

Human Rights Update



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Secretariat

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'We believe in the liberty of the individual, in equal rights for all citizens regardless of race, colour, creed or political belief, and in their inalienable right to participate by means of free and democratic political processes in framing the society in which they live'

Declaration of Commonwealth Principles 1971

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Editorial

This year marks the third anniversary since the reconstitution of the Human Rights Unit. We look back at the work and achievements of the Unit in this period and its vision for the future. The Human Rights Unit will continue to develop programmes that support the Commonwealth pledge to the promotion and protection of fundamental human rights and in particular, educational, legislative and administrative programmes. We are delighted to recently launch the Commonwealth Human Rights Curriculum Model for Universities in India. This project is a joint collaboration between the Human Rights Unit and the Commonwealth Legal Education Association. We believe that education is the basis of any socio-economic development. This was affirmed by Commonwealth Heads of Government at their meeting in Abuja in December 2003. In an increasingly divided and insecure world, the protection and respect of human rights can only be achieved if people are aware of what human rights are and how they can be protected. Without awareness, nothing much will be done to promote, protect and respect human rights. We will also continue to collaborate and co-operate with Commonwealth and non-Commonwealth governmental and non-governmental organisations working in the field of human rights in the Commonwealth.

Our work in human rights mainstreaming in the Secretariat is essentially its fourth phase, being preceded by an evaluation in 2001 of the Secretariat's activities in the human rights field which recommended the push towards mainstreaming human rights, a consultancy by two eminent human rights lawyers to lay out the structure for these actions and then briefings and mini-workshops by the HRU for all departments (in 2004).

The current phase of the work has tried to take on board some lessons from UN multilateral development and some bilateral agencies that have been working on mainstreaming human rights issues into their programmes.

Regarding developments at the UN, the recently concluded 61st Session of the UN Commission on Human Rights passed a number of resolutions aimed at strengthening the improvement and promotion of human rights globally. The Session also received reports of Special Rapporteurs and Experts on a wide range of human rights issues affecting different parts of the world. We highlight some of these resolutions and other

recommendations that came out of the Session. The Human Rights Unit has always attended the Sessions of the Commission in an observer capacity since the signing of the Memorandum of Understanding between the Office of the UN High Commissioner for Human Rights and the Commonwealth Secretariat a few years ago.

We hope you enjoy reading the Newsletter.

Human Rights Unit: Taking stock of the first three years since reconstitution as a free standing Unit

Introduction

This is an overview of the activities of the Human Rights Unit (HRU) as from January 2002, when it was set up as a Unit independent of the Legal and Constitutional Affairs Division reporting directly to the Deputy-Secretary General, to date.

Mandate

Although a decision to set up a Human Rights Unit in the Commonwealth Secretariat was made at the Melbourne CHOGM in 1981, as result of various delays relating to financing of the Unit and its mandate, it was finally set up in 1985 within what later became the Political Affairs Division. It is expressly stated that the mandate of the HRU was to promote human rights within the Commonwealth and not to be involved in any investigative or enforcement role. The HRU was subsequently moved from the Political Affairs Division to the Legal and Constitutional Affairs Division (LCAD).

The Commonwealth Secretary-General decided to set up the HRU as a free standing unit reporting directly to a Deputy Secretary-General, in accordance with the recommendations of the 'Evaluation Study of the Commonwealth Secretariat's Role in the Promotion of Human Rights 1997 – 2000' conducted by Dr Chaloka Beyani, Senior Lecturer in International Law, of the London School of Economics.

Objectives

In view of the decision to give human rights related work within the Secretariat greater prominence, the mandate of the HRU is presently as follows:

- To integrate human rights activities within all Divisions of the Secretariat.
- To develop programmes to support the Commonwealth commitment to the promotion and protection of fundamental human rights and more specifically to develop programmes that emphasise the indivisibility of civil, political, economic and social rights.
- To publish human rights materials for member countries.
- To collaborate and co-operate with Commonwealth and non-Commonwealth governmental and non-governmental organisations working in the field of human rights interacting with the United Nations system.
- To provide the Secretary-General with advice on CMAG and other human rights issues from time to time.

Strategic Framework

The HRU's programme activities support attainment of the Secretariat's strategic goal of strengthening democracy and respect for human rights within the Commonwealth. In order to achieve this, the HRU focuses on the following thematic areas:

- Determining 'best practice' and standard setting in a common law context of existing international human rights standards.
- Strengthening national and regional human rights mechanisms, thus enhancing and empowering Commonwealth human rights institutions.
- Increasing awareness of, and respect for, human rights throughout the Commonwealth, especially among young people. This can be broadly categorised as advocacy for human rights.
- Mainstreaming human rights across the Secretariat's programmes.

Activities

A. Determining Best Practice on Human Rights Issues for the Commonwealth

1. *Ratification of Human Rights Instruments*

Promoting ratification and domestication of international human rights instruments is one area that HRU is involved in. Under the Secretary-General's Human Rights Initiative, we want to encourage 18 Commonwealth countries to ratify two major human rights conventions (ICCPR and ICSECR).

2. *Promoting the Relationship between Governments and Human Rights NGOs in the Commonwealth*

We have just finished regional consultations in all the regions of the Commonwealth bringing together government officials, human rights practitioners and members of national human rights institutions. These workshops took place with different partners including UNHCHR, UNDP, Asia – Pacific Forum on Human Rights Institutions, Fiji Human Rights Commission, National Human Rights Commissions and Ministries of Justice. This will assist in creating an interface between NGOs and government institutions to ensure respect for human rights, and highlight their mutually complementary roles in achieving this.

3. *Expert Group Meetings*

The HRU also convened a number of Expert Groups to determine best practices to promote certain human rights related issues. The Expert Groups comprised individuals from the various regions of the Commonwealth, including small states, government officials, international experts, international NGOs and international governmental organisations.

(i) *Expert Group on Trafficking in Women and Children*

Trafficking in persons, especially women and children, for commercial sexual exploitation is one of the fastest growing areas of international criminal activity and of increasing concern to the international community, including the Commonwealth. Trafficking for the purposes of labour exploitation, forced labour, marriage,

adoption and the trade in organs are additional areas of concern, but are less well documented. The overwhelming majority of trafficked persons are women and girls. Consequently, this Expert Group focused primarily on strategies to combat unlawful trafficking of women and children in the Commonwealth. At the 2004 meeting on Gender and Human Rights in the Commonwealth, it was agreed that the Commonwealth Secretariat should consider the best way of taking forward the strategies.

(ii) *Expert Group on Freedom of Expression, Assembly and Association*

This project examines the fundamental human rights of Freedom of Expression, Assembly and Association as set out in the international and regional human rights instruments, which entrench these rights. Many Commonwealth jurisdictions have entrenched these fundamental rights in their constitutions or incorporated them into national legislation. Freedom of association encompasses the essential rights in a democratic society to establish and participate in political parties, trade unions and non-governmental organisations. The project considers factors which hinder the enjoyment of these rights by citizens, and posits guidelines to overcome these hindrances.

(iii) *Expert Group Meeting on the Guidelines for Treatment of Victims of Crime*

Victims of crime are sometimes overlooked when consideration is given to reforming the criminal justice system of Commonwealth countries. This leads to the incorrect perception that 'criminals have more rights than victims'. It detrimentally affects the public perception and support for fundamental human rights provisions in the law, especially those dealing with the right to a free trial. It also erodes confidence in the judiciary and justice systems. The work of the Expert Group is in line with the recommendation of the Law Ministers Meeting in 2002.

This Expert Group set out best practices and guidelines for dealing with these victims at various stages in criminal justice systems in the Commonwealth, including the role of police, prosecutors and courts. It also looks at issues of compensation and restitution for victims of crime. These guidelines have been published and widely disseminated in the Commonwealth.

B. Strengthening National and Regional Human Rights Mechanisms

1. National Human Rights Institutions

In response to the Commonwealth High Level Review Group's recommendation that national human rights institutions should be strengthened, training has been provided to enable National Human Rights Institutions to carry out their mandates. A workshop for National Human Rights Institutions for Southern and Eastern African Commonwealth countries has been held in collaboration with the Human Rights Centre of University of Pretoria. National Human Rights Institutions from Ghana, Kenya, Lesotho, Malawi, Mauritius, Seychelles, Uganda, United Republic of Tanzania and Zambia participated in this workshop. Similar workshops will be held in other regions of the Commonwealth as well. The aim is to link up National Human Rights Institutions with tertiary institutions as well as networking between human rights institutions so as to enable them to tender a more professional service in carrying out their mandates.

The Cameroon Human Rights Commission was assisted in the drafting of new legislation for its establishment to replace the Presidential Decree which was previously its founding legislation. It is intended to continue providing training and assistance to the Cameroon Human Rights Commission as soon as the new Commission is appointed under the new law. In collaboration with the Political Affairs Division and with the support of CIDA, a programme of assistance is being developed for the Commission.

In the next financial year we intend to work with the Government of Solomon Islands in the establishment of a human rights commission using the Paris Principles as well as the Commonwealth Best Practice Guidelines on the Establishment of National Human Rights Institutions which we developed a few years ago.

2. The African Court on Human Rights

We are also involved in the promotion of the protocol establishing the African Court of Human Rights. This project originally aimed at promoting the ratification of the protocol establishing the African Court of Human Rights amongst Commonwealth countries in Africa. Now that the

requisite ratifications have been attained, we recently organised in Nairobi a meeting of experts, government officials, human rights activists to look at the establishment of the court particularly in view of the decision of the Assembly of the African Union to merge the court with the court of justice.

The 'African court' will be the most recent of the three regional human rights judicial bodies to be established. This protocol was passed by the AU in 1998. We are of the view that it will significantly advance the promotion, enforcement and respect of human rights within Africa, should there be a regional judicial structure as in the Americas and in Europe.

C. Human Rights Awareness and Education

1. Young People

The HRU is also focusing on training youth in the field of human rights in collaboration with the Youth Affairs Division.

A training workshop to train tutors has been carried out in collaboration with the Commonwealth Youth Programme (CYP) Asia Centre. It was held in India, where representatives from five Commonwealth countries in South Asia comprising of tutors of CYP's youth in development programme from ten institutions were trained in teaching human rights. A similar training programme was carried out in Africa in collaboration with the CYP Africa Centre where representatives from some seventeen Commonwealth African countries were present.

The CYP programme covers some twenty-five institutions and two thousand students across the Commonwealth. There will be further training workshops in other regions of the Commonwealth.

2. Human Rights Training Manual for Police Training Schools and Academies in West Africa

Following a consultative meeting held in The Gambia last year involving senior law enforcement officials in West Africa to discuss the proposed

contents of the training manual, the manual has now been developed and adopted. We recently returned from Accra, Ghana where the draft manual was considered and adopted by all Commonwealth countries in West Africa (12-16 April 2005). The next phase is to assist in the implementation and training of trainers.

3. Commonwealth Human Rights Curriculum Model (Asia Specific)

In collaboration with the Commonwealth Legal Education Association (CLEA), we have developed the human rights curriculum model for Asia region targeting both young and old people interested in human rights. It involves a number of universities in the region and was launched last month on 16 May. This project is on a pilot basis and would be replicated in other regions if it is successful.

D. Mainstreaming of Human Rights across the Secretariat

1. The Project

This project has been carried out by initially arranging for two consultants, Dr Chaloka Beyani from the London School of Economics and Professor Paul Hunt from the University of Essex and the UN Special Rapporteur on Health, to meet with individual Commonwealth Secretariat Divisions to consider the applicability of human rights standards in the project activities being carried out by the various Divisions and linking human rights to development. We plan to have internal seminars for staff during which the genesis and contents of the international human rights standards as well as Commonwealth values could be discussed.

Richard Longhurst, our consultant on the second phase of the project, has met with and discussed with all Divisions the initial report to obtain further suggestions from them on mainstreaming human rights and identify some pilot projects to be tested.

2. Advice to the Secretary-General

The HRU is now included in meetings relating to political affairs of the Commonwealth. The HRU makes an input on human rights issues at these

meetings and also independently raises any issues relating to human rights with the Office of the Secretary-General and the Political Affairs Division and other Divisions on a day to day basis.

E. Publication and Dissemination of Information

The Human Rights Unit has, among other things, published and disseminated the following publications:

1. Unconstitutional Overthrow of Governments: Emerging Trends in the Commonwealth;
2. Introduction to Law and Human Rights for Young Persons;
3. Report on the Expert Group Meeting on Trafficking of Women and Children;
4. Best Practice for Commonwealth Countries in respect of Freedom of Association, Assembly and Expression;
5. Best Practice Commonwealth Guidelines on the Treatment of Victims of Crime;
6. 'Compilation of International and Regional Instruments for the Protection of Human Rights Defenders' in collaboration with International Services for Human Rights;
7. Report of the Expert Group Meeting on Internal Displacement in the Commonwealth: Common Themes and Best Practice Guidelines;
8. Human Rights Implications of Rising Sea Levels; (occasional paper)
9. Introduction to Citizenship for Young Persons in the Commonwealth.

In collaboration with Interights in the United Kingdom, the *Commonwealth Human Rights Law Digest* setting out human rights cases from across the Commonwealth is published on a bi-annual basis.

We have also published in collaboration with the Centre for Human Rights Studies for Africa the *African Human Rights Law Reports*, which collates cases applying international and regional human rights instruments at national level in Africa. This is the first collection of the judgments from courts in Africa on human rights as well as the decisions of the African Commission on Human and Peoples' Rights. The HRU newsletter, *Human*

Rights Update has been revived and six issues have been printed to date.

F. Collaboration with other organisations

The Commonwealth Secretariat has a Memorandum of Understanding with the UN High Commissioner for Human Rights (UNHCHR) which was signed in 1998. Regular meetings are held with various officials from the Office of the UNHCHR and there is a regular exchange of information. We have invited them to participate in our activities and similarly, they keep us abreast of the latest developments in international human rights. We have also collaborated on workshops with the Office of the UNHCHR, UNDP and national human rights institutions. We have an observer status with the Commission on Human Rights which meets in Geneva annually. We also relate with the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights.

We also have regular and fruitful meetings with international NGOs such as Amnesty International, Human Rights Watch and Association for the Prevention of Torture.

We have planned and executed joint activities with the Centre for Human Rights in South Africa, International Services for Human Rights in Geneva and South Asia Human Rights Documentation Centre in India, Asia Pacific Forum for National Human Rights Institutions, Commonwealth Legal Education Association and the Commonwealth Human Rights Initiative.

Conclusion

We have had the opportunity to bed the Human Rights Unit down since our reconstitution as an independent Unit. We are also aware that in view of our small staff complement, we need to enter into more partnership agreements with regionally or locally based bodies in the implementation of our activities. The HRU has made a positive start in implementing its mandate to promote human rights and Commonwealth values across the Commonwealth. With sufficient resources, it is hoped to have a larger impact on contributing to the betterment of the lives of Commonwealth citizens.

Update on Human Rights Mainstreaming in the Secretariat: Getting to Practical Action

by Richard Longhurst

Past issues of *Human Rights Update* (Numbers 1, 2 and 5) have plotted the progress made on mainstreaming human rights in the Commonwealth Secretariat. Now the work is going forward in the shape of an action for each of the sixteen programme areas in the Secretariat. This action may be in the form of a pilot project, a mechanism to enhance the human rights aspects of the programme (especially in the area of policy advice), checklists or guidance notes that help at some point in the project cycle, or administrative instruments.

This phase of the Secretariat's work in human rights mainstreaming is essentially its fourth phase, being preceded by an evaluation in 2001 of the Secretariat's activities in the human rights field which recommended the push towards mainstreaming human rights, a consultancy by two eminent human rights lawyers to lay out the structure for these actions and then briefings and mini-workshops by the HRU for all departments (in 2004).

The current phase of the work has tried to take on board some lessons from UN multilateral development and some bilateral agencies that have been working on mainstreaming human rights issues into their programmes. Key among these lessons learned are:

- A strong, continuing and evolving direction from the Chief Executive of the organisation in support, to provide a positive view of human rights in terms of language, to diffuse the tensions that may arise when human rights issues are raised, and to assure governments and the programme staff that their actions are supported.
- Adequate documentation in terms of procedures for project, programme and administrative manuals and related documentation such as checklists.
- Effective applied training for staff directly

relevant to their workplace activities, rather than solely in the area of human rights.

- A balanced mix of activities that properly reflects support to duty bearers (i.e. member governments) and claim holders (e.g. project beneficiaries, civil society organisations), so showing that the organisation acts in a fair manner.
- Enhancing human rights programming in some areas of an organisation and not others (without an organisation-wide view) can undermine its longer term progress.

These lessons have been carefully noted in the Secretariat's mainstreaming work and two other important but simple criteria have been applied: first, to listen and develop what the programme staff wish to do – after the previous phase of briefings, Secretariat staff are well aware of the next direction for their activities. The second is to build on existing ways in which the programming of the Secretariat fulfils the achievement of human rights, rather than start from scratch. Many of the Secretariat's existing projects and programmes through their efforts to ensure a wide participation of disadvantaged groups in their access to services, already have many elements of human rights embedded.

There are also four other aspects that make mainstreaming of human rights in the Commonwealth Secretariat an attractive proposition:

- It is a small multilateral agency, with a broad range of programmes and activities and its development programmes are implemented mostly in the areas of introducing best practice, expert advice, training, advocacy and consultations; increasingly more activities are being implemented in partnership with larger donors.
- It interacts with governments without the conditionality that many Western donors and International Financial Institutions bring with their development assistance. This is important as 'human rights' is sometimes seen as a Western construct by many developing country governments. However, as Commonwealth governments also subscribe to common legal and civil service systems, and adherence to democracy, this

mix is likely to encourage a sustained adoption of human rights criteria when the argument and practical programming arguments are made.

- Commonwealth governments have collectively and for many years espoused human rights as a central element in their system of governance, as reflected in the joint declarations made at Commonwealth fora, and also as reflected in the staff competencies of the Secretariat. For many years of its existence, the Secretariat has had the varied staff competencies required for mainstreaming human rights working together in the same organisation. This means that the clash of professional cultures that has weakened mainstreaming human rights in other organisations has been avoided.
- The development of cross-cutting themes in programming (especially in the areas of gender, small states and capacity-building and institutional development, and to an emerging degree, poverty and youth) has made good progress in the Secretariat and suggestions for future programming should reflect this; in the long run, human rights should be seen as *the* overarching cross-cutting theme, as proposed in the United Nations.

As noted above, with this background, HRU is now working in each of the sixteen programme areas on mainstreaming human rights. The predominant request has been 'how to do it?' Therefore a generic checklist has been developed to use at the project design stage, which is being tested by staff in different programme areas and modified accordingly. Other Divisions see the way forward with human rights curricula and training aimed at one of their key stakeholders. In the various areas of economic development: trade, debt, investment and finance, it is timely to map out the key issues in integrating human rights into these issues with 'think' pieces that can be later turned into policy advice or training sessions. In some cases specific projects have been developed, reflecting a gap in existing programming, and these include land rights for women, competition law and reducing discrimination in HIV/AIDS treatment. The Secretariat's administration has an

important role to play, above all in communicating positive messages about human rights.

The current work on cross-cutting issues such as gender equality, poverty and institutional development and capacity-building provides a valuable foundation for similar cross-cutting work on human rights, and several of the proposed actions can also work as a bridge across Divisions.

Finally, the Commonwealth Secretary-General provides strong support to the human rights work through the Secretary-General's Initiative, which has the objective of assisting member governments to sign up to the two core conventions: the International Covenant on Economic, Social and Cultural Rights (CESCR) and the International Covenant on Civil and Political Rights (CCPR). Before too long it is hoped that the Secretary-General will be able to make a keynote speech on how the Secretariat has successfully mainstreamed human rights into its programmes.

The Right Course of Action

Charlemagne Gomez

With more than 13 million females living with HIV/AIDS in the Commonwealth, the disease is increasingly wearing a feminine face. Women account for 70 per cent of the world's poor and are, as a result, bearing the brunt of the pandemic due to its profound entrenchment in society's poorer victims. Women's resonant poverty stems from the imbalance of power in relationships, which reverberates a plethora of societal inequalities which infringe upon their autonomy and basic life chances.

Women's lack of empowerment, and not their behaviour is contributing to the swelling infection prevalence rate. The majority of infections in Commonwealth countries are due to the high-risk behaviour of long term partners. Many women are unable to negotiate safe sex for fear of violence or accusation they themselves have been infected. HIV among married women is increasingly becoming a risk factor with studies in Kenya and Zambia claiming that infection levels

were ten per cent higher for married than for sexually active unmarried girls. A study in Mumbai, India, showed many women felt the economic consequences of leaving a long-term relationship far outweighed the health risks of staying in the relationship (Gupta, 2002).

Due to the economic and societal status exacerbated by gender inequalities, marriage and long term relationships between older men and young girls are escalating in many Commonwealth countries. The idea that younger women are free from infection has only encouraged men to seek solace in younger girls and as a result amplified their vulnerability to the disease. In Uganda the risk of infection doubles for girls between 15 and 19 with male partners ten or more years older than themselves, and HIV prevalence among girls under 18 is four to seven times higher than boys in many Commonwealth countries of Eastern and Southern Africa.

Coercion or force feature very highly in many of these sexual encounters and are detrimental to the physical and emotional health of the victims and constitute a grave human rights violation.

In many Commonwealth countries, substantial progress has been made to develop and put in place laws to address family violence, abuse, rape, sexual assault, trafficking and other gender-based violence (UNIFEM 2003). Nevertheless, there is no specific internationally recognised instrument which deals with this particular issue. The lack of adequate laws and the implementation thereof, is only one influencing factor which allows the violations to persist.

Violence against women will persist and continue to have a devastating effect on the number of women being daily infected with HIV/AIDS until all the Commonwealth countries and the world adopt a zero tolerance policy towards gender violence.

The lack of access to education afforded to the girl child is another prominent factor. It is no coincidence that AIDS rates are highest in countries where the goal of universal primary education is not on track. In South Africa, three out of every four young persons living with HIV/AIDS are female and in Asia nearly two-thirds are female. Research in various Commonwealth countries shows HIV is higher among pregnant

women with only primary school education or no education at all. Education is a key defence to combating the spread of AIDS, although, geographical and other factors do play an important role.

It is essential that girls complete secondary education, which in theory could boost their social power, employment opportunities and economic autonomy and reduce the risk of seeking economic gain through selling sex and other services.

Women's insufficient bargaining power and a lack of political will to make female condoms widely available and to inject money in the development of a female microbicide further contribute to a higher female infection rate. Stigmatisation, and the patent lack of sexual and reproductive care available to women also dissuade them from seeking advice and information on the disease. Less than 1 per cent of adults aged 15–49 are accessing voluntary counselling and testing services in the 73 low- and middle-income countries most affected by AIDS.

The pertinent lack of access to health facilities and new discriminatory practice towards patent laws for the treatments of HIV/AIDS will only exacerbate an already dire situation. Presently in Sub-Saharan Africa only one person in ten receives antiviral treatment.

As AIDS gains a strong foothold in many of the poorer Commonwealth countries, the growing burden of care is falling disproportionately on the shoulders of women and the girl child. The effect of this full time care ultimately pulls women away from vital economic activities and takes the majority of girls away from education, thus extinguishing the little physiological and economic autonomy they possess. To add insult to injury, many women – especially in African, Asian and Caribbean nations – lack the enforceable right to inherit which plunges them into deeper economic insecurity, forces them into abusive relationships and in many cases compels them to resort to dangerous sexual activity. These factors not only have an effect on the immediate family but have far reaching consequences on the community and entire national economies.

Despite the rhetoric, women's rights are still being put on the back burner. Many women and the girl

child around the Commonwealth still do not enjoy basic human rights, and as a direct result the number of female victims falling prey to the deadly virus is escalating. Entire generations will be lost if the trend persists, the goals of the Millennium Development Goals will be unattainable and poverty will be definitively entrenched into Commonwealth society.

“Gender inequalities are at the core of the pandemic” (Commonwealth Secretary-General – World AIDS Day 2004). The proclivities of the disease indicate a serious chasm between the verbatim of a myriad of strategies which tend to believe that women and men are on an equal playing field and are thus able to make empowered choices. Reticence is not the answer; Commonwealth governments should lead the way to breathe fresh air into these static commonly adopted approaches to combat the disease and must take the right course of action. “Sometimes the situation is only a problem because it is looked at in a certain way. Looked at in another way, the right course of action may be so obvious, that the problem no longer exists.” (Eduardo De Bono)

Did you know?

A Commonwealth national and distinguished jurist is President of the Inter-American Commission on Human Rights (IACHR). Clare Roberts, a citizen of Antigua and Barbuda was elected to the presidency of the Commission at its 122nd regular Session in February 2005. Dr. Roberts has been a member of the IACHR since 2002 and he was elected to its board of officers in that year. Prior to his joining the IACHR, Dr Roberts had a distinguished legal career at both the private and public bar. Most notably, he served Antigua and Barbuda as Attorney-General and Minister of Legal Affairs between 1994 and 1997. In addition to his ascendancy to the presidency of this regional human rights body, Dr Roberts will also serve as the first rapporteur for the newly created Organisation of American States’ Special Rapporteurship on the Rights of People of African Descent and on Racial Discrimination. To find out more about the activities of the IACHR visit its website at www.cidh.org. (Source: www.oas.org)

As of 1 March 2005, eighteen States have ratified the United Nations Convention on Corruption. Eight of those are members of the Commonwealth: Kenya, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Sri Lanka and Uganda. Thirty States must consent to be bound by the provisions of this treaty for it to enter into force.

The *McLibel* Case: Judicial activism in a human rights tribunal?

by Rolande Pryce, LL.M candidate,
University College London
(intern at HRU)

The final chapter of the controversial ‘McLibel Case’ was closed on 15 February 2005 when the European Court of Human Rights ruled against the United Kingdom finding that there had been a violation of Article 6 § 1 (right to a fair trial) and Article 10 (right to freedom of expression) of the European Convention on Human Rights (the Convention). The case addresses some fundamental issues concerning the civil claim of defamation, legal aid and the right of access to courts as interpreted by the European Court of Human Rights (ECHR) and could have an impact on the interpretation of these rights in international human rights law generally. This article sets out the background to the claim before the ECHR, describes aspects of the ECHR’s decision and briefly discusses the possible impact of the Court’s decision relative to the right to fair trial.

The case of *Steel and Morris v. the United Kingdom* was spawned from a case brought by McDonald’s against Helen Steel and David Morris, associated with London Greenpeace, a small group unconnected with Greenpeace International, which campaigned principally on environmental and social issues.

The Case before UK Courts

A six (6) page leaflet entitled ‘What’s wrong with McDonald’s?’ was produced and distributed as part of London Greenpeace’s anti-McDonald’s

campaign. McDonald's Corporation and McDonald's Restaurants Limited (US and UK McDonald's respectively) issued a writ against Steel and Morris claiming damages for libel allegedly caused by their alleged publication of the leaflet. Steel and Morris in response denied publication, denied that the words complained of had the meanings attributed to them by McDonald's and denied that all or some of the meanings were capable of being defamatory. They argued, in the alternative, that the words contained in the leaflet were substantially true or were fair comment on matters of fact.

Steel and Morris were refused legal aid because legal aid was not available for defamation proceedings in the United Kingdom and so represented themselves throughout the trial and appeal. They were aided sporadically by lawyers working *pro bono*. They argued that their representation of themselves was severely hampered by a lack of resources including legal advice, case preparation, administrative support and financial support for the payment of the expenses of witnesses.

Often referred to as the longest case in English legal history, the trial lasted for three hundred and thirteen (313) court days and the appeal hearing lasted for twenty-eight (28) days. The factual case involved forty thousand (40,000) pages of documentary evidence and one hundred and thirty (130) oral witnesses. The length of the judgments in the trial Court and Court of Appeal ran to over one thousand (1,000) pages.

The trial Court ruled that many of the claims contained in the leaflet were either untrue or were not justified. The Court found for McDonald's and awarded the company damages which were later reduced by the Court of Appeal to GBP 40,000. Leave to appeal to the House of Lords was refused. McDonalds had not applied for costs and have not taken steps to enforce the damages award.

The Case before the ECHR

In September of 2000, Steel and Morris (the applicants) lodged an application before the ECHR claiming that pursuant to Article 6 § 1 of the Convention, the proceedings before the UK domestic courts were unfair, principally because they were denied legal aid, and pursuant to

Article 10, that the proceedings and their outcome constituted a disproportionate interference with their right to freedom of expression.

The applicants submitted that the case was complex as evidenced by the fact that it was the longest trial in English legal history, that they were disadvantaged being without experienced counsel to argue points of law and to conduct examination and cross-examination of witnesses and that they lacked sufficient funds to conduct an appropriate defence. The applicants' inexperience and lack of legal training led them to make a number of procedural mistakes. The applicants submitted that the United Kingdom's adversarial system is underpinned by the notion that if the parties to a legal dispute are able to adduce their evidence and test their opponent's evidence in circumstances of reasonable equality, then justice can be achieved. They argued that in this case the inequality of arms could not have been greater, as at the time of the proceedings in question, McDonald's economic power outstripped that of many small countries, whereas one of the applicants was an unwaged single parent and the other was a part-time bar worker earning a maximum of GBP 65 per week.

The UK Government submitted that the Court should be slow to impose a duty to provide legal aid in civil cases, in view of the deliberate omission of any such obligation from the Convention. The Convention left Contracting States with a free choice of the means of ensuring effective civil access to court. Article 6 § 1 of the Convention provides in pertinent part that: "*In the determination of his civil rights and obligations . . . , everyone is entitled to a fair . . . hearing . . . by [a] . . . tribunal . . .*". This is in stark contrast to the position in criminal proceedings set forth in Article 6 § 3(c) of the Convention which provides expressly for free legal assistance to a defendant who has insufficient means to pay for such assistance.

The Government also submitted that in view of the fact that States did not have unlimited resources to fund legal aid systems, it was therefore legitimate to impose restrictions on eligibility for legal aid in certain types of low priority civil cases provided that such restrictions

are not arbitrary. Moreover, the Government pointed out that organs of the Convention had previously considered the non-availability of legal aid in defamation cases under English Law on six occasions and have never found it to be in breach of Article 6 § 1.

Thus, the Court held that that denial of legal aid to the applicants deprived them of the opportunity to present their case effectively before the court and contributed to an unacceptable inequality of arms with McDonald's.

The Court's Interpretation of Article 6 § 1

Opposing sides would differ as to whether the Court's interpretation of Article 6 § 1 and particularly what the State's responsibility is in relation to providing effective access to courts in civil matters has been a progressive erosion or improvement of the provision. What is clear is that whichever way one may chose to classify it, the progress has been steady and thus the *McLibel* case represents the most recent in a series of steps towards a more expansive reading of that provision of the Convention.

In the seminal case of *Airey v. Ireland*, judgement of 9 October 1979 (ECHR), the plaintiff cited the controversial *Golder* judgment¹ of 21 February 1975, where the Court held that Article 6 § 1 (the right to fair trial) embodies the right of access to a court for the determination of civil rights and obligations. On that basis, she argued that accordingly that same paragraph comprises a right for her to have access to the High Court in order to petition for judicial separation. The Court found that Mrs Airey did not enjoy an effective right of access to the High Court for the purposes of petitioning for a decree of judicial separation, in light of the fact that it was most improbable that a person in Mrs Airey's position could effectively present his or her own case. The Court acknowledged that its decision did not imply that the State must provide free legal aid for every dispute relating to a 'civil right', stating that:

While Article 6 para. 1 guarantees to litigants an effective right of access to the courts for the determination of their 'civil rights and obligations, it leaves the State a free choice of the means to be used towards

this end. The institution of a legal aid scheme . . . constitutes one of those means but there are others such as, for example, simplification of the procedure. ... it is not the Court's function to indicate let alone dictate, which measures should be taken; ... (*Airey*, para. 26)

Impact of the Decision

Taking the *Golder* decision as its starting point, the Court has in effect written into the Convention a positive obligation on the part of Contracting States to the European Convention on Human Rights to secure effective access to courts for litigants seeking to assert their civil rights.

If the *Airey* judgment, where the proceedings at issue were determinative of important family rights and relationships, defined a particular set of 'exceptional circumstances' where the provision of legal aid was indispensable to effective access to court, then the *McLibel* judgment, where two campaigners of limited means were taken on by a wealthy multinational company, it seems now represents a new set of exceptional circumstances.

This is particularly ironic, as the Convention organs have observed in the past that the general nature of a defamation action, brought to protect an individual's reputation is to be distinguished from an application for judicial separation, which regulates the legal relationship between two individuals and may have serious consequences for the children of the family.

The ECHR's selective approach to determining which civil rights warrant access to the court, regardless of the costs to the State, and those that fall within the category of claims that are reasonable to exclude from access to legal aid, risks the establishment of a hierarchy of civil

¹ In the *Golder* judgment, there were 9 votes in favour of finding a violation of Article 6 § 1 of the Convention and 3 votes against. Judges Verdross and Zekia and Fitzmaurice all wrote dissenting opinions. The opening statement of Judge Sir Gerald Fitzmaurice's dissent is telling; he states:

I am quite unable to agree with the Court on what has been the principle issue of law in these proceedings - namely that of the applicability, and interpretation, of Article 6, paragraph 1 (art. 6-1), of the Convention - the question of the alleged right of access to the courts - the point here being, not whether the Convention ought to provide for such a right, but whether it actually does. This is something that affects the whole question of what is legitimate by way of the interpretation of an international treaty while keeping within the confines of a genuinely interpretative process, and not trespassing on the area of what may border on judicial legislation.

rights. Similarly, if the humble background and lack of legal training on the part of the applicant are the crucial criteria for determining that legal aid is indispensable for access, a State will find it challenging to determine who among the many likely to fulfil that criteria should qualify and receive the benefit of its limited resources.

It is not easy to reconcile the *Airey* and the *McLibel* judgments with the six others in which the non-availability of legal aid for defamation cases was not found to be a violation of Article 6 § 1, and emerge with clear guidance as to those situations in which legal aid will be indispensable to effective access to court. This is especially relevant from the point of view of the State, which will be required to make the decision as to whether to grant legal aid prior to the matter being heard in domestic courts.

It is likely that that judgment will also have ramifications for the interpretation of the right to fair trial by regional and international human rights tribunals around the globe. It is a fact that regional and international human rights tribunals monitor closely the work of their counterparts. This is a reality to which members of the Commonwealth can relate in light of the fact that in our own domestic judicial systems decisions of the High Courts of other Commonwealth countries are regarded as persuasive or even highly persuasive in domestic courts.

It is not obvious, even from a careful reading of the decision, how the ECHR could move from the words contained in the provisions of Article 6 § 1 to its finding in the *McLibel* decision. Judicial activism best describes the ECHR's approach. The result is that the applicants are satisfied and the state of the law is left in somewhat of a quagmire. In light of this, regional and international human rights organs would be well advised to analyse carefully this decision and its antecedents before considering applying it. More so in human rights cases than in others, there is a risk of tribunals, in their decisions, substituting what they think the law should provide for, rather than interpreting the text of the existing provisions.

(Source: Information on the facts and procedural and substantive arguments in the cases mentioned was taken from the text of the decisions of the ECHR that can be found at www.echr.coe.int)

Statement by Mrs Florence Mugasha, Commonwealth Deputy Secretary-General, at the Launch of the Commonwealth Human Rights Curriculum Model on 16 May 2005 in Mumbai, India

I am delighted to inaugurate, on behalf of the Commonwealth Secretariat, the Commonwealth Human Rights Curriculum Model. It is, thus, a great pleasure for us, in the Commonwealth Secretariat, to be associated with this initiative which is aimed at promoting human rights education in India. Education is the basis of any socio-economic development. This was affirmed by Commonwealth Heads of Government at their meeting in Abuja in December 2003.

In an increasingly divided and insecure world, the protection and respect of human rights can only be achieved if people are aware of what human rights are and how they can be protected. Without awareness, nothing much will be done to promote, protect and respect human rights.

As you all know, we work as a trusted partner for all Commonwealth people as a force for peace, democracy and good governance. This commitment is predicated upon our shared fundamental principles and values of good governance, the rule of law, respect for and adherence to human rights standards, all of which are critical to the over 1.8 billion people in our member countries. Human rights are therefore emblematic of the Commonwealth as enshrined in the Harare Declaration.

The interdependence of the relationship between human rights and political values on the one hand, and development on the other, requiring international co-operation to support democracies in achieving benefits for the poor, is recognised by the Commonwealth as seen in various Declarations to which Commonwealth Heads of Government have committed themselves. The Commonwealth is dedicated to upholding the rights of its citizens, and assisting governments

and all stakeholders to work in a constructive and progressive way to ensure that these rights are respected at all times.

The Human Rights Unit of the Commonwealth Secretariat will therefore continue to develop programmes that support our pledge to the promotion and protection of fundamental human rights and in particular, educational, legislative and administrative programmes. We will also continue to collaborate and co-operate with Commonwealth and non-Commonwealth governmental and non-governmental organisations working in the field of human rights including universities and other institutions of learning.

I have followed closely the process of developing this Curriculum and I must say I am impressed with the level of commitment and dedication that all the participating universities and partners have shown. What is striking about this programme is the fact that the Model Curriculum has been adapted to suit local needs. It takes into account cultural and traditional beliefs without losing the core fundamental human rights principles that it seeks to promote.

As a result, the approach gives us the latitude and flexibility to replicate the project in other parts of the Commonwealth. Thus, our experience here, in India, will be instructive in this endeavour.

Finally, permit me to thank the Indian Government for allowing us to pioneer this project in this country. I would also like to thank the Vice-Chancellor of YCMOU University and staff as well as the Commonwealth Legal Education Association for their expertise and input to the project. You will agree with me that these two institutions have been instrumental in the drafting of the Curriculum and the conduct of meetings and workshops so far.

Our appreciation also goes to Vice-Chancellors of all participating universities for their interest and participation. It is my hope that other universities will avail themselves of this opportunity.

With these few remarks, it is my pleasure to officially launch the Commonwealth Human Rights Curriculum Model for India.

I thank you.

The 61st Session of the UN Commission on Human Rights

(Source UN)

The Commission on Human Rights concluded its annual session for 2005 on 22 April, after having debated a wide range of human rights issues under its agenda items from cross-cutting thematic issues, to country situations, to the organisation of its work. During the six-week session, which began on 14 March, the Commission adopted 86 resolutions, 16 decisions and four statements by its Chairperson, Makarim Wibisono of Indonesia.

The 53-member Commission, the world's foremost human rights forum, decided to establish several thematic mandates under its special procedures. It decided to establish a post for an Independent Expert on minorities for a period of two years to ensure that governments were guaranteeing the rights of persons belonging to national or ethnic, religious and linguistic minorities. The Commission also decided to request the United Nations Secretary-General to appoint a Special Representative on the issue of human rights and transnational corporations and other business enterprises, for an initial period of two years, to identify and clarify standards of corporate responsibility and accountability with regard to human rights. Moreover, it decided to create a mandate for an Independent Expert to look into the question of human rights and international solidarity.

The Commission also decided to appoint, for a period of three years, a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to make concrete recommendations, exchange information and communications from and with all relevant sources, and identify and promote best practices on measures to counter terrorism. It also decided to establish a mandate for a Special Rapporteur on the situation of human rights in the Sudan for one year to monitor the situation of human rights in the Sudan, including the Darfur region. This new mandate replaces that of an Independent Expert created last year on the situation in that country.

In addition, the Commission approved decisions of the Sub-Commission on the Promotion and Protection of Human Rights to appoint Special Rapporteurs to prepare studies on crimes of sexual violence; on work and descent; and on non-discrimination as it pertained to economic, social and cultural rights. The Commission also requested the Office of the High Commissioner for Human Rights to convene high-level seminars during the fourth session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action on Racism; recommended that the Economic and Social Council authorise the Chairperson-Rapporteur of the twenty-second session of the Working Group on indigenous issues to submit its report on that session to the Permanent Forum on Indigenous Issues during the Forum's fourth session in 2005; and requested the Office of the High Commissioner for Human Rights to prepare a study on the right to truth taking into account the views of States and relevant intergovernmental and non-governmental organisations, for consideration at its sixty-second session. Moreover, it decided to end the mandate of the Special Rapporteur on the use of mercenaries and to establish a Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination.

The subject of terrorism came up in several resolutions and decisions adopted at this year's session. These references correlated to national counter-terrorism measures in relation to the work and safety of human rights defenders; the use of counter-terrorism measures to restrict the right to freedom of opinion and expression; and equating religion with terrorism and its adverse consequences on the enjoyment of the right to freedom of religion or belief of all members of the religious communities.

Within the context of its agenda item on the promotion and protection of human rights, the Commission adopted a set of Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. Among other things, the guidelines recommended

that States investigate and, if there was sufficient evidence, submit to prosecution any person allegedly responsible for such violations and, if found guilty, the duty to punish her or him. As regards to the treatment of victims, the Principles state that victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well being and privacy, as well as those of their families.

Concerning the question of Palestine, the Commission expressed grave concern about the continuing construction, contrary to international law, by Israel of the wall inside the occupied Palestinian territory and demanded that Israel comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and cease the construction of the wall. In another measure, the Commission emphasised that the displaced persons of the population of the occupied Syrian Golan must be allowed to return to their homes and to recover their properties; and decided to include as an agenda at its next session an item entitled 'Question of the violation of human rights in the occupied Arab territories, including Palestine'.

Other issues that surfaced during the sixty-first session were good governance and the respect for human rights; democratisation; human rights violations against vulnerable groups, especially women and children; human rights defenders; racial discrimination; enforced or involuntary disappearances; sustainable development and human rights; and the report of the Secretary-General on the reform of the United Nations – 'In larger freedom: towards development, security and human rights for all'.

With regard to the proposed reform of the Secretary-General in the area of human rights, the Commission, while taking into account the report of the Secretary-General, decided to establish an open-ended Working Group, to be chaired by the current Chairperson, which would convene a five-day inter-sessional meeting in June 2005 to reflect on the recommendations on human rights contained in the report of the Secretary-General. It also decided to convene a

one-day special session to formally adopt the outcome of the open-ended Working Group and transmit it to the Secretary-General through the Economic and Social Council.

In his address to the Commission on 7 April, United Nations Secretary-General Kofi Annan elaborated on proposals to reform the human rights machinery of the United Nations. Outlining the reforms envisaged for the three main pillars of the Organisation's human rights machinery — the treaty body system, the Office of the High Commissioner for Human Rights, and the intergovernmental machinery — contained in his report, 'In Larger Freedom', the Secretary-General said that the most dramatic of his proposals concerned the replacement of the Commission itself by a smaller Human Rights Council.

A Human Rights Council could provide conceptual and architectural clarity, in parallel with the existing councils tasked to deal with security and development, Mr Annan said. The Council would be a standing body, he explained, able to meet when necessary, rather than for only six weeks per year. It should have an explicitly defined function as a chamber of peer review, and its main task should be to evaluate all States' fulfilment of all their human rights obligations, giving concrete expression to the principle that human rights were universal and indivisible. The Secretary-General also drew attention to the "appalling suffering" in the Darfur region of the Sudan for which the International Criminal Court had been asked to play its essential role in lifting the veil of impunity and holding those accused of war crimes and crimes against humanity accountable.

During the high-level segment of the Commission, taking place over the first four days of the session, high-ranking government officials addressed, among other things, the possible reform of the Commission; the need to reaffirm the indivisibility, universality and interdependence of all human rights; the links between human rights and conflicts; counter-terrorism measures; discrimination against women; trafficking in human beings; the situation in Darfur; and national efforts to ensure the promotion and protection of human rights.

The only proposed text to be rejected by a roll-call vote during the session was on the question of detainees in the area of the United States naval base in Guantanamo, which would have requested the Government of the United States to authorise an impartial and independent fact-finding mission by the relevant special procedures of the Commission on Human Rights on the situation of detainees at its naval base in Guantanamo.

While taking action on the situation of human rights in countries, under its agenda item on the question of the violation of human rights and fundamental freedoms in any part of the world, the Commission called upon the Government of Myanmar to release unconditionally and immediately all political prisoners; expressed its deep concern about the continuing reports of systematic, widespread and grave violations of human rights in the Democratic People's Republic of Korea; invited the Personal Representative of the United Nations High Commissioner for Human Rights to report to the Commission on the situation of human rights in Cuba; and expressed deep concern that senior officials of the Government of Belarus had been implicated in the enforced disappearance and/or summary execution of three political opponents of the incumbent authorities in 1999 and of a journalist in 2000 and in the continuing investigatory cover-up.

Under its agenda item on technical co-operation and advisory services in the field of human rights, the Commission approved resolutions on the human rights situation in Burundi, Sierra Leone, Cambodia, Nepal, the Sudan, Somalia, and the Democratic Republic of the Congo.

Country-specific mandates were renewed for the Special Rapporteurs on the situation of human rights in Myanmar, the Democratic People's Republic of Korea and Belarus, and for the Independent Experts looking into the situation of human rights in Somalia and the Democratic Republic of the Congo.

Under thematic agenda items and mechanisms, mandates were renewed for Special Rapporteurs on contemporary forms of racism, on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

on the right to freedom of opinion and expression, moreover, on the human rights of migrants. The Commission decided to extend the mandate of the Working Group on the right to development.

In closed meetings held under its '1503 procedure', the Commission decided to discontinue its discussion on the human rights situation in Honduras; to keep Kyrgyzstan under review; and to review Uzbekistan by appointing an Independent Expert to that country.

In presenting the annual report of the High Commissioner for Human Rights, High Commissioner Louise Arbour said the report covered the activities undertaken by her Office, regrouped around three main themes: those linked to the issue of the right to development; activities aimed at reinforcing national capacities in the context of the promotion and protection of human rights; and actions undertaken with regard to particularly vulnerable groups. The report also analysed the challenges which the Office of the High Commissioner would have to face in the near future, particularly with regard to the projects of reform of the United Nations system.

In closing remarks at the Commission's final meeting, High Commissioner Arbour said the current forum had been both a source for encouragement and a cause for concern. Several new resolutions had helped advance understanding and commitment to the rule of law as an indispensable prerequisite for the protection of human rights and consensus had been reached on protecting human rights while combating terrorism. However, the Commission's ability to address issues of human rights concerns at the national level remained demonstrably deficient. The Commission should consider the concept of peer review, which underpinned the Secretary-General's proposal for a Human Rights Council. The High Commissioner said she would submit her action plan to the Secretary-General on 20 May 2005. That action plan would be based upon the three concepts that human rights were universal and indivisible; that States remained the primary actors in the field of human rights; and that there must be implementation of human rights.

The Chairperson of the Commission, Makarim Wibisono, said in closing remarks that the spirit of consensus had pervaded this year, and this had helped smooth out the resolution of sensitive or potentially divisive documents. The quality of the interactive dialogue with the special mechanisms had been strengthened. The session had been exceptional in the fact that reform of the United Nations, including its human rights mechanism, formed the background to the debates and discussions. In closing, the Chairperson paid tribute to the High Commissioner for Human Rights, not only in the discharge of the Commission, but also in the field of the promotion and protection of human rights generally. The important role of civil society and national human rights institutions in furthering the works and goals of the Commission was also mentioned.

Recent Project News

Workshop on the Creation of an Effective Human Rights Court for Africa: Kenya Ratifies Protocol

Kenya has ratified the Protocol Establishing the African Court on Human and Peoples' Rights. The announcement was made by the Vice-President of Kenya, Dr Moody Awori, at the opening of a Commonwealth workshop on the establishment of the Court in Nairobi on Friday, 8 April 2005.

The Protocol was adopted on 10 June 1998 by the then Organisation of African Unity. It came into effect on 15 January 2004.

In his remarks, Dr Awori encouraged other countries in the region to ratify the Protocol in order to protect and promote human rights in Africa. "I am delighted that Kenya is hosting this workshop. Kenya is committed to promoting human rights, not only in this country but in the whole region," he said.

The Acting Head of the Commonwealth Secretariat's Human Rights Unit, Jarvis Matiya, said, "The establishment of the Court is one way of ensuring against impunity, which is one of the greatest obstacles to the enjoyment of human rights. The Commonwealth believes in national

and regional mechanisms for the promotion of human rights in all the regions of the Commonwealth, and will continue to support such institutions.”

The Attorney-General of Kenya, Amos Wako, noted the importance of not only establishing the court but making sure that it is effective. “It is necessary to integrate human rights in all the activities of regional institutions which aim at promoting human rights, rule of law and sustainable development,” he said.

The main objective of the workshop was to discuss the establishment of the African Court on Human and Peoples’ Rights. The workshop brought together about 100 participants from more than 30 African countries, including government officials, Commissioners of the African Commission on Human and Peoples’ Rights, academics, representatives of national human rights institutions, and human rights experts and practitioners. They discussed ways of building an effective regional human rights institution ensuring the justiciability of the African Charter on Human and Peoples’ Rights.

In July 2004 the Assembly of the African Union (AU) made a decision to merge the court with the Court of Justice of the AU. The workshop also considered the implications of the merger and other procedural and resource requirements which would ensure that the court is effective.

The workshop was organised by the Commonwealth Secretariat’s Human Rights Unit in collaboration with the Foundation of Human Rights, the Kenya National Commission on Human Rights, the East Africa Law Society and the Southern Africa Network on the African Court.

Human Rights Curriculum Development in India

A working group met in Nashik, India, from 1 to 3 March 2005 to finalise a draft Commonwealth human rights curriculum for tertiary institutions from India. The meeting brought together 15 representatives from the Commonwealth Secretariat, the Commonwealth Legal Education Association, the Commonwealth Human Rights

Initiative, the Commonwealth Youth Programme Asia Centre and a number of Indian universities. These included the Yashwantrao Chavan Maharashtra Open University (YCMOU), SNDT Women’s University, University of Pune and Panjab University in Chandigarh.

Based on the curriculum, the working group planned for the development of study material for the students and training strategies for master trainers. The meeting also examined model case studies and identified areas to be highlighted in the Curriculum, including the basic concepts of human rights and procedures to promote human rights that could be included in the trainers’ handbook. The draft curriculum included basic concepts of human rights and development, history and theory of human rights, rights and duties, human rights standards and humanitarian law.

Dr Rajan Welukar, Vice-Chancellor of YCMOU, said at the opening of the workshop that there is a need to educate students about human rights in order to create a greater awareness about this issue. Jarvis Matiya, Acting Head of the Human Rights Unit of the Secretariat, said: “This workshop is intended to equip students with a thorough understanding of the importance of human rights to development and enable them to promote human rights in their community. It is important for every person to be aware of his/her rights and to use this knowledge in decision-making and in one’s daily life.”

The Human Rights Unit is conducting one training workshop for trainers in May and two others later this year on how to deliver the course. The workshops will cover issues such as the objectives and nature of a human rights curriculum, the method of counselling and evaluation, as well as the use of teaching materials. These workshops will help the participants and students to understand more about the practical implementation of the rights-based approach to development through the human rights curriculum model. Another human rights curriculum model for an adults’ diploma-level course will be targeted at teachers, community and civil service workers, judges and lawyers. The Curriculum Model was officially launched in Mumbai, India on 16 May 2005.

Human Rights Manual for Police Training Institutions in West Africa

A new Commonwealth Human Rights Training Manual for police in West Africa was presented and adopted at a training workshop in Accra, Ghana, from 12 to 15 April 2005. The workshop brought together 40 participants including inspectors-general of police, trainers from police training institutions in all five Commonwealth countries in the West Africa region, and human rights experts from international organisations such as the Association for the Prevention of Torture. It was opened by Ghana's new Inspector-General of Police, Patrick K Acheampong. In his remarks, he said that his administration was committed to bring up the Ghana Police Service to appreciate international human rights standards on human rights and contemporary policing concepts. He expressed hope that the manual will be a very useful tool in assisting in promoting a culture of human rights in West Africa.

He stated: "Police in the region were historically carved out of military institutions and paramilitary posture has always been dominant. It was perceived by the ordinary citizen as oppressive to subdue any local upheavals. Most post-independence regimes have maintained the policing legacies of the past which have not conformed to acceptable international tenets governing the rule of law, respect for human rights and freedoms of the individual." He further said that it is important for the police to have a good relationship with the communities based on mutual trust and respect that are consistent with these fundamental rights and freedoms. "This can only be achieved if modern concepts, practices and procedures in law enforcement are introduced into our training regimes, so that we can produce a user friendly police."

The workshop's aim was to assist trainers and educators of the police force in selecting appropriate methods of instruction for human rights training programmes in their respective countries. It focused on people's human rights and their responsibilities towards each other, and the rights and responsibilities of police officers, victims of crime, suspected criminals and the general public. It followed a consultative meeting

on police human rights training organised by the Commonwealth Secretariat's Human Rights Unit in The Gambia last year, at which the Commonwealth was requested to develop the manual.

Jarvis Matiya, Adviser and Acting Head of the Human Rights Unit, said: "While keeping the peace and preserving security, police forces also have to respect the individual's rights to liberty and self-expression. It is important for police forces to be trained in human rights to enable them to use this knowledge in maintaining law and order in their respective countries. Often, the police are confronted with a situation where they have to balance the freedom of the individual and the maintenance of order."

The programme also provided a forum for police officers to share their experiences and ideas and develop their own solutions, taking into account internationally accepted human rights standards and practices. It was intended to add to the skills, knowledge and understanding of police officers, and where appropriate to change attitudes and behaviour linked to their daily activities.

Developed by the Human Rights Unit in collaboration with member governments, the training manual served as the principal resource document for police trainers, facilitators and educators during the workshop. It contains guidelines on how to present the material in training courses.

Commonwealth countries that adopt the training manual will receive technical assistance from the Human Rights Unit in the implementation of its guidelines. The training of trainers workshop will be held in Nigeria in July this year.

STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES IN THE COMMONWEALTH

Source: Office of the United Nations High Commissioner for Human Rights

As of 3 June 2005

The international human rights treaties of the United Nations that establish committees of experts (often referred to as 'treaty bodies') to monitor their implementation are the following:

- (1) the International Covenant on Economic, Social and Cultural Rights (CESCR), which is monitored by the Committee on Economic, Social and Cultural Rights;
- (2) the International Covenant on Civil and Political Rights (CCPR), which is monitored by the Human Rights Committee;
- (3) the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1), which is administered by the Human Rights Committee;
- (4) the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty (CCPR-OP2-DP);
- (5) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which is monitored by the Committee on the Elimination of Racial Discrimination;
- (6) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is monitored by the Committee on the Elimination of Discrimination against Women;
- (7) the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP);
- (8) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which is monitored by the Committee against Torture;
- (9) the Convention on the Rights of the Child (CRC), which is monitored by the Committee on the Rights of the Child;
- (10) the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict;
- (11) the Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography;
- (12) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC).

The following chart of States shows which are a party (indicated by the date of adherence: ratification, accession or succession) or signatory (indicated by an 's' and the date of signature) to the United Nations human rights treaties listed above. Self-governing territories that have ratified any of the treaties are also included in the chart. As at 3 June 2005, all 191 Member States of the United Nations and 1 non-Member State were a party to one or more of these treaties.

STATUS OF RATIFICATION OF HUMAN RIGHTS INSTRUMENTS BY COMMONWEALTH COUNTRIES

STATE	GESCR	CCPR	CCPROPI	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CRC	CRCOPAC	CRCOPSC	MWC
Antigua & Barbuda					24 Nov 88 ^d	31 Aug 89 ^a		18 Aug 93 ^a	04 Nov 93		30 May 02	
Australia	10 Mar 76	13 Nov 80	25 Dec 91 ^a	11 Jul 91 ^a	30 Oct 75 [*]	27 Aug 83		7 Sept 89 [*]	16 Jan 91	s:21 Oct 02	s:18 Dec 01	
The Bahamas					04 Sept 75 ^d	5 Nov 93 ^a			22 Mar 91			
Bangladesh	05 Jan 99 ^a	06 Dec 00 ^a			11 July 79 ^a	06 Dec 84 ^a	22 Dec 00	04 Nov 98 ^a	02 Sept 90	6 Oct 00	6 Oct 00	s:07 Oct 98
Barbados	03 Jan 76 ^a	23 Mar 76 ^a	23 Mar 76 ^a		08 Dec 72 ^a	3 Sept 81			08 Nov 90			
Belize	s:06 Sep 00	10 Sept 96 ^a			14 Dec 01	15 Jun 90	9 Mar 03 ^a	26 Jun 87 ^a	02 Sept 90	1 Jan 04	1 Jan 04	01 Jul 03 ^a
Botswana		08 Dec 00			22 Mar 74 ^a	12 Sept 96 ^a		07 Oct 00	13 April 95 ^a	4 Nov 04	24 Oct 03 ^a	
Brunei Darussalam									26 Jan 96 ^a			
Cameroon	27 Sept 84 ^a	27 Sept 84 ^a	27 Sept 84 ^a		24 Jul 71	22 Sept 94		26 Jun 87 ^{a*}	10 Feb 93	s:05 Oct 01	s:05 Oct 01	
Canada	19 Aug 76 ^a	19 Aug 76 ^a	19 Aug 76 ^a		15 Nov 70	09 Jan 82	18 Jan 03 ^a	24 Jul 87 [*]	12 Jan 92	7 Aug 00	s:10 Nov 01	
Cook Islands									06 July 97 ^a			
Cyprus	03 Jan 76	23 Mar 76	15 July 92	10 Sep 90 ^a	4 Jan 69 [*]	22 Aug 85 ^a	26 Jul 02	17 Aug 91 [*]	09 Mar 91		s:08 Feb 01	
Dominica	17 Sept 93 ^a	17 Sept 93 ^a				3 Sept 81			12 April 91	20 Oct 02	20 Oct 02 ^a	
Fiji Islands					10 Feb 73 ^d	27 Sept 95 ^a			12 Sept 93			
The Gambia	29 Mar 79 ^a	22 Jun 79 ^a	09 Sept 88 ^a		28 Jan 79 ^a	16 May 93		s:23 Oct 85	07 Sept 90	s:21 Dec 00	s:21 Dec 00	
Ghana	07 Dec 00	07 Dec 00	07 Dec 00		04 Jan 69	01 Feb 86	s:24 Feb 00	07 Oct 00 [*]	02 Sept 90		S:24 Sept 03	01 Jul 03
Grenada	06 Dec 91 ^a	06 Dec 91 ^a			S:17 Dec 81	29 Sep 90			05 Dec 90			
Guyana	15 May 77	15 May 77	10 Aug 93 ^a		17 Mar 77	03 Sep 81		18 Jun 88	13 Feb 91			
India	10 Jul 79 ^a	10 Jul 79 ^a			04 Jan 69	08 Aug 93		s:14 Oct 97	11 Jan 93 ^a	s:15 Nov 04	s:15 Nov 04	
Jamaica	03 Jan 76	23 Mar 76			04 Jul 71	18 Nov 84			13 June 91	09 Jun 02	s:08 Sep 00	
Kenya	03 Jan 76 ^a	23 Mar 76 ^a			13 Oct 01 ^a	08 Apr 84 ^a		23 Mar 97 ^a	02 Sep 90	28 Feb 02	s:08 Sep 00	
Kiribati						16 Apr 04 ^a			10 Jan 96 ^a		<i>Continued on page 22</i>	

STATE	GESCR	CCPR	CCPROPI	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CRC	CRCOPAC	CRCOPSC	MWC
Lesotho	09 Dec 92a	09 Dec 92a	06 Dec 00a		04 Dec 71a	21 Sep 95	24 Dec 04	12 Dec 01a	09 Apr 92	24 Oct 03	24 Oct 03	s:24 Sep 04
Malawi	22 Mar 94a	22 Mar 94a	11 Sep 96		11 Jul 96a	11 Apr 87a	s:07 Sep 00	11 Jul 97a	01 Feb 91a	s:07 Sep 00	s:07 Sep 00	
Malaysia						04 Aug 95a			19 Mar 95a			
Maldives					24 May 84a	31 Jul 93a		20 May 04a	13 Mar 91	29 Jan 05	10 Jun 02	
Malta	13 Dec 90	13 Dec 90a	13 Dec 90a	29 Mar 95a	26 Jun 71*	07 Apr 91a		13 Oct 90*	30 Oct 90	09 Jun 02	s:07 Sep 00	
Mauritius	03 Jan 76a	23 Mar 76a	23 Mar 76a		29 Jun 72a	08 Aug 84a	s:11 Nov 01	08 Jan 93a	02 Sep 90a	s:11 Nov 01	s:11 Nov 01	
Mozambique		21 Oct 93a		21 Oct 93a	18 May 83a	21 May 97a		14 Oct 99a	26 May 94	19 Nov 04a	06 Apr 03a	
Namibia	28 Feb 95a	28 Feb 95a	28 Feb 95a	28 Feb 95a	11 Dec 82a	23 Dec 92a	22 Dec 00	28 Dec 94a	30 Oct 90	16 May 02	16 May 02	
Nauru		s:12 Nov 01	s:12 Nov 01		S:12 Nov 01			s:12 Nov 01	26 Aug 94a	s:08 Sep 00	s:08 Sep 00	
New Zealand	28 Mar 79	28 Mar 79	26 Aug 89a	11 Jul 91	22 Dec 72	09 Feb 85	22 Dec 00	09 Jan 90*	06 May 93	12 Feb 02	s:07 Sep 00	
Nigeria	29 Oct 93a	29 Oct 93a			04 Jan 69a	13 Jul 85	22 Feb 04	28 Jul 01	19 Apr 91	s:08 Sep 00	s:08 Sep 00	
Niue									19 Jan 96a			
Pakistan					04 Jan 69	11 Apr 96a			12 Dec 90	s:26 Sep 01	s:26 Sep 01	
Papua New Guinea					26 Feb 82a	11 Feb 95a			31 Mar 93			
Saint Kitts & Nevis						25 May 85a			02 Sep 90			
Saint Lucia					14 Feb 90d	07 Nov 82a			16 Jul 93			
Saint Vincent & the Grenadines	09 Feb 82a	09 Feb 82a	09 Feb 82a		09 Dec 81a	03 Sep 81a		31 Aug 01a	25 Nov 93			
Samoa						25 Oct 92a			29 Dec 94			
Seychelles	05 Aug 92a	05 Aug 92a	05 Aug 92a	15 Mar 95a	06 Apr 78a	04 Jun 92a		04 Jun 92a*	07 Oct 90a	s:23 Jan 01	s:23 Jan 01	01 Jul 03a
Sierra Leone	23 Nov 96a	23 Nov 96a	23 Aug 96a		04 Jan 69	11 Dec 88	s:08 Sep 00	25 May 01	02 Sep 90	15 Jun 02	17 Oct 01	s:15 Sep 00
Singapore						04 Nov 95a			04 Nov 95a	s:07 Sep 00		
Solomon Islands	17 Mar 82d				17 Mar 82d	05 Jun 02a	06 Aug 02a		09 May 95a			

STATE	GESCR	CCPR	CCPROPI	CCPROP2	CERD	CEDAW	CEDAWOP	CAT	CRC	CRCOPAC	CRCOPSC	MWC
South Africa	s:03 Oct 94	10 Mar 99	28 Nov 02 ^a	28 Nov 02 ^a	09 Jan 99*	14 Jan 96		09 Jan 99*	16 Jul 95	s:08 Feb 02	30 Jul 03 ^a	
Sri Lanka	11 Sep 80 ^a	11 Sep 80 ^a	03 Jan 98 ^a		20 Mar 82 ^a	04 Nov 81	15 Jan 03 ^a	02 Feb 94 ^a	11 Aug 91	8 Oct 00		01 Jul 03 ^a
Swaziland	26 Jun 04 ^a	26 Jun 04 ^a			07 May 69 ^a	25 Apr 04 ^a		25 Apr 04 ^a	06 Oct 95			
Tonga					17 Mar 72 ^a				06 Dec 95 ^a			
Trinidad & Tobago	08 Mar 79 ^a	21 Mar 79 ^a			03 Nov 73	11 Feb 90			04 Jan 92			
Tuvalu						05 Nov 99 ^a			22 Oct 95 ^a			
Uganda	21 Apr 87 ^a	21 Sep 95 ^a	14 Feb 96		21 Dec 80 ^a	21 Aug 85		26 Jun 87 ^a	16 Sep 90	06 Jun 02 ^a	30 Dec 01 ^a	01 Jul 03 ^a
United Kingdom	20 Aug 76	20 Aug 76		10 Dec 99	06 Apr 69	07 May 86	17 Mar 05 ^a	07 Jan 89*	15 Jan 92	24 Jul 03	s:07 Sep 00	
United Republic of Tanzania	11 Sep 76 ^a	11 Sep 76 ^a			26 Nov 72 ^a	19 Sep 85			10 Jul 91	11 Dec 04 ^a	24 May 03 ^a	
Vanuatu						08 Oct 95 ^a			06 Aug 93			
Zambia	10 Jul 84 ^a	10 Jul 84 ^a	10 Jul 84 ^a		05 Mar 72	21 Jul 85		06 Nov 98 ^a	05 Jan 92			

Notes:

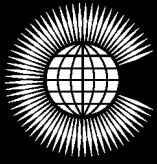
The dates listed refer to the date of ratification, unless followed by:

an 'a' which signifies accession,

'd', which signifies succession, or

's', which signifies signature only.

* indicates that the state party has recognised the competence to receive and process individual communications of the Committee on the Elimination of Racial Discrimination under Article 14 of the CERD.



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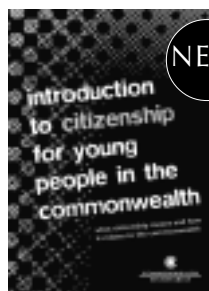
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