

Commonwealth Human Rights Initiative

Newsletter

Volume 11 Number 3
New Delhi, Autumn 2004

Inside

- ▣ Vinaka Commonwealth
7WAMM
- ▣ Fostering Open
Governance in the
Commonwealth
- ▣ Maldives on the Brink of
Revolution
- ▣ Zimbabwe's Place in the
Commonwealth
- ▣ Kenya: Not yet Uhuru
- ▣ Around the
Commonwealth
- ▣ Interacting with the
Commonwealth
- ▣ CTUC 's Disbanding Could
Seriously Impact CHRI
- ▣ Confronting Distrust: The
case of Redfern
- ▣ Illegal Orders: A Threat to
Democracy
- ▣ A Right to Information
Reception in Accra
- ▣ Human Rights and Anti-
Terror Laws: India Sets an
Example



The Decline of Democracy in the Maldives

- Maja Daruwala

Director, Commonwealth Human Rights Initiative

The Commonwealth preaches taking human rights and the rule of law seriously, to the extent that these are listed in the Harare Principles, the list of principles that countries agree to abide by in order to be a member of the Commonwealth. How disappointing then, that certain countries' records in this area have fallen to dismal lows and yet the Commonwealth publicly does little...

Recent events in the Maldives are the culmination of the suppression of dissent that has grown over the past 26 years. President Gayoom may have originally been welcomed as a hero in this small island nation, but his increasingly autocratic style has caused him to be likened with him with dictators of international disrepute. Over the years his grip on power has tightened and opportunities for his citizens to express their political will have virtually disappeared.

As you will read in the article by the Friends of Maldives on page 7 of this newsletter, the rule of law has become an empty statement with Gayoom's allies being treated well while opponents wither in jail. Expression of disparate views is limited, with the media controlled by the President and associates, and the use of the internet being stifled to the extent that Reporters Sans Frontiers lists the Maldives as the third most restrictive country in the world on electronic media freedom. Civil liberties have also been curtailed, including: the President's refusal to register an opposition party, despite this being allowed in the Constitution; arbitrary detention; numerous allegations of

Contd.....to pg.17

CHRI is now primarily using email to send out the CHRI Newsletter. To assist us, please email chriall@nda.vsnl.net.in and provide us with your current email address. We will stop sending hard copies of the Newsletter unless you send us a specific request to continue providing the paper-based version.

Vinaka Commonwealth 7WAMM

Carol Nelson

Amnesty International, New Zealand

Balmy Fiji was the venue for the 7th Commonwealth Women's Affairs Ministers' Meeting (7WAMM) from 30 May – 2 June 2004. Fijian culture and hospitality permeated the whole event, from the décor in the meeting rooms to the handicrafts market that took place in the foyer everyday to the excellent hosting by the Fiji National Council of Women. They have set a very high standard for their colleagues in Uganda to meet at the next Commonwealth Women's Ministers Meeting which will be held in three years time.

7WAMM resulted in a ten year Plan of Action 2005-2015 with four main themes:

- Gender, democracy, peace and conflict
- Gender, human rights and law
- Gender, economic empowerment
- Gender and HIV/AIDS

CIVIL SOCIETY PREPARATORY MEETING

The main event was preceded by a three-day Civil Society Preparatory Meeting, coordinated by the Commonwealth Foundation and the Fiji National Council of Women. Approximately 100 women attended of which two-thirds were from Pacific countries. As could be expected, this was one of the largest ever turn-outs of Pacific peoples at a Commonwealth meeting.

Prior to the preparatory meeting, the Pacific Foundation for the Advancement of Women coordinated a two-day workshop for Indigenous civil society women from the region. As a result, Pacific delegates were very focused on their objectives and had statements prepared on all main themes. Their ancestors must be very proud of them, for they were impressive. In fact, all the women from around the Commonwealth who gathered for the occasion were impressive. The quality of the outcome is a reflection of the quality of the participants.

The meeting was opened on Sunday afternoon by Ratu Epeli Ganilau, the Chair of the Great Council of Chiefs of Fiji. Ratu Ganilau gave an informed and supportive speech calling for the implementation of all existing conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and a rededication to the ideals of gender equality. He concluded with a reassurance on behalf of the Great Council of Chiefs that:

...as an integral member of civil society we believe that the principles of gender equality and inclusion are fundamental building blocks for democracy and peace building and that affording citizens a voice in the political system and a say over decisions that affect their lives is the essence of a human rights approach.

This was quite a significant statement for a Pacific leader to make since the cultural relevance of human rights, let alone gender equality, is widely debated by leaders in the region.

Workshops were held on the four main themes and the outcomes of these workshops were fed into the civil society statement and into the Plan of Action (PoA). This new text became the text that official delegates worked on over the next few days and many suggestions remain in the final text. The preparatory meeting was relatively well-organised, inclusive and provided real opportunities to influence the outcome of 7WAMM. Hopefully, it will serve as a model for future similar civil society gatherings.

Where Civil Society Made a Difference

Generally speaking, civil society representatives increased the references to human rights, such as calling for the PoA to be cast in a human rights framework; for rights-based approaches to citizenship education including in curricula; and for HIV/AIDS to be viewed from a rights perspective.

Much discussion took place on the failure of Commonwealth countries to achieve the target of a minimum of 30% representation of women in decision-making by 2005. A civil society statement calling for governments to report on progress and process at each CHOGM did not make it into the final text; however there is acknowledgment that institutional capacity needs to be strengthened for the purpose of achieving this target by 2015.

Recognising the important role played by women in preventing conflict, not just resolving conflict, was acknowledged in an effort to ensure that women and Women's Ministries are integrated into relevant government strategies. Governments have been charged with promoting the implementation and monitoring of Security Council Resolution 1325.

Other points include:

- Renewed emphasis was placed on the role of men and boys in achieving the equality of women and girls in all areas.
- More emphasis was placed on the need to collect and disseminate sex-disaggregated data.
- The role of the media in promoting discriminatory attitudes towards women also drew attention.
- A call for women's representatives to participate in negotiations towards just and fair trading systems was included, in acknowledgement of the different impacts of trade on women and men.
- The need to build capacity in civil society organisations (and some governments) was recognised and affirmed in the text. The need to facilitate civil society participation in partnerships to mainstream gender equality was also highlighted.

The Civil Society Statement was presented to the Senior Officials Meeting. The Statement welcomed the human rights approach underpinning the Plan of Action, but called for a holistic framework encompassing human rights norms and standards as provided for in international human rights instruments, particularly CEDAW.

7WAMM

Forty-three Commonwealth governments were represented at 7WAMM, which was chaired by the Fiji Minister of Women's Affairs, Adi Asenaca Caucau. A closed Senior Officials Meeting was held first, followed by the first round of discussions on the draft Plan of Action (PoA). Civil society representatives, who were part of official delegations, were able to observe. Apart from a few exceptions, official representatives were supportive of the text added by civil society and paragraphs were strengthened in many areas.



Working group session at the civil society meeting.

It was agreed at the opening plenary that civil society observers would be given an opportunity to speak on each topic, that is, one civil society statement could be made after every sixth intervention by delegates. The civil society responses were coordinated through a Linkage Caucus which were held each evening to strategise for the following day.

The second day of 7WAMM included presentations on the main topics, followed by simultaneous discussion groups which civil society observers were invited to join along with Ministers and other delegates. The following session had initially been allocated as a

government-civil society dialogue in the form of a roundtable of equal numbers of civil society representatives and official delegates. Three questions were agreed on at the Linkage Caucus on: partnerships; implementing the PoA; and strengthening relationships between government and civil society.

On the day however, a new agenda advised that the session would take the form of three brief presentations by civil society followed by interventions from official delegates. Civil society representatives were not prepared for this format and were disturbed that the original roundtable had been abandoned. A boycott of the session was fleetingly considered before a discussion took place between civil society representatives, the WAMM Chair and Commonwealth Secretariat staff. Apparently some Ministers (or was it some at the Commonwealth Secretariat?) were concerned that the meeting was being taken over by civil society. A lengthy discussion took place and negotiations continued but the roundtable did not go ahead.

Despite this, strong progress was made and certain areas of the PoA were strengthened by official delegates, including those related to:

- The need for transparency
- Capacity building for Women's Ministries and CSOs
- Strengthening institutional capacity to achieve the minimum 30% target of women in decision making and encouraging countries to strive for a higher target
- Culturally appropriate social safety nets
- Fulfilling the commitment to provide 0.7% of Gross National Income (GNI) to overseas development assistance
- Debt Initiative for the Heavily Indebted Poor Countries (HIPC) impact assessments.

Importantly, almost all human rights references in the document remained intact and there appeared to be consistent support for human rights-based citizenship education.

Monitoring and evaluation of the PoA are to be reported in the Secretary-General's biennial report to CHOGM. The Secretariat is to integrate monitoring of the PoA in its 4-year strategic planning and 2-year operational planning cycles. The impact of promoting equality between men and women will form part of gender audits of the Secretariat's work.

In all, a good result!

A Model for the Future

This was a very good civil society event and by all reports one of the best meetings held in conjunction with a Commonwealth event to date. Certainly, civil society representatives were given the opportunity to engage in a meaningful way and to influence. And their opinions were respected.

Some of the elements of success were:

- Genuine opportunities to feed in to, and therefore feel some *ownership* of, the Plan of Action
- Opportunities to make interventions in the main meeting, that is, to be *heard*
- Joining in with official delegates in discussion groups, to *exchange views and identify commonalities*.

Now that it has been done once, what a great starting point for all future meetings. Keep this up and the Commonwealth will lead best practice in civil society consultation and provide a standard for other regional and international organisations, such as the United Nations, to follow.

Carol Nelson represented the Association of Commonwealth Amnesty International Sections (ACAIS - a co-founder of the Commonwealth Human Rights Network) at the Civil Society Preparatory Meeting and at 7WAMM in Fiji. She would like to say: "Bula vinaka, thank you, to the staff of the Commonwealth Foundation and to those who assisted them in coordinating civil society attendance at the event. Special thanks to Titilia Naitini and the women of the Fiji National Council of Women. Your hard work was rewarded with a 'showpiece' outcome." ■

Fostering Open Governance in the Commonwealth

Katherine M. Hayes

Right to Information Programme, CHRI

The Commonwealth recently launched the Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government. These were developed by the Commonwealth Parliamentary Association (CPA), Commonwealth Legal Education Association (CLEA), Commonwealth Magistrates' and Judges' Association (CMJA) and Commonwealth Lawyers' Association (CLA); agreed to by the Commonwealth Law Ministers; and then endorsed by the Commonwealth Heads of Government Meeting (CHOGM) in Abuja, Nigeria, in 2003. They outline the importance of an effective framework for relations between the executive, legislative, and judiciary branches in order to ensure accountability and good governance.

The standards are timely, considering the Aso Rock Commonwealth Declaration on Development and Democracy of December 2003, where Commonwealth countries committed to "mak[ing] democracy work better for pro-poor development by implementing sustainable development programmes and enhancing democratic institutions and processes in all human endeavours." As part of this commitment, member countries pledged to promote several principles - among them, "a participatory democracy characterized by free and fair elections and representative legislatures," "an independent judiciary," and the "right to information."

The new principles take aim at corruption, noting the importance of the three branches of government in "the entrenchment of good governance through honesty, probity, and accountability."¹ This seems an appropriate addition as corruption charges plague many Commonwealth countries. Transparency International reported in their 2003 Corruption Perception Index, for instance that a number of Commonwealth countries are perceived as the most corrupt in the world. Of the

countries covered, thirty-one were Commonwealth members, but only eight made it past the halfway mark of five on a scale of one to ten. Nigeria and Bangladesh ranked at the very bottom of the 133 countries surveyed.²

Promoting practical solutions to corruption, the principles offer guidance to governmental branches in fostering accountability. Notably, they recognise that "Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the executive to parliament." The principles also lay out accountability mechanisms for the judiciary, recognising the importance of an independent judiciary which is accountable "to the Constitution and the law which they must apply honestly, independently, and with integrity."

The emphasis on judicial independence is a welcome addition to the principles as judicial independence has been questionable in many Commonwealth countries. Questions of judicial credibility erode confidence in the government and the rule of law, contribute to charges of corruption and limit the ability of citizens to access justice. This should be monitored with the utmost care.

The principles demonstrate the value of accountability mechanisms between the three branches by relating the idea to good governance and an enriched democratic process. The authors note that: "The promotion of zero-tolerance for corruption is vital to good governance. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process." The principles recognise the importance of scrutiny bodies and accountability mechanisms for governments in this process. They suggest scrutiny bodies should be officials of the government, ombudsmen, or other independent government bodies.

¹ Commonwealth Secretariat, CPA, CLEA, CMJA and CLA, *Commonwealth Principles on the Accountability of the Relationship between the Three Branches of Government*, 2004

² Transparency International (2003) Corruption Perceptions Index 2003, <http://www.transparency.org/cpi/2003.en/html>

One omission, however, is one of the best oversight mechanisms available to any democratic government - that of an active, inquisitive citizenry armed with the right tools. Realising the right to information ensures this.

Given the philosophy at the heart of democracy, it is appropriate that it is the *people* who serve as one of the best accountability measures available. Armed with the right to information and a strong implementation system, citizens can patrol governmental actions more fully than any single ombudsmen or government oversight body. The right to information ensures that the people of a democracy can demand information from their government (with limited exceptions for national security) and that the government has a responsibility to proactively disclose information. More progressive freedom of information legislation in some countries also cover information from private companies.

The Principles on Accountability suggest that a single oversight body serve as the watchdog ensuring accountability and transparency in the entire governance structure. While such oversight bodies are important, they must be supported by implementation of the right to information as this allows all people to act as a watchdog.

In Uganda, for example, the right to information ensured grants that were intended for primary schools did not end up lining bureaucrats' pockets. After an expenditure tracking survey found corruption kept funds from reaching schools, the Ugandan government began advertising grant disbursements, and required schools to post notices on the receipt of funds. With access to this information, parents were able to track the grants, and ensure accountability at the local level. In five years, corruption dropped from 80% to 20% and enrolment more than doubled.³ It would have been extremely costly and near impossible for a single government office to monitor those grants. However, for parents with a vested interest in their children's education, keeping track of the monies received

by the schools was simple and yet had a huge impact on corruption in their area.

The right to information also helps ensure participatory governance, especially with an active and independent media. With access to information, the media can serve as an arm of the people's oversight. An example from Australia clearly demonstrates this: two reporters from *The Age* newspaper took on the government and its slow response to a health care survey. The survey had found 16.6% of hospital admissions suffered an "adverse event" and of these, 13.7% resulted in permanent disability, 4.9% in death, and that – even worse – 51% were highly preventable. The reporters lodged information requests for statistics on which hospitals made the most mistakes and their procedures for correction. After a long legal battle reporters received only part of the information requested, but still had enough evidence about infection rates at one hospital to lead to the establishment of a state commission to investigate the findings.⁴ The reporters got a good story and saved lives in the process - thanks to access to information.

Accountability in democratic governance needs to emanate from the people, and governments have a responsibility to foster openness and transparency through the people and their right to information. However, power checks between the three branches of government are also needed and as such, the Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government are a welcome edition and the Commonwealth is to be congratulated on its efforts in this area. However, the Principles alone are not strong enough to truly bring accountability to corrupt governments – effective implementation in all Commonwealth countries is essential. The Commonwealth has in the past made other laudable statements, which simply gather dust. Let us hope that these will be implemented in the spirit in which they were developed and that measures are instituted for monitoring compliance. ■

³ World Bank (2003) World Development Report 2004: Making Services Work for Poor People, Washington, pp. 62-63 & 185.

⁴ This story is based on: Birnbauer, B. (2000) 'The Story Behind Fatal Care', <http://fifth.estate.rmit.edu.au/August/bill.htm> as on 1 August 2003.

Maldives on the Brink of Revolution as the Hunger for Democracy Proves Insatiable

Paul Roberts

Friends of Maldives

For most of the 40,000 tourists who visit the Maldives - an Indian Ocean archipelago off the south-western coast of Sri Lanka - each month, the return home is accompanied with tales of idyllic tropical islands ringed by turquoise waters and soft white sands. For the 300,000 inhabitants however, paradise is accompanied by the hell of tyranny. According to Amnesty International, the government of President Maumoon Gayoom is characterised by the widespread use of torture, routine detention of political opponents and a grossly unfair legal system.

President Gayoom has ruled the Maldives with an iron fist for over 25 years. Recently, though, his grip appears to be slipping in the face of growing demands for democracy by an increasingly restless populous. As this article goes to press, a state of emergency has been introduced after a 5,000-strong anti-government demonstration in the capital, Male', was broken up by police baton-charges, tear gas and rubber bullets.

A year ago, the headline of this article would have sounded absurd. For 24 years Gayoom had managed to rule the Maldives with relatively little open dissent, internally at least. His leadership had been as strong as his methods were ruthless.

The Maldives is, to all intents and purposes, run along the lines of a police state, led by a near-omnipotent President. There are no political parties, there is no independent press and the police force, the office of the Attorney General, the Ministry of Justice and the Parliament are, in effect, run by the President. The unsurprising result is that although enshrined as fundamental rights under the constitution, civil liberties such as freedom of expression, association, the right not to be held arbitrarily, to a fair trial and to be free from torture are denied to Maldivian citizens. Gayoom's police and National Security Service (NSS),

accompanied by unofficial hired thugs, terrorise the people, crushing all dissent.

Gayoom makes no secret of his preferred style of governance. In his official biography, *A Man for all Islands*, published in 1998, there is musing of his first meeting with Saddam Hussein: "After dinner, Saddam took Maumoon [Gayoom] aside and told him that to govern a country he needed to have an organisation...it was only through a one-party system that he was able to govern effectively. Following that visit, Maumoon developed a close friendship with Saddam Hussein." A few pages on, Gayoom describes Fidel Castro as: "the revolutionary...whose name has become synonymous with freedom, justice and human dignity." Gayoom has always been Ba'athist in his political thinking but of particular concern is the way the international community has tolerated him for so long. Even today the Maldives is still a full member of the Commonwealth despite frequently breaking the Harare Principles with apparent impunity.

However, things started to go seriously wrong for Gayoom in September 2003. An unprecedented anti-government riot erupted in the Maldives after prison guards opened fire on unarmed inmates in the Maafushi Jail, located just outside the capital. When news of killings reached Male', spontaneous riots ensued, leaving the Electoral Commission and other government buildings in flames. Amnesty International described these riots as a political protest in response to the increasingly oppressive and brutal way Gayoom is ruling the island state. It appeared that the people had had enough.

Equally worrying for Gayoom has been the establishment of an organised opposition movement. The Maldivian Democratic Party (MDP) was established in late 2003, in exile in Sri Lanka, with the

goal of bringing democracy and respect for the rule of law to the Maldives. However, as spokesperson for the party, Mohamed Latheef, comments, this goal will never be realised with Gayoom in power: "Gayoom is a dictator who sees himself as a heroic zaem who knows what is best for his supplicants/subjects. The concept of participatory, liberal democracy is completely alien to this Ba'athist Dictator...Look how much he spends on his military. As a proportion of GDP, the Maldives is one of the top ten defence spenders in the world and this in a small, peaceful island country that shares one religion, one ethnicity and one language."

Events of the last 12 months have also put the Maldives firmly on the international media radar screen. The BBC has reported from Male' frequently over the past year and dozens of newspapers have run stories on the Maldives, universal in their criticism of Gayoom. The only voice in support of the President is that of Hill & Knowlton, an international public relations firm, who have allegedly been paid \$2million by the Maldivian government to sing the praises of the President.

Along with recent pressure from international governments, notably from the British, Gayoom now appears more constrained than at any other point in his leadership. With an economy dependent on international aid and - mainly European - tourism he cannot afford to ignore the views of the international community who repeatedly demand democratic reform. Yet, by initiating a process of political liberalisation Gayoom risks his very position as leader. It is becoming glaringly obvious that his premiership is not, shall we say, based on the will of the people. Gayoom has instead tried to find a middle way, talking about reforms whilst attempting to prevent real change taking place.

Proposals for reforms were initiated in June 2004, including a pledge to rewrite the constitution. What perhaps Gayoom didn't bank on was the MDP taking a literal interpretation of his words. Within a week of the President's talk of freedom of speech and association, the MDP held numerous public meetings discussing how democracy could be introduced in the islands. The meetings were attended by over 1000 people - in a country where six months ago voicing 'views contrary to the government' risked a lengthy period in one of the Maldives' notorious prisons. The

regime attempted to counter the opposition movement with a campaign of dirty tricks, refusing to grant halls where meetings could take place and intimidating organisers. The opposition responded by holding 'picnics' on the beaches and 'birthday parties' in which the topic of debate for the thousands who attended was democracy, human rights and the desirability of Gayoom's resignation.

The scale of the protests on the evening of August 12, however, where 5,000 people gathered outside the NSS headquarters in central Male' calling for democratic reform and the release of political prisoners, seems to have seriously shocked the regime. It also appears to have caused a split in Gayoom's inner circle. During an emergency cabinet meeting, hardliners - headed by police chief Adam Zahir - seem to have won the argument. Soon after the meeting ended, thugs recognised as loyal to the regime were seen entering the crowd of peaceful protesters. They started to throw bottles at the police who, given a pretext, responded with baton-charges, tear gas and rubber bullets against the crowd. Dozens of people have reportedly been injured and waves of arrests of reformists have taken place. The capital remains under a tense curfew and armoured personnel carriers prowl the streets.

For Gayoom there are now two options: continue the crackdown, ignore the inevitable outrage of the international community and risk sanctions which would wreck the Maldivian economy, not to mention the 68 year-old President's place in history; or introduce genuine democratic reform and accept that bowing out gracefully is the best option for everyone, even if it means Gayoom and his cronies become part of Maldivian history quicker than they would like.

As the tear gas begins to lift on the streets of the capital, the next few weeks will be crucial for the future of the country and the stability of the wider region. Gayoom's policy of fudging reform is in tatters. There is now little centre ground between the poles of liberal democracy and Zimbabwe-fication in the Maldives.

Friends of Maldives is an organisation devoted to improving awareness around the world of the Maldives and the Maldivian People. See: www.friendsofmaldives.co.uk ■

Zimbabwe's Place in the Commonwealth

Joshua de Bruin

Advocacy Programme, CHRI

On 7th December 2003 the Zimbabwean Government voluntarily withdrew from the Commonwealth. Under Commonwealth policy, Zimbabwe is no longer eligible to receive Commonwealth assistance or to attend Commonwealth meetings and member states are obligated to treat Zimbabwe and its citizens as non-members. Member countries can, however, continue to seek to engage bilaterally with Zimbabwe to promote national reconciliation and its return to the Commonwealth. The implications for maintaining support to the people of Zimbabwe are less clear, particularly given continued concerns over human rights abuses, and the introduction of the Non-Government Organization (NGO) Bill, in the lead up to next years parliamentary election.

CHRI's London Office organised a conference in March 2004: *Zimbabwe and the Commonwealth: What Now for the Promotion of Human Rights?* The sixty-eight speakers and participants included representatives from the Commonwealth Secretariat, other Commonwealth organisations, Commonwealth governments, national and international NGOs and the media.

A consensus emerged amongst participants that engagement with Zimbabwean civil society should continue to be a high priority of the Commonwealth Secretariat, the Commonwealth Foundation, Commonwealth member states and civil society organisations. This was considered of particular importance as, by most accounts, the 2002 parliamentary elections were not free and fair and breached the fundamental tenets of the Harare Declaration. Thus the Zimbabwean Government's withdrawal did not necessarily represent the view of the people.

The Commonwealth's relationship with South Africa, Nigeria and Fiji during their withdrawal/suspension demonstrates the importance of sustained engagement

and solidarity with national civil society organisations. The relationship enabled outside actors to maintain their understanding of events on the ground and to prepare for, and provide, longer term assistance. It was of particular importance in South Africa, where civil society used the Commonwealth's extensive networks to quickly re-establish economic and political support in the aftermath of the apartheid regime. In Fiji, following its suspension in 1987, civil society with the support of the Commonwealth, played a key role in Fiji's readmission in 1997. However, this can be juxtaposed with Nigeria in 1995 where national civil society organisations lacked the support needed from Commonwealth members.

A number of recommendations arose from the conference. Commonwealth organisations were encouraged to diversify their lobbying efforts and to look at the opportunities to apply pressure on the Zimbabwean government through intergovernmental bodies such as the African Union. The importance of sharing information on events in Zimbabwe with their members or affiliates in all regions of the Commonwealth, particularly Africa, was also emphasised. Most importantly, Zimbabwean representatives called upon Commonwealth organisations to develop new and innovative ways of providing assistance in light of their government's increasing attempts to limit the space for civil society activities in the run up to the 2005 elections. The Commonwealth Foundation was also called upon to review its current policy which prevents it from providing support to Zimbabwean civil society organisations and the Commonwealth Secretariat was encouraged to step up its existing diplomatic efforts in the run up to the forthcoming elections.

Given the Zimbabwean Government's ongoing repression of local civil society and media and recent moves to introduce legislation to monitor and restrict the activities of national NGOs, it is important that

Commonwealth members develop a strategy that will enable support to Zimbabwean civil society to be maintained.

The proposed NGO Bill would require all NGOs to register with the government in order to continue activities. Concerns have been raised that the Bill's intrusive powers are an attempt by the government to control and limit NGO activities, as well as restrict the flow of information to regional and international bodies, with the intention of stifling opposition before and during the 2005 parliamentary elections. This is consistent with a general pattern of intimidation and harassment, including: oppression of the media, arrests during peaceful protests and selective use of the regressive Public Order and Security Act. For example, during the Lupane District elections in May, it was reported such methods were used to subvert the election in favor of the governing Zimbabwe African National Union Popular Front (ZANU-PF).

The NGO Bill also seeks to limit civil society's engagement in governance and human rights related activities by banning foreign funding to, and involvement in, such activities. Many NGOs engaged in governance and human rights activities are reliant on foreign funding and are not registered under the Private Voluntary Organizations (PVO) Act out of fear of reprisal. Under the proposed NGO Bill, which will repeal the PVO, *'issues of governance' includes promotion of human rights and political governance issues the definition of governance.* This appears to be an attempt to ensure all NGOs are registered and monitored. The Bill enables the government to deny and revoke registration and impose punitive penalties for individuals found to be in breach of the Act. NGOs have traditionally played a key role in monitoring and advocating during elections. This bill, it would seem, will severely hamper NGOs' capacity to play an active role during the 2005 parliamentary elections – in the same way legislation has been used to restrict the press.

Although recent statements by President Robert Mugabe to implement wide-ranging electoral reforms are welcomed - if in fact they are followed by action - engagement with civil society, as discussed in London, will be critical, particularly given the Zimbabwean

Government's record of intimidation during previous elections. The proposed NGO Bill, it would seem, is an attempt to prevent this. The lessons of South Africa, Nigeria and Fiji, however, demonstrate the importance of the Commonwealth and its members maintaining their resolve in order to assist the people of Zimbabwe to formally return to the Commonwealth.

Papers relating to the conference can be viewed at the What's New page of CHRI's website: www.humanrightsinitiative.org

For more information and a copy of the proposed NGO Bill see: www.kubatana.net ■

Commonwealth Human Rights Network

The Commonwealth Human Rights Network (CHRN), which was established by CHRI, the Commonwealth Policy Studies Unit and the Association of Commonwealth Amnesty International Sections in 2003, remains engaged with civil society groups in Zimbabwe and includes a number of Zimbabwean groups in its membership.

The particular focus of the CHRN is in supporting the work of civil society furthering human rights in the Commonwealth. While Zimbabwe is no longer officially part of the Commonwealth, considering its recent history and current situation, it is important that Commonwealth groups remain supportive of their Zimbabwean brother and sister groups. The CHRN enables sharing of information and showcasing the diverse work on human rights in the Commonwealth, as well as increasing the capacity of members to use the Commonwealth as a target for their advocacy.

For more information about the Commonwealth Human Rights Network, please email: chnr@humanrightsinitiative.org

Kenya: Not Yet Uhuru

Michelle Kagari

East Africa Police Programme, CHRI

18 months ago, Kenya experienced a peaceful regime change for the first time in the post-colonial era. The National Rainbow Coalition (NARC) won a landslide victory against the Kenya African National Union (KANU) government, in a win that was hailed as a new beginning for the struggling country. NARC came into power on a strong reform platform that emphasised good governance and poverty reduction. The pre-election pledges included: putting a new constitution in place within 100 days of coming into power; having a smaller, more effective government; reducing government spending; and eradicating corruption.

Kenyan confidence in their government was boosted when within six months, two laws crucial in the fight against corruption were enacted. Apart from the Public Officers' Ethics and the Anti Corruption and Economic Crimes Acts, the President also established a Governance and Ethics Office and appointed a well-known and respected anti-corruption expert. Considering these positive actions, Kenyans were at first understanding when the government reneged on the promise to have a new constitution within 100 days in power. 600 days later and they are still waiting.

It has taken one and a half years for Kenyans to realise that a new government does not necessarily mean better or more responsive governance. The constitutional review process has been hijacked by politicians determined to push their selfish and short-sighted agendas, no matter the cost to the rest of the country. A new constitution was passed by the National Constitutional Conference in March 2004 with only two major contentious issues left – parliamentary versus presidential, and central versus federal systems of governance. Despite the fact that the Constitution of Kenya Review Act 2001 states that contentious issues will be resolved by referendum, and that parliament only has the power to either accept or reject but not amend the draft constitution, some MPs are insisting

that they should have the power to amend the draft. The entire process has reached a deadlock with no clear end in sight, relegating Kenyans, once again, to the sidelines to watch helplessly as a few selfish politicians arrogate a process that has taken a decade to materialise and which they believed that NARC would protect.

Kenyans were told the NARC government would have a 15-member cabinet. The euphoria that accompanied the NARC victory had not even died down before the new President broke this promise and announced first a 23, and then a 25, member cabinet. It now seems the government has forgotten their original promise: the President recently expanded the cabinet and appointed four new Ministers and 17 Assistant Ministers.

To add insult to injury, the first thing the Parliament did was increase their remuneration and perks, after a debate that lasted only two and a half hours and despite overwhelming public opposition. While 60% of citizens live in absolute poverty, 222 MP's each take home over USD 6000 a month. 18 months and hundreds of thousands of dollars later, the Parliament is proving to be the worst performing legislature in Kenya's history. Parliamentarians have barely managed to pass two major bills; frequently adjourn due to lack of quorum and are plagued by infighting that threatens to bring the already minimal output to a total standstill. Yet, these same MPs recently proposed a new scheme¹ for lavish retirement packages that will see every Member get at least USD 18,000 for every term served. The proposal has not yet been tabled in Parliament, but it is almost certain that they will waste no time in awarding themselves this deal.

The convoluted Constitutional Review Process, expanded government and huge benefits paid to underperforming law makers has rubbished the promise to reduce government spending and contributed to a huge

Contd ...on pg.14

¹ East African Standard, 11th July 2004 – MPs in New Scheme to increase their perks <http://www.eastandard.net/intelligence/intel10070412.htm>

MALDIVES

The Maldives ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 20 April 2004. Considering that human rights activists have documented cases of torture in the Maldives, this is an important step towards protecting the rights of the people of the Maldives.

JAMAICA

Jamaican Human Rights Defender, Brian Williamson, was murdered on June 9, 2004. He was a founding member of the Jamaican Forum for Lesbians, all-Sexuals and Gays (J-FLAG), and an outspoken advocate for the rights of homosexuals in a country which activists have called highly homophobic. Investigations into Williamson's murder continue.

PAKISTAN

The suspension of Pakistan from the councils of the Commonwealth Group (CMAG) in May, CMAG is a group of Commonwealth Foreign Ministers Principles, which includes respect for human rights and rebuilding the progress made toward "restoring democracy and rebuilding democratic institutions in Pakistan" in their decision, although noted that more needs to occur to strengthen the democratic process and that therefore the country will remain on CMAG's agenda. The readmission has been viewed by some as a "reward" for General Musharraf's role in fighting terrorism. Many human rights groups have argued that the changes that have occurred in Pakistan are not enough to warrant a return to full membership of the Commonwealth and call on CMAG to monitor the situation closely.

ZAMBIA

Local government elections were to be held in Zambia in November, but have been postponed until 2006. The government has argued that holding elections is too expensive and that the money could be better spent on roads and hospitals – but the opposition argues that the government is delaying the polls because of fear they would not be re-elected. Human rights activists have condemned the postponement, arguing that building infrastructure can never be a justification for denying the political rights of Zambian citizens.

TONGA

Restrictions on the media continue in Tonga. Since December last year, all publications must be registered – and local media groups report that since then only a few government or church-owned publications have received licences. Particularly concerning is the reports of independent papers being denied licenses. Although a ban on one independent paper was overturned as it was deemed unconstitutional by the Supreme Court, human rights and media groups report ongoing restrictions on media freedom.

GHANA

In July this year, Ghana's National Reconciliation Commission (NRC) concluded its public hearings. The NRC has the investigative powers of a high court but cannot bring charges against individuals. Over the last 18 months it has listened to more than 2,000 accounts of human rights violations which it is hoped will lead to a complete and accurate historical record of human rights violations inflicted by people linked to the state, particularly under the military government of Jerry Rawlings. The NRC will now make recommendations to prevent such human rights abuses in the future.

Commonwealth

na & Clare Doube
ramme, CHRI

INDIA

At least eight people belonging to a lower caste were shot dead in India's poor eastern state of Bihar. The attack happened in Chakwai village in the state's Nawada district, police officials say. Three people were also wounded in the incident, which police say is a revenge attack, linked to recent violence between upper and lower caste militants.

NIGERIA / SIERRA LEONNE

In June the Special Court for Sierra Leone stated that Charles Taylor has no immunity for prosecution for crimes against humanity and war crimes. Taylor, the former President of Liberia, actively supported armed opposition forces in Sierra Leone who allegedly perpetrated crimes against humanity in Sierra Leone. The Special Court can prosecute those responsible for the atrocities that have occurred in Sierra Leone since 1996.

However, despite this statement of the Special Court, Taylor remains at large. An international arrest warrant was issued against him in June 2003, however since August 2003 he has been harboured in Nigeria by the Nigerian government. Activists argue that Nigeria must arrest him and either surrender him to the Special Court, or pursue criminal or extradition proceedings – and that the country's continued failure to act is a violation of its international legal obligations.

UNITED KINGDOM

Two out of three judges of the UK Court of Appeal - the second highest court of the country - have ruled that evidence obtained through torture would be admissible in UK courts if British agents [the home secretary] may be presented with information of great potential importance, where there is, let us say, a suspicion of great means by which, in another jurisdiction, it has been obtained. What is he to do?" Human rights groups have widely condemned the ruling as condoning or possibly encouraging torture and that it could lead to a situation where overseas detention centres are used for torturing suspects to give "information" to be used against them or others. This is a highly dangerous move in a country that has ratified the Convention against Torture and is a signatory to the European Convention on Human Rights.

GUYANA

Allegations about a state-sponsored death squad in Guyana, composed of current and former police officers, have led to the government announcing in May that an inquiry will be held. This as yet has not commenced. The death squad is allegedly responsible for more than 40 killings last year. Of particular concern is the recent death of George Bacchus, two days before he was due to testify in criminal proceedings related to the death of Bacchus and the authorities' ability to protect witnesses has been questioned following the death of Bacchus and the resignation of the Chief Magistrate leading a preliminary inquiry, allegedly because she is a death squad hit list.

BOTSWANA

More than 200 bushmen from the Kalahari desert are taking the Botswana government to court over their forced eviction from ancestral land. They are challenging a 2002 decision to resettle them outside the Central Kalahari Game Reserve, which was their home for tens of thousands of years. Activists say this action could be a test case for the rights of bushmen across southern Africa.

budget deficit amounting to USD 1 Billion. But the wanton fiscal indiscipline displayed by government has gone a step further and highlighted their contempt for the hardworking people who sustain them. In 2003 the government spent USD 425,000 to purchase a home for the late Vice President's widow. And another USD 587,000 to pay off his private debts! USD 15,000 was squandered on what can only be described as a complete fiasco: the Government, in an impressive display of naïveté, commandeered some poor bewildered Ethiopian peasant and declared him a long-lost freedom fighter and national hero. Once the truth emerged, the government smuggled the "hero" back to Ethiopia and has never made mention of the saga again. Of course the taxpayers did not get a refund for this gaffe.

The Government actions are particularly concerning when measured against the principles laid down in its Manifesto and the Economic Recovery Strategy, especially regarding priorities for government spending. They effectively wasted USD 137 million when they scrapped a police communications networking project four weeks before completion. They then announced plans to initiate what is essentially the same project but which will cost USD 187 million. As of April this year, the new task forces had cost the taxpayer USD 8.1 Million, and continue to guzzle more. 18 months after coming into power, none of these commissions, except the Constitution of Kenya Review Commission, have produced anything. It is unlikely these expensive ventures will amount to much except provide entertainment for the masses, make millionaires of those in the commissions and impoverish the taxpayer.

To make matters worse, the current budget showed that USD 12.5 Million has been allocated to construct a residence for the Vice President, despite the fact that there is already an official residence, which was appropriated by the former President. When this huge sum was questioned, the government attributed the allocation to a typing error! The original sum allocated was USD 624,000.

But the event that has forever shattered the rose coloured glasses through which Kenyan's viewed their government, is the Anglo-leasing scandal. In May, an

opposition MP blew the whistle on a multi-million dollar tender for the development of tamper-proof passports. It emerged that the tender was awarded to Anglo-leasing Finance, a company with dubious credentials, at a grossly inflated price and without adherence to due process. Soon after it hit the media, there were revelations of yet another multi-million dollar tender to the same company. Though the deals were busted before Kenya lost money, the government's procrastination in bringing those implicated to account confirms the public belief that high-ranking government officials are involved. So much for the government's "zero tolerance" campaign against corruption!

Shortly after the Head of the public service made an ill-advised – and quickly retracted – announcement that the government had been cleared of complicity in the Anglo-leasing scandal, donors added their weight to calls for public accountability. Mr. Edward Clay, the British High Commissioner to Kenya, was scathing and stated that "...they can hardly expect us [donors] not to care when their gluttony caused them to vomit all over our shoes. Do they really expect us to ignore the lurid, and mostly accurate details conveyed...?" While MPs reacted angrily to Mr. Clay's comments, he has received overwhelming support from many, including churches and civil society.

The exposure of grand corruption has serious repercussions for Kenya and the budget deficit, which the Minister of Finance hopes to fill using donor funds. The EU has stopped disbursement of budget support amounting to USD 58 Million, and it is expected that other donors may follow suit if the Anglo-leasing scandal is not dealt with decisively.

Many Kenyans believed the NARC campaign slogan "Everything is possible without Moi", but those who were not optimistic about the Government's ability to bring about fundamental change must now feel vindicated. New people at the helm without any resulting change has brought home the hard truth: that bad governance in Kenya is not just as a result of kleptocratic leaders. Weak institutions that confer huge powers to leaders, to do as they please under a shroud of official secrecy and without accountability, is the primary problem. Unless this and successive governments are reigned in and held to account by strong, independent institutions, Kenya will never be able to pull itself out of the quagmire of poverty. ■

Interacting with the Commonwealth

Clare Doube

Advocacy Programme, CHRI

As an organisation consistently advocating more interaction between the official and unofficial Commonwealth, CHRI must make the most of all opportunities available for a civil society voice to be heard in discussions on a range of human rights issues. As it is the obligation of the state to protect human rights, it is of course important that governments are intrinsically involved in discussions that relate to human rights in Commonwealth countries. However, this also means that governments have a vested interest in giving only one perspective and, as such, civil society groups need to ensure that an alternative perspective is also prominent in discussions.

One regular opportunity is the meetings of the **Commonwealth Ministerial Action Group (CMAG)**, the group of Commonwealth Foreign Ministers that is mandated to look into serious or ongoing violations of the Harare Principles, which all member states are obligated to abide by. Since the Harare Principles include a commitment to human rights, serious or ongoing violations of human rights naturally bring that country under CMAG's radar.

CHRI's submission to the September meeting of CMAG highlights our concerns and recommendations regarding the one country currently on CMAG's agenda, Pakistan; a country that is fast deteriorating and requires immediate Commonwealth action, Maldives; and a former Commonwealth member, Zimbabwe. The submission reminds CMAG that given Pakistan's readmittance – despite on-going concerns about adherence to the Harare Declaration – the Commonwealth is strongly obligated to closely monitor democratic development and human rights in Pakistan. CHRI also called upon the Commonwealth to urgently place the Maldives onto CMAG's agenda and condemn the government reaction to the August riots.

These concerns were reiterated in CHRI's submission to the upcoming **Commonwealth Foreign Ministers Meeting**. We also highlighted our recommendations on

the Commonwealth Heads of Government Meeting (CHOGM), arguing that as recent efforts to incorporate civil society input into Commonwealth Ministerial Meetings have proved effective, CHOGM should also reflect these changes. While it is appropriate for some CHOGM sessions to remain closed, CHOGMs offer a rare opportunity for genuine communication between civil society and official delegations. This could take the form of: regional and/or thematic meetings; opportunities to speak at plenary sessions or working groups; and joint communiqués which include outcomes of deliberations of government and civil society and set out programmes of action to be jointly progressed and monitored. Such activities would bring the Commonwealth in line with other international organisations such as the UN, which routinely include civil society voices in deliberations at all levels.

As the Foreign Ministers' agenda includes world trade issues, CHRI made recommendations on International Trade and Financial Institutions (IFTIs), arguing that Commonwealth members, using their membership and associated voting rights, are well positioned to be proactive in promoting accountability and transparency in IFTI activities. CHRI called on Commonwealth members to actively engage with IFTIs in developing disclosure policies that are consistent with Commonwealth principles and promote people-centered development.

This focus on disclosure policies was also reflected in CHRI's submission to the **Commonwealth Finance Ministers Meeting**, which will particularly focus on International Financial Institutions. As well as this submission, CHRI participated in the civil society consultation organised by the Commonwealth Foundation in London which provided the Ministers with a civil society perspective on the role of IFIs in promoting trade liberalisation.

All submissions can be downloaded from CHRI's website: www.humanrightsinitiative.org ■

CTUC's Disbanding Could Seriously Impact CHRI... And is a Grievous Blow to the Commonwealth

Murray Burt

Member, CHRI International Advisory Commission and representative, Commonwealth Journalists Association

The announcement in June 2004 that the Commonwealth Trade Union Council (CTUC) intends to fold its cards and deal itself out of the Commonwealth club of civil society organisations is a huge disappointment to all. It is as much a loss to humanity as it is to the labor movement.

CTUC Director, Annie Watson, wrote saying, with regret, that at the annual meeting in Geneva the CTUC accepted a Trustee Committee proposal and decided that the organization should be wound up at the end of 2004. "You will see that consultations are to take place with the world trade union body — the ICFTU — to consider which functions currently carried out by the CTUC can be carried out by the ICFTU" she said.

"Umi Issaji, CTUC Administrator, and I will remain in post until the end of January 2005... It will take a few months before we know exactly how certain functions will be transferred to the ICFTU and, if you have a relationship with CTUC that will be affected by this closure decision, I would ask for your patience and understanding until we have more clarification about future plans." CHRI does have a relationship and it will be affected. There is optimism that the downside will be minimal.

On a self-interest level, those of us at CHRI are surprised by the apparent suddenness of the decision in Switzerland, and saddened by the risk of losing such a respected, sophisticated and powerful ally — not to mention the pleasant participation of Annie Watson, an experienced, fair and forceful Commissioner for us, who has provided wonderful counsel on both CHRI's Trust Committee and its International Advisory Commission.

More serious will be the gap the decision leaves in the process of advancing Commonwealth values and issues.

These will be huge. In its 25-year history, CTUC spoke forcefully and well, from a foundation of 19th and 20th century history and experience for the 30-million workers in the 53 countries its latter-day member organisations represented.

Its advocacy and help for working people and democratic government in South Africa and Nigeria, and elsewhere of course, will always be a memorial to labor enlightenment. But loss of its voice and influence for good at CHOGM will be hard to replace and risks being a body blow to the Commonwealth, a world institution of its kind second only to the UN in size and second to none in financial effectiveness.

Reasons for the decision derive from two problems very familiar to those who champion Commonwealth civil society organisations: the drift to emphasize regional interests and the related burden of funding.

Although CTUC's announcement after June 13 was unequivocal on the fact of its intention to disband, the whys and wherefors were unstated. A suggestion that its work and influence were duplicated by the world labor body held some resonance but was small comfort to those who for years have had satisfaction and comfort from the Commonwealth relationship. Ms. Watson stressed that every effort will be made to maintain the network between labor and human rights and that the link with CHRI is critical to the trade union movement's voice being heard.

CTUC was founded in 1979. It was funded largely by the U.K. Trade Union Congress, the Australian Congress of Trade Unions, the Canadian Labor Congress and, to a lesser extent, by the New Zealand Council of Trade Unions. Australia and later Canada both felt a pressure on their priorities, and believed that their dollars could deliver more clout in their regions and thus enhance

national as well as democratic interests. It is believed this shifted the bulk of the cost burden the UK which, in light of an impending financial loss, felt it could not maintain the scale of support a CTUC secretariat needed.

We are very much indebted to the CTUC. It and the Commonwealth Journalists Association and the Commonwealth Lawyers Association were first to act

on the need for a human rights body to serve the Commonwealth. They became prime movers in pioneering the establishment of the Commonwealth Human Rights Initiative at the Vancouver CHOGM in 1987. Other NGOs have subsequently joined the team to great effect. We send our thanks to all at the CTUC for their support over the years and most particularly to Annie Watson who has been so closely involved for so many years. ■

Contd...from the coverage

torture; peaceful protests being dispersed with rubber bullets and teargas... The list could go on.

The recent increase in the levels of public dissent – the start of which were protests about deaths in prisons in September 2003 – shows that the people of the Maldives have had enough. On the positive side, President Gayoom has recognised the level of discontent and has publicly promised change. He, for instance, announced the establishment of a National Human Rights Commission on December 10th (Human Rights Day) 2003, and in June 2004 announced constitutional reform. While these are welcomed, the clamp-down that ensued when Maldivians met to discuss potential reforms, indicates that Gayoom's promises were far from genuine. Declaring a state of emergency is no way of sending a message of inclusive, participatory governance.

The Commonwealth has an important role to play in the Maldives, especially considering the association's commitment to small states. Part of this role needs to be a supportive one, by assisting the government with their promised reforms. It is not enough just for the President to promise respect for human rights and the rule of law, effective mechanisms need to be put in place to ensure that



Pro-democracy demonstrators, Male', 13th August 2004.

the current situation doesn't reoccur in the Maldives and that there are genuine limits on power for the future. The Commonwealth can and should assist with these efforts – and if Gayoom is serious about his desire for change, he will welcome such assistance.

While this behind-the-scenes assistance is provided, a more public monitoring role also needs to be taken by the Commonwealth. The association cannot publicly state that all members abide by the Harare Principles, while a member is so blatantly violating the very principles that the Commonwealth holds dear. Fortunately the Commonwealth has a mechanism in place which monitors serious or ongoing violations of the Harare principles – the Commonwealth Ministerial Action Group (CMAG). It is time for CMAG to add the Maldives to its agenda and send a message to the country that such behaviour is unacceptable and will lead to suspension from the Commonwealth and even potentially expulsion. Considering the situation in Zimbabwe, where the Commonwealth has witnessed the near-collapse of a member state, the association as a whole and individual member countries must act immediately to ensure that the situation in the Maldives does not further deteriorate. ■

Confronting Distrust: The Case of Redfern

Devika Prasad

Police Reforms Programme, CHRI

“Law enforcement agencies should be professional, effectively managed, vigilant against corruption and misconduct and publicly accountable”.¹

Realities on the Ground

On the night of February 15, 2004, the inner city suburb of Redfern in Sydney, Australia, collapsed into a riot, with violent clashes between the police and Aboriginal protesters. For nine hours, Aboriginal youth faced off against police called in from all corners of Sydney, pelting officers with bricks, petrol bombs and lumps of concrete. The riot erupted after news of 17-year-old Thomas “TJ” Hickey’s death spread across the neighbourhood. Thomas Junior, or TJ as he was affectionately called, succumbed to injuries sustained when he crashed his bicycle and landed on the blunt metal spokes of a fence. The riots were sparked by the community’s belief that TJ crashed his bike while being chased by the police – a claim the police repeatedly refute.

TJ set out to buy chips and cigarettes on the same morning that the local Redfern police were searching for a bag snatcher, who they consistently insist was not TJ. It appears that TJ saw the police and the police also noticed him while they were on patrol. TJ’s uncle, Roy Hickey, revealed that he saw a boy speeding along on his bike across Philip Street when he was driving a community health bus along the same street. The next thing he saw was a police van stop in the park behind the fence, though he maintains that he did not see any officers in hot pursuit. Mr. Hickey left his bus to investigate when he saw about six officers bending over a boy on the ground and discovered that the boy was TJ. He was on his back on the fence, impaled through the chest and neck. By 1 am on Sunday, doctors pronounced TJ dead.

In the aftermath of the riots, Bob Carr, the Premier of New South Wales (the state in which Sydney is located), pledged that the state government would launch inquiries into TJ’s death, to verify how he died and whether there was any police responsibility. Three different government bodies were delegated the task of carrying out an inquiry – the state Coroner, the police service and the state Ombudsman. On August 17, John Abernathy, the state Coroner, cleared the police of any responsibility in TJ’s death, even though he pointed out that a police car did follow TJ before he fell on the fence. In fact, Mr. Abernathy described TJ’s death as a “freak accident”, absolving the police of any responsibility.²

While it is encouraging that the state government immediately sprung into action and that it was found that the police were not responsible for TJ’s death, meaningful reconciliation between the police and the community in Redfern involves issues more profound than the resolution of this single incident. In spite of the outcome of the Coroner’s inquiry, it is undeniable that for such a reaction as this violent riot to occur, the Aboriginal community of Redfern, and most particularly the youth, have no belief in the impartiality of their local police.

The police have made attempts to reach out to the community through mentoring programmes, which had previously been seen as a success. Police officers who had been involved in these programmes have commented on their disillusionment in seeing individuals they had mentored being active participants in the rioting. Despite this setback, such programmes

¹ Goldsmith, Andrew “Better Policing, More Human Rights: Lessons from Civilian Oversight”, in Mendes et al (ed.), *Democratic Policing and Accountability*, Aldershot, pg. 33

² “Police not responsible for TJ’s death: coroner”, *Sydney Morning Herald*, August 17, 2004

must continue if there is hope of building understanding and a cooperative relationship in the future. These efforts must also be augmented by greater sensitivity and awareness of indigenous concerns, not just by police officers but also by the entire government apparatus. Going from this point of view alone, it becomes clear that police reform in New South Wales, while admirable on many fronts, has failed to keep historical legacies and multicultural concerns sharply in view.

The Face of Police Accountability in NSW

This deep level of community distrust of the police in Redfern is far removed from the larger context of police reform in New South Wales. The innovative mechanisms to strengthen police accountability that have been implanted in New South Wales have made the state police a beacon of good practice. Yet, a community living in Sydney has no faith in its own police. The anger in Redfern points to sorely neglected areas of police reform, and the extent to which a community has been damaged in its own neighbourhood because of this neglect.

The state of New South Wales has tackled police reform with vehemence, particularly by cementing accountability mechanisms within the functioning of the state police service. Following public outcry in the mid 1990s about a sweeping rot of the state police force, the state government as well as police responded diligently – a royal commission of inquiry was formed, the police was scrutinized from all quarters, and a staunchly independent oversight system was put in place to permanently guard against even a hint of serious police misconduct.

As a result, the combined offices of the Police Integrity Commission (PIC) and the Ombudsman maintain a steady check on the behaviour, responsiveness and impartiality of the NSW Police Service, through a combination of vigilant monitoring and extensive investigation into any instance of wrongdoing on the part of the police. Established by the *Police Integrity*

Commission Act 1996, the PIC is vested with formidable independent investigative capacity and is empowered to conduct investigations entirely on its own initiative with or without a complaint by a citizen or police officer. So far, the Police Integrity Commission maintains possibly the best track record in the country for securing convictions of erring police officers. Its latest annual report names nineteen former officers who were prosecuted last year for varied offences from supplying heroin, cocaine and cannabis to accepting bribes. They received jail sentences of up to seven years.

The New South Wales experiment provides a home-grown example of good practice for the rest of the country. Recent allegations of serious police misconduct in the state of Victoria have led officials to look to NSW as a model of an effective anti-corruption body, and certain quarters are clamouring the state government to replicate the Integrity Commission in their state.

The Future

The police have their work cut out for them in Redfern, which is a high crime area. Yet the challenge of policing a multicultural society is precisely to balance the demands of maintaining law and order while respecting indigenous and minority communities. Hopefully, the inquiry being done by the police will not only address operational concerns, but also tackle the deeper social factors that fuelled the anger that spilt over with such disastrous consequences on the streets of Redfern. The Redfern police must use the experience of the riots to build a true sense of trust with the community, and to do its best to set an example in improving race relations. This can be done through sustained dialogue with the elders, collecting community input in terms of how Redfern should be policed, closer interaction with the youth, and bringing more experienced officers to Redfern. It is up to the police, in partnership with other community actors, to ensure that the community's anger disappears and that violent riots truly become things of the past. ■

Illegal Orders: A Threat to Democracy

Dr. Doel Mukherjee

Police Reforms Programme, CHRI

In their anxiety to ensure performance, the police executive in India sometimes issue instructions, unaware that these may lead to an infringement of the rule of law. These instructions are usually verbal orders designed to subordinate police personnel, potentially without regard to the prevailing law.

The use of enormous discretionary powers vested in police personnel needs to be used with caution. With even the slightest negligence in formulating policies, the police top brass may unknowingly cause a cascade of abuse of powers – which not only undermines the democracy but also puts the image of the police in jeopardy.

The present image of police is poor but adopting short cuts is no way to increase public support. Stringent orders to increase arrests under preventive detention and to complete arrest quotas may improve law and order, but they are also used to get rid of political opponents, as well as escalating the numbers under police surveillance. These camouflage the real crime situation and provide no assistance to field officers. This also undermines public trust in the police, widens the police-public communications divide and severely curtails the rights of citizens, thereby weakening the democracy.

Illegal Orders

At a series of recent training and sensitisation programmes¹ in Chhattisgarh, a state in central India, reasons raised by police personnel regarding their inability to conform to human rights standards while executing their duties included: external interference, poor working and service conditions, and illegal orders. However, what seemed to disturb them most was the constant pressure to arrest people during “prevention drives” and the subsequent misuse of Section 151 of the Indian Code of Criminal Procedure – an arrest to prevent an offence – by orders to increase the number

of arrests by 10% each month to show the police are active. The participants felt that such orders pressure them to produce results, and this leads to the arrest of innocent people. Most often those with limited access to power and money are picked up and later set free – and this is often repeated, creating a “habitual offender” of an innocent citizen and a vicious cycle where innocent people come under the scanner without committing a crime. Illegal orders on pre-emptive arrests to fill arrest quotas may be of short term use to police departments, but they have few long term gains.

In Other Parts of the Commonwealth

India is not alone in using such practices. Internationally, police productivity is often measured by arrest quotas, leading to extensive patterns of false arrests and undermining of the credibility of an entire police agency.

In Pakistan, for instance, in spite of Article 10.4 in the Constitution – “*No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defense of Pakistan or any part thereof, or external affairs of Pakistan, etc*” – Pakistan’s Criminal Procedure Code permits preventive detention in defiance of the Constitution. In fact, the number of arrests under preventive detention provisions now exceeds arrests for substantive offences, and some of these have been politically motivated. These laws are designed not to stop criminals but rather to harass innocent people. The Human Rights Commission of Pakistan has expressed concern at the increase in the number of illegal arrests and the denial of due process to detainees.²

Section 54 of the Criminal Procedures Code in Bangladesh is also widely criticized for granting broad latitude to police to arrest and detain without a warrant or magistrate’s order. In August 2003 Human Rights

¹ Organised by CHRI, the State and National Human Rights Commissions, and Multiple Action Research Group for 100 police, February-July 2004.

² Mr. Ijaz Ahmad, “Pakistan’s law on preventive detention defies the Constitution”, Asian Legal Resource Centre, 2003.

Watch requested the Government to bring under court review all officers arresting under this section.

At CHRI's Roundtable Conference in Kenya in 2003³, the Chairman of the Constitution of Kenya Review Commission, Prof. Yash Ghai, described the testimonies received by the CKRC concerning the police, particularly regarding arrests without warrant and illegal search and seizure. They further documented the practice known as 'the Friday collection' where police make arrests on Friday evening and solicit bribes from those arrested, telling those who refuse that they cannot access a lawyer or magistrate until Monday. People testified to a "total lack of security" in their daily lives because of the criminal involvement of police. Such consistent testimony bears out that the police has "become a lawless force unto themselves quite apart from acting under an oppressive regime."⁴

Is Civilian Oversight A Solution?

Civilian oversight models – such as a Civilian Complaint Review Board (CCRB) – can help the police become more efficient and fair in handling citizen complaints or disciplining officers for misconduct. Such a Board also helps make police processes more efficient, transparent and fair, which in turn builds the credibility of the police. Some examples of oversight bodies are:

- Perhaps the most independent oversight body is that of paid, independent civilian investigators who investigate complaints and send results to the CCRB, which takes up the matter with the Chief of Police for action. In South Africa, the Independent Complaints Directorate (ICD) has jurisdiction over cases: involving the death of a person in custody or a death allegedly from police action; involving alleged criminal activity by a police officer; and where police officers allegedly engaged in conduct explicitly prohibited by South Africa's Police Regulations. The ICD can investigate these cases itself or work with investigators within the police force. It then refers the

findings of its investigation to appropriate prosecutorial and/or disciplinary authorities.

- Another type of CCRB is where investigations are conducted by the police supervised by a board which makes recommendations to the Police Chief. Nigeria's Police Service Commission is an example: made up of prominent citizens from outside government and the police who serve fixed terms of office, it has disciplinary control over the Nigerian police force, and has power to appoint all but the most senior officer in the police leadership.
- The third type of CCRB is where the internal affairs department receives complaints and conducts inquiries, then sends recommendations to the Police Chief. If the complainant is not satisfied, s/he can write to the CCRB to review and recommend a different disposition.
- The audit system entails the appointment of an auditor who does not investigate but reviews the department's procedures and policies regarding investigation and suggests necessary changes.

Recent attempts to provide functional autonomy to the police in the South Indian state of Kerala have laid the foundations for creating India's first civilian review board. The present DGP, Mr. P.H.K. Tharakkan IPS, stated that CHRI's intervention in Kerala when they were considering improvements led to the establishment of the Police Performance Evaluation Board,⁵ which will review police performance⁶. Although the mandate of the Board is rather limited, it is still positive that a body other than the police will be able to objectively study police functioning and continue the process of change within the department. Without such a body – to keep a careful watch on the law enforcement agencies, their actions and policies – illegal orders to execute arrest quotas will continue to challenge and undermine the essence of a free and democratic society. Both the police and political executive justify such actions as a necessity to ensure law and order and curtail terrorism, but the record of its use – or, rather, *misuse* – in recent history betrays the fact that the so-called cure can be indistinguishable from the disease.

³ Organised with the Kenyan Human Rights Commission on April 24-25, 2003 on Police as a Service Organisation: An Agenda for Change.

⁴ Michelle Kagari's (CHRI) submission on Police Reform to the Technical Working Committee on Defence and National Security in Kenya, 2003.

⁵ Notified by executive order, it is similar to that suggested by the 1998-99 Ribiero Committee on Police Performance and Accountability.

⁶ Stated at a seminar organised by the Ministry of Home Affairs, Government of India on 12th February 2004 in New Delhi.

A Right to Information Reception in Accra

Nana Oye Lithur

Coordinator, Africa Office, CHRI

An increasing number of Commonwealth associations are recognizing the importance of the right to information to their work and constituents. The Commonwealth Parliamentary Association, for instance, convened a study group on Access to Information in Ghana in July 2004. The group examined legislation and implementation issues in Commonwealth countries which have access regimes in place. The particular focus of the meeting was on identifying areas that have worked and others that have not, in terms of contributing to open governance.

CHRI participated in the event itself, as well as hosting a reception to enable Ghanaian activists to share ideas with their international counterparts. The Guest Speaker at the reception, the Editor of the Daily Graphic, Mr. Yaw Boadu-Ayeboah, spoke on accessing information as a human right for all. He stated that it would be wrong to suggest that enacting the Freedom to Information Act will benefit the media alone and, rather, that society thrived on the availability of and access to information, which is vital for the consolidation of democracy and governance. He stated that the overriding and underlying philosophy of this legislation is that freedom must be available to all. Democracy thrives on the quality of knowledge people have, and that these people must have access to a wide range of information to enable them to participate fully in the affairs of the society. This is imperative because open debate leads to greater truth and more informed decisions than where dissent is stifled.

In his welcome address, Mr. Sam Okudzeto, Chair of

CHRI's International Advisory Commission, also spoke of the importance of access to information to the functioning of a democracy. He highlighted how, due to lack of information, people do not know their power in deciding who forms the government.

A CPA representative and Fiji's Minister of Information, Mr. Simione Kaitani, explained that the Commonwealth wants members to recognise the importance of freedom of information laws. While Commonwealth members may have difficulties implementing this legislation, it is essential as it guarantees people the opportunity to freely participate in the development of their own countries.



CHRI's Right To Information reception.

Distinguished guests from Ghana included: Her Lordship Justice Anin Yeboah, Justice of the High Court; Hon. Freddie Blay, Deputy Speaker of Parliament; Hon. Alban Bagbin, Minority Leader of Parliament; Miss Anna Bossman, Acting Commissioner of the Commission of Human Rights and Administrative Justice; Angelina Baiden Amissah, Chairperson of Gender and Child Committee of Parliament; Mrs. Elizabeth Mills-Robertson, Deputy Inspector General of Police; and Hon. Hannah Tetteh Kpodah, MP. It was pleasing to note the importance placed on access to information by such luminaries in Ghana, and CHRI Africa looks forward to working with them in realizing the right to information in Ghana. Guests from the CPA study group included: Hon. Abdul S. Oroh, Deputy Chairman, Human Rights Committee, House of Representatives (Nigeria); Mr. Simione Kaitani, Minister of Information of the Fiji Islands; and Shri Bhartruhari Mahtab, MP from India. ■

Human Rights and Anti-Terror Laws: India Sets An Example

Swati Mehta

Police Reforms Programme, CHRI

That anti-terror laws are being used to curb people's civil liberties is no longer a disputed fact. From the developed West where Muslims are alleging unwarranted harassment through stop, seizures and arrests, to developing countries where these laws are used against political opponents, human rights violations abound in Commonwealth countries. India, which has had a long-standing problem of terrorist activities, has also had the dubious distinction of having extremely repressive anti-terror laws.

Under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the total number of detainees was around 76,000. Of these, 25% were dropped by the police without charges; trials were completed in only 35% of the cases and 95% of these trials ended in acquittals. The conviction rate was less than 1.5% and there were reports of human rights violations committed by the police abusing their excessive powers under the Act. This law was allowed to lapse in 1995 after pressure from national and international civil society groups, as well as the UN Human Rights Committee which monitors countries' compliance with the International Covenant on Civil and Political Rights.

The Government of India used the events of September 11, 2001, to justify legislating on terrorism once again – and the new Prevention of Terrorism Act 2002 (POTA) is similar to its predecessor in its provisions and in its implementation. There is no dearth of reports of it being abused for politically motivated arrests and torture: cases such as Mr. Vaiko, who, when a member of Parliament and a leader of the main opposition party in the state of Tamil Nadu, was incarcerated for over a year under this law without any charges being filed in court. Many tribal women and children in the state of Jharkhand, were arrested and placed in custody for long periods under this law. Similarly, many Muslims were held under the law in the state of Gujarat after anti-Muslim riots. Despite the fact that this Act was not

applied in 15 states and six Union Territories, in the remaining 14 states, a total of 301 cases have been registered involving over 1,600 persons over the two and a half years since it was enacted.

It is in this scenario of excessive abuse of the law that the new Government, elected in May 2004, promised to repeal the POTA. Impressively, it is already taking action: on August 10 the Cabinet gave its nod of approval to the repeal of the controversial Act.

The repeal will not have retrospective effect but the Government promises that it will ensure that the interests of the innocent are protected. The Government has promised to introduce two Bills – one to repeal POTA and another to amend the Unlawful Activities (Prevention) Act, 1967 – in the second half of the current Budget session of Parliament. The proposed amendments to the Unlawful Activities (Prevention) Act would ensure the implementation of the UN Security Council Resolution 1373 concerns relating to internal security, including funding of terrorist organisations. While it is too early to comment on the suggested amendments to the Unlawful Activities (Prevention) Act, it is hoped that the Government will keep in mind the reasons for repealing POTA and will ensure that the proposed amended Act will not become another piece of legislation that is easily misused.

This decision to repeal the abusive law – especially when countries across the globe are passing repressive anti-terror laws – is a very welcome step. It is hoped that it will be emulated by other countries where such laws are being used to curb civil liberties and political dissent and harass members of the minority community. No one can argue that security concerns are not justified but they cannot be used to take away hard won civil rights. After all, doesn't arguing for security without liberty (or extremely curtailed liberty) significantly blur the difference between a democracy and a dictatorship?

CHRI Calendar

CHRI Headquarters

June 2004

Observer at Pacific Human Rights Consultation, Suva, Fiji Islands.

July 2004

A Community Policing meeting was held between police personnel and the community of Mana area in Chhattisgarh.

Third Human Rights sensitisation programme held in Ambikapur, Chhattisgarh.

Human Rights sensitisation programme held in Jagdalpur, Chhattisgarh.

Participated in the Asian Development Bank's India consultation meeting on its disclosure policy.

Resource person attended the CPA Study Group on Access to Information in Accra, Ghana on July 4-9.

August 2004

CHRI's RTI Programme provided resource persons for an Action for Good Governance and Networking in India (AGNI) meeting in Mumbai.

CHRI London Office

June 2004

Participated in the Asian Development Bank's UK consultation on its draft access to information policy.

Participated in 2004 Roundtable Seminar on Civil Rights in Malaysia organised by the PAS.

July 2004

Participated in the civil society consultation for the Commonwealth Finance Ministers Meeting, organised by the Commonwealth Foundation.

CHRI Africa Office

June 2004

Launch of the CHRI/Open Democracy Advice Centre Access to Information Survey in Ghana.

July 2004

Hosting of cocktail reception for Access to Information Study Group of the Commonwealth Parliamentary Association, right to information coalition of Ghana, and Ghana parliamentarians.

First Annual General Meeting of Executive Committee of the Commonwealth Human Rights Initiative, Africa office.

The Commonwealth Human Rights Initiative (CHRI) is an independent international NGO mandated to ensure the practical realisation of human rights in the Commonwealth. It was launched in 1987 and is currently constituted by the Commonwealth Journalists Association, Commonwealth Trade Union Council, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association and the Commonwealth Press Union, Commonwealth Broadcasting Association. The funding organisations felt that while Commonwealth countries had both a common set of values and legal principles from which to work, they required a forum from which to promote human rights. It is from this idea that CHRI was born and continues to work.

Editors : Clare Doube; **Design :** Anshu Tejpal, CHRI
Acknowledgement : Many thanks to all contributors.

Executive Committee: B.G. Verghese - Chairperson; P.H. Parekh - Treasurer

Members : Anu Aga, T. Ananthachari, Vasudha Dhagamwar, K.S. Dhillon, N.R. Madhava Menon, Ashis Nandy, P.P. Rao, Jagdish C. Sobti, R.V. Pillai



Published by CHRI, B 117, 1st Floor, Sarvodaya Enclave, New Delhi - 110 017, INDIA
Tel.: 91-11-2685 0523, 2686 4678 Fax: 91-11-2686 4688 Email: chriall@nda.vsnl.net.in

Visit our website at www.humanrightsinitiative.org
for information on activities, publications, CHRI News, links and more.

Printed by _____