



**SUBMISSION OF THE COMMONWEALTH HUMAN RIGHTS INITIATIVE  
TO THE COMMONWEALTH MINISTERIAL ACTION GROUP MEETING  
September 2007**

The Commonwealth Human Rights Initiative (CHRI), as the main Commonwealth human rights non-governmental organisation, is committed to providing a civil society perspective on the issues and countries considered by the Commonwealth Ministerial Action Group (CMAG).

This submission covers general comments on CMAG, the situation in Pakistan and Fiji, the two countries currently on CMAG's agenda; Maldives and The Gambia where the Commonwealth Secretary-General's good offices have been involved; Bangladesh and Sri Lanka, which are both raising great concern; and the impact of counter-terrorism legislation on human rights in general and policing in particular in the Commonwealth.

**On CMAG:**

CHRI would like to congratulate CMAG for its on-going work and to acknowledge the challenges of its mandate to deal with "serious or persistent violations" of the Harare Principles. CMAG is an important mechanism to protect the human rights and democratic principles recognised as the fundamental political values of the Commonwealth. It is also a crucial instrument to encourage Commonwealth members' compliance with their past human rights commitments.

Unfortunately, CHRI has observed that CMAG mandate has been interpreted very narrowly to focus on the un-constitutional overthrow of governments. This narrowing of mandate contributes to the erosion of the moral force of past human rights promises, has contributed to a sense of impunity and has retarded the growth of a culture of human rights.

In this regard, CHRI encourages CMAG:

- To interpret and carry out the functions within the full parameters of its mandate, extending its activities to situations where clear patterns of serious violations of the Harare principles are observed;
- To develop clear and transparent indicators to measure "serious and persistent human rights violations";
- To adopt a policy that enhances the transparency of CMAG's agenda decision-making criteria;
- To support the value of Civil Society having a presence at CMAG, where and when necessary;
- To give support to the idea of a position of a Human Rights Expert within the framework of the Commonwealth Secretariat, that would assist all mechanisms where necessary, including those of compliance; and
- To effectively consider the situation observed in the countries listed below.

## **COUNTRIES ON THE CMAG AGENDA:**

### **Pakistan:**

In 2004, CMAG made the finding that the restoration of the 1973 Constitution, as amended by the 17th Amendment, constituted a positive step towards the re-establishment of a democratic regime and a sufficient basis to lift Pakistan's suspension from the Commonwealth. However CMAG had expected that the issue of the combined office of president and chief army of staff would be promptly resolved. Since 2004, showing no visible efforts to progress the democratisation of the country, Pakistan has remained on the agenda of CMAG.

Both the 2002 general elections and 2005 local government elections have raised concerns amongst international and local observers, who agreed that the internationally recognised standards for free, fair and independent elections were not met. The Commonwealth observation team of the 2005 elections stated in its final report that "[they] found that these elections were conducted in an environment of intense mistrust and scepticism [...] this cannot be healthy for the development of local democratic structures that the Team agrees are the key component to developing democracy in Pakistan." The current uncertainty over the date and state of organisation of the next general elections also raises concern and cannot be understood without consideration for the on-going debate over President General Musharraf's combined position as the chief army of staff.

The 1973 Constitution clearly requires the president to leave his uniform. CMAG stated to this effect in September 2005 that "the holding by the same person of the offices of the Head of State and Chief of Army Staff is incompatible with the basic principles of democracy and the spirit of the Harare Commonwealth principles, as well as CMAG's expectations". In this context, many fear that President Musharraf's unconstitutional decision in March 2007, to suspend Chief of Justice Iftikhar Mohammad Chaudhury on the eve of the elections aimed at removing an independent judge who may come to rule on the legitimacy of the president's attempts to keep his uniform or of his re-election. Illustrating a general concern over the independence of the judiciary, the chief justice's dismissal has also been interpreted by observers as retaliation for his independent rulings, particularly on disappearances in conflict areas.

Pakistan has been under increasing difficulties with internal insurgencies and militancy, particularly in Balochistan, Sindh and in the area bordering Afghanistan. While there are legitimate internal security concerns, the increased security focus has led to parallel abuses such as forced disappearances and extra-judicial killings.

In its effort to keep the strong hold required by the internal crises, the regime has been accused of trying to silence opposition at the price of the freedom of expression. Media professionals have for example been barred from entering conflict areas. The Government attempted to restrict live coverage of sensitive political events with an amendment to the Pakistan Electronic Media Regulatory in an alleged response to the coverage of the violent events in Karachi in May 2007 on the occasion of the chief justice's visit. More recently, thousands of members of the opposition party PML-N were arrested on the eve of the party leader's, Nawaz Sharif, attempted return to Pakistan.

These particular concerns occur in an overall grim situation with insufficient progress to address human rights violations. Pakistan promised nationally and as a candidate to the United Nations Human Rights Council, to establish a national human rights commission. A draft Bill establishing the commission was prepared in 2005 but has since then disappeared despite encouraging efforts to consult the civil society.

In this context, CHRI calls on CMAG:

- To urge General Musharraf to respect his past engagement and constitutional duty to abandon his position as Chief Army of Staff while holding presidency;
- To urge Pakistan to ensure that the next elections meet the internationally accepted standards of free, fair and independent elections;
- To urge Pakistan to review the existing draft for the establishment of a national human rights institution to reflect the concerns expressed by civil society and to bring it in line with the requirements of the Paris Principles and to take all necessary measure to ensure its prompt adoption; and
- To consider the overall human rights situation in Pakistan with the seriousness that it requires.

## **Fiji:**

Since the December 2006 coup, critics have faced ongoing threats in an attempt to silence them. In addition, there have been ongoing reports of arbitrary detention and torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) of civil society activists and media professionals.

On 5 December 2006, the Interim Prime Minister, Commodore Bainimarama, had proclaimed a state of emergency, significantly restricting constitutional provisions for freedom of expression and assembly, and the right to privacy, subject to the military's interpretation and without recourse to the courts. The military government arbitrarily detained, and sometimes abused, coup opponents, conducted searches without warrants, engaged in intimidation of the media, and restricted the right to peaceful assembly. Following CMAG's decision on 8 December 2006, after the military overthrow of Mr Qarase's SDL-led Government, Fiji was suspended from the Councils of the Commonwealth.

President Ratu Josefa Iloilo Uluivuda's announcement on 18 January 2007 of a decree, known as the Immunity (Fiji Military Government Intervention) Promulgation 2007, granted "full and unconditional immunity from all criminal or civil or legal or military disciplinary or professional proceedings or consequences" to the Disciplined Forces in the country who were involved in the coup and all other persons who acted under their command (in the run-up to 5 December 2006 until 5 January 2007). Despite repeated assurances by the Interim Attorney-General Aiyaz Sayed-Khaiyum that the Fiji Human Rights Commission (FHRC) would handle complaints of human rights violations with the government's full support, the fact that the persons covered by the above decree cannot be held accountable for any human rights violations that they may have committed seriously jeopardises the state of human rights and the rule of law in Fiji - entrenching the legacy of impunity experienced recently in the country. In addition, the military's blatant disregard for the rule of law, in placing the Chief Justice Daniel Fatiaki and Chief Magistrate Naomi Matanitobua on leave on 3 January 2007, has raised further questions around the independence of the judiciary from the executive branch.

Given the recent re-imposition of the Public Emergency Decree on 7 September 2007, along with the recent findings in the Fiji's Human Rights Director, Shaista Shameem, second report to the UN High Commission for Human Rights dated 29 August 2007, where the FHRC legitimated the actions taken during December 2006, finding that:<sup>1</sup>

"By authorizing [the] removal [of Prime Minister Laisenia Qarase], the President appears to have exercised his sovereign power under section 86 of the Constitution to

<sup>1</sup> Fiji Human Rights Commission, Director, Shaista Shasmeem (29 August 2007) "Report to the UN High Commissioner for Human Rights on alleged breaches of international law and the 1997 Constitution of Fiji in the removal of the Prime Minister, Laisenia Qarase on December 5th 2006" at <http://www.humanrights.org.fi/pdf/FHRCReportPartII.pdf> (last accessed on 13 September 2007).

protect both the Constitution and the State of Fiji and to provide immunity for those who carried out his wishes in the public interest”;

CHRI holds serious concerns around the deterioration in the situation in Fiji. Given that several civil society actors have been threatened in the last week (14 September 2007), by the Interim Prime Minister, CHRI feels that now is the time for CMAG to take steps to bring the current crisis to resolution before it deteriorates further.

CHRI urges CMAG:

- To take immediate action to support the end to the current situation in Fiji; urging the Interim Prime Minister and Authorities in Fiji to ensure the swift transition to an elected government;
- To call on the Interim Prime Minister, and all officials, to immediately and publicly make an unambiguous commitment that fundamental human rights will be respected and those who exercise them will be protected;
- To demand an independent investigation into military custody and allegations of arbitrary detentions, beatings, and harassment by the military; call on the Fijian Authorities to revoke the Public Emergency Regulation and to announce that all legal civil society groups are free to continue with their work; and
- To encourage the Authorities to uphold and protect the independence of the judiciary and the media.

## **COUNTRIES WHERE THE COMMONWEALTH SECRETARY-GENERAL'S GOOD OFFICES ARE INVOLVED:**

### **Maldives:**

CHRI wishes to reiterate previous submissions to CMAG on Maldives, noting continuing violations of human rights and disregard for the principles of participatory governance and the rule of law. CHRI particularly wishes to highlight these ongoing concerns in the context of the Maldivian Government's *Road Map for Reform Agenda* (Agenda), a policy document released in March 2006 that purported to include reform measures to increase the level of protection and promotion of human rights within Maldives.

In the 18 months following the release of the Agenda, the Government has tabled a number of laws before Parliament that it claims support the human rights policy objectives of the Agenda and has also appointed a Policy Integrity Commission. In August 2007, it conducted a referendum on the future style of governance in Maldives. These are indicators that the Government is taking steps towards the development of a human rights friendly state. However, the implementation of the Agenda and the achievement of its objectives have been deeply flawed. CHRI emphasises, as in previous submissions to CMAG, that there is a strong risk that the policy platforms provide a glossy veneer that obscures ongoing human rights abuses in the country.

An example of the failure of the Agenda to live up to its reform promise is the Police Integrity Council (Council). The Council was envisioned as an independent civilian police complaints authority that would monitor, investigate and act on complaints about the police. The Council has strong potential to act as an important accountability mechanism and ensure police compliance with human rights standards and the Harare Declaration. However, the Council was set up by executive order, rendering it vulnerable to immediate dissolution by the President, is made up of members appointed directly by the President, compromising its independence, and has not received adequate resource or support, preventing it from operating.

The Maldivian Government has stated that the ultimate aim of the Agenda is the introduction of a new constitution and democratic elections and that it will remain in power until the introduction of the constitution, in order to safeguard the reform process. The constitutional reform process has been subject to serious and consistent delays, including a failure of the Government-dominated Special *Majlis* –Maldives legislature - to endorse the results of the August 2007 referendum before 1 September 2007 deadline. There is a strong concern that delays are a strategy to keep the present government in power. In addition, the referendum was tarnished by allegations of fraud and vote rigging. This gives rise to concerns that reforms processes are not sufficiently inclusive, transparent or subject to effective accountability mechanisms.

CHRI recognises the work of the Commonwealth Secretariat and the Secretary General's Good Offices to support the creation of strong legal and constitutional frameworks and the building of trust between key stakeholders in the Maldives. However, CHRI also notes that persistent and continuing violations of the Harare Declaration continue, despite this work.

CHRI strongly recommends that CMAG:

- Take action to monitor the implementation of the Agenda and related legislation to ensure that it is consistent with international human rights norms and Maldives' obligations under the Harare Declaration; and
- Take formal note of the ongoing human rights violations in the Maldives.

### **The Gambia:**

Following the alleged coup plot in The Gambia on 21 March 2006, when more than 70 people were arrested and unlawfully detained, the situation has deteriorated further. While the constitution and law provide for protection of most human rights, there are problems in many areas. Arbitrary arrests and detentions increased, particularly after the discovery of the coup plot. Security forces harassed and mistreated detainees, prisoners, opposition members, journalists, and civilians with impunity. Prisoners were held incommunicado, faced prolonged pre-trial detention, and were denied due process. The Government infringed on privacy rights and restricted freedom of speech and press. The Government also remain largely inactive towards gender-based violence, with female genital mutilation, child labour and trafficking continuing.

The 2001 Indemnity Amendment Act has granted immunity from prosecution to members of the security forces accused of using excessive lethal force (during demonstrations in April 2000). Judicial independence appears to be a matter of concern, with the independence of the judiciary being undermined by alleged problems, questions being raised as to the constitutionality in the appointment of the new (acting) chief Justice and, perhaps more worrying, with the removal of a judge upon him having ruled against the state in several cases. Freedom of Expression appears also to have been an ongoing problem. Along with the suppression of the media and other perceived opponents of the government, in the last year alone at least 15 journalists or staff of media institutions being detained without charge, held for long periods unlawfully, some allegedly suffering ill-treatment at the hands of the State. More seriously, allegations of extra-judicial executions and enforced disappearance, and the absence of investigation around such claims would appear to suggest an increasing atmosphere of impunity.

One such case, which CHRI has been following in this regard, occurred during July 2005, when approximately 50 African immigrants from Ghana, Guinea, Ivory Coast and Senegal disappeared in The Gambia while on route to Europe. Their disappearance had been subsequently accompanied by reports of illegal detentions and extra judicial-executions. Despite Gambian President Jammeh's initial support of the creation of a Joint Investigative Team to investigate the issue, The Gambian authorities took a series

of measures, which undermined the normal course of the investigation. Refusing to meet with the Investigative Team in March 2006, and barring its entry into Banjul in December 2006, The Gambian Authorities thereby prevented the possibility of an investigation.

Aware that a Special Envoy, of the Secretary-General and General Abdulsalami Abubakar, have promoted dialogue between political parties and the strengthening of democratic processes and institutions in The Gambia, CHRI requests that CMAG take steps to stop the growing climate of impunity.

In this regard, CHRI calls on CMAG:

- To advise the Government of The Gambia to cease curtailment of the right to freedom of expression and to access information;
- To request that the Government of The Gambia immediately and unconditionally ensure the respect of the due process of law, particularly an accused right of access to an attorney;
- To urge the Government of The Gambia to ensure that detainees are held only in publicly recognised places of detention; and
- To demand the Government of The Gambia investigate reports of torture or other ill-treatment of detainees and bring to justice the perpetrators.

## **OTHER COUNTRIES OF CONCERN TO CHRI:**

### **Bangladesh:**

On 11 January 2007, Bangladeshi President Iajuddin Ahmed called the army in, formed the third consecutive caretaker government and declared the Emergency Proclamation Order with the intent to clean the country from the rampant corruption and put the country back into the path of democracy. A road map was adopted for reforms. Initially cautious, observers, including CHRI, are increasingly critical to the chances for Bangladesh to return promptly to a democratic regime if the caretaker government does not lift the state of emergency and organised democratic elections.

The 2007 Emergency Proclamation Order, by suspending the fundamental freedoms enshrined in Bangladesh Constitution of movement, assembly, association, thought and conscience, expression while banning political activities undermines the very basis of a democratic regime. The decision in September 2007 to allow political parties to re-open their offices is not sufficient to address the restrictions on the core rights and freedoms that allow political pluralism and shape a democratic regime.

The caretaker government's intent to lead Bangladesh to democratization cannot materialise under the current emergency order. It is crucial to organise without delay elections that will legitimise the regime and bring back their right to citizens. In this context, the decision to postpone the next elections, initially fixed on 22 January 2007, at the end of 2008 raises particular concern for the future of Bangladesh and on the possible intention of the caretaker government to extend its tenure for an undetermined period of time.

The interim caretaker government formed with the support of the military would have also engaged in law and order measures leading to arbitrary arrests that add to reported custodial deaths, extra-judicial killings and massive evictions.

CHRI acknowledges that the caretaker government has a vast and difficult task ahead and has taken positive measures including the reform of the election commission, the activation of the anti-corruption commission and the promulgation of rules on the separation of judiciary. Bangladesh is however at a crucial point and requires assistance and encouragement to ensure a speedy return to a democratic regime. The

Commonwealth Secretary-General stated himself in September 2007 that he was “convinced that [the lifting of the state of emergency and the ban on indoor political activity] are urgent and essential steps that need to be taken if the dialogue is to be meaningful and the roadmap implemented on schedule.”

CHRI urges CMAG:

- To decide on clear and benchmarked progresses that must be visible in Bangladesh and without which the country should be moved on CMAG agenda; and
- To notify its interlocutors in Bangladesh that any failure in the progress towards an early general election would be dealt with the seriousness required.

### **Sri Lanka:**

In the past year, civil society and intergovernmental institutions, including the United Nations agencies, have noted instances of severe human rights abuse by Sri Lankan state entities in their efforts to counter terrorism. Several high profile allegations of human rights abuse that have been highlighted include: state complicity in the recruitment of child soldiers; large scale state sponsored abductions and disappearances; impunity for state abuses; suspicion of state involvement in the murder of humanitarian aid workers; forcible eviction of minorities; and state sponsored threat to freedom of expression.

Despite ostensible cases of persistent violations of the Harare Declaration, CMAG has never considered the situation in Sri Lanka. Irrespective of the particular problems faced by Sri Lanka in its efforts to counter terrorism, given the international exposure and endorsement of the severity of the situation in this country, CMAG’s decision not to include the country on its agenda raises questions on the interpretation of its mandate and the criteria used to set its agenda.

In this context, CHRI urges CMAG:

- To add Sri Lanka on its agenda; and
- To indicate to its interlocutors in Sri Lanka that it is closely monitoring the situation to ensure the compliance with the Harare Principles.

### **ON THE IMPACT OF COUNTER-TERRORISM ON COMMONWEALTH COUNTRIES’ COMPLIANCE WITH THE HARARE DECLARATION:**

In its 2007 report to the Commonwealth Heads of Government Meeting ‘Stamping Out Rights: The impact of Anti-Terrorism laws on Policing’, CHRI has observed how the contemporary agenda of anti-terrorism has devalued civil liberties while enhancing state power and police.

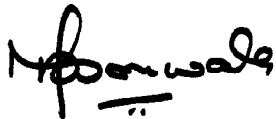
Even more than the act itself, the fear of terrorism is a growing global phenomenon and has been the driver for harsh state reactions that have little justification or legal validity. Police powers have increased, broad definitions have extended discretion, accountability has been reduced and the protections of due process have fallen by the wayside in an attempt to counter terrorism effectively. Arbitrary arrest and detention, enforced disappearances, torture and extra-judicial killings are too frequently employed with little or no consequences on the police. The conflation of police and military or paramilitary units in certain states and the militarization of police practices have blurred the distinction between two traditionally very distinct roles.

CHRI believes that legislative responses to terrorism that increase police powers, enhance discretion and reduce accountability create an environment conducive to human rights violations and are therefore counter-productive to effective counter-terrorism. Where counter-terrorism policing should be ensuring security of person and state, it often undermines the very institutions it is designed to serve, further spreading public fear and in some countries directly threatening the life and liberty of people it is supposed to protect.

There is an urgent need to protect citizen's rights as enshrined in the Harare Declaration and indeed enhance them as being central to ensuring lasting security of populations.

Given the new threats that counter-terrorism measures have and can pose to the principles of the Harare Declaration, CHRI urges CMAG:

- To give a particular attention when monitoring abuses and violations of human rights in the Commonwealth to the impact of counter-terrorism legislation and practices;
- To remind the countries it is in contact with to support continued and increased cooperation between the United Nations Counter-Terrorism Committee and the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and to encourage them to engage in a dialogue to adopt a common position on anti-terrorism laws at the international level, including at the United Nations, in accord with their human rights obligations; and
- To adopt a clear position in its final statements that counter-terrorism measures cannot justify any breach to the principles and rights enshrined in the Harare Declaration and recognised as the cement of the Commonwealth.



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