

Commonwealth Human Rights Initiative



Newsletter

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CHRI has launched an Electronic Magazine 'Commonwealth Police Watch'. Please visit www.commonwealthpolicewatch.org

Counting down to Commonwealth Heads of Government Meeting

- Clare Doube

Co-ordinator, Strategic Planning & Programmes, CHRI

The biennial Commonwealth Heads of Government Meeting (CHOGM), scheduled for 25th to 27th November, in Valletta, Malta, is just around the corner. CHOGM itself is of course the only of the many Commonwealth events to be held then. A Foreign Affairs Ministers Meeting will also be held in Valletta just before CHOGM as well as a string of civil society initiatives. The largest of these is the Commonwealth People's Forum, which will be held from 21st to 25th and will include a variety of smaller workshops, events and displays from across the regions of the Commonwealth.

Plans are underway for a Commonwealth Human Rights Forum and already groups from around the Commonwealth have expressed interest in attending and sharing their experiences as human rights defenders in the fight against restrictions to civil society space in a variety of Commonwealth countries. It is positive to note that the Human Rights Unit of the Commonwealth Secretariat has already held some regional workshops on Human Rights Defenders and it is hoped that some of those who participated in these meetings will attend the CHRF, as well as members of the Commonwealth Human Rights Network.

As part of lead-up to the People's Forum, the Commonwealth Foundation is organising a series of national consultations in collaboration with local civil society partners. These meetings are designed to bring together civil society and government for discussions around CHOGM. They aim to build momentum towards CHOGM, galvanise civil society around CHOGM themes and provide a focus for civil society-government dialogue on CHOGM processes and outcomes. While each national consultation is different, they are based around four key issues: the World Summit on the Information Society (WSIS), Small Island Developing States (SIDS), Africa and the Millennium Development Goals (MDGs).

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Since this is the first time that such consultations have been organised it will be interesting to see the outcomes across the Commonwealth and what impact they have on CHOGM.

While all reports are yet to be synthesised, some of the important emerging issues are: the difficulties faced by civil society groups if they do not have the space in-country to effectively function or are unable to access information; the need for greater emphasis, by government and civil society alike, on South-South sharing of good practice; and on better using the report of the Expert Group on Development and Democracy as so many of the recommendations have great relevance to the problems faced by many Commonwealth countries.

It is positive that the broader Commonwealth has already recognised this last point and the Secretariat is organising an important series of regional Commonwealth Colloquia on Development and Democracy.

It is hoped that these will give the impetus to member states to implement some of the recommendations of the Expert Group, including: establishing an independent human rights commission and a freedom of information commission, as well as ensuring that the police force abides by the law.

Another key recommendation is the Expert Group's emphasis on developing a monitoring mechanism to ensure progress needs to be acted upon. Let us hope that this is the CHOGM when such a monitoring mechanism is finally developed.

If you would like to be involved in the Commonwealth Human Rights Forum; become a member of the Commonwealth Human Rights Network or require further information about CHRI's plans around CHOGM; please contact Clare Doube at our New Delhi Headquarters at clare@humanrightsinitiative.org. ■

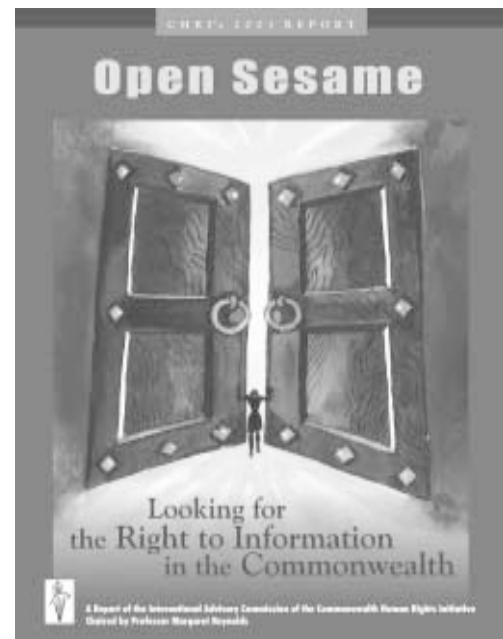
What is the Commonwealth Heads of Government Meeting?

The Commonwealth Heads of Government Meeting (CHOGM) is a biennial meeting of the Heads of Government from all Commonwealth nations. Every two years the meeting is held in different member states, and is chaired by that nation's Prime Minister or President.

Most meetings include an appearance by the Queen of Britain, Queen Elizabeth II, who is the titular Head of the Commonwealth.

In the past CHOGMs have attempted to orchestrate common policies on certain contentious issues and current events, with a special focus on issues affecting member nations. This includes the continuation of apartheid rule in South Africa and how to stop it, military coups in Pakistan and Fiji and allegations of electoral fraud in Zimbabwe.

The member states agree on a common idea or solution and thereby release a joint statement declaring their opinion, this becomes Commonwealth policy and informs the work of the Commonwealth Secretariat.



“Open Sesame”; CHRI's report on 'Right to Information' at the Commonwealth Heads of Government Meeting, 2003 in Abuja, Nigeria

Zimbabwe: Where is Operation Clean up Government?

Andrew Galea Debono

Consultant, CHRI

Since Zimbabwe withdrew from the Commonwealth in December 2003, the official Commonwealth has taken little notice publicly of the deteriorating situation in the country—particularly in the field of human rights. While Zimbabwe is of course no longer part of the association, it is worth noting that the decision to leave the Commonwealth was taken by an undemocratically elected government and was a move that did not enjoy the support of many Zimbabwean people. One must also keep in mind that Zimbabwe may potentially rejoin the Commonwealth in the future if a democracy is reinstated; and so ongoing dialogue during its period in the dark would be beneficial. Whilst interaction with the Zimbabwean government is impossible at present, Commonwealth bodies – both the official Commonwealth and the NGOs - can still interact with the people and human rights organisations within the country and the diaspora outside.

When South Africa withdrew from the Commonwealth in 1961, mainly due to its apartheid policy, the official Commonwealth still kept providing support to various South African organisations. Although the situation in South Africa in those days and the present situation in Zimbabwe are clearly different, we can still learn from that period to determine our policies in Zimbabwe. Many feel that the Commonwealth could still speak out in favour of democracy and human rights in Zimbabwe. During the celebrations of the 40th anniversary of the Commonwealth held in London on 24 June 2005, a recurring concern raised by presenters and participants alike was the lack of intervention related to Zimbabwe.

President Robert Mugabe has long tried to quash the growth of opposition in Zimbabwe to consolidate his dictatorial regime over the country. His decision to withdraw the country from the Commonwealth is viewed by many independent journalists in Zimbabwe as yet another move away from democracy and an immature reaction to a likely extension of the suspension of Zimbabwe following the flawed elections of 2002. Legislation to further increase government control is in

the pipeline. Examples include a law for government control over private schools and a law to allow all productive farmland to be nationalised (including a clause barring the possibility of court challenges against any government land seizures). Independent Zimbabwean journalists are given a hard time, enabling government propaganda to go largely unchallenged.

Meanwhile the situation in Zimbabwe on the ground is going from bad to worse. Starvation deaths have been on the increase, whilst the recent ‘operation clean up’ - a housing demolition operation by the Zimbabwean government aimed predominantly at opposition oriented communities contributed to further degrading the situation. The UN has recently launched a campaign to urgently help about 700,000 people rendered homeless or jobless by the clean up drive. A further 2.4 million people are said to have been affected by the demolitions. UN officials have confirmed that the drive continued in Eastern Zimbabwe despite claims by the government that it had ended the campaign. The evicted included a large number of women with HIV/AIDS, HIV/AIDS orphans, widows and children with disabilities.

President Mugabe is fast running out of options for bailing himself and his country out of this colossal mess. There have been recent discussions with South Africa and China on financial assistance and loans, but details are unclear and murky. South Africa has offered financial assistance to Zimbabwe to help combat the increasing poverty in the country, but it is likely that Mugabe will turn down this offer due to the conditions attached to the loan. The fear is that even if he manages to find a funding source, it will be used solely for political ends. Commonwealth governments, agencies and NGO’s need to engage themselves further to ensure that the Zimbabwean people are not simply abandoned at the mercy of their government.

The FCMC Bill 2005: Sounding the Death Knell

Siddhartha Kumar

Programme Officer, Voluntary Action Network India

It is unfathomable why, in the garb of guarding the security of the country and fighting global terrorism, NGOs and other civil society organisations could be restricted, regulated and strangled to the level of being non-functional. India's tabled "Foreign Contribution Management and Control Bill" (FCMC), 2005, raises many issues of concern for the voluntary sector. The Foreign Contribution Regulation Act (FCRA) - which since 1976 has regulated the receipt and use of foreign contribution made by donors to the voluntary sector - has come under fire with allegations about foreign contributions being used to destabilise the government. This sector includes voluntary organisations, educational institutions and religious organisations. The FCMC bill is in response to those allegations.

In 1998 the UN General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of society to promote and protect universally recognised human rights and fundamental freedoms (otherwise known as the Declaration on Human Rights Defenders). India is a signatory to this declaration. It affirms the right of everyone to promote and protect human rights and fundamental freedoms at the national and international level. The declaration also includes a new right to "receive and use financial resources for human rights activities" (*Article 13*). Through the FCMC, India would be violating its own commitments made to the UN and the world community.

Foreign funds coming to India for business purposes is much larger than that contributed towards voluntary organisations working for social development. If funds regulated for business purposes are not a threat to national security how can funds for the voluntary sector that constitute less than one percent be considered a threat? The justification given by the government that funds coming to the voluntary sector are used for anti-national activities fails to hold any substance and merely reflects a prejudiced attitude.

A press release by the Ministry of Home Affairs (MHA) quotes the Home Minister as stressing the need for new legislation to replace FCRA 1976 to facilitate inflow of foreign contribution for genuine activities without compromising on national security. He further emphasises that the Bill should ensure a proper balance between twin competing objectives of facilitating flow of foreign funds for NGOs and also addressing security concerns. FCRA and now FCMC have been mainly promulgated to regulate the objectives mentioned above. The Government's concerns can be regulated under the existent FEMA with new initiatives introduced such as multiple bank accounts to regulate monitoring of funds. New legislation in totality is just not necessary.

The first ever seminar on FCRA, 1976 was organised on 24th and 25th of June 2005 by the MHA and the Institute of Chartered Accountants. The seminar was pegged as a curtain raiser for FCMC Bill 2005 and the deliberations held were mainly centered around educating civil society about the provisions of the Bill. It was, however, hugely disappointing for the NGO sector as they hardly got a chance to express their views. The fact that there were only two speakers from the sector to address the issue with the rest comprising of government officials, showed just how respected the opinion of NGOs were.

A vibrant and dynamic civil society is a must for any democratic polity to function. The government in the past has recognised this, reflected in the words of Home Secretary "we are convinced of the potentialities of the NGOs in India." However, the new Bill threatens to derail the structure of NGOs who are being singled out in the name of preserving internal security. Statements such as that of S.K. Panda, Special Director, Enforcement Directorate allegedly terming NGOs as 'risk customers' further sabotage the already delicate relationship between the government and the voluntary sector. Led to believe that the new Act would liberalise receipts into the sector, its intention serves quite opposite the effect. ■

New Approaches to the Protection of Human Rights in Canada

Murray Burt

Ex-President, Commonwealth Journalists Association & Member, International Advisory Commission, CHRI

The Canadian Human Rights Commission with a quarter of a century experience under its belt is at a threshold where it most certainly has to review its functioning to make effective interventions. Realising this, the Commission has decided to launch new policies, which will significantly alter its approach to human rights and its impact on society.

Many Commonwealth countries with bodies administering their own human rights legislation will find the Canadian exercise an interesting one to watch. The new model aims at realigning the current imbalance of the old, essentially an emphasis on litigation and conflict, and focusing its new effort on mediation and prevention.

The Canadian Human Rights Commission has looked into the application of the original legislation of 1977, how well it worked and what changes have to be made to tailor it to counter the pressures of demand, demographics and public expectation.

“Our new package of reforms anticipates rebalancing the mix between mediated and traditionally-managed cases, addressing the backlog and liberating our energies and resources to focus more on systemic, egregious and high-impact human rights issues,” said Mary Gusella, Chief Commissioner of the Canadian Association of Statutory Human Rights Agencies.

However, changing a system, which has grown over 25 years of accumulated jurisprudence, processes and client expectations, is not without risks. New human rights challenges have appeared and increasing demands are made on public institutions to deliver results. Issues have become more complex and require a continuum of compliance and enforcement tools to adequately respond to the expectations. The new management system is said to be aimed at meeting these demands and allowing the commission to fulfil the (old) mandate in a manner, which delivers results for today.

Ms. Gusella emphasised that the Commission faced significantly different and more demands than when it was first created in 1978. “In 2002, the number of signed complaints rose by 39%, from 574 to 800. Our projections for 2003 showed that this number could rise even higher, to as many as 950-signed complaints. Some categories have risen even more sharply — for instance complaints citing disability rose by 85% last year. At the same time as cases are increasing, budgets are not.” The situation was clearly unsustainable and it was clear that new approaches were needed.

Since 1977 when the *Canadian Human Rights Act* was passed, the human rights landscape has changed considerably in a number of ways:

- ◆ Although discrimination is still at the forefront of Canadians’ human rights concerns, it has become more complex and subtler.
- ◆ Human rights law and practice have evolved to recognise that inequality arises not only from prejudice but also from the discriminatory impacts of ordinary policies and practices.
- ◆ While individuals still experience discrimination and still deserve remedies, we also know now that we miss most of the picture if we focus solely on individuals - some types of discrimination only become apparent when we look at ongoing patterns of inequality for groups.
- ◆ Demographic changes in Canada, for instance a higher proportion of visible minorities, a burgeoning young Aboriginal population and a general population which is aging, have also had an impact on the types of human rights issues coming to the fore and the demands placed on human rights institutions.

Despite this “landscape” change, the Act and the human rights institutional framework have remained largely as they were in 1977. The same institutions — the Commission, the Human Rights Tribunal and the

courts — are still there and all still have roughly the same tools to deal with what have become very different human rights challenges. Compounding the situation is the fact that the relative balance among these human rights institutions has shifted over the years.

At its origin in 1978, the Canadian Human Rights Act was remedial, aimed not only at deterring offenders but also at encouraging compliance. The Commission was given the power, in addition to the individual complaints function, to conduct research, foster greater understanding of discrimination and educate the public about equality.

Parliament did a good job when it crafted the Canadian Human Rights Act. The legislation was intentionally made to be flexible and give the Commission a full range of tools to adapt to new circumstances and changing demands. Resource constraints and judicial decisions over the years, however, have pushed CHRC away from its administrative, remedial roots towards enforcement, focusing more on investigation and litigation to resolve human rights disputes. In doing so, in some respects the courts have shifted the balance found in the Canadian Human Rights Act between private and public interests in favour of private interests. In many ways the human rights system has strayed from the original intent and has not met the full potential and range of the Canadian Human Rights Act.

What was the challenge and direction of needed change, and in what spirit and vision? The original purposes of human rights commissions were to:

- ◆ Correct persistent patterns of inequality;
- ◆ Redress discrimination against individuals;
- ◆ Prevent discrimination before it occurs (an effective strategy to eliminate both individual and systemic discrimination cannot rely entirely on legal remedies for past discrimination);
- ◆ Provide an effective, expeditious remedy through a fair process. Delays allow discrimination to fester and cut the likelihood of solution. Fairness, an important right in itself, is essential because rights litigation is unlikely to bring change if all sides do not have confidence in the fairness of the process;
- ◆ To ensure the system serves to identify emerging issues, or it will fail over the long run; and

- ◆ For eight months, the Canadian Commission worked hard to re-engineer its management system. It was clear simple demands for more resources, to permit more of the same procedures, were not going to resolve anything.

Canadians expect tax-supported services to be effective, efficient, timely and fair. The existing model of litigation and conflict is and always will be incapable of satisfying this legitimate demand. To respond, the Commission is focusing on a management approach that will entail a client-centred, result-oriented set of principles for the human rights system.

The Commission while adopting new methods of alternate dispute resolution through mediation will continue to use the traditional model of investigation and litigation. The Commission understands that some cases can only be resolved through litigation. In other cases, for instance where the resolution of a case might bring about a change in the law or result in policies that will affect many people, litigation may be the optimal route to effect societal change.

Investigation and litigation are blunt instruments. Some systemic issues are better suited to non-complaints processes and the Commission is developing new tools outside of the complaints system, such as public reports and policy inquiries, to respond to systemic human rights issues, identify their root causes and make recommendations for change. More research, public dialogue education and awareness are also key to addressing systemic discrimination.

Summing up the catalytic change in the Commission, Ms. Gusella said that, “If new legislative amendments are indeed required to bring about fundamental change in the human rights system, we would hope that any new legislated structure would be consistent with the mediation and prevention model we have set out. A move towards a model which is more court-like and adversarial would, in our view, be a move in the wrong direction.” ■

Material accepted from a paper delivered by Mrs. Mary Gusella, Chief Commissioner of the Canadian Human Rights Commission to The Canadian Association of Statutory Human Rights Agencies

Journalists Intimidated Across the Commonwealth

Andrew Galea Debono

Consultant, CHRI

A recent worrying spate of arrests and attacks on members of the media in various countries of the Commonwealth has brought the issue of freedom of expression – or rather the lack of it – into the foreground. Most incidents can be viewed as intimidation tactics and extreme attempts at censorship. It's unfortunate to note that the very institutions that are meant to protect the journalists in the performance of their duty are often the very ones who are guilty of obstructing them.

In Uganda, radio talk show host and journalist Andrew Mwenda risks facing up to 5 years in jail after being accused of sedition following remarks made during a radio programme that Government incompetence led to the 30 July 2005 crash of the Ugandan Presidential helicopter. The programme dealt with the recent air crash in which Sudan's former First Vice-President and Southern Sudanese Leader John Garang together with seven Ugandan crew members were killed. The Ugandan Broadcasting Council suspended the licence of K-FM Radio on the 11 August 2005 following the radio programme and Mwenda was arrested the following day. On the 15 August 2005 he was charged with sedition and was subsequently released on bail. The arrest of Mwenda comes at a time when the Ugandan Government is being accused of trying to intimidate the independent press by means of official threats. Just one day before the closing down of K-FM radio, President Yoweri Museveni had threatened to shut down any news media considered to be compromising on regional security.

A similar incident occurred in Cameroon where the Editor of *Le Front*, Joseph Bessale Ahanda, was detained on the 6 July 2005 after he accused the head of the Postal Service and the owner of a press group of embezzlement. The reports were effective enough to lead to the dismissal of the head of the Postal Service - yet Ahanda was inexplicably arrested as a consequence. He was later released on the 21 July 2005, after journalists went to the Justice Ministry to ask for his release. He is currently awaiting trial concerning his reports.

The world of journalism was further dismayed following the murders of the popular Tamil journalist Relangi Selvarajah, her husband Senathurai Selvarajah and their ten month old baby in Sri Lanka. Unidentified assailants gunned down the couple on the 12 August 2005. Suspicion has been cast upon the Liberation Tigers of Tamil Eelam (LTTE) who, on their part, are denying any connection with the murders. Meanwhile, many international journalist federations are calling for an immediate and thorough inquiry to take place.

Three photographers were hospitalised and another six were injured after security agents in Dhaka, Bangladesh assaulted them on 8 July 2005. The incident erupted when a photographer attempted to photograph graffiti, which accused the government of corruption. He was prevented from doing so by security agents and was beaten up in the process.

This incident follows another incident in May when the police while covering student riots attacked six photographers. In another episode, police beat a journalist after being denied entry to a ruling party office.

Practising the profession of journalism has become a dangerous affair. Freedom of expression and the right of the public to be informed needs to be defended by all means and, as a consequence, journalists should be given all the necessary protection they can get when performing their duties and in their day-to-day lives.

The position of journalists in several countries has been aggravated by recent episodes where governments are using the excuse of national security to censor and intimidate journalists. Do governments really expect a situation where they are never criticised by the free press? The concept of the rule of law, so prominent in the Harare Principles, is strengthened by independent and serious journalism. Attacks of any sort on the institution of journalism are, therefore, also an attack on those very principles, that the Commonwealth is based upon. ■

The Protection of Refugee Children in Malaysia: Wishful Thinking or Reality?

Amer Hamzah Arshad
Advocate - Malaya High Court

The United Nations Convention Relating to the Status of Refugees 1951 was the first and most important international legislation on refugees. The 1951 Convention clearly defines a refugee and sets out the kind of legal protection and the minimum assistance, social and human rights to be accorded to them by States party to the Convention. It emphasises that the rights to be accorded to refugees should, at the very least, be equivalent to the rights enjoyed by foreign nationals living there legally.

To date the 1951 Convention and the amending 1967 Protocol are the two main international instruments that regulate the treatment of those compelled to leave their homes due to persecution. These two instruments are the guiding light for the office of the United Nations High Commissioner for Refugees (UNHCR) in its efforts to help and protect more than 17 million people of concern.

Refugees in Malaysia

There are 145 countries that have signed up to the 1951 Convention and/or the 1967 Protocol. Unfortunately Malaysia isn't one of them, even though there are approximately 27,000 refugees in Malaysia (excluding asylum seekers), 4,600 of whom are children.

Malaysia has failed to enact any legislation for the protection of refugees. They are treated as *illegal immigrants* by the authorities and are subjected to harsh penalties, detention and deportation under the Immigration Act 1959/63.

Over the years, supporting treaties have been developed to deal with the issue of protection of refugees and asylum seekers. Of the more relevant ones, is the Convention on the Rights of the Child, which Malaysia has ratified.

Convention on the Rights of the Child

The CRC is important to children because it sets comprehensive standards for almost all aspects of a child's life i.e. health, education, social and political rights. It came into force in 1989 and was signed and ratified by Malaysia in 1995.

Article 22 of the CRC specifically endorses the rights of refugee and asylum seeking children to appropriate protection and humanitarian assistance. It states:

“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee...receives protection and humanitarian assistance...”

For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the UN and other competent organisations... to protect and assist such a child and to trace the parents or other members of the family for reunification...”

The CRC has gained importance because of the near-universal ratification of the treaty – only two countries are yet to ratify it. Importantly, when a State is a party to the CRC but not to any refugee treaty, the CRC may be used as the primary basis for protecting refugee children.

Effects of the ratification on the Convention on the Rights of the Child

Ratification of international conventions should not be considered as a mere public relations exercise. It requires the State Parties to take pro-active steps and in the Malaysian context, the existing immigration laws must be amended to incorporate the principles pertaining to refugees in statutory form.

Malaysia has generally taken a conservative approach in dealing with international law and instruments. Rights or principles in a convention or treaty have no application and cannot be incorporated into the local jurisprudence until an Act of Parliament decrees it so. If at all, such instruments are only persuasive in nature as long as they do not contradict any express statutory provisions.

It can be suggested that since Malaysia has ratified the CRC, it would have the force of law and thus bind the government in its dealings with refugee children.

More importantly, it would enable the courts to provide relief to refugee children who have not been accorded such protection and rights.

Therefore by ratifying the CRC, the Malaysian government has effectively made a positive statement that it will act in accordance with the Convention and thus render the appropriate protection to refugee children.

If any refugee child is prosecuted in court for entering into Malaysia without a valid pass under Section 6(1)(c) of the Immigration Act, a challenge may be made to such criminal proceedings.

The refugee child may commence appropriate proceedings by motion to a High Court to quash the charge and the proceedings by producing evidence to satisfy the court that the charge has been referred without any basis or jurisdiction.

It is unacceptable for the Malaysian Government to ratify the CRC and then act in a way clearly contradictory to the clauses of CRC by prosecuting refugee children as illegal immigrants.

Unfortunately, the local jurisprudence is hesitant in developing standards that would enable application of international standards without an Act of Parliament. It has been widely accepted in other jurisdictions that

the principles or norms of international instruments may be incorporated through the process of common law. Courts may, through the interpretation of municipal law, introduce and adopt principles of international human rights law into the domestic system.

It appears that in the Malaysian Government's point of view, asylum seekers and refugees are nothing more than unwanted statistics who have the potential to cause social problems.

Notwithstanding the ratification of the CRC, the actual protection and assistance given to refugee children is virtually non-existent.

There are cases where refugee children as young as 10 years have been arrested, detained, charged in court or subjected to penalties merely on account of entering into Malaysia without valid documentation. These children lack basic amenities and invariably suffer from symptoms of trauma.

Conclusion

The Malaysian Government's paranoia of the influx of asylum seekers and refugees if it ratifies the Refugee Convention is an unfounded fear that the Government must overcome. Its justification for not ratifying the Refugee Convention is arguably nothing more than an attempt to avoid dealing with pressing humanitarian problems that are beleaguering thousands of asylum seekers in and around Malaysia.

It must also be remembered that since the Malaysian Government has ratified the CRC, its action must not contravene the principles as laid out in the CRC. Otherwise, the Malaysian Government will be seen as being ignorant of its international obligations and blatantly disregarding the protection of human rights norms and values. ■

South Africa

Decision to prosecute Deputy President welcomed

Political parties have welcomed the National Prosecuting Authority's (NPA) decision to charge former Deputy President Jacob Zuma, saying it will give him his 'long awaited day in court.' NPA spokesperson Makhosini Nkosi said they had informed Zuma that criminal charges would be brought against him, including two counts of corruption.

A spokesperson for the presidency said, 'The President hopes that all South Africans will allow the law to take its course.' DA leader Tony Leon said the decision was in line with the judgment handed down by Justice Hilary Squires in the Schabir Shaik trial, as well as with President Thabo Mbeki's decision to remove Zuma from office.

Nigeria

Politicians say the law they are charged under is 'extinct'

Several politicians facing trial for corruption have asked the Abuja High Court to throw out the charges as the Act they have been charged under is null and void. Legal counsel for former Senate President Adolphus Wabara, argued that the Independent Corrupt Practices and other Related Offences Commission (ICPC) Act 2000 was 'extinct'. He said the Act of the National Assembly, which established the ICPC was repealed in 2003 and replaced with a new ICPC Act. Also accused with Wabara of taking bribes are five other senators and a former Education Minister.

Maldives

Peaceful Demonstrators arrested on First Anniversary of Mass Arrests

What was simply meant to be a peaceful demonstration on the 12th August 2005 to mark the first anniversary of mass arrests at a pro-democracy rally, ironically turned into another spate of gratuitous arrests aggravated by police brutality. This event and other recent arrests are a blow to the Government's stated plans to bring about democratic reforms in the country and are a step backwards after the positive event of the official registration of the Moldavian Democratic Party (MDP). Amongst the people arrested recently were several members of the MDP in what seems like an effort to intimidate and suppress the opposition party.

Kenya

Death Penalty on the Way Out

Death-row convicts will soon have their sentences reduced to life imprisonment. Justice Minister Kiraitu Murungi said he was working closely with the President's Office to commute to life all the death penalties. "We are committed to abolishing the death penalty. The death sentence is a violation of the right to life," said Mr. Murungi.

Sri Lanka

Movement for legal reform

Over 300 persons gathered on the streets of Kalutara, Sri Lanka on 13 July 2005 demanding legal reforms to ensure justice.

The participants in the inaugural meeting of the Street Movement for Legal Reform came from Kalutara, Panadura, Galle, Ambalangoda, Kandy and Negombo. In recent years a number of human rights groups have worked hard to build a strong movement for justice reforms, in the conflict ridden country.

Addressing the gathering Chitral Perera one of the

Mishra

Communication Officer

Lanka

Hits the streets of Sri Lanka

chief organisers said, “The criminal investigations were of poor quality and that delays in the adjudication process discouraged everybody except for criminals.”

“The beginning of this street movement for justice reform is of historic importance. If it gathers momentum it is likely that the reforms will be speeded up”, said Basil Fernando, Executive Director of the Asian Human Rights Commission (AHRC).

Uganda

Women activists will back down over Bill

Women activists in Uganda have indicated they are willing to back down over some proposals in the Domestic Relations Bill in order to get it passed. The Bill seeks to reform and consolidate the law relating to marriage, separation and divorce. It also seeks to reform marital rights and duties, grounds for separation, and rights of parties upon dissolution of marriage. The Bill was recently shelved by Parliament on a Government request to make further consultations with various sections of society, including Muslims and Christians.

Malawi

Law Society slams impeachment Bill

The Malawi Law Society is opposing a Bill that proposes forming a National Governing Council that will lead the country for six months if Parliament impeaches President Bingu wa Mutharika. Opposition parties have listed several grounds for impeachment, including the alleged use of public resources by the Democratic Progressive Party. But the Law Society described the proposal to have a Governing Council as expensive and a waste of time. ‘ You cannot have the head of the judiciary involved in another government arm, and amend the Standing Orders with one thing in mind: to remove Mutharika,’ said Society President Alick Msowoya. He said the amendment needed wider consultations to get a political consensus because what was being proposed was a change to the Constitution.

Fiji

Tension rises over the proposed Reconciliation, Tolerance and Unity Bill

The recent Government proposals for a Reconciliation, Tolerance and Unity (RTU) Bill is causing great concerns in the Pacific island of Fiji, particularly due to two clauses which would grant amnesty to those guilty of serious human rights violations in the failed coup of 2000, including coup leader George Speight, who is serving a life sentence for treason. The army has recently threatened a coup if the controversial Bill is passed, causing tension to rise in the political sphere of the country. The threat was made by the military in its eight-page submission to the Parliamentary Select Committee that is receiving submissions from members of the public on the Bill.

It would seem that two sections of the proposed Bill (Article 18(2) and Article 21) would violate Fiji’s international law obligations that oblige Fiji, through positive and negative action, to prevent violations and to respect, protect, ensure and promote human rights. Fiji has an obligation under customary international law to provide reparation for victims of gross human rights violations and to provide assistance and a right to justice to victims of crime. Whilst Fiji should aim at reconciliation and tolerance, it should not oppose the course of justice along the way.

The UK Racial and Religious Hatred Bill: A Violation of the Freedom of Speech

Karolin Silfver

Intern, CHRI London Office

Freedom of expression is the cornerstone of any given democratic society. The proposed UK Racial and Religious Hatred Bill has been heavily criticised for undermining this fundamental right.

Despite a statement by Home Secretary Clarke saying that he believes the Bill is compatible with the British Human Rights Act of 1998 as well as the European Convention on Human Rights, demonstrations have been held by over 1,000 Christian churches alleging that the Bill infringes on freedom of speech and will worsen the relations between religious communities.

Organisations such as the Muslim Council of Britain, the Commission for Racial Equality, the Law Society, the rights group Justice, the Association of Chief Police Officers and the Director of Public Prosecutions are in support of the Bill as it will also ensure equal protection for all believers as well as those with no religious belief.

There has been a surge in the attacks against Muslims and mosques since the London blasts of July 2005. In a disturbing report the BBC said that there were 269 religious hate crimes in the UK during the three weeks after 7 July, compared to 40 in the same period in 2004. The Bill aims at making acts and instigation of hatred against persons on religious grounds a criminal offence punishable by up to 7 years of imprisonment. Critics fear that people may start taking offence at every day comments made at places of worship, thereby turning communities against each other. "Religious hatred" is defined as hatred against a group of persons sharing a religious belief or lack of one; but the term "religion" is not very clearly defined. Giving the courts broad leeway to determine what this means in practice, the Bill's proponents nevertheless believe that the law comports with Freedom of Thought, Conscience and Religion as guaranteed by Article 9 of the European Convention on Human Rights and Article 19 of the International Covenant of Civil and Political Rights.

Proponents argue that an offence under the proposed law are words, behaviour, written material, recording, or programme which are threatening, abusive or insulting and *intended or likely to cause* racial or religious hatred. Merely causing ridicule or prejudice will not be an offence. Finally, it must involve stirring up hatred against a group defined by its religious beliefs, and not hatred of the religion itself. Proponents of the law believe that it will not be easily misused because of the clause that the Attorney General, an independent authority, must agree to prosecute, thereby giving the law accountability and a semblance of independence.

Critics of the Bill remain unconvinced, fearing a crippling effect on free speech and freedom of religion. Concerns have been voiced that a simple quote from the Koran and Bible might lead to prosecutions. Lord Anthony Lester recently published a book challenging the Bill, saying he feared that basic mediums of communication would now come under unrestricted scrutiny. People may censor themselves out of fear that they might be held criminally responsible for unintended effects of their words. It is argued that this could happen since the speech need only be *likely* to cause religious hatred, as opposed to be *intended* to cause it. This contradicts international standards, which requires that a State must show that the accused spoke with the *intention* to incite discrimination or violence.

Considering that the Bill is being promoted during a time of heightened terrorism in the UK, it might be viewed as a tool the Government aims to use in addressing national security challenges. If this is the case, the Bill should be scrutinised with reference to the Johannesburg Principles that have become widely accepted in customary international law.

There is a thin line between free and hate speech. In its current state the Bill in the UK is vague in its definition and constitution. It runs the risk of restricting the freedom of expression and religion and creating more problems than solutions. ■

An Opportunity for Change

Devika Prasad

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The Royal Malaysia Police has a chance to start over. An independent commission of inquiry, formed for the first time in Malaysia in December 2003 to inquire into the police, has forcefully indicted the police for excessive human rights violations and abuse of power. Based on the submissions and complaints received, the “Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police” reported that public dissatisfaction with the police was high, particularly in terms of the police response to complaints lodged at police stations, overcrowding and illtreatment in police lock-ups. The Commission has taken a strong pro-human rights stance in its report, by asserting “upholding human rights needs to become the central pillar of policing and the foundation of their ethical code”.

The findings of the Commission echo long-standing criticisms by international human rights organisations, civil society groups and individuals, of a police force regarded as brutal, corrupt and mired in impunity. The Commission has produced an extensive report (made public in May 2005), containing 125 recommendations aimed at rekindling public faith in the professionalism and integrity of the police force. These valuable suggestions, if implemented, will go a long way in shaping the Royal Malaysia Police into a truly democratic and accountable organisation that is trusted by the public.

The concept of ‘democratic policing’ implies an approach based on norms and values derived from democratic principles. Critical to the success of democratic policing is the principle that the police should be held accountable: not just by government, but by a wider network of agencies and organisations, working on behalf of the interests of the people, within a human rights framework. It prompts the creation of an Independent Police Complaints and Misconduct Commission (IPCMC) and a Parliamentary Select Committee on Police and Public Safety, to build external and parliamentary oversight into a new police accountability framework. A draft bill establishing the

IPCMC has already been prepared. The Commission is envisaged as an independent complaints body, with powers to investigate serious misconduct matters and advise the Minister for Internal Security on increasing police integrity, reducing misconduct and building public confidence in the police. The Select Committee would exercise oversight over police functioning and the government’s implementation of the Royal Commission’s recommendations.

As with any reform process, the key questions of political will and implementation will loom large. Prime Minister Badwai has formed a task force (of which he is the chair) comprising of a cross-section of government agencies tasked with directing the implementation of the recommendations, though a prominent Malaysian NGO has expressed concern that the role and scope of the task force has not been clearly defined. The report of the Commission provides the blueprint for reform, but the pace and quality of reform will be set by the Government. There are countless examples across the Commonwealth of inquiry commissions, investigating all kinds of government deficiencies and issues of public interest that produce groundbreaking reports which are simply, and unjustifiably, neglected. Forming a commission of inquiry is only the first important step – clearly the true test of any government’s commitment to reform lies in how effectively it operationalises a commission’s suggestions.

At this time, Malaysia can look to the example set by three Australian states which transformed endemically corrupt police forces into democratic organisations by implementing the recommendations of commissions of inquiry. Today, these three police services enjoy public trust and work under a layered accountability system. The fate of policing in Malaysia is at a crossroads – it is now in the hands of the Government to deliver an improved service, or to perpetuate a substandard status quo. It is hoped that the work of the Commission and the voice of the public will not go unheeded at this opportune time. ■

The African Court Merger

Andrew Jordan

Intern, East Africa Project, CHRI

International human rights law is often thought of as emanating only from the United Nations. However there are different regional jurisdictions in the world that have developed human rights legislation, such as the African Union (AU), formerly the Organisation of African Unity (OAU), founded in 1963. This article will examine the various human rights mechanisms of the AU and the proposed merger of the existing African Court of Justice and the new African Court on Human and Peoples' Rights.

The African Union

In spite of the organisation's endorsement of the principles of the 1948 Universal Declaration on Human Rights in the preamble of the AU Charter, the protection of human rights within AU member states was not a major priority. The AU's focus had been on political and economic independence, non-discrimination and the eradication of colonialism in the continent and apartheid in Southern Africa, at the expense of individual liberty. While condemning apartheid in South Africa it generally ignored massive human rights violations committed by its members and has been criticised for the excessive length of time that it has taken to bring the Banjul Charter into being in the first place (1981), and subsequently for it to come into force (1986). As a result, the African Commission on Human and Peoples' Rights was initiated in 1987 - twenty-four years after the OAU was founded.

The AU's record shows it to be more of a 'talking shop' where broad statements and good intentions are spoken of, but little is followed through, than a forum where the human rights of the citizens of member states are protected. This is arguably due to the lack of political will and determination that exists to ensure that legal redress is available to individuals and enforcement mechanisms for victims of police brutality are strong and difficult to circumvent. This has had a detrimental effect upon the realisation of the ideals that are behind the mechanisms of the AU and are described below.

The Banjul Charter

The African Charter on Human and Peoples Rights or the 'Banjul Charter', was adopted by African Union members in 1981 and came into force in 1986. Although the youngest, it is the most widely accepted regional charter in the world – with 53 ratifications/accessions to date. All Commonwealth African countries have signed up to the Charter.

This Charter grants similar protections for rights as in the International Bill of Rights. It is also unusual in that it covers economic, social and cultural rights as well as civil and political rights.

However, 19 years after the African Charter entered into force, these rights remain under severe attack. African governments generally have failed to address adequately the human rights problems confronting the continent.

The African Commission

The African Commission on Human and Peoples' Rights was borne out of the Banjul Charter in 1987 to promote and protect these rights in Africa. The Commission entertains complaints by one State against another if both parties have ratified the charter. Individuals, NGOs and States Parties, may submit complaints of State human rights violations. A complaint may be considered from a person other than a State Party to the charter (including international complaints), but only at the request of the majority of its members. Moreover, the Commission only embarks upon a substantive consideration of the matter, after ensuring that various conditions of complaint admissibility, including the exhaustion of all local remedies, have been met. Importantly, cases can be initiated and concluded through correspondence alone instead of the traditional necessity for parties to be physically present, and submissions on behalf of others are also investigated. Where the Commission finds that

violations have occurred, it makes recommendations to the State(s) concerned; to ensure that the occurrences are investigated, victim(s) compensated (if necessary) and measures taken to prevent recurrence.

Inadequate human and financial resources and significant arrears of payment have dogged the Commission for years. It has potential, but there are many hurdles that must be overcome before it is successful.

The African Court on Human and Peoples' Rights

The Protocol authorizing the formation of an African Court on Human and Peoples' Rights finally came into force in 2004, a disturbing 23 years after the Banjul Charter was adopted. Judges will be appointed and confirmed by the Assembly of African Heads of State and Government. The Court has been designed to complement the protective mandate of the African Commission on Human and Peoples' Rights. It has both advisory and contentious jurisdiction over human rights matters. The jurisprudence will draw on the Banjul Charter and, notably, "*any other relevant human rights instruments ratified by the States concerned.*"

African States, the Commission, and African intergovernmental organisations will be able to submit cases to the Court. Individuals and NGOs may, at the discretion of the Court, file a petition against a State, if they have exhausted other avenues of relief; but the Court will only hear the case with the State's consent. It has been suggested that one way around this impasse will be to sue State leaders in their private capacities. The Court can order remedies for human rights violations, including compensation or reparation. States are merely obliged to comply with judgements. Court expenses are to be borne by the AU Commission.

Concerns surrounding the Proposed Merger

With the start of this Court looming on the horizon, there is now uncertainty over its functioning, with a proposal to merge it with the existing African Court of Justice. While preparations were underway to make the Court operational, in July 2004 the AU Assembly decided to join the Court with the AU Court of Justice,

and suspend the process until the modalities of the merger had been considered. The proposed merger has drawn deep concern from groups including The Coalition for an Effective African Court on Human and Peoples' Rights (formed in May 2003) and Amnesty International.

While the Court of Justice established under the AU Constitutive Act has jurisdiction to resolve disputes between member States that have ratified the Court's Protocol, the African Court is empowered to hear cases challenging violations of the civil and political rights as well as economic, social and cultural rights guaranteed under the African Charter. Furthermore, unlike the judges of the African Court who are required to possess competence in human rights, the judges of the Court of Justice are only required to "possess the necessary qualifications required in their respective countries for appointment to the highest judicial offices." Amnesty International believes that human rights issues will become subsumed in a merger of the two Courts and there is a better chance of the implementation of the African Charter and more effective remedies for human rights violations with a separate Human Rights Court.

Importantly, proposals for the new Court leave unresolved such important issues as its functional link with the African Commission, and that individual and NGO access to the Court is dependent upon member States making a specific declaration permitting it. Of the 19 States that have ratified the protocol only one has made such a declaration.

It remains to be seen how effective the new proposed African Court will be, but if the length of time that the process of its initiation and the complexities involved in the merger of the two Courts are anything to go by, it will be some time before the new African Court is functioning effectively. Whether member States abide by and collectively enforce judgments of the Court, and whether the AU can itself develop effective mechanisms of enforcement against States, will be important tests. As in domestic reform, the political will and total long term commitment to accept and obey the rule of law will be critical to any effective and lasting justice in the African continent.

Jamaica and the Struggle for Access to Information

Indra Jeet Mistry

Project Assistant, Access to Information, CHRI

In a statement to Parliament, Jamaica's Information Minister, Burchell Whiteman, admitted that less than 50 government ministries, departments and agencies had met his 5 July 2005 deadline to be sufficiently prepared to come under the remit of the 2002 Access to Information Act.

Whiteman had previously pledged that all of the government's 264 institutions would meet the deadline but in a 4 July session of Parliament, he noted that fewer than 50 departments were technically ready to implement the law, while also despairing that, in his judgment, some of them may never be prepared. Whiteman's statement reflected Government fears that preparing departments and agencies for implementation under the Act would swallow up too much of its resources. Three years after being passed, the implementation of the Act is still at a nascent stage.

Initial progress

Despite slow progress, Jamaica has come a long way from the days when access to information was governed solely by the Official Secrets Act (OSA) – a throwback from its days of colonial rule. Under the OSA, civil servants were liable to prosecution for disclosing information to the public and a culture of secrecy became ingrained in the bureaucracy, thereby fuelling public mistrust of the government.

In an apparent attempt to break with the secrecy of the past, the Government passed the Access to Information Act in 2002. After the passage of the Act, the initial pace of implementation, in particular, the establishment of an Access to Information Unit (ATI Unit) in 2003 tasked with implementation, raised hopes that the Act could be used effectively and quickly by the public to hold the Government to account.

In the early months of implementation, the ATI Unit invited key stakeholders such as members of the political opposition, all of the civil service's permanent secretaries, heads of ministries and agencies, private

sector groups and civil society organisations to participate in the implementation process. Non-governmental groups also came together to form the Advisory Committee of Stakeholders, which now plays an active role in monitoring the implementation of the Act and has been supported by the ATI Unit.

Phased implementation

The interaction between the Advisory Committee and the Government played a crucial role in formulating a plan to implement the Act. In consultation with these groups, the ATI Unit designed a phased implementation programme that started in 2004 with seven ministries and agencies coming under its jurisdiction. These included the Office of the Cabinet, the Ministry of Finance and Planning and the Ministry for Local Government, Community Development and Sports.

Nevertheless, even these Departments and agencies have yet to produce an index of documents available for publication under the Act. Such a list is crucial if the public is to know which departments to approach when making specific information requests. Meanwhile, the ATI Unit has also found itself short on skilled staff and resources required for it to carry out the myriad of tasks. It is responsible for training of government archivists in effective records management; the general training of public officials and key participants in the private sector; the monitoring and evaluation of government entities covered by the Act; and the drawing up of enforcement measures through an internal review and appeals process.

Raising Public Awareness

However, the most worrying problem has been the lack of general public education and awareness of the new rights under the Act. Consequently, applications from the general public for information under the Act have been low, although those from lobby groups and the media have been much higher. In particular, although the ATI Unit has conducted some awareness raising

activities, it has been unable to formulate a broad-ranging educational campaign that can penetrate the island's rural areas. The Unit has looked to other government agencies for assistance in this task. It has only recently been able to launch an awareness campaign but the programme's effectiveness remains in balance.

Civil society groups, such as Jamaicans for Justice (JFJ), have taken up the cause and set up information help desks both to educate the public about the usefulness of the Act and to assist anyone wanting to make an application. More specifically, JFJ has been careful to demonstrate to the public how it can meet their everyday concerns, for example granting people the power to check that the quality of a road being built in their community matches that of what was set out in the contract for the project.

Critical stage

Public involvement in the implementation stage is crucial in sustaining pressure on the Government to ensure that it implements the phased implementation plan. To this extent, Jamaica has reached a crucial stage in its implementation of the law. A right to information law is only effective if it is utilised. Its existence on the statute books is only the first step – effective implementation and application is what will bring about a change in governance and accountability in reality. With that in mind, it is imperative to recognise that unless the wider public is educated and made aware of the Act, Jamaica's efforts to foster transparent governance could be in danger of relapsing. The Act needs to become more than just a paper tiger. ■

Implementing RTI: Uttaranchal Takes a Lead

With the President's assent of the Right to Information Act 2005, governments across India have been sent into a tailspin. The 12 October deadline, when the Act is due makes it all the more essential that time and speed in functioning become top priority. There are positive signs that the Central Government and several State Governments are seriously gearing up to meet the challenge of implementing the Act effectively so that come 12 October, the first information requesters will return satisfied. This is perhaps nowhere more evident than in the hill state of Uttaranchal. Since the Act came into force on 15 June, the State Government has been working hard and fast to meet the 120-day deadline. To date, the Uttaranchal Government has a) set-up a State Task Force on the Right to Information b) set-up a selection committee for the appointment of the Information Commissioner(s) and c) taken several other measures to meet other obligations. The State's preparations include a detailed time bound Action Plan for its officers on implementing key sections of the Act and a model scheme on proactive disclosure to guide all public authorities.

The State's commitment to enabling the right to information law may have as much to do with being a new state (it was carved out of Uttar Pradesh in 2001), where the expectations and aspirations of the people are high, as with the remarkable commitment of the State's political leadership and bureaucracy. In a workshop co-organised by the Uttaranchal Government and CHRI on Implementing the Right to Information from 23-24 July 2005, this was reflected in the address of the State Chief Minister Shri. N.D Tiwari, who encouraged officers to start work on implementation of the Act rather than waiting for the 12 October deadline.

The workshop brought together Heads of departments and other public authorities in the State to discuss and debate the obligations and duties of officials under the Act. As a follow up to the workshop the Government issued an order clarifying various implementation issues around the key provisions of the Act. The Government is also now finalising the dates for an intensive training of trainers programme in the State to be completed by end-September.

Presumably, the challenge for successfully implementing the Act is greater for a State hamstrung by its size, geography, and human resources – Uttaranchal is a small state, with limited funds and human resources with the additional challenge of trying to forge for itself a unique place in the Indian Union. But so far, all appears to be going well because in Uttaranchal actions speak louder than words; clearly we need to watch this state.

Kerala Police Performance and Accountability Commission Report: A Critique

Mandeep Tiwana

Consultant, Access to Justice Programme, CHRI

The Kerala Police Performance and Accountability Commission, set up in November 2003 on the initiative of A.K Anthony – former Chief Minister of the southern Indian state – was widely welcomed by many, including civil society. The Commission was given a threefold mandate: to evaluate the general performance of the police during the years 2002 and 2003; to examine the effectiveness of the autonomy given to the police and comment on its merits and demerits; and to make recommendations on improving the functioning and accountability of the police. Expectations were high that the contribution of the Commission (comprised of a former Supreme Court judge, former chief of Kerala police, and a former high-ranking civil servant from the state) would enhance the steady momentum of police reform in the state. Sadly, the recently released report of the Commission has failed to substantively address its terms of reference. In addition, it puts forward a series of controversial recommendations with negative implications for human rights and accountability.

To ensure that the police are effectively discharging their responsibilities – for which they are allocated public money and granted extraordinary powers – it is imperative to regularly review their performance. Assessing performance means looking at the police in terms of the *results* they deliver, particularly in tackling criminality, responding to victims' needs and creating a safe environment for the public.

A significant part of the Commission's mandate was to evaluate police performance. But nowhere in its report does the Commission clearly mention the particular areas where police performance was poor, or conversely where it was good. The Commissioners did identify ten "broad parameters" for reviewing performance but did not use any specific indicators or formula to properly base an evaluation. No statistics

about the percentage of respondents who are satisfied or dissatisfied with policing have been included in the report. Nor is there any reference to how the police are viewed by different socio-economic groups in the state. An "assessment" of public feedback on police performance has been simplistically passed off as "a mixed bag ranging between accusation and adulation". The Commission's broad assessment of the police reads, "while some improvement in the overall police performance during 2002 and 2003 was noticed, there was a disturbing tendency towards deterioration subsequently". This "deterioration" is apparently based on recorded crime, which increased in 2004. Clearly, any "deterioration" in police performance should have been gauged by the police response to the increased recorded crime, but this aspect was notably absent in the report.

The Commission was given an unprecedented opportunity to consider a weighty issue in the quest for better policing - the value of functional autonomy - particularly as this was the first real initiative by any state government in India to attempt to free the police of illegitimate political interference. Officers were assured that they need not fear whimsical transfers if they declined interference by politicians in doing their duty by law. It was therefore expected that the Commission would examine how the policy impacted on specific aspects of police work, such as registration and investigation of crime; crime prevention; maintenance of law and order; police-public interface; and human rights protection. The Commission responded by oversimplifying the issues into sweeping generalisations. Its comments on the merits of the policy were simply that the police were emboldened to act according to the dictates of their conscience, and people were free to approach the police without power brokers. The demerits were that ordinary people who feared to approach to the police by themselves were denied the assistance of a political power-broker, and also that

some police officers used the autonomy to misuse their vast powers. Interestingly, the final opinion of the Commission holds that it is “not a useful exercise to work out the cumulative effect of the new policy” (in asserting this, the Commission violates a central aspect of its own mandate). Saying “autonomy to the police is the ideal, but it should be tempered with measures to prevent its misuse”, without explaining or elaborating these measures, amounts to blatant abdication of responsibility.

To top it all, the Commission puts forward controversial recommendations that have implications for key human rights. For one, it suggests an amendment to the Code of Criminal Procedure to make it mandatory for witnesses and accused persons to sign statements made to police officers, in the course of an investigation. The logic given is that this will ensure that they stick by their statements in court, and also prevent police officers from tampering with statements. This line of argument does not take into account the likelihood of witnesses being coerced (sometimes through torture) to sign statements in support of the police case, and then being put under undue pressure to stand by them simply because their signatures are affixed.

To tide over staff shortages, the Commission proposes that magistrates can visit prisons for routine judicial proceedings, like remand extension, not involving hearing or presentation of evidence. This will free a number of officers from the responsibility of escorting prisoners back and forth from the jail to the courts. But in situations where an undertrial prisoner appears to be a security risk, the Commission has made an alarming suggestion: “trial can be proceeded with either dispensing with his personal appearance and substituting a photograph for his identity or by resorting to video conferencing”. If accepted, this recommendation will violate the fundamental right to a fair trial that strictly requires the accused to be physically present to defend the charges against her/him.

Another contentious suggestion is that Assistant Public Prosecutors should be accountable to Superintendents of Police who will have a say in the writing of their performance appraisals (known as annual confidential reports). This goes against well established principles of the criminal justice system. Though the prosecution

may work in close coordination with the police, it must be able to weigh the merits of a case independently. The Supreme Court of India has categorically affirmed that the Prosecutor is not part of the investigating agency and is an independent statutory authority appointed under the Code of Criminal Procedure.

On the question of accountability, the Commission has dismissed the suggestion to set up an independent police complaints body to investigate complaints against police officers because it is “likely to be expensive”. Instead, they have recommended installing police complaint boxes in offices of all local self government bodies (panchayats, municipalities *et al*). Complaints would be forwarded by the heads of the local bodies to the district police chief. This suggestion does not address vital issues – the public have no faith in the internal disciplinary systems of the police and there is a tendency within the police itself to protect its staff and image. It is the considered view of this organisation that in the long run, the money spent on setting up an independent oversight body – to receive complaints against the police – actually saves government money. A police force subject to strict external accountability is more efficient and less prone to waste precious resources.

Some recommendations of the Commission are noteworthy. These are: clear transfer norms and a fixed tenure of two years for all police officers; separation of law and order and investigation duties at the station house level; greater emphasis on traffic management at training institutions; increased use of information technology; emphasis on community policing; and greater powers and autonomy for the Vigilance and Anti-Corruption Bureau. However, in the final analysis, the Commission has not lived up to its mandate. It has skirted the real issues – accountability, transparency and public participation – overemphasising what is already known, for instance, that training should be given greater attention or that recruitment should be streamlined. Civil society expected the Commission to make a strong case for dedicated and periodic evaluation of the police against set indicators; institutionalisation of public input in annual policing plans; and the establishment of an independent, well resourced disciplinary mechanism to deal with officers accused of violating rights. ■

CHRI Calendar

CHRI Headquarters

June 2005

Addressed a workshop on Right to Information organised by PACS (Development Alternatives) in Lucknow, India.

July 2005

Addressed a workshop on Right to Information in Katni, India.

Organised a workshop on Police-Public Interface in Bhopal, India, in collaboration with the Ministry of Home Affairs and the Madhya Pradesh government.

Participated as a resource person in a seminar organised by the Media Institute of Southern Africa in Maputo, Mozambique to revise the Access to Information Bill.

Organised an implementation training programme on Right to Information programme in Dehradun, India.

August 2005

Organised a workshop on Right to Information for civil society organisations from the seven North Eastern states in Guwahati, India.

Organised a workshop on Police-Media Interface in Raipur, India, in collaboration with the Chhattisgarh State Human Rights Commission.

Participated in the Judicial Officers Conference in Visakhapatnam, India.

CHRI Africa Office

June 2005

Participated in a Commonwealth Secretariat workshop as follow-up to the Africa consultation on Human Rights Defenders.

Invited to a stakeholders forum on 'Key Public Anti-Corruption Agencies and the Fulfillment of their Mandates: Achievements, Gaps and the Way Forward' organised by the United States Embassy in Ghana.

July 2005

Organised the inaugural annual public human rights lecture titled, 'The Situation Of Human Rights in Ghana: Assessing trends from 2000-2004', in collaboration with the Commission on Human Rights and Administrative Justice and the Ghana Bar Association.

Participated in a Policy Forum organised by the Institute of Economic Affairs on: 'Making Parliament more receptive to the needs of the larger society: the need for Rules of Procedure to govern the presentation of Private Members' bill and the creation of the office of Parliamentary Draftsman'.

CHRI London Office

June 2005

Participated in the 40th Anniversary celebrations of the Commonwealth Secretariat in London, UK.

The Commonwealth Human Rights Initiative was founded in 1987 and is currently constituted by the Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association. These sponsoring 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.

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