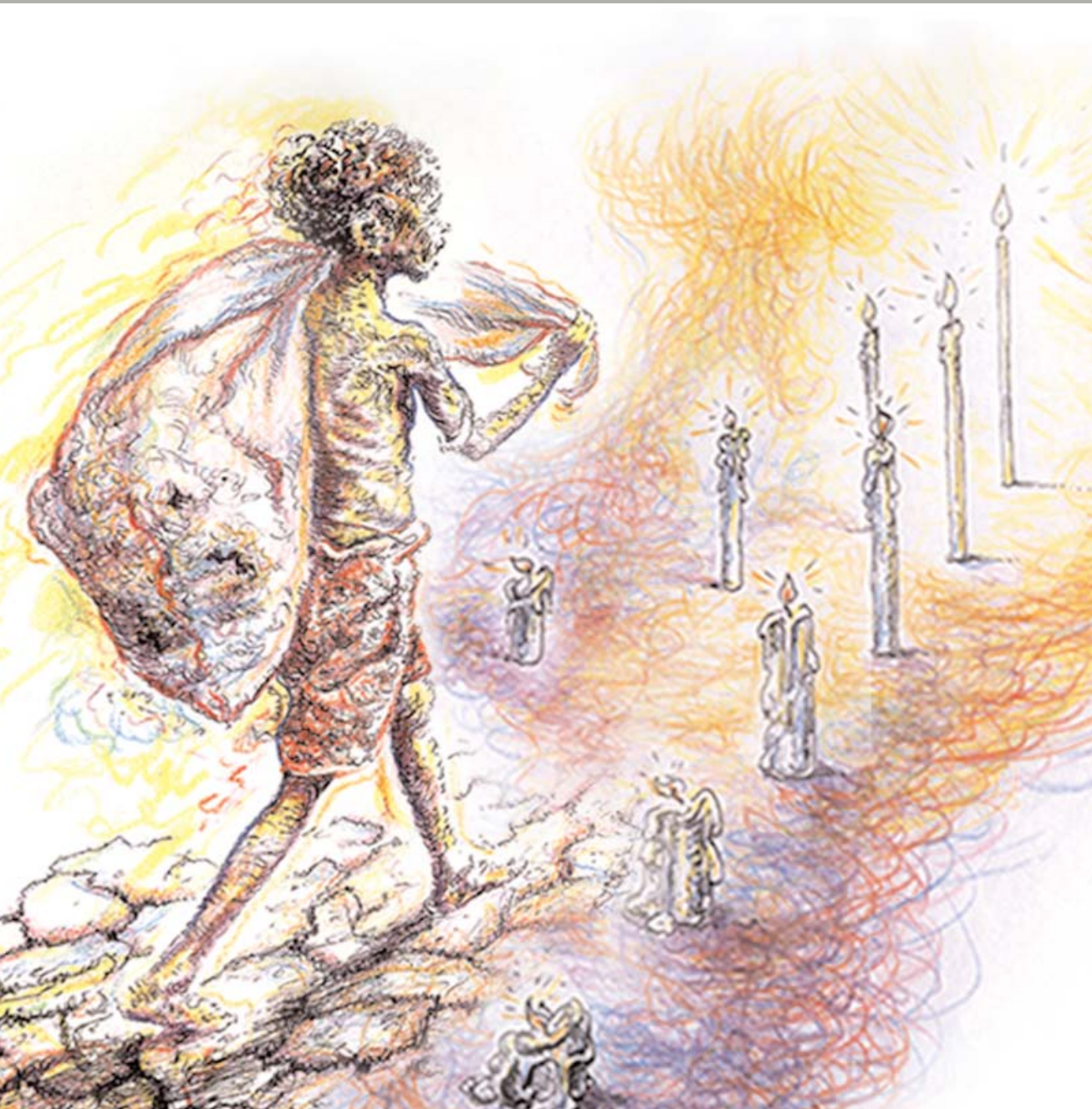


CHRI's Millennium Report

Human Rights and Poverty Eradication

A Talisman for the Commonwealth



**COMMONWEALTH HUMAN
RIGHTS INITIATIVE**

**A report by the International Advisory Commission of CHRI, chaired
by Professor Margaret Reynolds**

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international NGO, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. Over ten years ago, several Commonwealth Associations founded CHRI because they felt that while the member countries had both a common set of values and legal principles from which to work, and also 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 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 biennial CHOGM reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in various Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member-state governments and civil society associations. By holding workshops and developing linkages, CHRI's approach throughout is to act as a catalyst for activity around its priority issues.

The nature of CHRI's constituent groups* - journalists, lawyers, legal educators, trade unionists, doctors and parliamentarians - ensures for it both a national presence in each country and a local network. More importantly, these are strategic constituencies, which can effectively steer public policy in favour of human rights. By incorporating human rights norms into their own work and acting as a conduit for the dissemination of human rights information, standards and practices, their individual members and collectives are themselves capable of affecting systemic change. In addition, these groups bring knowledge of local situations, can access policy makers, highlight issues, and act in concert to promote human rights. The presence of eminent members of these professions on CHRI's International Advisory Commission assures CHRI credibility and access to national jurisdictions.

Originally based in London, United Kingdom, CHRI moved to New Delhi, India in 1993. It currently has a Trustee Committee Office in London, and a new office in Accra, Ghana.

* Commonwealth Journalists Association, Commonwealth Trade Union Council, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Medical Association, Commonwealth Parliamentary Association, Commonwealth Press Union and the Commonwealth Broadcasting Association.

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ISBN 81-88205-00-1



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Human Rights and Poverty Eradication: A Talisman for the Commonwealth

“I will give you a talisman . . . Recall the face of the poorest and weakest man whom you may have seen, and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? . . . Then you will find your doubts and yourself melting away.”¹

Mahatma Gandhi

The 2001 report by the International Advisory Commission of the Commonwealth Human Rights Initiative, chaired by Professor Margaret Reynolds

Published by the

COMMONWEALTH HUMAN RIGHTS INITIATIVE

F1/12A, Hauz Khas Enclave

New Delhi - 110016 INDIA



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FOREWORD

Human rights advocates will welcome this most timely report which advocates the rights based approach to eradicating the large-scale poverty that currently exists in the Commonwealth. Ten years have passed since the Commonwealth Heads of Government Meeting (CHOGM) adopted the Harare Declaration in 1991, so it is important to evaluate the Commonwealth's will and ability to tackle poverty through its own fundamental principles of good governance and commitment to human rights. As this report reveals there is a disturbing gap between the rhetoric of Commonwealth Communiqués and the reality of people's lives. The evidence presented here starkly highlights the extent to which human rights standards are being ignored throughout the Commonwealth. Commitments made by countries by signing and ratifying the various international human rights treaties and conventions, and reiterated time and again by the Commonwealth are being bypassed or downgraded. Specific groups within our communities are especially vulnerable to abuse and are more likely to be living in poverty. Little has been done to change their situation. Violence and exploitation remain a daily threat for many individuals living in Commonwealth countries.

CHOGM 2001 must respond to the alarming statistics contained in this report. Firstly, Commonwealth Heads of Government need to recognise that poverty itself is an abuse of human rights. Secondly, there needs to be a renewal of commitment to the Harare Declaration, strengthened by a plan of action to implement policies which prioritise economic, social and cultural rights. The Commonwealth values the special relationships between its members, but the Commonwealth cannot maintain this goodwill while there are such glaring inequalities between nations and between its peoples. In order to achieve the success and relevance it desires, the Commonwealth must act internationally as an association that gives a strong voice to poor people and embraces civil society and the innovation and experience it brings.



Margaret Reynolds

Chair, International Advisory Commission, CHRI

ACKNOWLEDGMENTS

This year's report of the International Advisory Commission is the outcome of teamwork and dedication. It utilises contributions from 26 academics, professionals and activists, all of whom are at the cutting edge of their field. We extend our thanks and our sincere appreciation of their work to: Cathi Albertyn, Kitty Arumbulo, Kevin Bales, Richard Bourne, Jill Cottrell, Alison Duxbury, Patrick Earle, Savitri Gooneskere, Jagdish Gundara, Paul Hunt, Chris Jochnick, Peter Larmour, Sandra Liebenberg, Neville Linton, Erin MacCandless, Allan McChesney, Malini Mehra, Amitava Mukherjee, Binaifer Nowrojee, Ann Pettifor, Margaret Reynolds, Lindsay Ross, Siraj Sait, Amanda Shah, Douglas Tilton and Deepika Udagama.

The concept for the report was developed and refined at consultations with NGOs, experts and activists in New Delhi, Geneva and at a Conference organised at Wilton Park, UK, entitled *Human Rights and the Alleviation of Poverty*. This brought together expert participants and contributors from around the Commonwealth, who we thank for contributing to a rich and fruitful discussion. More particularly we would like to thank the resource people: David Batt, Richard Bourne, Winston Cox, Meghnad Desai, Oronto Douglas, Julia Hausemann, Paul Hunt, Roushan Jahan, Graeme Justice, Allan McChesney, Rose Mwebaza, Carol Narciss, Vusi Nhlapo, Michael Odhiambo, Boniface Oye-Adeniran, Angela Penrose, Bertrand Ramcharan, Margaret Reynolds, Emile Short and Siraj Sait.

In fact, this report has been contributed to by so many people in so many different ways that it would be impossible to thank all of those who have made it possible. However, some deserve special mention.

First among them is Yash Ghai - Sir Y. K Pao Professor of Public Law, University of Hong Kong and presently heading the Kenyan Constitutional Review Commission. He has my special thanks and appreciation for his tireless efforts on behalf of CHRI over the last decade and on behalf of human rights in general for much longer than that. This report owes much to his assistance and contributions.

I am indebted to Jill Cottrell for interacting so closely with us and providing comments and input at various stages; to A. K Shiv Kumar for always being available and for the friendship, advice and extensive experience that he has generously donated to the production of this report; and to Deepa Grover for adapting to a tight schedule and providing us with useful feedback.

I extend my appreciation to Federica Donati for research assistance and Rashmi Kaleka for her work on the design and publication. Our appreciation also goes to officials of the Commonwealth Secretariat who took the time to provide us with valuable information.

I would especially like to express my appreciation of the team in New Delhi and London for: soliciting contributions, researching, writing, organising conferences and meetings, and coordinating the advocacy efforts throughout the development of the report and at the CHOGM. The task of coordinating so international an effort across several time zones would not have been possible without the devotion, professionalism and whole-hearted commitment of Michelle Kagari, Amanda Shah, Kerry Emmonds, Hasit Thankey, Claire Martin, Bibhu Mohapatra, and lately Charlemagne Gomez, Venkatesh Nayak, Anuradha K and Deepika Mogilishetty.

My thanks also to Radha Sharma and P. Prasad for always being such willing hands and Centhil Kumar for providing cheerful technical support through power cuts and viruses. My special appreciation goes to Benjamin Croft and Philip Duffy who spent endless hours researching, refining and providing thoughtful input and without whose effort and dedication under pressure, it would have been impossible to bring this report to fruition.

This report and the research, advocacy and networking that accompanied the process of developing it was generously supported by the FCO Challenge Fund and the Human Rights Project Fund. CHRI is deeply appreciative of this support. We would also like to thank the Westminster Foundation for Democracy for providing a researcher for the project and the Ford Foundation for its on-going institutional support.

CHRI assumes full responsibility for the opinions expressed in this report.

Maja Daruwala
Director, CHRI
September 2001

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INTRODUCTION

The Commonwealth Human Rights Initiative (CHRI) is appalled at the scale and depth of poverty in so many parts of the Commonwealth. The suffering of so vast a majority of people is unacceptable. At the threshold of the third millennium, when sections of the Commonwealth enjoy unprecedented wealth, and when the international community knows well that it has the knowledge, means, stated intention, and legal obligation to ensure the eradication of poverty, it only needs the political will to remove it quickly and forever. Yet, it is a matter of shame for the association, member governments, the commercial sector, and civil society actors that it continues to rely on rhetoric when the social and economic conditions of millions in the Commonwealth are in fact worsening in many ways. Such pervasive poverty mocks the pretensions of the Commonwealth to solidarity, social justice and equity.

The human rights of Commonwealth people have all too often been cast aside either by the rapid pace of an elite-driven globalisation or by corrupt governments and bureaucracies, all of which fail to prevent, or even actively promote, the poverty caused by environmental degradation, HIV/AIDS, oppressive social structures and armed conflicts. The Commonwealth and its member states must act to reverse this trend by taking responsibility for the continuing violation of the rights of the poor. This requires both recognising one's own duty and holding other international actors to account for the continued existence of poverty.

Experience shows that policies and practices of development not based on the norms and procedures of human rights are unlikely to remove poverty or ensure a just society, which is the core value of people-centred development. This alone must guide the structure, work and processes of the Commonwealth Secretariat and national governments. This approach has the force of being based on both moral consensus and legal obligation and clearly identifies the relevant duty-holders. It is also a practical means for policy setting, enabling policy-makers to: choose the most appropriate processes; re-orient public structures; adopt democratic methods of implementation; pinpoint fitting targets and beneficiaries; and evaluate impact in terms of people's enhanced dignity. This report urges that the concepts of human development and human rights be made to work vigorously together, creating the necessary synergy between development and human rights.

Much of the framework for this approach to poverty eradication in the Commonwealth is already in place. The Commonwealth does not need to reinvent the wheel. The human rights of Commonwealth citizens are already protected on the basis of international instruments and numerous mechanisms for their enforcement and supervision. Both the official and the unofficial

Commonwealth should act to support, engage with and improve this framework. There has been significant elaboration of the substance of economic, social and cultural rights, but these rights remain less known and less enforced than civil and political rights. The Commonwealth must be a prime advocate for improvements in the existing legal framework for these rights and be at the forefront of developing ways to improve their enforceability. It must ensure that human rights are mainstreamed in the practice of its official organs and member governments, bringing rights to front and centre of all policy-making.

As regularly as it has indicated its concern for poverty, the Commonwealth has everywhere in its statements and declarations committed itself ritualistically to human rights. However, this has not gone much beyond rhetoric. The Commonwealth must now act immediately and comprehensively to hasten the process of achieving prosperity and human dignity. To do this it must unequivocally recognise that the continuation of poverty anywhere in the association is a serious human rights violation and one that demands a genuine rights based approach as the only effective and immediate solution.

To this end, CHRI urges the Heads of Government meeting at Brisbane to completely re-orient the Commonwealth's workings by committing it and its member states to the urgent eradication of poverty. This requires that it implement, in partnership with its people and civil society, a specific, practical, time-bound plan of action within a framework of human rights that addresses both global and domestic systems of economic inequity. It must commit itself to focusing only on such strategic initiatives that will make the Commonwealth, with its member states acting as a bloc in solidarity with each other, the international spokesperson and leader by example in the global fight to eradicate poverty and to enforce human rights. Without this, the Commonwealth is in danger of becoming increasingly irrelevant to large numbers of its citizens.

The Commonwealth has reached a critical point in its development. The High Level Review Group (HLRG), convened prior to the Brisbane CHOGM, focuses on this need for renewal. The role for an association born out of the victory over colonialism should be characterised by a continued struggle against oppression and the practical realisation of the rights of all its citizens. As an association of poor people, the Commonwealth must ensure that its policy is made both through engagement with, and in the interests of, those people. CHRI believes that the stage is set for the Commonwealth to imbue itself with new relevance for the coming century by becoming known as a champion of poverty eradication and a strong and effective advocate for the all round realisation of human rights.

POVERTY IN THE COMMONWEALTH



It is no exaggeration to say that we live in a poor Commonwealth. A snapshot of the poverty-related violation of rights shows a grim picture. In a Commonwealth of nearly 2000 million people, a third - or nearly 700 million people - live on less than US \$1 a day.² For example, over 40% of Lesotho, India, Ghana, Kenya, Nigeria, Zambia, Tanzania, Uganda, The Gambia and Sierra Leone live below either the national poverty line or below an income of US \$1 a day. That makes the Commonwealth home to over half of the people worldwide who struggle to survive with this paltry income.³ The majority of Commonwealth citizens (64%) - 1279 million people - live on less than US \$2 a day. In Bangladesh the figure is 78%, which means that a hundred million are trapped in poverty, and in India, the Commonwealth's most populous country, 86% or 860 million people suffer from this poverty of resources.⁴

Poverty forces both women and men into precarious economic and social lifestyles that shape their vulnerability to disease. HIV/AIDS, malaria and tuberculosis (the last two being curable diseases) claim millions of lives, as do infant mortality and maternity deaths. About 60% of HIV cases are found in Commonwealth countries and 4 out of the 9 most affected countries are members of the Commonwealth. Zambia lost 1300 teachers from AIDS in 1998, more than two-thirds of the number of that year's trainee teachers.⁵ Almost 60%

of the Commonwealth lacks access to essential drugs and adequate sanitation facilities.⁶ In Nigeria 90% of the population cannot obtain essential drugs.⁷ 270 million people in the Commonwealth lack access to improved water supplies⁸ and perhaps even more people are at risk from arsenic poisoning from drinking water sources than from HIV/AIDS.⁹

There is evidence to indicate that poverty is deepening. In 1997, Botswana, Kenya, Sierra Leone, Vanuatu, Cameroon, Zimbabwe and Zambia had all registered a decadal decline in their Human Development Index - a construct based on income, life expectancy and literacy. One in every two Kenyans now lives below the poverty line on an income of 33 Shillings - less than half a dollar per day - which represents a massive deterioration since the 1980s.¹⁰

In fact there is an alarming disparity emerging. The share of the world's poorest 20% in global income is only 1.11%, down from 2.3% in 1960. Today, the richest 20% earn 78 times more than the poorest 20%. In 1960 the disparity was only 30 times as much. Even in wealthy Commonwealth countries, there are enclaves of deepening poverty - frequently the result of discrimination against minorities.

Although developed Commonwealth countries are among states with the best records, even within them there are internal disparities. In the UK and Australia, over 13% of the population live below the poverty line.¹¹ In Canada, the proportion of the population living in poverty is 17.6%¹² and 64% of the national income is in the hands of the richest 30% of the population.¹³

The severity of poverty is highlighted when we focus on the particularly vulnerable sections of society.

Women

Women and children share a disproportionate burden of poverty in the Commonwealth. Women account for 70% of the world's poor.¹⁴ Two-thirds of illiterate people are women. Life expectancy in Africa and Asia is shorter for women than men, contrary to normal expectations elsewhere. 70% of children out of school are girls; malnutrition and mortality rates are much higher among girls than boys. Women have fewer opportunities to develop their skills. Their activities as care-givers and home-makers go unpaid and unrecognised as contributions to national wealth. Outside the home, women usually get less pay for equal work; find themselves mainly restricted to the lower rungs; work long hours in substandard or appalling conditions; and often lack membership in unions, enjoying little legal protection. Discriminatory personal laws and customary regimes add further obstacles to women's ability to pull out of poverty. Amongst other things, many Commonwealth countries continue to retain systems that create disabilities such as those that prevent equal shares in inheritance and prevent women from securing credit. In Cameroon, employers seek a husband's

consent before hiring a woman because he has the right to end his wife's commercial activity or refuse her permission to work in a separate profession on grounds of family interest.¹⁵ Widespread violence against women continues in too many countries but not enough to attract serious public policy attention. Its consequences for women as active political and social beings are myriad and well documented. But for one example, with less control over their bodies, women are particularly vulnerable to HIV or are forced by poverty into situations where risks of HIV/AIDS are high.

Only When Intolerable

With a woman raped every hour and one of the highest growth rates of HIV/AIDS in the world, Namibia has passed one of the most progressive and comprehensive laws on rape. But not without a battle. Objecting to the idea of marital rape, the South West African People's Organisation's (SWAPO) Secretary General argued that "the victim should only report it to the police when the abuse becomes intolerable."

Under the new *Combating of Rape Act* any person who intentionally under "coercive circumstances" commits a sexual act with another person or causes someone to commit such an act, that person will be guilty of rape. In this broadened definition of rape is included, "coercive circumstances", such as physical force, threats, any physical disability or helplessness in the victim and mental incapacity due to intoxicants. If the perpetrator is more than 3 years older and the victim is under 14, "coercive circumstances" are presumed and attract higher penalties. Penalties go up with successive offences. Severity will depend on: the age of the victim; if the rapist is in a position of guardianship, authority or trust; if there is gang rape; or if the rapist knows he has a serious sexually transmitted disease. Only minority or "substantial and compelling circumstances" will allow for a shorter sentence. Uniquely, marriage or any other relationship is no defence. Boys under 14 years are now legally considered capable of rape and the victim-friendly Act allows evidence of mental trauma and the right to intervene in bail hearings. It removes the caveat against treating allegations with caution; does not allow into evidence the complainant's sexual reputation; and limits public and media access to trials.¹⁶

Indigenous Peoples

Of the approximately 250 million indigenous peoples around the world, at least a 100 million live in Commonwealth countries. In 1984 a UN study documented modern discrimination against indigenous peoples and their precarious situation. It concluded that the continuous discrimination against indigenous peoples threatened their very existence.¹⁷

Wherever they live, from the Aborigines in Australia, to the Amerindians in Belize, from the Jummas in Bangladesh to the Innu in Canada, from the Adivasis in India to the Orang Asli in Malaysia, and from the Bushmen in Southern Africa to the Ik in Uganda, indigenous peoples encounter discrimination, intolerance and prejudice. They must struggle for both their survival and their identity.

Indigenous people's lives are often characterised by poverty, poor health and education, inadequate housing, unemployment and heavy dependence on state institutions for many aspects of their livelihood. In Australia, infant mortality

amongst indigenous people is 2 to 4 times higher and adult death rates are 3 to 4 times higher than other people. In many countries, these people often occupy the most menial posts, facing little prospect of promotion or a more respectable and higher paid job. Despite the *Bonded Labour Abolition Act, 1976*, Adivasis/tribals in India still form a substantial percentage of bonded labour. In Australia, for example, the unemployment rate among Aborigines is approximately 23% compared with the national average of 7%.¹⁸

India has the largest tribal population in the world (over 70 million). It does not recognise the notion of indigenous people as it applies to tribal groups within the country. However, the Constitution recognises their historical disadvantage and provides for special laws that aim to protect their land, culture and language and assure political representation. In addition, there are overseeing mechanisms to watch over rights and their implementation; development schemes; financial allocations; affirmative action policies in education and employment and experiments in reviving their language and protecting their culture. Despite all this, tribal groups remain the most backward section of society. Implementation has fallen grievously by the wayside. The legal and constitutional frame is defeated by a co-opted leadership, weak political will, poor execution coupled with ignorance, poverty and lack of organisation as an interest group. Everywhere, government welfare services are woefully inadequate, if not downright neglectful.

Education differentials indicate fewer opportunities for indigenous people. In India, for example, at 1991 figures, only 23.03% of tribals/Adivasis were literate as opposed to the national average of 52.21%. The figure for Adivasi women is much lower at 14.5%, which is near one-third the national average for women (39.29%). Most national educational programmes and curricula pose an increasing danger to the cultural identity of indigenous people, since they do not take into account their special needs. In Botswana, the Basarwa/Bushmen children are rarely taught in their own languages. In Canada, in the education of Innu children, the interpretation of history in the mainstream differs significantly from their own. Standard school textbooks seldom show sensitivity or knowledge about the cultural practices of indigenous peoples. Added to this is the dearth of teachers who know the language and cultural history of these people.

In contemporary times, globalisation - the moving frontier of the market in search for forests, minerals and other natural resources - poses further threats. The environment in which indigenous people and tribal groups live has been

Less at Risk

In a climate of despondency risk behaviour flourishes. Whilst overall rates for sexually transmitted infections have declined amongst gay men and female sex workers in Australia, they are substantially higher in indigenous populations, “by a factor of 10 to 100”. Despite this, the Commonwealth Government in Australia spends significantly less per head on the health of each Aboriginal person than on the health of each non-Aboriginal person. In 1998 approximately 63 cents per head were spent on health services to Aboriginal and Torres Strait Islander people, for each dollar spent per head on the health of other Australians and “only a portion of the 63 cents is spent on culturally acceptable and effective services to Aboriginal people.”¹⁹

degraded and disturbed due to deforestation, mineral exploitation, construction of dams, weapons testing ranges and more. Although they often live in resource-rich areas, indigenous people gain little from the exploitation of these resources - the profits being shared by national elites and trans national corporations (TNCs). Many states and their elites, particularly in Southeast Asia, are dependent upon keeping peripheral communities marginalised in order to exploit their resources.²⁰ In India, out of the 25 million people displaced due to development projects since 1947, about 10 million are tribals. Their rehabilitation and resettlement has become a deeply divisive and disputed issue. Though the majority of dams built in India are located in Adivasi/tribal areas, only a small part of Adivasi landholdings are irrigated as compared to the national average.

Tribal groups pay a disproportionate amount of the cost of 'progress'. A key cost has been the erosion of their ownership, entitlements and usage of land and other common property resources. A strong relationship with their land is a characteristic shared by all indigenous peoples. For example, the proposed resettlement of the Jarawa of India's Andaman Islands, who number no more than 400 people, may signal an early end for this tribe.

Progress - A Sampler

- **Guyanese Amerindians have been struggling hard to stop the construction of a road through the centre of their traditional lands.**
- **The Bagyeli in the Cameroon are fiercely opposing the construction of an oil pipeline that will cut through their ancestral lands.**
- **The Ogiek are challenging the Kenyan government over the theft and destruction of their forest homelands.**
- **The Mayan people are struggling to preserve their land rights and to protect the rainforest from the depredations of logging companies in Belize.**
- **The Basarwa/Bushmen and Bakgalagadi peoples in Botswana have been evicted from the Central Kalahari Game Reserve to make way for conservation, tourism and diamond mining, and now face discrimination, harassment and torture as they struggle for their right to remain on their ancestral land.**
- **The Wanniyala-Aetto (Veddah) in Sri Lanka who were evicted from their traditional habitat to make way for the Madura Oya National Park, are systematically losing their cultural identity.**
- **The Mirrar people in the Northern Territory of Australia are actively opposing mining for uranium in Jabiluka, in the Kakadu National Park.**

Children

Children's vulnerability to rights abuse is extreme given the nature and extent of their needs. About 130 million children worldwide lack access to primary school and around half of those live in Commonwealth countries.²¹ Children form a significant part of the labour force in the Commonwealth countries of South Asia where the challenges for primary education, along with sub-Saharan Africa, are also the greatest. Children are often the victims of exploitation and deprivation due to general social and moral negligence. Cameroon, where forced child labour and slaves are a grim reality, has been cited as a major transit point for trafficking as many as 200,000 children. Children are regularly trafficked for labour and into the sex trade in Bangladesh, India, Mozambique, Namibia, Pakistan, South Africa, Sri Lanka, Nigeria and Zambia. Young girls are particularly at risk. An estimated 60% of those trafficked into the sex trade in South Asia are minor girls. About 600,000 Bangladeshi women and children have been trafficked into India, Pakistan and the United Arab Emirates. In Sri Lanka, nearly one million or 21% of all children aged between 5 and 17 are active in the labour force; the International Labour Organisation (ILO) estimates that 80 million working children (32% of the world's total) are in Africa, many of them between 10 to 14 years of age. In Cameroon, 600,000 children work in informal urban activities as well as in agriculture and domestic service, 60% of whom have dropped out of primary school. Trafficking - whether of women or children - has all the hallmarks of slavery as has the thriving system of bonded labour to which many children and adults are mortgaged. This is a particular scourge of Commonwealth countries in Asia and Africa. It is estimated that out of 27 million victims of bonded labour, 15 to 20 million are in India, Pakistan and Nepal.

Slavery - the ultimate denial of human rights - is on the increase. The forces which promote and sustain slavery are so strong that few states or international agencies can counteract them. India and Pakistan have excellent laws against debt bondage. Despite the hundreds of cases brought to light by NGOs in Pakistan, there has not been a single conviction. In India, commitment by the national government is foiled by lack of enforcement at the state level, with slaveholders being regularly tipped off when a police raid is imminent, while rehabilitation grants to those freed from bondage are seldom given or given speedily, so that they continue to remain extremely vulnerable to re-enslavement. Women marry into debt bondage and the debt itself might be carried into a second and third generation, growing under fraudulent accounting by the slaveholder, who may also seize and sell the children of the bonded labourer against the debt.

Playing with Matches

Sivakasi in Tamil Nadu, India, has perhaps one of the most filmed, written about and researched concentrations of child labour in the world. Despite the dangerous work, exploitation and everybody knowing about it, the lucrative match making and fireworks trade thrives on the backs of some 45,000 children who are bonded to work in repayment of earlier debts and advances given by agents and factory owners to their parents.

Each day children aged between three and a half and fifteen are picked up by factory buses from the surrounding countryside as early as 3 a.m. A study by UNICEF, surveying 33 buses, found 150 to 200 children jammed into a single bus. For the next 12 hours the children work in dark and dingy factories and only get back to their villages after 7 p.m. In the run up to the big Diwali (festival of lights) holiday, the factories go over to extended hours and work seven days a week. The children roll and pack huge quantities of fireworks. The gunpowder mixture is corrosive and over time eats away the skin on a child's fingers. Blisters form and the child can not work as the chemicals burn quickly into the exposed flesh. Blisters heal in five or six days, but staying off work for that long means being fired. So, normally, a hot coal or cigarette-end is applied to the blister, bursting it and cauterising the wound. In time the children's fingertips become a mass of scar tissue. The powdered potassium chlorate, phosphorous and zinc oxides also fill their lungs and lead to breathing problems and blood poisoning. The children work until they are too ill and then get dumped when a new child is ready to work against the debt.

Fun At The Races²²

Pakistan, India and Bangladesh, all provide children for rich Gulf States, for entertainment as jockeys for camel racing. Most frequently, relevant labour laws are not enforced, as those who own racing camels and use the children come from powerful local families that are in effect above the law.²³ Police investigate, but despite clear evidence few charges are ever filed.

Small children are smuggled in by organised groups. Children as young as five or six are specially preferred because they are light. Tiny boys are sometimes kidnapped, but often sold by parents or relatives, or taken on false pretences of being given a better home or domestic work. Separated from families, in a country where the people, culture and language are completely unknown, most children are in no position to report incidents of torture and abuse. A few rescued children provide a cruel picture. To make them as light as possible, children are underfed and are subjected to crash diets before a race. They report that regular beatings and serious injuries are not uncommon during races. Terrified children are tied to the backs of camels and their screams add to audience excitement. In August 1999, a four-year-old camel jockey from Bangladesh was found abandoned and close to death in the UAE desert. In May 2000, an employer burnt the legs of his four-year-old Bangladeshi camel jockey for under-performing in a race. The United Nations Special Rapporteur on the sale of children, child prostitution and child pornography notes, that little was being done to stop the use of underage children as camel jockeys which indicates that “the rules are being blatantly ignored.”

The use of children, especially for things like camel racing, is prohibited by the United Nations Convention on the Rights of the Child (CRC) and by the ILO Convention on the Worst Forms of Child Labour. This Convention, requires immediate and effective action to prohibit and eliminate child slavery, debt bondage, prostitution, pornography, forced recruitment of children for use in armed conflict, use of children in drug trafficking and other illicit activities, and all other work harmful or hazardous to the health, safety or morals of girls and boys under 18 years of age.

Even if ILO member states have not yet ratified Convention No.182, they must, without being bound by each and every one of its provisions, still gear their policies towards the effective abolition of child labour. Till August 2001, India and Pakistan had not ratified the Convention on the Worst Forms of Child Labour.²⁴

Child soldiers are becoming an increasing phenomenon wherever there is prolonged armed conflict. Children are cheap, expendable and easier to condition into unthinking obedience and “can become efficient killers”. Both girls and boys are recruited. Girls often end up as camp followers and sex slaves. Sometimes they are also forced to go to battle, “with babies strapped to their backs.”²⁵

Conscripted, frequently abducted, by governments and rebels alike, the *Coalition to Stop the Use of Child Soldiers* concludes that about 300,000 children, some as young as seven, are actively fighting in 41 countries, while about 500,000 are recruited into paramilitary organisations, guerrilla groups and civil militias. Child soldiers are common in Uganda, Sri Lanka (frequently used as suicide bombers), Sierra Leone, Mozambique and even the UK. The Coalition has particularly sharp words for the UK as the “only European country to send minors routinely into battle” and which has “persistently objected to raising the international minimum age for voluntary recruitment and participation in hostilities to 18.” There are about 7,000 under-18s in the British armed forces, while paramilitary groups in Northern Ireland are also believed to be recruiting teenagers.

ILO C138 Minimum Age Convention, 1973²⁶

Country	Ratification Date	Status
Antigua and Barbuda	17:03:1983	Ratified
Barbados	04:01:2000	Ratified
Belize	06:03:2000	Ratified
Botswana	05:06:1997	Ratified
Cyprus	02:10:1997	Ratified
Dominica	27:09:1983	Ratified
Gambia	04:09:2000	Ratified
Guyana	15:04:1998	Ratified
Kenya	09:04:1979	Ratified
Malawi	19:11:1999	Ratified
Malaysia	09:09:1997	Ratified
Malta	09:06:1988	Ratified
Mauritius	30:07:1990	Ratified
Namibia	15:11:2000	Ratified
Papua New Guinea	02:06:2000	Ratified
Seychelles	07:03:2000	Ratified
South Africa	30:03:2000	Ratified
Sri Lanka	11:02:2000	Ratified
Tanzania, United Republic of	16:12:1998	Ratified
United Kingdom	07:06:2000	Ratified
Zambia	09:02:1976	Ratified
Zimbabwe	06:06:2000	Ratified

Workers

Workers in general are of course better off than their counterparts in the past. However, it is a particular irony that after centuries of struggle for rights, in a globalised world, work is increasingly characterised by greater disparity of income, insecurity of tenure, reduced protection in terms of safety and working hours and the dependence of economic systems on sweated labour, migrants, child labour and forced labour, all of which remain stubbornly alive. Even in wealthy countries, and 'hi-tech' industries, employment relations have changed to the detriment of workers in many ways. Contracts are short term, giving rise to alternating periods of employment and joblessness, uncertainty and insecurity, and thus to a work force reluctant to insist on rights. Modern employment structures positively discourage organisation, while the poorest and most

Damned If You Do and Damned If You Don't

About 88,238 workers - the large majority women - are engaged in over 253 factories in the EPZs in Dhaka and Chittagong. The Bangladesh Export Promotion Zone Authority (BEZPA) oversees their rights. Though subject to the general law and exempt from some, in the absence of any effective monitoring authority trusted by employees, the impression is that the EPZs enjoy blanket exemption from all labour laws. EPZ employers are virtually exempted from providing basic conditions of employment. Management unilaterally decides the classification of workers, working hours, leave time, payment of wages and maternity benefits. Labour unions are not allowed to form or operate.

As early as 1991, AFL-CIO, the largest trade union federation in the USA, petitioned to revoke Bangladesh's general system of preferences (GSP-tariff concessions) for alleged infringement of labour rights, including the denial of freedom of association. The US government continued Bangladesh's privileges, following the government's assurances to allow freedom of association in the EPZs. In June 1999, AFL-CIO again filed for revocation on grounds of Bangladesh's failure to act in accordance with the assurance. Since then, Bangladesh has lived under repeated threats of withdrawal of GSP privileges. On the other hand, the Japanese Ambassador has made it clear that "Japan does not want trade unions in the EPZs at this moment" and expressed satisfaction at the "congenial atmosphere" there. Other investors insist that permitting trade unions would be a breach of contract by the Bangladesh government, which had promised a peaceful atmosphere in these Zones. Caught between the devil and the deep blue sea, the government has to walk a thin line between giving assurances that it will take some measures to protect the interest of the workers and the investors equally, while qualifying this by stating categorically that: "The prime objective of the government is to increase employment opportunities through increased investment". Meanwhile workers continue to be employed at rates unrevised since October 1993. These range from US \$22 to a maximum of US \$63 per month, amounting in many cases to less than the US \$1 per day - the international benchmark used to identify those below the poverty line.²⁷

vulnerable workers in the informal sector have additional obstacles to organising. Women are more likely than men to be in the informal sector.

Unionisation as a means of protecting labour rights was always low in the poorer Commonwealth countries with only 9% of the entire workforce in India and 14% of the formal sector in Malawi and Lesotho. But in recent times the rate of unionisation has been decreasing everywhere. In any case the largest number of workers remain outside a union in the unorganised or informal sector and have little protection under labour laws.

The future does not augur well for the Commonwealth workforce. It will have to trim its expectations and its pockets. More people than jobs will ensure that rights will be foregone and entire populations will become more vulnerable to exploitation. Already there are 110 million unemployed workers in developing countries. ILO statistics indicate that "in addition, 500 million workers are unable to earn enough to keep their families above the US \$1 per day poverty line. These are almost entirely in the developing world. And of the workers who are not among the poor, many lack basic job and income security. There is reason to believe that the numbers in this group are growing in many parts of the world." Over the next 10 years two-thirds of all new job seekers will be in Asia, but "fewer than projected will be in Africa because the HIV/AIDS epidemic is having a disastrous impact on the economy and the labour market." Everywhere unemployment rates among young workers are almost twice as high as the average, this in turn will impact on social stability.

The increasingly desperate situation of poor countries like Bangladesh, Lesotho and others forces concessions on rights. This is especially so in Export Promotion Zones (EPZs) which globally employ 27 million people - 90% of them women. Governments in effect withdraw the implementation of protective measures in these territories in order to attract foreign investors. While workers in such zones are therefore by definition not

in the poorest of the poor category, they are indicators of a general level of poverty within the country.

Migrant workers are sometimes 'illegal' and sometimes officially recognised or even encouraged. Recruited mostly to perform unskilled, low paid and unpopular tasks, their very existence reflects the poverty at home and forces them into accepting wages that look high from the 'home' perspective, but are in fact very low. Their immigration status, even if they are 'legal', may be tied to particular jobs, and their bargaining power thus weak, may well be worsened due to their unfamiliarity with the system and perhaps the local language.

The ILO has a system for measuring compliance with the conventions among ratifying states. A study showed that of the 37 states with the worst records in terms of compliance and responsiveness to complaint, the following were Commonwealth members (in ascending order of 'offending'): Ghana, Pakistan, Bangladesh, Sierra Leone, United Kingdom, Malaysia, Jamaica/Singapore/Tanzania (countries separated by slashes being at the same level), Pakistan and Tanzania being among the most 'recidivist'.²⁸

Much emphasis has been placed in discussions on global trade and development on the inclusion of a 'social clause' in international agreements. Such a clause seeks to safeguard minimum standards for labour within international trade agreements. However, its inclusion into trade negotiations and linkages to investment has been resisted and is strongly opposed by many developing Commonwealth countries, amongst them Malaysia. Some oppose it because of its potential for becoming an additional conditionality to trade bargains; others because supporting it legitimises the whole globalisation-development paradigm epitomised by the WTO. While still others argue that even if intended to mitigate the impact of globalisation, social clauses would be very difficult to enforce. It could be argued that many Commonwealth countries are already committed by virtue of their ratification of ILO Conventions to courses of action which are best suited to mitigating the plight of the employed poor.

However, in their desperation to become competitive in a buyer's market, many Commonwealth countries are constricting workers' right to associate, for example Swaziland and Cameroon. The Commonwealth has pinned its colours to the mast of democracy; democracy demands the right to associate be safeguarded and not eroded as is happening in many of its member states. The Commonwealth needs to monitor the protection of workers' rights and insist that workers' equity is not hostage to economic compulsions and must come to the aid of workers in both the formal and informal sector.

The Elderly

Commonwealth societies in the coming years of the new millennium will have to consider another vulnerable segment of society - the elderly; and will have to make provision for their well being and rights. At present, already 60% of above 60 year olds live in developing societies. By the third decade of the century this figure will go up to 70%. Some developing countries which have placed particular stress on health care will by the third decade of the twenty-first century have a higher proportion of over-65s than some developed countries have at present. The majority of the elderly are women.²⁹

Medicine and improved public health may have prolonged life but they have not guaranteed a life of general good health or nutrition. Of course developed societies, with better health care, nutrition levels, and social safety nets, have been able to look after the elderly. They are also able to plan for their aging populations and evolve economic responses that are better able to protect rights in the future. Even here though, pensions are being cut back. Developing societies do not have the economic strength nor are they so free from immediate urgent concerns to plan for ageing populations, especially as they are assumed to be economically unproductive. Care of the elderly is left for the most part in the private domain of the community and family relationships. Under pressure of the changing environment, community and family support networks have been breaking down. Like some sort of ethnic minority in the heart of society, the elderly are sidelined socially, politically and economically; they are stereotyped, often undervalued, and overlooked; and increasingly, significant problems of physical and mental abuse of the elderly are coming to light. Yet 'grandparent bashing' has received far less attention than wife-bashing or child abuse. The poor enter old age on very small or non-existent incomes, weakened by a lifetime of recurrent disease, sub-optimal nutrition and poor living conditions and, in the case of women, repeated childbirth, and they may in fact be the victims of malnutrition to a greater extent than even children are - India and Tanzania being two Commonwealth countries where this is shown to be the case.³⁰

Yet the elderly contribute to family well-being and the economy. Where both parents work to cope with family expenses and are unable to afford carers, grandparents are being called upon to look after children. The most acute examples of this contribution come from the HIV-devastated societies of sub-Saharan Africa, where grandparents are struggling to compensate for the absence, in many families, of a whole generation of parents. Grandparents - overwhelmingly grandmothers - find that they must farm for, feed, clothe and if possible, educate their grandchildren. This large and growing segment of the world's population still receives very little attention in indices of human development and other research. The future management of poverty in

societies which are likely to have a significant portion of ageing folk, requires more deliberate efforts to take into account their situation.

The Nature Of Poverty

“Poverty is like heat: you cannot see it, you can only feel it; so to know poverty you have to go through it.”³¹

Statistics about poverty only indicate the mass quantity of deprived people, not their life condition. While horrific, they cannot express the individual misery of a life lived in want and fear.

An examination of the nature of poverty draws forth the ways in which poverty negates the realisation or enjoyment of human rights. There is no real possibility of enjoying rights, whether civil, political, social, economic or cultural, without resources such as food security, education, physical safety, health, employment, property, access to justice, and due process - all of which poverty negates.

The concept of human rights, with human dignity as its corner stone, alerts us to the multiple dimensions of the human person that are negated through poverty. Poverty is about physical and economic insecurity, fear of the future and a constant sense of vulnerability. It is the lack of qualities that facilitate a good life, defined in terms of access to the conditions that support a reasonable physical existence and enable individuals and communities to realise their spiritual and cultural potential. It is about lost opportunities - for reflection, artistic creativity, development of and discourse on morality, and contribution to and participation in the political, social and economic life of the community. This dimension is best captured in Amartya Sen's concept of human 'capabilities', which he defines as opportunities to achieve valuable 'functionings' or 'states of being',³² that represent different facets of well being; physical - such as being fed and housed - but also more complex social achievements such as taking part in the life of the community and being able to appear in public without shame.

Poverty robs self-confidence as much as capability and clings to nations, communities and families from generation to generation, forcing them to remain at subsistence level while others outdistance them in all ways. The massive dependence that arises from poverty generates habits of subservience and docility, reinforcing the hierarchy in social and economic relations. Homelessness, ill-health and lack of education suppresses the development of people's potential, prevents them benefitting from a fair share of development and leads to the waste of desperately needed human resources.

Poverty makes a mockery of the concept of the 'autonomous individual' that lies at the heart of the dominant conception of human rights. Long-

established norms of family life are not possible when one is poor. Children often get sold into bondage and young daughters and sons get forced into migration to distant places, often in dangerous circumstances, in order to send meagre savings back home. Men strained to the limit with the effort of supporting families draw away or simply abandon their responsibilities and go in search of slim opportunities elsewhere, burdening wife and family with additional responsibilities to sustain the family. Unable to bear the burden of continuous starvation, unemployment, debt or illness, families in many poor countries of South Asia are all too often documented in the media as having taken the terrible route of murdering their kith and kin and then killing themselves to end the suffering. In this and other ways, poverty subverts decent and fulfilling family life - this at the same time as the Universal Declaration of Human Rights calls the family the natural and fundamental group unit of society, which is entitled to protection by society and the state.³³

Yet poverty is not solely the problem of the poor. Poverty affects the rich. It divides societies into groups with opposing interests and thus negates another important objective of human rights - that of human and social solidarity. In the modern age where the images of the life of the wealthy daily assault everyone, poverty poses a major threat to social consensus and political stability. It erodes the moral fibre of rich and poor alike. The consequences of pervasive poverty cannot be restricted to the confines of the state, and cannot be dealt with merely by increasingly stringent bans on immigrants and refugees. While the answer often provided by governments is ever more suppression and calls for enclosing poverty in ghettos, they pay little attention to the fact that widespread poverty leads to the proliferation of diseases and other social ills that can scarcely be contained within the confines of slums and must eventually affect all. The middle class obsession for more and more security conveys its deep-seated fear of tremendous social upheaval, where all the trappings of the affluent society could be swept away by the growing tide of the poor and the deprived. Democratic societies must conjure into being some remedies, which can stem the tide. But the scale, depth and spread of poverty ring a warning bell.

CAUSES OF POVERTY



Poverty is not a natural condition nor are the poor makers of their own misfortunes or the victims of their own faults and weaknesses. Poverty is not due to individual shortcomings in personality or morality nor failures of family and upbringing. To argue as if it were, is to obscure the causes of poverty, justify its existence and detract from the responsibility for its cure.

Poverty is created. It is created by an uncaring international community, governments and societies. Worsening poverty has resulted from discriminatory and exclusionary policies that create an inequitable distribution of resources and prevent people from accessing the benefits of development. In our own times poverty has increased and intensified under national and international economic policies that are now encapsulated in the concept of globalisation, whether they are structural adjustment programmes (SAPs), or the subordination of national economies to the unchecked interests of global capital. The positive potential of globalisation - such as increased information exchange, the free reign of human rights and the opening of markets to poor

people's products - is obscured by its misuse by powerful interests that can compel priorities at the national level and uphold unfair trading systems and monopolist property regimes at the global level.

The closely intertwined skein of trans-national political and economic interests combined with the increasing social cohesion of affluent groups across the world is principally responsible for the situations that create economic disparity and divisions within society. This alliance of interests creates unbalanced structures of international trade and investment, uneven distribution of new technologies and an unjust allocation of resources, as well as employment practices that work against the interests of the poor. These biases are often then entrenched in both national and international systems through legislation. All this conspires to exclude the majority of Commonwealth people from access to meaningful economic opportunities.

Poverty is also born out of consistent and unchecked theft and waste of community resources, corruption and the misappropriation of public and private wealth. A powerful economic and political class accompanies poverty, with no interest in social reform. Poverty is caused by largely unaccountable systems which govern people and insulated economic and social conglomerates of the global and national elite that keep the poor ill-equipped to participate in political processes or to mobilise the legal process to their aid. More than anything else, poverty is about unequal power relations and the ability of the few to oppress, suppress and exploit with impunity.

Globalisation

"I sit on a man's back choking him and making him carry me, and yet assure myself and others that I am sorry for him and wish to lighten his load by all possible means - except by getting off his back."

Leo Tolstoy

The term globalisation itself has no precise meaning, but for our present purpose which is related to poverty eradication, it may be defined as the growing dominance of market principles in the organisation of international and national economies, the inter-state penetration of trade and investments, the liberalisation of economies through privatisation, the removal of national restrictions on imports and exports, and the freeing of financial markets and movements of capital. Undoubtedly, globalisation has brought about increasing cultural and information exchanges, networks of governmental and non-governmental organisations, a growing sense of inter-dependence, the spread of the concept and elaborations of human rights, international collaboration in dealing with global problems, and so on. But these developments - even when they seek to cushion the impact of globalisation - are shaped and dominated by world economic processes.

Passion for Profits

The truth is that the ruling passion of globalisation is 'profit', not human values or welfare. As William Greider says:³⁴

“The terms of trade are usually thought of as commercial agreements, but they are also an implicit statement of moral values. In its present terms, the global system values property over human life. When a nation like China steals the property of capital, pirating copyrights, films or technology, other countries will take action to stop it and be willing to impose sanctions and penalty tariffs on the offending nation’s trade. When human lives are stolen, nothing happens to the offender since, according to free market’s sense of conscience, there is no crime.”

There is nothing inevitable about these economic processes. They are the result of particular policy decisions made by a global elite who have fostered a number of organisations and institutions which nurture this new economic order, most prominently the World Trade Organisation (WTO) and the growing role and influence of international financial institutions (IFIs). The processes of globalisation are greatly assisted by innovations in technology and management, the pre-eminent ownership and control of which is with the rich.

Inequality and poverty long preceded what is today termed ‘globalisation’; and the causes of poverty cannot be solely attributed to it. But the momentum that the phenomenon has gathered; the sheer force of the interests that are driving it; its pervasive influence over international and national economies, politics, and societies in the last twenty or more years and the extent of populations that are experiencing its negative effects; have inextricably associated globalisation with the exacerbation of poverty which is pushing unheeded millions into a downward spiral of poverty.

There are counter-arguments which focus on: the efficiency of globalisation and its abilities to use the world’s resources optimally; its potential for encouraging human creativity and spreading democratisation; its ability to increase the cake for all to share; and its capacity for ushering in an era of prosperity and rights. However, these benefits are a reality for only an elite minority of people in today’s Commonwealth. This is no accident.

The ideology of globalisation is rooted securely in market liberalism, the celebration of the virtues of private economy and critiques of state management of, or interventions in, the economy. This ideology argues that a country can maximise the welfare of its people only if it integrates in the global economy. In so far as the ideology of globalisation concerns itself with rights, it privileges certain civil and political rights which are deemed essential to the operation of national and international capitalism, such as the increasing scope, clearer elaboration and protection of private property, the strict enforcement of commercial contracts, the independence of the judiciary, and the rule of law. It requires an active role for the state only to create and reinforce laws, institutions and policies in order to promote favourable conditions for global capitalism. But the ideology is against specific state interventions for the protection of economic and social rights, such as those that aim at redressing social injustices through affirmative policies and other redistributive mechanisms or protecting the domestic economy against the ravages of external forces.

This ideological orientation has been used to justify the termination of policies which have hitherto sustained a measure of social cohesion through assistance

to the disadvantaged and promoted a minimum degree of access to education and health services. It is often argued that the harm caused by the market's failure to guarantee people's well-being is less severe than that caused by the government's failure to uphold rights. The tragedy of bad governance should not be ignored. However, the existence of irresponsible duty-holders is no reason to submit democracy and rights to the domination of an unaccountable market. The dangers of this are nowhere better demonstrated than in the outcome of years of bowing to SAPs.

Effectively imposed by powerful outside donors on already weak states, SAPs have been the harbinger as well as the facilitator of accelerated globalisation. They have not only resulted in a calamitous reversal in economic growth in affected countries but have systematically eroded the authority of the state and the rights of vulnerable people and succeeded in sharpening inequality in society by pushing a large number below the poverty line. Faced with these consequences, even the most ardent promoter of SAPs - the World Bank - has had to acknowledge the failure of these programmes to achieve national well being. Health care systems are collapsing, medicines are hard to obtain and schools are being closed down due to huge cuts in state grants. In Zimbabwe, for example, since the introduction of the programme in 1990, households classified as poor rose from 40.4% in 1991 to 63% by 1996. In the same period, extreme poverty increased from 16.7% to 35.7%. Today 75% of all Zimbabweans are classified as poor and 47% as very poor. The most vulnerable have been the hardest hit by SAPs, while the commercial sector has been the principal beneficiary.

Dying For More

Crude prescriptions from afar that give primacy to commercial interests over human dignity have wrought havoc in Zambia.

In obedience to SAPs, the Zambian government speeded up privatisation programs. But 50% of the companies sold out of the state sector are now bankrupt. More than 60,000 people have lost their jobs as a result of the economic liberalisation programme introduced after 1991. With many mouths dependent on one breadwinner, this has thrown an estimated 420,000 people into destitution. 40% of Zambia's children are suffering from chronic under-nutrition. This reflects the cuts in public spending and the introduction of school fees. For example, whereas in 1991 the Zambian government spent about US\$60 per primary school pupil, it now spends just US\$15. Girls are the first to be withdrawn from school. In 1980 the under-5 mortality rate was 162 deaths per 1,000 births. It is now 202 per 1,000 or one in every five. The average life expectancy has fallen from 54 in the mid-eighties to 40 now.³⁶

Overseas Development Assistance (ODA) is known to be an instrument designed to help narrow the gap between the developed and the developing nations. From its beginning, however, ODA was more than humanitarian assistance. It constituted an integral part of the donor's foreign policy objectives. Given the donor/developed countries' need for raw material and markets, and the skewed distribution of resources, ODA became an instrument for shaping the politics and

The Debt Trap

Between 1981 and 1997 developing countries paid almost US \$3 trillion in interest and principal payments - double of what they received in new loans. In 1999, developing countries borrowed US \$246 billion, but paid back US \$349 billion just in interest on old loans, meaning a net transfer of US \$103 billion from South to North.³⁸

economies of recipient countries towards a particular end. Since most of the funds were given in forms of loans, the pursuit of 'development' contributed to massive indebtedness - carried forward - creating a debt-cycle. By 1997, the world's highly indebted 41 poorest countries had a debt burden of US \$215 billion, as against US \$183 billion in 1990 and US \$55 billion in 1980.³⁷ This has ensured that these poor countries pay more in debt service than they can invest in development. The Heavily Indebted Poor Countries Initiative (HIPC), which was evolved to give debt relief, has been able to make very little dent. It is difficult to convince the donors that in the long run it is more efficient to invest in the poor, mobilising their labour, than the non-poor, who absorb more resources than can be socially, morally, and economically justified.

Asymmetries

SAPs are one high visibility example of the ideology of globalisation in practice. In order to combat the negative effects of globalisation, it is necessary to uncover its mechanisms. Globalisation has arisen on the basis of a series of asymmetries - which are at the root of growing poverty and inequalities.

The State and the Market

The first asymmetry concerns the relationship between the state and the market. The irony of 'free' markets is that they are not free. They are created and sustained by political intervention - whether voluntary or induced. Many of the conditionalities imposed on states in the name of SAPs are aimed at 'globalising' national economies through opening them to foreign investment and trade. Free markets require political clout to penetrate new areas and to flourish in them. For this, commercial interests rely on the coercive powers of their affluent and powerful home regimes and the international arrangements such as the WTO and North Atlantic Free Trade Association (NAFTA) that now govern trade. Very few developing countries have enough clout to gain their home industries a foothold in developed markets. Globalisation does not work even-handedly for all commercial interests. This is especially so, as the protected markets of developed countries belie their free market rhetoric.

At the same time the state is weakened by the imperatives and influence of multinational corporations. Privatisation and liberalisation, as conditions of SAPs, have produced a more 'autonomous' market system by decreasing the scope of the powers of the state and generating an equivalent increase in those of the private sector. Corporations have acquired enormous powers to negotiate with governments on the terms of their investment and operation, and great capacity to affect fundamental decisions on social, economic and political policies of states. The conditions of global competitiveness give great leverage

Where The Money Is

Since 1970, multinational companies have grown in number from 7000 to over 50,000 in 1999.

Global corporations now account for over 70% of international trade flows, one third of which flow among these companies themselves.

At the global level, the combined annual revenue of the top five corporations in the world exceeds that of the poorest 100 countries put together. Put another way, the world's 100 biggest companies have a combined annual revenue larger than the GDP of half the world's nations.³⁹

to corporations over public policies and practices. Because corporations are free to move around the globe unhindered, states compete for investments by, for example, lowering taxes, removing regulations over business, lowering environmental standards, and restraining workers' organisations. The consequent loss of revenue to the state means that it has ever less resources to spend on poverty alleviation. In many states welfare - where not abolished - has been privatised and numerous key state functions have been transferred to the corporate sector.

Democracy has also been weakened by this shift of power from the state to corporations, and other global institutions. As policies are frequently imposed on states, either explicitly as conditionalities or effectively as the logic of global markets, states are forced into the role of agents of international capital and often end up acting

against the very wishes of their own citizens. Indeed, global capitalists often rely on a nation state's coercion of its citizens to ensure that their interests are protected. The locus of the exercise of sovereignty or self-determination is no longer solely the state. This weakens the ability of citizens to hold states accountable, as they no longer have the capacity to respond fully to the demands of citizens, whose lives are ever more affected by the policies of non-state actors.

Those corporations and institutions which have replaced aspects of the state's governing force are themselves not democratic, being run by executives or bureaucrats on behalf of particular interest groups. A good example is when a state joins a regional economic association (which are themselves a product of globalisation). In regional associations, the interests of capital generally wield more power than all other groups, resulting in a democracy 'deficit.' The corporate sector deals with a large number of stakeholders - shareholders, workers, consumers, sub-contractors, the state and communities in which its enterprises are located. It has effectively disempowered all of them and impoverished many.

Although shareholders and consumers are groups to which global corporate power is directly accountable, to a large extent even they are unable to effectively monitor corporate behaviour or control management. Corporate activities are as widely dispersed as are shareholders and consumers. This makes it difficult for the latter to know what decisions and activities are underway and exert any united or effective authority. Other shareholders, such as those who purchase shares through pension funds, cross-holdings and portfolios, may not even be aware of which companies they have invested in. Large and small sub-contractors tend to become so dependent on a particular corporation that they are often forced into work practices that contravene legal or acceptable standards. Corporations have pushed wages down and reduced many

safeguards of the work place and of social security - particularly in the developing world - with no means for the workers to voice their opposition. Cartelisation has further reduced consumer choices.

Investing In Human Rights

Corporations can be persuaded to act more responsibly when investors demand ethical practices be put in place which further the human rights of people.

Friends Provident, a major UK pension fund, has thrown its weight behind a campaign led by Oxfam to force the £120 billion drug giant, Glaxo-SmithKline (GSK) to make essential drugs available cheaply in developing countries.

The issue that has catapulted this to public consciousness is the HIV/AIDS epidemic which is ravaging African countries and the South African government's efforts to make generic drugs available to its population rather than paying for just a few expensive drugs from the giant pharmaceutical companies.

Friends-Ivory Simes, which manages Friends Provident's pension money, has £30 billion under management and about £1 billion invested in GSK. Craig Mackenzie of Friends- Ivory Simes, said: "If millions of Africans are dying of preventable diseases and one reason is that drug companies are charging too much, you have a serious reputational risk."⁴⁰

Friends have made an ethical investment policy statement which precludes them from investing in companies that they see as profiteering from excessive drug prices. This kind of policy damages the investment prospects of major companies such as GSK, thereby encouraging socially responsible practice. Other institutional investors are beginning to follow suit. GSK has recently announced price cuts on key medicines in 63 countries.⁴¹

To compound the misery of the poor, there is frequently close collaboration between corporations and governments, lubricated by bribes and a convergence of sectoral self-interest amongst elites. The state will often, in the name of development, unfairly favour schemes which dislocate hundreds of thousands, carefully prevent scrutiny of processes, refuse to divulge criteria or the prices for granting valuable concessions, object to publishing data on impact, and in the name of maintaining law and order undertake oppressive practices to enable the exploitation of people and resources by corporations, as is typified by the oil industry in Ogoniland in Nigeria. These practices further remove the state's machinery from citizens and weaken the underpinnings of democracy.

Capital and Labour

A second fundamental asymmetry in globalisation is between capital and labour. Capital is free to move around the world - the daily flow of dollars and other major currencies runs into billions. There is no similar mobility for labour. It is argued that there is little need for labour to flow across borders when capital, industry and manufacturing can come to labour, but this discounts the fact that these are small enclaves of opportunistic employment which can be removed and relocated without much concern for the labour force. Capital is entitled to national treatment wherever it chooses to go, but

not the migrant workers, who are subject to considerable legal restriction and practical discrimination in the host countries. Capital can move out of countries at the press of a button and corporations move out of territories as suits their business strategies. Corporations therefore, hold labour at ransom, threatening to disinvest if legitimate workers' demands are not moderated either by themselves or the state. For many countries, contemporary globalisation began with the establishment of 'free' economic zones, enclaves of unregulated markets to attract foreign investment. Protective labour laws relating to minimum wages and the right to associate were suspended or modified in these enclaves, changing the power relationships in favour of corporations. Capital, commerce and corporations are much better able to organise and co-ordinate policies and strategies globally than labour - through chambers of commerce, cartels designed to exclude others and retain competitive edge, interlocking relationships, and influence over governments and international financial and trade organisations. Workers, often confined within national boundaries, are forced to accept unfair terms. This is demonstrated in the weakening of their ability to demand fair wages, pensions and safe working conditions.

Markets and Communities

The third asymmetry is between markets and communities, for, the most serious challenge for the world economy in years ahead lies in ensuring that international economic integration does not contribute to domestic social disintegration. In the 20th century the excesses and failures of the market led to a class compact that eventually culminated in social democratic orders in the West. The essence of this compact was a politically and democratically regulated market, in which rights and protections of labour, including minimum wages and safe working conditions, were recognised, basic services and social security were to be provided by the state and the externalities of corporations were well regulated. Institutions were established to mediate between the interests of different social and economic groups and maintain a degree of social cohesion.

The speed at which globalisation is spreading, the historic accretions of financial power, technological capability and ownership of intellectual property, on the one hand, and the weakened political and economic situation and bargaining power of governments of developing countries on the other, create serious consequences for the stability of society.

For one, the moving frontiers of the market have prised open communities hitherto living in autonomous circumstances with control over their natural resources to the predatory practices of corporations. Freed from national regulation, the global market subordinates societies. The result is greater

social polarisation, alienation and the disintegration of social bonds. Corporations have broken the cohesion and integrity of communities, dispersing their members and appropriating their resources. They have often ruined people's environment whilst giving little in return. Well known examples are the Bougainville Copper Mine and the Ok Tedi mine in 'mainland' Papua New Guinea. In specific localities, like large plantations or industrial sites (sometimes referred to as 'company towns'), corporations assume many functions of the government or administration and have an enormous influence on the lives of the people. The appropriation of their resources destroys the basis of their way of life and takes away their means of livelihood. Increasingly, communal property resources are passing out of the control of communities and are being converted to individual property, as many tribal and indigenous peoples have discovered. Mega projects often result in the displacement of entire communities, exposing them to vulnerabilities over which they have no control.

For another, the freedom of exchange and transaction, in itself part and parcel of the basic liberties that people have reason to value, is being eroded by aggressive competition from privileged players. The market organisation of manufacturing, trade, services and agriculture relies on homogenised models of private ownership underpinned by wage labour and meant for mass production and consumption. The need for economies of scale for survival denies small service providers, producers, cultivators and artisans - all of whom already work in fragile economic environments - the ability to share in markets. Those who depend on diverse small self-sustaining enterprises are squeezed out by privileged competitors in the same field.

The Selective Use of Rights

The fourth asymmetry is between the different kinds of rights that the ideology of globalisation supports, prioritising market-oriented rights over social rights, that is, property, investment and trade rights over equality, mobility of labour, social justice and rights of communities. The exclusionary effects of this are clearly illustrated when we examine the pre-eminence now accorded to property rights, in particular intellectual property.

Intellectual property rights (IPR) are an instrument of power which enables their holders to control or influence a host of others' economic activities. It has long been clear that poor countries benefit little from intellectual property rights. The extensive protection given to intellectual property rights has meant that large Western corporations have firm control over industrial development and imports to and exports from developing countries. It has represented a huge flow of funds in the form of royalties to the already rich countries and corporations, and has had the effect of weakening the capacity for research and innovation in developing countries.

Bio-Prospecting

Advances in biotechnology for plant breeding purposes and for manufacturing pharmaceuticals have given enormous economic value to genetic materials, plant varieties and other biological resources.

Contrary to traditional law, the TRIPS Agreement permits patents on micro-organisms, micro-biological and non-biological processes. As a consequence 'bio-prospecting' has mushroomed, taking what were freely held community resources and 'reinventing' them and then patenting them; with the effect that something that was in the public domain is turned into private property and becomes unavailable. Recent patents awarded in the US for healing properties of Turmeric and for pesticide properties of the Neem tree (both known and used by communities from time immemorial in India and Bangladesh) are examples.⁴²

Countries that adhere to the international regime of intellectual property rights have found that they are restricted in their industrial, technological and trade policies. Once an invention or process is patented in one of the participating countries, its use or trade can be controlled by the patent holder in all the participating states - thus reinforcing the technological lead that the West has.

IPRs have often brought under private ownership, resources and products which had hitherto been in the public domain, freely available to all. The ability of corporations to appropriate community resources has been considerably enhanced in recent years due to the expansion and elaboration of intellectual property rights. The world is belatedly appreciating the benefits of biological diversity - not simply because man should not arrogantly assume that all other forms of life are ultimately expendable, but because there are benefits for humanity to be derived from plants and animals, such as, all sorts of drugs. The very existence of various human communities is intrinsically tied up with the other forms of life around them. Yet, during the same period as the Convention on Biological Diversity came into being as a response to the awareness

of the irreversible losses we are inflicting on our world, other types of international agreements threaten some of the very interests the Biodiversity Treaty is designed to protect. Notably, the Trade Related Intellectual Property Rights (TRIPS) agreement threatens to deprive communities - which are so often already extremely vulnerable - of the benefits of natural products on which they have depended, and which their own knowledge and skills built up over centuries have identified and enhanced. For example, by modifying germplasm marginally and registering it in their own name, plant breeders' rights legislation has enabled large companies to appropriate the fruits of the research done by publicly funded national and international agricultural research centres, which disseminate the results of their research, including germplasm, without cost. So time and again public money pledged for the common weal, disproportionately benefits private interests. Legislation of a similar kind has been used to appropriate medicine and other kinds of knowledge and heritage of indigenous and other communities - and then market it back to them at a high cost.

The tensions between, on the one hand the TRIPS agreement, and on the other, the Biodiversity Convention, the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), epitomise the tensions that arise with globalisation when it is not guided by a holistic rights framework. The benefits of globalisation are parcelled out all too easily to the multinational corporation, and the disadvantages to the third world farmer.

A central feature of the arrangements for the WTO is the generalisation of intellectual property rights to all its members, regardless of their adherence to international conventions on intellectual property rights. Realising the imbalance of the effects of these international conventions for developing countries, many states had stayed out of the international system or modified it in its application in their own legal systems. Now the TRIPS agreement, which was drafted by a committee consisting of the world's leading drug corporations, and strongly supported by the US government during the negotiations, obliges all states to adhere to these conventions and to apply them without any discrimination between national and foreign persons or corporations.

The implications of TRIPS for the supply and distribution of food have been hinted at above. Another important area is pharmaceuticals. TRIPS reduces very substantially the capacity of states to provide for the manufacture or importation of generic medicine. The result is a considerable increase in prices of drugs and the diminution of research on tropical diseases. There will be further concentration of scientific and production capacity in the West, as transnational firms will be free to export finished or semi-finished products instead of transferring technology or foreign investment directly to developing countries. Medical research and drug manufacturing will be further subordinated to the market, with the result, as Medecins Sans Frontières has said, that patients in poorer countries will die because of the lack of access to life-saving medicines and the lack of research and development for neglected diseases.⁴⁴ These patients are dying not because their diseases are incurable (leaving aside the case of HIV/AIDS) but because, as consumers, they do not provide a profitable enough market for pharmaceutical products.

The recent case brought, but withdrawn, against the South African government to prevent it importing generic medicine for HIV/AIDS has underlined the negative consequences of TRIPS. Although pharmaceutical companies made concessions there, they are resisting it in other countries, such as Kenya, which is attempting to introduce similar legislation as in South Africa. It is not therefore surprising that the UN Sub-Commission on Human Rights has questioned the compatibility of TRIPS with human rights instruments, noting a conflict between the private interests of intellectual property rights holders championed by TRIPS, and the 'social' or 'public' concerns embodied in international human rights law. Generic drugs have played a crucial role in providing medicines inexpensively and in developing a technological and production base in developing countries. Generic medicines cost a fraction (sometimes as little as 10%) of the cost of patented medicine, helping to bring down the price of patented medicine through competition.

Bio-Piracy

In the late 1990s, two Australian corporations applied for 'plant breeders' rights' on two varieties of chickpeas. These legal rights would have granted a 20-year monopoly to sell the chickpea seeds to farmers throughout the world. The chickpeas had originally been freely given by an international agricultural research centre from seeds developed and grown by farmers in India and Iran. If the Australians had gained ownership of the plant varieties, they would have held an exclusive right to sell them at a profit to farmers world wide, including the farmers who had first developed the plants. However, the attempt to patent the chickpea strain was finally dropped but only after several civil society groups had brought attention to the attempt and the research centre charged the two corporations with violating a signed agreement.⁴³

Putting a Price on Life

TRIPS puts curbs on many public policies that promote cheap and wide access to health care. In order to promote local manufacturing capacity of generic drugs and make drugs available at lower prices, national laws in many developing countries traditionally excluded product-patents of drugs and medicines allowing only process-patents. Under the TRIPS Agreement both product and process patents are required. This reduces the possibilities of local companies producing cheaper versions of important life-saving drugs. In 1998 the anti-AIDS drug Flucanazole cost US \$55 in India for 100 tablets (150 milligrams each) but US \$697 in Malaysia, US \$703 in Indonesia and US \$817 in the Philippines.⁴⁵

In all of the above ways globalisation is having a profound effect on societies. It has produced a new configuration of relationships and powers, between multinational corporations and governments of their states, between investors and the elites of host states, between corporations and professional associations like those of accountants, engineers and lawyers, between them all and international financial and trade organisations and the international media. These combinations have often suppressed views which challenge and criticise globalisation, and have effectively marginalised those who are the victims of globalisation. Skills needed to negotiate in a globalised world, which puts a premium on relationships across distances, nationalities and languages, are seldom available to the poor.

Given these developments, the world today can be characterised by what one observer has described as “the concurrence of globalisation and marginalisation.”⁴⁶ While one section of humanity is growing and developing - literally basking in the glow of globalisation - the other wallows in increasing despondency and despair.⁴⁷

There is in fact at the present time a contestation between the underlying ideology of globalisation and the universally accepted norms of human rights. The challenge before the international community, domestic governments, civil society and the human rights community is to ensure that human rights do not become subordinated to the profit motive and that the engines of globalisation, its regimes, institutions, processes and outcomes all accord with the norms of human rights. The key question is not whether the processes of rapid change that we are experiencing are necessarily good or bad, but how they can be subject to the imperatives of human rights and turned to work for them. In this way, the globalisation of human rights would become the central pivot of international and national economic endeavour and at the same time, the international economic environment would be made conducive to the realisation of human rights.

Corruption and Bad Governance

In the era of globalisation there is a growing gap between democratic process and good governance. Increasingly, the structure and practices of national governments are less responsive to the demands of social justice and public welfare than to private interests. Systems of patronage amongst the elite do not permit transparency and indeed thrive on secrecy. This has allowed corruption to breed and go unpunished. Democratisation itself has become a cause of corruption, as multi-party politics are increasingly fuelled by money, and the centre of power is shifting towards the rich, articulate, and supra-national actors. Privatisation, foreign investment, sponsorship arrangements, increased lobbying, and easier flows of money and laundering all propel corruption further.

Corruption is now pervasive. It takes many forms, such as bribery, extortion, nepotism, unfair recruitment and promotion, electoral malpractice (gerrymandering, rigging), and insufficient or non-performance of contractual or other obligations. Corruption in government and bureaucracy is reflected in their workings, when they concentrate more on obstructing public welfare and indulge in personal gains rather than their legal obligations. The government's policy priorities reflect this lack of ethics and often result in expenditure that is not in line with people's needs. Bribes become a pre-requisite for access to simple public services, such as securing an application form for a birth certificate or for a quota of food grains from the fair price shops in public distribution systems. The result is massive inefficiency.

Corruption has effectively become a tax on the poor. Corruption negates the rights of the poor, depriving them of their right to participation and denying them access to economic and social welfare. It deepens their incapacity, for they lack the means to lubricate the wheels of the bureaucracy. It thus sharpens divisions and disparities in society, privileging the already wealthy and well connected. Corruption threatens the very existence of the state as a viable community with collective goals and institutions because it loses all credibility. In extreme cases, the writ of the state ceases to run in parts of its jurisdiction because it has been conceded to networks of illegitimate interests. This creates further obstacles to the realisation of rights of the poor and hinders any chance of redress. The result is a sense of hopelessness among people and general cynicism and selfishness in society. Corruption destroys trust between citizen and state.

Eliminating corruption and promoting good governance is crucial to developing an environment conducive to social, political and economic development. The

Keeping Poverty Alive

Poverty is not a natural state. It takes many people to keep its wheels oiled. One thing that has to be kept in good working order is corruption. Some countries do this better than others. Transparency International's now famous Corruption Index highlights worldwide corruption and finds it growing. Almost two-thirds of countries ranked in March 2001 score less than 5 out of a possible clean score of 10. Of the Commonwealth countries listed, most come in the unclean category. Bangladesh, Nigeria, and Uganda are at the top of the corruption table, closely followed by Kenya and Cameroon which score barely 2 points on a scale of 10. Tanzania, Pakistan, Zambia, India, and Zimbabwe all keep each other good company below the 3-point mark. Despite its extreme poverty Malawi scores a little better along with Ghana. But better off Mauritius and South Africa still score less than 5, with the relatively affluent Malaysia just squeaking in at 5. Trinidad and Tobago and Botswana come in just above the half way mark. Not surprisingly the more affluent countries score better. The UK, Australia and Canada do well with an 8 plus point score but not as well as strict Singapore and New Zealand which top the scale at 9 plus points. Singapore's anti-corruption codes and rules contribute in no small degree to its steady and growing prosperity.

United Nations Committee on Economic, Social and Cultural Rights (CESCR) has several times commented on the negative effects of corruption on human rights. In relation to an African state it noted “economic, social and cultural rights were hindered by the negative effects of widespread corruption on the functioning of government institutions.” On another occasion it said “the process of transition to a democratic country with a market-based economy is being undermined by corruption, organized crime, tax evasion and bureaucratic inefficiency, resulting in inadequate funding for social welfare expenditure and for the payment of wages in the state sector.”⁴⁸

Corruption is high on the international agenda of reform. Many conditionalities on aid and loans are connected with the elimination of corruption. So far they have met with limited success, for corruption is deeply woven into the fabric of political and economic life of some countries. The failure of wholehearted support for attempts to enforce governance reforms lies in the suspicions about the motives of donors, who are regarded, correctly, as wanting to create conditions for quick profits for their corporations, and because of their selectivity and the absence of consistent concern for justice and fair distribution. Frequently these conditionalities are accompanied by structural adjustment programmes that worsen the situation of the poor. Pettifor argues that the IMF’s so-called Poverty Reduction Strategy (which was brought in as a response to criticisms against SAP) is less a strategy for poverty reduction and civil society participation and more a strategy for providing security and guarantees for foreign investors. She argues that the intervention of western ‘donors’ exacerbates the democratic deficit in that country, “and contrary to spin-doctoring presentations, undermine democratic participation in government decision-making.”⁴⁹

Contemporary Threats To Human Welfare

The failure of the international and national bodies to focus on the needs of the poor and to fulfil their human rights, is both illustrative of, and the reason for, the existence of widespread oppression, disease, conflict and environmental degradation. All of these are simultaneously elements of poverty and part of the causes of it.

Social Structures

In many parts of the world poverty is perpetuated by traditional social structures. In India, for example, the caste system rooted in the principle of discrimination and exclusion remains a way of life. Despite an egalitarian constitution that outlaws ‘untouchability,’ strong legislation making it a criminal offence, affirmative action and political representation, the social and economic exclusion of over a hundred million Dalits continues unabated. ‘Dalit’ is a self defining term

for people born into castes that for generations have worked only in so called 'impure' menial tasks like cleaning toilets, carrying night soil for disposal, skinning animals and disposing of the dead. Their segregation from mainstream society often resembles Apartheid. They live in carefully defined, shabbier and less developed areas of their villages; are seldom permitted to drink from the same wells, or enter temples. Their status and role has been defined by the mores of Hindu society and is additionally justified by sacred texts. Confined to low paid and unskilled jobs, their access to education and other facilities which might enable them to escape the poverty that is the product of this discrimination is denied to them. Collective efforts that they might make to lift themselves out of the mire of poverty, or even to exercise their more basic rights, are frequently met by violence from elements within the 'upper' castes. Constant humiliation and oppression that has come to define their status deprives them, in their own eyes and the eyes of others, of dignity. State affirmative policies, legislative and administrative measures have only limited success because of pervasive discrimination in the social sphere.

In many parts of the Commonwealth, other communities have found themselves trapped in similar situations of exclusion, deprivation and discrimination, such as indigenous and tribal peoples, black people under Apartheid, ethnic minorities, pastoral groups, and migrant labourers. There are still pockets of feudalism and land

The Woman's Place

If international social, economic and cultural rights are to be honoured and women's conditions improved then every law and economic policy has to be interrogated to establish whether it will improve women's social and economic equality. The sampler below does not by any means imply that countries not included in this brief selection are doing enough to address the lack of these rights for women.

- In the Commonwealth Caribbean women get a much smaller proportion of earned income than men: this ranges from 21.2% in Guyana, 24.7% in Trinidad and Tobago, 28.3% in the Bahamas, 38.6% in Jamaica and 39.4% in Barbados.
- The majority of the poor in Canada are women: a result of government policies which have cut back on social spending leading to increasing inequalities between rich and poor.
- In South Africa despite strong guarantees of economic and social rights women have an unemployment rate of 52% compared to 34% for African men.

Many African Commonwealth countries restrict women's ability to inherit property on the death of her husband or father, preferring to follow customary/personal law practices that are not in step with their international obligations.

- In Zimbabwe, in *Magaya v Magaya* the higher court overturned the decision of a community court which had appointed a woman as heir of her father's deceased estate and replaced her with her younger half-brother saying that under customary law "males are preferred to females as heirs."
- In some sections of Malawian society property grabbing is sanctioned through the practice of widow inheritance whereby the man who inherits her deceased husband's property also inherits his widow as wife. Low levels of literacy and representation of women in the workforce and in decision making ensure that women can do little to fight such practices.
- In Nigeria despite several attempts by successive governments to implement programs designed to address inequality, little has improved. In many states of Nigeria women are not allowed to inherit their deceased husband's property. Early marriage, arranged at birth and occurring formally by the age of 19, has a devastating effect on girl's education. The tax provisions of the civil service give child welfare benefits only to male workers and a discriminatory provision prevents police women from marrying without permission.
- In Sierra Leone, women living in the provinces cannot own or control land but may only use it through male heads of household. A woman cannot administer her husband's deceased estate or inherit his land, in terms of the Mohammedan Marriage Act.⁵⁰

tenure systems in parts of the Commonwealth which perpetuate social and economic inequalities, and various forms of subordination.

As mentioned, women throughout the Commonwealth along with their counterparts elsewhere suffer from institutionalised discrimination and deprivation. In many traditional communities they have no right to property or inheritance. Their place of residence and their relationships to others, especially after marriage, are determined by social customs over which they have no control. There are still places in the Commonwealth where women do not have full legal capacity and so cannot conduct transactions without which they cannot escape the cycles of dependency to which they are consigned. Many Commonwealth countries, although by no means all, have passed legislation to remove these restrictions. But in the absence of strong government action in favour of women, legislation alone has failed to change social attitudes or behaviour and women continue to suffer from traditional mores and practices.

In plural societies large concentrations of minority populations are similarly discriminated against and must live lives deprived of the benefits of development that the mainstream can access. Their human development indicators demonstrate continued existence of a majority in poverty.

HIV/AIDS

The prospect of people remaining in poverty is heightened by the HIV/AIDS pandemic. The raging epidemic is primarily located in the Commonwealth and threatens social cohesion and the ability to retain past progress or go swiftly to higher economic growth. 60% of all infected cases are found in Commonwealth countries. India, Kenya, Nigeria, and South Africa each have at least 2 million infected adults. In Botswana, Lesotho, Swaziland, Zambia and Zimbabwe one in 5 adults has HIV. The progression has been faster and more virulent than predicted. Outside Africa, the Caribbean has the highest HIV/AIDS rates of infection.

Not surprisingly some of the countries and people most seriously affected are also the poorest and the least able to afford preventive and palliative health care. In Africa especially, the impact of the disease has been to cut life expectancy dramatically, to reduce skilled manpower significantly, and to place impossible burdens on those least able to bear it. There are 900,000 orphans each in Nigeria and Uganda alone. In some countries HIV is becoming, to a striking extent, a woman's illness - though it is spread predominantly by male behaviour. In sub-Saharan Africa more women (55%) are affected by AIDS than men, reversing the global trend. Women account for 52% of the 2.1 million who died from the disease in 1999. In Africa, the ratio of female/male infections in younger age groups reaches 16:1 in some places. In certain parts of Kenya, one out of four girls between the ages of 15 and 19 are infected compared to 1 in

25 boys of the same age. Women are biologically more prone to infection by heterosexual intercourse. There are more women sex workers than men. Poverty related prostitution exposes them to higher likelihood of infection. In countries with large numbers of sex workers and more ingrained traditions of male dominance, it is particularly hard for sex workers to insist on the use of condoms which are the primary means of protection. Cultural practices such as female genital mutilation or widow inheritance also account for the transmission of the disease. Higher incidences of HIV are likely where there is a high proportion of mobile or migrant workers (truck drivers in India and East Africa or migrant mine workers in Southern Africa, for example). The latter may be viewed to some extent as the product of poverty in the originating country.

The connections with poverty work in a number of ways. While it is true that no one gets AIDS merely because they are poor the probability of falling prey to the disease are multiplied many fold by ignorance, general ill-health, inability to deny sexual contact or get protection, poor health care services that cannot detect HIV/AIDS, or cannot provide anti-retroviral drugs even for pregnant mothers who then bear HIV positive children. Inability or reluctance to talk about it, or outright denial by society and government that the problem exists, keeps AIDS populations unaware and increases the risk of passing the disease further along. Inadequate public education measures mean that the seriousness of the disease is not got across to the public.

Once HIV is established in a poor country, inevitably its impact will be more devastating than on a richer country: it spreads and kills more quickly as opportunistic illnesses attack. As the disease takes hold, more and more man-days are lost in attending to the disease and its aftermath.

The HIV epidemic adversely affects growth rates in complex ways, not least by killing off the most productive in their prime. Swaziland estimates that it will have to train more than twice as many teachers as usual over the next 17 years just to keep services going at their 1997 levels. Swaziland's extra hiring and training costs are expected to drain the treasury of some US \$233 million by 2016 - more than the 1998-1999 total government budget for all goods and services. 30% of Zambian teachers are infected with HIV - and are destined to die of it. With fewer teachers and many thousands of orphans, countries like Zambia face the prospect of severely declining GDP levels. In Tanzania, in a survey of six firms, annual average medical costs per employee increased more than three-fold between 1993 and 1997 because of AIDS, while the companies' burial costs showed a five-fold increase. Barclays Bank of Zambia is said to have lost 25% of its senior managers to AIDS. In Botswana, it is estimated that the AIDS epidemic in the next 10 years will slice off 20% of the budget. In South Africa, the GDP in 2010 is projected to be 17% less than it would have been without AIDS wiping out US \$22 billion of the economy. By contrast responses require modest

The Right to Health Care

Commonwealth Africa and Asia, which are home to vast populations of HIV positive people, have a lot to learn from Brazil while formulating AIDS control policies.

The first case of AIDS was detected in Brazil in 1980. In 1994 the World Bank estimated that Brazil would be home to 1.2 million infected persons by the year 2000 (population: 173 million). Today the actual number is less than half that. Deaths due to AIDS related diseases have halved and only 20,000 new cases are being reported each year indicating stabilisation of the epidemic. Due to the early treatment of AIDS and reduced rate of hospitalisation, Brazil has actually saved an estimated US\$ 190 million in public health care expenditure. How did this 'miracle' happen?

The single most important factor in Brazil's success story is Brazil's political commitment. In 1996 Parliament passed a law guaranteeing AIDS patients state-of-the-art treatment. While this treatment costs between US\$10,000 to 15,000 annually in the developed world, Brazil has managed to reduce the costs by as much as 79% by producing generic copies of patented anti-retroviral drugs. Despite enormous pressure and opposition from multinational pharmaceutical companies - backed for sometime by the US Trade Representative's office - Brazil has made drugs available to everyone who needs them. (Brazil's patent laws have been brought in line with the TRIPS agreement in 1997). With the UN Human Rights Commission endorsing Brazil's strategy to manufacture and supply generic drugs some multinational pharmaceutical companies have begun offering their products at reduced prices exploding the myth that MNC drug prices were determined by production related costs alone.

A major share of the credit for shaping Brazil's AIDS prevention and control policy goes to civil society organizations (CSOs) - initially spearheaded by the gay community. In collaboration with the government about 600 CSOs are involved in providing holistic health care catering to the diverse needs of patients ranging from drug therapy, hospitalisation, counselling, monitoring of outpatients, ensuring strict adherence to pill schedules etc. During the last eight years CSO projects have given specialised training to 200,000 persons and disseminated educational material to half a million people. Poor patients receive special facilities such as free bus passes, food and baby formula and are counselled in Alcoholics Anonymous-style groups.

A nation-wide network of AIDS clinics has reached out to a wide spectrum of high risk groups such as commercial sex workers, drug users, truck drivers, pregnant and lactating women, the homeless, prisoners, students and others. The national health care hotline has logged over 2 million calls. With 65% of the activities devoted to behaviour intervention and public education, prevention is the most important focus. Working with the private sector and the Brazilian Army, the National Coordination has distributed condoms and information about AIDS to an estimated 3.5 million workers and 700,000 conscripts. Public awareness campaigns have succeeded in taking away some of the social stigma attached to AIDS.

Brazil shows how a nation emerging out of decades of military rule can successfully meet the challenge of AIDS by adopting the 'rights' approach to health care. The larger lesson to be learnt is how political will can assert itself over obstacles posed by MNCs and patent regimes to secure the well being of citizens. A government can do more than sit and watch the tide rise.

allocations: the UNAIDS program estimates US \$1.5 billion a year for prevention measures to reduce the HIV risk plus another similar amount for palliative care and treatment in the Caribbean.

Recognition and acceptance is as important for prevention as assuring cheap drugs and public policies that assure availability of medicines for all. It is only recently that Caribbean ministers of health have responded with political will to the epidemic after the realisation that the regional development achievements over the past decades were likely to be lost if the trends of infection continue. Donors and governments have now come up with plans of action that are likely

to ameliorate the situation. Wherever even small initiatives have been taken, the effects are plain to see. The need for greater resources and international support and solidarity for policies and national programs that ensure cheap and effective AIDS interventions cannot be over-emphasised if the Commonwealth is serious about poverty eradication.

Environmental Degradation

The degradation of environment has become an issue of global concern. The appropriation and competition over resources is fast becoming a cause of violent conflagration, while the over-utilisation and appropriation of hitherto common property resources into private hands is leading to the impoverishment of disadvantaged communities and is a violation of their rights.

Linkages between environment and poverty have been identified in many studies. The World Bank has said that "the roughly 2.8 billion poor and near-poor people in the world - those living on less than US \$2 a day - are disproportionately affected by bad environmental conditions."⁵¹ For one, the need to pay back huge debts accumulated over time by developing countries is oft times met by selling off natural resources or giving impossibly cheap concessions for mining and logging. In the situation where it is imperative to attract foreign investment the state can hardly insist on environmental protections even if it could monitor them properly. Export crops sown to increase foreign exchange earnings diminish food security. Privatisation of natural resources reduces access to traditional healing herbs for the poor who can afford few other alternatives, even as the regime of intellectual property rights takes away their ownership. It is less clear whether the poor - or their poverty - contribute to environmental degradation. Environmentally vulnerable sectors of society tend to include women, children, indigenous or other marginal peoples. And projects that are designed - and may succeed - to benefit certain sectors of society, even, ironically, projects that are designed to enhance the environment itself, may degrade the environment of these vulnerable sectors, and exacerbate societal disparities and divisions.

Oil and mineral exploitation has a deplorable record of devastation. It destroys ecological balance creates water pollution, and destroys farmland. Notwithstanding very bad press large extractive schemes such as those of the Niger Delta, the Ok Tedi and Panguna Mines in Papua New Guinea, continues to attract the avarice of governments and the huge TNCs while putting at risk local peoples and environments.

On the one hand 16% of the world's population, the industrialised countries generate two-thirds of its industrial waste, over one-third of the greenhouse

gases responsible for global warming, and they consume over one half of its fossil fuels. On the other hand the sheer struggle for survival forces the poor to over-exploit scarce natural resources because the "immediate environment is their resource base and source of livelihood, and they have no alternative."⁵²

At a global level, the implications of climate change are likely to hit the already poor most forcefully. Some of the poorest Commonwealth nations are most at risk - notably Bangladesh which stands to lose 16% of its land surface and the very area where the poorest tend to live, just because it is vulnerable to hurricanes. Some Commonwealth small island nations are in danger of near total inundation. Climate change means a whole range of new or enhanced climatic effects, such as drought and storms, many of which will impinge more upon countries within the tropics, and everywhere, more upon the vulnerable.⁵³

Although it might be expected that dams have become less 'fashionable' as a result of unfavourable publicity about their limited value and deleterious side effects, a surprising number of dams are still under construction in Commonwealth countries, often with financial aid or guarantees from other Commonwealth states. Very frequently, whatever the 'developmental' benefits of these, there are communities which stand to lose livelihoods, environments and cultures as the result of inundation, while measures to compensate them are often inadequate, ill-thought out or culturally inappropriate.

Ethnic and Social Conflicts

Globalisation and the failure of states to address problems of poverty and inequality have led to alienation and protests against existing orders. The reaction to polarisation, inequalities, and social disintegration is the rise of fundamentalist movements. Ethnic and religious conflicts have also intensified as new forms of identity and territorial assertions are articulated. However, in all this, respect for human dignity and human rights is disregarded, and scarce resources are squandered on arms and armies. The problem is compounded by the opportunism of politicians, the greed of particular groups, and a growing culture of intolerance. The result is an escalation in the number and intensity of ethnic and social conflicts.

The Commonwealth has an excess of internal and external conflicts. The only external conflict in the Commonwealth is the long standing one between India and Pakistan. But several Commonwealth countries are involved in one way or another in the conflict in the Congo. The effects of this are increasingly being felt in the home countries, particularly in Zimbabwe, where they are contributing to strife and deprivation.

A decade-long conflict in Bougainville over its relationship with Papua New Guinea has caused massive devastation, more or less eliminated all health and

educational services, destroyed agricultural and most other forms of economic activity, deprived a whole generation of educational facilities and produced a culture of intolerance. Ethnic conflicts in the Solomon and the Fiji Islands have also had adverse effects on economic growth and distribution. In Africa too, particularly in Mozambique, Uganda and Kenya, ethnic conflicts have discouraged investments, led to discriminatory practices and numerous other violations of rights, undermined the economy, and deprived particular communities of access to resources.

But the Commonwealth region most adversely affected is South Asia whose people are among the poorest in the world. Most other countries in Asia have experienced phenomenal growth and a steady rise in living standards, but these have bypassed India, Pakistan, Bangladesh and Sri Lanka, largely because of internal and external conflicts.⁵⁴ Bangladesh has suffered from conflicts over Chittagong Hills Tract, and periodic tensions in its relations with India. Sri Lanka has seen a conflict lasting for years over the claims of a section of the Tamils for autonomy or secession in the north of the country. Hundreds of thousands of people have died, much property destroyed, the economy has slowed down, and the generally high standards of literacy and health have declined. A large number of skilled and talented citizens have left the country. In Pakistan the fights between the Sunnis and the Shias, the struggle by the Mohajir Qaumi Movement, and the claims by Pakhtoons and Baluchis for a separate homeland have hit its economy hard. Numerous people have fallen victims to bombs and other forms of violence. The rights of women are everywhere under attack in these conflict areas. In India, communal conflicts and violence have almost become a way of life. Terrorist activities by separatist outfits like Hizb-ul-Mujahideen and Lashkar-e-Toiba in Kashmir, and United Liberation Front and Bodoland Movement in the North East States and Assam, have a crippling effect on the economy, destroying the livelihood and property of millions. India and Pakistan in particular have engaged in some form of hostility ever since their independence, especially over Kashmir. Such war-like activities in all these countries also lead to the conscription of children in the army, the rape of women, and generally the destruction of conditions necessary for human survival. They sap the human capacity for productive activity and bring within the trap of poverty, millions who would otherwise have carved out a decent living by their own efforts.

After a lull of a decade, the year 2000 saw a sharp increase in military spending the world over with the highest rises coming from Africa and South Asia at 37% and 23% in real terms, respectively. Another result of these conflicts is that South Asia has become one of the most militarised regions in the world. Amongst the top 15 military spenders are UK and India.⁵⁵ The agreement to purchase just one type of military equipment - Sukoi-30, multi-role fighter aircraft - by India is predicted to put a tremendous strain on the

country's already overstretched budgets.⁵⁶ Maintaining a nuclear arsenal entails an expenditure of US\$15 billion, which could be diverted to more productive activities, including making food available to millions who today go hungry.

The recent United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects⁵⁷ has highlighted another more hidden threat to human security - the presence of 500 million small arms in the world. About 40% of the trade in weapons is illicit but much more finds its way into the illegal market. Illegal light weapons and small arms go like magnets to points of tension fuelling and prolonging ethnic conflict and eating up scarce resources in the process. The presence of cheap light weapons available sometimes for no more than a meal or in exchange for one, undermines the authority of states that are frequently unable to prevent the cross border entry of arms and have few mechanisms of identification and control. Whether legal or illegal, arms are big business. The largest seller of arms - the US - succeeded in watering down efforts of most affected countries in Africa, and Commonwealth countries like India and Canada, who wanted a strong plan of action to come out of the conference. That would have helped ensure that initiatives to control illicit weapons went forward more quickly and certainly. However, the conference, the first ever on the subject, initiates a process whereby greater attention will focus on this issue.

THE RIGHTS BASED APPROACH TO POVERTY ERADICATION



Preceding sections have demonstrated that poverty is the result of the failure to observe and implement human rights. Hitherto discretionary *ad hoc* handouts along with the idea of market led growth have been the principal prescriptions for the alleviation of poverty. But this is no solution.

Charity remains at the level of grace and favour, reinforcing dependencies, sharpening misleading perceptions of the alleged inadequacies of the poor, as well as giving cause to the rich to complain about them and talk about donor fatigue to justify their refusal to fulfil legal obligations. An ideological dependence on the market is underpinned by an implicit vision which essentially glorifies incentives to, and ultimately the greed of, individuals. It is profit-driven, with the tendency to fragment and destroy communities if left unchecked. It creates vulnerability and insecurity, and does not depend upon common values, treating individuals as commodities (labour) or as consumers.

On the other hand, solutions to poverty eradication crafted on a foundation of human rights provide a clear alternative to either the paternalist welfare-based approach or waiting hopefully for a positive outcome to the market. The rights based approach rejects the trickle-down effect, either as an effective or a legitimate policy for the eradication of poverty. For where this disregards human rights, the rights based approach refuses to accept that poverty eradication be considered an accidental by-product of the market.

It gives primacy to the participation and empowerment of the poor, insists on democratic practices and on the fulfilment by the international community, nation-states, the commercial sector and local communities and associations of their obligations to respect, fulfil and promote human rights. It emphasises the moral and legal duties of global society to ensure a just and equitable social, political and economic order in which all people and persons can live in dignity. It is based on the fundamental principle of equality of all human beings. It provides a balance between the different aspirations and interests of individuals and communities, and a way of reconciling them, thus preventing the lurches to extremes of economic or social policies and ideologies implicit in so many of the practices and justifications of globalisation.

It calls for the recognition of the role of all citizens in governance. Its values are instinctively appreciated by most people. As such, human rights can form the basis of social and political mobilisation. For communities which have been deprived of the basic necessities of life, the appeal of the idea of entitlement to a decent life is tremendous, and empowering. The idea of economic, social and cultural rights can play a legitimising role for claims to equal opportunities and the basic necessities of life. Far from being a 'ragbag' of miscellaneous interests, human rights constitute a coherent, complex system, grounded in these universal values.

An approach to poverty eradication that relies on a bedrock of rights, alerts us to the real purpose of development, which is the achievement of all aspects of human development - the protection of entitlements to work, food, health care, literacy, participation, a life in freedom, association and solidarity. It reminds us of the obligations incumbent upon public authorities to secure policies and institutions in which these entitlements can be realised through the efforts of individuals, families and communities.

The ideology of globalisation and the effects of the market as they are playing out today, are so inherently antithetical to human rights norms and so powerful that ironically it can only be countered by the ideology of human rights, which is more commanding because it has been accorded a universal pre-eminence that has developed over years through debate, refinement, reiteration and consensus. It is only by reiterating the primacy of human rights and strengthening its sinews at all levels that the more deleterious effects of

globalisation can be controlled and contoured to work to preserve and promote human dignity.

True, there remain different interpretations of the importance of each kind of right, just as there are different visions of the 'good society.' These competing paradigms sometimes make the whole terrain seem contested, largely because the general recognition of the interdependence and indivisibility of human rights has in practice failed to give economic, social and cultural rights the same status and institutional support as certain civil and political rights because of the power of vested interests.

There may also be justification for complaints about the selective use to which civil and political rights are put in the international political arena: to name and shame some to the advantage of more pliable political or economic partners; to prise open markets for domestic economic benefit; as a tool of foreign policy to ensure geo-political ascendancy; or to impose conditionalities that double up as protection for powerful industrial interests.

At different times, different rights have been harnessed to justify different kinds of ideologies - one is based on individual enterprise and profit, the other on social justice and participation. It is not always that the division is, as the International Covenant on Civil and Political Rights/International Covenant on Economic, Social and Cultural Rights (ICCPR/ICESCR) division assumes, that civil and political rights fall on one side of an ideological line and economic, social and cultural rights on the other. The divide may be one of class and economic status. For example, the right to property is important to both the rich and the poor, but it is the property of the poor which is not protected; frequently property becomes a subject of protection only once it has been appropriated by the rich from the poor. The idea of civil and political rights had a powerful appeal in the West in the seventeenth and eighteenth centuries, but the function of these rights was to legitimise the claims and eventually the rule of a new rising class. The idea of economic, social and cultural rights can play a similar role today to legitimise claims to equal opportunities and the basic necessities of life by speaking to the concerns of deprived and powerless classes and communities. Thus, for the human rights framework to be

A Voice For The Poor

A rights-based approach to poverty eradication has at its core the participation of the poor - ensuring that their voice is at the centre of the policy-making process.

In order to find out what poor people had to say about poverty and what solutions they would offer, the South African Human Rights Commission and the Commission on Gender Equality held a series of 10 hearings on poverty in 9 provinces called **Speak Out On Poverty**. About 10,000 people participated in the hearings and communities were mobilized to attend. About 600 presented oral evidence over 35 days of hearing. Themes ranged from money to food, employment, land, rural development, housing and urban development, social services, health education, social security and the environment. Recommendations, signed widely by the people, will hopefully factor into the government's evolving policies and programmes to fight poverty.

Similarly in Nigeria, the Vision of Development Project, surveyed people throughout the country about how they viewed poverty, what they thought about their condition and what they felt needed to be done to make it go away. In Kerala, India development plans are made after long consultation and surveys taken from across the state.

A poverty assessment in Uganda in 1999 revealed that people saw poverty "as multi-dimensional - as powerlessness as well as lack of means to satisfy basic material and social needs."⁵⁸ This mirrors the findings of a civil society survey carried out by the Commonwealth Foundation with partner organizations across 45 Commonwealth countries, which found that even the very poor had clear ideas of what amounted to good governance and a good society, but didn't think anyone was listening.⁵⁹

Every survey reveals that people believe that the problem lies in lack of good governance. However, knowing this is not enough. Both governments and the Commonwealth itself give relatively little weight to a lobby that consists of the majority of the population, and pays more heed to small lobbies of the rich and powerful.

effective, the importance of economic, social and cultural rights must be more strongly recognised by policy-makers.

Although there remain controversies over the different emphases and use of the rights regime, the ascendancy of the values that are enshrined in the whole and undivided human rights discourse makes it a prime validating force. Only a few states now contest the values that are enshrined in human rights or the international, regional or national arrangements for the protection and supervision of these rights. It has been possible to reach broad agreement on the scope and substance of rights, and the key international instruments have been ratified by a large number of countries of various political hues and adhering to differing religions and cultural traditions - largely at the level of rhetoric, but also as justification for action, particularly the collective interventions by the international community in oppressive states. Moreover, whether the preferred foundations of rights are sacred or secular, there is broad agreement that rights are inherent in the human being and are inalienable. Even those who constantly cavil at human rights being an imposed value system do not seriously challenge the universal concepts of equity and equality on which they are based.

At the core of the consensus on rights is the agreement that the purpose of human rights is to protect human dignity, even if there are different views on the source of that dignity. A human rights approach keeps human dignity in the forefront, and since dignity is so closely connected with the satisfaction of the basic necessities of life and autonomy, it is inevitably concerned with the causes and the eradication of poverty.

The orthodoxy of the regime of human rights, endorsed numerous times, including in the World Conference on Human Rights in 1993, is that all types of rights - civil, political, cultural, economic and social - are interdependent and indivisible. The synthesis of rights implicit in 'indivisibility and interdependence' is most fully elaborated in the Right to Development, with its location of the human being at the centre, and as the agent, of development. Neither economic nor political rights are complete by themselves; the realisation of human potential requires both. Since these rights respond to different dimensions of a person's needs, aspirations and humanity, their indivisibility is maintained through establishing a balance between different, and what may seem competing, entitlements.

Nowhere is the interdependence and indivisibility of rights more clearly demonstrated than in the causes and consequences of poverty and prescriptions to overcome it. Those who are poor, or economically or socially marginalised, are also those least able to enjoy civil and political rights. They have little physical security; cannot influence public opinion or policies; are unable to have access to the law or the courts to protect themselves from exploitation or wrongdoing; and have little prospects of participation. All this limits their

opportunities, access to basic necessities like food, shelter, health care, work and education and limits their life chances.

The interdependence is clear and has been highlighted by Amartya Sen in his seminal work on famines. He concludes that: "The diverse political freedoms that are available in a democratic state, including regular elections, free newspapers and freedom of speech, must be seen as the real force behind the elimination of famines. Here again, it appears that one set of freedoms - to criticise, to publish, to vote - is usually linked with other types of freedoms, such as the freedom to escape starvation and famine mortality."⁶⁰ From the perspective of poverty, the purpose of both kinds of rights is empowerment. Today without social justice, democracy itself is under threat - while social justice cannot be maintained without the exercise of citizenship rights. As such, the rights framework can provide an appropriately balanced approach to poverty eradication.

Indeed, there is a natural synergy between human development, which focuses on enhancing the capabilities of the poor, and human rights. In common with the UNDP *Human Development Report*, this report urges that the concepts of human development and human rights work together. As the report says:

*"If human development focuses on the enhancement of the capabilities and freedoms that the members of a community enjoy, human rights represent the claims that individuals have on the conduct of individual and collective agents and on the design of social arrangements to facilitate and secure these capabilities and freedoms."*⁶¹

Human development thinking has many useful lessons for the rights based approach. It helps to focus on outcomes where human rights thinking may fall into the trap of concentrating on process alone. Human development requires us to take into account the interaction of rights and duties with resources, constraints and capacities. Human development requires change, and thus evokes a dynamic approach that some, at least, of human rights thinking lacks.

However, although we have seen that human development is concerned with human dignity, freedom and human capabilities, it does not seem to confront what some might find to be the thornier questions of rights - duties - and so offers a more comfortable matrix than one of rights. Adding the notion of duties to human development thinking requires us to say not only that humans have rights, but that others have the duty to respect, fulfil and promote those rights. It is here, of course, that some feel uncomfortable, for to say that there are duties (or more gently phrased 'responsibilities') has the corollary that if the rights have not been achieved, then culpability lies somewhere.

A singularly important implication of using the human rights approach to poverty eradication is that it requires accountability. When power is so

imbalanced, both in the domestic sphere and in the international arena, accountability does tilt the scales in favour of the most marginalised. Even if many cannot individually seek out fora for adjudication and redress, the presence of a culture of accountability - from first to last - tempers the actions of all. This can imbue their policies and practices with the notion of responsibility and reckoning. Organisations like the International Monetary Fund resist this notion and indeed have demonstrated that they need never be accountable to the vast majority affected by policies such as Structural Adjustment Programmes. But the Commonwealth as an association of peoples as much as states, must embrace the notion of accountability both for itself as an organisation and for its member states as the direct opposite to impervious, undemocratic and remote functioning.

If development occurs as the result of grace and favour, and not as a corollary of realising rights, it is both susceptible to being reversed by the withdrawal of that favour and is less sensitive to the idea of human dignity than development which occurs as the result of the fulfilment of human rights. This approach places human beings at the centre of development, human rights being both the means and the end of development. It gives priority to human rights over other claims, and sets them as the yardstick by which to judge the worth, and even the legality, of laws, policies and administrative acts. The rights based approach does not attribute responsibility to the impersonal and intangible market, but directly attributes responsibility to a variety of duty-holders.

As SAPs and mega-projects imposed without prior consultation with the people have shown, development policies and allocations of resources which are not based on the framework of human rights are unlikely to advance human welfare or enhance social stability. As it is, rights remain something that lawyers talk about; development remains something that economists and politicians talk about. What is required is captured in the rather ugly word 'mainstreaming.' Human rights as a framework for poverty eradication must be used as a measure of performance and as a mode of critique, of all policies and actions. It should be as fundamental to the public service philosophy as the notion of efficiency and honesty.

Indeed, there is growing consensus on the importance of the rights framework for poverty eradication. Most analyses of contemporary ills and problems advocate democratisation, equality, participation and empowerment as remedies. This is evident from the resolutions of international conferences on women, children, population, and social development and the work of the treaty bodies. It is worth representing the agreement reached in one such conference in more detail. The Copenhagen Declaration on Social Development (1995) places considerable emphasis on human rights and democracy in order to address social problems, especially poverty and social exclusion. Indeed, the Declaration, more than any other international declaration, with the exception

of the Declaration on the Right to Development, places human rights at the centre of development. It states, for example, that democracy and transparent and accountable governance and administration in all sectors of society are indispensable foundations for the realisation of social and people-centred sustainable development.⁶² At another point it says, “that social and economic development cannot be secured in a sustainable way without the full participation of women and that equality and equity between women and men is a priority for the international community and as such must be at the centre of economic and social development.”⁶³

The first of the principles and goals enunciated in the Copenhagen Declaration - and a central theme of the Programme - is a commitment to “a political, economic, ethical and spiritual vision for social development that is based on human dignity, human rights, equality, respect, peace, democracy, mutual responsibility and cooperation, and full respect for the various religious and cultural backgrounds of people.”⁶⁴ More specifically, governments have agreed to “promote democracy, human dignity, social justice and solidarity at the national, regional and international levels; ensure tolerance, non-violence, pluralism and non-discrimination, with full respect for diversity within and among nations.”⁶⁵ They have undertaken to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all, including the right to development, and to ensure that disadvantaged and vulnerable persons and groups are included in social development.⁶⁶ Particular mention is made of the right of self-determination of all peoples, in particular of peoples under colonial or other forms of alien domination or foreign occupation,⁶⁷ and support for indigenous people in their pursuit of economic and social development, “with full respect for their identity, traditions, forms of social organisation and cultural values.”⁶⁸ The last paragraph of the First Commitment is worth quoting, as it highlights the urgent need to: “Reaffirm and promote all human rights, which are universal, indivisible, interdependent and interrelated, including the right to development as a universal and inalienable right and an integral part of fundamental human development, and strive to ensure that they are respected, protected and observed.”

This remarkable consensus on the importance of rights for the eradication of poverty is in itself a good reason why we should explore the potential of human rights as the framework for political, social and economic policies.

THE HUMAN RIGHTS FRAMEWORK



The Global Regime of Human Rights

The human rights regime has become truly international. It has established a new international morality. Because international human rights have been established by a consensual process, they have universal validity.

Much of this consensus has already been translated into morally and/or legally binding agreements at an international level. The Commonwealth's own statements and pledges on human rights and poverty eradication are morally binding statements that reaffirm and reflect legally binding international and domestic obligations of member states. There are no 'Commonwealth human rights' as such, however member states are signatories not only to United Nations conventions but to regional commitments such as the European Convention and the African Charter on Peoples' and Human Rights and the American Convention on Human Rights.

These commitments should be familiar terrain for policy-makers. However, the constant breaches of human rights standards in the daily lives of citizens; the

lack of consciousness within the Commonwealth and its ruling elite that human rights are as much a legal obligation as a moral imperative; and the lack of knowledge about the existence of an alternative empowering framework amongst the citizenry (especially the poor, who are as deprived of information as they are of more tangible entitlements); demand the constant reiteration of obligations undertaken by states.

Though the international community has a nascent appreciation of the importance of human rights, the emphasis is largely on civil and political rights. While a strict and universal observance of these rights would undoubtedly alleviate poverty, it is however critical that governments and international organisations, including the Commonwealth, acknowledge and implement social, economic and cultural rights, which more obviously deal with the basic necessities of the human person.

The global system of human rights consists of various components. Three of the most important components of the existing framework are: the different levels at which rights are defined and protected; the various beneficiaries and guarantors of rights, and the methods and machinery to implement, supervise and enforce rights.

Levels: International, Regional and National

The global system of rights is constituted at the international, regional and national level. Since the setting up of the UN there has been an exponential growth in international human rights law. The UN Charter committed its members to the promotion and protection of all human rights. The UN marked its entry into the field in 1948 by adopting the Universal Declaration of Human Rights (UDHR) - since then many conventions have been negotiated and ratified by member states. The UN has sponsored a complex set of interlocking conventions and a network of supervisory bodies. In the area of human rights major functions of the UN include consensus building; norm setting; increasing national capacities and supervision of the extent to which states in fact abide by obligations they have undertaken under the various conventions. In the exceptional circumstances of the oppression by a state of its own nationals, the UN may even make direct interventions, even if armed force is required. The Office of the High Commissioner for Human Rights (OHCHR), now has over 20 field offices, which supervise the protection of rights and offer technical assistance.

The growth of conventions and institutions at the international level was paralleled by the establishment of the European Convention of Human Rights, providing the first instance of the protection of rights at the regional level. The Convention is enforced by the European Court of Human Rights. Since then, regional systems of human rights have been established for the Americas and

Africa, though, there are differences in the scope of rights and the methods of enforcement. Another 'regional' system has developed in recent years under the auspices of the Organisation for Security and Cooperation in Europe (OSCE), in which Canada also participates - so far the progress has been in developing norms and in methods of persuasion.

There are many advantages in having regional systems - they take the load off the international system and they bring the pressure of friendly, neighbouring states to bear on offending states. Equally important, they represent the consensus of the states as to the standards of behaviour of governments acceptable in the region. Perhaps the absence of regional systems in Asia and Pacific-Australasia is due to the lack of such a consensus. Consequently, regional systems are uneven, with Europe being best integrated and certainly the most effective.

The third level is the national. This is the most important level for giving legal effect to human rights norms; through constitutional guarantees and complementary laws, and by giving effect to international or regional treaties. Once treaties are ratified, countries are obliged to take measures to bring domestic laws in line with the convention, where it does not automatically become part of the domestic law. But at the time of signing, states may sometimes enter caveats indicating a limited acceptance of one or other clause in the treaty. Most violations of rights are dealt with, or at least in the first instance, in national courts or other human rights institutions. It is at this level that the key struggle for human rights is conducted, and the resistance to it waged.

The different levels are integrated through a regime of treaties which are effective at the national level, but which are supervised at the regional or international level, and through the respect paid by national governments and judiciaries to elaborations of rights by regional or international tribunals. The inscription of these rights in international instruments has expanded the scope of the operation of human rights. It has brought an important change in the character and purpose of international law. It has made individuals and their rights a central concern. The manner in which a state treated its citizens used to be regarded as its internal affair. The concept of state sovereignty provided a shield for states against external intervention, even external comment. State sovereignty and non-intervention in the domestic affairs of a state are still the corner stone of the international order under the United Nations Charter. But the notion of what is 'domestic' has changed under the Charter's imperative to promote and protect all human rights.

The right of states, regional organisations and the international community to criticise states which violate the human rights of their nationals is increasingly recognised. The eruption of civil wars, centering often on ethnic conflicts, has increased the involvement of the international community in the affairs of

states. This involvement is most dramatically manifested in humanitarian intervention, but also takes the form of mediation and conciliation, strengthening national capacity for the promotion of and respect for human rights, monitoring the observance of treaty obligations, and the imposition of sanctions. The lack of immunity for heads of states for torture and other similar crimes, and the establishment of an International Criminal Court, has reinforced this trend.

The Beneficiaries of Rights

Rights have traditionally been restricted to citizens, but an increasing number of states extend non-political rights to *all* residents. However, many constitutions still restrict the scope of rights and discriminate against immigrants. International instruments are ambivalent; they speak as if only political rights are restricted to citizens, but they do not seem capable of enforcing the wider view of *everyone* being entitled to rights. In a globalising world, the restriction of rights to citizens, especially when citizenship is conceived of in narrow racial or ethnic terms, is a serious limitation on people's exercise of rights.

So long as rights were attached to citizenship, there was a notion of a standard set of rights and obligations that fitted all. But soon after the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted - which are available to 'everyone' - the international community turned its attention to specific groups of persons.

The idea of group rights was prompted by a concern with vulnerable communities, particularly minorities. Conventions for the protection of racial minorities, women, children, indigenous peoples and migrant workers were adopted. For the most part they reiterate all the rights under the two Covenants, but they also provide a basis for affirmative action, special policies, protective institutions and networking.

In the classical traditions of human rights, only individuals had rights; those who adhere to this approach are uncomfortable with rights of groups and this grounds much of the resistance to newer ideas like the right to development. But the notion of group rights has assumed a particular importance in multi-ethnic societies, where it has in some cases become the organizing matrix of society, such as in Fiji.

Most legal systems also extend 'human' rights to corporations and other entities, at least those rights that they are capable of exercising and those that are of importance to them. Critics complain that to extend human rights to corporations is an abuse of the concept.

Duty-Holders

The state has traditionally been seen as responsible for the fulfilment of human rights. Its principal obligations include respecting, promoting, protecting and fulfilling *all* human rights. *Respect for human rights* requires the state to refrain from conduct that would deprive people of their rights, such as torture, closing schools for minority cultures, or arbitrarily restricting the freedom of speech or movement. *Promotion of respect for rights* consists of various activities, including promoting human rights education and providing support for institutions which uphold rights, such as human rights commissions. This function is the responsibility of official and non-official bodies.

The duty to *protect rights* requires the state to protect rights against violation by public authorities or other persons and groups. Much of criminal law is based on this duty. To discharge this obligation the state has to actively ensure law and order and for example: a police force that is trained in human rights; well run and adequately resourced independent judiciaries and human rights commissions; effective sanctions against those who violate rights of others; and legislation to protect the environment and regulate the sale and administration of medicines and drugs. The discharge of this duty may require that the state should not de-gazette forests or alienate land in which communities have traditionally lived.

The duty to *fulfil* rights requires the state to take positive steps to ensure that people who do not have access to rights gain access to them. State subsidies for health, education and food, the provision of free legal aid services, assistance through grants of land and building materials to the homeless so that they can build their own homes, and affirmative policies, all help fulfil rights.

The state-centric paradigm of the human rights framework precludes non-state actors from being duty-holders. Most legal actions to enforce human rights are directed at states' violations of rights. Increasingly, however, the human rights framework is striving to cover powerful non-state actors and make them responsible for actions that create poverty or reverse social achievements. The human rights regime is seeking to capture the private sector, international financial institutions and third-party states. However, the precise extent of the obligations of these bodies has as yet not been clarified.

Enforcement and Supervision

The task of enforcement of rights is in the main, the responsibility of the state. The primary institutions for the enforcement of rights are national. Typically, rights are enforced in court through the judicial process. In recent years other institutions, such as ombudsmen, and human rights or equality commissions, have been established as additional protections. These follow less adversarial

procedures than courts, and offer mediation and reconciliation. Access to these bodies is easier, cheaper and more informal than to courts. These institutions tend to be multi-functional, with information and education being important responsibilities. They can also oversee the national human rights situation and produce annual and thematic reports. But courts remain the final arbiters of violations, and ultimate authorities for the interpretation of human rights provisions.

In countries, which are part of a regional system of human rights, regional commissions or courts can play an important, supplementary role. The role of the European Court of Human Rights is crucial in that it makes the final interpretations of the European Convention which are binding on national governments and courts. A supervisory function is also exercised at the regional level for states which are members of regional systems.

The international system plays little role in the enforcement of rights. However, the first steps towards international enforcement have recently been taken with the establishment of tribunals for war crimes in the former Yugoslavia and Rwanda and the imminent establishment of the International Criminal Court, as agreed in Rome in 1998.

Despite this, the international system has an important, or more accurately, a potentially important role in the supervision of the protection and enforcement of rights. This supervision takes two forms: one is primarily political and is the responsibility of the UN Human Rights Commission and the mechanisms associated with it, like special *rapporteurs* who keep problem countries under scrutiny and report back to the Commission, or examine and elaborate on thematic areas such as extra-judicial killings, disappearances, or violence against women; the other is more 'judicial,' the task being performed by specialist, independent committees - such as the Committee on Economic, Social and Cultural Rights - set up under human rights treaties to keep under review states' fulfilment of their international human rights obligations. In addition where there are optional protocols in place - as recently put in place under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) - individuals, and sometimes states - as under the Convention for the Elimination of All Forms of Racial Discrimination (CERD) - can bring complaints before the Committees. Under the latter Convention if states fail to resolve the complaint through mediation, either state can refer the matter for a binding decision to the International Court of Justice.

Most major treaties provide for periodic reports to these bodies; this is the principal means of supervising a state's performance of its treaty obligations. Even when there is a complaints procedure, the decision of the body is not strictly enforceable, although it provides a valuable opportunity for the body to elaborate the provisions of the treaty and explain the scope of rights protected

by it-and the permissible derogations. This has been a particularly valuable aspect of the work of the UN Committee on Human Rights, set up under the ICCPR. Under the Convention for the Rights of the Child (CRC), UNICEF and other UN agencies assist in the review and in the making of recommendations.

Working with the UN

NGOs can usefully make submissions to the conventions' treaty bodies, as a form of monitoring governments and assisting the committees in developing their positions.

A coalition of anti-poverty NGOs in Canada submitted information in 1998 to the CESCR, as part of the scheduled review of Canada's periodic report, regarding the impact of the repeal of social security legislation on the right to adequate standard of living of vulnerable groups such as single mothers. After considering the response of the Canadian Government, the Committee concluded that the repeal of the relevant legislation "entails a range of adverse consequences for the enjoyment of Covenant rights by disadvantaged groups in Canada." It went on to say that: "The Committee regrets that, by according virtually unfettered discretion to provincial governments in relation to social rights, the Government of Canada has created a situation in which Covenant standards can be undermined and effective accountability has been radically reduced."⁶⁹ It also criticised provincial governments in Canada for arguing in court cases that Canada's Charter of Rights and Freedoms should be interpreted in a way that denied legal remedies to those whose social and economic rights were violated, and urged that economic and social rights not be downgraded to "principles and objectives."

The full potential of the supervisory role of the international system has yet to be realised. Until now meagre resources have been provided to the UN and the treaty bodies, many of whom can only meet once or twice a year for a fortnight or so, have inadequate secretariat support, and virtually no follow-up machinery.

The Commonwealth itself has a mechanism for dealing with "serious and persistent" violations of the principles contained in the Harare Declaration, which subsumes in itself all the international human rights norms. The Commonwealth Ministerial Action Group (CMAG), comprised of a rotating group of Foreign Ministers, interprets its mandate narrowly to take action only in the event of an unconstitutional overthrow of a democratically elected government and occasionally it will, as in the case of the Gambia, keep a country under scrutiny. The steps taken range from an expression of collective disapproval to suspending a country from membership. The CMAG mandate is currently under review by the Commonwealth High Level Review Group.

The Substance of Economic, Social and Cultural Rights

The treatment of the corpus of human rights as if it is constituted by two quite separate streams of human rights, on the one hand, civil and political and on the other, social, economic and cultural, is, as argued, a fallacy. The substance of economic, social and cultural rights cannot be neatly segregated because each right has dimensions of the one integrated and inherent in the other. However, in this section we do not describe those rights which are

predominantly civil and political, as they are well known and have been analysed in previous CHRI reports. Suffice it to say that they protect personal freedoms and physical security of individuals, the freedoms of expression and belief, political rights to participate in public affairs, the right to form and operate associations, the right to equality, and the due process of the law. Here the focus is on the multi-tiered regime of economic, social and cultural rights. Importantly and inevitably, as will be self-evident, these rights themselves incorporate certain aspects of civil and political rights.

The International Level

The Preamble to the Charter of the United Nations commits its members to promote economic and social progress and better standards of life in larger freedom and to employ international machinery to achieve these objectives. The General Assembly has the obligation to promote international co-operation in the economic, social, cultural, educational and health fields⁷⁰ and the UN has the general obligation to promote higher standards of living, full employment, and conditions of economic and social progress and development.⁷¹ The Preamble of the UDHR has as one of its objectives the “freedom from fear and want” and several of its provisions seek to secure the economic, social and cultural rights indispensable for a person’s dignity and the free development of his or her personality.⁷² It acknowledges everyone’s right to work, including the right to just and favourable remuneration, ensuring to himself and his family an existence worthy of human dignity and supplemented, if necessary by other means of social protection.⁷³ Article 25 proclaims everyone’s right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Everyone has the right to education, which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.⁷⁴ Finally, the Declaration acknowledges everyone’s right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.⁷⁵ The family, which is the “natural and fundamental group unit of society” is entitled to protection by society and the state.⁷⁶ Fundamental to the Declaration is the equality of all persons, regardless of, for example, sex, race, or social origin. Members of the UN have committed themselves to a social and international order in which these and other rights can be fully realized.⁷⁷ These commitments have been elaborated and given binding form by signatories to the ICESCR. The broad framework for these rights is self-determination by virtue of which all peoples may “freely determine their political status and freely pursue their economic, social and cultural development.”⁷⁸

The UN Declaration on the Right to Development states that the “right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.”⁷⁹ It also states that the human person “is the central subject of development and should be the active participant and beneficiary of the right to development.”⁸⁰ While all human beings have a responsibility for development, states have the “right and duty to formulate appropriate national development policies that aim at the constant improvement of the well being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from.”⁸¹

The Right to Development has not been well received by some western governments. However, the document proclaiming the Right to Development is valuable for establishing a broad and humanistic definition of development as “a comprehensive economic, social, cultural and political process, which aims at constant improvement of the well-being of the entire population and of all individuals” and “in which all human rights and fundamental freedoms can be fully realised.” It provides a basis for the integration of various strands of rights, pointing to conditions under which all kinds of rights can be enjoyed.

It is, however, necessary to temper enthusiasm for this right, for it has been promoted by many states whose commitment to human rights is suspect. Its detailed formulations could easily be used to obscure or evade the obligations of states for ensuring human rights, attribute the failure to ensure rights to wrong causes, and close off international scrutiny of the national record of observance of human rights. By itself the Declaration scarcely adds new rights, and its usefulness in providing a way to balance different kinds of rights or as a framework for achieving rights in a globalising world with new powerful actors, is limited. However, with refinement, and consensus, it could provide a useful basis for an integrated approach to human rights.

Other International Conventions

While the ICESCR is the primary framework treaty for economic, social and cultural rights, other instruments also provide these rights for specific groups. Economic, social and cultural rights are incorporated into other major conventions that make up the human rights framework and are articulated in accordance with the specificities, particular needs and vulnerabilities of different groups, in recognition of their historically derived disadvantages.

All the conventions in their full elaboration contribute to a coherent, though not fully comprehensive, international framework of economic, social and

cultural rights which addresses different sets of beneficiaries. Two of the most important are CEDAW and the CRC.

CEDAW (1979) provides a charter for human rights. It places discrimination against women in a broad context, recognising that such discrimination is “an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and humanity.”⁸² Importantly it recognises that “in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs.” Therefore, state parties are required to “take in all fields, in particular the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men,”⁸³ while another article authorises affirmative action to achieve this purpose.⁸⁴ State parties have undertaken to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and practices which are based on stereotyped roles for, or the idea of the inferiority of, either of the sexes.⁸⁵ They must take all appropriate measures to suppress all forms of traffic in women and exploitation or prostitution of women.⁸⁶ They must ensure women complete equality of political and civil rights with men.⁸⁷ Likewise women are guaranteed equal rights with men in the fields of education,⁸⁸ employment,⁸⁹ health⁹⁰ and in other areas of economic and social life, in particular rights to family benefits, bank loans, mortgages and other forms of financial credit, and participation in recreational, sports and cultural life.⁹¹

CEDAW gives women full equality before the law, including the right to conclude contracts and to administer property.⁹² Women are also guaranteed equal rights in marriage and family life, including: the right to freely choose a spouse and to marry only with their own free and full consent; full equality in and management of family property; and protection against marriage when below the prescribed minimum age of marriage.⁹³ The Convention requires states to take into account the particular problems faced by rural women and the significant role they play in the economic survival of their family, including their work in the non-monetised sectors of the economy. Consequently, it must ensure to them agricultural loans and credit, participation in all community activities, training and literacy and the organisation of self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment. More broadly, states must ensure them the enjoyment of all rights, including participation and adequate living conditions, particularly in relation to housing, sanitation, electricity, water supply, transport and communications.⁹⁴

The CRC, the most widely ratified of all human rights conventions, recognises that “in all countries in the world there are children living in exceptionally difficult conditions” who need special consideration.⁹⁵ The central theme of the Convention is stated in Art. 3.1 as follows:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Recognising that every child has the inherent right to life, states agree to ensure “to the maximum extent possible the survival and development of the child.”⁹⁶ The child is to be assured a nationality, in part to avoid statelessness, and the development and protection of his or her identity.⁹⁷ One of the central themes of the Convention is the integrity and protection of and assistance to the family, for as the preamble states, family is the “fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children” and such protection and assistance would enable the family to “fully assume its responsibilities within the community.” Several provisions aim to maintain the family and to avoid the separation of the child from his or her parents, unless such separation is judged by a judicial institution to be in the best interests of the child, as when parents abuse the child.⁹⁸ The CRC assures children the usual civic, legal, social, economic and cultural rights, but specifies in detail how they should be applied to the special circumstances of children. Thus the right to physical and emotional security is reformulated as protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (including sexual abuse), whilst in the care of parents, legal guardians or any other person who has the care of the child.⁹⁹ The right to health specifies that states must diminish infant and child mortality, provide pre and post-natal care for expectant mothers, and abolish traditional practices prejudicial to the health of children.¹⁰⁰ Children have the right to be protected from economic exploitation and from any work that is likely to be hazardous or harmful to the health or the development of the child.¹⁰¹ Children are to be protected from the illicit use of narcotics¹⁰² and trafficking and sexual exploitation.¹⁰³ The CRC, unlike CEDAW, is particularly solicitous of the cultural milieu and rights of the child.¹⁰⁴ Every child has the right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.¹⁰⁵

The special vulnerabilities of other groups, such as indigenous people,¹⁰⁶ ethnic minorities,¹⁰⁷ workers¹⁰⁸ and refugees,¹⁰⁹ have also gained the attention of the human rights regime that has articulated many economic, social and cultural rights, which, coupled with civil and political rights will ensure that these groups are not discriminated against, often benefit from affirmative action, have access to employment, housing, education and other conditions of life and can participate as full members in the political and social lives of the society they live in.

The Regional Level

The main regional instruments for economic, social and cultural rights are the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Social Charter. These have been signed up to by a significant number of Commonwealth states in their respective regions.

The African Charter on Human and Peoples' Rights

The African Charter, which has been acceded to by all Commonwealth African states accords high priority to economic, social and cultural rights. The preamble urges that attention be paid to the right to development and notes the interdependence of all rights.

The Charter guarantees rights to: work "under equitable and satisfactory conditions,"¹¹⁰ education,¹¹¹ "the best attainable state of physical and mental health,"¹¹² culture,¹¹³ and the family.¹¹⁴ All peoples are guaranteed the right of self-determination which includes the inalienable right to freely dispose of their wealth and natural resources, while state parties agree to "eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their natural resources."

The Charter sets up the African Commission on Human and Peoples' Rights which has wide ranging functions to promote and protect. These include: encouraging national human rights institutions; making recommendations to governments; proposing national legislation; interpreting the Charter at the request of a state, the Organisation of African States (OAU) or any organisation recognised by the OAU; and any other functions conferred on it by the OAU. There is provision for inter-state complaints, under which the Commission may investigate, if all local remedies have been exhausted, and submit its findings to the concerned states and the OAU. If certain minimal conditions are met, complaints can also be made by groups or persons. But, here again the Commission's powers are merely advisory. This machinery, which has been relatively ineffective so far has been strengthened by a Protocol adopted in 1998, which establishes the African Court on Human and Peoples' Rights with jurisdiction to enforce all Charter rights, including social and economic rights.¹¹⁵ The Protocol requires 15 countries to bring it into force. As of January 2001 only 4 states had ratified it, of which the Gambia is the only Commonwealth country.

American Convention on Human Rights

The Commonwealth states who have signed and ratified the American Convention are Barbados, Dominica, Grenada, Jamaica and Trinidad and

Tobago. This convention obligates state parties to ensure “the realisation of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organisation of American States as amended by the Protocol of Buenos Aires.”¹¹⁶

The American system is served by both a Commission and a Court; the functions of the former are largely promotional, but it may also receive complaints made by another state (if the state has accepted such jurisdiction) or by a group or individual, of violations of rights by a state. The functions of the Commission are to promote friendly settlement of the complaint, failing which, it may investigate the complaint and make a confidential report to the parties. The jurisdiction of the Inter-American Court, which is optional, is both advisory and binding. Recently the Commission has accepted a complaint from the Toledo Maya Cultural Council, an NGO, against Belize, objecting to concessions for logging and oil exploration of large foreign corporations in the rain forest which seriously impinge on the survival of indigenous Mayan Communities. This step was taken after the Supreme Court of Belize did not hold any hearing. If proved, this would constitute a breach of Belize’s obligation to protect human rights.

The European Social Charter

The Commonwealth countries that have signed and ratified the European Convention of Human Rights and the Social Charter are the UK, Malta and Cyprus.

The Social Charter was adopted by the Council of Europe in 1961 to supplement the European Convention of Human Rights which does not contain any economic, social and cultural rights (although the European Court of Human Rights has read some of these rights into the Convention). It aims to improve the standard of living and promotion of the social well being of both rural and urban populations within the general framework of rights. Rights which are protected by the Convention are specially oriented towards workers. They take in a series of rights associated with full employment, safe and healthy working conditions, association and collective bargaining. They include: special protection for women workers; protection of children and young persons against physical and moral hazards; the right to vocational training; the highest possible standard of health attainable; social security for workers and their dependents; social and medical assistance for anyone without adequate resources; and everyone’s access to social welfare services. Special provisions are made for disabled persons and mothers and children, and the family, as a fundamental unit of society, has the right to “appropriate social, legal and economic protection to ensure its full development.”

The Charter imposes the “legal obligations of an international treaty”¹¹⁷ but the performance of these obligations is supervised by non-judicial methods. Supervision is based on biennial reports by each state. In the first instance these are examined by a Committee of Experts, to which the ILO may be invited. The report and comments of the Committee are then reviewed by a Sub-Committee of the Governmental Social Committee, an inter-governmental body, which in turn submits its report, along with the national report and comments of the Experts, to the Committee of Ministers, who by a two-thirds vote, “make to each Contracting Party any necessary recommendations.”¹¹⁸ The Committee of Ministers also has the benefit of the views of the Consultative Assembly, which itself receives the comments of the Experts.¹¹⁹

The European Court of Human Rights has begun to integrate civil, political, economic, social and cultural rights in interesting and potentially effective ways. It declared that: “whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention.”¹²⁰

A good example of how economic rights can be protected even when there is an apparent clash between different rights is provided by the Court. In one case, it has held a serious case of environmental damage and accompanying health problems to be a violation of the protection of private and family life and invoked economic, social and cultural rights to restrict the scope of other rights, such as the right of property. In another example, a landlord’s challenge to rent control legislation was rejected on the basis that the government in question was protecting the right to housing.¹²¹

The National Level

Indirect Enforceability

Early national constitutions did not protect economic, social, and cultural rights. A partial break with this tradition was the adoption of Directive Principles of State Policy, which found their way, via the Indian Constitution of 1950, into Commonwealth constitutions where they are now quite common. The inspirations for including directive principles and the sense of social and economic justice that underlie them, have deep roots in Indian nationalism and the modern India envisioned at Independence. Described as the conscience of the constitution, the Directive Principles of State Policy represent goals to which its framers committed the nation.

In a country emerging from colonial subjugation, steeped in social stratification and gender subordination, with embedded systems of tied labour and large scale unemployment and illiteracy, the Directive Principles require that state policies and actions go to reduce inequalities of income, status and opportunity, not only among individuals, but also amongst groups of people residing in different areas or engaged in different vocations.

Toward the creation of an egalitarian society the state has to ensure that all citizens have the right to an adequate means of livelihood; that the distribution of ownership and control of material resources best serves the common interest; that the operation of the economic system does not lead to the concentration of wealth or the means of production to the detriment of the common good.

In order to protect from exploitation and uplift disadvantaged groups it has to ensure: that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength; that men, women and children are not abused; and that children, in particular, have opportunities to develop. Other Directive Principles provide for: free legal aid for the needy; guarantees of a living wage; the protection of historically disadvantaged castes, tribes, and other weaker groups; the improvement of nutrition and health; the provision of free and compulsory education for children under 14 years; participation rights in local government and, for workers in management; and the protection and improvement of the environment and safeguarding of forests and wild-life.

Still others declare that “within the limits of its economic capacity and development, the state shall make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

Though not enforceable in courts, the Directive Principles “are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”¹²² For many years the courts interpreting the Constitution used the Directive Principles merely as guidance for the government and not as legally binding principles that translated into enforceable rights.

Gradually however, this changed and it is now recognised that “harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.”¹²³ The Directive Principles prescribe the goals while the fundamental rights lay down the means by which those goals are to be achieved.¹²⁴ The Indian position now is that enforceable fundamental rights are to be interpreted in the light of directive principles and that these principles should, whenever possible, be read into fundamental rights.

The scope of India's fundamental rights and freedoms, which were essentially fashioned along the lines of western classical liberal individual rights, has thus been considerably expanded. For example: the courts have given a wide definition to the right to life to mean something more than mere survival or animal existence,¹²⁵ but the right to live with human dignity and have all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, as well as freely moving about and mixing and co-mingling with fellow human beings.¹²⁶ Adding further to the content of this 'right to life' the court has explicitly used non-justiciable directive principles to include protection of health, provision of education, and just and humane conditions of work¹²⁷ and has recently added that it guarantees access to medical services, especially in an emergency. The state cannot ignore its constitutional obligation to provide adequate medical services to preserve human life on account of financial constraints.¹²⁸

Taking a leaf from the Indian book, the Bangladesh Supreme Court has expanded the right to life in its own constitutional context as not limited only to the protection of life and limb necessary for the full enjoyment of life but including, among other things, the protection of the health and longevity of a ordinary human being.¹²⁹

Despite these bold moves, the judiciary is neither particularly qualified nor willing to establish entitlements to economic and social benefits¹³⁰ and, particularly in India or Bangladesh, unable to enforce judgments that recognise social and economic rights. The reading of the directive principles into fundamental rights, regardless of the way it has expanded or changed the understanding of fundamental rights, does not give directive principles *per se* a secure legal standing and does not make them directly enforceable.

Nevertheless courts have put them to good use. Courts protect directive principles from threats by requiring due process before they can be denied. Courts have used directive principles as the basis for giving directions to governments, legislatures and administrators to promote social justice. They have also used directive principles to restrict the scope of fundamental rights when the exercise of the latter negates or threatens a protection accorded by the directive principle. For example, the directive principle on living wages and decent conditions of work has been used to uphold the reasonableness of the restrictions imposed by the Minimum Wages Act.

Indian courts have decided that although directive principles are unenforceable by the courts, and courts cannot direct the legislature or the executive to enforce them, once a law is made in pursuance of them, the courts can order the

state to enforce the law, particularly where non-enforcement leads to the denial of a fundamental right. Sometimes the courts have gone further and based a right on a directive principle, as on education, to hold that “every child/citizen of this country has a right to free education until he completes the age of fourteen years.”¹³¹ Alternatively they have used directive principles to impose a duty on the state to regulate the activities of private institutions, such as preventing the winding up of a company without consultation with workers or obliging the state to pass laws regulating the fee structure of private colleges, so as to ensure that high fees do not lead to the total exclusion of poor students.

Finally, courts have used directive principles to fashion novel legal remedies, such as the establishment of welfare funds to assist needy communities or to require the state to provide employment for parents if otherwise their children would have to work in hazardous conditions. In these ways the courts have blurred the distinction between justiciable and non-justiciable rights and given substantial force to economic and social rights.

A number of Commonwealth states, such as Ghana, Namibia, Uganda, Nigeria, Papua New Guinea and Sri Lanka, have adopted the directive principles scheme. In the 1995 Uganda Constitution, directive principles include gender balance and the fair representation of marginalised groups, the welfare and maintenance of the aged, the right to development, and access to education, health services, clean and safe water, decent shelter, adequate clothing, food security and pension and retirement benefits. The Ghanaian Constitution enjoins the state to eradicate corrupt practices and the abuse of power, protect the environment, secure participation rights of the people, safeguard the health, safety and welfare of all persons in employment, provide educational facilities at all levels and in all parts of the country, including free, compulsory and universal basic education, and promote indigenous cultures. Although in most cases directive principles are non-justiciable, that they constitute binding legal obligations is obvious from the obligations they sometimes impose. For example, the Ghanaian Constitution says that directive principles “shall guide all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just and free society.”¹³² The President has to report to Parliament, at least once a year, the steps taken for the realisation of the directives, particularly regarding basic human rights, a healthy economy, the right to work, the right to good health care and the right to education.¹³³

The right to non-discrimination is emerging as a particularly fruitful basis for the enforcement of social and economic rights. The Canadian Supreme Court has declared that the failure of hospitals which run government schemes for health

care are in breach, for lack of *de facto* equality of Article 15 of the Charter of Rights, if they do not provide sign interpreters for deaf patients.¹³⁴ The Court said that the “principle that discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is widely accepted in the human rights field.”¹³⁵ The Court reiterated its earlier view that “a government may be required to take positive steps to ensure the equality of people or groups who come within the scope of Article 15.”¹³⁶

In this way there exists great potential for overcoming the technical and procedural deficiencies of the ICESCR and weaknesses and procedural difficulties that attend the realisation of economic, social and cultural rights at the national level. For example, the concept of equality is the basis for affirmative action. This focuses on remedial action for the disadvantaged and deprived communities, that is now recognised in a number of international instruments (such as the CERD, CEDAW and the Right to Development). Many Commonwealth constitutions require or urge the state to institute affirmative action policies, although for the most part they are not mandatory, but they do provide a defence against a challenge on grounds of discrimination.

India and South Africa are two outstanding examples, where the obligations on the state are based on the moral and political recognition of past injustices to particular ethnic or social groups. The recent Fiji Constitution¹³⁷ imposes a legal obligation on the government to institute schemes for preferential policies for poorer communities and groups. Several other Commonwealth countries such as Malaysia, Canada, and Australia also have preferential policies.

Direct Enforceability

Some of the difficulties that India has faced in the implementation of directive principles, combined with the increasing recognition that all kinds of rights are interdependent and indivisible and that at least some aspects of all rights can be judicially enforced, has persuaded some countries to make economic, social and cultural rights directly enforceable. In its 1995 Constitution, Uganda has made enforceable the right of all persons to education, culture, a safe and healthy employment environment, the socio-economic rights of children, and the rights of minorities and persons with disabilities. The 1997 Fiji Constitution refers the courts to current practice and understanding of human rights when interpreting the Fiji human rights provisions. By far the most far reaching provisions for justiciability and integration of economic, social and cultural rights with civil and political rights are to be found in the South African Constitution.

The economic and social rights included in the South African Constitution can be divided into three main types.¹³⁸ The first category consists of children’s socio-

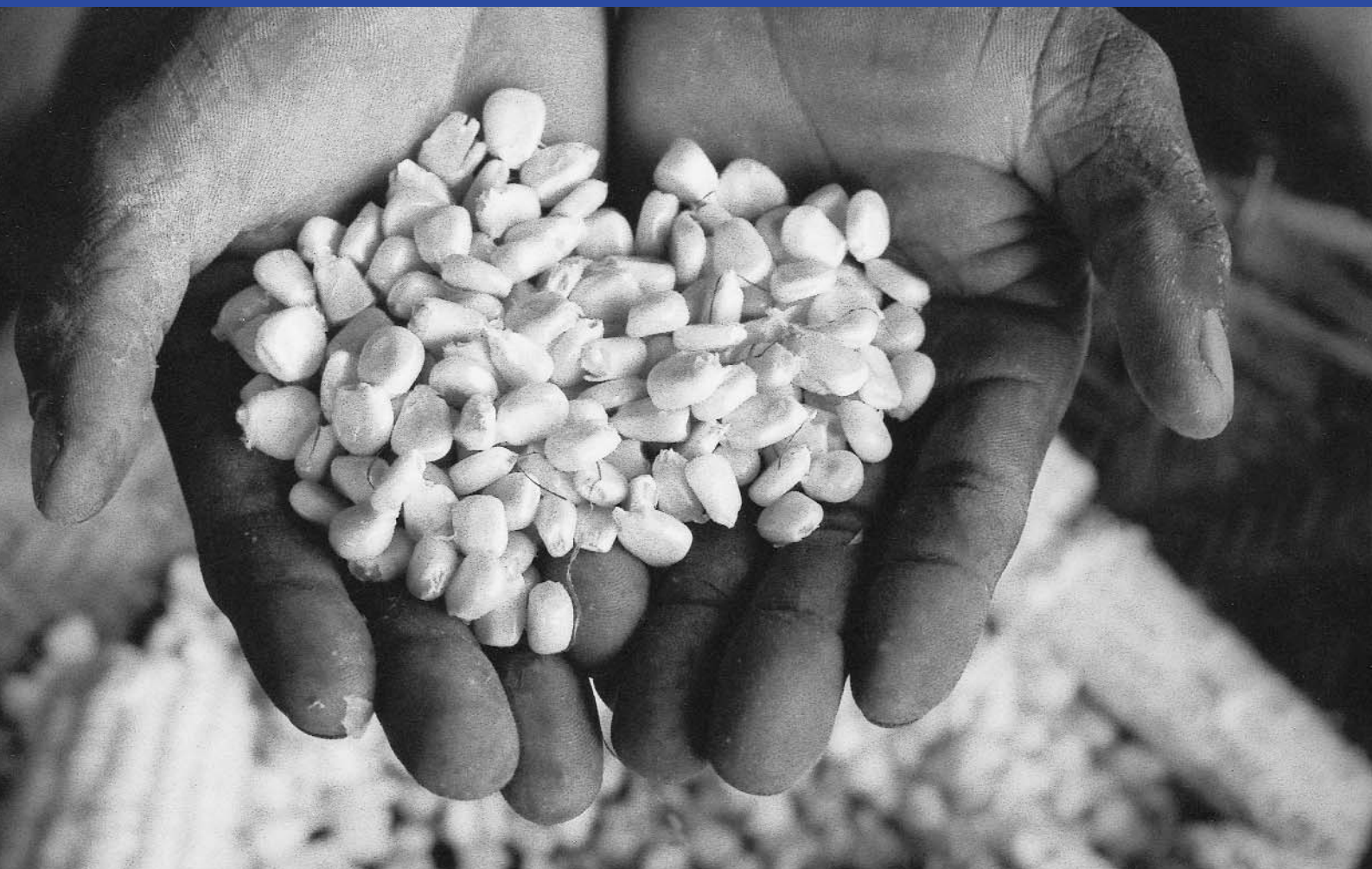
economic rights; the right of everyone to basic education, including adult basic education; and the socio-economic rights of detained persons, including sentenced prisoners. The obligation of the state in relation to these rights is not qualified by any reference to 'progressive realisation' and resource constraints.

The second category entrenches the right of everyone to 'have access' to adequate housing, health care, food, water and social security. The obligations of the state here are qualified by the terms 'available resources' and 'progressive realization.'

The third category prohibits certain kinds of conduct by public and private authorities, including prohibition of eviction of people from their homes without an order of court made after considering all the 'relevant circumstances,' and of the refusal of emergency medical treatment. Labour, environmental, land and cultural rights are also protected. Obligations are placed on the state to respect, protect, promote and fulfil these and other rights. South African courts, particularly the Constitutional Court, have played a creative role in the development of jurisprudence of these rights and the modalities of enforcement.

Finally, in giving effect through domestic legislation to international conventions such as CEDAW, CRC and other specialised instruments, which incorporate many social and economic rights, a number of Commonwealth states have imported these concepts, making them enforceable in local courts and through other quasi-judicial or administrative bodies.

MAKING RIGHTS COUNT FOR THE POOR



The persistence of poverty indicates that despite this elaborate framework, much remains to be done before economic, social and cultural rights can become a reality for all Commonwealth people. The framework for economic, social and cultural rights is not yet strong enough, nor have all duty-holders demonstrated sufficient commitment. Though the intellectual and practical elaboration of rights is fairly comprehensive, the evolving context requires a process of fine-tuning, which continues. More importantly perhaps, what is needed is a commitment to rights, which goes beyond rhetoric. What has not been achieved in most, if not all countries is the imbuing of every section of government and society with the tools, institutions, knowledge and will to ensure that rights are actually achieved as a matter of course.

Reinforcing The Framework

There needs to be a significant clarification of the language and elaboration of the content of economic and social rights in order to improve their enforceability.

Conflict or Care

- World military expenditures have been on the rise since 1998 with the steepest increase being recorded in Africa and South Asia - two continents not only hosting most of the Commonwealth member states, but also the poorest members of the Commonwealth. Nigeria, where 90% of the population does not have access to essential drugs, reduced public expenditure on health from 1.0% of the GDP in 1990 to 0.8% in 1998. By contrast, Nigeria spent 1.4% of its GDP on military expenditure in 2000, almost double what it had spent on military expenditure the year before.
- India, where only 31% of the population has access to adequate sanitation and 35% to essential drugs, military spending increased from 2.2% (387 billion Rupees) in 1998 to 2.4% (464 billion rupees) GDP in 1999.¹⁴²

Clarifying the Language

A major obstacle to making use of social, economic and cultural rights to fight against poverty is the fact that the language in which they are formulated is such that it is difficult to draw precise obligations from them. Because the International Covenant on Economic, Social and Cultural Rights (ICESCR) commits member states to “take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its *available resources*, with a view to *achieving progressively* the full realisation of the rights recognised in the present Covenant by all appropriate means,”¹³⁹ some national courts have taken the view that the Covenant is not directly applicable in their states, but requires national legislation. It is therefore necessary to disaggregate the various strands of this argument.

The provision that these rights are to be implemented to the maximum of a state’s available resources has been used to argue that a state’s obligations depend on its resources, and may not be binding if the state claims that it has no resources for a particular right. However, the Committee on Economic, Social and Cultural

Rights (CESCR) has stated that regardless of resources, a minimum core obligation to ensure the satisfaction of, at the very least, minimum levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is *prima facie* failing to discharge its obligations under the Covenant.¹⁴⁰ The opinion of a group of eminent jurists is that a state is obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all and that in the use of the available resources due priority shall be given to the realisation of the Covenant’s rights.¹⁴¹ Certainly a state which pays out vast sums for armaments while its people starve, is in breach of its obligations.

It is often assumed that without economic development and resources, there can be no provision of economic and social rights. Many states, reluctant to divert resources from the well off, have taken refuge behind this assumption. However, while there is no doubt that increased economic resources can facilitate better enjoyment of these rights, there is no necessary connection between resources and rights. There are significant pockets of poverty in the richer Commonwealth states like the UK, Canada and Australia. On the other hand, relatively poor countries like Sri Lanka, Fiji and the state of Kerala in India have been able to provide a creditable record of economic and social services. We must remind ourselves that economic and social rights are not about

handouts or gratuitous payments, but policies and institutions that enable people through their own efforts to realise their livelihoods. Therefore, we can conclude that justifications for denying rights which are based on the lack of 'available resources' cannot be sustained.

It is also often argued that the provision in the ICESCR about implementing the rights 'progressively' is evidence of their non-binding nature. However, the jurists meeting at Limburg concluded that this provision requires a state to move as expeditiously as possible towards the realisation of the rights; that it is no warranty for a state to defer indefinitely efforts to ensure the full realisation of these rights. The obligation of progressive realisation does not depend on any increase in resources but instead requires the effective use of whatever is available.¹⁴³ It should also be noted that some rights are not subject to 'progressive' or 'resource availability' qualifications, but must be implemented immediately, such as the right to non-discrimination, the rights of children in the Convention on the Rights of the Child (CRC) and some social and economic rights that are entrenched in national constitutions.

Elaborating the Content

In order to overcome some of this ideological opposition, much work needs to be done to imbue economic and social rights with measurable content so that the rights become tangible and therefore, more easily enforceable. Indicators measure the extent to which the right is being implemented and enjoyed. Indicators can give content to rights and sharpen definition. For example, they can clearly lay down what is an acceptable standard of literacy, nutrition or shelter. Indicators and benchmarks have not traditionally been used in human rights - in part because the study of human rights has lain largely in the domain of lawyers, accustomed more to developing norms and case law, than to a statistical measurement of the enjoyment of rights, and in part because the emphasis has hitherto been on those civil and political rights which do not lend themselves easily to a statistical analysis. The interaction of human rights and development policies has encouraged the greater use of indicators, and the emerging focus on economic and social rights has brought their value to light.

In a rights based approach to development, indicators provide the hard measurements while the principles of human rights provide the framework for formulating policy, judging methods of implementation, and the means by which to evaluate outcomes in terms of what the impact has been on the realisation of rights. In other words, indicators provide the hard data by which to judge if equities are being observed and rights realised.

Statistics help to determine how resources need to be allocated in order to realise the different rights. They can provide proof of who are the most

disadvantaged groups in a population and compel affirmative action policies. Setting targets based on human rights principles allows policy-makers to create realistic frameworks for achieving rights and making informed evaluations of the effectiveness of a particular policy. In this way, they encourage time-bound programmes for the achievement of rights.

Indicators are also useful for fine-tuning implementation. The presence of hard data can expose the poor administration of a policy and weak links in its implementation, or prevent an ineffective policy from continuing indefinitely. As such, they provide an important means of accountability, by clearly indicating what is expected in terms of outcomes, whether a policy has been successfully implemented and an objective achieved. To deepen accountability, comparisons with other localities, countries or regions can provide clear benchmarks by which to judge a government's performance in fulfilling human rights.

Indicators require further refining in order to better define the contours of economic and social rights. The UNDP report has identified effective benchmarks as those which are specific, time bound and verifiable, "not set too low", and reassessed independently at their target date.¹⁴⁴

Targeting Poverty

Even where targets have been set for poverty reduction, many are unrealistic and not underpinned by action plans, budgets or institutional behaviour. These elements are key to their success or failure. The five-year review of poverty reduction commitments made by countries at the 1995 Social Summit in Copenhagen came up for examination at the UN General Assembly Special Session in June 2000. Countries had committed to make estimates of poverty, set targets for eliminating or reducing it and start toward the implementation of plans. While most countries had attempted estimates so that poverty now is less hidden and more amenable to careful targeting, few had gone as far as time-bound action plans for implementing anti-poverty programmes while far too many were content with incorporating these measures into general national development plans.

Unpacking Food Rights

It is useful to situate this discussion of the ways to revitalise economic, social and cultural rights in the analysis of a particular right, the right to food.

Food inadequacy is perhaps the most immediately obvious concomitant of poverty. But the notion of 'food needs' or even 'right to food' requires considerable 'unpacking' in order to understand how it can best be realised.

What is there a right to?: Article 2 of the ICESCR refers to the "fundamental right of everyone to be free from hunger." Hunger itself, in the sense of absence of food, is evidently something which should be eliminated, but those who do not feel hunger pangs are not necessarily adequately fed. The emphasis, therefore, must be upon the *adequacy* of food, which has been analysed into

several aspects: food must be nutritious, safe and culturally acceptable. Food must have sufficient nutritional content to ensure the physical and mental development of the human person, depending on his or her special needs. For example, a pregnant or lactating woman will have different needs from a man engaged in hard physical labour. Food safety requires that it contain no harmful elements, such as poisons or harmful bacteria. Cultural acceptability requires that the food be suitable in terms of cultural beliefs and taboos.

Access to food, like many other rights, is a continuous need, and the notion of food simpliciter has therefore been expanded to embrace 'food security'. Food must be procurable, that is readily available and affordable and food supplies must be sustainable. This requires long-term and contingency planning to cope with possible shortages or distribution bottlenecks.

What is the responsibility?: Given the three-fold obligation of the state to respect, protect, and fulfil rights, the state is obliged to ensure food adequacy and food security. A full conceptualisation of the right to food involves recognising that lack of food will have a negative effect on the realisation of other rights. For example, lack of adequate food may force a child into dangerous unsuitable work and remaining out of school and illiterate. The obligation to 'respect' will involve *recognising* the needs and the realities of food production and consequently, *refraining* from measures which will undermine food security. For example, ensuring availability of inexpensive seeds on the one hand and avoiding policies that diminish land used for food crops in favour of exportable cash crop alternatives. Protecting requires *preventing* distortions (between regions, for example), and *developing* protective legislation to ensure, for example, that in a time of scarcity food is not hoarded by profiteers. Fulfilling the right will involve *incorporating* aspects of food culture into development, (like ensuring large vegetarian populations with a nutritious alternative to meat), *establishing* food control mechanisms and so on.

Another important aspect of economic and social rights are that they are to be progressively realised. This does not mean that the state can indefinitely put off or delay the realisation of these rights. True, a state is not expected to fulfil all needs

The Right to Food Enforced

A prisoner in Fiji was sentenced to six months imprisonment for escaping from custody. As additional punishment the prison authorities reduced his food rations according to the Prisons Act. The prisoner challenged this in court. Listening to his appeal the court said that any treatment or punishment that impinged on the inherent dignity of the individual went against the Constitution. Fijian courts can take account of international instruments when interpreting the Bill of Rights. Drawing on Art.11 of the ICESCR on the right to food, the Court held that "any reduction in rations as was meted out to the appellant was not consonant with the Republic of the Fiji Islands' undertaking to provide its people with adequate food." The court went further and said that although it was not mandatory for the state to follow its obligations under this covenant the action taken by the prison commissioner in using food as a means of control went against the spirit of the ICESCR and therefore violated the prisoner's right to food and could not be allowed.

Finally the court said:

"Food is a basic necessity for daily sustenance. To reduce prison rations, as a form of punishment is a concept that is offensive in principle. Not only may it affect a person's capacity to survive but also it deprives him/her of a portion of rations that are at best adequate. The amount of reduction is not of any importance. The very idea that the state would employ such means is intrinsically unacceptable for the reason that it uses what is a necessity of life as a means to punish proscribed behaviour. This devalues persons such as the appellant because it assumes their status as prisoners justifies such sanctions. The short answer to that proposition is that they are no less human for being incarcerated with an entitlement to an inherent dignity no bars or walls can violate. The rationale for such treatment harks back to a time when prisoners were not considered deserving of much consideration as human beings. The court is respectfully of the opinion that section 83(1)A(vi) of the Act contravenes section 25(1) of the Constitution as amounting to degrading and inhuman treatment and is null and void."¹⁴⁵

simultaneously, but there is an obligation to tackle urgent needs first. It also means that the state cannot stop when it has satisfied the most urgent needs; the process of satisfying obligations is one of continuous re-evaluation and re-assessment of entitlements. Moreover, states are required, by the terms of Art. 11(2) of the ICESCR to embark immediately on the process of achieving the right, within the limits of available resources.

Precisely how the state is to carry out its obligations will depend upon the factors, which hinder the realisation of the right to food within its own territory. The CESCR has recommended that states should develop national strategies for food: these include identifying resources and needs, framing objectives, setting benchmarks, and assuring people's participation in a democratic, transparent and accountable process.¹⁴⁶ The strategy must take particular account of the need to avoid discrimination (especially in the light of the position of food disadvantage experienced by women in many societies). In case of severe constraints, care should be taken to protect vulnerable groups and individuals. Various bodies have urged the importance of systems of national indicators that take into account data on nutrition needs, and national circumstances. This can be used as a way of maintaining continuous monitoring of needs and achievements, so that the state can know whether it is moving towards the achievement of the right.

As food is a right it becomes incumbent upon the state to have a policy and legislative framework that will ensure not only food security but also that legal, social, geographical or other factors, as diverse as the status of women, farming subsidies or intellectual property regimes, do not impinge on the right.

Whose is the responsibility?: There is no suggestion that the right to food means substituting state activity for the fundamental assumption that people feed themselves. The obligations of others come into effect only due to the inabilities of the individual, or family, within society, to fulfil the need. The primary holder of obligations towards its own citizens is the state. But in an interlocking world there may be others who are responsible. States should recognise the interests of other countries and citizens: food should not be used as a weapon in times of war or as an international sanction; states should be conscious of the possible impact of their trade and aid policies on the right to food elsewhere; states should provide food and other relevant aid where required; and fulfilling the right to food should be one focus of debt relief measures.

Much of this 'unpacking' of the right to food has already been done by international organisations. The Food and Agricultural Organisation (FAO), the CESCR and the UN Sub-Commission on the Promotion and Protection of Human Rights, the World Bank and World Commission on Environment and Development, have elaborated on the right to food. There is also the experience of Commonwealth members to draw on: the National Food Strategy of

Botswana is a useful example. Many Commonwealth states are already parties to international declarations, such as the Declaration on Food Security and a Plan of Action adopted at the World Food Summit in 1996, which commits them at the very least to recognise the needs of their own citizens and others. All this goes a long way towards giving greater definition to the right to food, and needs to be replicated for all social and economic rights, to improve their enforceability.

Revising the Framework

Even with an extensive elaboration of rights there are ways in which the rights framework requires some rethinking and reformulating in order to maximise its potential for poverty eradication, as there are still those who feel that they fall outside the framework. There needs to be a reconceptualisation of some of the fundamentals of the rights regime.

Duty-Holders

In a world in which corporations are as powerful as many states, where investment decisions are made by foreign countries and by international bodies, and where so much importance is given to the market which is independent to a considerable extent of the actions of any state, duties and responsibilities need to be re-thought out as much as the rights.

For example, Multilateral Lending Institutions (MLIs) have interpreted their charters very narrowly, insisting that they are specialised international organisations devoted exclusively to the economic aspects of relations between member states; they are neither standard setters nor enforcers of human rights. The farthest they would like to go would be to help create economic conditions, which contribute towards the fulfilment of human rights, which they maintain essentially, belong to the domain of relations between states and their individual citizens.

In the light of such pronounced positions, there needs to be an unequivocal recognition that MLIs are duty-holders. We must question the idea that the line of accountability for human rights runs from the state in favour of the citizen, as it absolves MLIs from any responsibility for the consequences that their policies may have on human rights. The World Bank, the IMF and the WTO are more than mere aggregates of member states possessing legal personality, privileges and immunities essential for the exercise of their functions. Having been created in accordance with the general principles of international law these institutions must respect the fundamental principles of human rights law which themselves form part of those general principles. Both international economic law and international human rights standards are creatures of the

same *jus cogens*. It is incumbent upon MLIs to avoid adverse human rights effects resulting from their own policies following the dictum - "Any actor should in principle be held accountable for the effects of his/its actions."¹⁴⁷

The fact that MLIs are duty holders must become a common perception both from within and from outside these institutions. Such an explicit recognition would obligate these institutions to actively search for ways of realising their policy objectives so that they are in compliance with international human rights standards. Oloka-Onyango and Udagama have recommended that human rights standards must become the embarking point for the formulation of poverty reduction policies by MLIs. In consonance with the consensus spelt out in the Declaration on the Right to Development, the process of development must recognise and protect all human rights without privileging any single right or class of rights. The principle of 'non-retrogression' must be incorporated within the human rights obligations of MLIs. This implies MLIs have a duty to ensure that they do not advise macroeconomic policy measures that would cause a reversal of the social achievements already made in countries adopting poverty reduction strategies. Instead they should take pro-active measures that will further promote those sectors of the economy such as health, education, shelter and environment protection where positive achievements have been made. Periodic Human Rights Impact Assessment (HRIA) would help minimise threats to positive achievements in these sectors.¹⁴⁸ Such institutional accountability would also involve issues of transparency in functioning, independent evaluation of policies and drawing up of adequate and effective remedial measures within MLIs. MLIs have a duty not to advise states to adopt policies that would handicap the realisation of the economic and social rights of their citizens. In short, MLIs must make a renewed commitment to social responsibility informed by the universal standards recognised in various international human rights instruments.

Another prominent example of an influential set of actors who currently evade much of their responsibility is the private sector, which must be made to fulfil its responsibilities for human rights. Given the difficulty that states have in regulating the ever-increasing power of the private sector, the question of the direct applicability of international law to this sector arises.

Hitherto, the international (and domestic) human rights regimes have been largely ineffective in regulating companies. Corporations claim to be, and under most legal systems are, the beneficiaries of rights, but they resist obligations to respect the human rights of others. Imposing obligations on corporations to respect rights runs counter to the traditional notion of rights, which are protected only as against the state.

As the Union Carbide Bhopal Gas Tragedy case amply illustrates, ordinary civil actions against corporations for injuries to others or damage to the environment, face numerous difficulties. Most large corporations operate

through subsidiaries, whose liabilities are hard to enforce because most of the assets from which damages may be claimed are vested in faraway parent corporations, which can disown the liabilities of its subsidiaries. Litigation against corporations is usually biased in favour of the corporation, since it has huge resources, can purchase the best legal talents and prolong proceedings or delay the implementation of the judgement. Victims of its conduct are often the poor and are unable to mobilise access to lawyers or courts. Others who may wish to take up their cause may not have legal standing to institute proceedings. And there is constant fear of reprisals if litigation or other remedies are pursued against a corporation - dismissal from employment, social victimisation and more.

However, there are effective ways of holding corporations accountable. Companies are starting to see that their own interest is served by taking a proactive approach to human rights. Being ethically, environmentally and socially responsible is good for business. Consumer boycotts, embarrassing questions from shareholders (some of whom may have acquired their shares precisely in order to be able to use the position in this way), and general adverse publicity, all persuade companies of the good business sense of pro-poor behaviour.

For example, in order to protect high profits from the sale of HIV/AIDS drugs a cartel of powerful pharmaceutical companies recently took the South African government to court for seeking to get cheaper drugs for its people. However, they backed off from taking the challenge to South Africa's patent law any further, after massive adverse publicity which showed how they were willing to prevent cheaper drugs from reaching HIV infected people.

In these days of mass consumption, consumer boycotts can bring great pressure on corporations, as they have an immediate impact on their profits. Consumer boycotts have had considerable success in discouraging corporations from; employing child labour in carpet and football manufacturing industries in Pakistan and Bangladesh; paying low wages as with campaigns against Nike and other firms outsourcing parts of their production to sweatshops; and marketing genetically modified food.

United Nations Global Compact

In 1998, the United Nations Secretary-General, Kofi Annan, proposed to the world business leaders at the World Economic Forum in Davos, a global compact of shared values and principles, to give a human face to the global market. He called on them to embrace, support and enact a set of core values in three areas: human rights, labour standards and the environment.

The nine principles of the Global Compact are:

Human Rights:

- to support and respect the protection of international human rights within their sphere of influence;
- to make sure their own corporations are not complicit in human rights abuses.

Labour:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced and compulsory labour;
- the effective abolition of child labour;
- the elimination of discrimination in respect of employment and occupation.

Environment:

- to support a precautionary approach to environmental challenges;
- to undertake initiatives to promote greater environmental responsibility;
- to encourage the development and diffusion of environment friendly technologies.

Though a voluntary non-binding agreement, the Compact specifically challenges companies to incorporate universal values in mission statements; to change management practices to achieve these goals; and to share learning experiences. It has currently been signed by firms and supported by business associations all over the world.

For this reason, corporations themselves are beginning to talk about human rights. Many have agreed to voluntary codes of conduct, in respect of quality, labour standards, wages policy and environmental protection. A wide range of bodies have in recent years been working on what might be described as the 'how' of corporate human rights responsibility. The common approach is the development of codes of responsible practice.¹⁴⁹ The principles underlying these are two-fold. Firstly, those companies will perceive that there is comparative advantage to be gained by their public adherence to these guidelines. Secondly, that there is an efficiency gain for companies to be able to adopt principles and guidelines established by others.

However, it may be less straightforward to draw up guidelines for *proactive* corporate initiatives, such as offering skills training for non-employees, giving time off to employees to help NGOs, or searching out disabled or disadvantaged people to employ. Nor will the shame or praise techniques work so well with essentially covert behaviour like corruption.

On the whole, the success of initiatives for corporate human rights responsibility has been limited. Corporations and governments of poor countries have a common interest in exploiting cheap labour and in dispensing with international labour standards. The activities of corporations are hard to monitor, especially when there is a considerable element of outsourcing. Individual corporations or even individual states cannot do much on their own, given global conditions of competitiveness - as is illustrated by the way in which Japanese companies have in recent years reduced or stopped corporate welfare policies, for which they were so famous.

The way forward must rely on legal regional and international regulation of the policies and conduct of corporations which impact negatively on human rights. There is no theoretical or practical reason why corporations cannot be subjected to the regime of rights. In fact a general principle is enunciated in the preamble of the Universal Declaration of Human Rights (UDHR), which requires that "*every individual and every organ of society [emphasis added]....shall strive...to secure their universal and effective recognition and observance.*" But obligations imposed on states for the protection and promotion of human rights may only be adequately discharged if the international community regulates the conduct of companies. Sometimes a treaty may expressly require states to regulate that conduct, as with the Convention on the Elimination of Discrimination Against Women (CEDAW) which requires states "to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise."¹⁵⁰ In relation to the right to food the ICESCR states that "State Parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food."¹⁵¹

Beneficiaries

There are currently particular groups whose rights are not adequately recognised by texts which form part of the international human rights framework. Two such groups are the elderly and indigenous peoples.

The specificity of the condition of the elderly, especially those living in poverty, must become the concern of international law. Presently there is no convention on the rights of the elderly. In 1991 the UN drew up a set of non-binding principles for older people. Poverty alleviation has been prioritised and targets for reducing poverty amongst the elderly by half by 2015 have been set.¹⁵² In preparation for the World Assembly on Ageing in 2002 the concept of 'productive ageing' has been proposed as the basis for evolving norms particular to the rights of the elderly. This would primarily require that they be treated not as passive victims but as contributing members of society, guaranteed the particular care and rights relevant to their situation.

Internationally, the rights of indigenous peoples are governed by the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1991). Although an advance on the 1957 Convention, the 1991 Convention has been criticised for being 'paternalistic',¹⁵³ and its negotiations involved only a limited participation by indigenous peoples. These deficiencies were meant to be addressed in another exercise in standard setting: the Draft UN Declaration on the Rights of Indigenous Peoples.¹⁵⁴ It proclaims their right to self-determination, under which they may "freely determine their political status and freely pursue their economic, social and cultural development."¹⁵⁵ The principle of self-determination gives them the "right to autonomy or self-government in matters relating to their internal and local affairs," which include social, cultural and economic activities, and the right to control the entry of non-members.¹⁵⁶ It recognises their 'collective rights'¹⁵⁷ and the right to maintain and strengthen their distinct political, economic, social and cultural characteristics.¹⁵⁸ This Draft Declaration, much potential as it has, is currently under consideration, awaiting ratification.

In the Harare Declaration, the Commonwealth Heads of Government reaffirmed that "The special strength of the Commonwealth lies in the combination of the diversity of its members with their shared inheritance in language, culture and the rule of law." Yet only one Commonwealth country, Fiji has signed the 1991 ILO Convention and few Commonwealth governments have participated in the adoption process of the UN Draft Declaration on the Rights of Indigenous Peoples.

While other major international organisations have been working hard to define and protect indigenous peoples' rights and cultures, and to combat racism and racial discrimination against them, the Commonwealth with about one-third of the indigenous peoples of the world living in it, does not yet have an explicit position with regard to indigenous and tribal peoples. While a

number of Commonwealth countries have developed individually specific policies to combat discrimination and racism against indigenous peoples, there remains no Commonwealth-wide commitment to eliminating racism and racial discrimination against these groups. Nor has the Commonwealth any specific theoretical framework that could encourage, support and help member states in formulating appropriate indigenous policy at the local level. There is no official Commonwealth publication describing the current economic, social and cultural status of the indigenous peoples in member states and there is no administrative mechanism within the Commonwealth Secretariat to channel specific enquiries, advocacy or support.¹⁵⁹

This indifference translates to low support for the agreement. For example, only nine Commonwealth states attended the 6th session of the Working Group, 2000, in Geneva, namely: Australia, Bangladesh, Canada, India, Malaysia, New Zealand, Pakistan, South Africa and the UK. In their approaches to the Declaration at the 6th session, Commonwealth Government delegations can be divided into the following three blocs: those which support the adoption of some or all of the articles under discussion as drafted (Pakistan); those which support the principles contained in particular articles, but insist on amendments to the current text, (New Zealand, Bangladesh and Canada); and those which challenge fundamental principles underlying the Declaration, in particular, the concept of self-determination, language of indigenous peoples and/or the recognition of collective rights (Australia and UK). The most active Commonwealth states at the 6th session were: Canada, New Zealand, and the UK. Bangladesh and Pakistan were far less active, while India and South Africa remained silent. Government delegations from Fiji, Kenya, and Nigeria, who participated in previous sessions, did not attend the 6th session.

Committing to Poverty Eradication

Building the Mechanisms

A clear signal of commitment to human rights is given when countries sign on to international treaties without restrictive declarations and caveats and subject themselves to their discipline by changing laws at home to conform to those obligations, report regularly and agree to sign on to their protocols, which allow individual complaints to be entertained against the state. Too many Commonwealth countries however still shy away from formal commitments to international obligations, particularly from the ICESCR.

Institution-Building

The supervisory work of the CESCR in particular requires the commitment of states to strengthen its hand. It suffers from a lack of resources and expert staff.

The Committee cannot receive individual complaints. The International Committee of Jurists has said that “a system for the examination of individual cases offers the only real hope to move towards the development of a significant body of jurisprudence which is absolutely indispensable if economic, social and cultural rights are ever to be taken seriously. An individual complaints procedure will be the best opportunity, by means of developing case law, to define the precise meaning and the limits of economic, social and cultural rights.” The 1993 World Conference on Human Rights called for the consideration of an Optional Protocol to the ICESCR, which would enable individuals to submit complaints.¹⁶¹ A draft protocol has been prepared and the UN Commission for Human Rights is currently considering it.¹⁶² The signing and ratification of the protocol is essential in order to enhance the effectiveness of the international supervisory system for economic, social and cultural rights. If the Commonwealth as an organisation is serious about tackling poverty in member states, it should advocate for its early adoption of this optional protocol.

In order to be an effective supervision mechanism the Committee system requires political backing.¹⁶³ States must make every effort to contribute to the influence of the Committee’s decisions and reports. That means submitting regular reports to the Committee, responding positively to criticism and indeed inviting the Committee’s evaluation as a means to monitor the implementation of economic, social and cultural rights in their country. This is not always the case.

Signing On

As of 14th June 2001, the following Commonwealth countries had neither signed nor ratified the ICESCR: Antigua and Barbuda, the Bahamas, Botswana, Brunei Darussalam, Cook Islands, Fiji, Kiribati, Malaysia, Maldives, Mozambique, Nauru, Pakistan, Papua New Guinea, Samoa, Singapore, St Kitts and St Nevis, St Lucia, Swaziland, Tonga, Tuvalu and Vanuatu.

While on the same date, both South Africa and Belize had signed, but not ratified it.¹⁶⁰

A number of Commonwealth countries have signed the ICESCR with reservations or declarations. A number of the reservations concern maternity benefits and equal pay for men and women (Barbados, Kenya, New Zealand, United Kingdom).

Resisting The Rights Regime

States once they sign on must submit themselves to the discipline of a treaty body.

In March 2000, the Committee on the Elimination of Racial Discrimination criticised the Australian government in relation to the rights of Aboriginals. The criticism highlighted the government’s failure to apologise for the past forced removal of Aboriginal children from their families and the fact that the government had also refused permission to the Committee to visit Australia for the preceding two years.

Far from viewing it as the *raison d’être* of the Committee, the Australian government reacted with contempt for the treaty system. Foreign Minister Alexander Downer said: “People who are critical of the Australian Government need to reflect on this point: do they really think it’s right for a United Nations committee, which includes people from Cuba and from China and Pakistan, to start getting involved in a debate about whether the Prime Minister should say sorry or not for the stolen generation?” The Australian government went as far as threatening its withdrawal from the Convention and began an internal review of the operation of the United Nations treaty body system.¹⁶⁴

Here too, the Commonwealth has a role to play. Its Human Rights Unit (HRU) can ensure that general comments of the Committee and remarks made on country reports receive the widest possible publicity and that suggestions and

recommendations made in the context of reports are kept under scrutiny and states encouraged to conform more closely to agreed upon standards.

The Commonwealth's own supervisory mechanism is presently under review. Made up of foreign ministers and with no permanent secretariat or expertise readily available to it, the Commonwealth Ministerial Action Group (CMAG) has chosen not to speak out in the case of violations of social and economic rights. In doing so CMAG has neglected the Commonwealth's fundamental principle that points to the "importance and urgency of economic and social development to satisfy the basic needs and aspirations of the vast majority of the peoples of the world, and seek the progressive removal of the wide disparities in living standards amongst...members." Having reaffirmed these principles, the Harare Declaration had promised that the Commonwealth would work with "renewed vigour" concentrating especially on "extending the benefits of development within a framework of respect for human rights." As the High Level Review Group (HLRG) goes toward re-examining CMAG's mandate, it should seek to enhance CMAG's ability to monitor the implementation of economic and social rights in member states. Since it does not consist of experts in the field it cannot itself make evaluations of states' compliance with the Fundamental Principles. To this end the HLRG should recommend to the Heads of Government at Brisbane that the Secretariat provide CMAG with periodic reviews of member states' fulfilment of their commitments to satisfying the basic needs of their people. A mini-secretariat for CMAG would be composed of the HRU and led by a Commonwealth High Commissioner for Human Rights (CHCHR), or, in the absence of this, the Secretary-General himself.

While the international and regional rights framework as well as CMAG are very valuable, they can never be more than an exceptional or last ditch approach to the fulfilment of rights. More important is the operationalisation of rights at the domestic level. The means to promote economic and social rights at home include creating effective and accessible human rights commissions and putting in place ombudsmen to look into corruption. All this goes to create a strong rights framework - as does generally a transparent and participatory system of government and administration.

It is vital that countries also enshrine economic, social and cultural rights as fully justiciable human rights in their founding documents or integrate them into law through innovative judicial interpretation.

For many, especially the poor, access to the courts may still be a last resort, but efforts should be made, by means of legal aid and other measures, to ensure that the courts, as the appropriate forum for the enforcement of rights, are available to all.

The courts too must play their part. The common law system, which is applicable to a greater or lesser extent in all Commonwealth countries, depends for its effectiveness upon the judiciary. They normally set out the procedural criteria. We have seen over the last 20 years the courts of a number of countries dramatically expand the circumstances in which the poor and oppressed sectors of society can approach them. The 'public interest litigation' movement begun with the Supreme Court of India, has extended to lower courts in that country and been taken up by the courts of several other countries including Bangladesh, Pakistan, and Sri Lanka. Some of its most valuable principles have come to be enshrined in the Constitution of South Africa.

The growth of human rights commissions in the Commonwealth is both a sign of the growing centrality of human rights to the image of a country and the occurrence of too many violations. Human rights commissions are independent constitutional or statutory bodies established with the primary aim of protecting and promoting human rights of people within their national boundaries. Human rights commissions, depending on their mandates, can contribute in a number of ways to the eradication of poverty by: investigating and providing a remedy for violations of economic, social and cultural rights; creating and enhancing public awareness and monitoring the government's policies and programmes to discover the extent to which these promote rather than derogate from these rights. This is all the more important in countries where courts are remote, law complex and processes slow and expensive. Strong and accessible commissions can provide a great service to the poor.

The Ghana, South African, Zambian and Namibian Human Rights Commissions, among others are explicitly mandated to investigate in the areas of socio-economic rights. Strong commissions do a great deal towards the realisation of socio-economic rights. The majority of cases received by the Ghana Human Rights Commission, for example, relate to deprivation of socio-economic rights or discrimination. In pursuance of its mandate to uphold socio-economic rights the Commission has investigated environmental rights violations resulting out of the massive degradation of large areas due to gold mining. Water sources had been polluted, farmlands blasted and communities rendered homeless. The Commission has collaborated with NGOs and trade unions to hold public hearings to formally determine the scope and extent of the degradation, offer a voice to affected people and explore remedial and preventative courses of action.

It has also consistently drawn attention to the extent to which Structural Adjustment Programmes (SAPs) have devastated health care and advocated for the repeal of the 'cash and carry' system that deprives the poor of adequate health care. Recent access to pronouncements that the system would be overhauled points to the ability of a credible commission to safeguard socio-economic rights. As an anti-corruption body the Ghana Commission views

corruption as a violation of social and economic rights because such acts deprive government, especially in developing countries where state resources are already scarce, of money which should be used for social services to the poor.

The secure constitutional position of the South African Human Rights Commission provides it with a strong role in safeguarding economic and social rights and one that is worth emulating. The South African Constitution requires that organs of state must annually provide the Commission with information about the measures that they have taken toward the realisation of the rights to housing, health care, food, water, social security, education and the environment.¹⁶⁵ The Commission has powers to enforce this accountability through judicial means. The Commission has begun the practice of sending questionnaires, referred to as 'protocols,' to organs of the state requiring detailed information on measures taken to promote socio-economic rights. The protocols particularly asked about the measures taken toward the realisation of socio-economic rights of vulnerable groups living in rural areas, or informal settlements, homeless persons, female-headed households, persons with disabilities, women, children, older persons and those with HIV/AIDS, as well as formerly disadvantaged racial groups. Through these reports the Commission assesses performance, publishes findings and makes government accountable for continually improving performance.

The international community under the aegis of the UN has done a great deal to set up human rights commissions across the world, including in Commonwealth countries. The Paris Principles, a set of internationally agreed guidelines, lay down clear principles which if followed would go a long way to assuring the autonomous functioning of commissions, free from overt or covert government control.

However, most Commonwealth human rights commissions are fragile entities. For the most part created by reluctant governments - after 5 years of deliberation there is still no Bangladesh human rights commission in place - commissions are often kept in close check by the executive through methods such as budgetary controls, lack of independent staff, little investigative machinery, restricted mandates and most of all by the presence of pliable commissioners, whose appointments are made by private treaty rather than any impartial public process.

The mere creation of a national human rights commission cannot be equated with enhanced respect for human rights or even genuine commitment to this goal. In an already brittle human rights environment, weak commissions too often become an obstacle to human rights realisation, because they create despondency and disbelief in the system and throw the notion of human rights into disrepute in much the same way that delay and corruption have destroyed belief in the ability of the court system to provide justice in some countries.

The Commonwealth has a role to play in the in-country process of setting up a human rights commission to help ensure that its mandate, terms of reference, composition and criteria for appointments conform strictly to the Paris Principles so as to ensure maximum effectiveness.

This is a function that could be performed by a revitalised HRU. The HRU was set up to “promote human rights within the Commonwealth” and to “ensure that in the Secretariat itself due account is taken of human rights considerations.” This mandate to promote human rights inside and outside the Secretariat is limited enough, yet in its present condition the unit has neither the stature nor the resources to fulfil its mandate.

Because the HRU has in the past done good work especially in providing training and human rights education to government agencies, it has a regular stream of requests for its services, which it is often unable to meet. Starved of resources, the HRU has, ironically in the name of mainstreaming, been steadily downsized until it now has only two posts. A substantial evaluation of the HRU in 1993, while critical of aspects of a training scheme for public officials, strongly urged that the HRU should be developed. At one time linked to the Political Affairs Division, the HRU is now a part of the Legal and Constitutional Affairs Division. Its lowly status belies the Commonwealth’s commitment to human rights.

CHRI believes that the HRU has great potential for making Commonwealth rhetoric a reality and has already produced a detailed report, *Rights Must Come First*, which outlines how this may be done. CHRI’s recommendations include that the HRU should: have a separate annual core budget with a fixed minimum figure; be pro-active; significantly increase and upgrade its present financial allocations by seeking funds elsewhere amongst the community of donors and similarly augment personnel resources by using consultants and advisors; assure its stature by being made a free-standing entity within the Secretariat that is directly responsible to the Secretary-General and has direct access to all divisions; make its own human rights assessments and feed these into CMAG and act as a constructive critic; be a mechanism that ensures that human rights are orienting all the Secretariat’s programs throughout its divisions and evaluate the Secretariat’s own performance and commitment to human rights against the same criteria of good governance to which all democratic functioning is held. The HRU would effectively be responsible for and have the capacity to genuinely institutionalise a human rights culture in the Secretariat and would play a role in instigating the same throughout the Commonwealth.

Calling the Tune

- **In Cameroon, the Commission’s funding was dramatically reduced for two years after it criticised government abuses in a confidential report on the state of emergency in the North-West Province in 1992.**
- **In Zambia, the Commission, already short on funding, lost the government premises promised to it after it commented on torture of coup detainees in 1996.¹⁶⁶**

Building a Culture of Rights

The importance of this 'culture' of human rights cannot be overstated. The aims of truly good governance are not achieved simply by having just efficient or incorrupt government or even democratic government. To be fully effective democracy requires the supporting concepts of human rights. The norms of freedom of information, free press, freedom of expression and association, the assurance of widespread citizen participation in public affairs, and an active civil society are essential for the full realisation of the norms of democracy - and of a system of government responsive to the issue of poverty.

Governance that is founded on a regime of rights and that is pervaded by the common value of respect for every individual's dignity, can respond most effectively to solving all the urgent human problems identified in the earlier parts of this report. For this reason, it is essential that human rights do not remain in the preserve of a small set of actors and institutions in remote locations, but are factored into a state's national and international policy-making processes and embedded in the consciousness of its people. Yet, what remains to be achieved in most countries is the imbuing of every section of government and society with the values, knowledge and tools necessary to ensure that rights are actually achieved.

There are many ways of creating a culture of human rights in a country. There ought to be a specifically targeted effort geared at making government and its agencies more responsive to human rights, internalising it into their everyday work and creating the spaces for genuine citizen participation in decision-making. This must include the expectation of, and mechanisms for, transparency and accountability, backed up by a legislated right to information. Information must not only be freely available, but disseminated in the population at large, both as part of the right to information and in the form of educating all of society about human rights. In all this, there is a major role for civil society to play in supporting and reinforcing the human rights framework.

Mainstreaming

No Need to Know

Country representatives who walk into important negotiations on trade and aid with powerful adversaries lose the shield of human rights

"... one state was very candid. It said that it did not mention the Covenant in its negotiations with IFIs. Why not? Because the state's negotiators with IFIs did not know about the Covenant. Foreign Affairs knew about the Covenant. Maybe the Ministry of Justice knew about the Covenant. But neither Foreign Affairs nor Justice negotiated with the World Bank and the IMF. Who negotiated with these? Treasury. But Treasury had not heard of the Covenant"

- Anecdote, Professor Paul Hunt, a member of the CESCR

It is important and necessary for not only the civil servants but also the MLIs/IFIs to know about international human rights obligations. Lack of knowledge about rights means that the common matrix of globally accepted human rights values is under-utilised in international trade, aid and debt negotiations. This prevents unequally matched countries from establishing a level playing field, so essential to getting equitable terms for their countries. Similarly within the nation-state, bills of rights provide commonly assumed principles of fair play between government and citizen, yet they are little regarded or internalised by those who rule.

The challenge is to ensure that all civil servants understand not only their powers but also their responsibilities in terms of human rights and human development. Civil servants, everywhere within the Commonwealth come from cultures which are not particularly inclusive or alert to the values of human rights and therefore need to be especially targeted for human rights training. If they were formally educated about human rights as rigorously as they are about administrative procedure, it would fundamentally change the basis upon which they represent their countries abroad and would transform their implementation of development policy at home.

Once practice is institutionalised it becomes easier, less time-consuming and expensive than when it is new. Prevention is of course better than cure. In the area of the environment the international community has to some extent accepted the 'preventative principle' as more effective and efficient than dealing with later harm. Similarly, with human rights and poverty eradication it is far more difficult to re-tool institutions on lines of justice and equity than it is to get them right in the first place. Immediate and targeted measures are also needed to bring on board strategic groups such as the media, judges, teachers, police, lawyers and more. Using mid-career training and retraining as an incentive for promotions and rewards would be an effective way of ensuring that constitutional values are inculcated into resistant systems.

A number of years ago the UK government prepared a document for the civil service called *'The Judge Over Your Shoulder'*, that was designed to alert the public service to what they needed to do to remain on the right side of the law and to avoid successful actions for judicial review. However, not only policy-making and implementation but substantive law itself should be subject to scrutiny in terms of compatibility with a newly focused regime of rights. Some states when introducing human rights norms into substantive law, have embarked upon a systematic attempt to evaluate the existing law in terms of its compatibility with those norms.

Participating

Presently, even when formulating social legislation which has a direct impact on the community, the political culture of most Commonwealth countries relies on

People Power

In a small drought prone village, in Rajasthan India, the government had put in place food for work schemes on which the majority of the poor depended for their livelihood. Villagers contracted by the government worked for subsistence wages, as daily labourers on local development projects such as building roads, community halls and schools, digging wells and small canals. However, contractors hand-in-glove with the local administration were systematically cheating them. While they knew of the corruption in the system they had no way of proving it or getting their due entitlements under the various benefit schemes of the government. In time, however, and with the assistance of a local NGO, the villagers began questioning the administration and sought details of employment rolls, development works undertaken and expenditure earmarked and incurred. The villagers demanded information stating that it was their right to know what the government was doing with money that belonged to the people. The local administration resisted this questioning, but after persistent demands was forced to provide documentary proof of expenditure and employment records. The villagers soon found proof of ways in which money was being siphoned off: by inflating employment records with false names, and claiming expenditure for completed projects which had never begun. The villagers took to holding a series of public hearings to expose the wrongdoing and force a return of the large sums that had been misappropriated. They demanded back wages and a return of development money. In some cases the threat of public humiliation acted as a deterrent and officials returned money that they had wrongfully taken. Little by little, the demand for information spread and grew into a state-wide movement until the government was forced to pass a law guaranteeing the people's right to information. However, the struggle goes on, as even today, despite the law, the inherent culture of secrecy prevalent in government prevents the free flow of information to citizens.

'expert' consultation, or input from 'eminent people,' coupled with some parliamentary deliberation. Broad consultation with the public at large or with affected communities is considered burdensome and impracticable. The assumption is that the educated elite will know what is best. Not surprisingly, these exclusive processes often result in laws that are inadequate and unworkable, fail to resonate with the public, undermine respect for the law and alienate citizens from their representatives.

A wide consultative process has in fact been undertaken by some Commonwealth countries, notably South Africa, and Uganda prior to important legislation. The process itself is an important part of learning human rights. It demonstrates the principle of inclusiveness and values a diversity of views. It accommodates dissent and lets free expression flow. In the run up to becoming law, the process educates the public about limits and license and the surrounding debate grounds acceptance of compromise, so that in the end the law becomes owned by the people and accepted as a consensus solution to knotty problems. One of the poorest countries in the world, The Gambia, after return to civilian rule in 1997, launched its national poverty alleviation program with its cornerstone being the promotion of participatory communications processes.¹⁶⁷

However, these experiments are few and far between. Too many countries continue on the old paths of command and control models of development and shore up rotten and hollow interiors with unjust laws and exclusion. Whether it is poor management or lack of political will, governments need reform.

Beyond consultative participation, governments need to accept that there must be real accountability and transparency in governance, as part of the process of deepening democracy. However, there is enormous resistance to more accountability and transparency from the elite at all levels, whether they are international financial interests or national and local elites. Presently in Commonwealth countries much information is in the public domain but unavailable and a deal of it is stored away from the public for reasons of privacy, commerce, or security. But much of it is also kept away because information in the hands of the population at large would fundamentally alter power relationships.

You've Made Your Mark, Now Have Your Say.

Law making whether it is to create or review constitutions or to simply make new legislation should involve people at all levels and from as varied backgrounds and interests as possible.

When turning from Apartheid to democracy, South Africa consciously embarked on a very complex people-oriented process for creating its Constitution. The first challenge was to enhance the capability of the poor, unlettered, and remote populations unused to being consulted about anything. Just before the work of the Constituent Assembly began, a media campaign was launched to carry the message that an important process was unfolding, the outcome would affect everyone and the unique opportunity to take part should be embraced by all. Community based political networks, school meetings, church gatherings, popular TV and radio programmes, essay competitions, traditional dance and drama helped to spread the message. A brand name, 'Constitutional Talk' labelled various activities and a widely distributed newsletter. Database containing minutes, drafts, opinions and submissions to the Assembly were put on a website. The response was overwhelming. 10,000 people called in on a toll-free Constitution hotline. 1.7 million submissions were received of which about 11,000 were substantive. 5 million copies of the working draft in user-friendly format were distributed throughout the country and another media campaign was launched to ask people to comment on specific areas. Again the Constituent Assembly received 250,000 submissions. Finally when the text was done a multi-media campaign was designed to focus on socio-economic and political issues. Advertising slogans like "Securing your freedom. Securing your Rights. The New Constitution, and One Law for one Nation. The New Constitution", educated people on rights in the new law. Finally when the Constitution was ready the meaning of the whole exercise was brought home to a people proud of what they had created together during National Constitution Week. A national assessment showed that media efforts had reached 65% of all adult South Africans.

Uganda spent a whole year just to find out if people believed a new constitution was required and what it should contain. In order to help people understand the issues the existing constitution was reprinted along with guidelines on constitutional issues and a booklet explaining how to submit a memoranda to the Constituent Assembly. Women were particularly targeted. Women leaders were trained in all 167 counties to reach out to other women. 25,000 submissions were received from them. Every submission was summarised and translated for the Commissioners and a common women's memorandum was also submitted to them. In order to make the process as transparent as possible the Ugandan government published three volumes containing submissions, an analysis of these, subsequent recommendations and the draft Constitution.

For the poor, information is a survival need. Lack of information certainly impinges on their ability to access opportunities and benefits and be free of oppression and corruption. Access to information is a major tool for accessing other rights.

Informing

Creating an enabling environment for participation requires that Commonwealth governments guarantee an effective right to information law in each country. Many Commonwealth countries already have such laws and practices of openness and information management that could be emulated. Others are extremely reluctant to pass such laws or would do so as a means to regulate journalists and fetter media freedom as is feared in the case of Zimbabwe. The Commonwealth Law Ministers Conference back in 1980 recognised the importance of Freedom of Information and stated that:

“Freedom of Information has many benefits. It facilitates public participation in public affairs by providing access to relevant information to the people who are then empowered to make informed choices and better exercise their democratic rights. It enhances the accountability of government, improves decision-making, provides better information to elected representatives, enhances government credibility with its citizens, and provides a powerful aid in the fight against corruption. It is also a key livelihood and development issue, especially in situations of poverty and powerlessness.”

Nearly two decades later in 1999, the Law Ministers Meeting adopted the Commonwealth Freedom of Information Principles. These principles were noted by the Committee of the Whole at the 1999 Durban CHOGM and the Secretariat has since then drafted a model legislation.

Human Rights Education

In most Commonwealth countries there has been little effort to give the public information about their rights. This is a particularly significant failure in view of the fact that in the majority of countries the monopoly of radio and television is with government. Given the plethora of commitments on rights that governments have signed up to, it is not a matter of choice but of duty, that airtime is used in part to inform people of their rights. Most governments, with some honourable exceptions, are presently content to work with NGOs to disseminate human rights in small initiatives but assiduously avoid using mass communications as a means of vigorously promoting rights. It is not too uncharitable to say that this easy option is deliberately not used, as bureaucrats resist the idea of rights being widely disseminated because they mistakenly see it as creating confrontation with society, rather than as a foundation for peace and justice.

The decade from 1995 to 2004 is the UN Decade for Human Rights Education. Governments are required to draw up plans and expend funds for educating the public at large about human rights. The Decade is now in its 6th year and a mid-term review of in-country efforts makes uninspiring reading. Apart from the work of a very few human rights commissions, little systematic work has been undertaken or can lay claim to significant success. If this is anything to go by, Commonwealth states are a long way from embracing a culture of rights. Only a handful of governments even bothered to respond to the review and overwhelmingly the largest number of responses came from NGOs.

Human rights education for the population at large would provide populations long accustomed to being subjects with an alternative paradigm from which to view their situation. This in itself is empowering and transformative. Human rights commissions, which almost always have the mandate for public education, need to insist that governments use their media power and their law making processes as a means of creating respect for the law rather than fear of it. The incorporation of human rights into school curricula is part of the long-term solution and a sound investment in a rights based culture.

For ultimately, the most important factor in developing a culture of human rights is that everyone internalise it. Moral individuals use moral standards as a constant monitor of their behaviour. Similarly a human rights perspective needs to be internalised into the collective psyche. The truly substantial changes in the lives of poor people will only come about when governments no longer have to stop and say “now we must look at human rights”, but operationalise it as a matter of course. Governments should always be thinking about human rights simply because this is one of their principal *raison d’être*.

The Role of Civil Society

Civil society has a crucial role to play in advancing human rights and poverty eradication in the Commonwealth. While the promise of human rights remains unrealised and the framework is not fully effective, civil society must work to fill in the gaps in the framework and to bridge the gap between rights-holders and duty-holders.

Many civil society groups are in the forefront of efforts to improve the living conditions of the poor and less powerful. Yet civil society groups that work on humanitarian, welfare or development issues often do not know about rights or if they do, do not use a rights based approach to further their agendas. Frequently equating rights with the legal process and often disappointed at its ability to provide justice, such groups resist the notion of rights. They must overcome a suspicion of human rights as being a legal instrumentality, irrevocably linked to a distrusted institution - namely the legal profession. In a

sense, they must reclaim human rights from the law, while recognising the potential which law may have for enforcing rights. They must be aware that the human suffering they witness is not merely morally unacceptable but is legally indefensible and neglect of public duty leads to consequences for violators and compensation for victims.

There are many things that civil society can do to ensure the realisation of human rights, as well as to ensure the adoption and implementation of pro-poor policies. Firstly, they help to develop a consensus on human rights and subsequently assist in the elaboration of human rights norms. For example, the conventions against torture, minority rights and the draft declaration on indigenous peoples owe a great deal to the initiatives and enthusiasm of NGOs. The adoption of optional protocols would scarcely be possible without their interventions and lobbying.

The democratic process requires that civil society work to make duty-holders fully accountable for rights. Once norms are in place, they can usefully monitor the compliance of duty-holders. Civil society groups regularly create alternative reports to submit to the UN treaty monitoring bodies, such as the CESCR; assist special rapporteurs in researching and compiling reports; and prepare alternative budgets at home which track social expenditure and demonstrate how governments can produce a budget that is both socially and fiscally responsible and complies with their human rights obligations. In the context of the Commonwealth, they can make submissions to the CMAG with information and positions on the human rights record of different Commonwealth regimes.

Alternative Budgets In Canada

In Canada, the process of preparing an 'Alternative Federal Budget' began in 1994. An assembly of representatives from 40 national labour, social and environmental organisations, plus many community groups, has produced annual budgets up to the year 2000. The associated groups began this effort because they believed that the federal and other levels of government were putting too much emphasis on cutting social programmes in efforts to balance their budgets. The coalition contended that these budgets typically represented concerns of the business elite, rather than the interests of the general population. Through a widespread process of consultation, the coalition has developed alternative budgets that take into account the need to decrease debt and yearly deficits, yet respect economic, social and cultural human rights.

Typically, the Canadian Alternative Budgets have been designed to promote more job creation than the federal government's budgets promised to achieve. Independent expert reviews of the Alternative Budgets suggested that while respecting human rights, the budgets were also economically realistic. In 1998, the Alternative Federal Budget was reportedly endorsed by more than 150 economists, including some of the most widely respected financial analysts in Canada.¹⁶⁸

Civil society organisations can mobilise public opinion and people around campaigns. Whether at home or abroad, the most successful social movements

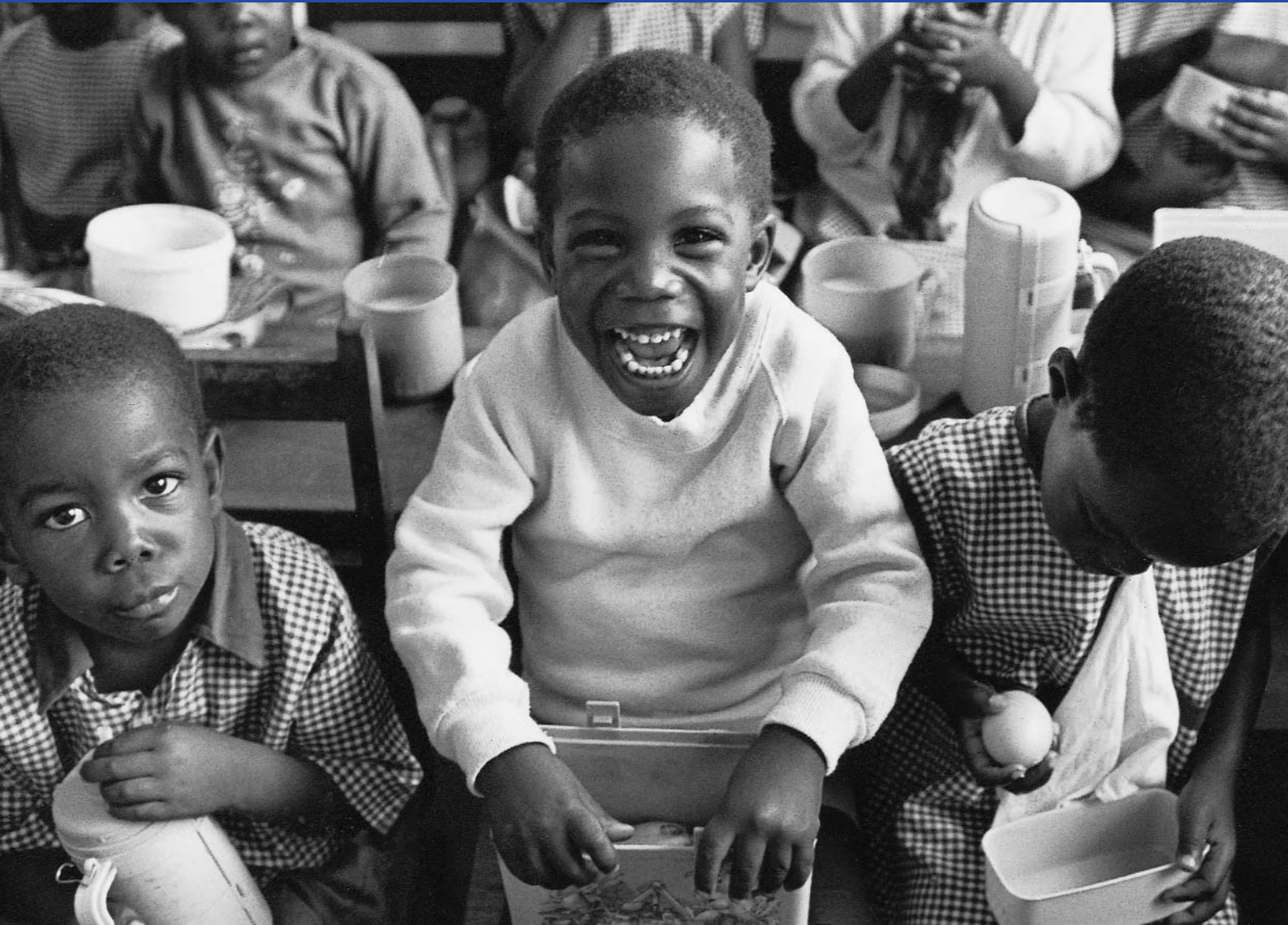
use the language of human rights to campaign and lobby for justice and reform. Claims of rights have constituted forms of protest and challenges to authority. In so far as one function of rights is the empowerment of vulnerable groups, mobilisation is crucial. In this way the disadvantaged and marginalised are given a voice, and their participation is promoted. Human rights have made them effective agents of change. Raising awareness effectively multiplies the number of human rights activists and enhances the possibilities of really developing a critical mass that will entrench rights deep within society.

Human rights have been particularly valuable in the creation of global, regional and thematic networks. The universal language of rights helps to create a common means of communicating for campaigners across geographic areas and cross-cutting themes and helps to link up even very small groups with the larger world of activism. Women and environmentalists have been particularly successful in networking.

Civil society does not always enjoy a comfortable relationship with government. Happy to partner with them as implementers of welfare schemes, governments are wary and downright restrictive of advocacy groups or those that work to create a demand for rights.

They will often refer pejoratively to the 'human rights industry,' to refer to the self-interest of the above groups and the way they organise the production, dissemination and implementation of rights. It suggests that their primary commitment is to their organizations and their dominance of the system, not the protection of rights.¹⁶⁹ There is no need to buy into all of this cynicism, but there is little doubt that the human rights movement has become highly bureaucratised, hierarchical, and even narrow.¹⁷⁰ These organisations must be careful to take stock and ensure that they incorporate a human rights approach into their own structures and institutional processes. For the most part, they are less concerned with mobilising mass social movements around rights than advocacy and lobbying. The framework of human rights will serve the agenda of the eradication of poverty only if it is carried to the people, they realise that their own oppression is clearly linked to the violation of rights, and they are organised to claim their rights and to base their agenda and organisation on them.

THE COMMONWEALTH, HUMAN RIGHTS AND POVERTY ERADICATION



Commonwealth Pledges and Responsibilities

As with the world community, the Commonwealth has made endless commitments to both human rights and the eradication of poverty, yet as we have indicated, many of the objectives remain unfulfilled.

The Commonwealth has acknowledged the challenge posed by the persistence of poverty. In 1991, in Harare, the Commonwealth promised to work with renewed vigour toward the alleviation of poverty. In 1999, in Durban, the Commonwealth had once again to admit that poverty persists, that many millions live in conditions of extreme deprivation and that a sense of social exclusion and failure of moral purpose threatens to undermine the hope of just and stable societies.

Heads of Government have repeatedly expressed their belief that equality, democracy and the rule of law are the bedrock of a good society. A decade ago, they declared their belief in “the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief and in the individual’s inalienable right to participate by free means and democratic political processes in framing the society in which he or she lives” as well as in the “principles of human dignity and equality.”¹⁷¹ At the Durban Heads of Government Meeting in 1999, “Heads renewed their commitment to the Commonwealth’s fundamental political values of democracy, human rights, the rule of law, independence of the judiciary and good governance.”¹⁷² They reiterated that fundamental political values and sustainable development were interdependent and mutually reinforcing and that economic and social progress worked to enhance the sustainability of democracy. They called for “increased international co-operation to support democracies in achieving benefits for the poor.”¹⁷³

The Heads have on several occasions also urged member states to sign and ratify the international covenants and conventions on human rights. This, despite the fact that in the Communiqués emerging from successive Commonwealth Heads of Government Meetings (CHOGM), member states have been urged to ratify amongst others: the International Covenant on Economic, Social and Cultural Rights (ICESCR);¹⁷⁴ the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Rights of the Child (CRC);¹⁷⁵ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);¹⁷⁶ and, most recently, the International Labour Organisation’s (ILO) Convention on the Worst Forms of Child Labour.¹⁷⁷ In doing so, the Commonwealth implicitly recognises their commitments to the international human rights order, all of which are vital to the eradication of poverty.

Indeed the Heads of Government have expressed outrage at the depth and extent of poverty and stated the need for action to redress the inequalities between member countries of the Commonwealth. In Harare, they “expressed serious concern at the deteriorating socio-economic condition of the least developed countries.”¹⁷⁸ In the Edinburgh Commonwealth Economic Declaration, they committed their governments to “work to halve the proportion of people living in extreme poverty by the year 2015.”¹⁷⁹ This has also involved recognition that they should increase donor assistance to 0.7% of GNP in line with the UN targets,¹⁸⁰ as well as provide assistance with debt relief “with the overarching aim of reducing poverty in Highly Indebted Poor Countries (HIPC).”¹⁸¹ Finally, they recognised that “world peace, security and social stability cannot be achieved in conditions of deep poverty and growing inequality. Special measures are needed to correct this, and in particular to help the integration of countries.”¹⁸² Finally, in Edinburgh they affirmed that “there must be effective participation by all countries in economic decision-making in key international fora.”¹⁸³

The Heads of Government have also repeatedly expressed their belief in people-centered development and that participation cannot be distinguished from the effective promotion of human rights. In Limassol, Heads reiterated the “important role played by Non-Governmental Organisations in the area of promotion of human rights.”¹⁸⁴ Whilst, in Durban they “declared that people-centered development implied that people must be directly involved in the decision-making process.”¹⁸⁵

They have further recognised the importance of human rights to the association by providing the mandate for greater allocation of resources to human rights within the Commonwealth Secretariat. In the Harare Communiqué, they “requested the Secretariat to give greater impetus to its current activities to promote human rights in all its aspects.”¹⁸⁶ Later, in Cyprus, they “asked the Secretariat to provide for increased allocations to that area as much as available resources would allow.”¹⁸⁷

A Lukewarm Commitment

Despite these fine words, in comparison to the strong articulations of commitment by international organisations such as the UN with its treaties and reporting and monitoring mechanisms, the Commonwealth’s means of actualising human rights is distinctly modest. Apart from serious political interventions that have a high dramatic colour like the actions taken against the Nigerian dictatorship, Fiji or Pakistan, and the honourable role in breaking down Apartheid, the Commonwealth’s commitments to human rights appear lukewarm. Its leadership often appears more concerned to respect the susceptibilities of fellow governments than to advance the interests of citizens. In the past, the Commonwealth has acted only in situations where civil and political rights have been violated or are under serious threat, but has treated the deprivation of economic and social rights and the condition of Commonwealth citizens, however wretched, as best left to member states to deal with unencumbered by anything more than oratory.

There appears a general unwillingness on the part of the Commonwealth to revitalise the association’s overseeing capabilities to take more account of human rights violations. The common justification given is that “the United Nations and its bodies are best placed to investigate and remedy breaches of rights and that the Commonwealth, with no comparative advantage in these areas, is not best placed to advance the global agenda by duplicating the work of other organisations.”¹⁸⁸ However, there remains much more that the Commonwealth can do that would build synergistically on the work of national and international bodies without duplication.

At the Limassol CHOGM, the Heads of Government called on all member governments to become parties to the ICESCR and ICCPR by 1995.¹⁸⁹ However

at Auckland in 1995, there was no attempt to check on progress, and subsequent summits have stopped calling for these signatures. It is not clear whether the Heads had stopped worrying about these international treaties because they realised their admonitions were so ineffective, or because they felt they were engaged in something more worthwhile in setting up CMAG, or because they recognised that the real state of human rights in any member country bore little relation to the signature of conventions. Then at Edinburgh in 1997, the Commonwealth committed itself to the International Development Targets now widely adopted in the international community. But again there was no report-back on progress at the Durban meeting in 1999. The Commonwealth, it appears, does not adequately monitor the implementation of its own rhetoric.

In terms of its commitment to economic, social and cultural rights, the general approach of the Commonwealth, over many years, has been to stress the need for development of its poorest states and citizens, but the value of human rights in eradicating poverty has not been central to its prescriptions.

The Commonwealth summit in Durban in 1999, took people-centered development as its theme. Its Fancourt Declaration stated that “the elimination of poverty is achievable.” It urged that the debt burden of the poorest countries should be lifted, that development assistance should increase and that it must be focused on “human development, poverty reduction and on the development of capacities for participating in expanding world markets for goods and capital.” Yet, its support for managed globalisation seemed to be given more weight than its commitment to eradicate poverty, and again there was no sense that its concern for the poor was informed by a rights perspective or an appreciation of the value of economic, social and cultural rights.

The only celebration of the 50th anniversary of the Universal Declaration of Human Rights organised by the Commonwealth Secretariat anywhere in the world, took place in Accra, in December 1998. It had two themes: economic and social rights, and human rights education for schools. Representatives of over half the Commonwealth countries attended. The conference produced a statement on economic and social rights. This was hardly advertised afterwards. A proposal that it should be put before Commonwealth Law Ministers, who met in Trinidad in early 1999, was overruled inside the Secretariat on the grounds that law ministers are not interested in economic and social rights!

Without a clear mandate the Commonwealth Secretariat has generally given a low priority to human rights as a whole and its actions to eradicate poverty have not gone beyond discrete programmes to become a full-scale assault on poverty from all angles.

Matching Reality to Rhetoric

With the force of the rights framework behind it, the Commonwealth, as an association predominantly made up of poor nations, must fulfil in demonstrable ways its unity of purpose to eradicate poverty by effectively amplifying the voice of the poor in international fora. The Commonwealth has already committed itself to doing just that. In the Millbrook Commonwealth Action Programme,¹⁹⁰ Heads of Government endorsed the “use of formal and informal Commonwealth consultations in the wings of meetings of international institutions with a view to achieving consensus on major concerns.” Where the Commonwealth has put its mind to acting in solidarity, it has been part of significant successes. A strong example has been that of the Finance Ministers, who have been campaigning - in their annual meetings prior to the meetings of the World Bank and IMF - for a write-off of debt for the poorest countries (the HIPC initiative). In conjunction with a major NGO mobilisation, especially in Commonwealth countries, the campaign had achieved a fair success by the end of 2000. Recently, the Secretary-General prior to the G8 Summit meeting in Genoa personally called up each of the leaders to encourage them to take a “humane approach” with countries deep in debt.

The Commonwealth must now make explicit its recognition that the persistence of poverty in a world of plenty is a serious violation of human rights, of all kinds - civil, political, economic, social and cultural - and provide its official organs, especially the Secretariat, with an unequivocal mandate to: prioritise poverty elimination through a rights based approach with a singularity of purpose; provide leadership to member states in crafting rights based approaches to poverty eradication within their borders; and as an association of largely poor nations, act to give strong voice to perspectives of the poor in all international fora.

In order to fully realise its pledges, the Commonwealth must radically overhaul its mechanisms and policies to signal the centrality of poverty and human rights to its purpose and direction.

The Commonwealth Ministerial Action Group (CMAG)

CMAG, the Commonwealth’s only overseeing mechanism, was established in 1995 by Heads of Government as part of the Millbrook Commonwealth Action Programme. The ‘Plan of Action’ authorises CMAG to take appropriate action “when a member country is in violation of the Harare Commonwealth Declaration, and particularly in the event of an unconstitutional overthrow of a democratically elected government.” CMAG’s record of work indicates that it has interpreted its mandate to mean that it acts in the case of a military take-over of a democratically elected regime. It also keeps under scrutiny countries where there is a risk to fundamental democratic principles. This is an

unnecessarily narrow interpretation of its role. Paragraph C4 of the 'Plan of Action' requires CMAG to "deal with serious or persistent violations" of the Harare Principles, which include all human rights. CHRI calls on CMAG to fulfil its true mandate, by being not only a guardian of the fundamental political values of the Commonwealth, but also a custodian and spokesperson for all the human rights of Commonwealth citizens, including their socio-economic rights. In practice this means that CMAG equip itself and keep under scrutiny the continuing existence of poverty on a large scale - and treat the lack of significant progress by member states in its eradication - as a serious and persistent human rights violation. Its consideration of a country could be prompted by civil society reports and should continue, identifying the responsible duty-holder, until such violations end.

Commonwealth High Commissioner for Human Rights (CHCHR)

For 10 years CHRI has been calling for the appointment of a CHCHR. Heads of Government must appoint a CHCHR to oversee the implementation of human rights in the Commonwealth including, social, economic and cultural rights. By so-doing, they would be giving substantial weight to their rhetoric. The establishment of such an office would provide renewed focus, authority and co-ordination to the Commonwealth's work towards upholding the Harare Declaration, the work of CMAG, the Human Rights Unit (HRU), the good-offices work of the Secretary-General, election observation missions and more. The CHCHR's work would include *inter alia*: well-qualified adjudication in the application of membership and suspension criteria; warning publicly and privately when human rights problems are growing in any region; engaging in fact-finding missions and presenting findings to the public; making annual progress reports on the Official Commonwealth's human rights work; making oral representations to international fora; presenting the pro-poor Commonwealth perspective at international venues; promoting human rights norms and furthering human rights education within the Commonwealth. Naturally, the work of the CHCHR would be informed by the knowledge and expertise of unofficial Commonwealth organisations working in the field of human rights and national human rights institutions in the Commonwealth.

The CHCHR, would also be well-placed to liaise with the UN and other regional bodies to ensure that duplication is avoided and that the human rights work of these bodies is smoothly integrated into and built upon the work of the Official Commonwealth.

The Human Rights Unit (HRU)

The HRU was set up to "promote human rights within the Commonwealth" and to "ensure that in the Secretariat itself due account is taken of human rights

considerations.” As mentioned earlier, its mandate to promote human rights inside and outside the Secretariat is limited enough, yet in its present condition the unit has neither the stature nor the resources to fulfil its mandate. However it has a role to play in mainstreaming human rights.

Mainstreaming Human Rights And Poverty Eradication

The adoption of a human rights approach is particularly valuable to those within the Official Commonwealth who have traditionally seen their role as being of service to governments. Servicing governments is presently perceived in narrow terms as acting at the behest of sovereign states. A human rights approach provides a new way of looking at the role of servicing governments, and equates it with servicing democracy and human rights, as the principal *raison d'être* of governments. By assisting a government to engage with its people, the Secretariat would be contributing to the deepening of democracy and the legitimacy of the state. By assisting the monitoring of a state's compliance with its human rights obligations, far from acting in confrontation with governments, the Secretariat would be aiding governments in evaluating their own performance and policies. This approach would enable the Secretariat to tackle the political dimensions of its work in a principled and consistent manner, through constructive engagement rather than risk of alienation.

For such change to be institutionalised in practice, it will require a clear signal from the very top about the importance and practicality of the human rights approach for the functioning of the Secretariat, and an equivalent redefinition of what is expected from the institution and individuals.

Individuals need to be convinced about the value of a human rights approach. This requires that the process of mainstreaming and capacity building itself demonstrate the values of human rights and good governance by developing it out of a consultative process which is transparent, egalitarian, open and inclusive. The elaboration of a clear mission statement offers an opportunity for multi-tiered collegial consultations and discussions that create interest and ownership in the process.

Training is an important part of mainstreaming. The nature of the training must go beyond requiring people to know the technical substance of human rights law or the international regime. It needs to include elements that are designed to test out belief systems, question held values and build up solidarity amongst individuals and departments. Training must aim at lowering the thresholds of disquiet that changes in institutional culture always create. It must go beyond knowledge transfer and skills building, toward assuring behavioural change and the incorporation of human rights values in all the policy formulation and programme implementation work of the Secretariat.

Training must avoid starting from particular rights or being overly legalistic, but rather stress generic values that ground human rights such as equity, equality, non-discrimination, inclusiveness, the accommodation of dissent, participation, and accountability.

For the achievement of all this, the presence of a high status focal point with responsibility for overseeing the process - such as a revitalised HRU or a CHCHR - would help to ensure that the momentum builds up and is sustained. This process will strengthen the human rights capacity of the institution internally as well as when it reaches out to others such as political leaderships, judiciaries, in-country bureaucracies, as well as business and the non-profit sector.

Participation

Presently the Commonwealth is examining its own legitimacy and relevance to its peoples.¹⁹¹ As an association composed mainly of poor people, pro-poor perspectives must inform all the work of the Commonwealth. By demonstrating that the major concerns of the Official Commonwealth reflect those of its citizens, the Commonwealth will become a powerful force for the universal promotion of human rights.

As we have mentioned, a key element of the human rights framework is the right to participate in decision-making. The Heads have called upon non-governmental Commonwealth organisations to play their full part in promoting Commonwealth objectives in a spirit of cooperation and mutual support and have affirmed the need for direct participation in decision making. If the Commonwealth can publicly signal its commitment to citizen participation in governance, by enshrining participation within its own mechanisms, it will give itself legitimacy. Furthermore, participation will promote ownership by Commonwealth citizens, enhancing its standing and relevance amongst them. The sustained relevance of the Official Commonwealth will only be enhanced if it can harness the participation of the Commonwealth's unofficial organisations.

However, until now, the Official Commonwealth has been distinctly reluctant to implement participation in practice. There are many potential opportunities for Commonwealth citizens to participate in the Commonwealth mechanisms, including the Ministerial Meetings, CHOGMs, and involvement in the activities of the Secretariat.

Successful mainstreaming requires several undertakings:

- elaborating human rights guidelines and directives that serve as criteria for internal accountability and provide a framework for dialogue with governments and others outside the institution;
- setting human rights and poverty eradication goals and targets for all programmes and developing the use of indicators and measures for monitoring and evaluating outcomes;
- establishing participatory processes for policy formulation and programme implementation;
- assuring accountability for using a human rights approach through incentives, persuasion and positive professional reinforcement; and
- developing internal human rights capacities for accomplishing the above tasks; including periodic assessments of methodologies for making human rights mainstreaming operational.

Commonwealth Ministerial Meetings are marginally more open to civil society than CHOGMs and more creative in devising innovative methodologies for meaningful participation. For example: the 2000 Commonwealth Education Ministers Meeting offered free access to the media; pre-Commonwealth Health Ministers' Meetings are convened for NGOs by the health department of the Secretariat; and Health, Education and Women's Affairs' Ministers' Meetings offer observer status to NGOs to sit in on plenary sessions. These are small steps in the right direction but have a long way to go before they can be truly participatory or honour the idea of equality between citizens and officials.

But even this degree of formal mingling is not available at Heads of Government meetings. CHOGMs are notoriously closed to Commonwealth civil society.

NGO Accreditation

Since the 1993 CHOGM in Cyprus, NGOs have been able to apply for registration to CHOGMs. Accreditation brings certain functional benefits, such as the use of an NGO lounge, assistance with distribution of materials to government delegations, and invitations to certain social events. The criteria for accreditation are relatively straightforward; the only two stipulations being that NGOs have 'Commonwealth' in their name and are pan-Commonwealth in their governance mechanisms and operations. However the process for accreditation itself is non-transparent and unaccountable and needs to be opened up. A committee including representatives from accredited Commonwealth NGOs, would make the process more peer-oriented and inclusive. Reasons for non-accreditation should be publicly stated.

Even NGOs with accredited status have no meaningful interaction with the Heads. Adopting a policy of 'splendid isolation,' meetings of Heads of Government and those of civil society occur in parallel with no points of convergence. Since the 1997 Edinburgh CHOGM, NGO activities have been organised in Commonwealth People's Centres (CPC) and have had participants from both accredited and non-accredited organisations. CPCs are often located in close proximity to the Heads' meetings and yet NGO representatives and government officials are carefully segregated from each other.

The holding of CHOGMs in relatively open societies such as South Africa - which prides itself on pioneering participatory processes - and Australia, have not been able to prise open these meetings to the people of the Commonwealth. If Heads of Government can take time out to walk through the people's halls once every CHOGM in carefully choreographed ceremonial visits, there seems little reason why more democratically oriented exchanges between citizens and their representatives cannot be designed. Summits offer a rare opportunity for purposive communication between civil society and officials of the Commonwealth, country delegates, and the Heads. These could take the form of question and answer sessions, regional or thematic meets, and opportunities to speak at plenary sessions or make presentations to working groups. This

would go a significant way toward democratising and revitalising Heads of Government Meetings and need not in any way detract from the privacy and collegiality that the Heads value so highly.

The Commonwealth NGO Forum, a large gathering of varied civil society actors, convenes every four years usually just prior to CHOGM to exchange views and experiences. In keeping with the idea that the Commonwealth is as much an association of peoples as it is of states, the NGO Forum's statement and recommendations are meant to communicate the views of the many to the few who rule them - and perhaps even influence their decisions. The Commonwealth Foundation convenes the Forum in order to "enable NGOs to contribute to Commonwealth consultative processes."¹⁹² At the Durban CHOGM the Forum came together to review and discuss a two-year long 47-country survey which asked over 10,000 of ordinary people in various situations what they thought was a good society. From Aotearoa to Zimbabwe, the poor reiterated that they felt alienated from their rulers, hapless in the face of present power structures and helpless to influence the decisions that govern their own lives. Respondents, however poor and remotely placed, offered solutions based on justice, equity and common sense. In view of this, the Forum in the first of its many recommendations to this 'people-centred' CHOGM, stated that all institutions "must ensure the practical realisation of the social, cultural, economic and political development of Commonwealth citizens, with particular need for gender equity."

If logic and democracy ruled, the findings of the survey and the Forum's recommendations would not only have grounded all that came out of the deliberations of the mighty in Durban, but would have also been cause for anguished introspection amongst the Heads of Government. As it was, the Durban Communiqué merely 'noted' the Commonwealth Foundation study on Citizens and Governance and asked senior officials "to study the issue of the Forum presenting its views to the next CHOGM."¹⁹³ That such an account evoked so little response is a matter of concern, and brings into question the real commitment of the Commonwealth to participation and to seriously addressing issues of good governance and poverty eradication. There must be an explicit understanding that once the Forum's views are presented to the Heads they will impact upon their decision-making and find matching expression in Communiqués.

There are opportunities for contact and cooperation at the operational level of the Commonwealth Secretariat. But all too often the level of interaction is dependent upon the personality of the individual concerned or the persistence of the citizen or group attempting the contact. There appear to be no institutional guidelines on participation, rather a culture of remoteness and distance. Enshrining citizen participation in its mechanisms will bring added

benefits to the Commonwealth. The participation of NGOs would augment the resources and the capacity of the Commonwealth. The future of the Commonwealth depends crucially on the activities and enthusiasm of NGOs.

The notion of consultations within the Secretariat needs to go beyond talking to 'experts' or with a few select organisations. If the Commonwealth is concerned with people-centred development, it needs to become a magnet for civil society groups and draw a broad swathe of civil society interest groups and associations into systematic participation. One way to ensure this is to expand the role of the Foundation, which already has civil society networks, and a sympathetic understanding of the sector.

The Commonwealth Foundation was established to deal with the unofficial Commonwealth. It is currently mandated to work with and provide assistance to NGOs in the 'social sector,' understood as welfare organisations, but not with human rights organisations or those working on 'political issues.' In reality the Commonwealth Foundation does interact with advocacy and monitoring organisations. Rather than being the occasional medium for civil society's opinions, the Foundation needs to be encouraged to assist the Secretariat to be more inclusive and participatory. For example, it could monitor the Secretariat's fulfilment of Commonwealth citizens' right to participation. In cooperation with the HRU it could ensure that each division of the Secretariat integrates the notion of civil society participation in its work and decision-making processes. It should help create spaces for civil society groups to participate in the workings of various departments and organs of the Official Commonwealth, while the HRU assists these groups to adopt a rights based framework for their own work and help them improve their own monitoring and advocacy activities. Heads of Government have verbally supported the activities of monitoring NGOs. In paragraph 57 of the Cyprus Communiqué, they emphasised the "important role played by non-governmental organisations in the area of the promotion of human rights." However, in reality the Commonwealth's assistance to 'monitoring' NGOs has been sparing.

But there is no reason why this should be. For example, whilst the Commonwealth Fund for Technical Co-operation (CFTC) gives assistance to states in preparing their reports for treaty monitoring bodies, no such assistance is provided to NGOs in preparing their alternative reports.¹⁹⁴ Technical assistance could also be offered to NGOs, for example, in their efforts to do budget analysis and the preparation of alternative budgets. The Commonwealth could take advantage of expertise it has developed in gender analysis of government budgets to provide assistance to NGOs more generally in the analysis of the human rights impact of government budgets.¹⁹⁵ These are matters which require a considerable amount of expertise and which the Foundation could coordinate with the CFTC to provide. This is another illustration of the utility of integrating

the Foundation into the Commonwealth Secretariat, whilst preserving its distinctive identity, enlarging its role and yet giving it the autonomy and status to enable it to monitor and cooperate with the various divisions.

A significant obstacle to participation in the mechanisms of the Commonwealth is lack of information. Without access to relevant information, meaningful participation is undermined. The Commonwealth has been criticised for the culture of quite unnecessary secrecy and confidentiality that has grown up within it. Such unnecessary concealment results in restraining the flow of information even between departments. Indeed, the Information and Public Affairs Division - the first point of contact with the public - has been referred to as the Cinderella of the Secretariat: it does not get documents easily or continuously and like the Foundation is not included or made aware of what is actually going on in other divisions or, even more importantly, in the Secretary General's office.¹⁹⁶ This means it cannot provide information for the public or make the Secretariat's work intelligible to the outside world, especially the media. The Commonwealth's website, another opportunity for openness, is at best uneven in the information it provides and has little or nothing on human rights. There is no page or specific link to the HRU or of knowing from the website that the Unit exists.

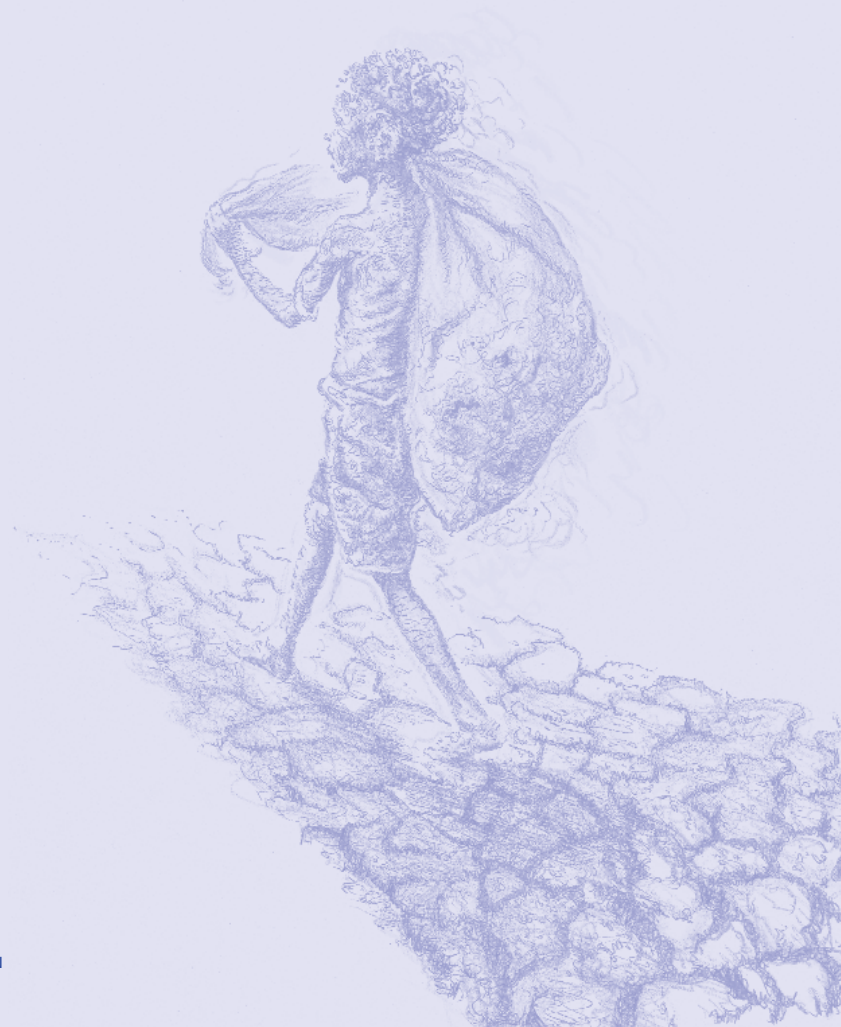
Creating a New Identity

For the Commonwealth, at the beginning of the third millennium, there will be a price to pay for its failure to be inclusive, to treat poverty as a human rights violation and to attack poverty through a human rights framework. Progressively, regional and international organisations are making human rights a central plank of their association and co-operation. Their collective policies are defined by human rights and the practices of their institutions must increasingly demonstrate human rights values in order to be considered legitimate. This is especially so for an association born out of a colonial past, which could find the antithesis of that past, and a refreshed identity, in the promotion of human rights and assured participation of its citizens in all its policies and programmes. We say that the Commonwealth is about human rights or it is about nothing. For it to retain relevance, the Official Commonwealth must move closer to its people, especially those millions living in poverty. Those people will gain immeasurably if the Commonwealth acts uniformly to enforce human rights.

Recently, the Commonwealth's crisis of identity and purpose has caused it to reflect on its priorities, modalities, and relationships. At the 'people-centred' Durban meet, ten of the Commonwealth Heads of Government referred to as the High Level Review Group (HLRG), were mandated to examine the role of the Commonwealth in the new century. The new Commonwealth-sponsored

examinations of the Official Commonwealth's treatment of human rights and its relationship with civil society are all indications that it is struggling to overcome its generic character as a club of leaders of sovereign nations and establish itself as an association rich in diverse cultures and peoples

However, the outcomes of any reorientation must be radical rather than merely incremental. The Commonwealth is in real danger of losing all relevance and credibility unless it engages more urgently and seriously with poverty, and the premier means to overcome it - human rights. To be meaningful, the Official Commonwealth has to commit itself by deeds not words to more just social, political and economic orders. If it does not, its people will pursue their human rights concerns in more relevant fora and the Commonwealth will become redundant.



RECOMMENDATIONS

The decade-long round of global conferences and successive Commonwealth summits since Harare have produced a wide range of recommendations and little purpose would be served by reiterating them. Most of CHRI's periodic recommendations also remain valid at today's date. We do not propose to provide detailed recommendations here below, as they are to be found in the body of the text and many others have the backing of international consensus.

Policy-makers, multilateral bodies, the private sector and nation states know their obligations and what needs to be done to redress past injustices and to establish fair and equitable conditions to achieve human dignity.

We restrict ourselves now to recommendations we believe will signal the will of the Commonwealth and its member states to eradicate poverty and thus rejuvenate the Commonwealth in the new century.

The Commonwealth is truly an organisation of poor people and must recognise itself as such. The first step thereafter is to state that poverty itself is an ongoing human rights violation. It must then act as a strong and unified voice for the human rights of the poor in international fora and negotiations.

In 1991 the Commonwealth Heads of Government pledged to work with "renewed vigour" toward "extending the benefits of development within a framework of respect for human rights." This statement, recognising part of the relationship between human rights and poverty, must be translated into immediate action.

This requires a sober pledging of the institutions at the Commonwealth level and of the governments of the Commonwealth to a thoughtful, structured and targeted plan of action to wipe out the worst instances of poverty. The Commonwealth must restructure the Secretariat and other institutions to make human rights their central concern. The commitment must be made as much by the governments of poor countries as of the rich, and governments must undertake to insert the procedures necessary for the achievement of poverty eradication into the very structures and sinews of government.

In addition, this CHOGM must at the very least:

- establish a clear procedure for systematically monitoring the implementation of pledges made by Heads of Government and the mandates given to the Commonwealth's official bodies. It should without doubt evaluate and publicise the progress made by the Commonwealth and its member states towards achieving the target set for halving the proportion of people living in poverty by 2015;

- urge, more vehemently than ever before, and with the explicit intention of evaluating compliance at the next CHOGM, the ratification and incorporation into domestic law of the ICESCR, ICCPR, CEDAW, CRC as well as their optional protocols and the ILO fundamental conventions;
- create the post of Commonwealth High Commissioner for Human Rights, as repeatedly recommended by CHRI;
- expand the working role of CMAG so as to fulfil its true mandate and to serve as a custodian and spokesperson for all the rights of the people of the Commonwealth; and acknowledge that serious and persistent violations of economic, social and cultural rights come within its remit;
- strengthen the capacity of the Human Rights Unit, by increasing its resources and raising both its stature and autonomy within the Secretariat;
- set an example by adopting a stated policy on open governance within the Commonwealth Secretariat and other organs of the Official Commonwealth that not only makes information readily available but actively disseminates it in the interests of democratic functioning; and
- go beyond mere formal consultation with, to participation by, associations and NGOs at all levels of Commonwealth functioning. In order to underpin this the Secretary-General must signal his clear and unequivocal support for the unofficial Commonwealth and the importance of these networks for the longevity of the Commonwealth itself.

CONCLUDING STATEMENT

CHRI believes that the Commonwealth needs human rights more than human rights needs the Commonwealth. As a grouping of several major Commonwealth NGOs, CHRI declares its commitment to promote the use of human rights for the eradication of poverty. The ideological force of human rights will make globalisation work for the good of all Commonwealth citizens. CHRI therefore extends the hand of friendship and the offer of partnership to the Heads of Government and the Commonwealth Secretariat to struggle against poverty. It urges the Heads of Government that the first item on the agenda of the 2003 CHOGM should be a review and assessment of the efforts of the official and unofficial Commonwealth in using human rights to eradicate poverty.

STATUS OF RATIFICATIONS OF PRINCIPAL HUMAN RIGHTS TREATIES¹⁹⁷

COUNTRY	ESCR	ICCPR	ICCPR- OP1	CERD	CERD (Art.14)	CEDAW	CEDAW- OP	CRC	CRC- OP1	CRC- OP2
Antigua and Barbuda	X	X	X	✓	X	✓	X	✓	X	X
Australia	✓	✓	✓	✓	✓	✓	X	✓	X	X
Bahamas	X	X	X	✓	X	✓	X	✓	X	X
Bangladesh	✓	✓	X	✓	X	✓	✓	✓	✓	✓
Barbados	✓	✓	✓	✓	X	✓	X	✓	X	X
Belize	S	✓	X	S	X	✓	X	✓	S	S
Botswana	X	✓	X	✓	X	✓	X	✓	X	X
Brunei Darussalam	X	X	X	X	X	X	X	✓	X	X
Cameroon	✓	✓	✓	✓	X	✓	X	✓	X	X
Canada	✓	✓	✓	✓	X	✓	X	✓	✓	X
Cook Islands	X	X	X	X	X	X	X	✓	X	X
Cyprus	✓	✓	✓	✓	S	✓	S	✓	X	S
Dominica	✓	✓	X	X	X	✓	X	✓	X	X
Fiji Islands	X	X	X	✓	X	✓	X	✓	X	X
Gambia	✓	✓	✓	✓	X	✓	X	✓	S	S
Ghana	✓	✓	✓	✓	X	✓	S	✓	X	X
Grenada	✓	✓	X	S	X	✓	X	✓	X	X
Guyana	✓	✓	✓	✓	X	✓	X	✓	X	X
India	✓	✓	X	✓	X	✓	X	✓	X	X
Jamaica	✓	✓	X	✓	X	✓	X	✓	S	S
Kenya	✓	✓	X	X	X	✓	X	✓	S	S
Kiribati	X	X	X	X	X	X	X	✓	X	X
Lesotho	✓	✓	✓	✓	X	✓	S	✓	S	S
Malawi	✓	✓	✓	✓	X	✓	S	✓	S	S
Malaysia	X	X	X	X	X	✓	X	✓	X	X
Maldives	X	X	X	✓	X	✓	X	✓	X	X
Malta	✓	✓	✓	✓	✓	✓	X	✓	S	S
Mauritius	✓	✓	✓	✓	X	✓	X	✓	X	X
Mozambique	X	✓	X	✓	X	✓	X	✓	X	X
Namibia	✓	✓	✓	✓	X	✓	✓	✓	S	S
Nauru	X	X	X	X	X	X	X	✓	S	S
New Zealand	✓	✓	✓	✓	X	✓	✓	✓	S	S
Nigeria	✓	✓	X	✓	X	✓	S	✓	S	S
Niue	X	X	X	X	X	X	X	✓	X	X
Pakistan	X	X	X	✓	X	✓	X	✓	X	X
Papua New Guinea	X	X	X	✓	X	✓	X	✓	X	X

COUNTRY	ESCR	ICCPR	ICCPR-OP1	CERD	CERD (Art.14)	CEDAW	CEDAW-OP	CRC	CRC-OP1	CRC-OP2
Samoa	X	X	X	X	X	✓	X	✓	X	X
Seychelles	✓	✓	✓	✓	X	✓	X	✓	S	S
Sierra Leone	✓	✓	✓	✓	X	✓	X	✓	X	X
Singapore	X	X	X	X	X	✓	X	✓	S	X
Solomon Islands	✓	X	X	✓	X	X	X	✓	X	X
South Africa	S	✓	X	✓	X	✓	X	✓	X	X
Sri Lanka	✓	✓	✓	✓	X	✓	X	✓	✓	X
St Kitts and St Nevis	X	X	X	X	X	✓	X	✓	X	X
St Lucia	X	X	X	✓	X	✓	X	✓	X	X
St Vincent and the Grenadines	✓	✓	✓	✓	X	✓	X	✓	X	X
Swaziland	X	X	X	✓	X	X	X	✓	X	X
United Republic of Tanzania	✓	✓	X	✓	X	✓	X	✓	X	X
Tonga	X	X	X	✓	X	X	X	✓	X	X
Trinidad and Tobago	✓	✓	X	✓	X	✓	X	✓	X	X
Tuvalu	X	X	X	X	X	✓	X	✓	X	X
Uganda	✓	✓	✓	✓	X	✓	X	✓	X	X
United Kingdom	✓	✓	X	✓	X	✓	X	✓	S	S
Vanuatu	X	X	X	X	X	✓	X	✓	X	X
Zambia	✓	✓	✓	✓	X	✓	X	✓	X	X
Zimbabwe	✓	✓	X	✓	X	✓	X	✓	X	X

Key: X Not a signatory

S Signed

✓ Ratified

CESR International Covenant on Economic, Social and Cultural Rights (CESR)

CCPR International Covenant on Civil and Political Rights (CCPR)

CCPR-OP1 First Optional Protocol to the CCPR on the right of individual petition

CERD International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

CERD (Art.14) Article 14 of CERD on the right to individual petition

CEDAW International Convention on the Elimination of All Forms of Racism Against Women (CEDAW)

CEDAW-OP Optional Protocol to CEDAW on the right of individual petition

CRC Convention on the Rights of the Child (CRC)

CRC-OP1 Optional Protocol to CRC on the involvement of children in armed conflict

CRC-OP2 Optional Protocol to CRC on the sale of children, child prostitution and child pornography

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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 at 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 new democracies.

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 second, the economic transition from planned to market economies.

The Right to a Culture of Tolerance (1997)

This report focused on two themes. Firstly on ethnic and religious intolerance as an urgent problem throughout the Commonwealth and secondly it explored the 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 organisation to act to promote tolerance in member countries and the report made recommendations for achieving this goal.

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 development and democracy. The report outlines urgent recommendations for curbing the reach of light weapons across the Commonwealth.

CHRI'S PROGRAMMES

Right to Information: CHRI believes that the Right to Information is a fundamental right vital to the realisation of other human rights and often essential for survival. Each country must ensure that it has effective laws in place and an enabling environment that will guarantee people's participation. Over a period of four years, CHRI has worked to inform community level groups about the value of the right to information and advocated directly with policy makers to ensure that laws are made so as to reflect the real information needs of the community at large. Our report to CHOGM 2003 will be on the Right to Information.

Police Reform: In many Commonwealth countries, the police are seen as agents of repression. Poor policing underpins widespread human rights violations and denial of justice. CHRI believes that the need for police reform is urgent and essential for upholding civil rights as also for the achievement of economic progress and good governance. This programme aims at mobilising public demand and harnessing support for police reform. CHRI's programme of work has been concentrated in India but will expand into examining the supervision and control of police forces in Africa.

Prison Reform: Due to their inherently closed nature, prisons tend to become centers of human rights violations. Guided by the need to protect human rights of the most vulnerable, CHRI has conducted field studies in select jails in India, has undertaken capacity building programmes for prison visitors and has developed a manual to assist prison visitors in carrying out their duties.

Constitutionalism: CHRI believes that Constitutions must be made and reviewed in consultation with the widest number of people. At CHRI's conference on Pan-Commonwealth Advocacy for Human Rights, Peace and Good Governance in Africa, held at Harare, Zimbabwe in 1999, CHRI was mandated to develop guidelines that should inform the making of constitutions through a consultative process. CHRI has been advocating for the adoption of a consultative process in the development of the new constitution of Sri-Lanka and in the review of the Constitution in India.

Human Rights Advocacy: Many civil society groups across the Commonwealth work unceasingly for social justice and equity. Often they work in isolation, without sufficient knowledge of like-minded efforts elsewhere or the value of using human rights framework to further their concern. CHRI is building a curriculum to assist NGOs across the Commonwealth, especially those working on development and poverty related issues, in order to enable them to make a rights-based approach central to their advocacy.

Human Rights Commissions: Human Rights Commissions (HRCs) are a recent and little known phenomena in most Commonwealth countries. CHRI is committed to making HRCs in the Commonwealth better known by informing the public about their work and making them more gender sensitive.



Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, The General Assembly, proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all

nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Art. 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Art. 2 Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Art. 3 Everyone has the right to life, liberty and security of person.

Art. 4 No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Art. 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Art. 6 Everyone has the right to recognition everywhere as a person before the law.

Art. 7 All are equal before the law and are entitled without any

discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Art. 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Art. 9 No one shall be subjected to arbitrary arrest, detention or exile.

Art. 10 Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Art. 11 Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Art. 12 No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Art. 13 Everyone has the right to freedom of movement and residence within the borders of each State.

Everyone has the right to leave any country, including his own, and to return to his country.

Art. 14 Everyone has the right to seek and to enjoy in other countries asylum from persecution.

This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Art. 15 Everyone has the right to a nationality.

No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Art. 16 Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Art. 17 Everyone has the right to own property alone as well as in association with others.

No one shall be arbitrarily deprived of his property.

Art. 18 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Art. 19 Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Art. 20 Everyone has the right to freedom of peaceful assembly and association.

No one may be compelled to belong to an association.

Art. 21 Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right to equal access to public service in his country.

The will of the people shall be the basis of the authority of

government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Art. 22 Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Art. 23 Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Everyone has the right to form and to join trade unions for the protection of his interests.

Art. 24 Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Art. 25 Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Art. 26 Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

Art. 27 Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Art. 28 Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Art. 29 Everyone has duties to the community in which alone the free and full development of his personality is possible.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as 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.

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Art. 30 Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

The majority of Commonwealth people live in poverty. As a matter of urgency, this report aims to focus people's attention on poverty, human rights and the rights based approach to poverty eradication. This report will serve as a useful tool for both government and civil society alike in the fight against poverty. The Commonwealth Human Rights Initiative (CHRI) urges Heads of Government to act upon the recommendations in this report with immediate effect, in order to fulfill their obligations to the millions of people still living in poverty in the 21st century Commonwealth.



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