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“Scaling-up human rights impact in the English-speaking, Commonwealth Caribbean”

Dutima BHAGWANDIN
Office of the High Commissioner for Human Rights (OHCHR)
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Abstract

This paper seeks to understand the disjuncture between the international human rights framework and people’s lived experiences and daily enjoyment of human rights in the English-speaking Commonwealth Caribbean, in order to identify pathways for scaling-up human rights impact in the sub-region. It draws on information from four countries, namely Barbados, Dominica, Guyana, and Jamaica (or “the Commonwealth four”) in its consideration of the research questions.

The review shows that the Commonwealth Caribbean has had a long history of human rights, and in the post-World War II era, contributed to efforts in the United Nations to build an international architecture for protection and promotion of human rights, while at the same time, using these processes to advocate for the rights to self-determination, equality and non-discrimination. These countries drew inspiration from the Global South’s activism on decolonization and human rights, and also contributed to it. As they gained independence, they began to sign on to a critical mass of human rights instruments, however, their motivation for doing so was less their own human rights struggles and a desire to better the lives of their people, and more to gain an expressive benefit and participate in international relations. As a result, they have fallen short in taking key actions to inter alia, give effect to the instruments; install competent, independent, and well-resourced institutions to deal with complex human rights issues; and strategically engage with the international human rights mechanisms, thus failing rights-holders. This does not mean that the countries are not upholding individual rights and freedoms or implementing their human rights obligations, but rather they seem to be doing so fairly in abstract of the international human rights architecture. At the same time, there is evidence that the countries are responsive on certain issues such as capital punishment when there is combined action of the international and regional human rights mechanisms’ and advocacy of the international community. Overall, the Commonwealth Caribbean’s story is in essence, a human rights story that has ebbed and flowed, and is at a point where it can summit with greater solemnity on the part of States, and encouragement and support of stakeholders, thereby benefitting rights-holders.

The review also looks the spate of crime, violence and insecurity which is cross-cutting in the sub-region and severely impacting on both the observance and enjoyment of human rights, and how a sampling of violence typologies has been addressed by the mechanisms. This issue was chosen because the sub-region forms part of the Latin America and Caribbean region which is known for being the most violent region in the world, with crime and violence reaching epidemic proportions. It finds that the enforcement or monitoring system is failing to make much of a difference to people’s lives, but other mechanisms such as the Special Procedures bring a special value-added, although there engagement with the sub-region has been very limited. While the Universal Periodic Review holds greatest potential to drive improvements because of its political nature and the weight that Commonwealth Caribbean States give to international relations, there is much room to improve its consideration and outcomes pertaining to the sub-region. With respect to the endogenous and exogenous economic and social factors impacting on the enjoyment of human rights, the paper finds that while the mechanisms have made salient recommendations, there is little evidence that Commonwealth Caribbean countries refer to their human rights legal obligations or the authoritative interpretations and recommendations of the treaty bodies in aid, financial or trade discussions. However, even if they were to do so, it is not clear that the international human rights framework and State obligations’ are strong enough to make a difference in discussions with International Financial Institutions and multi-national corporations. One
The paper concludes with five perspectives on the disconnect between the international human rights architecture and people’s lived realities and enjoyment of human rights in the sub-region, but importantly, advances an argument that notwithstanding the disjuncture, human rights serve an vital purpose in the sub-region and must therefore be leveraged further to make a greater positive difference to people’s lives. This can only be most efficiently and effectively done at national-level by domesticating ratified treaties and providing support to constitutional and legislative reform processes; strengthening national institutions and structures for human rights protection and promotion, notably courts, parliaments, NHRIs, civil society and the media; and building capacity for human rights.

The review and analysis culminated in a number of issues with bearing for OHCHR’s future policy and operational direction, namely: (1) the Office should scale-up its support to the sub-region, including through expanded presences and activities in countries; its Change Initiative is a welcome development in this regard and its proposals with respect to the sub-region should be firmly pursued; (2) the Office can assist in building awareness of the treaties which is generally low in the sub-region. It can provide capacity-building support to Government officials, NGOs, media and others, as well as advisory services and technical cooperation for domestication of the treaties, constitutional and legislative reform, and training for judicial and legal professionals to take the treaties into account in adjudication. It can importantly assist with human rights education and on the ground human rights monitoring and reporting, and catalyze access to resources; (3) the Office would benefit from assessing the effectiveness of two decades of mainstreaming human rights in development cooperation, including how UNCTs in the sub-region advocate for human rights and follow-up to key recommendations, especially in countries where there is no UN human rights presence; (4) OHCHR must recognize that the Commonwealth Caribbean is very distinct from Latin America. As such, the sub-region needs dedicated attention and expertise and this would entail establishing a stand-alone unit in the structural configuration of the Americas Section of FOTCD. The Office, especially where it does not have a human rights presence, should liaise more regularly with UNCTs to identify human rights opportunities, such as nascent constitutional reform processes; (5) more strategic and tailored approaches to the sub-region are necessary due to its history, diversity and unique characteristics, but also because international human rights must be understood and realized in differing political, social and cultural contexts; (6) sustained efforts are needed to evaluate and rethink the architecture, including with respect to ratifications and the functioning individually and collectively of the mechanisms, as well as how they might be coordinated and harmonized to produce greater impact. A key part of this reflection would relate to measures to ensure that the mechanisms are guided by a more comprehensive understanding of issues affecting rights-holders and their inter-relationship; targeted recommendations which could engender progress; and more effective follow-up and assessment and reporting of results. It would importantly consider the role of national civil society organizations in assisting the international mechanisms and OHCHR in this regard. It would look at options for more strategic apportioning of issues, and mutually reinforcing, coordinated approaches of the mechanisms, further linking them with national level; (7) there should be greater reflection on the Office’s approaches to human rights and strengthening of its recognition of countries’ diverse contributions to the building of the human rights architecture, and how these might usefully serve to make human rights work more effective; (8) the Office’s various public databases, including JURIS and the UHRI are useful tools, and especially the later, would benefit from regular updating; and (9) the Office would be usefully served by keeping abreast of the wealth of academic and
expert research and opinions on human rights and OHCHR’s work, in order to inform, assess and reorient its strategic, policy, and operational directions.
I. Introduction

In the post-World War II era, there have been considerable advances in building an international system for protection and promotion of human rights, with continuing progress to date, including normative developments; negotiations for new binding instruments; establishment of new Special Procedures mandates; the start of the third cycle of the Universal Periodic Review (UPR); and evolving jurisprudence. However, despite a body of human rights principles, norms, standards, mechanisms, and outputs, there is still a significant chasm with people’s lives – i.e., their lived experiences and daily enjoyment of human rights – in the English-speaking Caribbean. The central research question of this paper is thus: why the disconnect? And relatedly, can the human rights framework be leveraged further to make a greater positive difference in people’s lives or is there a need to evaluate and rethink it as applicable to the sub-region, or both?

This paper focuses on the Commonwealth Caribbean and draws on information from four countries, namely Barbados, Dominica, Guyana, and Jamaica (or “the Commonwealth four”) in its consideration of the research questions. Chapter II provides an introduction to the English-speaking Commonwealth Caribbean, with focus on the Commonwealth four. Chapter III looks at the historical engagement of the Commonwealth Caribbean and Global South in the building of the international human rights framework, and Chapter IV then draws on examples from the Commonwealth four to assess the States’ post-ratification follow-up and commitment to human rights. Chapters V and VI take two issues of critical importance to the sub-region - crime, violence and insecurity, and economic and social factors impacting on the enjoyment of human rights – and trace how issues therein have been addressed by the international human rights mechanisms. The final two chapters use the review and analyses in the paper to draw conclusions on the research questions and offer observations on the way forward.

The analyses in this paper focus on the international human rights system, rather than the countries’ compliance or responsiveness to the Inter-American System for the protection and promotion of human rights or the mutually-reinforcing cooperation and partnership between the two systems.

The Commonwealth four were selected to ensure broad geographic coverage and a representative sampling in terms of land area and population size (small to large); human development (medium to high); and human rights situation (fair to challenging).

Methodology and limitations

This paper was researched and written during Sabbatical Leave from the United Nations Office of the High Commissioner for Human Rights (OHCHR) from 3 April to 31 July 2017. It is based on preliminary discussions to inform and finalize the research proposal; subsequent extensive desk review; follow-up discussions to clarify issues and gather sub-region-specific insights; and vetting of the draft, including in the United States and Barbados. Inputs were also gathered from rights-holders in particular, during an earlier visit to Guyana in December 2016.

A few limitations were encountered in the research. The first relates to data paucity on the smaller Eastern Caribbean States, as compared to, for example, Guyana and Jamaica. The visit to Barbados thus facilitated data gathering, especially on a small island State with a population of under half a million people, and was also useful as Barbados serves as a sub-regional hub for the United Nations and other stakeholders. The second limitation relates to the Universal Human Rights Index which is an extremely
useful research tool, but did not comprehensively contain all the mechanisms’ observations and recommendations, and would benefit from more regular updating.

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II. A snapshot of the Commonwealth Caribbean, with focus on the Commonwealth four

The term “English-speaking” or “Anglophone” Caribbean can variously refer to the Commonwealth Caribbean; the British Overseas Territories; and other groupings such as the United States Virgin Islands. This paper deals with the Commonwealth Caribbean which is a grouping of twelve States who formed part of the British Empire and West Indies, and upon gaining independence from Britain, chose to remain members of an organization “of independent and equal sovereign states” known as “the Commonwealth.” These States are mainly the island nations of Antigua and Barbuda, the Bahamas, Barbados, Dominica, Grenada, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago, and the mainland territories of Guyana and Belize which, although located on mainland South and Central America respectively, are considered part of the Caribbean for historical, linguistic, political and cultural reasons. This chapter provides an overview of the Commonwealth four’s geographic and demographic situation; political systems; and socio-economic progress, as a preface to the review contained in the two main chapters of this report on crime, violence and insecurity, and economic and social factors impacting on the enjoyment of human rights.

Geographically, Barbados is situated furthest east of all the Caribbean islands, surrounded by the Atlantic Ocean to the east and Caribbean Sea to the west; its terrain is mainly flat. Dominica is also located in the Eastern Caribbean and is a mostly mountainous, volcanic island, which also lies in the hurricane belt; 59 percent of its land area is dense forest and woodlands. Jamaica lies to the northwest, south of the United States, and is a mainly mountainous island. Guyana lies to the south, on the northeastern coast of South America. It is bordered by the Atlantic Ocean to the north, Brazil to the south, Suriname to the east, and Venezuela to the west; 77 percent of its land area is covered by dense, tropical rainforests.
The ethnic and racial composition of these countries reflects their common history of colonization, slavery, and indentureship, as well as historical and contemporary migratory flows between territories; small indigenous populations remain in Dominica and Guyana. These countries are for the most part multi-ethnic and multi-racial societies which can be characterized as microcosms of complexity and diversity. Barbados is the smallest and most densely populated of them. It spans 430 square kilometers and has a population density of 662.8 persons per square kilometer. Its population of 285,000 is composed of six ethnic groups, with 93 percent of African descent, 4 percent of Asian (Chinese, Indian, Lebanese, and Syrian) or mixed descent, and 3 percent of European descent. Dominica is larger at 750 square kilometers, but with a much lower population density of 97.4 persons per square kilometer. Its population of 73,000 is largely of African ancestry, with the indigenous Kalinago people constituting 5 percent of the population. Jamaica is the largest of the Commonwealth Caribbean islands at 10,991 square kilometers, with a population density of 259 persons per square kilometer, although this figure rises around the capital, Kingston, and other areas such as Montego Bay. It also has the largest population of these countries at 2.8 million people, with 90.9 percent of African descent, 7.3 percent of mixed descent, 1.3 percent of Indian descent, 0.2 percent of European and Chinese descent, respectively, and 0.1 percent other ethnicities. Guyana’s land mass is significant at 214,969 square kilometers, however, it is very sparsely populated, with only 3.9 persons per square kilometer; approximately 90 percent of the population lives along the Atlantic coast. Its population of 771,000 is composed of 43.5 percent of Indian descent, 30.2 percent of African descent, 16.7 percent of mixed descent, 9.1 percent indigenous Amerindian people, and 0.5 percent of Chinese and Portuguese origin.

The Commonwealth four are structurally, liberal democracies. Their elections are generally free and fair and contested by at least two political parties; their judicatures are largely independent; and they have had a long history of human rights and relatively good record of protecting human rights. Helfer observes that “the strength and resiliency of liberal democratic structures in the Commonwealth Caribbean are unique among developing nations and contrast sharply with the nearby nations of Central and South America, which have been governed by autocratic or unstable regimes until a democratizing trend took hold in the 1980s.” Guyana was the only longstanding exception in its embrace of State socialism and one-party rule, although this began to erode after the country’s authoritarian leader for almost twenty years died in 1985 and accelerated after the country’s first free post-independence elections in 1992.

However, while they may be structural democracies, they are not yet fully functional democracies, and when assessed against broader measures of democracy or the concept of “holistic democracy,” they can still be said to be in the process of consolidating democracy. As Mendez and Mariezcurrena have observed “for many reasons, Latin America and the Caribbean are well short of what we would call fully functioning democracies. Evidently, there are important differences between countries, and generalizations are always dangerous. But there are traits that are common to the entire region in one degree or another and we have called the present state one of “insufficient democracy.” In addition, in some countries like Barbados, the minority white population maintains a strong influence on the politics and economics of the country, and this group’s interests are said to be misaligned from those of the majority population, skewing the democratic tenet of majority rule.

The countries are part of the Small Island Developing States (SIDS) grouping which brings together countries facing comparable physical and structural barriers to their development, including small populations, limited resources, and vulnerability to external shocks. Notwithstanding, the
Commonwealth four have achieved notable economic and social progress in recent decades. For example, between 2004 and 2014, annual growth rates of most countries in the Latin America and Caribbean region were close to 4 percent, and education and health outcomes improved. A drawback though is that this economic growth is still to translate into better human rights outcomes. And, while the Caribbean made strides compared to other regions in rapid increase in access to education during the Millennium Development Goals (MDGs), accessibility is only one feature of the right to education, and gains are still to be made with respect to the other components of availability, acceptability and adaptability, as well as non-discrimination in education.

In term of human development, Barbados, Dominica and Jamaica were categorized as having High Human Development on UNDP’s 2015 Human Development Index (HDI). Barbados ranked 54 of 188 countries and territories with an HDI value of 0.795 which is above the average of 0.751 for countries in Latin America and the Caribbean; Jamaica ranked 94 and Dominica 96, with HDI values of 0.730 and 0.726 respectively, which are slightly below the average of 0.751. Guyana stands apart, with Medium High Human Development; it ranked 127 of 188 countries and territories, with an HDI value of 0.638, which is below the aforementioned average.

The Commonwealth four are Members of the United Nations, the Caribbean Community and Common Market (CARICOM), the Non-Aligned Movement, and the Group of 77 plus China. Dominica is a Member of the Organization of Eastern Caribbean States (OECS), which regroups economies that are small, open, and vulnerable, including to external shocks which impact on main revenue streams such as tourism.

III. The Commonwealth Caribbean, the Global South, and the making of the international human rights architecture

The story of the Commonwealth Caribbean is essentially a human rights story that is still being written. It is recognized that before the arrival of Europeans to the sub-region in the fifteenth century, it was home to millions of indigenous peoples who were decimated as a result of contact with those expeditions. This was followed by hundreds of years of colonization, slavery, indentureship, and the long road to freedom. As Commonwealth Caribbean countries gained their independence, they started to contribute to post-World War II efforts to construct an international architecture to protect and promote human rights, to use international processes in the United Nations to advocate for the right to self-determination, and to formally commit to human rights, including the rights to equality and non-discrimination. These countries drew inspiration from the Global South’s efforts on decolonization and human rights, but also contributed to it. This chapter provides a brief overview of how this transpired, and subsequent chapters tell of the human rights story that is still evolving.

The Global South and the making of the international human rights architecture

In the aftermath of the Second World War, Global South countries were for the most part, engaged in national-level anti-colonial pushback, often against colonial interests, and striving for equality, freedom, and the dignity and worth of their peoples. Their national struggles informed their international activism on both decolonization and human rights; the two issues were inextricably linked and mutually reinforcing. Jensen observes that “the notion of equality was without a doubt a major reason for the emphasis on human rights by countries from the Global South.” This notion, along with principles of
dignity and mutual responsibility, were not unfamiliar to these countries as they find expression in many of their ancient religious scriptures.  

From a platform of this consciousness and largely still grappling with colonialism and racism, countries of the Global South advocated for human rights from the very founding moments of the United Nations and were responsible for placing the first human rights issue on the newly-founded Organization’s agenda. In 1944, at Dumbarton Oaks, the United States, Great Britain and the Soviet Union had concluded a proposal for the United Nations. China’s request that the one reference to human rights be strengthened was not accepted. The proposal’s human rights paucity was broadly criticized by the Governments and peoples who reviewed it. This was later addressed at the UN Conference in San Francisco in 1945 and “the insertion of human rights into the UN Charter would be among the most significant changes made during the … Conference ….” Once the UN was established, it was India that brought “the first conflict over human rights … before the UN,” namely South Africa’s discriminatory treatment of Indians in South Africa and later secured support to keep the issue on the UN’s agenda.

Global South countries also contributed to shaping the Universal Declaration of Human Rights (UDHR). In 1947, countries such as Lebanon, China, and Chile made “particularly constructive contributions” to the debates as part of the Commission on Human Rights Drafting Committee. Once the draft had been tabled in the General Assembly’s Third Committee in 1948, other countries such as the Philippines, Cuba and Pakistan made key contributions to the discussions on freedom of thought, conscience and religion. Cuba and other Latin American countries were amongst the most ardent supporters of the indivisibility and inter-dependence of civil, political, economic and social rights. When the UDHR was adopted on 10 December 1948, 34 of the 48 countries voting in its favor were from the Global South.

They also contributed “at key junctures in building the human rights architecture.” Their activism spanned fifteen years from the early 1950s and informed the drafting of the two International Covenants on civil and political rights (ICCPR) and economic, social and cultural rights (ICESCR), as well as efforts to end colonization and racism. In this regard, they advocated for the rights to self-determination and equality which were later included in common articles one and three of the two Covenants, respectively. Iraq is recognized for ensuring “the inclusion of equal rights for women in the human rights covenants and denounced cultural relativism.”

Global South countries also advocated for petitions procedures. “The Philippines, Egypt, Syria, India and Guatemala all sponsored various proposals on petition, both as part of the international covenant on human rights and as a basic prerogative of the Commission on Human Rights.” In the context of the Third Committee’s debates on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965, they lobbied for an individual petitions mechanism which culminated in article fourteen of the ICERD. This mechanism served as a precedent in later discussions on a similar procedure for the covenants, especially the ICCPR. These countries based themselves on the practices of the Special Committees on Decolonization and Apartheid which were mandated to hear petitioners and initiate investigations, as well as the Trusteeship Council’s handling of colonial petitions. Their efforts also resulted in the adoption of Economic and Social Council (ECOSOC) resolutions 1235 (1967) and 1503 (1970) which authorized the Commission and Sub-Commission on Human Rights to consider information on gross violations of human rights and fundamental freedoms.
Global South countries’ opposition to apartheid South Africa and racial discrimination informed the spirit of negotiations for the first core human rights treaty, the ICERD. As Jensen observes, contrary to the common narrative on human rights which asserts that the normative foundation of human rights is civil, political, economic, social and cultural rights, “international human rights law has been built on a foundation of race. The (I)CERD from 1965 established the major precedent that made human rights into international law accompanied by some measures of implementation. The 1965 Convention paved the way for the universal legal recognition of civil, political, economic, social and cultural rights elaborated in the Human Rights Covenants from 1966. The claim is supported by both chronology and precedent.”

The Commonwealth Caribbean and the making of the international human rights architecture

In 1960, the General Assembly adopted Resolution 1514 on the Granting of Independence to Colonial Countries and Peoples. Decolonization was spreading across Africa and Asia, and to other parts of the world. Jamaica was the first of the Commonwealth Caribbean countries to gain independence in 1962, however, political activity and organization in the context of labor unions and worker’s rights had been a shared feature of Commonwealth Caribbean countries long before their formal independence. From the start, Jamaica used its UN membership as a platform to actively advocate for human rights. Its 1964 Foreign Policy was “possibly the first human rights-focused foreign policy strategy developed by any country” and inter alia, “committed Jamaica to speaking out against discrimination wherever it was practiced.” In the context of the bloc politics of that era, Jamaica became the principal facilitator of human rights progress from 1962 to 1968 which was a critical period when human rights were being codified into the ICERD and two Covenants. Further, it called for a first International Human Rights Year and World Conference, the latter becoming the First World Conference on Human Rights, in Tehran, in 1968. Jamaica worked to ensure that by the time of the Conference, the instruments under negotiation would be concluded with implementing measures.

For other countries in the sub-region, with independence on the horizon, national consideration was being given to the place of human rights in new constitutional orders. Concurrently, the UN processes on the right to self-determination and decolonization continued to serve as a rostrum for territories to advocate for independence. In the case of Belize which had “internationalized” its efforts to gain independence, these processes were also essential in safeguarding its full territorial integrity against claims from Guatemala. The first General Assembly resolution on the “Question of Belize” was adopted in 1975 and reaffirmed “the inalienable right of the people of Belize to self-determination and independence.” Belize eventually gained its independence in 1981.

As countries of the sub-region gained their independence, they adopted Constitutions that were inspired by human rights and the European Convention on Human Rights (ECHR). Starting in the early 1970s, they began to sign onto international human rights treaties.

IV. Applicable legal framework and commitment to human rights

Commonwealth Caribbean countries have become States parties to a critical mass of human rights instruments, but did their own human rights struggles and a desire to better the lives of their people motivate them to ratify the treaties or were there other reasons? Before looking more closely at the Commonwealth four, it is useful to frame the review by available research on why States’ ratify treaties. Hathaway, for example, explains that “when a country ratifies a treaty, it may do so for purely
disingenuous reasons (simply to gain an expressive benefit); for aspirational reasons (because the government or a part thereof is truly committed to the norms embodied in the treaty and wishes to commit the country to them); or for self-interested reasons (perhaps because political or economic benefits are tied to ratification).” Heyns and Viljoen’s study on the impact of the human rights treaties on the domestic level in twenty countries is supportive of the expressive function theory, concluding that “the primary reason why states ratify international human rights treaties relates to international diplomacy. States want to be seen internationally to support human rights.”

For the Commonwealth four, assessing motivation for ratification of all instruments is complex, largely owing to data gaps. However, the examples of Guyana and Jamaica in relation to one instrument, the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), may be illustrative. For Jamaica, which was one of the aforementioned twenty countries, ratification was due to a desire to fully participate in the UN System. For Guyana which ratified the Protocol one year after its first free post-independence elections, it was aspirational, “motivated by the newly-elected government’s distrust of the local judiciary and its desire to make available to Guyanese an international body to review human rights abuses.”

This limited view signals varying motivations, and for this reason, the States’ post-ratification follow-up and commitment to human rights may provide a better window onto why they ratified the treaties and to what effect. In this regard, it is useful to recall that of the Commonwealth four, Barbados, Guyana and Jamaica are parties to the 1969 Vienna Convention on the Law of Treaties which stipulates that “a State is obliged to refrain from acts which would defeat the object and purpose of a treaty (article 18);” that “every treaty in force is binding upon the parties to it and must be performed by them in good faith (article 26);” and that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty (article 27).”

The Commonwealth four have all ratified the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CPRD). With respect to the instruments which give individuals subject to a country’s jurisdiction recourse to submit complaints of human rights violations under the corresponding treaties, only Barbados and Guyana have ratified the First Optional Protocol to the ICCPR, and only Dominica is party to the Optional Protocol to the CPRD. None have ratified the Optional Protocols to the ICESCR, CEDAW and CRC.

These countries have also not ratified the Second Optional Protocol to the ICCPR, aiming to abolish the death penalty, or the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), and only Guyana has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), although it has not subscribed to the Convention’s Optional Protocol which is intended to facilitate visits to places of detention. Barbados, Guyana and Jamaica have ratified the ICERD. Annex I contains a more comprehensive overview of the core human rights instruments to which these States are parties. The countries have entered some reservations to the treaties.

A first indicator of post-ratification follow-up and commitment to human rights relates to the actions that are required of States parties to give effect to the treaties so that inter alia, rights-holders may avail
of the guarantees and protections they offer, as well as the institutional architecture that States build to protect and promote human rights. These countries follow English common law and are dualist States, or States in which international law is distinct from national law, and legislation is required in order to give effect to treaty provisions in the national legal order.\(^{59}\) However, while they have ratified the treaties, they are yet to enact the enabling legislation, in some cases, more than four decades later. Jamaica, for example, has acknowledged that “in order for the provisions of any international agreement to which Jamaica is a party to become enforceable by the courts, legislation implementing the agreement is necessary” but that “no such legislation has been enacted in relation to the International Covenant on Civil and Political Rights.”\(^{60}\)

The countries are also yet to ensure that their laws are harmonized with the treaties, and both omissions and contradictions exist. For example, while article 17 of the ICCPR protects against arbitrary or unlawful interference with privacy, family, home or correspondence, the Constitution of Guyana does not contain a similar protection. The sole reference to privacy was removed during the 2003 amendments to the Constitution.\(^{61}\) Further, while article 154 (A)(1) stipulates that “every person, as contemplated by the respective international treaties set out in the Fourth Schedule to which Guyana has acceded is entitled to the human rights enshrined in the said international treaties, and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of Government,” this guarantee is essentially neutralized by sub-article (2) which qualifies that “the rights referred to in paragraph (1) do not include any fundamental right under this Constitution.” Bulkan observes that this latter formulation practically nullifies the impact of article (1); he states “the peremptory limitation of the rights in paragraph (1) to those not covered by the Constitution will have the practical effect of excluding many of the treaties in the Fourth Schedule altogether.”\(^{62}\) Recently, the Committee on Economic, Social and Cultural Rights (CESCR) confirmed that article “(2) may be interpreted as limiting the applicability of the Covenant within the domestic legal order” and additionally, “that article 154 (A) (6) of the Constitution provides that the State party may divest itself or otherwise limit the extent of its obligations under the Covenant.”\(^{63}\) These shortcomings essentially mean that the full range of rights is not protected or justiciable, and rights-holders cannot claim their rights before the courts or seek redress for violations. In the case of Jamaica, the Human Rights Committee (HRC) expressed concern “that some provisions of the Covenant, including prohibition of discrimination, are not adequately protected under [Jamaica’s] domestic law” and at the State party’s explanation “that the provisions of the Covenant cannot be directly invoked before domestic courts.”\(^{64}\)

These countries refer to their Constitutions as the guarantor of human rights. Each Constitution includes a chapter or charter on fundamental rights and freedoms.\(^{65}\) Traditionally, as they were modeled on the ECHR, they largely comprised civil and political rights, along with protections for labor rights, and unions which were politically active in these countries. However, they have evolved to include some economic, social and cultural rights entitlements, although not exhaustively, and in the case of Guyana’s 1980 Constitution, are reflected as “principles and bases of the political, economic, and social system” in keeping with the country’s socialist past, and not individual rights. Jamaica’s 2011 constitutional reforms added rights such as to primary education (though only for citizens), and to a healthy and productive environment. Further, the Constitutions of Jamaica, Trinidad and Tobago, Guyana and Barbados still contain certain “savings clauses” which are provisions that pre-independence or colonial laws must be upheld by the courts because they existed before the Constitution or charter came into effect.\(^{66}\) In some cases, these clauses curtail human rights, as for example, acts which are criminalized as sexual offences, and impact on the enjoyment of human rights based on sexual orientation. In this
The countries’ courts are the guardians of human rights protection and are structured similarly. The hierarchy is typically the Magistrate’s Court; the High or Supreme Court; and the Court of Appeal. In Barbados, Dominica, Guyana, and Jamaica, the Supreme Court is mandated to hear persons alleging violations of their Constitutional rights and to provide remedy. However, in adjudication of cases and judicial decisions, while there are some references to customary and general international law in some cases, there are no references to the treaties. Taking Guyana for example, the CESCR has observed that the rights guaranteed by the Covenant have not yet been applied or invoked in the jurisprudence of Guyana. Further, in respect of the Court of Appeal, Ramcharan remarks that “the jurisprudence of the court, on occasions, matches for excellence that of … institutions such as the Privy Council,” though it “has been more reticent when it comes to the invocation and application of international human rights norms in its jurisprudence, even though individual judges of the High Court have been more forthcoming on this subject.” The Judicial Committee of the Privy Council is the last level of appeal for Jamaica, while for Barbados, Dominica and Guyana, it is the Caribbean Court of Justice for civil and criminal matters. While the Court’s statute does not include provisions for individual complaints of human rights violations, it can consider human rights “in its capacity as a court of final appeal in civil and criminal matters, which often involve fundamental rights,” and in its appellate jurisdiction, it receives cases presented to High or Supreme Courts for breaches of human rights.

Complementing the courts are non-judicial, independent bodies and institutions which aim to contribute to ensuring respect for human rights. Jamaica has a Public Defender; Barbados, Guyana and Jamaica have Parliamentary Ombudspersons; and Guyana has a number of Constitutional Commissions on Ethnic Relations, Women and Gender Equality, Children, Indigenous Peoples, and Human Rights, although the Human Rights Commission has so far not been operational, and the others are seemingly insufficiently resourced and function with varying degrees of efficiency and independence. None of the countries have established a National Human Rights Institution (NHRI) in line with the Paris Principles, although Jamaica is in the advanced stages of discussions on a NHRI. Barbados is exploring establishing a National Mechanism for Reporting and Follow-up (NMRFU) and Jamaica has an ad-hoc Inter-Ministerial Committee on Human Rights which in practice looks at all reporting processes. A Cabinet submission to convert it into a Standing Committee has been announced for some time.

A second indicator of post-ratification follow-up and commitment to human rights comes from Jamaica and Guyana. In a bold move, both countries withdrew from the Optional Protocol to the ICCPR in October 1997 and December 1998, respectively. Their denunciation is rooted in the complex case of Pratt & Morgan v. The Attorney-General of Jamaica and may be understood through different optics, as explained by Helfer. One is focused on the Caribbean backlash as a dispute over capital punishment; essentially, “when the governments could not reconcile [a] strong domestic preference for capital punishment with their international commitment to allow defendants to petition the human rights tribunals, they withdrew from the treaties.” The second relates to the judicial imperialism of the Privy Council, and in particular, the Council’s refusal “to acknowledge that Pratt’s inflexibility had made it impossible for Caribbean states to permit human rights petitions to be heard within a reasonably deliberative period of time.” And the third emphasizes that the over-legalization of international law...
had led the countries’ decision to withdraw from the Protocol. In effect, the Governments had undertaken certain commitments at the time of ratification and these had been extended by the three variables of legalization, thus changing and expanding what they had consented to and leading to their rejection of the Protocol.

Beyond these perspectives, Commonwealth Caribbean countries have a strong legal tradition and keen understanding of the functioning of the human rights mechanisms and are apt to disengage when space for dialogue closes. Jamaica and Trinidad and Tobago, another of the States that had denounced the Protocol, had tried to engage the Inter-American Commission and Human Rights Committee to ensure that these bodies review of death row petitions would be expeditious and allow them to stay within the timeframe that had been set by the Privy Council, however, both rejected the countries proposals, perceiving “the instructions as threats to their authority.” This was one of the contributing factors to the countries’ decision to withdraw from the Protocol. These various reasons suggest that the countries did not take their decisions lightly but ultimately, affinity for capital punishment and sovereignty trumped human rights. To date, Jamaica has not re-accessed to the Protocol. Guyana re-accessed, but with reservations aiming to ensure that the Human Rights Committee would not be able to consider cases from death row inmates who allege that their rights under the ICCPR were violated during capital proceedings against them or in the execution of their sentences. This followed an earlier expression by the Government that it would not follow recommendations of the HRC in a death penalty case in Guyana.

A third indicator of post-ratification follow-up and commitment to human rights is engagement with the human rights mechanisms, including the treaty monitoring bodies, Special Procedures (SPs) of the Human Rights Council, and the UPR. The Commonwealth four have submitted a significant number of their reports to the treaty bodies however, many are still outstanding. Generally, the treaty bodies have indicated that “the issue of late reporting and non-reporting by States parties gravely undermine the effectiveness of the treaty body system.” However, the effect goes beyond the system to directly impacting rights-holders, as demonstrated later on.

Regarding the initial reports that normally follow ratification, Barbados fairly recently ratified the CRPD and its initial report is outstanding. Dominica has six initial reports outstanding under the ICCPR, CEDAW, ICESCR, the CRC Optional Protocols on the Involvement of Children in Armed Conflict (CRC OP AC) and on the Sale of Children, Child Prostitution and Child Pornography (CRC OP SC), and CRPD, with the first five being overdue for more than ten years. Guyana’s outstanding three initial reports are under the International Convention on Migrant Workers (CMW) and CRC OP AC and OP SC. Jamaica has four initial reports due under the CMW, CRC OP AC and OP SC, and CRPD, with its initial report under the CRC OP AC outstanding for more than a decade.

Barbados has three periodic reports overdue under the ICCPR, ICERD, and ICESCR, with the last being overdue for more than ten years. Dominica has one periodic report under the CRC overdue for more than a decade. Guyana’s outstanding four periodic reports are under CAT, ICCPR, CEDAW, ICERD, with a periodic report under the ICCPR outstanding for more than 10 years. Jamaica has two periodic reports outstanding under CERD and CEDAW.

In terms of the content of the reports, although it is difficult to generalize, there are a number of shortcomings which compromise the reports. As will be seen in the chapter on crime, violence and insecurity, Guyana’s report is silent on critical issues affecting rights-holders. In respect of Jamaica,
Heyns and Viljoen had remarked *inter alia*, that non-governmental organizations (NGOs) do not actively participate in report preparation and the reports are not publicized or tabled in parliament. The reports were “written in general terms and seek to give an optimistic and favorable picture of the Jamaican situation. In some cases, they are defensive and even misleading.” However, since this assessment, there have been a number of improvements. For example, civil society organizations have increased their engagement with the treaty bodies, submitting alternative inputs for the HRC’s 2016 review of Jamaica’s periodic report.

The countries have offered a number of reasons for the late reporting and quality of reports. Barbados for example has acknowledged the periodicity of the treaty-based reporting requirement, but explained that its lateness is due to the State’s lack of human and financial resources, and not out of disrespect for its obligations. Dominica has also pointed to scarce human and financial resources which make it difficult for the country to fulfill its international human rights commitments. It has stated that ratification entails the burden of *inter alia*, reporting and allocating resources to give effect to the treaties. Barbados and Jamaica have stood in solidarity with micro islands like Dominica on the challenges they face. Jamaica for example, stated that “capacity constraints and the resources challenges faced by small island developing States could prevent their timely and effective compliance with their reporting obligations.”

However, United Nations entities and the aforementioned independent study offer other perspectives. In the case of Dominica, UN entities have noted that with regards to the CRC, the delays are due to administrative and political processes at the review and approval stages by the Government. With regards to its initial reports under the CRC OP AC and OP SC, UNICEF’s offer of technical and financial support has not yet been accepted by the Government which has cited its limited administrative capacity to carry out the process. In terms of CEDAW, “a draft report has existed for quite a while, but has yet to be cleared by Cabinet. The line Ministry responsible for the report continues to advocate for its adoption and formal submission to the CEDAW.” In the case of Jamaica, the independent study stated “one of the reasons most often cited for not submitting reports on time is a lack of political will to do so, or, put differently, it is said that reporting is not a priority of government.” Further, reporting is considered to be “a difficult and onerous process, due to the need for extensive consultation and the compilation of comprehensive information from different sources.”

In terms of their engagement with the Special Procedures, the Commonwealth four have had limited engagement with the SPs, drawing on country visits as an indicator. Dominica extended a standing invitation to the SPs on 9 December 2009 but has had no visit; Barbados has not extended a standing invitation “owing to capacity constraints . . .” and has also had no visit. Guyana and Jamaica have also not extended standing invitations but have had a few visits from amongst the forty-four thematic mandates. In 2003 and 2008, the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance and the Independent Expert on minority issues visited Guyana, respectively. The Working Group of Experts on People of African Descent is scheduled to visit Guyana in October 2017. Jamaica received two Special Rapporteurs, on extrajudicial, summary or arbitrary executions in 2003, and on torture and other cruel, inhuman or degrading treatment or punishment in 2010.

While the SPs have made several other requests for visits and the countries have generally expressed openness to the SPs, the requests have not actually materialized into visits. Barbados has indicated that it is “not averse to receiving special procedures.” Jamaica regards the “special rapporteurs as
constructive players in the international human rights framework” and “was not opposed to accommodating visits of special rapporteurs.” However, it requested “adequate notice” and “mutually agreed dates,” and “recommended to the Human Rights Council that a mechanism be instituted to allow for information-sharing between the various human rights bodies and procedures” … “as there were often overlapping requests that were not only inefficient but also unduly stretched the country’s limited resources”. There is little available evidence that the countries actively reach out to any of the SP mandates on issues of importance to them, essentially meaning that they are unable to tap into expertise or knowledge, or avail themselves of a platform to work through obstacles they face in human rights implementation. There are many mandates that correspond to a broad range of issues of relevance to the sub-region, including on the “softer” economic, social and cultural rights side (such as education, food, health, housing, etc.,) and on other issues such as the environment, business and human rights, foreign debt, hazardous substances, and poverty. Mandates also deal with children and women’s rights, the rights of persons with disabilities and the rights of older persons.

With respect to the UPR, the Commonwealth four, along with all other UN Member States, participated fully in the first and second cycles which were held from April 2008 to October 2011 and January 2012 to November 2016, respectively. During the second cycle, each country received more than 115 recommendations (many overlapping). At the third cycle of the UPR which began on 1 May 2017, States were expected to provide updates on steps taken to implement recommendations received during the first and second cycles, as well as developments and challenges to follow-up action. Barbados is scheduled for review in January-February 2018; Dominica in April-May 2019; Guyana in January-February 2020; and Jamaica, slightly later, in April-May 2020.

The three indicators of post-ratification follow-up and commitment to human rights lead to the conclusion that the Commonwealth four’s motivation for ratification is reflective of the expressive function theory, and in essence, is the reason why they have not progressed further to making the human rights architecture work for rights-holders. The States’ give importance to international relations, and is plausibly why they have engaged more willingly with political rather than legal processes that seek to advance human rights. Of the human rights mechanisms then, the UPR holds greatest potential to drive improvements if it is to be properly adapted to the sub-region, as discussed further on in this report. Secondly, States’ withdrawals from key instruments and reservations to the treaties also serve to deprive rights-holders of recourse and voice. Thirdly, the countries’ institutional structures for protection and remedy, including competent, independent, and well-resourced bodies to deal with complex human rights issues are missing key pillars, thus failing rights-holders. This is a serious obstacle to victims of human rights violations being able to lodge complaints and get redress. And lastly, States’ follow-up to the treaties and engagement with the mechanisms are systemmatic at best, and especially in the case of the SPs, is reactive rather than proactive and strategic, depriving rights-holders of the most they can gain from the system. This is not to say that these countries do not uphold individual rights and freedoms or implement their human rights obligations, but rather they seem to do so fairly in absent of the international human rights architecture. Ramcharan has observed with respect to the Court of Appeal of Guyana for example that there are important pronouncements in the jurisprudence of the courts concerning protection of the rights of the individual, even if the courts have had an inconsistent record when it comes to the protection of human rights.

In terms of implementation of human rights obligations, Governments across the sub-region are taking multitudinous actions which coincide with their human rights obligations, including in some cases, in response to international and regional human rights outcomes, and there is progress, including on issues
such as the death penalty, extrajudicial killings, child protection, and hate crimes targeting sexual minorities. However, this progress has to be understood in the context of how change happens in the sub-region. Additionally, the efficacy and sufficiency of actions to implement human rights obligations would merit review. While this is beyond the scope of this paper, the Concluding Observations (COs) of the treaty bodies reflected in the next two chapters provide some ideas as they highlight positive aspects, and strengths and weaknesses of these actions, as well as omissions.

The States are assisted in implementing their human rights obligations by the United Nations, including OHCHR. OHCHR’s assistance is provided via its own stand-alone arrangements, and since 1997, through inter alia, development cooperation and UN Country Teams. In 2016, of OHCHR’s 12 field presences in the Latin America and Caribbean region, only one was based in the sub-region. This was a Human Rights Advisor to the United Nations Country Team (UNCT) in Jamaica. The Office provided other minimal support, including a project in Barbados to assist countries in the eastern English-speaking Caribbean on implementing recommendations issued by the international human rights mechanisms, including the UPR. In 2016, through the United Nations Voluntary Fund for Financial and Technical Assistance for the Implementation of the UPR, Barbados, Dominica, and Jamaica were assisted in order to establish or strengthen their respective national mechanisms to report and follow-up on recommendations, and countries have participated in the HRC, funded by the Voluntary Technical Assistance Trust Fund to Support the Participation of Least Developed Countries and Small Island Developing States in the work of the Human Rights Council. However, according to publicly-available information, the countries did not benefit from assistance from the Voluntary Funds for Participation in the Universal Periodic Review Mechanism; for Indigenous Peoples; on Contemporary Forms of Slavery; for the Victims of Torture; or for Technical Cooperation in the Field of Human Rights (VFTC) which provides resources to national efforts to strengthen legal frameworks, national human rights institutions, independent judiciaries and vibrant civil society organizations, which are all key to the sub-region.

Beyond supervision, it is useful to look at how the Commonwealth Caribbean participates in Charter and treaty-based international human rights mechanisms in Geneva, bearing in mind that these small States face not only resource, capacity and logistical constraints, but also challenges of how to create relevance in bodies like the HRC; to equally access advice and information; and to meaningfully contribute to multiple, parallel processes, especially as they are small missions with the large task of covering thirty-nine international organizations in Geneva, most critically, the ones dealing with trade and development.

Although no Commonwealth Caribbean State has ever been a member of the HRC, the Bahamas has expressed intention to stand for membership for 2019-2021 which will make it the first State from the sub-region to be a member if elected. Of the Commonwealth four, Barbados and Jamaica have had the longest representation in the Human Rights Council. Guyana established a presence in Geneva for the first time in 2016; and Dominica has no permanent presence, and is represented by its High Commission in London. Dominica is a key case of technical and logistical challenges faced by SIDS in engaging with the human rights mechanisms, and this often results in their interests being overlooked. A positive development has been the establishment of the aforementioned Trust Fund to Support the Participation of LDCs/SIDs in the HRC which has enabled several of the sub-region’s delegates to attend sessions and also, a first CARICOM statement to the HRC, delivered at the 35th session.

Despite their limitations, the Commonwealth four are fairly active at the HRC. At the 31st to 33rd sessions in 2016, the countries participated in the general debate, on panels, and co-sponsored
resolutions. At the 31st session, Barbados participated in a panel discussion on climate change and the right to health. Jamaica co-sponsored a resolution on “the rights of the child: information and communications technologies and child sexual exploitation”, and made a statement at the Council’s commemoration of International Women’s Day. At the 32nd session, Barbados participated in the general debate on technical cooperation and capacity building. Jamaica participated in a panel commemorating the 30th anniversary of the Declaration on the Right to Development. It co-sponsored resolutions on “addressing the impact of multiple and intersecting forms of discrimination and violence in the context of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of all human rights by women and girls”, and “protection of the family: role of the family in supporting the protection and promotion of human rights of persons with disabilities.” Guyana participated in the general debates on protection and promotion of all human rights, including the right to development; the UPR; and technical cooperation and capacity building. At the thirty-third session, Jamaica participated in the general debate on technical cooperation and capacity building, which is an issue of common importance to all countries. Most recently, at the 36th session, Guyana co-organized a side-event on “Small States at the Human Rights Council: Building Capacity, Strengthening Presence and Developing Outreach” which discussed some of the challenges and opportunities for small States at the HRC.

The countries’ representation in treaty and Charter-based human rights mechanisms is negligible. They form part of the Latin America and Caribbean region and are subsumed by Latin America’s representation in these mechanisms. In respect of the ten treaty bodies, out of a total of 172 members as of 1 January 2016, the region had a total of 28 members (or 17 percent) of the membership, but only two were from the sub-region (as CERD and CEDAW members). As of 31 December 2016, of the Special Procedures’ 81 mandate-holder positions, 15 (or 19 percent) came from the region, but only one was from the sub-region (as a member of the Working Group of Experts of People of African Descent).

V. Crime, violence and insecurity: a cross-cutting challenge in the sub-region

If the States are falling short in making the human rights system work for their people, are the efforts of the human rights enforcement or monitoring mechanisms which are ultimately intended to benefit rights-holders, making any difference in the Commonwealth Caribbean? This chapter looks at the epidemic of crime, violence and insecurity which is of concern across the sub-region and profoundly impacting upon human rights, and how a sampling of violence typologies has been addressed by the mechanisms.

At the outset, the Latin America and Caribbean region is known for being the most violent region in the world, with the World Health Organization (WHO) indicating that crime and violence have reached epidemic proportions. The Organization of the American States (OAS) has observed that “the insecurity generated by crime and violence in the Americas is a very serious problem in which the observance and enjoyment of human rights are at stake.” Homicide rates give an idea of the problem. In 2015, the region counted 24 homicides per 100,000 people, which is around four times the global average of 6.2. In the Caribbean sub-region, the average homicide rate in 2014 was 16 per 100,000, although there were great variances amongst countries. For example, Barbados and Dominica have close to the average with 8.8 and 8.4 respectively, while Jamaica was on the extreme high side with 36.1, and Guyana was in between at 20.4. As of 2015, the sub-region had the second highest average rate (65 percent) of homicides committed with a firearm, again with Barbados (38 percent) and Jamaica (73.4 percent) on the low and high ends. Regarding other violent crimes, assault and threat of assault in
the Caribbean is significantly higher than in any other region of the world.\textsuperscript{113} Notwithstanding, these figures represent improvements over previous years. The homicide rate in Jamaica for instance declined from 61.5 in 2009 to the 2014 level of 36.1 (but rose again to 40.9 in 2015),\textsuperscript{114} although this is still in contrast to Chile for example, which has the lowest homicide rate in the region, at 3.6 per 100,000 (2014).

Violence occurs at all levels of society in the Caribbean and manifests itself in various ways. It is important to stress though that the phenomenon differs amongst countries, as the homicide data shows. The different types of violence are inter-related, and given the smallness and close geographic proximity of these countries, the phenomenon causes a ripple, reverberating effect both internally and externally. One example of the latter is a recent trend of criminal “island-hopping,” or cases of gangs shuttling between islands, spreading crime and violence in their wake.

This chapter uses the WHO’s typology of violence, namely (1) collective violence (such as political violence within States, State-perpetrated violence, and organized criminal and gang violence); (2) interpersonal violence which covers family and intimate partner violence, and community violence (such as youth violence and violence in institutional settings such as schools and work); and (3) self-directed violence (such as suicides), to demonstrate some aspects of the epidemic and the mechanisms’ responses.\textsuperscript{115}

\textit{Collective violence: political violence}

The governance system of each of the Commonwealth Caribbean countries is characterized by two major political parties and ongoing political polarization between these parties. In the case of the Commonwealth four, this polarization has progressed to political violence in at least Guyana and Jamaica, and is linked to pervasive crime, violence and insecurity in these countries.

In Guyana, periodic political violence is rooted in the colonial period and pre-dates the country’s independence. Guyana’s first political party, the People’s Progressive Party (PPP), was formed in 1950 and its two leaders represented the country’s two major ethnic groups, people of African and Indian descent. Due to the Marxist political leanings of the Indo-Guyanese leader, Cheddi Jagan, Britain, the colonial power, supported by the United States, instituted measures which included military intervention and constitutional suspension, to replace him with the Afro-Guyanese leader, Forbes Burnham, who eventually led the country to independence. This, combined with racial divisions sowed during the colonial period, has been at the root of the political violence in Guyana. On the latter, Wilson explains, “during the colonial period the Indian and African populations developed negative perceptions of each other derived from the attitudes of the Europeans” and subsequently, geographical distance, occupational segregation, positions, practices and different cultural leanings perpetuated the ethnic divisions.\textsuperscript{116} She characterizes Guyana’s politics as “ethnopolitics,” which is marked by periodic electoral and other violence, and attacks and retribution between the two major political parties – the PPP and the People’s National Congress (PNC) - who have largely governed the country since its independence.\textsuperscript{117} She concludes that the problem is more than a simple struggle for dominance between the two major ethnic groups, but linked to competition for power, spoils and material benefits. The dominant political culture is one of distrust, recrimination, indiscipline, and even immaturity, and the political dialogue is presented as a quest for economic survival and ethnic domination in the political sphere. State-society relations and inter-ethnic relations are presentations of domination and protection.
from domination. On the electoral front, however, there has been progress. In the 2015 general elections, six political parties stood for election and the Partnership for National Unity (APNU)/Alliance for Change (AFC) coalition won in elections that were uncharacteristically peaceful. Nonetheless, the long-standing tensions between ethnicity and politics continue and return to violence is always a risk.

In Jamaica, both of the major political parties - the Jamaica Labour Party (JLP) and the People’s National Party (PNP) – have engaged in varying levels of conflict since independence, and have manipulated the electorate for their own political gain. In the period between 1962 and 1980, they helped to organize and arm residents in poor urban communities, producing "garrison" neighborhoods where gangs controlled the streets on behalf of the politicians and mobilized voters at election time. The relationship between the politicians and their supporters has been described as one of “patron-client” where the clients were “obedient” to the “patrons” who in turn, provided benefits, including jobs and money. In more than half of the years since independence, “Prime Ministers representing seats characterized by high levels of armed dominance have governed the country” including the former and current Prime Ministers. Varying accounts of the post-1980 period abound. One holds that following the inter-party violence of the 1980 elections, the two parties began to distance themselves from the political gangs, although they still maintained relations and looked to them for support and votes. Seeing a loss of revenue from political activities, gang leaders expanded to international narco-trafficking. The other holds that “by the early 1980s, as demand for illegal drugs began to soar in the US, Jamaica developed into a transshipment point, and many gangs became involved in cocaine and marijuana smuggling. With money of their own, they no longer needed the patronage of politicians and began to operate independently.” In some instances, the drug dealers have created their own independence and patronage and carved out urban spaces with semi-sovereign rule. Regardless of which is more accurate, the interplay of politics and gangs is evident and continues. It is recognized that at least some part of the current epidemic of crime, violence and insecurity in Jamaica is attributable to “the history of political-criminal ties that has marked the country since its independence.”

Encouragingly, political reforms have helped to reduce political violence and electoral abuse.

The mechanisms’ responses

Political violence is cautiously or rarely considered by the treaty bodies and UPR although it sets the framework within which other types of violence thrive and has far-reaching consequences for rights-holders. In the case of Guyana, the Committee on Economic, Social and Cultural Rights (CESCR) has focused on ethnic and racial discrimination generally, but less on the ethnic tensions and political polarization perpetuated by the State and its links to violence and insecurity. In its recent dialogue with the State party on its periodic reports, it asked the State *inter alia*, to specify the legislative, policy and organizational measures taken to combat racial discrimination; provide information on cases and investigations of the Ethnic Relations Commission; and information on cases, prosecutions and sentences by the courts under the Racial Hostility Amended Act No. 9 of 2002. In its brief response, the State informed *inter alia*, that “in 2015, a former President of the Cooperative Republic of Guyana, Bharrat Jagdeo, was taken to court for inciting racial hostility.” In its Concluding Observations, the Committee noted *inter alia*, concern “about the impact of ethnic discrimination, in particular in the context of the relationship between Afro-Guyanese and Indo-Guyanese, on the development of the country and the equal enjoyment of economic, social and cultural rights” and *inter alia*, recommended “that the State party spare no efforts to eliminate the causes of inter-ethnic discrimination.” In the case of Jamaica, the HRC expressed “concern about the delay in investigating and prosecuting the
violations committed by law enforcement officials in the aftermath of the elections in 2009 …” and encouraged the State party to speed up its investigation of allegations of abuse by law enforcement officials in connection with the April 2009 elections and to bring perpetrators to justice and provide remedy to victims.129

The Special Procedures have gone beyond, although in varying depth. In the case of Guyana, both the Special Rapporteur on racism and the Independent Expert on minority issues addressed the topics in detail at the end of their visits. The Special Rapporteur on racism stated that every level of Guyanese society is permeated by a profound moral, emotional and political fatigue, arising out of the individual and collective impact of ethnic polarization.130 The Independent Expert on minority issues witnessed what she described as a continuing societal malaise that shows evidence of having deepened and transformed in some instances into despair, anger and resistance. She remarked that “a bitter and destructive political environment has infected the wider society and is failing the people of Guyana.” Further, ethnicity has been grossly manipulated as a political tool. Due to recent atrocities and ongoing killings, both ethnic groups perceive a heightened threat of violence from the other. Many believe this threat to be sanctioned or supported to some extent by the opposing political party. She recommended inter alia, that “Guyana must take immediate steps towards healing the wounds of history and those inflicted by recent events” and “the Government and both political parties should take full responsibility to ensure that decisions taken to resolve conflicts are fully implemented.”131 In the case of Jamaica, both Special Rapporteurs briefly acknowledged that the root causes of the high level of violence in the country were inter alia, links between criminal gangs and political parties. They recommended actions to “address the root causes of this culture of violence.”132

Collective violence: State-perpetrated violence

State-perpetrated violence is routine in the Commonwealth Caribbean and is of concern not least because it violates human rights and perpetuates a culture of violence.

Commonwealth Caribbean countries retain the death penalty, recalling however, that none have ratified the Second Optional Protocol to the ICCPR and are thus, not in contravention of international human rights law, but rather a global movement that seeks to abolish the death penalty. Only Barbados and Trinidad and Tobago maintain the mandatory death penalty. With respect to the Commonwealth four, Barbados’ last execution was in 1984; Dominica’s in 1986, Jamaica’s in 1988, and Guyana’s in 1997. The countries hold that the death penalty is widely supported in the sub-region, including amongst elected officials and the public. However, with respect to the mandatory death penalty, public opinion is more nuanced. A public opinion survey in Trinidad and Tobago which canvassed a representative sampling of 1,000 residents revealed that 89 percent of Trinidadians favor the death penalty (with 11 percent supporting immediate abolition), but only 26 percent backed the law which stipulates that the death penalty is mandatory on conviction for murder, no matter the circumstances of the case or characteristics of the perpetrator.133

The fact that the countries have not progressed to abolishing the death penalty and still maintain a retentionist stance sets a framework of condoning violence. However, it is important to recognize that the de facto moratorium on the death penalty over the last two decades is a sign of progress in response to international and regional human rights trends and outcomes. While there was an initial backlash to the recommendations and decisions of international and regional mechanisms and the Privy Council,
leading three countries to withdraw from the Optional Protocol, there was also a subsequent sustained retraction, demonstrating that these countries are responsive when there is combined advocacy of the mechanisms and international community.

Extra-judicial killings are reported in many countries of the sub-region, including in micro island States such as Saint Kitts and Nevis, and Saint Lucia. In the Commonwealth four, Guyana and Jamaica have serious incidences of extra-judicial killings and impunity for such acts. Guyana has had a history of periodic extra-judicial killings, including markedly, during its period of autocratic, socialist rule. However, a more recent example is of the alleged “phantom squad” which reportedly tortured, "disappeared," and killed more than 200 individuals during the period 2002 to 2006. Its members included former and serving police officers, and it allegedly had links to the police force and Government officials. In October 2009, following the conviction of a Guyanese citizen in the United States on charges of inter alia, drug smuggling and leading a criminal enterprise in the United States, the Government announced that it would investigate his involvement as alleged head of the “phantom squad.” It proposed to constitute a special investigative team of the Guyana Police Force, however, NGOs have called for a truly independent commission of inquiry to ensure truth and justice. As of the writing of this paper, the commission had still not been established.

In Jamaica, law enforcement officials have allegedly killed over 3,000 people since 2000; only two police officers have reportedly been convicted for murder since then. Between January and October 2016, 92 people were killed, representing an average of two killings per week by the police. The Tivoli Incursion is an example of law enforcement excess. On 23 May 2010, a State of Emergency was declared in the parishes of Kingston and St. Andrew, and on the following day, “approximately 800 soldiers of the Jamaica Defence Force (JDF) and 370 police officers of the Jamaica Constabulary Force (JCF)” moved into West Kingston to inter alia, execute an arrest warrant for the leading “Don” in Jamaica, Christopher Coke, in accordance with an extradition request by the United States Government. Coke was based in Tivoli Gardens which “was the most significant garrison community in Jamaica” and practically, a “state within a state.” By the end of the operation, 69 civilians had been killed by the security forces. In 2016, a Commission of Enquiry report identified several cases of possible extra-judicial executions and made recommendations for inter alia, police reform. The JCF accepted a number of the recommendations, but declined to accept responsibility for the alleged executions or human rights violations during the operation. By the end of 2016, the Government had still not officially indicated how it would follow-up to the report. A large proportion of the unlawful killings in Jamaica are attributed to the JCF. Teenagers and male youth from inner-city, disenfranchised neighborhoods, account for the majority of the victims of these killings, and their relatives face difficulties in securing justice, along with frequent intimidation by the police. Amnesty International has observed “Jamaica’s shocking culture of fear and violence is allowing police officers to get away with hundreds of unlawful killings every year. Shocking injustice is the norm.” Despite a recent reduction in the number of killings by police, there has been limited progress in addressing police lack of accountability and impunity and policing methods which are non-compliant with international standards.

The mechanisms’ responses

The issue of the “phantom squad” in Guyana has been taken up by the Special Procedures and UPR, but not the treaty bodies. The Independent Expert on minority issues expressed concern “regarding numerous killings of young Afro-Guyanese men from 2002 to [2008], and the existence of what has
been described as a “phantom death squad;” failure to adequately record or investigate the murders; and the perception of collusion of Government and law enforcement with known criminals against young African males known to the security services. She further stated that civil society groups had described a history and culture of violent policing in Guyana and catalogued fatal police shootings. She recommended that the Government “take steps to respond convincingly to perceptions that the Afro-Guyanese community as a whole has been targeted during actions by the joint services …” During Guyana’s 2010 UPR, Canada referred to the Independent Expert’s findings, and recommended an independent commission into the “phantom squad.” The United States also recommended increasing the capacity of the police complaints’ authority to investigate allegations of extrajudicial killings and the use of excessive force by police. In Guyana’s 2015 UPR, this latter recommendation was repeated by Italy, indicating a lack of progress on implementation between the first and second cycle reviews.

The pattern of unlawful killings in Jamaica has been addressed by all of the human rights mechanisms. In 2010, the Special Rapporteur on torture “expressed concern at the increasing number of fatal shootings by the police, often allegedly amounting to extrajudicial executions, as well as the apparent lack of investigation and accountability in a large number of these cases” and called for the establishment of “the independent commission of investigation, equipped with sufficient powers and resources to investigate all forms of police misconduct, including allegations of extrajudicial killings, torture and ill-treatment.” In 2011, the Human Rights Committee noted continued reports of cases of extrajudicial executions and excessive use of force by law enforcement officers and lack of effective investigations, and recommended that the State party closely monitor and investigate allegations of extrajudicial killings, bring perpetrators to justice and provide effective remedies to victims. It also called on Jamaica to ensure that INDECOM be adequately resourced to carry out independent and effective investigations. In Jamaica’s 2011 UPR, Hungary, Spain, France, Canada, Belgium and the United States made various recommendations to address allegations of excessive use of force and extrajudicial killings by law enforcement, with the United States reiterating the Special Rapporteur’s recommendation.

While the preceding may paint a grim picture, it is important to stress that the countries have also not been immune to the findings and recommendations of the international and regional human rights mechanisms’ with respect to unlawful killings. Jamaica for example, included a detailed annex to its second cycle UPR report, updating on follow-up to the Special Rapporteur on torture’s recommendations, including with respect to unlawful killings. In addition, the establishment in 2010 of Jamaica’s Independent Commission of Investigations (INDECOM) to investigate “death or injury to persons or the abuse of the rights of persons …” by the Security Forces and other State agents can be cited as a successful model in tackling extrajudicial executions.

**Collective violence: organized criminal and gang violence**

Organized crime is said to affect all countries in the sub-region in one way or another, although it is difficult to measure prevalence. Organized crime groups have been found in several countries, including in Barbados, Guyana and Jamaica, and are reportedly involved in the drugs and arms trade, and trafficking in persons. In Guyana for example, sex trafficking occurs in the interior regions where port-knockers mine the sedimentary plains for gold. One scholar has written that “drugs present some clear and present dangers to democracy in the Caribbean, not least because of its corrupting influence and associated violence.”
Regarding gang violence, several data sources report that street gangs are active in much of the sub-region, although the magnitude of the problem in each nation varies substantially. One indicator of the extent is police data which shows 150 gangs and 4000 gang members in Barbados, although these figures seem high, and 268 gangs and approximately 3900 gang members in Jamaica. Police estimates were not available for Guyana. Based on self-reporting of 15,695 school-aged youth in several countries, including the Commonwealth four, the “research suggests that, compared with more developed nations, the Caribbean might have a relatively significant gang problem.” The first comprehensive study of citizen security in the region concluded that both street gangs and organized crime have contributed to violence and crime (e.g., homicides, drug-trafficking, the arms trade, and more recently, trafficking in persons), and undermine local economies, the rule of law (through pervasive judicial corruption) and human development.

The mechanisms responses

The issue of organized crime has been addressed by the mechanisms with respect to very few States and not at all in the Commonwealth four. With regard to gang violence, they have examined it only in respect of Jamaica. The Special Rapporteur on torture touched on the matter during his visit and stressed the need to “break the cycle of violence by addressing the root causes of violent crime, including, inter alia, [the] drug trade, trade in firearms, links of criminal gangs to political parties, corruption, poverty and other socio-economic disparities.” In Jamaica’s 2011 UPR, one State, Azerbaijan encouraged Jamaica “to speed up its efforts to effectively combat criminal networks.” In 2015, the Committee on the Rights of the Child provided fairly extensive recommendations to Jamaica following its consideration of the State party’s report. It welcomed the various initiatives to combat gang violence, including intervention and youth programs, but remained concerned about the high rate of crime and violence, and the number of children who are murdered, and in particular, gang violence in poor inner-city communities, which impacts on children as victims and perpetrators. The Committee was further concerned that the climate of fear, insecurity, threat and violence linked to gangs was preventing children from enjoying their childhood and adolescence, and recommended that Jamaica adopt and implement a national strategy with a coordinated and structured approach to address issues pertaining to children as victims, perpetrators and witnesses of acts of violence and abuse. The Committee also recommended that Jamaica invest in prevention activities, with an emphasis on the school and the family, as well as social inclusion measures, and address the social factors and root causes of juvenile violence and gangs, such as, inter alia, social exclusion, lack of opportunities, a culture of violence, and migration flows.

Inter-personal violence: family violence, specifically child abuse and neglect

Child abuse and neglect are endemic in the Commonwealth Caribbean and large numbers of children are believed to be affected, although there is significant official underreporting of incidences across all countries. Violence and fear of violence are thus omnipresent in children’s lives and affect every aspect of their development into adulthood. There is very little attention to child neglect in analyses of the Caribbean region, although some countries like Barbados have very high incidences.

At the same time, some studies of children’s experiences as victims of violence reveal a high prevalence of physical, sexual and emotional abuse and as children get older, this abuse moves from a home-setting to community and schools. Physical abuse normally starts in the context of “disciplining” children and
eventually degenerates into physical abuse. With respect to sexual abuse, Dominica and Jamaica are reported to have the highest incidences, with girls being disproportionately victimized. There is much less information on emotional abuse in the Caribbean, however, verbal aggression and threatening children with physical punishment are commonly described in the literature. In Jamaica, 97 percent of 11-12 year olds interviewed, reported verbal aggression from an adult at home. Children are often witnesses of domestic violence and this affects their development in numerous ways.

Child abuse and neglect occur across all socio-economic groups and family structures based on information from Guyana and Jamaica, although children who are poor are especially victimized. Further, children from minority communities such as Carib children in Dominica, and indigenous Amerindian children in Guyana; children living with disabilities; orphaned children or children with absentee parents; children in institutional care, or who work or are forced to live on the streets are especially vulnerable.

Inter-personal violence: community violence in schools and amongst youth

In addition to family violence against children, reports indicate that children are exposed to very high levels of violence in their community, affecting them both as victims and witnesses of violence. For example, 47 percent of children in Guyana knew someone who had been killed, 60 percent of 9-17 year-old children in Jamaica reported that a family member had been a victim of violence and 37 percent had a family member who had been killed.

High levels of physical, sexual and emotional abuse are reported in some Commonwealth Caribbean countries’ schools also. The problem is complicated by the fact that corporal punishment is sanctioned by law in many Caribbean countries and entrenched in Caribbean culture. It is also reported that school children encounter abuse in public spaces, such as when using public transportation. Corporal punishment is also a reality for children in institutional settings.

Notwithstanding, there are some encouraging signs with respect to ending this practice. While nine Commonwealth Caribbean countries retain corporal punishment as a sentence for crime and/or disciplinary measure in institutions, law review is underway in five of these countries. This progress may be attributed to inter alia, the outcomes of international human rights mechanisms and to Caribbean courts which have found corporal punishment as a sentence to be inhumane in both Barbados and Jamaica. Jamaica represents a good practice in the Commonwealth Caribbean in prohibiting corporal punishment as a disciplinary measure in penal institutions and as a sentence for crime, although it is permitted in all other settings.

With respect to youth violence, 64 percent of CARICOM’s population consists of young people under 30 years of age, with the specific youth category of 15 to 24 years old representing around one fifth of national populations. In Barbados, it is 18.0 percent; Guyana, 21.3 percent; and Jamaica, 18.7 percent. There is a reported increase in youth violence. Youth crime and violence has a male character and is linked to the emergence of criminal gangs. In absolute terms though, the actual number of cases in all countries is small. Violence occurs in the context of high levels of youth unemployment, inadequate educational opportunities, and exposure to violence at home, in communities, in schools and in the wider society. Gangs and gang violence in and outside schools have reportedly grown in parallel, and gang violence in schools includes severe beatings, stabbings and shootings, and tends to be
more severe than other forms of violence in schools because it is associated with trafficking of illicit drugs. A major concern in terms of policy and practice in the Caribbean is that the approach to youth crime is often punitive rather than restorative. This is an area where much remains to be done to value youth and maximize their potential.

The mechanisms’ responses

Inter-personal violence is often addressed by the treaty bodies and UPR, although some issues such as emotional abuse are infrequently considered. In addition, while the Committees address topics such as sexual exploitation and abuse, and trafficking, they often refer to a lack of information which limits their consideration of the issue. For example, in the case of Barbados, the CRC expressed concern about the lack of information on trafficking, as well as measures to address and prevent the abduction, sale and trafficking of children. In the case of Guyana, the CRC recently noted the lack of data and information on the root causes and extent of sexual exploitation and abuse of children. Late and non-reporting also impacts on the mechanisms’ consideration of these violations of children’s rights. Dominica’s last report to the CRC was in 2004, and at the time, the Committee’s brief Concluding Observations on it included concerns and recommendations on, inter alia, corporal punishment in law and practice, child abuse and neglect, and juvenile justice.

In the case of Barbados, the CRC addressed the issues, inter alia, of lawful and widely used corporal punishment in homes and schools, child abuse and neglect, sexual exploitation and abuse of children, and trafficking for labor and sexual exploitation in a fairly extensive way, although as indicated previously, it asked for more information on trafficking. In respect of Guyana, the CRC examined lawful and prevalent corporal punishment in homes and schools, as well as briefly referring to abuse and neglect, and to sexual exploitation and abuse as indicated above. Further, CESCR also expressed concern at the disproportionately high unemployment rates of inter alia youth, and recommended that Guyana take all necessary measures to collect disaggregated statistical data to enable assessment of the employment and labor market situations and review and implement effective employment policies. In the case of Jamaica, both CESCR and CRC addressed a number of issues. CESCR remained deeply concerned at high levels of violence, use of corporal punishment in the home and in schools, abuse, neglect and sexual exploitation and abuse of children, as well as victims’ lack of access to psychosocial support. It was also deeply concerned at reports of sexual, physical and mental abuse of children in State-run children’s homes and safe houses supervised by the child development agency. The CRC was concerned about the number of cases of child abuse and neglect, as well as on the issue of missing children, weak parenting skills, poor management of discipline, poverty and isolation, family violence and weak community support systems, which are predominant factors for abuse and neglect of children. The Committees made corresponding recommendations in all cases.

In Barbados’ 2009 UPR, Italy encouraged it to take appropriate legislative and administrative measures to fight against domestic violence and physical abuse of children, and engage in an exchange of information with countries that are developing best practices in these fields. Brazil recommended it work towards taking measures in relation to the psychological and physical impact of domestic violence on children. In Dominica’s 2014 UPR, Costa Rica recommended that it take appropriate legislative and administrative measures to combat domestic violence and physical ill-treatment against children, including the prohibition of the practice of corporal punishment. In Guyana’s 2015 UPR, Romania and Namibia encouraged Guyana to develop a comprehensive national
strategy and take all the necessary measures to address violence against children. Namibia made special mention of corporal punishment. In Jamaica’s 2015 UPR, Slovenia addressed a similar recommendation to Jamaica to develop a comprehensive strategy to combat violence against children. The issue of corporal punishment has been the subject of numerous recommendations to the Commonwealth four in each of their UPRs.

Youth is normally taken up by the mechanisms through the prism of health and unemployment, and juvenile justice, and only in the case of Jamaica, is the link between youth and violence addressed. For example, CESCR expressed concern that youth unemployment is three times higher than that of adults due to inadequacies in education and skills training, particularly in rural areas, leading to an influx of youth into urban areas and higher levels of violent crime and gang-related violence.\(^\text{174}\)

**Self-directed violence**

Although estimated suicide rates in the Americas are generally lower than in any other region of the world, Guyana is distinguished by having the highest estimated suicide rate *in the world*. Amongst the Commonwealth four, based on age standardized suicide rates per 100,000 of the population for 2012, Guyana’s rate was 44.2 for both sexes (22.1 females, and 70.8 males), compared to Barbados’ of 2.3 for both sexes (0.6 for females, and 4.1 for males), and Jamaica’s of 1.2 for both sexes (0.7 for females, and 1.8 for males).\(^\text{175}\) For all three countries, there is a distinctive male character of suicides. No estimates were available for Dominica which highlights a problem of data paucity on micro-islands and their exclusion from global policy analysis.\(^\text{176}\)

**The mechanisms’ responses**

The treaty bodies have recently begun to address this issue as relates to the sub-region, however, in an inconsistent manner. For example, in the case of Guyana, the World Health Organization’s *Report on Preventing suicide: a global imperative* was issued in 2014 highlighting that the country has the highest suicide rate in the world, yet CESCR’s 2015 consideration of the State party’s periodic report did not take it up. A general question in the list of issues to the country asked for “information on the mental health-care services, including any challenges in this area and measures taken so far to overcome them.” The Government response included acknowledgement “that mental health services in Guyana are inadequate and not available or accessible to the vast majority of the population” and indicated several measures which have been started to address this gap.\(^\text{177}\) In its Concluding Observations, the Committee expressed concern at the limited availability of mental health-care services and recommended that the State party intensify its efforts to improve the availability, accessibility and quality of health-care services, including in the mental health sector.\(^\text{178}\) None of the other mechanisms have addressed the issue. While the country has pending requests for visits from SPs mandates on water and sanitation, torture and indigenous peoples, it has not received a visit request from the mandate on the right to health for instance. In the case of Jamaica, the CRC did take up the issue, urging the State party to “take urgent action to strengthen efforts to prevent suicide among children and adolescents, including by increasing psychological counseling services and the number of social workers in schools and communities,”\(^\text{179}\) although based on the data, Jamaica’s suicide rate is far less severe.

**Causes of crime, violence and insecurity:**
The causes of crime, violence and insecurity in the sub-region are attributed to many factors in the literature on the subject, although a few are more frequently referred to. One explanation traces for example, violence against children to ancient civilizations, thus inferring a link with tradition as opposed to discipline. More recent research has concluded that while biological and other individual factors explain some of the predisposition to aggression, more often these factors interact with family, community, cultural and other external factors to create a situation where violence is likely to occur.

Another explanation links the legacy of colonialism, slavery and the conditions on plantations, as well as the indentured workers scheme in some countries, to violence in the sub-region. Naipaul wrote “sugarcane is an ugly crop and it has an ugly history,” “slavery lasted for three hundred years and was of exceptional brutality,” and “the indenture system … operated most harshly in British Guiana.” The use of physical pain as punishment, as well as its subsequent acceptance, is ascribed to the legacy of slavery. Further, punitive sanctions as a means of solving social problems rather than recourse to conflict resolution, mediation or rehabilitation are also said to be due to the influence of values associated with slavery. The legacy of colonialism and slavery also had a significant impact on the family. As Barrow explained “the slave plantation system marginalized and disrupted family life for nearly two centuries from its inception in the mid-1600s” … and even “in the post-Emancipation era after 1838, macro-economic and environmental constraints continued to militate against family life.”

Although she does not suggest a causal link between this and contemporary violence in the sub-region, a study on violence against children suggests that family disruption contributes to neglect and abuse of children, and a protective factor against youth involvement in violence is family connectedness.

The colonial legacy must not be underestimated. Its imprints have been entrenched on many aspects of Caribbean societies, from laws to institutions and practices, to socio-cultural norms, and continue to impact on people’s enjoyment of their human rights. Some view addressing this legacy as uncomfortable or irrelevant. Posner, for example, observes that Western countries view these challenges as belonging to the distant past. However, insofar as colonial remnants continue to impact on human rights, they must be kept under review in order to determine and institute mitigating measures. While Caribbean countries represented in CARICOM have initiated efforts to seek reparations from former colonial powers, the equally important national and sub-regional dialogue on the legacy and its effects is lagging, and is necessary to create awareness of the truth and set the stage for reconciliation and progress for current and future generations.

Concerning the law, as demonstrated previously, the Constitutions of Jamaica, Trinidad and Tobago, Guyana and Barbados contain savings clauses which lead to violations of human rights and impede judicial review; while the countries’ parliaments can repeal or amend laws regardless of these clauses, law reform is often slow because of a range of factors, including socio-cultural norms which have developed over time, and impact on legislative progress. This is evident in areas such as the death penalty, corporal punishment, and LGBTI rights. With respect to institutions, the main policing model in the Caribbean for example, has its roots in Europe and is based on “state security rather than citizen security.” This, coupled with contemporary challenges relating to police capacity, responsiveness, effectiveness, and legitimacy, sustains the epidemic of crime, violence and insecurity in the sub-region. In addition, challenges in the criminal justice system which include case processing delays and backlogs, low conviction rates, poor conditions of prisons, and overcrowding and few alternatives to prison, aggravate the problem. Practices such as corporal punishment which is widespread in homes and schools and legally sanctioned in the sub-region have been traced back to British cultural
Both corporal and capital punishments are recognized as having been used as institutionalized mechanisms of control over the slave and indentured populations. A further explanation for the wave of violence relates to socio-cultural norms which sustain the epidemic. These are attributed to the colonial legacy, but also to a contemporary lack of knowledge and understanding of the consequences of certain practices, as well as perceived beneficial traits of them. One example is the common support for the use of corporal punishment by parents who themselves likely experienced such punishment, and perpetuate an inter-generational practice based on insufficient knowledge of the causes and belief that it was in some way useful in ensuring that they remained disciplined. Socio-cultural norms are also said to impact on efforts to find solutions to problems in the sub-region. Some interlocutors referred to “superiority tendencies”, based on educational levels and professional status which lead to for instance, lawyers and prosecutors treating the police with disrespect, and a breakdown between different levels of the judiciary. These norms are also said to feed a defensive and taciturn culture in which social taboos thrive and where constructive, open, sustained, dialogue and solutions are impeded. In addition, the influence of Christian evangelical views on human rights implementation in the Caribbean is a major challenge in areas such as sexual and reproductive health and rights, LGBTI rights, and capital and corporal punishment. Gibbons observes that “finding effective responses to global violence against women and children demand that we examine the roots of culture within which gender-based violence happens.” This is also applicable to other typologies of violence.

And lastly, economic and social factors such as unemployment, poverty, and exclusion, also contribute to the epidemic. Countries of the sub-region, and particularly the island nations, were significantly impacted by the last global financial crisis which limited, inter alia, revenue streams and thus, employment and livelihood opportunities. A later article published by the North American Congress on Latin America connects the collapse of Caribbean economies starting in 2011 to the observed spike in domestic violence. The article termed the phenomenon a ‘crisis of masculinity” related to rising unemployment and men’s desire to reestablish their dominance and control. Other factors such as parents migrating for work or other purposes, are said to contribute to children left behind becoming more vulnerable to neglect, and physical, emotional and sexual abuse.

VI. Economic and social factors impacting on the enjoyment of human rights

The cost of crime, violence and insecurity in the Commonwealth Caribbean is significant for victims, their families, and society at large. Some of these costs are difficult to quantify; however, recent attempts have been made to assess at least economic costs. According to an Inter-American Development Bank study, the Caribbean is the sub-region with the second highest costs of crime in Latin America and the Caribbean. The average cost of crime per country in 2014 was 3 percent of GDP, with a lower and upper bound of 2.41 and 3.55 percent respectively, with wide variations between countries (for example, the cost of crime is particularly high in Jamaica, while in Barbados, it is amongst the lowest in the region). The cost of crime represents for the region as a whole a total of USD 174 billion in Purchasing Power (PPP), which is approximately USD 300 per capita on average. This cost is comprised of 37 percent in private costs (expenditure of firms and households on crime prevention, namely spending on security services); 42 percent in public spending (including on the judiciary, police, and prison administration); and 21 percent in social costs (including the costs of victimization in terms of quality of life loss due to homicides and other violent crimes and the lost income of the prison population). The study highlighted that the relatively high public spending on combating crime goes
overwhelmingly toward costs for police (and prisons, in the case of Barbados), with little allocated to
prevention and the judicial system,” supporting the earlier finding that the sub-region takes a largely
punitive approach to dealing with crime, violence, and insecurity.

These costs detract from already limited resources to protect and fulfill human rights. As noted earlier
on, Commonwealth Caribbean economies are small, relatively undiversified and vulnerable, and
Governments often point to economic under-development as one of the main reasons for non-realization
of human rights. Economic and social factors impacting on human rights are well documented. For
example, Heyns and Viljoen note “socio-economic factors often have a negative influence on the
potential impact of the treaties. Illiteracy of the population is an important factor in this regard. Poverty
undermines especially socio-economic rights and other rights which place a positive obligation on the
states, such as the rights of prisoners or legal representation, in particular in respect of vulnerable groups
such as women or children.”

The Commonwealth four has both intrinsic and self-inflicted limitations which are further compounded
by a number of external constraints which impact on human rights. With respect to their intrinsic
limitations, Barbados’ economy is divided into three main sectors: services, light industry and sugar.
Tourism is the biggest source of foreign exchange, followed by an offshore financial services sector. Dominica’s main export is bananas, and since the 1980s, Governments have tried to diversify the
economy into new crops; export-oriented small industries (notably garments and electronics assembly);
tourism; offshore financial services; and a highly controversial “economic citizenship program” which
awards citizenship for a substantial investment in Dominica. Guyana’s economy is based on
agriculture (sugar and rice) and mining (gold and bauxite). It has pursued diversification of the
economy and attracted foreign investment, particularly in the extractive (gold and oil and natural gas
exploration) and service industries. In 2015, 2016, and 2017, a United States multi-national
corporation (MNC), ExxonMobil, announced three discoveries of oil in Guyana’s territorial waters,
making “Guyana … poised to become a top producer.” It has estimated that the sandstone reservoirs
could hold more than 1.4 billion barrels of high-quality oil. Jamaica’s economy is based on
agriculture and bauxite, with these latter two sectors, along with remittances, serving as major
contributors to the economy.

The island nations are particularly vulnerable to external shocks. As noted before, the 2007-2008 global
financial crisis negatively impacted many of these economies, especially in the sectors of tourism and trade. Both unemployment and poverty rose, feeding crime, violence and insecurity, which in turn impacted on \textit{inter alia}, tourism. The countries are also all affected by natural disasters.

Based on GDP figures for 2015, Jamaica had the largest economy at USD 14.2 billion. It is followed
by Barbados at USD 4.385 billion. Guyana’s is next at USD 3.166 billion. Dominica had the
smallest economy at USD 517.2 million. Barbados GDP per capita however, was highest at USD 15,360 in 2014. It was followed by Dominica at USD 7,361 in 2014. Jamaica and Guyana have fairly low GDP per capita rates (2014) at USD 5,004 and USD 4,039 respectively, essentially
meaning that poverty is prevalent in such small populations and an inescapable reality that people face.
Based on the most recent survey data that was publicly available for Jamaica (2012), 2.7 percent of the
population (76,000 people) were multi-dimensionally poor and an additional 9.6 percent (265,000 people) live near multidimensional poverty. The breadth of deprivation (intensity) is 40.5 percent. The
most recent survey data for Guyana (2009) indicates that 7.8 percent of the population (59,000 people)
are multi-dimensionally poor, an additional 18.8 percent live near multidimensional poverty (141,000 people), and the breadth of deprivation (intensity) is 40.0 percent. Data was not available for Dominica. For Barbados, based on 2012 survey data, 1.2 percent of the population (3000 people) were multi-dimensionally poor, 0.3 percent (1000 people) live near multi-dimensional poverty, and the breadth of deprivation is 33.7 percent.

Although the debt-to-GDP ratio varies enormously among Commonwealth Caribbean countries — reaching its highest level in Jamaica at some 135 percent in 2013, five of the twenty countries in the world with the highest levels of debt are located in the Commonwealth Caribbean, including Barbados and Jamaica. The majority of this debt is due to natural disasters, and not especially bad or irresponsible management of fiscal policy. Jamaica’s nine natural disasters from 2006-2016 for instance cost USD 532 million.

While it may be the case that Governments are economically constrained to address key issues, corruption is also prevalent in the sub-region and entails significant costs. On the 2016 Corruption Perception Index, Guyana ranked 108; Jamaica, 83; Dominica, 38; and Barbados, 31. The linkages between crimes and the corruptive influence of gangs and organized crime, and decreased economic performance have been established. Crime redirects a country’s limited resources to prevention and control, and away from areas that can drive economic growth and human development, including with respect to education, health and physical infrastructure. Corruption impacts on foreign investment, and private and public loans from overseas. Both impact on tourism and take away resources from production and innovation.

Gains from lowering the costs of crime, violence and insecurity and combating corruption could be applied to greater spending on especially education and employment opportunities which are key to preventing crime, violence and insecurity. Efforts to estimate the potential benefits of violence prevention to national economies suggest that significant gains could be made by countries if violence could be reduced to Costa Rica’s level of 8.1 homicides per 100,000 people. Guyana would benefit from growth rate increases of 1.7 percent and Jamaica could see annual economic growth per capita by an estimated 5.4 percent. This, in turn, would benefit human development. For example, while Barbados’ spending on health and education was 7.5 and 6.7 percent of GDP in 2014, respectively, Guyana’s spending in both areas in the same year was low at 5.3 and 3.2 percent, respectively; and Jamaica was slightly better at 5.4 percent on health and 6 percent on education. Dominica spent 5.5 percent of its GDP on health in 2014. Of these countries, Barbados has a much less challenging problem of crime, violence and insecurity which supports the correlation between greater social spending and reduced crime, violence and insecurity.

States’ intrinsic and self-inflicted limitations have been considered by the treaty bodies. For example CESCR has clarified the nature of States parties’ obligations in respect of article 2, paragraph 1, of the ICESCR, which commits each State to take steps, individually and through international assistance and co-operation, to the maximum of its available resources, to progressively achieving full realization of the rights contained in the Covenant ... Further, it has, for example, in the case of Guyana expressed concern “that corruption, which has a devastating impact on the enjoyment of economic, social and cultural rights, is pervasive in the country, including in relation to the procurement of goods and services by public authorities and public works contracts” and “that the institutional framework to counter corruption within the Government is weak and ineffective and thus unable to prevent or effectively prosecute corruption.” The Committee made several recommendations to the State party to address
However, the costs of crime, violence and insecurity, and corruption are rarely treated by the mechanisms.

The Commonwealth four also face a number of exogenous factors which impact on protection and fulfillment of human rights, including most notably, constraints imposed by external actors such as the International Financial Institutions (IFIs), and some aspects of globalization such as financial flows and trade. With respect to the IFIs, one author has remarked that “constraints on the execution of economic policies, as well as poor management have contributed to gaps between legally adopted instruments that deal with economic and social rights and actual practice.”

IFIs policies and their impact on people’s lives in the sub-region can be illustrated by the case of the Omai gold mine disaster in Guyana. The Omai gold mine is the largest in Guyana and second largest in South America. In the 1980s and 1990s, as part of structural adjustment programs, the International Monetary Fund (IMF) encouraged countries to prioritize and increase exports in order to repay its, and other lenders’ loans. This entailed greater dependence on foreign companies that invested in a few sectors, and allowed the MNCs to flout human rights. Many of the policies promoted by the IFIs remain in place today.

In Guyana, as part of a structural adjustment program that began in the late 1980s, the IMF sought to make the mining, oil and logging sectors the country’s principal economic sectors as part of the export-oriented strategy advocated to help the Government meet its foreign debt repayments. During the 1990s, the Government started to allow exploitation of the country’s natural resources, especially minerals and timber, in order to generate income and satisfy the conditions of a 1991 structural adjustment program; the Omai project was part of this program, and one of its main financiers was the World Bank’s Multilateral Investment Guarantee Agency (MIGA); the Omai mine represented a quarter of the Government’s revenues. Guyana’s high dependence on a few major corporate investors created a large power imbalance that companies could exploit.

In 1995, an Omai waste containment system failed and in four days, 3.2 billion liters of liquid waste contaminated by cyanide (used to extract gold from ore) and heavy metals poured into the Omai and then Essequibo rivers. The spill infringed on indigenous and other people’s rights to inter alia, food (fish), water (for bathing and other purposes), health and livelihoods, and aquatic life in the two rivers.

To date, accountability for the spill and the right to remedy have been frustrated by MIGA which is alleged to have exercised political pressure on the Government after the spill to prevent environmental regulations from being strengthened, and the MNCs’ influence on the Government. Omai Gold Mines Ltd., was constituted between the Canadian, Quebec-based, MNC Cambior which held a 65 percent stake in the mine and the United States, Denver-based, Golden Star Resources Ltd., with a 30 percent share. The Government held only a minority interest at 5 percent. The MNCs influence started early in the investment process when they swayed the laws and regulations that would govern their investments. Once the spill had taken place, the laws essentially deemed their harmful actions as legal and as such, communities’ ability to seek remedy was hindered from the outset.

The Omai gold mine disaster was litigated in Quebec’s Superior Court and Guyana’s High Court but did not result in remedy for the victims of the spill. The Quebec Court dismissed the case in 1998 on the grounds that the courts in Guyana were better placed to hear the case, under the doctrine of forum non conveniens, disagreeing with the plaintiffs’ arguments about the poor state of the legal system in
Guyana. The subsequent first legal action in Guyana’s High Court was dismissed in 2002 for reasons which are unclear and the second was apparently dismissed in 2006, again for unclear reasons, given that the Court did not maintain written records of the proceedings and decisions. Small compensation packages were received by a limited number of victims but overall, all victims were not provided with long-term alternative sources of potable water and no assessment was done of whether pollution had impacted on the health of those living off the river. None of the companies involved in the operations of the Omai mine were held to account for the spill and its consequences.

The CESCR has noted in respect of the right to remedy that, “practice shows that claims are often dismissed under this doctrine [forum non conveniens] in favor of another jurisdiction without necessarily ensuring that victims have access to effective remedies in the alternative jurisdiction.” This was the case of Quebec’s Superior Court. At the end of its recent country visit to Canada, the Working Group on Business and Human Rights stated that “Canada is home to more than half of the world’s mining companies, operating in Canada and across the globe,” and “we found evidence of the victims of human rights abuses continuing to struggle in seeking adequate and timely remedies against Canadian businesses” and recommended that “steps should be taken to ensure that even individuals and communities impacted by the overseas operations of Canadian businesses are able to obtain effective remedy in Canada in appropriate cases.”

The CESCR has also addressed the issue of the IFIs and human rights. For example, in the context of the rights to education and health, it concluded that “States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health. Accordingly, States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions” and “the international financial institutions, notably the World Bank and the International Monetary Fund, should pay greater attention to the protection of the right to health in their lending policies, credit agreements and structural adjustment programmes.”

Further, in the case of Guyana, the CRC recommended that it inter alia, establish the necessary regulatory framework and policies for business, in particular with regard to the extractive industry and timber and fisheries projects to ensure that they respect the rights of children; promote the adoption of effective corporate responsibility models; ensure that prior to the negotiation and conclusion of free trade agreements, human rights assessments, are conducted and measures adopted to prevent and prosecute violations, including by ensuring appropriate remedies; and, comply with international and domestic standards on business and human rights with a view to protecting local communities from any adverse effects resulting from business operations, in line with the Guiding Principles on business and human rights.

While the mechanisms have made salient recommendations, there is very little evidence that Guyana or other Commonwealth Caribbean countries refer to their human rights legal obligations or the authoritative interpretations and recommendations of the treaty bodies in aid, financial or trade discussions. This is supported by the aforementioned independent study which noted that of twenty countries, there was “no available evidence of these Conventions being used by government in any other way.” Whether the international human rights framework and State obligations’ are strong enough to make a difference in discussions with the IFIs and MNCs is not clear. Moyn, in his reflection on
whether human rights increase inequality, highlights the failures of human rights in the socioeconomic domain and concludes that “the chief tools of human rights,” focus on State abuse, “are simply not fit for use in the socioeconomic domain.”

There has been much analysis and many proposals aimed at alleviating some of the hardships that countries face due to exogenous factors. In addition, in terms of economic modeling, there has been talk of moving from the old Washington Consensus to either a Beijing or Mumbai Consensus. In 2015, a number of institutions were established to provide alternatives to the IFIs on aid and financing. The New Development Bank (NDB) and related Contingent Reserve Arrangement (CRA) established by Brazil, Russia, India, China and South Africa (the BRICS countries) and based in Shanghai aim to provide alternative development financing and balance of payments support to that of the IFIs. The establishment of these new institutions reflects China’s and other emerging economies’ frustration with the IFIs and the slow pace of reform of the Bretton Woods Institutions. China stresses that it is itself a developing country and its support for developing countries is South-South cooperation rather than development assistance.

For historical and political reasons, countries of the sub-region have broad ties to China and India, and more so, to China. As China continues its significant aid, trade and investment packages bi-laterally in the Caribbean, including for reasons of market access, the countries must ensure that rights-holders come first. Governments’ human rights obligations must be central in negotiations; outcomes must be people-centered and deliver first and foremost benefits to present and future generations of the sub-region; and efforts must be made to guard against repatriation of benefits without reciprocity for rights-holders.

The Omai case is an excellent demonstration of countries’ lack of knowledge and capacity to maneuver complex negotiations and favorable outcomes for their people, but also the corrosive impact of corruption on human rights. The Government and people’s stake was only 5 percent, and in addition, they were severely impacted by the spill. In the case of the contracts with ExxonMobil, these are yet to be made public, although they have been requested by inter alia, the opposition party. In the case of lack of knowledge and capacity to negotiate, States can seek external, independent assistance and avail of guidance which has expanded in recent years, and is relevant to foreign investments in Commonwealth Caribbean States, whether in extractive, hotel, or other sectors. These include the Guiding Principles on business and human rights; Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations - Guidance for Negotiators; and Human Rights Impact Assessments of Trade Agreements, as well as the most recent General Comment of the CESCR on State obligations under the ICESCR in the Context of Business Activities.

VII. Why the disconnect?

The central research question of this paper was why the disconnect between the body of human rights principles, norms, standards, mechanisms, and outputs, and people’s lives – i.e., their lived experiences and daily enjoyment of human rights in the Commonwealth Caribbean. This section draws on the preceding analysis to offer perspectives on the disconnect.

First, while universal human rights may have come to be accepted, their realization is still subject to relativist positions which impact on people’s enjoyment of their human rights. In the post-World War II
era, the discussions on human rights, whether in the context of the founding of the United Nations, in the building of the human rights framework, or in parallel processes, have been complex, and at times contradictory, and have impacted on subsequent realization of human rights. In the formulation of the UN Charter, colonial powers such as Britain and France had agitated for exceptions to human rights to protect their colonial interests. As a result and as Jensen observes, “the Charter also had colonial hypocrisy written into its human rights provisions” which essentially meant “a double standard for colonial territories.” While China had argued for additional references to human rights in the Dumbarton Oaks proposal, it had mounted a challenge to the UDHR at the 1955 Bandung Conference. And while the Global South had challenged colonialism and racism, and championed universal human rights, African and Asian countries were denouncing “human rights as a Western imposition,” and stressing “the need for different rights in Third World countries” by the late 1960s.

Human rights contradictions continue to date in different forms, including in the sub-region, and impact on people’s lives. In addition, while human rights may be universal, the tailored approaches needed to realize them are lacking. Foley observes that “the rights discourse itself raises a whole set of issues that need to be considered more carefully.” Further, “it does not require that much thought to realize that people in different countries may have different views about what policies would be most appropriate for achieving economic growth or that attitudes towards certain human rights are quite socially and culturally specific. No one should ever be tortured, arbitrarily executed or held in slavery, but notions such as freedom of expression, religion and sexual relations do vary in different parts of the world.”

Second, while countries of the sub-region have become parties to a critical mass of human rights instruments, they have fallen short in giving effect to them. The question is whether this matters to people’s lives. The answer may lie in various perspectives on the instruments. Elliott observes that the instruments represent “the highest moral aspirations” and imply “fundamental beliefs that are highly idealized” and therefore, not attainable. Their codification in law is a reflection of abstract principles rather than a strategic instrument which affects implementation. This leads to a “decoupling” of abstract legal principles and national level practices, which in turn “provokes widespread efforts to rectify this disjuncture.” Posner comments that there is little evidence that human rights treaties, on the whole, have improved people’s wellbeing. Human rights, he argues, “were never as universal as people hoped, and the belief that they could be forced upon countries as a matter of international law was shot through with misguided assumptions from the very beginning.” Further, the law is hopelessly ambiguous and allows Governments to rationalize almost anything they do. The treaties are overloaded with hundreds of poorly-defined obligations, and the sheer quantity and variety of rights can provide no guidance to Governments. Given that all Governments have limited resources, protecting one human right might prevent a Government from protecting another. Thus, the existence of a large number of vaguely defined rights ends up giving Governments enormous discretion with respect to implementation. Cole argues that ratification is symbolic. “Human rights norms will penetrate countries regardless of whether they ratify human rights treaties. Even countries that reject human rights treaties or that ratified for purely symbolic reasons are not immune from the transformational power of treaty-based norms.”

This is by virtue of them being part of an international order of States. Palmer assessed whether ratification impacted on improved health (including HIV prevalence, and maternal, infant, and under 5 years old mortality) and social indicators (child labor, human development index, sex gap, and corruption index) and concluded, based on data from 170 countries, that there was “no consistent associations between ratification of human-rights treaties and health or social outcomes.” Economic progress rather than treaty ratification seemed to have more impact on improved health. Another large-scale quantitative analysis, based on the experiences of 166 countries over a nearly forty-year
period in five areas (genocide, torture, fair and public trials, civil liberties, and political representation of women) concluded that “although the ratings of human rights practices of countries that have ratified international human rights treaties are generally better than those of countries that have not, noncompliance with treaty obligations appears to be common.” More paradoxically, taking into account “the influence of a range of other factors that affect countries’ practices, … treaty ratification is not infrequently associated with worse human rights ratings than otherwise expected,” although “the evidence suggests that ratification of human rights treaties by fully democratic nations is associated with better human rights practices.” The author concludes “given that I find not a single treaty for which ratification seems to be reliably associated with better human rights practices and several for which it appears to be associated with worse practices, it would be premature to dismiss the possibility that human rights treaties may sometimes lead to poorer human rights practices within the countries that ratify them.”

Notwithstanding, there is other evidence that some treaties, as well as domestication of treaties, can make a difference to rights-holders. For example, Heyns and Viljoen found that before Jamaica withdrew from the Optional Protocol to the ICCPR in 1997, out of the 107 of 116 admissible cases, violations were found in 90. “These cases mostly related to individuals sentenced to death complaining of violations of their right to fair trial, and conditions on death row. Many of especially the later communications related to individuals whose sentences [were] commuted. A major change brought about by the HRC views (and Privy Council decisions) was the adoption of the Offences Against Persons (Amendment) Act 1992, which established two categories of murder: “capital” and “non-capital”. This change led to a significant number of commutations of persons previously sentenced to death.”

The authors report that “the fact that the country withdrew from the [Protocol] shows that it probably had some impact.” Further, with respect to domestication, they conclude “that the international system has had its greatest impact where treaty norms have been made part of domestic law more or less spontaneously (for example, as part of constitutional and legislative reform)…” In addition, there are a great many cases, adjudicated at national level, which have invoked the instruments, and outputs of the monitoring bodies, and resulted in concrete remedies for rights-holders. The evidence on which these two perspectives is based suggests that tailored approaches, including to ratification, and domestication of treaties can make a difference to rights-holders and are areas for scaled-up action in the Commonwealth Caribbean.

A third reason for the disconnect centers around the enforcement or monitoring system which fails to make much of a difference to people’s lives in the sub-region. On the one hand, States parties late or non-reporting as well as the gaps in reporting, not only undermine the treaty body system as indicated earlier on, but also directly impact on rights-holders in that it deprives the treaty bodies of the opportunity to do timely consideration of issues and make recommendations that could have a bearing on people’s lives. On the other, drawing from the chapter on crime, violence and insecurity, the mechanisms’ responses bring to the fore certain issues and areas for improvement.

For instance, the spate of crime, violence and insecurity in the sub-region is complex and rooted in both past and present dynamics; the different typologies of violence are to a large extent inter-related. This necessitates a comprehensive analysis and understanding of the problem, including with respect to the nexus between the violence typologies and their causes. However, while the issues are addressed by the mechanisms, they are so done in an unsystematic way, or not at all, due to lack of information, oversight or other. Further, the causes are only partially considered, and often relate to the more contemporary
rather than historical reasons, even if these latter remain very present and relevant. This results in gaps in consideration of the issues and piecemeal recommendations which relate to one or another aspect of the problem, but not the totality. This in turn is far from the disruptive, transformational approach to crime, violence and insecurity that is needed and results in little impact for rights-holders. Heyns and Viljoen have recognized that “the impact of the treaties has been much more pronounced through the recognition of treaty norms on the domestic level, than as a result of international supervision, although the two processes are obviously interwoven.”255

The Special Procedures demonstrate the greatest added-value in being able to comprehensively analyze and address issues, including very sensitive ones such as political and State-sponsored violence, however, their engagement with the sub-region is very limited.

While the UPR has been found to be “an efficient tool for the amelioration of human rights on the ground” globally, there are some evident shortcomings with respect to the sub-region that would need to be addressed. For example, concerning the reports on which the reviews are based, countries late or non-reporting to the treaty bodies as well as the relatively few Special Procedures visits to the sub-region contribute to information gaps. In addition, with respect to the stakeholders’ reports, UN entities do not provide much input, especially where there is no human rights presence on the ground. International NGOs pursue their and global priorities, and national NGOs are largely absent. This results in reports which do not necessarily contain an accurate, complete or current picture of issues which affect rights-holders, and as recommendations are drawn from them, these also end up being often misaligned from the realities on the ground. Peer States also fail to complement the UPR reports with their own research. In addition, the rationale for the choice of certain recommendations is unclear. For example, despite the literature on ratification, countries of the sub-region continue to receive numerous, blanket recommendations for further ratifications, while other aspects of crime, violence and insecurity, as well as economic and social factors impacting on human rights, receive much less attention or none at all. Moreover, while the UPR was intended to complement the treaty bodies, there are key issues that are overlooked by both mechanisms. The UPR holds great potential vis-à-vis the sub-region because as seen previously, Commonwealth Caribbean States give importance to international processes, including those dealing with human rights, and it would thus be strategic to strengthen its functioning to achieve greater impact in the sub-region. Overall, there is much room to strengthen coordination and complementarity between the mechanisms, and to develop a system for strategic apportioning of issues amongst them, so that they can be mutually reinforcing.

These shortcomings impact on follow-up to recommendations and contribute to the disjuncture between the human rights architecture and people’s lived realities. The aforementioned independent study noted in respect to the Concluding Observations of the treaty bodies that “lack of implementation is sometimes due to the lack of precision or practicality of the observations themselves or the fact that priorities are not listed, or a perceived failure to take local conditions into account.” In addition, it documents many countries’ examples which illustrate that Concluding Observations are being ignored. Follow-up is also affected by countries’ concerns about technical knowhow and financial resources to implement recommendations.

The mechanisms’ follow-up to their outputs is also less than rigorous. In a reflection on follow-up and implementation of decisions of the treaty bodies, it was stated that the HRC has two follow-up procedures, one for Concluding Observations, and the other for its views on individual communications under the First Optional Protocol to the ICCPR; other Committees have adopted or are considering the
same. The HRC did not have a sense of how effective its follow-up procedure was and along with the other treaty bodies, was aware of the need to reflect on more creative ways of doing follow-up. It was also highlighted that traditionally, the HRC and other treaty bodies have not written COs that explain what actions need to be taken at the national level to provide an effective remedy.\textsuperscript{260} The treaty body strengthening exercise and General Assembly resolution 68/268 aimed to address some of these issues, however, more remains to be done.

In the case of the SPs, there are evolving good practices regarding their follow-up to their country visits and other areas of work. A recent example comes from the Working Group on discrimination against women in law and in practice which sent letters to the ten countries that it has visited, seeking feedback on the visits and reports. In the case of the sub-region, the Special Procedures that visited Guyana and Jamaica built on, and reiterated aspects of each other’s findings and recommendations; the UPR later called for certain of the Special Procedures recommendations to be implemented. However, there is no systematized follow-up to the Special Procedures visits to the sub-region, and as such, their findings and recommendations are largely left to the discretion, priorities and resources of the States, UNCT, and other stakeholders.

With respect to the UPR, apart from the choice and alignment of recommendations, the sheer quantity is of concern, although there are many overlaps and gaps. The third cycle seems very similar to previous cycles, and there is a risk that the objectives set for it will not be achieved. Of difference is the increasing number of recommendations. The first 14 country reviews resulted in a 15 percent increase per State, although on the positive side, some report that there are greater efforts by States to make the recommendations less general.\textsuperscript{261} The quantity of recommendations is of concern for small States’, but also allows them to advance arguments about non-implementation due to capacity and resource limitations.

A fourth reason for the disconnect lies in UN institutional support for human rights which is relatively weak in the sub-region compared to the human rights challenges it faces as outlined in chapter four. In addition, while the Office has, since 1997, sought to integrate human rights in development cooperation or in effect, through the UNCT, the degree of impact of these efforts on people’s lives is still to be evaluated. In this area also, there is discord between the two disciplines, which, coupled with the lack of human rights presence, essentially translates into a void with respect to the UN’s support to human rights in the sub-region. Lankford offers a number of reasons for “the enduring disconnects between human rights and development despite the evidence of convergence.” She suggests that for many development agencies, human rights are perceived as controversial and treated with caution; the practice and policy that has evolved around development and human rights is governed by divergent discourses at least in part due to the predominance in each of different disciplines and methodologies, and therefore, a perceived incompatibility between the approaches and language of each, making cohesion between them very challenging. The consequences are an imbalanced recognition of human rights in development discourse, policy and operational frameworks and under-emphasis of their binding nature. This may also result in lost opportunities for human rights treaties to positively inform development processes and programming and provide relevant input where specific rights are in issue in the planning or assessment of particular activities.\textsuperscript{262} Furthermore, at national level, human rights are often embedded in UNDP, in small projects which are under-funded, and are thus under-emphasized.\textsuperscript{263}
In terms of programming, the sub-region has shifted from the UNDAF and CCA to the new United Nations Multi-Country Sustainable Development Framework (UN MSDF) and Common Multi-Country Assessment (CMCA) for 2017-2021. The decision to move to this regional “UNDAF” was taken by the Governments and UN System “after a thorough CMCA showed that the complex development challenges facing individual countries were similar, and would require a coherent, coordinated, multi-sectoral, and multi-institutional response. The CMCA also considered the economic characteristics of the Caribbean countries, their small economies, and the common social issues and challenges.” The MSDF is anchored in the SDGs and contributes to the SIDS Accelerated Modalities of Action (SAMOA) Pathway and CARICOM Strategic Plan 2015-2019, and will be guided “by the obligations of all Member States under international conventions for the protection of human rights and dignity for all.” The four priority areas are an inclusive equitable, and prosperous Caribbean; a safe cohesive and just Caribbean; a healthy Caribbean; and a sustainable and resilient Caribbean. While the shift is strategic for the countries and sub-region, the Lankford assessment would seem to be the case of the one Country Implementation Plan (for Jamaica) that was available at the time of the writing of this report. There are requisite mentions of human rights in both the MSDF and CIP, and under priority two for example, some important activities such as support for the establishment of the NHRI; review of the human rights curriculum of the National Police Training College; human rights training for the JCF; capacity-building for the judiciary and for CSOs to report to their Human Rights Observatory; strengthened coordination of CSOs to implement development programs in West Kingston; and support for implementation of a Violence Interrupters’ Program, child-friendly justice guidelines and Safeguarding Children through Sports. However, there are no activities with respect to the gaps identified in chapter four of this paper. Further, while OHCHR is involved in implementation of at least a half-dozen activities, its financial contribution is naught, which prompts a question of capacity to influence. Overall then, the comprehensive, transformational rights-based approach that is needed is still to be achieved and raises considerations about eventual impact and results on people’s lives.

Lastly, Commonwealth Caribbean countries by their words and deeds seem to have lost sight of the human rights story that is at the heart of the sub-region and view human rights as a burden, rather than the wings on which they rode to freedom and equality, as well as legal obligations they have voluntarily undertaken. In addition, they appear not to view the framework as a strategic tool that can be leveraged to better people’s lives and bolster development prospects in their countries. This may well be due to the narrow political interests and agendas in at least some countries. International human rights law is negotiated by States for States, meaning that human rights obligations are State-focused but implemented by Governments who, as is clear, subjugate human rights to considerations of power, wealth and patronage. Further, the mechanisms that have been worked out for monitoring are State-focused, with the aim that their findings and recommendations will eventually translate into benefits for rights-holders. However, from the outset, these assumptions are impacted by Government practices as illustrated by political polarization and violence, State-perpetrated violence and links to criminal enterprise, and lack of good, accountable governance. Moreover, Government commitment to implementation is falling short, as witnessed by, inter alia, lack of leadership, drive and fervor for human rights; backtracking on human rights commitments; the inability to prioritize macro-level interventions that could transform societies; and delays and barriers in implementing announced reforms or new developments, with respect to strengthening the legal, policy and institutional framework for human rights. Concerning the lack of resources arguments which are common in the sub-region, many interlocutors stated that this is only part of the problem, and rather, other factors such as lack of drive and initiative; lack of care; and continued failure to modernize impede progress.
VIII. Observations on the way forward

Notwithstanding the disjuncture, this paper takes the approach that human rights serve an important purpose in the sub-region for as long as political polarization is ongoing and democracy and the rule of law are being consolidated, freedoms cannot be taken for granted. As Mendez observes, “the problem with the lack of progress is that things are never stagnant in Latin America and the Caribbean. If our societies do not move forward to a more satisfactory democracy, the risk of backsliding into authoritarianism is very real.”265 Of the Commonwealth four, this is at least true of Guyana because of its autocratic past, however, other countries of the sub-region are not immune from practices and threats that could further undermine rights and freedoms.

In addition, in the next decade, five top risks have been identified for a number of Latin American and Caribbean countries, including Guyana, Jamaica, and Trinidad and Tobago, which stand to make human rights safeguards even more crucial. They are failure of national governance (91 percent), including as a result of corruption and mistrust in the functioning of institutions; energy price shock (82 percent) which is linked to the region’s high reliance on commodity exports and decreased commodity prices as for oil and gas; unemployment or underemployment (64 percent); profound social instability (59 percent); and fiscal crises (45 percent) which is linked to low commodity prices, in turn reinforcing existing high public debt, low economic growth and investment.266 These risks, along with the epidemic of crime, violence and insecurity and other factors impacting on human rights, suggest strong reasons for why safeguards, most notably a set of norms to serve as a protective threshold against abuses, will be necessary.

And looking beyond the next decade, future predictions up to the year 2060 point to persisting inequalities worldwide which, coupled with the predicted effects of climate change and natural disasters, as well as growing youth populations, will have significant implications for countries. While increasing youth populations has the potential to spur economic growth, “ineffective or non-existent employment creation programs will result in increased social and political instability and missed economic opportunity.”267 A 2016 study found that “in order to be successful, the region needs to build a more inclusive social fabric with more equality of opportunities, and implement prevention policies that have worked to curb violence, such as reducing school dropout rates and increasing quality youth employment.”268 This is essential for the sub-region which can draw on the lessons from civil upheavals in other parts of the world due to inter alia, disruption to economic and social cohesiveness, and Governments’ ability to cater to youth populations.269

Human rights will thus continue to be crucial to the sub-region. Putting aside the enforcement system, a number of activists and scholars have identified the real value of human rights. They argue that the central historical importance of human rights is that it has abolished the hierarchy of civilizations and cultures. Human rights is the language that most consistently articulates the moral equality of all individuals but in so doing, leads to conflict, deliberation, argument, and contention. In effect, it creates the basis for deliberation and this represents “progress towards a world imagined for millennia in different cultures and religions of genuine moral equality amongst human beings.”270 Further, all the available evidence suggests that the treaties have greatly influenced the current global understanding of human rights and the limits of these.271 They codify a widely agreed set of principles, help to explain why abuses are wrong, and serve as a starting point for dialogue.272 Moreover, their coercive power lies in them encapsulating global norms, values, and expectations that cast dishonor on States who defy
them. However, the means that have been worked out to enforce and monitor them are faulty and weak.

Human rights must therefore be leveraged further to make a greater positive difference to people’s lives in the sub-region. However, to do this, there is the need to concentrate focus at national-level by domesticating ratified treaties and providing support to constitutional and legislative reform processes; to strengthening national institutions and structures for human rights protection and promotion, notably courts, parliaments, NHRIs, civil society and the media; and to building capacity for human rights. Heyns and Viljoen conclude that current work “must be supplemented by creative efforts to ensure that treaty norms are internalized in the domestic legal and cultural system, and are enforced on that level. The challenge is to harness the treaty system to domestic forces – “domestic constituencies” – that will ensure its realization.”

Tharoor states “the standards being proclaimed internationally can become reality only when applied by countries within their own legal systems. The challenge is to work towards the "indigenization" of human rights, and their assertion within each country's traditions and history. If different approaches are welcomed within the established framework—if, in other words, eclecticism can be encouraged as part of the consensus and not be seen as a threat to it—this flexibility can guarantee universality, enrich the intellectual and philosophical debate, and so complement, rather than undermine, the concept of worldwide human rights.”

In this regard, current and future opportunities, such as discussions underway in Guyana on constitutional reform, provide pathways to ensure that States’ human rights obligations are incorporated into their constituent law. It would be essential for OHCHR and the mechanisms to contribute to the conversation given the disjuncture between development and human rights approaches. However, according to available information, Guyana has approached UNDP rather than OHCHR or the mechanisms for assistance, plausibly because of its proximity and long history of interest in constitutional reform in the region.

With respect to further ratifications, as described previously, human rights norms will influence States regardless of whether they ratify treaties. Moreover, commitment to human rights does not come from ratification of treaties but rather a renewed aspiration in the sub-region to equality and non-discrimination, freedom from fear and want, and a genuine will to empower people and better their lives. The pursuit to end racial discrimination did not start with an instrument, but rather culminated in it. As Cole notes “the real and lasting power of these treaties comes from the fact that they give concrete substance to the norms that existed prior to their formulation (i.e., the “pre-treaty foundations of human rights treaties”). Formal codification, in turn, invigorates the moral force of these diffuse norms.”

Although treaty adherence is not an inherently poor objective, in a situation where countries are inter alia, struggling or falling short on meeting existing commitments, and there are resource constraints on Governments, there must be careful consideration of which treaties and the scope for direct, immediate benefits to right-holders. As such, ratification recommendations must not be blanket, but rather tailored to the realities of the countries of the sub-region. As Hathaway concludes, “the findings of [the aforementioned] study may also give reason to reassess the current policy of the United Nations of promoting universal ratification of the major human rights treaties. Although universal ratification of a treaty can make a strong statement to the international community that the activity covered by the treaty is unacceptable, pressure to ratify, if not followed by strong enforcement and monitoring of treaty commitments, may be counterproductive.” This paper takes the position that instruments that give voice and access to rights-holders are strategic choices, as for example, the complaints procedures and the OPCAT. However, for these instruments to be ratified, citizen and civil society mobilization is
Civil society, including youth organizations, as a third pillar to Governments and the United Nations, and a bridge between elected leaders and the populace, is crucial to engendering improvements in people’s lives, including because civil society actors are arguably closer to people’s lives. Bottom-up ownership of human rights and social mobilization for change is necessary in light of the governance challenges in the sub-region. Babb has observed that “elected leaders in the Caribbean are ambivalent about the role of ordinary people in public life. On the one hand, they call for self-reliance and initiative from their constituents. [On the other], they often resist the involvement of “non-state” organizations in decision-making processes. In many countries of the sub-region, civil society is appreciated for their service provision role, but less tolerated in the political realm or on perceived sensitive issues. CARICOM’s 1997 Charter of Civil Society provides a framework that could facilitate participatory democracy in the sub-region.

Civil society capacity varies across the sub-region. In some countries, there is a lack of critical mass, including to sustain activities and respond to the range of challenges that countries face. In other countries, civil society is active. In all cases, civil society would benefit from greater financial and technical support. Many Commonwealth Caribbean countries fall within the middle-income category, which limits their access to loans with favorable conditions and obliges them to resort to commercial sources of financing which increases their debt burden. This constrains both State and civil society organizations ability to advance human rights, including in respect of the 2030 Sustainable Development Goals. In addition, donor driven approaches to civil society which impedes work on priority issues to rights-holders.

Within these constraints though, civil society organizations are essential partners in scaling-up human rights impact and would benefit from support. Barbados is a case of lack of critical mass to sustain civil society activities; this is aggravated by overlaps between Government and civil society, for example in the area of at-risk youth, and results in gaps in coverage. The Business and Professional Women’s Club of Barbados offers the only institutional shelter for battered women and an operational crisis hotline. In general, there are few NGOs working to address crime and violence. Guyana has a small but impressive group of civil society organizations. Traditional NGOs have worked in the area of legal aid and violence against women while newer NGOs are working on issues such as restorative justice, youth, and the rights of LGBTI persons. Other organizations are contributing to managing substance abuse and suicide prevention. Youth mobilization for human rights is a notable good practice. In March 2017, a group of young Guyanese from the Guyana Equality Forum (GEF) were received as petitioners during a hearing by the IACHR Country and Thematic Rapporteurs on the human rights situation of young people in Guyana. Jamaica has a long history of civil society activism. In 1968, the oldest modern-day human rights NGO in the sub-region, the Independent Jamaica Council for Human Rights (1998) Limited, was formed on the 20th anniversary of the UDHR. The country also has the most extensive civil society capacity in the sub-region, with over 3,500 organizations although most are community-based organizations (CBOs), with varying strengths and weaknesses. These organizations demonstrate the value-added of engaging with and supporting civil society in the sub-region. CSOs, based on their research and interaction with individuals at the community, parish, national and international levels, hold a vast reservoir of knowledge which is critical for policy development and strategic planning. CBOs on the other hand, usually have a deep understanding of the existing issues and needs at the ground level that the Government, NGOs and other stakeholders would not have. Therefore, CBOs are
better aware of the unique circumstances that their communities face, and their knowledge is crucial in finding solutions to social problems. Facilitating collaboration amongst policy and grass-roots civil society organizations is key, and their inputs to international human rights mechanisms would strengthen the mechanisms’ work.

With respect to the two issues identified as cross-cutting in the sub-region and profoundly impacting on human rights, the findings and the recommendations of the expert bodies are salient. However, a few additional points may be highlighted. First, with respect to crime, violence and insecurity, more comprehensive analyses and keener understanding of the epidemic and responses to it must be driven from the ground-up and inform the work of the mechanisms. Civil society actors also constitute a key role in the human rights architecture and can be engaged and supported to engage with the mechanisms on causes, consequences, and responses to the phenomenon. Partnerships are essential in this regard, but so too is presence on the ground. Second, in relation to the economic and social factors which impede human rights enjoyment, the mechanisms have a greater role to play in spotlighting issues such as corruption; advocating for international cooperation to assist SIDS who, in addition to intrinsic limitations, are regularly affected by external shocks and natural disasters such as hurricanes; and in monitoring the actions of the IFIs and MNCs in small States. In addition, greater focus on economic, social and cultural rights is necessary, including in the context of the UPR. Interlocutors unanimously stressed that education as a primary catalyst for social change cannot be over-stated and there is the need to simultaneously strengthen realization of all features of the right to education and human rights education, including in primary and secondary school curricula. As indicated before, research suggests that economic progress is key to realizing ESC rights, including educational outcomes, employment, and inclusion. Posner has argued that more focused and pragmatic interventions, including relying heavily on foreign aid for economic development, rather than coercion or shaming, is the better way to go; helping countries means giving them cash, technical assistance and credit where there is reason to believe that these forms of aid will raise the living standards of the poorest people. While this may be true, economic gains made by the sub-region have yet to translate into significant benefits for rights-holders and this is an area for future effort.

The sub-region must also have a renewed connection to its human rights legacy, a clear vision as it did for ending colonialism and discrimination, and a more astute understanding of the value of human rights to the sub-region. Just as in 1955 when “human rights … provided much of the lexicon for the articulation of grievances and aspirations,” it must again today serve that purpose. The story of the Commonwealth Caribbean is one that started in human rights, has ebbed and flowed, and stands to summit with greater solemnity, encouragement and support. Countries must retake ownership of the human rights agenda, build understanding of the human rights system, and see its findings and recommendations as a guidance framework, including to defend and serve national interests. They must be driver of solutions, harnessing the system and making it work for them rather than being passive recipients of it and a plethora of recommendations. Ideally, countries would use the human rights framework strategically to defend the interests of their peoples; the people would use the human rights framework to stake their claims against Governments; and the international community would use the framework to keep the eyes on Governments and to be an avenue of recourse for the people.

The sub-region should also continue to pursue sub-regional integration and South-South cooperation to combat some of the common challenges it faces, including confronting and overcoming the different effects of colonialism, including violence, racial polarization, and victimhood, and the limited capacities...
and resources in countries. CARICOM provides a good platform to further deepen regional cooperation to combat cross-cutting challenges and to draw on lessons learnt and good practices. Likewise, South-South cooperation is key to addressing development issues, and responding to needs such as small enterprise development, information technology, investment and manufacturing, and mobilization of investment/development resources from emerging economies, including in Asia.288

Countries must also search for and demand evidence of what works. This entails a data-driven approach which includes and gives credence to knowledge emanating from the sub-region. Contrary to the perception that data is a problem in the sub-region, it is fortunate to be the subject of a wealth of academic research; findings, recommendations, guidance and other materials from the international level; a significant body of analysis from regional and national bodies; and civil society reports. While ongoing updated research and sustained reviews are necessary and there are some data gaps, especially on micro-island States, it is also important to shift the balance to capacitating and incentivizing countries and the sub-region to use knowledge to engender improvements in peoples’ lives.

Additionally, the above review and analysis highlights some issues with bearing for OHCHR’s future policy and operational direction as follows:

First, the Office should scale-up its support to the sub-region, including through expanded presences and activities in countries; its Change Initiative is a welcome development in this regard and its proposals with respect to the sub-region should be firmly pursued. It is useful to recall that the Commonwealth four has requested inter alia, greater presence in the sub-region, capacity-building and institutional support on many occasions.289 It is also important to recognize that change in the Commonwealth Caribbean occurs in small spurts, against backlash and backsliding. It is at the same time dynamic, fraught, and somewhat unpredictable, and understanding its minutiae and who makes it happen and how is crucial to success. This can only be most effectively accomplished through proximity and detail.

Second, the Office can assist in building awareness of the treaties which is generally low in the sub-region. It can provide capacity-building support to Government officials, NGOs, media and others, as well as advisory services and technical cooperation for domestication of the treaties, constitutional and legislative reform, and training for judicial and legal professionals to take the treaties into account in adjudication, as well as for law enforcement. It can importantly assist with human rights education and on the ground human rights monitoring and reporting, and catalyze access to resources.

Third, with respect to the UNCTs work on human rights, it would be important for the Office to assess the effectiveness of two decades of mainstreaming human rights in development cooperation, including how UNCTs in the sub-region advocate for human rights and follow-up to key recommendations, especially in countries where there is no UN human rights presence.

Fourth, OHCHR must recognize that the Commonwealth Caribbean is very distinct from Latin America.290 As such, the sub-region needs dedicated attention and expertise, and should not continue to be obscured by Latin America. This would entail establishing a stand-alone unit in the structural configuration of the Americas Section of FOTCD; scaling-up activities and allocations to the sub-region, and maintaining disaggregated data to track same; ensuring greater representation of nationals of the sub-region on HQs staff (at 1 January 2017, only 6 out of 1180 staff were from the Commonwealth Caribbean) and engagement of sub-regional experts as consultants and trainers; and fellowship and internship opportunities for youth to build the next generation of human rights defenders of the sub-
region, as well as encouraging greater applications from the sub-region for membership of the mechanisms. The Office, especially where it does not have a human rights presence, should liaise more regularly with UNCTs to identify human rights opportunities, such as nascent constitutional reform processes.

Fifth, more strategic and tailored approaches to the sub-region are necessary due to its history, diversity and unique characteristics, but also because international human rights must be understood and realized in differing political, social and cultural contexts. Such approaches would recognize that direct interventions on certain issues may yield less progress and rather, alternative entry points such as the SDGs and MSDF may serve as openings for dialogue and progress on human rights. In addition, education, including human rights education and knowledge, is key to engendering change in cultural settings which value education greatly, as previously stated. Moreover, more strategic partnerships, including with national civil society organizations, academia, and sub-regional organizations such as CARICOM, would be useful in developing tailored insights and approaches. The Office could advocate for the law schools of the sub-region to establish dedicated human rights programmes.

Sixth, sustained efforts are needed to evaluate and rethink the architecture, including with respect to ratifications and the functioning individually and collectively of the mechanisms, as well as how they might be coordinated and harmonized to produce greater impact. The wealth of information that is available on the factors which limit and enhance the impact of the treaties as well as numerous proposals to “bring the treaty system to the people,” and strengthen its country-level impact should be reexamined. The lead-up to the 2020 review aimed at “Strengthening the United Nations human rights treaty body system,” pursuant to General Assembly resolution 68/268, could be an opportunity to reflect on the human rights architecture in relation to people’s lives and to charting a systematic and sustained course forward with respect to achieving greater impact. A key part of this reflection would be related to measures to ensure that the mechanisms are guided by a more comprehensive understanding of issues affecting rights-holders and their inter-relationship; targeted recommendations which could engender progress; and more effective follow-up and assessment and reporting of results. It would importantly consider the role of national civil society organizations in assisting the international mechanisms and OHCHR in this regard. It would look at options for more strategic apportioning of issues, and mutually reinforcing, coordinated approaches of the mechanisms, in what one human rights activist has suggested could be “a triangulation of reporting, recommendations, and implementation of the human rights obligations and accountability of the vast majority of UN member states,” and to link them further with national level.

Seventh, there should be greater reflection on the Office’s approaches to human rights and strengthening of its recognition of countries’ diverse contributions to the building of the human rights architecture, and how these might usefully serve to make human rights work more effective. Jensen recently echoed strands of this, noting “a strong need for more imaginative approaches to the study of human rights – past and present – as their evolution has too often been narrated from a Western perspective or based on a certain construct of what the West represents.”

Eight, the Office’s various public databases, including JURIS and the UHRI are useful tools, and especially the later, would benefit from regular updating.

Lastly, the Office should designate responsibility for keeping abreast of the wealth of academic and expert research and opinions on human rights and OHCHR’s work, in order to inform, assess and
reorient its strategic, policy, and operational directions. These outputs could form the basis for both senior and working-level discussions and debates, including in the Policy Advisory Group. The Office would benefit from inviting academics and researchers, including from the sub-region, to present their findings using IT tools such as GoToMeeting, Skype or video-conferencing, as the basis for brainstorming, critical thinking and innovation on human rights. It could support this enterprise through dedicated budgetary allocations.
# Annex 1

## Status of ratification of core international human rights treaties

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### Year of treaty adoption by the GA


### Legend – N represents No.

Regional Human Rights Instruments:

- Convention of Belem do Para ratified by Barbados in 1995; Dominica in 1995; Guyana in 1996; and Jamaica, in 2005.
Endnotes

2 For example, on encryption and anonymity being core to freedom of expression and opinion in the digital age; the 2015 UN Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, etc.
3 For example, on transnational corporations and other business enterprises.
4 For example, in 2017, a Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members; and in 2016, an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, and a Special Rapporteur on the right to development.
5 There are several instances of cooperation between the two systems. For example, during the June 2015 Annual Meeting of Chairpersons of the Treaty Bodies in San José, Costa Rica, meetings were held between the Chairs and the Inter-American human rights mechanisms, including the judges of the Inter-American Court of Human Rights and the Commissioners and Secretariat of the Inter-American Commission on Human Rights. A number of proposals were submitted by the Chairs to the Inter-American Commission to enhance the cooperation between the two systems. In November 2015, there was also a dialogue on sexual orientation and gender identity between the African Commission on Human and Peoples’ Rights, the Inter-American Commission, and the United Nations. With respect to the Special Procedures, in 2014, a representative of the Inter-American Commission briefed the Annual Meeting of Special Procedures of the HRC on the work of the Inter-American System and especially, its Commission. In 2016, there was a follow-up visit by several mandate-holders to the Commission, resulting in a call for closer cooperation. In addition, the former United Nations Special Rapporteur on violence against women, its causes and consequences, and Inter-American Commissioner and Rapporteur on the rights of women conducted a joint study visit to Jamaica, Barbados, Dominica, and Trinidad and Tobago in April 2015. The visits were not official, but enjoyed the support of the concerned Governments, and while the report was not submitted to either the HRC or IACHR, it is public and intended to inform those working to combat discrimination and violence against women. In addition, in November 2014, OHCHR and the IACHR signed a Joint Declaration intended to strengthen collaboration, including through joint actions, regular consultations, and on standard setting.
6 Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Turks and Caicos, and Montserrat.
7 http://thecommonwealth.org/our-charter
8 http://commonwealthofnations.org/yb-pdfs/guyana_country_profile.pdf
10 Average annual population growth rate of 0.3% between 2010-2015.
12 Average annual population growth rate of 0.4% between 2010-2015.
16 Core document: Guyana. HRI/CORE/1/Add.61. 21 July 1995.
17 Average annual population growth rate of 0.4% between 2010-2015.
19 Ibid.
20 Ibid.
21 “A conception of democracy that encompasses the procedural and the substantive, formal institutions and informal processes, majorities and minorities, males and females, Governments and civil society, the political and the economic, the national and the international.” Report of the High Commissioner for Human Rights, E/CN.4/2003/59, 27 January 2003.


26 The HDI is a summary measure for assessing progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living.

27 http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/BRB.pdf
28 http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/JAM.pdf
29 http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/DMA.pdf
30 http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/GUY.pdf

32 See for example, Burke, Roland: Decolonisation and the Evolution of International Human Rights, University of Pennsylvania Press, 2010, for a detailed account of how anti-colonialism and the decolonization movement impacted on 30 years of UN human rights deliberations and the crucial role that the Global South played in human rights diplomacy.


34 Such as the Hindu Vedas, Agamas and Upanishads of over 3000 years ago; the Buddhist Tripitaka and Anguttara-Nikaya, and Confucianist Analects, Great Learning and Doctrine of the Mean of the over 2,500 years ago; the Christian New Testament of 2000 years ago; and the Islamic Quran that followed 600 years later. UNDP Human Development Report, Human Rights and Human Development, 2000. P. 27.

35 See supra note 29. P. 25.
36 Ibid. P. 32-33.
37 Ibid. P. 30.
38 Ibid. P. 34-35.
39 58 Member States were eligible to vote. http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=132G11114932H.82867&profile=voting&uri=full=3100023~!909326~!0&ri=7&aspect=power&menu=search&source=~!horizon
40 See supra note 28.
41 Ibid.
42 See supra note. P. 61.
43 Ibid. P. 60-91.
44 See supra note 29. P. 102.
45 The opening paragraph of this Declaration makes reference to fundamental human rights, the dignity and worth of the human person, and equality.
46 Guyana and Barbados gained theirs in 1966, and Dominica, in 1978, and like Jamaica, joined the United Nations and the Commonwealth the year of their independence.
47 See supra note 29. P. 86.
48 Ibid. P. 82.
49 Ibid. P. 79.
50 A key source for this reflection was from the Guyanese lawyer, Shridath Ramphal, in a chapter on “Fundamental Rights – the Need for a New Jurisprudence” which considered new constitutional guarantees of fundamental human rights, and in particular, their significance in the legal system. Caribbean Quarterly, Vol 8, No. 3, circa 1961.
This quote is extracted in the context of her discussion of the expressive role of treaties arising from their legal and political nature (“treaties, like domestic laws, work by expressing the position of the community of nations as to what conduct is and is not acceptable; they tell the international community what are the norms and code of conduct of civilized nations. Yet treaties also have an expressive function that arises from what membership in a treaty regime says about the parties to the treaties. When a country joins a human rights treaty, it engages in what might be called “position taking,” defined [...] as the public enunciation of a statement on anything likely to be of interest to domestic or international actors.”

Helfer notes that “upon achieving independence beginning in the early 1960s,” each nation retained key features of British law and politics, including Westminster-style parliaments and common law legal systems. Caribbean nations deviated from the British model, however, by adopting written constitutions that endorsed judicial review and a rule of constitutional supremacy over legislative and executive action.” See Helfer, supra note 18.


Core Document, Jamaica, 23 June 1997, HRI/CORE/1/Add.82.


CESCR Concluding observations on the combined second to fourth periodic reports of Guyana, 28 October 2015, E/C.12/GUY/CO/2-4.


In Barbados, a “Bill of Rights” is included in Chapter III. The 1978 Constitution of Dominica provides for the protection of human rights and fundamental freedoms for all persons in Chapter 1. In Guyana, the 1980 Constitution protects fundamental rights and freedoms in Chapters II and III. The Constitution of Jamaica entrenches fundamental rights in its Chapter III.

For a detailed account of the events leading to the countries’ withdrawal from the Optional Protocol, see Helfer, supra note 18. Briefly, Earl Pratt and Ivan Morgan were two Jamaican citizens who were sentenced to death for murder, and made submissions to the IACHR and Human Rights Committee complaining about inter alia, delayed judicial proceedings which amounted to cruel, inhuman and degrading treatment. The full communication to the HRC is available at: http://hrlibrary.umn.edu/undocs/session44/210-1986.htm. The case was also appealed to the Privy Council which ruled that “in any case in which execution is to take place more than five years after sentence, there will be strong grounds for believing..."
that the delay is such as to constitute “inhuman or degrading treatment” and therefore unconstitutional. The case resulted in hundreds of commutations of death sentences in the Caribbean.

See http://www.deathpenaltyproject.org/where-we-operate/caribbean/jamaica/

75 Ibid.

76 See supra note 18. P. 1889.

77 Legalisation is measured by the three variables of “obligation, precision, and delegation.” Obligation” refers to the binding nature of an institution's or a regime's rules; “precision” refers to the specificity of those rules; and "delegation" refers to the authority granted to neutral third parties to interpret and implement those rules, to resolve disputes relating to them, and (sometimes) to create new rules.” See Helfer, supra note 18.

78 Ibid. Some other perspectives exist on the reasons for the withdrawals. For example, in respect of Jamaica's decision, Heyns and Viljoen report that “the official reason for Jamaica’s renouncement of OPI is the delay in cases before the HRC; unofficially it is said that the Government wants to avoid international scrutiny of police brutality and prison conditions, and to protect its sovereignty.” With respect to the overall low number of ratifications of the Optional Protocol in the sub-region (only three of the twelve Commonwealth Caribbean are States parties), Vasciannie attributed this to States finding that in respect of the death penalty, their domestic laws and the remedies contemplated by the Protocol were asymmetrical. However, subsequently, domestic courts’ rulings have been consistent with international mechanisms, although constitutional reforms in Jamaica and Barbados have invalidated some of those court rulings. See http://legal.un.org/avl/ls/Vasciannie_HR.html


80 Ibid.

81 General Assembly resolution 60/251 of 15 March 2006, which created the Human Rights Council, mandated the Council to "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.” The Universal Periodic Review mechanism was established through HRC resolution 5/1 - on 18 June 2007. The HRC decided that the reviews would be conducted by one Working Group, composed of all 47 members of the Council. State reviews are based on information prepared by the State concerned; information contained in the reports of treaty bodies and Special Procedures; and stakeholders to the UPR (non-governmental organizations, national human rights institutions, human rights defenders, academic institutions and research institutes, and regional organizations). Source OHCHR, UPRB.

82 Note by the Secretary-General, Implementation of Human Rights Instruments, 7 August 2015, A/70/302.

83 http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx

84 See supra note 49.


87 A/HRC/27/9, 26 June 2014.


89 See supra note 49.


92 17 to 27 February 2003 (E/CN.4/2004/7/Add.1) and 12 to 21 February 2010 (A/HRC/16/52/Add.3).


95 Ibid.

96 Dominica (116), Barbados (115), Guyana (143) and Jamaica (145).

97 By HRC resolution 16/21 of 25 March 2011 and decision 17/119, it was decided that the second and subsequent cycles of the UPR should focus on, inter alia, implementation of accepted recommendations.


99 States bear primary responsibility under international human rights law for respecting, protecting and fulfilling human rights. The obligation to respect means that they must refrain from interfering with the enjoyment of human rights; the obligation to protect requires them to prevent others from violating the human rights of rights-holder; and the obligation to fulfill means that they must take positive steps to realize human rights.
Crime, violence and insecurity impacts on a wide range of human rights, including on the right to security of person. With respect to the right to security of person, the Human Rights Committee in its General Comment No. 35 has held that the “right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury. The right to personal security also obliges States parties to take appropriate measures in response ... to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury. For example, States parties must respond appropriately to patterns of violence against categories of victims such as ... violence against women, including domestic violence, ... violence against children, violence against persons on the basis of their sexual orientation or gender identity, and violence against persons with disabilities. They should also prevent and redress unjustifiable use of force in law enforcement, and protect their populations against abuses by private security forces, and against the risks posed by excessive availability of firearms.”

108 The WHO defines violence as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation.” Violent acts can be physical; sexual; psychological; or involve deprivation or neglect.

110 These rates are the most widely accepted indicator of the level of violence in a society.

111 http://data.un.org/


117 Wilson, see supra note 96.

118 http://www.economist.com/node/10903343

119 UNICEF: Violence against children in the Caribbean Region Regional Assessment: UN Secretary-General’s Study on Violence against Children, 2006.


121 Ibid.

122 See supra note 99.

123 See supra note 100.

124 See supra note 101.

125 CESCIR, see supra note 70.


127 CESCIR, see supra note 70.

128 HRC Concluding observations on the fourth periodic reports of Jamaica, 22 November 2016, CCPR/C/JAM/CO/4.

See supra note 153.


156 Bahams, Barbados, Dominica, Grenada, and Saint Vincent and the Grenadines.

157 Report of the independent expert on minority issues, visit to Guyana from 28 July and 1 August 2008, A/HRC/10/11/Add.2.

158 See supra note 84.


156 See for example the Report of the Commission of Inquiry on the Circumstances Surrounding the Death of the Late Dr. Walter Rodney on June 13, 1980, issued 8 February 2016. Witness account, P.46. Available at http://digitalcommons.auctr.edu/cgi/viewcontent.cgi?article=1000&context=wrcoi

157 See supra note 115.

158 Ibid. P. 18-19.

159 See supra note 133.

160 The Bahamas, Barbados, Dominica, Grenada, and Saint Vincent and the Grenadines.
Dominiça’s GDP was USD 45.1 million in 1978, the year of its independence. 

http://data.worldbank.org/country/jamaica?view=chart. Jamaica’s GDP was USD 777 million in 1962, the year of its independence.


Guyana’s GDP was USD 228.7 million in 1966, the year of its independence. 

UNDP’s Multidimensional Poverty Index (MPI) identifies multiple overlapping deprivations suffered by households in 3 dimensions: education, health and living standards. The education and health dimensions are each based on two indicators, while standard of living is based on six indicators. All of the indicators needed to construct the MPI for a country are taken from the same household survey. The indicators are weighted to create a deprivation score, and the deprivation scores are computed for each household in the survey. A deprivation score of 33.3 percent (one-third of the weighted indicators) is used to distinguish between the poor and nonpoor. If the household deprivation score is 33.3 percent or greater, the household (and everyone in it) is classified as multidimensionally poor. Households with a deprivation score greater than or equal to 20 percent but less than 33.3 percent live near multidimensional poverty. Finally, households with a deprivation score greater than or equal to 50 percent live in severe multidimensional poverty. See supra notes 24-27.

UNDP Proposes Debt Relief for Caribbean Countries and the Creation of a Subregional Fund, 13 July 2015. Available at http://www.cepal.org/en/comunicados/cepal-propone-alivio-de-la-deuda-de-paises-del-caribe-y-la-creacion-de-un-fondo

See supra note 128, P. 79.


Concluding observations on the combined second to fourth periodic reports of Guyana, E/C.12/GUY/CO/2-4, 28 October 2015.

IFI financing is done through grants and loans at concessional or near market interest rates, depending on the size of the borrowing country’s economy. All financing comes with policy conditions that require borrowing Governments to adopt economic strategies for rapid economic growth, privatisation, deregulation, liberalisation and market driven approaches to development. In terms of human rights, IFI responsibilities can be said to relate to inter alia, the promotion of human rights, which concerns the obligations of the IFIs to actively seek to improve the human rights situation in their Member States. On this latter, see The World Bank, the IMF, and Human Rights. 1996, Daniel Bradlow, American University, Washington D.C.

See supra note 127. P. 5.


Recently, the Independent Expert on the promotion of a democratic and equitable international order confirmed “numerous examples of human rights violations which have been alleged in connection with projects the World Bank has financed . . .,” corroborating the information that decades old policies continue to impact on human rights in many parts of the world. News Release, “UN expert urges World Bank to amend its constitution to effectively advance human rights”, 14 September 2017.

See supra note 189. P. 178.


See supra note 189. P. 129.

See supra note 189.

CESCR General Comment No. 24, State obligations under the ICESCR in the Context of Business Activities, 23 June 2017. P. 14.
Towards a Universal Human Rights Model? The Role of the United Nations in Global Governance

The Bandung Conference was the first Afro-Asian conference, attended by 29 countries, most of which had just gained independence, and represented a billion and a half people. The Conference forged a Third World identity “which was constructed around the common experience of Western subjection and economic underdevelopment.”

See supra note 28.


Ibid.

These are a sampling of perspectives; the literature on this subject is extensive. See for example others like Hathaway, Oona A., “Do Human Rights Treaties Make a Difference?” (2002), Yale Law School. Faculty Scholarship Series. Paper 839. http://digitalcommons.law.yale.edu/fss_papers/839few of many references.


See supra note 28.


See supra note 48. P. 1939-1940.


Ibid. P. 380.

See supra note 49. P. 5.


See supra note 49.


UPR objectives are the improvement of the human rights situation on the ground; fulfilment of the State’s human rights obligations and commitments and assessment of positive developments and challenges faced by the State; the enhancement of the State’s capacity and of technical assistance; the sharing of best practice among States and other stakeholders; support for cooperation in the promotion and protection of human rights; and, the encouragement of full cooperation and engagement with the Council, other human rights bodies and OHCHR.


Ibid.

Bristol University, Human Rights Implementation Centre, Follow-Up and Implementation of Decisions by Human Rights Treaty Bodies,’ Summary of issues and recommendations of an expert seminar, 10 September 2009. There is a distinction between “follow-up” and “implementation”. The treaty bodies “follow-up” to their outputs, but have no means of enforcing their decisions and recommendations. States have the primary duty to consider ways to implement treaty body decisions.
Available at http://www.bris.ac.uk/media-library/sites/law/migrated/documents/implementationtreaty.pdf

261 See supra note 76.


263 Remarks of the Ambassador of Guyana, Side event on Small States at the HRC, 12 September 2017.

264 See supra note 21.

265 See supra note 49. P. 5.

266 This paper recognizes that over the decades, ensuring change on the ground has been an enormous challenge and a key issue for discussions within inter-governmental bodies such as the General Assembly (e.g., the treaty body strengthening process) and the mechanisms themselves (treaty bodies and Special Procedures), and there are limits to what such mechanisms can do, especially in view of resource constraints, however, it takes the position that efforts to strengthen them
must be continuous as long as there is reason to believe that they can make a greater positive difference to people’s lives. OHCHR is uniquely placed to be a driver of these efforts.

293 See supra note 49.
296 Strengthening links to national-level in order to achieve human rights impact is a recurring theme in the literature on what can be done to make the international human rights framework more effective.
297 See supra note 29. P. 278.