | R | - | - | R | R | R | - | S | - | - | R | S | S | - |
| Papua New Guinea | R | - | - | R | R | R | - | - | - | - | R | - | - | - |
| Samoa | R | - | - | - | - | R | - | - | - | S | R | - | - | - |
| Seychelles | R | R | R | R | R | R | S | R | - | - | R | S | S | R |

| Country | IC CPR | ICC PR OP I | ICC PR OP II | ICE SCR | IC ERD | CE DA W | CE DA W OP I | CA T | CA T OP I | IC PP ED | CR C | CR C OP I | CR C OP II | IC R MW |
|-------------------------------------|-----------|-------------------|--------------------|------------|-----------|---------------|-----------------------|---------|-----------------|----------------|---------|-----------------|------------------|---------------|
| Sierra Leone | R | R | - | R | R | R | S | R | S | S | R | R | R | S |
| Singapore | - | - | - | - | - | R | - | - | - | - | R | R | - | - |
| Solomon Islands | - | - | - | R | R | R | R | - | - | - | R | - | - | - |
| South Africa | R | R | R | S | R | R | R | R | S | - | R | S | R | - |
| Sri Lanka | R | R | - | R | R | R | R | R | - | - | R | R | R | R |
| Saint Kitts and Nevis | - | - | - | - | R | R | R | - | - | - | R | - | - | - |
| Saint Lucia | - | - | - | - | R | R | - | - | - | - | R | - | - | - |
| Saint Vincent and the Grenadines | R | R | - | R | R | R | - | R | - | - | R | - | R | - |
| Swaziland | R | - | - | R | R | R | - | R | - | S | R | - | - | - |
| Tanzania | R | - | - | R | R | R | R | - | - | S | R | R | R | - |
| Tonga | - | - | - | - | R | - | - | - | - | - | R | - | - | - |
| Trinidad and Tobago | R | D | - | R | R | R | - | - | - | - | R | - | - | - |
| Tuvalu | - | - | - | - | - | R | - | - | - | - | R | - | - | - |
| Uganda | R | R | - | R | R | R | - | R | - | S | R | R | R | R |
| United Kingdom | R | - | R | R | R | R | R | R | R | - | R | R | R | - |
| Vanuatu | R | - | - | - | - | - | R | - | - | S | R | R | R | - |
| Zambia | R | R | - | R | R | R | S | R | - | - | R | S | S | - |

Key

R: Ratification; Succession; Accession

S: Signature

D: Denunciation

| | |
|-------------|---|
| ICCPR | International Covenant on Civil and Political Rights |
| ICCPR OP I | Optional Protocol to the International Covenant on Civil and Political Rights |
| ICCPR OP II | Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CEDAW OP I | Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CAT OP I | Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| ICPPED | International Convention for the Protection of All Persons from Enforced Disappearance |
| CRC | Convention on the Rights of the Child |
| CRC OP I | Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts |
| CRC OP II | Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography |
| ICRMW | Convention on the Protection of the Rights of All Migrant Workers and Members of their Families |

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CHRI'S Previous Reports to CHOGM

Stamping Out Rights: The impact of anti-terrorism laws on policing (2007)

Stamping Out Rights examined the impact of anti-terrorism legislation on civilian policing, looking at how anti-terror laws that relate specifically to police powers have affected policing on the ground. It provides practical suggestions, for how the state, police and communities can work together to improve the security for all in the effort to counter terrorism.

Police Accountability: Too Important to Neglect, Too Urgent to Delay (2005)

The police accountability report explores the critical relationship between accountability of the police in the Commonwealth and the protection and promotion of basic rights in communities. The report considers the defining elements of good and bad policing and puts forward a road map for police reform based on accountability to the law, accountability to democratic government, and accountability to the community.

Open Sesame: Looking for the Right to Information in the Commonwealth (2003)

Open Sesame demonstrates the value to democracy and development of ensuring that people have a guaranteed right to access information held by government and other powerful institutions as well as the urgency of enabling that right. The international standards, practice and lessons expounded in this report offer a practical solution to the all too evident systemic governance problems that beset most Commonwealth countries today through the neglect of this fundamental right.

Human Rights and Poverty Eradication: A Talisman for the Commonwealth (2001)

The Talisman report shows how poverty is an abuse of human rights. It advocates the adoption of a rights-based approach to eradicating the large-scale poverty that continues to exist in the Commonwealth. It points to the gap between the rhetoric the Commonwealth espouses and the reality of people's lives. The report urges member governments to cooperate to fulfill the many solemn commitments made at successive CHOGMs or risk the Commonwealth losing its relevance.

Over a Barrel - Light Weapons and Human Rights in the Commonwealth (1999)

Over a Barrel exposed a tragic contradiction in the modern Commonwealth in that although human rights are recognised as central to the Commonwealth, millions of light weapons flow freely, jeopardising safety, development and democracy. The report outlines urgent recommendations to the Commonwealth for curbing the reach of light weapons in member countries.

The Right to a Culture of Tolerance (1997)

This report focused on two themes: ethnic and religious intolerance as an urgent problem throughout the Commonwealth; and freedom of expression/information as a crucial element of a democracy. The report noted that the norms and political values of the Commonwealth compel the association to act to promote tolerance in member countries and the report made recommendations for achieving this goal.

Rights Do Matter (1995)

Rights Do Matter explored two themes: freedom of expression and the need for major reform in prisons. The report placed this discussion in the context of the transition from authoritarian to democratic political orders and the economic transition from planned to market economies.

Act Right Now (1993)

Act Right Now was an assessment of the progress of human rights in Commonwealth countries since the Harare Declaration and was made with reference to the United Nations World Conference on Human Rights in Vienna in June 1993. It called for the Commonwealth to play a lead role in supporting the long, complex process of moving towards real democracy in transitional countries.

Put Our World to Rights (1991)

Put Our World to Rights was the first independent overview of the status of human rights in the Commonwealth. It provides practical guidance on how to use international machinery for redress.

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy:

CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

Access to Information:

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy-makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Access to Justice:

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock on effect on the administration of justice overall.

Human rights defenders are ordinary people who often find themselves in extraordinary circumstances. In the course of their legitimate and peaceful efforts to protect and promote human rights many have faced assault, surveillance, arrest, arbitrary detention, and even death. The targeting of human rights defenders is a function of the light they shine on hidden truths. Many would like to silence these defenders and many do.

The Commonwealth is bound by its commitment to democracy, human rights and the rule of law. These are precisely the principles that human rights defenders uphold and advocate for. States committed to full democratisation, as all the countries in the Commonwealth are in principle, should be taking steps to ensure that all individuals within their borders enjoy security of person, justice and human rights. The true measure of a country's respect for human rights is whether its human rights defenders are able to operate freely and without fear.



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