

COMMONWEALTH HUMAN RIGHTS INITIATIVE

MECHANISMS OF THE COMMONWEALTH TO ADDRESS VIOLATIONS OF
COMMONWEALTH VALUES – THREE PART SERIES

PAPER ONE: THE GOOD OFFICES OF THE COMMONWEALTH SECRETARY-
GENERAL

BY STUART MOLE

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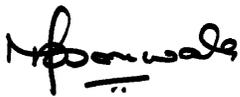
No one more so than Anna Hood and Monique Cormier whose, comprehensive research, skilled writing and professionalism allowed CHRI to produce its 2013 report to the Heads of Government Meeting at Colombo. Their yearlong efforts, reviews, editorial refinements and patient reiterations proved indispensable to bringing out the report.

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This series, which dedicates separate papers to each mechanism that can support human rights compliance in the Commonwealth, is based on the original document and supplements our 2013 report. Vrinda Choraria, Kirsty Welch, Sanyu Awori and Samane Hemmat - our Strategic Initiatives team, also deserve much appreciation for converting the original into the present format.

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Maja Daruwala,
Director, Commonwealth Human Rights Initiative

PREFACE

This paper is part of a three paper series which is dedicated to mechanisms in the Commonwealth that can support human rights compliance. The series includes an overview of – Secretary General’s Good-Offices, Commonwealth Ministerial Action Group and Human Rights Unit. The papers seek to elucidate the functioning of the mechanisms and highlight the need for a Commonwealth Commissioner for Human Rights.

At the Commonwealth Heads of Government Meeting (CHOGM) in Perth in 2011, the Eminent Persons Group (EPG) recommended the appointment of a Commissioner for Democracy, the Rule of Law and Human Rights. By the end of 2012, the Heads had approved various EPG recommendations but the recommendation relating to the creation of a Commissioner was dropped since no consensus could be reached.

However, events since the 2011 CHOGM in Perth, make it clearer than ever that the Commonwealth must consider, and this time agree, to create an independent specialist who can monitor, investigate and advise on human rights. Human rights standards in the Commonwealth have continued to be a cause for alarm, despite implementation of reforms - efforts intended to address the Commonwealth’s oft criticised lack of response to violations of its values. After well reasoned reports and impressive sounding changes were put in place, to say that hopes of real commitment to core values have been dashed would be to say too little.

CHRI’s report to the Commonwealth Heads of Government in 2013 calls for the appointment of a Commissioner for Human Rights. The call is based on the fact that Commonwealth’s existing mechanisms are inadequate to hold Members States to account over their human rights records – as illustrated in the present series of papers. A full time independent expert with functions that will compliment that of existing Commonwealth mechanisms will effectively assist Member states comply with Commonwealth Values and rebuild the confidence of its people and ensure a renewed, relevant and sustainable Commonwealth.

UPHOLDING VALUES, MEDIATING PEACE: THE GOOD OFFICES OF THE COMMONWEALTH SECRETARY-GENERAL

1. Introduction

Since the foundation of the Commonwealth Secretariat in 1965, there have been five holders of the office of Commonwealth Secretary-General. The first, Arnold Smith, was described, in his first months, as “living in the eye of the hurricane”.¹ As the Commonwealth was gripped by a succession of crises among – and beyond – its membership, Smith was increasingly involved in using his diplomatic skills and the prestige of his office to resolve conflict and seek principled solutions. So was born “the Commonwealth Secretary-General’s Good Offices”.

Nearly half a century has elapsed since Smith’s largely solo initiatives. Over the years, Good Offices work has expanded considerably. It started emerging into the light after the 1991 Commonwealth Harare Declaration² and was embodied in the Millbrook Commonwealth Action Programme,³ which also established the Commonwealth Ministerial Action Group (CMAG). CMAG, a group of then eight Commonwealth foreign ministers, was set up as a mechanism to deal with serious or persistent violations of Commonwealth core principles (as set out in the Harare Declaration). Along with the Secretary-General, CMAG is viewed as the custodian of Commonwealth values.

The relationship between CMAG and the Secretary-General’s Good Offices was further refined by the adoption of the six-step Coolum Procedure (2002), the codification of the Commonwealth’s fundamental principles contained in the Affirmation of Commonwealth Values and Principles (2009), and the enhancement of CMAG’s role, as agreed at the Perth CHOGM (2011). Most recently, the public launch of the Commonwealth Charter (March 2013) provided a visible and contemporary statement of Commonwealth values and principles to which member governments and Commonwealth organisations alike could formally subscribe.

Since 2003, the Secretary-General’s Good Offices were institutionally embedded in the Secretariat’s programmes, and a Good Offices section was established. The scope for the Secretary-General’s intervention has broadened substantially, as the Commonwealth has grown; as its programmes on democracy and human rights have developed; and as the primacy of respect for the Commonwealth’s fundamental values has overridden the now much-qualified principle of non-intervention in the domestic concerns of sovereign nations.

¹ Quoted in *Stitches in Time: The Commonwealth in World Politics*, by Arnold Smith and Clyde Sanger, Andre Deutsch, London (1983) p. 20.

² “The Commonwealth at the Summit Vol. 2” (Communiqués of Commonwealth Heads of Government Meetings, 1987-1995), Commonwealth Secretariat, London 1997 pp. 82-5.

³ *Ibid.* pp. 156-9.

What has also changed is the range of Commonwealth actors involved in conflict resolution and mediation. CMAG must work closely with the Secretary-General and, with an enhanced role, can operate in a variety of guises, through its Chair, for example, or by deploying ministerial missions. In the latter part of the Zimbabwe crisis (between 2001 and 2003), the Troika (of three Commonwealth Heads of Government) assumed a central role while CMAG – and to a lesser extent, the Secretary-General – had only peripheral involvement. The Chairperson-on-Office can also be involved – as Thabo Mbeki of South Africa, John Howard of Australia and Olusegun Obasanjo of Nigeria have all demonstrated at various times.

This paper therefore explores the growth and effectiveness of the Secretary-General's Good Offices. How successful have the Secretary-General's interventions been on delivering solutions? Has the expanding network of other mechanisms for intervention assisted or inhibited the Secretary-General's actions? Is the mystique and "hype" surrounding "Good Offices" justified by recent events, and in particular interventions in Fiji, Swaziland, the Maldives and Sri Lanka?

2. What Good Offices Work Is

Third-party intervention in situations of potential and actual conflict, using the prestige of the holder's "office" and his or her bona fides as a trusted "honest broker", is probably as old as society itself.

In terms of international organisations, it was the late and much respected Dag Hammarskjöld, the United Nations' Secretary-General, who established the use of his Good Offices as a legitimate and important part of his international role. Indeed, it was in September 1961, while attempting to mediate in the Congo crisis, that he met his death in an unexplained air crash near Ndola, in what is now northern Zambia.

Today, the Good Offices section of the Commonwealth Secretariat, working with the Secretary-General's Office, is seen as an important part of its flagship democracy and human rights programme, and it underpins a crucial element of the Commonwealth Secretary-General's reputation and moral authority.

For the purposes of this paper, the Secretary-General's Good Offices are taken to mean all third-party interventions by, or under the authority of, the Secretary-General, which are designed to address situations of actual or threatened conflict, within or between countries, by helping mediate differences through dialogue, persuasion and moral authority, with the aim of brokering a viable and sustainable solution, acceptable to all parties. This may involve deploying personnel and pursuing associated initiatives on the ground, which build confidence, minimise challenges, encourage reconciliation and make the acceptability, legitimacy and sustainability of any agreed solution more likely.

In cases where a member country is in danger of violating Commonwealth principles in a sustained and significant way, the Secretary-General's Good Offices could be perceived as mediating a potential or actual dispute between that government and those whose rights are being abused. Equally, a country in conflict with Commonwealth values could be said to be at odds with all other member nations who have pledged to uphold those fundamental principles. Mediating conflict in the pursuit of core values of human rights, democracy and the rule of law is therefore a recurrent theme and a key task for the Secretary-General and for CMAG (though their respective roles are distinct).

It is now normal practice for the Secretary-General to use special envoys, advisers and senior staff when deploying his Good Offices. There may also be occasions when the Secretary-General will ask others – CMAG's Chair or of a Commonwealth Election Observer Group, or a Head of Government – to assist in a process of mediation on which he has already embarked. In these circumstances, the involvement of such individuals can be regarded as part of the Secretary-General's Good Offices, even though their responsibilities would normally be defined otherwise. It is also the case that, in the Commonwealth, parallel interventions by CMAG, the Troika or the Chair-in-Office, say, may inhibit and constrain Good Offices actions the Secretary-General might otherwise have undertaken.

3. Historical Background

In the manner of Dag Hammarskjöld, both Arnold Smith and Shridath "Sonny" Ramphal (the first and second Commonwealth Secretaries-General, respectively) undertook Good Offices interventions.

From his appointment in 1965, and with only a fledgling Secretariat as support, Arnold Smith was flung into a series of crises. First, there was Singapore's expulsion from the Malayan Federation in August 1965; second, the outbreak of war between India and Pakistan in the same month; and, third, Rhodesia's Unilateral Declaration of Independence in November of the same year.

Much effort was expended by Arnold Smith on the Rhodesia issue. While Britain (as it was then called in Commonwealth circles) jealously guarded its role as the responsible power, tasked with bringing the rebellion to an end, Smith was acutely conscious of wider Commonwealth concerns. After the decision by the Wilson government to disavow the use of force against Ian Smith, the new Commonwealth Secretary-General was constantly engaged with the British government to prevent the negotiation of a settlement with the Rhodesian regime which would fall short of agreed Commonwealth principles. He also had to manage considerable anger and frustration by other Commonwealth countries, particularly from Africa, and prevent retaliatory action which could have shattered the association.

If no settlement proved possible in the period of Arnold Smith's tenure (1965-1975), it can be plausibly argued that his Good Offices work within the association managed to avoid two dangers which, if not contained, could have made a peaceful and just outcome in Zimbabwe much more problematic. First, he helped dissuade the British government from ill-advised policy. Second, he helped keep the Commonwealth together; encouraged it to adopt a separate role on Rhodesia (for example, in monitoring oil sanctions or training refugees) which was distinct from the policies and actions of the British government; and persuaded some of the newer Commonwealth members not to define the value of their membership in relation to one fellow member only, however important, but to recognise the wider benefits and obligations of membership of the association as a whole. In so doing, Arnold Smith can be said to have laid the ground for the Lusaka Accord of 1979, the Lancaster House talks which followed, and Zimbabwe's birth in 1980.

There were other Good Office initiatives. After 1967, Smith made a determined effort to mediate between the Nigerian federal government and the secessionist state of Biafra, and bring the bloody conflict to a peaceful resolution. His initial aim was a ceasefire and the deployment of a peace-keeping force. While a negotiated outcome was always improbable, Smith won plaudits for his courage and tenacity.

Towards the end of his tenure, Smith had to deal with rising tensions between East and West Pakistan, and a political stand-off between the respective democratic leaders of each territory. In the event, these tensions erupted into a brutal war, as Pakistani troops attempted to suppress the East. Many thousands – and, by some accounts, millions – of lives were lost before Indian intervention brought the conflict to an end with the defeat of Pakistani and irregular forces.

Smith did much to help the new state of Bangladesh achieve international recognition and membership of the Commonwealth; though he could not prevent Pakistan's abrupt departure from the association in response.

Like his predecessor, Sonny Ramphal spent much of his three terms as Commonwealth Secretary-General (1975-90) on the issue of racism in Southern Africa. This was as much because of the challenge that failure to act would pose for the Commonwealth as it was concern for the intrinsic importance of the issues.

Ramphal's mediating skills were particularly important in securing united Commonwealth support for a solution to the Rhodesia/Zimbabwe crisis, and in helping broker a deal in the Lancaster House talks that followed. Increasingly, however, he was involved in building the Commonwealth campaign against apartheid in South Africa. One of his first challenges, in the wings of the 1977 London summit, was to unite the Commonwealth around the Gleneagles Agreement which accelerated the sporting boycott of apartheid.

Most notably, the Commonwealth made a ground-breaking intervention in South Africa in 1986, through the mission of the Commonwealth Eminent Persons Group (EPG). The Group's objective was to seek a negotiated end to apartheid. Remarkably, it came closer to success than many could have imagined.⁴ However, even in failure, the Group's report (which quickly became an international bestseller) played a major part in galvanising the application of further international sanctions against South Africa. In all this, Sonny Ramphal played an important behind-the-scenes role in advising and guiding the Group and promoting its report beyond the Commonwealth.

Apartheid in South Africa was not the only issue preoccupying Ramphal in this period and he used his consummate negotiating and leadership skills to advance other emerging international issues such as sustainable development and climate change; poverty alleviation, debt and social justice; and recognition of the global challenge presented by HIV/Aids.

4. The Secretary-General's Good Offices (1990-2010)

It was the resolution of the apartheid issue with the creation of a democratic, non-racial South Africa in 1994 which, paradoxically, helped set a new democracy and human rights agenda for the Commonwealth and gave much greater visibility to the Commonwealth Secretary-General's Good Offices interventions.

The Commonwealth's campaign against apartheid aroused fierce emotions and there was no shortage of critics pointing at Commonwealth countries where the commitment to democracy and human rights was honoured more in the breach than the observance. Indeed, in 1991, at the time of the Harare CHOGM, around one-fifth of the membership comprised one-party or military regimes, and there were others whose attachment to democracy was slight. Chief Emeka Anyaoku, the incoming Secretary-General, felt these issues keenly, having been on the staff of the Secretariat almost from its inception. He resolved to make the drive for democracy and human rights – and therefore respect for the Commonwealth's fundamental political principles – a defining feature of his tenure.

The first task was to provide the Commonwealth with a new mission statement – a declaration of core values to which existing and aspirant members would need to subscribe and strive to uphold. Even as the 1991 Harare CHOGM debated these issues – and before the Harare Commonwealth Declaration⁵ was agreed and publicised – the Secretary-General had embarked on a discreet campaign of persuasion, pinpointing

⁴ For further details, see "Negotiating with Apartheid: the Mission of the Commonwealth Eminent Persons Group 1986", by Stuart Mole in *The Round Table: The Commonwealth Journal of International Affairs* Vol. 101, Issue 3 June 2012.

⁵ The Commonwealth Harare Declaration was agreed at Elephant Hills, Victoria Falls, Zimbabwe on 20 October 1991.

those countries where change had to occur. It was not just a case of persuading leaders to relinquish their grip on absolute power and face multi-party elections, though that was difficult enough. It was also necessary to help manage the most difficult of transitions – to encourage losing candidates and parties to accept the democratic verdict; to dissuade the triumphant newly-elected to wreak vengeance and humiliation on the vanquished; and to negotiate arrangements which would allow the smoothest and most dignified transition of power that was possible. In the years that followed Harare, the roll-call of Commonwealth countries embracing the democratic path was remarkable; and the Secretary-General's discreet Good Offices was a near-essential requirement to make this happen.

This was not the only demand on the Secretary-General's time. In 1990, Nelson Mandela was released from prison after 26 years and South Africa had entered the final and irreversible stages of apartheid's demise. As a consequence, the Commonwealth changed from being a relentless critic of the South African government to an organisation offering its assistance in facilitating change. From the Harare CHOGM (attended by Mandela as an honoured guest), Chief Anyaoku and his team travelled to Pretoria and Cape Town. They present themselves at the doorstep of a deeply suspicious State President, F. W. De Klerk. The next three years saw a pattern of interventions by Anyaoku intended to smoothen the path to negotiations, defuse the ever-present threat of violence and pave the way for credible and transformative elections in 1994.

Even so, it was not every country or every circumstance where intervention by the Secretary-General was likely to be welcome. That included Anyaoku's own nation, Nigeria, which had acquired a new military dictator, General Sani Abacha, in 1993. His denial of democracy and human rights abuses were accompanied by a wholesale looting of the national treasury, on a vast scale.

It was clear to Anyaoku that persuasion, encouragement and support was inadequate to ensure respect for Commonwealth values. In extreme cases, a mechanism would be necessary, together with agreed procedures, which could bring pressure to bear and to maintain the Commonwealth's credibility. Thus, in 1995, CMAG was created and procedures adopted in the Millbrook Commonwealth Action Programme on the Harare Declaration. Ironically, Anyaoku's task in securing the agreement of member governments to this radical innovation was made easier by outrage at the Nigerian government's actions. In a travesty of justice, the noted playwright, Ken Saro-Wiwa and eight other Ogoni activist were condemned to death, accused of involvement in the murder of four local chiefs. Abacha ignored appeals for clemency – including from many African and Commonwealth countries – and, as the CHOGM opened, word came that the executions were carried out in a particularly gruesome and heartless fashion.

Even as CMAG set about its work – dealing with the consequences of coups in Sierra Leone, The Gambia, Pakistan, Fiji and of course Nigeria itself – it soon became

apparent that CMAG's terms of reference were unduly restrictive. The trigger for CMAG's intervention was the violent or unconstitutional overthrow of a legitimate Commonwealth government. While this definition certainly supplied CMAG with enough work, and provided the group with a defensible "fire-wall" against those who were deeply suspicious of external intrusion, it left unchallenged many other instances of serious violations where Commonwealth action would normally have been expected. Anyaoku knew that securing member governments' agreement to a broader remit for CMAG would be difficult. At his last CHOGM as Secretary-General, in Durban, South Africa in 1999, his attempts to widen CMAG's scope for action ended in failure.

5. The Changing Context of Good Offices

The following decade saw further attempts to upgrade CMAG's work and to give greater recognition to the Secretary-General's Good Offices. This was scarcely surprising, since the new Secretary-General – the New Zealander, Don McKinnon – had for some years served as CMAG's Vice-Chair, and as a long-serving foreign minister and deputy prime minister was interested in, and committed to, the difference a Secretary-General could make through exercising his Good Offices. In 2002, the Coolum "six-step process" was adopted to clarify procedures for intervention; and, in 2009, with Kamalesh Sharma now Secretary-General, a substantial restatement of Commonwealth principles took place with the adoption of the Trinidad & Tobago Affirmation of Commonwealth Values.

By this time, CMAG was asked to recommend improved terms of reference and their efforts were vigorously encouraged by the work of the Commonwealth Eminent Persons Group, set up after 2009 to consider the reform of the association. The EPG's widely-trailed report⁶ was submitted to the 2011 Perth CHOGM and, after a disastrously stuttering start, its recommendations were largely accepted, except for its principal recommendation for the establishment of a Commonwealth Commissioner for Democracy, the Rule of Law and Human Rights. Its recommendations for a more significant role for CMAG were echoed by the recommendations of the Group itself, which were duly adopted. Under the revealing heading "Silence is not an option"⁷, the report also made recommendations for the Secretary-General to be much more vocal and active in dealing with violations of Commonwealth principles.

While the current Secretary-General, Kamalesh Sharma, has attracted much criticism for failing to act robustly in the face of challenges, it is worth adding one qualification. In two years time, the Secretariat, and the office of Secretary-General, will be 50 years old. In that time, what is expected of a Secretary-General – and what is possible – has changed dramatically. Arnold Smith and Sonny Ramphal – with their in-trays filled with the challenges of racism in Southern Africa – very rarely confronted member governments

⁶ "A Commonwealth of the People: Time for Urgent Reform". The Eminent Persons Group's report to Commonwealth Heads of Government, Perth, October 2011, Commonwealth Secretariat.

⁷ Ibid. p. 52.

over their actions (apart from Idi Amin in Uganda, and later, the 1987 coup in Fiji). Besides, there were few mechanisms or sanctions open to them. This changed during Anyaoku's time as Secretary-General; but did not extend to some of the more traditional societies with few democratic structures, such as Tonga, Swaziland or Brunei Darussalam. It was only during the time of McKinnon – and now Sharma – that the agenda has broadened to encompass these countries. In some ways, these later issues can be regarded as the most complex of all.

6. Case Studies

As an indication of the current thrust of the Secretary-General's Good Offices work, the following case studies are instructive:

a) Fiji

Fiji became independent, as a constitutional monarchy within the Commonwealth, in 1970. In 1987, it suffered two successive military coups led by Lt. Colonel Sitiveni Rabuka and on 15 October 1987, it announced that it had become a republic (while wishing to retain its Commonwealth membership). Reacting to this development, Commonwealth leaders meeting the next day in Vancouver, Canada used a procedural device (previously employed against apartheid South Africa in 1961) to remove Fiji from the association, reflecting the collective view that Fiji's racial policies were incompatible with Commonwealth membership. At that time, any change to the constitutional status of a member – and specifically the adoption of a republican constitution rather than a monarchical one – required the country concerned to reapply for membership. This change could only be sanctioned by a settled consensus among the membership. In Fiji's case (as it had been on South Africa), no such support was forthcoming. (However a minority had some sympathy with the coup leaders over the question of prior indigenous rights.)

In their statement recognising the “lapse” in Fiji's membership, Heads of Government agreed: “that the Commonwealth would, if requested, be ready to offer its Good Offices towards such a resolution (in accordance with Commonwealth principles) and, on such a basis, if the circumstances warrant, to consider the question of Fiji's membership of the Commonwealth if asked to do so.”⁸ Fiji reluctantly accepted the offer some years later after the adoption of a new Constitution which entrenched Melanesian dominance. There had in any case been heavy Indo-Fijian emigration, resulting in economic difficulties. Rabuka, the Prime Minister after the disputed 1992 elections, sought the Commonwealth's help for a new, broad-based constitution, consistent with democratic principles and acceptable to all sections of the Fijian population. Chief Anyaoku, in consultation with Commonwealth governments, appointed Sir Paul Reeves, former Governor-General of New Zealand (and also its one-time Anglican Primate) as his

⁸ Statement on Fiji, Vancouver, 16 October 1987, Commonwealth Secretariat.

Special Envoy to Fiji. Sir Paul played a major part in the process that led to a new Constitution and a democratic settlement.

This first period of turbulence ended with Fiji's readmission to the Commonwealth on 1 October 1987, as the association's 54th member, to the universal satisfaction of Commonwealth leaders.⁹ A Commonwealth-brokered Constitution was adopted and fresh elections under its provisions promised. The now legitimate Prime Minister, Sitiveni Rabuka, triumphantly returned to the Commonwealth's councils. But this was not before he attended a private audience with the Queen, Fiji's former monarch. There, in an act of atonement, he presented the Head of the Commonwealth with the special traditional gift of a tabua, the tooth of a sperm whale.

But barely three years were to pass before Fiji was plunged into a further period of instability and unconstitutionality. In 1999, elections were held under the new 1997 Constitution and Mahendra Chaudhry took office as Prime Minister, the first Indo-Fijian to do so in the country's history. In response to widespread unhappiness among ethnic Fijians – and respecting the power-sharing provisions of the new Constitution – a majority of Chaudhry's cabinet appointments were ethnic Fijians. Even so, on 19 May, a failed businessman and political unknown, George Speight, together with dissident Fijian soldiers, stormed the parliament, captured the Prime Minister and most of the government and held 35 parliamentarians hostage under armed guard for 56 days.

Within days of the coup, the new Commonwealth Secretary-General, Don McKinnon, put together an initiative in consultation with UN Secretary-General, Kofi Annan. Working in harness with the United Nation's Secretary-General's (UNSG) Special Representative, Sergio de Mello, they met Speight and interceded for the release of the hostages. Although the immediate hostage crisis eventually ended with the adoption of the Muanikau Accord, the political crisis continued with the abrogation of the 1997 Constitution, the resignation of President Ratu Sir Kamisese Mara, several army mutinies and a series of unelected administrations.

CMAG, the Commonwealth's ministerial watchdog, meeting in special session in July 2000, immediately suspended Fiji from the "councils of the Commonwealth", and agreed to despatch a four-person ministerial mission to Fiji. McKinnon persuaded the new President, Ratu Josefa Iloilo, to accept his Special Envoy, Justice Pius Langa, the former Vice-President of the Constitutional Court of South Africa. Langa made six visits to Fiji, gradually working towards the restoration of democracy.

It was only in June 2001, that final agreement was reached. The 1997 Constitution was reinstated and fresh elections held in August 2001, observed by the Commonwealth. Once again, Fiji returned to full membership, following the election of Prime Minister Laisenia Qarase. Even so, the situation remained fragile. CMAG announced that Fiji

⁹ 1997 Commonwealth Heads of Government Meeting: The Edinburgh Communiqué, p. 1, Commonwealth Secretariat.

would remain on its agenda¹⁰ and that the Commonwealth's Good Offices engagement would continue. The task was to facilitate dialogue between the political parties and promote national reconciliation with a view to encouraging the formation of a government in compliance with the rulings of the Supreme Court and in accordance with the Constitution.¹¹

In May 2006, Qarase won a narrow majority in national elections but a further military coup later that year plunged Fiji back into crisis. The instigator of the coup was the nation's top military commander, Commodore Voreqe Bainimarama, who, in 2000, had ended the Speight coup. He was intensely critical of what he saw as Qarase's leniency towards those implicated in the 2000 coup plotters, within a process of national reconciliation. With Bainimarama in power (subsequently as interim Prime Minister), CMAG again suspended Fiji from the councils of the Commonwealth.

Once again, the Commonwealth announced that it would engage with the interim government to encourage and support "a broad-based and inclusive political dialogue".¹² All this was to no avail. On 9 April 2009, Fiji's Court of Appeal declared that the 2006 coup was illegal. A day later, Fiji's President, Ratu Josefa Iloilo, announced that he had abrogated the 1997 Constitution, revoked all judicial appointments and imposed public emergency regulations, limiting freedom of movement and expression. Bainimarama was re-appointed interim Prime Minister.

In response, on 1 September, Fiji's full suspension from Commonwealth membership was announced. (The country was also suspended from the Pacific Islands Forum). In November, at the Port of Spain CHOGM, Heads of Government expressed their "deep concern" at the further deterioration in the situation in Fiji "including the abrogation of the Constitution in April 2009, ongoing restrictions on human rights including freedom of speech and assembly, and the Interim Government's decision to further delay elections until 2014".¹³

Once again, the Commonwealth called on the Fijian government to pursue "a credible, inclusive and time-bound political dialogue towards the restoration of constitutional civilian democracy without further delay, and for the protection of fundamental human rights, including the immediate rescission of the Public Emergency Regulation." They reaffirmed their "willingness to remain engaged with Fiji in support of any good faith efforts toward this end, in accordance with fundamental Commonwealth principles."¹⁴ As a consequence of full suspension, Fiji was also excluded from the 2010 Commonwealth Games by the ruling body, the Commonwealth Games Federation.

¹⁰ 2002 Commonwealth Heads of Government Meeting: Coolum Communiqué, paragraph 11.

¹¹ "Conflict Resolution: A Commonwealth Perspective" Speech by Rt Hon. Don McKinnon, Commonwealth Secretary-General, to the Royal United Services Institute, London 26 February 2004.

¹² Briefing Note – Peace and Conflict, Commonwealth Secretariat p. 3.

¹³ 2009 Commonwealth Heads of Government Meeting, Communiqué, Trinidad & Tobago 27-29 November 2009, paragraphs 8-10.

¹⁴ Ibid. paragraph 9.

Sir Paul Reeves, who had made an important contribution to the adoption of Fiji's 1997 Constitution and the return to democracy, was re-appointed by Don McKinnon as his Special Envoy to Fiji. This appointment was confirmed by the incoming Secretary-General, Kamalesh Sharma. Even so, McKinnon later ruefully reflected that: "little progress was made in the years that followed".¹⁵

As of December 2013, a military government, under Commodore Bainimarama, continues to rule Fiji by decree. While the Public Emergency Regulation (PER) was lifted in January 2012, it was soon replaced by the Public Order (Amendment) Decree, which reinstated many of the PER's provisions.¹⁶ Human rights continue to be constrained.

More encouragingly, Fiji's fourth Constitution received President, Ratu Epeli Nailatikau's assent in September 2013 and became law. This removed the race-based provisions of the earlier Constitution (on voting and representation) and abolished the unelected upper house and the role played by the hereditary Council of Chiefs. Sole legislative authority now lies with a unicameral, fifty-seat parliament, elected at large.

Critics of the new Constitution, including Amnesty International, argue that it weakens respect for human rights, enshrines in law restrictive measures imposed by military decree and provides immunity to those officials who might otherwise be held accountable for their actions.

Nevertheless, the Colombo CHOGM, held in Sri Lanka in November 2013, noted the promulgation of the new Constitution "as a step towards the restoration of democracy and the holding of national elections in 2014".¹⁷ They welcomed the Commonwealth Secretariat's provision of technical advice and support to the electoral preparations, including the offer of electoral observers. They urged the rapid appointment of an independent national election commission to oversee credible and inclusive elections. Heads concluded by requesting the Commonwealth Secretary-General and CMAG "to remain engaged with a view to restoring full adherence to Commonwealth values".¹⁸

Assessment

Did the exercise of the Commonwealth's Good Offices through the Secretary-General and CMAG have a positive impact in encouraging respect for Commonwealth principles in Fiji during the period under review?

¹⁵ *In the Ring: A Commonwealth Memoir*, Sir Donald McKinnon, Elliott & Thompson, London, 2013, p. 248.

¹⁶ Republic of Fiji, Country Brief, Department of Foreign Affairs and Trade, Australian government p. 2.

¹⁷ Commonwealth Heads of Government Meeting, Colombo 2013, Final Communiqué, Commonwealth Secretariat, London.

¹⁸ *Ibid.* p. 16, paragraph 77.

In the 25 years under study, Fiji has suffered four military coups, only limited democratic rule and prolonged periods of military dominance, political instability and economic contraction. Taking the broadest measure, the Commonwealth has not succeeded in its goal of addressing Fiji's deep-rooted political problems.

However, a more detailed assessment of the three phases of Fiji's crisis provides a better positive outcome. During the first interruption to democratic rule (1987-97), the Commonwealth, through its Secretary-General, can claim to have played a significant role in the adoption of the 1997 Constitution and the return to democracy that followed. During the second phase of crisis (May 2000 to August 2001), there was a similarly positive impact by the Commonwealth in encouraging respect for the 1997 Constitution, and fresh elections. Don McKinnon must also be given due credit for his role in the release of the hostages held by George Speight.

The impact of the Commonwealth during the third phase of unconstitutionality (2006 to the present) is more difficult to assess. The Secretary-General and CMAG pursued the goal of finding a solution acceptable to all Fijians, which would also be consistent with Commonwealth principles. However, there is little evidence that Commodore Bainimarama is particularly influenced by the Commonwealth in pursuing his "road map" to democracy. There is increased expectation that elections will be held in Fiji by September 2014, and voter registration has begun, but few would be likely to predict with any certainty that Fiji will return to democracy during that year.

b) Swaziland

Swaziland gained independence in 1968, becoming a member of the Commonwealth the same year. As the colonial power, the British government originally proposed an independence Constitution which would develop Swaziland as a constitutional monarchy, working with a popularly-elected bicameral parliament. However, in 1973, King Sobhuza II, who reigned for almost 61 years and enjoyed widespread popular support, repealed the 1968 Constitution, dissolved parliament and banned political parties and trade unions. Ruling henceforth by decree, he thus entrenched Swaziland as one of the world's last remaining absolute monarchies.

In 1986, after a period of regency following King Sobhuza's death, his son, King Mswati III, came to the throne. In November 1987, a new parliament was elected and a fresh cabinet appointed, but there was growing pressure for democratic reforms and limits to the King's power, including greater governmental accountability. A national debate on the constitutional and political future of Swaziland was instituted and the King approved a limited number of political reforms, particularly in relation to the 1993 national elections.

In 2001, with domestic pressure growing, the new Commonwealth Secretary-General met King Mswati in London to press for political change and to offer Commonwealth

assistance. McKinnon appointed a senior Secretariat staff member, Professor Ade Adefuye, as his Special Envoy to Swaziland and Adefuye began regular visits to Mbabane. As part of Swaziland's constitutional review, McKinnon nominated two senior Commonwealth lawyers – familiar with developing country constitutions and with monarchy – who could assist in the process. In 2005, the King signed the long-awaited Constitution and it was introduced after a year. Later, Don McKinnon described the four-year partnership with the Commonwealth “as an involvement that... produced a new Constitution, diminished the King's authority by half and set the country on a new and challenging journey”.¹⁹

In 2008, national elections were held under the new constitutional settlement, though the ban on political parties remained. A Commonwealth team observed the elections and concluded that: “in part, they meet acceptable international standards”. But they added: “However, even under the new Constitution Members of Parliament continue to have severely restricted powers and political parties are denied formal recognition... we cannot therefore conclude that the entire process was credible.”²⁰ In pointing to future Commonwealth assistance, the group (led by former Ugandan Deputy Prime Minister, Paul Ssemogerere) recommended that the association should: “aim to ensure that Swaziland's commitment to political pluralism is unequivocal.”²¹

Swaziland's faltering steps along the democratic path come in a lower middle income country where an estimated 69 per cent of the population lives in poverty. The country has the world's highest prevalence rates of HIV/Aids and tuberculosis, with 31 per cent of Swaziland's adult population (18-49 years) HIV positive. The economy is sluggish, with fiscal indiscipline, government corruption and extravagant spending by the royal family.

In August 2012, the current Secretary-General, Kamalesh Sharma, visited Swaziland, in the wake of continuing engagement by senior Secretariat staff with the reform process. In a lengthy statement on his departure, Sharma listed the full range of technical and other assistance provided by the Commonwealth.²² In referring to the 2013 national elections, the Secretary-General made no mention of lifting the ban on political parties or of progress by the Swazi government in addressing key recommendations of the 2008 Commonwealth Expert Team's Report.

Voters in Swaziland went to the polls in national elections in September 2013. The Commonwealth Observer Mission, led by Dr Bakili Muluzi, the former President of Malawi, concluded that: “Overall, the elections were well conducted but we strongly

¹⁹ *In the Ring: A Commonwealth Memoir*, Sir Donald McKinnon, Elliott & Thompson, London, 2013, p. 251.

²⁰ Report of the Commonwealth Expert Team to the Swaziland National Elections, 19 September 2008, Commonwealth Secretariat, London. (Letter of Transmittal).

²¹ *Ibid.* p. 26.

²² Departure Statement by Commonwealth Secretary-General Kamalesh Sharma after visiting the Kingdom of Swaziland, 2-4 August 2012, Commonwealth Secretariat.

believe that there is considerable room for improving the democratic system, in the light of Swaziland's international obligations. We therefore cannot conclude that the entire process was credible."²³ In the report's recommendations, the Mission, inter alia, calls for measures to ensure the separation of powers, and a fully inclusive review of the Constitution to harmonise those parts which are in conflict. They also call for the enactment of enabling legislation to allow for political parties. The aim is: "To ensure that Swaziland's commitment to political pluralism is unequivocal."²⁴ This phrase echoed the same sentiment expressed in the 2008 COG report. Secretary-General Sharma commented: "The Commonwealth will continue to work closely with Swaziland to strengthen further the country's democratic processes and institutions."²⁵ The same month, Sharma appointed an Adviser to provide: "Enhanced access to key stakeholders in Swaziland... to promote greater adherence to Commonwealth values and principles."²⁶ While the elections saw at least 46 former MPs (including six ministers) lose their seats, it was, in the words of one observer: "a choice of faces rather than a choice of ideas".²⁷

Assessment

While the Good Offices work of Don McKinnon and his Special Envoy, Ade Adefuye, can claim to have facilitated the adoption of the 2006 Constitution and moved Swaziland on the path of democratic reform, there is little indication of significant political change since the 2008 elections. The inadequacies of the Constitution have become increasingly apparent. Significant restrictions remain on the right to freedom of assembly and expression; civil society is constrained; and deficiencies remain in the judicial system. The country seems no nearer the goal of a constitutional monarchy, underpinned by a functioning multiparty democracy. It remains, in the words of the King, "a monarchical democracy". In this respect, it is difficult to see evidence that the Commonwealth Good Offices engagement with Swaziland is achieving a positive impact in any substantive way.

c) The Maldives

The Maldives won its independence from the United Kingdom in 1965, becoming a republic three years later. In 1978, Maumoon Abdul Gayoom was elected President, and was re-elected at six successive elections, with little effective opposition. Although credited with economic development and political stability, Gayoom was regarded an autocrat by many.

²³ Letter of Transmittal, Report of the Commonwealth Observer Mission to the Swaziland National Elections, 20 September 2013, Commonwealth Secretariat, London.

²⁴ Ibid. Recommendations: The Constitutional and Legal Framework.

²⁵ Commonwealth releases report on the 2013 elections in Swaziland, Media Release, 28 October 2013, Commonwealth Secretariat, London.

²⁶ Secretary-General's Biennial Report 2011-13, Commonwealth Secretariat, London.

²⁷ Mario Masuku, of the Open Society Initiative, Swaziland, reported by Al Jazeera, "Swaziland elects new faces for an old order", 25 September 2013.

A series of coup attempts were made in the 1980s. The most serious of these involved a landing by an 80-strong mercenary force which seized the airport and caused Gayoom to go into hiding. Secretary-General Ramphal was instrumental in securing the intervention of the Indian government. Indian paratroopers were flown to the Maldives where they quickly secured the airfield and reinstated the Maldives government on Male.

In 2004/5, increasing unrest and protests over Gayoom's rule led to pressure for democratic reform. The Commonwealth assisted with advice on the reform process and in the drafting of a new constitution. As a result of domestic and international pressure, President Gayoom legalised political parties and prepared for multiparty elections. These were held on 9 October 2008, and were observed by a COG under the chairmanship of Rt. Hon. Owen Arthur, the former Prime Minister of Barbados. After an inconclusive first round of voting, a run-off ballot was held between Gayoom and his principal challenger, Mohamed Nasheed. This resulted in victory for Nasheed and his Vice-Presidential running mate, Mohammed Waheed, with 54 per cent of the vote. In 2009, Nasheed received the Anna Lindh award for his part in bringing democracy to the Maldives.

In the parliamentary elections held in 2009, Nasheed's Maldivian Democratic Party received the most votes, with a 31 per cent share of the total but received two fewer parliamentary seats than the Dhivehi Rayyithunge Party, with a 25 per cent vote share.

Despite political and social reforms, the Maldives faced continuing economic difficulties and a recurrence of political instability. In December 2011, a campaign of social unrest was initiated, and Nasheed was accused of failing to protect Islam within the country.

On 16 January 2012, President Nasheed ordered the arrest of Judge Abdulla Mohamed, the Chief Justice of the Maldives Criminal Court, on the grounds that he was blocking the prosecution of corruption and human rights cases against allies of former President Gayoom. On 7 February, Nasheed also instructed the police and army to subdue anti-government protesters, if necessary by force. This led the police to join the protests because of what they saw as unlawful orders given to them.

On 7 February, amid public disturbances and much turmoil, Nasheed resigned. His letter of resignation, signed before the media, was followed by a TV broadcast to the Maldivian people setting out the reasons for his resignation. But almost immediately, differing accounts began to emerge of the President's departure from office. Nasheed subsequently alleged that he was forced from office at gunpoint, in a military coup led by his former colleague and new President, Mohammed Waheed. Waheed denied this and argued that the transfer of power had been voluntary and entirely in accordance with the Constitution.

The Commonwealth was already engaged as the crisis unfolded. Before Nasheed's move against the Chief Justice, Kamallesh Sharma phoned Nasheed and urged him not to arrest Mohamed; and certainly not with armed soldiers. His advice was ignored.

Even so, the crisis in the Maldives was the first real test for the Commonwealth since the 2011 Perth CHOGM. There, barely three months earlier, Commonwealth leaders had enhanced CMAG's powers and urged the Secretary-General to do more to speak out to act when Commonwealth principles appeared under assault.

As it happened, Sharma already had a small technical mission from the Commonwealth Secretariat working in the Maldives. This proved to be a useful monitoring presence at the heart of the crisis.

In line with the enhanced Perth mandate, Sharma first made an immediate public statement expressing his concern. The Secretariat team was also formally alerted to its new role. He quickly convened a "virtual" meeting of CMAG by using teleconferencing and decided to dispatch a ministerial mission to assess the situation in the Maldives.

On 23 February, a full meeting of CMAG was convened in Marlborough House, London. Armed with the ministerial mission's report, it agreed on a range of actions, including placing the Maldives' membership of CMAG in abeyance, while the country remained on CMAG's watch list. It welcomed the Secretary-General's Good Offices role, including his appointment of Sir Donald McKinnon, the former Commonwealth Secretary-General, as his Special Envoy.

McKinnon quickly took up his new assignment, visiting the Maldives some weeks later. Apart from seeking an inclusive settlement which would include early elections and an impartial investigation into the circumstances of Nasheed's fall from office, McKinnon explored increased technical assistance to the judiciary and other key democratic institutions. He promised to remain engaged with the process.

A month later, amid continuing public protests in the Maldives and reports of human rights violations by the security services, the full CMAG met again. It heard reports from Sharma and McKinnon and invited presentations from the Attorney-General of the Maldives, Aishath Azima Shakoore, and a representative of former President Nasheed, Dr Farahanaz Faizal. CMAG regretted that there were no all-party talks in an attempt to reach an agreed way forward and repeated its call for early elections, by the end of 2012. It warned that the Commission of National Inquiry into the events surrounding the transfer of power on 7 February was "not independent or impartial" and failed to gain sufficient support in Maldives.²⁸ CMAG then concentrated its efforts on improving the composition and terms of reference of the Commission to make it genuinely independent, credible and impartial. Commonwealth assistance was offered to this end.

By June, with McKinnon's active involvement, there was progress in revamping the national inquiry, with both the Maldives government and former President Nasheed

²⁸ Concluding Statement, Commonwealth Ministerial Action Group, 16 April 2012, Commonwealth Secretariat, London.

eventually assenting to the new arrangement which were designed to provide “an independent and impartial investigation”.²⁹

In August, the Commission of National Inquiry’s report was released. Its conclusion was that Nasheed had not been forced from office illegally. “The change of the President in the Republic of Maldives on February 7, 2012 was legal and constitutional,” said the report:

“The resignation of President Nasheed was voluntary and of his own free will. It was not caused by any illegal coercion or intimidation.”³⁰

Sharma welcomed the report. “I urge all concerned to respect the finding of the Commission so that, moving forward, all actions and reactions reflect the sense of responsibility and restraint necessary in the best national interest.” He said.³¹ Despite the resignation of his nominee, Ahmed Saeed, on the eve of the report’s release, Nasheed later told reporters: “I accept the report with Ahmed Saeed’s reservations.” He added that he would now press for the full implementation of all its recommendations.³²

In September 2012, following a teleconference meeting, CMAG met in New York. In an indication of how far issues had changed, the group received a “personal briefing” from the President of the Maldives, Mohamed Waheed. In recognising the conclusions of the Commission of National Inquiry, CMAG drew from Waheed a commitment to implement the report’s recommendations in full, including investigating allegations of police brutality in the aftermath of Nasheed’s resignation. With the immediate crisis seemingly over, the Commonwealth’s offer of further assistance was renewed, with a focus on the elections scheduled for 2013.³³ CMAG removed the Maldives from its formal agenda and re-instated the country’s CMAG membership.

On 7 September 2013, the Maldives went to the polls in the much-anticipated Presidential election. Former President Mohamed Nasheed topped the poll, while his successor and former colleague, Mohammed Waheed Hassan, captured only 5 per cent of the vote. Nasheed prepared for a run-off election against his main rival, Abdulla Yameen (the half-brother of former President Maumoon Abdul Gayoom, and the candidate for Gayoom’s Progressive Party). However, on 27 September, the Supreme Court (by a 4-3 vote) annulled the election, and cancelled the run-off ballot, due the next day, citing electoral irregularities.

A fresh election took place on 9 November. Once again, Nasheed (the nominee of the Maldivian Democratic Party), convincingly trounced his rivals and prepared for the run-off vote, due two days later. Once more, on the eve of the election the Supreme Court cancelled the vote, recognising the claim of Yameen, the runner-up, that he needed

²⁹ Statement by the Chair, Teleconference meeting of CMAG, 20 June 2012.

³⁰ Reuters report, 30 August 2012.

³¹ Statement by the Commonwealth Secretary-General, Kamallesh Sharma, 30 August 2012.

³² Report by 2 News, 2 September 2012.

³³ Concluding Statement, CMAG, 28 September 2012, New York.

more time to campaign. A new date, 16 November, was set for the deciding vote, although this was outside the timescale for electing the President specified by the Constitution.

By this stage, the Commonwealth was becoming concerned by the turn of events. Meeting in New York on 27 September, after the annulment of the first election, CMAG returned to debate developments in the Maldives. The group recalled the comments of the COG to the presidential elections, which described the 7 September poll as “a credible electoral process (which) met the standards for democratic elections to which Maldives has committed itself”.³⁴ As the COG, led by former Maltese Prime Minister, Dr Lawrence Gonzi, shuttled back and forth, working closely with the Secretary General’s Special Envoy, Don McKinnon, doubts grew about the integrity of the elections and of the Constitution.

As Commonwealth leaders gathered in neighbouring Sri Lanka for their biennial summit, CMAG expressed its disappointment that the constitutional deadline was breached and decided to place the Maldives back on its formal agenda, pending the run-off ballot on 16 November and the inauguration of a new president.

A further surprise was in store; but this time, of a new kind. Once the results of the elections were tallied, Nasheed had managed to add a mere 2 per cent increase to his first round of 46 percent share of the vote. Yameen, by contrast, managed to build on a disappointing 31 per cent in the first round to overtake his opponent in the second, winning 111,203 votes (51 per cent). Crucially, Nasheed immediately declared: “I graciously concede defeat.”³⁵ With Abdulla Yameen quickly inaugurated as the new President, Dr Gonzi could state that the election “brings to a successful conclusion what has been a credible but unnecessarily protracted, electoral process”.³⁶ In Colombo, on the same day, CMAG welcomed the successful conclusion of the elections and removed the Maldives from its formal agenda.

Assessment

The transition of the Maldives to a multiparty democracy and the resolution of the 2012 crisis were marked by a sustained period of engagement by the Commonwealth over six to seven years. While CMAG played only a supporting role in the latter stages, Don McKinnon, the Special Envoy, worked closely with Dr Gonzi, the COG and the Secretary-General in pursuit of peaceful and inclusive elections. After several false starts, this was eventually achieved, though Mohamed Nasheed’s statesmanship in accepting defeat was clearly a crucial factor.

³⁴ Joint Statement on the Maldives by the Commonwealth Secretary-General and the Chair of the Commonwealth Ministerial Action Group, 27 September 2013, New York, Commonwealth Secretariat.

³⁵ “Ex-President Mohamed Nasheed concedes defeat in Maldives vote”, NDTV, 17 September 2013.

³⁶ Interim Statement by Dr Lawrence Gonzi, Chairperson, COG, Maldives Presidential Elections, 16 November 2013, issued by the Commonwealth Secretariat on 17 November 2013.

Overall, the Commonwealth Secretary-General's Good Offices involvement was central to international efforts to assist the Maldives. It was also multi-faceted, involving a range of individuals and groups acting on behalf of, or in concert with, Secretary-General Sharma. New mandates agreed by Heads of Government in Perth in 2011 also helped drive the Commonwealth's involvement. Taken together, the Commonwealth's role in the Maldives was effective in resolving the country's crisis, in ways that are consistent with Commonwealth values.

d) Sri Lanka

Since the outbreak of civil war in Sri Lanka in 1983, Commonwealth Good Offices initiatives were limited. This is explained, in the early years of the conflict, by two factors. First, there was little appetite by either the Sri Lankan government or the Liberation Tigers of Tamil Eelam (LTTE) to seek the Commonwealth's involvement; and no effective mediation would have been possible without the consent of the two principal parties to the conflict. Second, a major Commonwealth member, India, took on the role of attempting to broker a solution. This led to the 1987 Indo-Sri Lankan Accord. Following the breakdown of the agreement (largely owing to lack of Tamil involvement), India subsequently deployed a substantial peacekeeping force of around 50,000 troops, ostensibly to protect the Tamil population. By 1990, no real progress was made. The LTTE continued its armed struggle and did not welcome the Indian presence, which was subsequently withdrawn.

On 21 May 1991, the former Indian Prime Minister, Rajiv Gandhi, was assassinated by a suicide bomber while visiting Sriperumbudur, in India's Tamil Nadu state. The LTTE was widely held to be responsible for the killing.

In the years after the collapse of the 1994 cease-fire, the Commonwealth Secretary-General, Chief Emeka Anyaoku, was repeatedly urged to mediate in the conflict. While publicly reminding people of the need for the consent of both parties to third party intervention, Chief Anyaoku was privately working hard to make this possible. From 1997, with the cautious assent of the Sri Lankan government, Chief Anyaoku and his staff had a series of meetings with LTTE representatives in Paris and London. Plans were laid for "talks about talks", under the Commonwealth's auspices at a neutral venue and with the Secretary-General's facilitation. For the Sri Lankan government, President Chandrika Kumaratunga gave her support to the initiative and the Secretary-General selected two Commonwealth envoys to carry his proposals to LTTE leader, Velupillai Prabhakaran. The initiative foundered when the LTTE were unable to provide written assurances of safe conduct for the envoys, as requested by the International Committee of the Red Cross. Momentum then moved to the Norwegian peace initiative, resulting in the ceasefire agreement of 2001.

No further attempt at Commonwealth mediation, through the Secretary-General's Good Offices, were made till after the end of the civil war in May 2009.

In that same year, at their summit meeting in Trinidad & Tobago, Commonwealth leaders accepted an offer from Sri Lanka to host the 2013 CHOGM. This decision was wholeheartedly reaffirmed at the 2011 Perth CHOGM, against the sole opposition of Canada.

The original agreement to award the CHOGM to Sri Lanka, notwithstanding the post-conflict issues it faced, was widely criticised. But the emphatic reaffirmation of their decision by Commonwealth Heads may have been primarily motivated by the desire of the Commonwealth “family” not to publicly disown and humiliate a fellow member by reversing its previous stance. But it masked a more widespread underlying concern about post-conflict issues of accountability and reconciliation, and developments in Sri Lanka since 2009 in regard to human rights, democracy and the rule of law. This was manifest by votes in the UN Human Rights Council (UNHRC) critical of Sri Lanka’s progress in addressing these issues. India is among the most notable Commonwealth member supporting UNHRC resolutions.

Even so, it was not till September 2012, during his visit to Sri Lanka for the annual conference of the Commonwealth Parliamentary Association, that the Secretary-General began to exercise his Good Offices. His departure statement of 13 September gave some clues as to where the focus might be, including “supporting the implementation of the Lessons Learned and Reconciliation Commission (LLRC) report, in ongoing consultation with the Government of Sri Lanka”, strengthening the Human Rights Commission, and the Office of the Elections Commissioner; and assistance in rejuvenating local government.

Two months later, the first substantive test of the Secretary-General’s mission came with moves by the Parliament of Sri Lanka to impeach the Chief Justice, Dr Shirani Bandaranayake. Expressing concern, Kamallesh Sharma said, “The Commonwealth’s principal consideration is that the provisions of Sri Lanka’s Constitution are upheld with regards to the removal of judges, respecting the independence of the judiciary.” On 12 December, the Secretary-General again released a statement on the impeachment process, emphasising the importance of the separation of powers and the independence of the judiciary. With the passing of the impeachment motion against the Chief Justice, on 11 January Mr Sharma once more spoke out, saying: “The Commonwealth collectively is profoundly concerned about this situation.” He added that he was in touch with the Sri Lankan government “at the highest levels” to offer assistance to find a way forward. Two days later, the Sri Lanka President, Mahinda Rajapakse, ratified the impeachment motion and sacked Dr Bandaranayake.

Expressing his “deep disappointment” at an act which “would be seen as running counter to the independence of the judiciary, which is a core Commonwealth value”, Sharma pledged to remain engaged with the Sri Lankan government, and added: “I will also consider further Commonwealth initiatives and responses as are envisaged in

situations that could be perceived to constitute violations of core Commonwealth values and principles.”³⁷

Amid mounting international criticism and calls for Sri Lanka’s referral to CMAG, the Secretary-General visited Colombo on 11 February. This came days after the Sri Lankan government had denied visas for the former Chief Justice of India, J. S. Verma, and Baroness Usha Prashar, a prominent UK crossbencher and former President of the Royal Commonwealth Society. They had planned to visit Sri Lanka as part of a fact-finding mission on the dismissal of the country’s Chief Justice, under the auspices of the International Bar Association.

In a departure statement on 13 February, Kamalesh Sharma spoke of the Commonwealth’s commitment to support Sri Lanka to strengthen its culture of democracy and human rights, and other key Commonwealth values. He said that in its partnership with Sri Lanka in various priority areas, there was “marked progress” in the six months since September 2012. Further collaboration was agreed to increase the independence of the Electoral Commission and the Human Rights Commission; assist the process of reconciliation by hosting an expert roundtable on post-conflict reconciliation in London in May 2013; offer expert advice and assistance over the independence of the judiciary and of the media; and agree, by mid-2013, “where the Commonwealth can support Sri Lanka’s implementation of the LLRC Report’s recommendations.”³⁸

On 21 March, the UN Human Rights Council voted to adopt a resolution critical of Sri Lanka’s Human Rights record. Sponsored by the United States, 25 countries voted in favour of the resolution (including India and Nigeria) and 13 against (including Pakistan) with 8 abstentions. The US Ambassador, Eileen Donahoe, said after the vote: “Sri Lanka must take meaningful action on reconciliation and accountability and address the growing concerns over the deteriorating human rights situation.”

Following the vote, and at the urging of the Canadian government, CMAG was convened for a teleconference discussion on Sri Lanka. Looking ahead to CMAG’s April meeting, Canada argued that the situation in Sri Lanka (and particularly the dismissal of the Chief Justice) merits Sri Lanka being formally placed on CMAG’s agenda. This was resisted on the grounds that on his February visit, the Secretary-General’s Good Offices were offered to the Sri Lankan government which had accepted his intervention. Under CMAG’s new operating principles, if such an offer is accepted within the two-month timeframe stipulated, no referral to CMAG is possible till the Secretary-General’s Good

³⁷ Statement by the Commonwealth Secretary-General, Kamalesh Sharma, 14 January 2013, Commonwealth Secretariat.

³⁸ Statement by Commonwealth Secretary-General, Kamalesh Sharma, 13 February 2013, Commonwealth Secretariat.

Offices are exhausted. At the same time it was understood that there would be a “below the line” discussion at the April meeting, where Sharma would report on his actions.

On 17 April, the Commonwealth Lawyers Association (CLA), the Commonwealth Legal Education Association (CLEA), and the Commonwealth Magistrates and Judges Association (CMJA), passed a resolution in the wings of the 18th Commonwealth Law Conference in Cape Town, South Africa. It called on CMAG to place Sri Lanka on its agenda for its 26 April meeting and suspend Sri Lanka from the councils of the Commonwealth for serious and persistent violations of the Commonwealth’s fundamental values, particularly, actions which were undermining the rule of law and the independence of the judiciary. The motion also exhorted the Commonwealth to reconsider holding the next CHOGM in Sri Lanka “as to do so will tarnish the reputation of the Commonwealth... (and)... call into grave question the value, credibility and future” of the association.

On 26 April, CMAG met in Marlborough House, London. At a press conference after the meeting, the CMAG Chair, Dr Dipu Moni, the Foreign Minister of Bangladesh, and Kamallesh Sharma confirmed that there was a discussion on Sri Lanka at the meeting but argued that CMAG had no authority to question the venue of the forthcoming CHOGM, which was a matter solely for Heads of Government. Facing a barrage of questions from journalists on Sri Lanka, the Secretary-General told the press conference: “All member states subscribe to the same principles and values equally. Interacting with them (Sri Lanka) on many fronts as I have been doing at all levels, I am fully persuaded that they are sincere in subscribing to and following those values (of democracy and protection for human rights).” To some incredulity, Sharma insisted that his Good Offices interventions were working. “I am satisfied that the progress which I am making is encouraging and will continue.”

Later, John Baird, Canada’s Foreign Minister, said that Canada was “appalled” that Sri Lanka would be hosting the summit and that CMAG’s stance was “not a good day for the Commonwealth”. He added that there was no sign that the Commonwealth’s engagement with Sri Lanka made any difference so far and, in key indicators “in fact, they’ve gotten worse”, he said.

On 7 May, Buckingham Palace announced that the Queen would not be attending the Colombo CHOGM. She would instead be represented at the summit by the Prince of Wales. This was because the Palace was reviewing the amount of long-haul travel undertaken by the Queen. It was not related to the political situation, the Palace insisted. Since becoming Head of the Commonwealth in 1952, the Queen has been present at every summit except the Singapore CHOGM of 1971.

By June 2013, the Commonwealth and Kamallesh Sharma were under renewed assault. In a highly critical article in the UK’s Financial Times, Gideon Rachman wrote: “The sins of the Sri Lankan government are not merely being ignored. They are about to be

rewarded... (the Commonwealth) should feel sick about accepting the hospitality of a Sri Lankan government with a grim record of human rights abuses". Turning on Kamallesh Sharma, he charged: "The organisation's Secretary-General has singularly failed to provide any moral leadership". His conclusion was damning: "The sad truth is that the Commonwealth Heads of Government will, in all likelihood, troop into Sri Lanka later this year. And the damage to the Commonwealth will not end there. Sri Lanka would then assume the chairmanship of the organisation for the next two years". He added, "That should just about finish off any claim the Commonwealth has to moral authority in world affairs."³⁹

Sharma responded to the article three days later. Citing Sri Lanka's LLRC Report, the Secretary-General wrote in a letter to the paper: "This is a home-grown road map for achieving a multi-ethnic nation at peace with itself. The question for the international community is whether to criticise lack of progress from afar in implementing that report or to offer and to make a practical difference." The Commonwealth opted for the latter, he continued and the Sri Lankan government "even now" was identifying areas where the Commonwealth could help. He added: "Our Commonwealth soft power and behind the scenes contributions can often be at risk of negative judgement in the short term, but our success is invariably measured positively in the longer term in the form of real progress," adding "To walk away and not to stay the course would be to the Commonwealth's lasting discredit."⁴⁰

On 7 July, Edward Mortimer, the former journalist and UN official who now chairs the Sri Lanka Campaign for Peace and Justice, responded with his own letter. "Mr Sharma thinks he is exercising 'soft power' through a policy of constructive engagement. The truth is that (Sri Lanka) will make meaningful concessions on human rights only if there are clear benchmarks and sanctions – the exact opposite of what the Commonwealth is doing."⁴¹

Meanwhile, the Financial Times article, and Sharma's response, triggered an intervention from Mangala Samaraweera, an opposition MP and former Foreign Minister of Sri Lanka. In a detailed letter to the Secretary-General, he welcomed the Commonwealth's desire to make a practical difference but argued that: "the day-to-day reality is that Sri Lanka continues to violate with impunity all 16 values of the Commonwealth Charter in varying degrees". Citing the failure of the Human Rights Commission of Sri Lanka (HRCSL) to take meaningful action to deal with human rights abuses, Samaraweera pinpointed the Commonwealth Secretariat's workshop then being conducted with the HRCSL in Colombo. This was "a useless exercise in mutual deception", said the former Minister. He then set out a number of immediate steps the

³⁹ "A Sri Lanka summit discredits the Commonwealth", by Gideon Rachman, *Financial Times*, London, 25 June 2013.

⁴⁰ "Wait before you judge Sri Lanka", Letter by Kamallesh Sharma, *Financial Times*, London, 28 June 2013.

⁴¹ Letter by Edward Mortimer, *Financial Times*, London 7 July 2013.

Government of Sri Lanka could take, if it was sincere and genuine in its commitment to the Commonwealth Charter. These included restoring the independence of the elections and police commissions before holding of elections for the Northern Provincial Council; appointing a civilian governor of the North; and confining the army there to barracks. Holding CHOGM without any such proven commitment to the values and principles of democracy “would not only call into grave question the value, credibility and future of the Commonwealth”, said Samaraweera, “it will also be the granting of the Commonwealth seal of approval to an emerging dictatorship in Asia.”⁴²

Further pressure on the Commonwealth came in August with the week-long, fact-finding visit to Sri Lanka of Navi Pillay, the UN Commissioner for Human Rights. Speaking at a press conference at the conclusion of her visit, she paid her respects to all Sri Lankans who had suffered loss because of the conflict, described the LTTE as a “murderous organisation” and declared: “Although the fighting is over, the suffering is not.”⁴³ She praised the government’s reconstruction and resettlement achievements in the war-affected areas but went on to raise a range of human rights concerns, including the harassment and intimidation of journalists and human rights defenders. She concluded: “I am deeply concerned that Sri Lanka... is showing signs of heading in an increasingly authoritarian direction.”⁴⁴

The following month, in Geneva, Navi Pillay’s interim report was delivered to the Human Rights Council (HRC). Declaring that she detected no new or comprehensive effort to independently or credibly investigate allegations of concern to the Human Rights Council, she put the Sri Lankan government on notice. If, by the time of the HRC’s March 2014 sessions, there was no credible national investigative process with tangible results into allegations of human rights abuses, she believed that the international community would have a duty to establish its own inquiry mechanisms.

Pillay’s report was strongly repudiated by the Sri Lankan government. Earlier, Professor G. L. Peiris, the External Affairs Minister criticised the “lack of fairness and balance” in her report which was not the product of an open mind.⁴⁵

And what of the Commonwealth? No public record is yet available of what Secretary-General Sharma said to Commonwealth Foreign Ministers, at their meeting in New York on 27 September, in reporting on his Good Offices work in Sri Lanka. But he would undoubtedly have remarked on continuing steps to upgrade Sri Lanka’s Human Rights Commission and the decision to establish an inquiry into torture and mistreatment by state forces, supported by a Commonwealth advisory dimension. The election of the

⁴² “Mangala writes to Commonwealth Secretary”, *Sri Lanka Mirror*, 8 July 2013.

⁴³ Text of departure statement of Navi Pillay, UN Commissioner for Human Rights, printed in the *Colombo Telegraph*, August 2013.

⁴⁴ *Ibid.* p. 5.

⁴⁵ Report on GOSL Ministry of Defence website, 3 September 2013 “Navi Pillay’s Sri Lanka report not the product of an open mind”.

Northern Provincial Council, witnessed by a Commonwealth Observer team, would have also been a cause for satisfaction. The first provincial elections in the area for 27 years, the vote resulted in a resounding victory for the Tamil National Alliance (TNA). On a 67 per cent turnout, the TNA captured 30 of the 38 seats, with the much-respected former judge of the Supreme Court, Hon. Justice C. V. Vigneswaran, being elected Chief Minister. Given the current constitutional provisions, it remains to be seen how far this elected Tamil leadership can establish democratic control over reconstruction and development across the Northern Province. But it is undoubtedly a positive step forward.

These achievements notwithstanding, the Commonwealth experienced a steady barrage of criticism in the run-up to the Sri Lanka CHOGM. Kamallesh Sharma himself was excoriated by one of his severest critics, the UK's Channel 4, in two disastrous TV interviews in the first week of November. Faced with horrifying images of slaughter and summary execution, Sharma attempted to evade the issue of accountability by suggesting that this was the responsibility of the United Nations.

Despite the host government's insistence that the Colombo CHOGM was a summit in Sri Lanka and not on Sri Lanka, media conferences and coverage were dominated by issues of human rights, democracy and accountability. In fact, President Rajapaksa had early on appreciated that the issue could not be avoided. In Galle, at the opening of the Commonwealth Peoples Forum, he declared: "Sri Lanka is emerging from an era of nearly three decades that saw destruction, bloodshed, mayhem, brutality, economic reversals and human suffering, all due to separatist terrorism (my emphasis). This sad period of our history was destructive not only in a materialistic way, but also in a way that affected the very soul of our people and our nation." He continued: "We are finding our way again, though there are many obstacles."⁴⁶ And he assured his audience that on core issues, including press freedom and democracy, Sri Lanka would do better.

In contrast, the Secretary-General and Commonwealth leaders attempted to maintain a studious silence on these issues. There were several off-stage discussions on peace and reconciliation, and sometimes whispered conversations on human rights. The UK Prime Minister, David Cameron, chose to absent himself from much of the summit and instead journeyed to the North where he issued a media-based public ultimatum to Rajapaksa, urging him to begin a credible process of investigation into alleged war crimes or risk facing international intervention on the issue after March 2014.

But there was no attempt by the Commonwealth to build on the logic of the Secretary-General's Good Offices work by using the presence of Heads of Government, such as Jacob Zuma, of South Africa, Najib Razak of Malaysia or Tony Abbott of Australia (and indeed UK's David Cameron), to engage with Sri Lanka at the highest political level. In this way the Commonwealth could have made a genuine and distinctive contribution to the process of healing and justice in Sri Lanka. Perhaps an independent and

⁴⁶ Speech by President Rajapaksa at the Opening Ceremony of the Commonwealth Peoples Forum, Galle, Sunday 11 November 2013.

international group of Commonwealth experts could have been established, working with the Sri Lankans, to authenticate visual and other material submitted to it relating to the atrocities alleged during the whole of the 26-year conflict (and not just the final months). Perhaps a High-Level Advisory group of Heads (including South Africa) could have been formed to advise President Rajapaksa on the process of reconciliation.

There was an argument for meeting in Sri Lanka so soon after the end of the conflict (albeit a rather poor one); but the case was not effectively made, and a chance was missed. Instead, the Commonwealth failed to use the leverage it possessed. It seemingly asked for nothing in return for the international support given to Sri Lanka by the 53-nation association. It extracted no price and created no safeguards for the fact that hosting the CHOGM had automatically propelled President Rajapaksa into the Commonwealth's Chairmanship for the next two years. Instead, it guaranteed that the Commonwealth's credibility in upholding its values would continue to be under attack and its leadership engulfed by controversy

Assessment

What assessment can be made of the effectiveness of Sharma's Good Offices in Sri Lanka to date?

What Sharma has described as "the Commonwealth's Partnership with Sri Lanka" was first outlined in the Secretary-General's statement of 13 September 2012. Since then, there was a further statement by Kamallesh Sharma on 13 February 2013 and a sixth month progress report, together with statements, letters and press reports, particularly in the run-up to the Colombo CHOGM. Taken together, this material provides a reasonable indication of where the Secretary-General's Good Offices were focussed and what other projects and programmes the Commonwealth Secretariat and other partners are pursuing in support for his interventions.

A distinction needs to be made between capacity-building programmes, across a range of areas, such as the training of human rights officials; public service reform; the development of youth entrepreneurship; and the role of sport in post-conflict reconciliation, for example, and the discreet, non-public engagement of the Secretary-General or his representative, at the highest level, designed to effect significant policy changes towards respect for Commonwealth principles. The former may assist the Secretary-General in reaching his objectives; but will be largely irrelevant if the latter is not successful.

What is evident are a number of Commonwealth capacity-building and training programmes. Less so, is evidence of high-level policy interventions. As regards the dismissal of the Chief Justice, the Secretariat is currently compiling a compendium of good practice in the Commonwealth so that there is no repeat of procedures which were widely criticised in Sri Lanka and internationally. This mild response will not reassure many. Nor will they understand Sharma's refusal to provide CMAG with the legal

opinions of two eminent Commonwealth jurists on the legality of the dismissal of the Chief Justice. Although the information was requested by the Canadian High Commissioner in London, Gordon Campbell, for circulation to CMAG members, the Secretary-General reportedly declined to release the opinions on the grounds that they were “privileged” communications within the ambit of his Good Offices work.⁴⁷

Till mid-2013, there was a marked absence of discernible activity on the central issue of the implementation of key recommendations of the LLRC Report. However, as described above, by September 2013 there was some evidence of progress on such matters as disappearances, and a proper investigation of the torture of civilians by state forces. Work with the Electoral Commission, and through the efforts of the Commonwealth Local Government Forum, helped prepare the way for credible elections for the Northern Provincial Council, monitored by a Commonwealth Observer Mission. Since the CHOGM, the Government of Sri Lanka has announced a national census to establish the loss of life that occurred during the 26 years of the conflict. This was welcomed by Secretary-General Sharma, who said: “Healing and enduring reconciliation will only come about when the truth is known about what happened in the past.”⁴⁸

But how far have any of these welcome developments materialised, wholly or in part, as a result of Commonwealth pressure, through its Secretary-General? The Secretariat explains that the need for confidentiality and discretion, as an essential condition of trust between the parties, makes any publicly-available measure of the effectiveness of Good Offices impossible. Only if the beneficiaries are prepared openly to give credit to the Commonwealth, can recognition be given of the value of such interventions. But officials insist that Commonwealth governments appreciate the work that is done “below the radar”. Lack of public understanding of the role, they argue, is therefore the price that has to be paid.

There is also the question of time frames. From Millbrook and Coolum, to the new guidelines for CMAG agreed in Perth, there have been repeated attempts to stipulate what might be an acceptable time frame, say, for the return of a member country into compliance with Commonwealth principles. In practice, some of these deadlines have been honoured more in the breach than the observance.

But there has been no attempt to quantify what might be an acceptable timescale for a Good Offices intervention, or how to determine if all realistic attempts at mediation have been exhausted.

Above all, the Colombo CHOGM provided an opportunity for the Secretary-General’s Good Offices engagement to translate into political intervention by the Commonwealth at

⁴⁷ *Colombo Telegraph*: “Secretary-General hides two key legal findings on CJ impeachment from CMAG”, 15 August 2013.

⁴⁸ Statement by the Secretary-General in Sri Lanka’s counting of the dead, 2 December 2013, Commonwealth Secretariat, London.

the highest level. This might have led to a distinctively Commonwealth dimension to help address Sri Lanka's post-conflict issues. It could also have made more visible the underpinnings of the Secretary-General's Good Offices initiatives, and increased their authenticity.

But this opportunity was missed, dealing a grievous blow to the entire credibility of the Commonwealth's approach, and making more damaging criticism and controversy in the coming months and years all the more likely.

7. Conclusions

All five occupants of the position of Commonwealth Secretary-General used their authority to mediate in positions of actual or threatened conflict. Invariably, and in contrast to the work of the UNSG, most interventions involved problems within member states, rather than between them.

Since 2003, and more recently with the introduction of "results-based management" (RBM) within the Commonwealth Secretariat's Strategic Plan, there has been increasing programmatic recognition of Good Offices work and the resources devoted to it. Regular reporting mechanisms – by the Secretary-General or his Special Envoys – are established, where relevant, involving CMAG and the annual meeting of Commonwealth foreign ministers in New York (in the wings of the opening of the UN General Assembly). That said, there has been a paradoxical decline in public information available about the Secretary-General's Good Offices work. The Secretariat has not yet developed any performance indicators, under RBM, which could help measure the effectiveness of the programme.

From 1991, there were regular reports of the Secretary-General's Good Offices work in his biennial report to Heads of Government. This practice was seemingly discontinued by Kamallesh Sharma and no biennial report appeared at all in 2011. However, a report by the Secretary-General was prepared in 2013, submitted to the Colombo CHOGM and a version was posted on the Secretariat's website. On Good Offices, the report explains:

The Commonwealth Secretariat delivers the Secretary-General's Good Offices work by promoting political dialogue, fostering greater democratic space for political and civil actors, and strengthening democratic institutions. An important aspect of this approach is discreet engagements with member governments, usually carried out by the Secretary-General and his staff, but also at times by his Special Envoys, who work towards reinforcing Commonwealth values. The Commonwealth has used its comparative advantage as a trusted partner to carry out such dialogue and engagement, to introduce long-term conflict prevention methodologies such as strengthening local

dispute resolution mechanisms, and mediation and negotiation training for election bodies and parliamentarians.⁴⁹

The report further declares: “From 2011 to 2013, the Commonwealth Secretariat engaged in institutional strengthening work in Cameroon, The Gambia, Kenya, and Lesotho to augment political dialogue between opposing parties.”⁵⁰ Prominent mention is made of Good Offices work in the Maldives and Swaziland but references to Sri Lanka are limited and submerged in later sections on an individual project basis. There appears to be no mention of Fiji at all.

Taken together, these elements of the report provide a far from clear or adequate public record of the Secretary-General’s Good Offices work.

The report also refers to CMAG’s work, saying: “ At the 2011 Commonwealth Heads of Government Meeting, CMAG received an enhanced mandate from leaders to engage proactively with member countries considered to be in danger of serious or persistent violation of Commonwealth values. Heads of Government outlined ‘triggers’ that could invoke CMAG scrutiny. These included the abrogation of constitutions, unjustified postponement of elections, systematic violation of human rights, undermining of the rule of law and independence of the judiciary, closing political space, and suppression of media freedoms. There is now a more closely defined link between the Secretary-General’s Good Offices role and the scrutiny of CMAG.”⁵¹

And yet, in August 2013, the Colombo Gazette published facsimiles of an exchange of correspondence between the Canadian High Commissioner in London, Gordon Campbell and Kamallesh Sharma. This concerned the Sri Lankan government’s controversial removal of the Chief Justice. Campbell wrote to Sharma: “I understand that you have rightly sought and obtained independent legal opinions from two eminent Commonwealth jurists, the Honourable Pius Nkonzo Langa of South Africa and Sir Jeffrey Jowell QC of the UK, as to the constitutionality of the dismissal of the Chief Justice.” He then asked for the documents to be made available to CMAG.⁵²

Under the new criteria agreed at the Perth CHOGM for enhancing CMAG’s role, one of the circumstances specified which might cause the Secretary-General to seek CMAG’s involvement would be: “The abrogation of the rule of law or undermining of the independence of the judiciary.”⁵³ The disclosure of these documents would thus seem an entirely proper request from a CMAG member and Commonwealth government so that CMAG, as the custodian of Commonwealth values, might be able to reflect on the

⁴⁹ Secretary-General’s Biennial Report: 2011-2013, p. 3 Commonwealth Secretariat, London (2013).

⁵⁰ Ibid. p. 5.

⁵¹ Ibid. p.7

⁵² Reproduced in the *Colombo Telegraph*, 15 August 2013.

⁵³ “Strengthening the Role of the Commonwealth Ministerial Action Group (CMAG)” Report by CMAG as adopted by the Commonwealth Heads of Government Meeting, 2011.

issue in full possession of all the relevant facts. It would also be consistent with CMAG's new responsibilities that: "The link between the Good Offices of the Secretary-General and the work of CMAG could be strengthened so as to provide greater complementarity between these roles. In this context, the authority of CMAG ought to be reinforced and further recognised."⁵⁴ Sharma himself has written: "CMAG's review has also demonstrated that Commonwealth governments have listened carefully to the voices of those Commonwealth citizens who have called for a more effective and engaged CMAG."⁵⁵

Sharma's decision to decline the request to make the two legal opinions available to CMAG was all the more perplexing because he cited in his defence: "a longstanding practice of successive Secretaries-General that communications in support of Good Offices engagement are privileged." He continued: "Indeed, it would be injurious to the discretion, trust and ultimately the effectiveness of the Secretary-General's Good Offices if the sources and nature of privileged communications were to be compromised."⁵⁶

Of course, it has always been the case that there will be material and communications, whether involving Good Offices interventions or not, which a Secretary-General will wish to keep confidential. It is far less obvious that Sharma's predecessors have established "a longstanding practice" that all communications relating to their Good Offices work would be automatically regarded as "privileged". Even less plausible is the notion that, given CMAG's enhanced role in upholding Commonwealth values, a Secretary-General would not wish to make available to the group something as pertinent as a commissioned legal opinion from eminent Commonwealth jurists. It is also difficult to believe that the jurists concerned would consider their positions compromised had their opinions been discreetly shared with a group of Commonwealth governments.

The difficulties revealed by these exchanges between the Secretary-General and a CMAG member government raise a worrying possibility. It has widely been assumed that a proliferation of the mechanisms and the procedures for sustaining Commonwealth values would lead to greater effectiveness in dealing with potential violations of those principles. In many ways, the Commonwealth's handling of the Maldives crisis since January 2012 has provided evidence of that new relationship. But it may also be the case that, in other circumstances, a claim to act by one party may simply have the effect of impeding the actions of others whose interventions might otherwise have been justified.

In the case of Sri Lanka, it appeared that the Secretary-General's Good Offices engagement with Sri Lanka began in September 2012 (in itself a later starting point than many would have expected). A sixth month progress report on the Commonwealth's "partnership" with Sri Lanka was issued in March 2013 and it was known that Sharma

⁵⁴ Ibid. p. 6.

⁵⁵ Ibid. (Introduction to the report), p. v.

⁵⁶ Quoted in the *Colombo Telegraph*, 15 August 2013.

was in private communications with the Sri Lankan government over the impeachment of the Chief Justice at the highest level throughout the period of the crisis. Nevertheless, in arguing that his Good Office intervention with Sri Lanka was only offered and accepted in February 2013, CMAG was effectively excluded from pursuing the issue (and particularly the dismissal of the Chief Justice). Under CMAG's new operating principles, in such circumstances CMAG cannot become involved till the Secretary-General's Good Offices are exhausted.

When is such a point reached? The short answer might be: "when the Secretary-General says that they have been exhausted". But this is hardly good enough, though the Colombo CHOGM provided no indication of whether or not Commonwealth governments – and CMAG – were content with an open-ended approach but expected something more time-bound and contained.

The case studies above are instructive. In the Maldives, the Commonwealth in recent years supported two phases of Good Office engagement. The first period covered the process of reform arising out of the 2004/5 disturbances and the adoption of a multiparty democracy at the 2008 elections. The second phase spanned the crisis surrounding the transfer of presidential power in January 2012, the subsequent report of the Commission of National Inquiry, and the 2013 national elections which eventually resulted in the election of President Abdulla Yameen. Each of these periods can be considered as self-contained phases of engagement. In some respects, the objectives governing the Commonwealth's Good Offices intervention might be considered as intermediate. Other phases might follow. But the time frames are reasonable and the interventions measurable.

This is far less obvious in Fiji and Swaziland. In respect of the former, no real progress in advancing Commonwealth values has been observed since Fiji's full suspension from the Commonwealth in September 2009. In Swaziland, since the 2008 national elections (and the call by the Commonwealth Expert Group for progress towards realising a functioning multiparty democracy) little was achieved in that regard. The 2013 elections were held under conditions where political parties remained banned and freedom of assembly and speech, as well as normal political activity, was significantly curtailed. In both cases, in the periods in question, the Secretary-General's Good Offices appear to be both exhausted and to have failed in achieving their stated aims.

In the case of Sri Lanka, there is now no clear idea of future time frame or of expected benchmarks in resolving what the Leader of the Opposition, Hon. Ranil Wickremesinghe, has described as: "outstanding issues relating to Commonwealth values, UNHRC resolutions regarding Sri Lanka and Sri Lanka's own Lessons Learnt and Reconciliation Commission's recommendations".⁵⁷

⁵⁷ *Colombo Telegraph*, "UNP is disturbed by the Commonwealth Secretary-Generals statement", 31 May 2013.

One, possibly unintended, consequence of recognising the Good Offices function as part of the Secretariat's programmes, within the Strategic Plan, has been to blur the distinction between the personal and precisely targeted interventions of the Secretary-General (or his nominees) and what are sometimes described as "Commonwealth Good Offices". While the latter may provide valuable ancillary support to the Secretary-General's work in capacity-building, democratic development, strengthening of the judiciary, or training of human rights commission officials, for example, they do not, in themselves, amount to the kind of high-level, discreet policy interventions which should characterise the Secretary-General's Good Offices. To regard them in that way would risk lapsing into the much longer time scales involved in capacity-building and would remove pressure from the Secretary-General to use his moral authority to engage, in a timely matter, on the central political issues.

By way of illustration, the range of Commonwealth technical assistance to Swaziland in a number of key areas of governance may be considered as impressive and judged successful in terms of implementation. At the same time, on the central issue of a constitutional monarchy within a functioning multiparty system, many would judge that progress since 2006 had been non-existent, within a worsening political context.

As previously mentioned, given the discreet and non-public ways in which the Secretary-General's Good Offices must be deployed, and the importance of trust and confidentiality, measuring achievement is difficult. Invariably, other partners or governments may be involved and quantifying impact complicated and counterproductive. Some governments, or prominent individuals, may, after the event, openly testify to the value of a Commonwealth Good Office intervention; but many more may have reason not to praise external parties and thereby expose their potential vulnerabilities.

Some argue that anonymity is the burden that the Secretary-General's Good Offices must carry – the price the Secretary-General pays for privileged access and the ability to reach those parts which others cannot. This has never been wholly true and is increasingly anachronistic today.

In 1986, the mission to apartheid South Africa of the Eminent Persons Group- arguably, an extension of the Secretary-General's Good Offices, operated in discreet and non-public ways which were scrupulously observed. But as soon as its work was complete, its report was made public, detailing the initiative and allowing international judgement on its success or failure. In other cases, partial accounts have leaked into the public domain after the event or have eventually appeared in the Secretary-General's memoirs. This is unlikely to make for a dispassionate and balanced assessment.

Commonwealth Heads of Government have repeatedly expressed their support for the Secretary-General's Good Offices work. There are now a variety of reporting mechanisms available to the Secretary-General in briefing member governments and

CMAG. Under the enhanced mandate given in Perth in 2011, they also expect him to speak out periodically where Commonwealth values are seen to be under assault. All this may create tension and difficulty between the various functions. But it cannot invalidate the necessity, in a careful and considered way, to provide proper and regular public reports of the Secretary-General's Good Offices work.

It is also incumbent on governments – and especially CMAG – to clarify with the Secretary-General the scope and objectives of any Good Office intervention; the regularity of his reports; and the expectation of time frame for the duration of an initiative.

It would not be wise for the Commonwealth to set up new structures or elaborate procedures which might hamper the confidentiality and effectiveness of its Secretary-General's initiatives. But a mystical faith in the value of Good Offices, without sufficient regard to evidence of their impact, is no longer adequate. A public dimension to the Secretary-General's accountability to governments is now a central ingredient of Commonwealth reform as is evidence that, when it really counts, high-level political mediation by the Secretary-General is any longer a reality.