

## **Civil Society Involvement in Constitutional Review** **A letter from Maja Daruwala, Director, CHRI**

Friday, March 30, 2001

Justice Venkatchelliah,  
5-A, Sir M. N Krishnarao, Rd  
Bangalore 560004

Dear Justice Venkatchelliah,

Re: civil society involvement in constitutional review

I was very pleased to be able to talk to you this morning and write now as a follow up to our talk. Over the past year and a half CHRI has been working on constitution making processes in Africa. As a consequence we have developed a position paper on best practices in constitution making. This arose out of a demand and mandate given to us at a meeting of human rights organizations and advocates in Harare in January 1999. I enclose the booklet that has been developed as a result of consultations with many people and organizations in Africa. Though written in the context of Africa the booklet emphasizes the importance of process and most especially people's participation in making [and reviewing] constitutions. I also enclose the report of the conference itself.

The main thrust of my writing today is to further with you the idea of an international conference on constitution making which would bring together some of the experiences of process as well as examine some of the content of newer constitutions. As you mentioned yourself there are many vibrant processes of review from which we can take lessons.

In India towering leaders who made the original constitution drew their validity from being at the forefront of the peoples struggle against colonialism. Though there was consultation and debate the vision of new India embedded in the constitution, it must be said, was dependent on the views of a few elite. The Constitution arose out of nuanced debate, but one limited to a class and to a smaller population. Several amendments to the original confirm that the constitution is a living document but in the wake of increasing ungovernability in the country, a review of why it is not working has been put in place.

One of the main reasons the constitution does not work must surely be that there is no wide base of people who know it enough to love it, guard it as their own or insist that its processes are not abused and subverted. This review provides the opportunity to create that base.

CHRI sees the constitutional review as an important opportunity for creating public awareness of the document itself and the fine tenets upon which our governance was envisioned. The international conference would be one part and a curtain raiser toward creating that public interest. We intend that other catalytic activities will fuel discussions and debates which will feed into the process of consultation that you have already envisaged.

With this in view CHRI is keen - as I know you are - to broad base the consultation process and take it as deep down into the community as possible. Without this consultation there is a danger that the review will remain an exclusively elite exercise and one where the debate is likely to get mired in party political rhetoric and a tendency for some to use the process for gaining transient points for small immediate advantage.

In the conference I mention above, we see the opening moments of an opportunity to deepen the debate to many more people who can then interact with the review committee. International experience is wide and relevant and will familiarize our own civil society actors about innovative ways in which consultations can be mechanisms for consultation can be institutionalized and feedback inform official processes of the peoples' perspectives. I see that you have already thought much about mechanisms that would inform people about the review process. These would only be furthered with wider consultation which in turn can sensitize the government to the context in which the state impacts in the peoples' lives, or (as often,) where it is completely absent.

CHRI's efforts in India are in continuation of our work in examining processes of Constitutionalism in Africa.

As you mentioned the newer constitutions of Africa reflect modern trends that centralize human rights. Their hall mark is that they having been developed through participatory processes. By way of illustration, in the past year, a dynamic process of developing a constitution through a people's process has been demonstrated most recently in Zimbabwe. The strength and validity of that process lies in the fact that the proposed constitutional changes, which was widely perceived not to reflect the will of the people, was rejected by a 'NO' vote in a government sponsored referendum.

The younger constitutional processes of South Africa, Eritrea and Uganda have produced modern documents, which incorporate many new processes in governance such as justifiable economic rights, minority protection, and new models of devolution. More importantly, the process by which the South African constitution was made was so successful in informing people of its content that within 4 hours of the constitution booklet being first released and disseminated to post offices all across the country some 8 million copies had been taken up.

CHRI contends that it is these processes which have laid the foundation for peace and stability in countries that like India, are essentially poor and have hugely diverse populations. The process of consultation and participation has even brought stability to countries which are struggling to arise out of the ashes of war and military strife as in Eritrea; civil conflict as in Uganda and immeasurably unjust systems such as in South Africa. Equally the education and awareness raising activities of the process assist in ensuring continuous scrutiny of functioning and greater accountability and transparency.

The processes--all of which are extremely well documented---were primarily founded on wide consultations with the people. They were conceived to be open, outward looking and inclusive. They were designed to ensure widest possible consultation. Structures were created by the bodies entrusted with developing the constitution to send out information and questionnaires, receive replies and hear submissions. Submissions and viewpoints were aired on radio and in the press. At every next stage of evolution each constitutional article of the South African constitution was published with the comments, explanatory notes and opposing viewpoints. Then further debates were held to refine outstanding arguments.

Wide consultation ensured that people knew about the review. MPs and special commissioners took the review back to their constituencies, administered questionnaires and held clinics to discuss issues with their constituents, among whom many could not read or write. The people knew the issues, learned about the fundamental laws that they were agreeing to live by in future and finally owned the document. Now they are prepared to defend that constitution and make use of it because they own it. The process embeds the habit of negotiation as a way of resolving differences rather than violent conflict. It also means that people know what their rights are and the duties of their elected representatives, and what the duties of each organ and institution of the state is. This ensures accountability.

The genius of democracy in India lies still lies bottled up in its people. Even if it has escaped the leadership, the leadership must now take democracy to the people. Unfortunately, exclusion characterizes our democracy wherein everywhere large segments are excluded: women, Dalits - despite reservations: - Muslims, tribals and of course the large mass of the poor---each of these should feel included in order for India to become the vibrant democracy it was meant to be.

It is only through the process that rests on a knowledge of and input from the community level that solutions will emerge. Then, even if there is no political will to implement those solutions, the people will have benefited from the exercise by being better informed about their own governing document which makes them the sovereigns of their country and from which they have derived too little benefit for too long.

As you know Chief Justice, CHRI is concerned with the practical realization of human rights within the Commonwealth. I know that you are very much of the same view. Sharing experiences and catalyzing activities for this to happen are the best we can do. We are committed to making this happen and

seek your advice, friendship and involvement. I hope you will find the enclosed materials interesting and that we can discuss the matter further at the earliest when you are next in Delhi.

Best regards,  
Maja Daruwala