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Civil Society Forces Indian Government to Defer Amendments to RTI Act

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The Indian Government in August this year deferred the tabling of the Right to Information (Amendment) Bill, 2006 in Parliament amidst protests from right to information activists, civil rights group and indefinite hunger strikes by eminent social activists. This is indeed a triumph for civil society and the media who have been successful in preventing the Government from narrowing the scope of the Act by limiting the definition of 'information' and by unjustifiably broadening the exemptions to disclosure.

The Right to Information Act (RTI Act) passed by Parliament last year is new and finding its feet. Both educated and unlettered people around the country are struggling to make it a reality. Their efforts have begun to stem corruption and arbitrariness in decision-making. So it is only natural that shock and dismay pervaded the country when the Government tried to restrictively amend the Act in a way that would have had removed 'file notings' away from public scrutiny. The proposed amendments would have ended up snatching away people's right to know in what circumstances, through what process and under whose advice their legislators and civil servants reach decisions - big and small. File notings are a generic term used to refer to the opinions, advice and recommendations recorded on file by officers involved in the process of decision-making on any matter under the consideration of Government offices.

Stung by the levels of protest, on 26 July the Prime Minister's Office issued a rebuttal. The press release tried to clarify that "the Union Cabinet had in fact approved last week an amendment to the Act that specifically provides that file notings of all plans, schemes and programmes of the Government that relate to development and social issues shall be disclosed." But why clarify what was never in doubt?

This class of information called 'file notings' relating to 'development and social issues' is nothing special. It was never excluded from the purview of the RTI Act under any of the exemptions to disclosure that broadly related to

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national security, commercial competition, and personal privacy. Nor was it mentioned as an exception to the definition of 'information'.

The confusion regarding the status of file notings was a conscious creation of the Department of Personnel and Training (DOPT), the nodal agency for implementing the RTI Act at the national level. The DOPT's website in its Frequently Asked Questions (FAQs) about the Act insisted that file notings were not in fact part of the definition of 'information'.

The Central Information Commission (CIC), the newly constituted appellate body under the Act has clarified in at least two decisions that file notings clearly fall within the purview of the definition of the terms 'information' and 'record' and had recently issued a show cause notice to the DOPT for refusing to take its own interpretation off its website.

The value of a law lies in its precision. By seemingly 'gifting' special classes of information as being available to the public, the amendment would in fact have removed from public view all other classes of 'file notings' where they do not specifically relate to development and social issues. At the very least all file notings would have become disputed territory.

Once again officials would have had enormously increased discretionary powers to deny citizens access to almost every opinion recorded on file on any matter. Where access may be given in a limited number of cases, authors of file notings would have enjoyed anonymity. Once again we would not have had moved an inch from being a rent seeking and patronage based government to a rule-based government where every action of a public official has to be in conformity with established norms and procedures.

International best practices point to transparency in the deliberations within public bodies. In the USA, citizens are provided access to records of opinions expressed by officials in relation to a policy formulated or action that has been taken. In Albania, Germany, Israel, South Africa, Turkey, Uganda and several other countries with functional information access laws, file notings have not been given a blanket exemption. They must be disclosed in the public interest as people have a right to know whether the Government had the benefit of accurate and legally defensible opinion from its own officers while formulating a policy or contemplating action. When the Government aspires to have the most modern of military equipment to protect the people, the best of medical facilities to cater to their health-related needs, the best of transport and communications facilities and the most advanced of Information Technology systems, there is no reason why it should opt for the lowest standards of transparency and accountability.

In the hubbub of argumentation around file notings two more retrograde amendments were reported. The first related to disclosure of materials on the basis of which Cabinet decisions are taken. At present these could be disclosed after a Cabinet decision has been made. But the proposed amendments would deny access to these materials. This assumes significance as every voting-taxpaying citizen of India has a right to know what materials form the basis of the decisions of the Cabinet at the level of the Union and in the States.

The other proposed amendment related to the recruitment and examination processes adopted by various public agencies. This has been prompted by fears that the RTI Act may be used to ask about question papers before the examinations have been held or identify members of interview boards with a view to influencing their opinion. Again there is no need for any amendment as the Act already adequately protects any information that might hurt the competitive position of a third party and can be applied to information disclosure that may prejudicially affect the outcomes of examinations and recruitment procedures.

In reality the proposed amendment appeared to be aimed at avoiding access to evaluated answer scripts of candidates appearing in such examinations and challenges to the appointment process. Many of our better academic institutions already give candidates the opportunity to see answer scripts and be satisfied that the evaluation has been fairly arrived at. This reduces the possibility of subjectivity in the evaluation process. What could be a better disinfectant for a country drowning in corruption, nepotism, influence peddling and abuse of process than the sunshine of disclosure under the Right to Information Act – especially where appointments and recruitment are concerned?

Amending the RTI Act at the very early stages of its implementation to suit the convenience of elements

who would like to hide their negligence and wrongdoings sets a precedent that emboldened governments in the states and at the Centre may soon follow. They will be encouraged to tear up more of the Act again and again whenever they find some provision inconvenient.

The price of freedom is eternal vigilance but even being vigilant requires information. While the amendments have been put on hold by the Government, civil society needs to be vigilant and be at guard because the Government may seek to table the amendments in the winter session of Parliament come December. They will have to work strategically to prevent the Government from clipping away the wings of the RTI Act that is fast gaining recognition around the world as one of the best information access laws currently in operation. *(Source: Published in The Tribune, India on 20 August 2006)*

List of Countries Allowing Access to File Notings

Albania: Every public authority has a positive obligation to keep ready for review and duplication, **its final decisions on a given case including concurring and dissenting opinion** as well as orders for implementing them. This statutory duty is placed upon a public authority in anticipation of any request that may be received from the public for copies of opinions expressed by officials in any case. (Article 9, *Law on the Right to Information Over Official Documents*, 1999)

Czech Republic: A public authority may withhold from disclosure **any new information** that originates during its decision-making process in a given case. By implication this includes opinions and advice given by officials involved in this process. However this exemption will not be valid after the decision has been taken on that matter. In other words **opinions and advice tendered by officials will have to be disclosed along with the decision taken by the public authority** upon receiving a request from the public. (Article 11, *Law on Free Access to Information*, 1999)

Germany: A public authority is not obliged to disclose drafts of decisions or any work or resolutions that directly lead to a final decision on any matter if disclosure is likely to prevent the success of the decision or pending official measures. **However expert opinions and third party opinions rendered on the subject are not covered by this exemption.** They can be disclosed upon request. (Section 4, *An Act to Regulate Access to German Federal Government Information*, 2005)

Greece: Any person may apply in writing to a public authority seeking access to administrative documents. Administrative documents are defined as documents drawn up by public services - such as reports, studies, **minutes**, statistical data, circulars, **replies of the Administration**, **opinions** and resolutions**. There is no exemption against disclosure of opinions recorded by officials in their capacity as public servants**. (Article 5, *The Administrative Procedure Code*, 1999)

Uganda: Access to records containing opinion, advice, report or recommendation obtained or prepared can be denied. Access may be withheld legitimately if the request is for an account of a consultation, discussion or deliberation that has occurred, including, minutes of a meeting, for the purpose of assisting to take a decision in the exercise of a power or performance of a duty conferred or imposed by law. Similarly access may be denied if the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the - (i) communication of an opinion, advice, report or recommendation; or (ii) conduct of a consultation, discussion or deliberation.

However this exemption is not only restricted by a time limit of ten years but also subject to a public interest test on more than one ground. The information officer is duty bound to grant access **if disclosure of the record would reveal evidence of a substantial contravention of, or failure to comply with the law; or an imminent or serious public safety, public health or environmental risk**. (Sections 33 and 34, *The Access to Information Act,* 2005)

USA: Notes and correspondence containing records of discussions and deliberations between officials are exempted from disclosure only until they arrive at a final decision on the matter. **Once a decision is taken or a policy is finalised the records containing opinion and views of officials involved in the decision making process must be disclosed.** (*Freedom of Information Act*, 1966. See 2nd Report by the Committee on Government Reform submitted to the House of Representatives, US Congress, 2005)

Modernising Police Legislation in New Zealand

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Many Commonwealth countries recognise the need to modernise the legislative platforms for their police. One of the parallels to the Indian government's work to rewrite the 1861 Police Act is a law reform project in New Zealand. This article describes the New Zealand project. It also highlights ways to learn more, track progress or become involved in developing new police legislation for the southern-most Commonwealth member state.

'First Principles' Review

In March 2006, the New Zealand government announced a comprehensive review of the Police Act 1958 and Police Regulations 1992 (accessible electronically from http://www.legislation.govt.nz). As well as overcoming constraints that have become apparent from an increasingly out-of-date Police Act, it is hoped that the review might also help foster a conversation about communities' expectations of policing. The background government Cabinet paper speaks of the review "allow[ing] New Zealanders to articulate what kind of police service they want, and to give them a direct voice in shaping the kind of legislative arrangements that can help deliver that style of policing" (see http://www.policeact.govt.nz/cabinet-business-committee-paper.html).

Source: www.police.govt.nz

The hope that the Police Act review might stimulate a broader public conversation about policing reflects the importance of bringing in a range of views when designing new police legislation. A trusted police service is often seen as a key feature of a healthy democracy but, as one noted criminologist has remarked, precisely because it is viewed as a vital institution, policing "tends to be a socially invisible, undiscussed routine" (Robert Reiner, The Politics of the Police [2000], p 9). The Police Act review aspires to change this, offering a tangible way that members of the public can have a say in what sort of legislative building blocks should be put in place for policing in New Zealand.

There is also a willingness to go back to first principles and to challenge assumptions. For instance, the Police Act 1958 contains no explicit statement of the role or functions of New Zealand Police. This lack of clarity encourages debate about the purposes of policing, begging the question whether a new Police Act should describe New Zealand Police's fundamental areas of responsibility.

Timing and Process

The task of writing a new Police Act and accompanying set of Regulations for New Zealand is planned over a two-year period, with opportunities for public input throughout the process. On current projections, a Police Bill is expected to be introduced to New Zealand's House of Representatives in 2008.

Three main phases of consultation are anticipated. First, to stimulate discussion as early as possible, a series of issue papers are being prepared. The papers address some of the central issues in policing, such as the constitutional dividing line between Police and Government, and are aimed at encouraging debate. Three such papers have already been released - dealing with principles of policing, governance and accountability, and police employment arrangements. Subsequent papers will cover topics such as community engagement, police powers and protections, and conduct and integrity. ■

Cases of Increasing Disappearances in Pakistan

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Incidents of disappearances in Pakistan, rising at an alarming rate, are a major concern to human rights organisations. These disappearances are linked to both Pakistan's internal conflicts and its frontline status in the United States' 'War against Terror'. The Karachi office of the independent, non-government Human Rights Commission of Pakistan alone has, in the past few months, received 25 complaints from families who have seen one of their members being picked up by personnel of intelligence agencies, in plain clothes, never to be heard of again. Newspapers report a much higher number.

The initial disappearances were directly a consequence of the US invasion of Afghanistan and pressure on Pakistan to deliver those suspected of Al-Qaeda and Taliban links. Many later surfaced at the American prison facility in Guantanamo Bay in Cuba, in some cases years after they went 'missing'. Those returning home spoke of how they were picked up, often on flimsy evidence, by Pakistani intelligence agencies, kept and interrogated under torture in 'safe houses' in Islamabad and later handed over to US agents. Most came home without being charged and in bewilderment at their treatment by their own government.

The current spate of disappearances is linked to both American concerns in the region as well as the political crisis in Pakistan's provinces of Sindh and Balochistan. The Pakistan army, which finds it easier to govern a unified federal structure, is deeply suspicious of nationalist movements. Those demanding the rights of smaller provinces are deemed to be 'traitors', their loyalty to Pakistan questioned. The Baloch nationalists, fighting for the province's economic rights, have seen vast areas besieged by the paramilitary. The military operation in Balochistan has had repercussions in Karachi where many Baloch reside. As the insurgency continues in Balochistan, with tribal leaders in hiding, the government is picking up individuals suspected to be supporters of the shadowy Balochistan Liberation Army. Among those who went 'missing' are journalists, trade unionists and student activists. Munir Mengal, for example, was planning to set up a Balcoh language television channel when, on his return from Dubai in April, he was whisked away by men in plain clothes and has not been heard of since.

Other Baloch nationalists made to 'disappear' include Rauf Sasoli of the Jamhoori Watan Party (Democratic National Party), picked up in Karachi and missing since March 2006. Haneef Shareef, a poet and writer, was lucky to be finally released (without charges) after remaining in the custody of intelligence agencies for about five months. Twelve workers of Pakistan Petroleum Limited (which has major commercial interests in Balochistan) were also picked up in Karachi and released months later. They were reportedly kept in cells in Malir Cantonment (Karachi) and claim to have shared space with others who went missing, including Rauf Sasoli, Munir Mengal and Dr. Safdar Sarki.[1]

The case of Dr. Safdar Sarki is possibly the most high profile one. An American national and former chairman of the World Sindhi Congress, Dr. Sarki was picked up from his home in a residential part of Karachi in February this year. His family's persistent efforts to seek his release or information about his whereabouts have been futile. Even the concern expressed by a number of US senators has not helped. The higher judiciary in Pakistan has so far failed to provide redress to families trying to locate missing members. Advocates representing the Ministry of Defence routinely deny that the missing persons are in the custody of either the Inter-Services Intelligence or Military Intelligence. In fact, the Ministry of Defence has admitted before the Sindh High Court that it has no powers over the intelligence agencies run by the army.

In the city of Karachi, in front of the centrally located Press Club, passers-by are getting accustomed to the sight of families on hunger strike – in protest against disappearances. Playing at the back of their minds, in all probability, is the case of the young journalist, Hayatullah. He went missing after he photographed and reported on the American bombing of Bajaur (in Pakistan's tribal areas). The target was an important Al-Qaeda leader. The attack was denied by both the American and Pakistani governments. Hayatullah's body was found on 15 June, the day his unidentified captors had told his family that he would return home. ■

[1] Herald, August issue

Bringing in an Access Regime in Guyana

Sheila Holder
Vice-Chair of the opposition Alliance For Change

Guyana has to deepen its democratic and electoral processes to ensure that democracy works to help empower citizens and improve the competitiveness of the country by facilitating free flow of information.

For the last 40 years since independence from British colonial rule, Guyana has floundered socially, economically and politically. Partisan political interests by the two monolithic parties that governed Guyana since independence, the People's Progressive Party/ Civic (PPP/C) and the People's National Congress/ Reform (PNC/R) have been given precedence over the national welfare.

It would, therefore, come as no surprise that a Freedom of Information (FOI) Bill, submitted to the Clerk of the Eighth National Assembly of Guyana by Khemraj Ramjattan on behalf of his colleague Raphael Trotman has not seen the light of day. The Government failed to even publish or circulate the private member's Bill which, I was told, had been sent to the Attorney General's Chambers for scrutiny several months ago.

Trotman had resigned from the National Assembly before its dissolution to concentrate on advancing the new political movement named the Alliance For Change (AFC). He was a former PNC/R opposition Member of Parliament and now Chairman of the AFC, while Khemraj Ramjattan was a former Member of Parliament for the governing political party, the (PPP/ C) is the Leader of the AFC. They contested the recently held general and regional elections in August end as presidential and prime ministerial candidates, respectively, for the AFC party.

The AFC is of the view that a FOI Act is an important first step in steering the country in the direction of transparency and accountability and curtailing the high levels of corruption in the country. It has, therefore, given a commitment to the electorate to ensure that the FOI Bill is debated, strengthened and passed into law in the next Parliament of Guyana.

Since independence and during the tenure of successive Governments, citizens have experienced victimisation based on the expression of their political viewpoints. This has had the effect of limiting how citizens of all strata of society express themselves. It has also deterred citizens from requesting information from the state and public entities.

This is especially so as regards to the free expression of one's political viewpoint to the extent that Guyanese really need a Freedom of Information Act. The Act should spell out exactly what information, on government's operations especially, citizens are entitled to access. With this knowledge in hand citizens, could then know how to get information on those aspects of government's operations that are of most interest to them. It is equally desirable that the Act should also cover some aspects of the operations of publicly traded private sector entities.

With access to information enshrined into law, Guyanese citizens could finally be empowered to scrutinise and investigate government and their public operations and come to their own conclusions as to how government is really serving them.

Guyanese are mobile internationally, as it is estimated that some 700,000 live abroad and many others have relatives residing in countries all around the world. This serves to make Guyanese very aware about how the media ought to operate in a country in which the government routinely keeps information classified while claiming to be democratic.

A major part of the problem of poor access to information in Guyana, apart from the lack of a freedom of information law, is the fact that the PPP/C government that emerged victorious in the recent elections has refused to open the broadcast space for

FM and AM radio transmissions. There is reasonable choice with regards to broadcast television in some parts of the country. However, government control of frequency management means that in some Guyanese communities citizens are fed a constant diet of government propaganda only. Moreover, in hinterland regions, citizens are without access to either local radio or television broadcast even though private operators are willing and able to offer radio and television broadcast to these Guyanese citizens.

However, for radio, the only choice Guyanese have right now is between two government-owned broadcast stations. There is some choice in terms of the fact that persons can access other radio stations internationally by means of the internet. However, the web based radio stations do not give Guyanese choice from broadcast entities which are located in Guyana and hence whose programming reflects Guyanese realities.

With a Freedom of Information Act in place buttressed by a modernised and democratised Broadcast Act, Guyanese can get innovative radio and TV programming that reflects their tastes and desires to actively participate in the country's fledgling democracy. For example, in daytime radio in Guyana there is currently no programming where views on the Guyanese reality can be freely expressed from all points of view. If one wants to get the government's spin on any issue that is easy. However, Guyanese need to also be able to use the Freedom of Information Act to get information on government operations, then use that information in talk shows to oppose government policy or, in the case of supporters, provide reasons as to why current government policy and action is good for Guyana.

If the Freedom of Information Bill is passed along with government's divesting itself from media operations except for the government information and news agency (GINA), then Guyanese would see an explosion of radio and more responsibly operated television stations that will in all likelihood take Guyana to where citizens in the other neighbouring countries have been for some time.

Regrettably, the PPP/C party in government still retains a philosophy that the central government has to control all levels of power in the country. With such a philosophy there is no urgency to allow the citizens to access more government information, because the more information citizens have, the more empowered they become and the greater their ability to challenge government functionaries. The PPP/C government in Guyana had even gone to the extent of not allowing the Alliance for Change party to air its political advertisements even though they were submitted and higher than normal fees demanded and paid in accordance with Government guidelines.

With the ruling PPP/C emerging victorious in the recently held elections, what Guyana, now needs is a government that empowers the people through a sensible Freedom of Information Act. Democracy can be meaningful only when citizens can make informed decisions and hold their elected representatives to account and keep officers of public companies honest. Such elements serve to help advance Guyana's fledgling democracy and thus improve the lives of its people. ■

Commonwealth Observer Group Commends Guyana Polls

Guyana conducted its regional and general elections on 28 August 2006. The ruling People's Progressive Party/Civic came back to power winning 36 seats while their rival the People's National Congress/Reform won 21 seats. The Alliance for Change established itself as the third political force in Guyana and broke the record of third parties by gaining five seats as well as Regional Democratic Council (RDC) seats in all ten regions of the country even though the party was launched ten months ago. The Chairman of the Commonwealth Observers group Mr Ratu Epeli Nailatikau in their departure statement had stated that the Observer Group 'believed that, as a whole, the conditions allowed for a free expression of will by the electors and that the results reflected the wishes of the people.' The Group also recommended rethinking the way in which the Elections Commission was constituted and to ensuring that Guyana had a new voters register.

Prospects for Human Rights in the Maldives

Adam Cooper
Former UN official and political consultant to the opposition Maldivian Democratic Party

At first glance, the prospects for human rights reform in the Maldives may seem promising. The launch of President Gayoom's *Roadmap for the Democratic Reform Agenda* in March 2006, which outlines a timetable of commitments to human rights and democratic reform, was at first well-received by the international community. Over the past weeks, informal talks between the opposition Maldivian Democratic Party and the government have led to the release of a number of political prisoners. The prospect of formal talks, which could accelerate democratic reform and strengthen human rights, looms on the horizon.

This certainly contrasts favourably with the state of human rights three years ago, when the repression of President Gayoom's government was at its height. September 2003 saw five custodial killings which prompted public uproar, demonstrations, and property damage to certain government buildings, a reaction which Amnesty International described as "a consequence of endemic torture and unfair trials, abuse of power by the security personnel, and a lack of clear boundaries between the executive power and the judiciary". While those problems still persist today, local and international pressure has opened up a space for freedom of expression and dissent that did not exist in 2003.

Optimists may also point to the recent passing of the Human Rights Bill by Parliament, which will revitalise the long-defunct Maldives Human Rights Commission. But these developments must be seen within a historical and political context that offers two cautionary messages. Firstly, that there is an enormous gap between commitments to human rights on paper and to human rights in practice; secondly, that it is only with sustained local and international pressure that the Government of Maldives relinquishes executive control, enshrines human rights protection in law, and applies that law fairly in practice. These two threads weave themselves through the brief overview of the prospects for human rights outlined below.

It is impossible to understand human rights in the Maldives outside of the context of recent political history. The realisation of human rights is tightly bound up with politics and, in particular, the calls for reform articulated by opposition groups locally and by the diplomatic community abroad.

For most of President Gayoom's 28 year rule, the longest in Asia, collective dissent has been suppressed. Banishment to islands of those that were suspected of being opposed to Gayoom was common and a culture of fear all pervasive. A brief period of press freedom in 1990 was short lived: journalists critical of the government were arrested and tortured. An attempt by 42 intellectuals, businessmen, and academics in February 2001 to register the Maldivian Democratic Party (MDP) as a political party was rebuffed. They were denied permission on the grounds that the Constitution did not provide for the existence of political parties – a decision later reversed in June 2005.

However, the deaths in custody in September 2003 marked a watershed moment where a shocked public found a political voice. While this resulted in the persecution and exile of some key members of the MDP leadership, a threshold had been crossed. Locally, an unprecedented level of dissent was being expressed. Internationally, the Maldives' poor human rights record was placed on the diplomatic agenda.

Following pressure from the international community and the MDP campaign from exile, President Gayoom announced in June 2004 that "the time is right for more sweeping changes… [which] is why I have proposed a new package of reforms".

Scepticism of 'reform' ran high. Opposition activists pointed to the example of the Special Assembly formed by the President that deliberated a new constitution for 17 years without in the end offering any substantive reform. Outspoken criticism culminated in a police crackdown on a peaceful protest in August 2004, which resulted in the arrest of several hundred people which in turn led to additional international scrutiny of the Maldives, including a unanimously passed resolution by the European Parliament threatening sanctions against the Maldives.

Evidence shows such scepticism was warranted. The constitutional reform process, which the President declared would be finished by June 2005, is now scheduled to finish in November 2007. The Human Rights Commission established in December 2003 has been hobbled by legislation restricting its activities that fails to meet the standards of the Paris Principles. Executive control over the judiciary has been exercised through the arbitrary detention of democracy activists and sentencing in grossly unfair trials.

Today, the government now touts its *Roadmap for the Democratic Reform Agenda* as evidence of its commitment to human rights. But since the launch of the 'Roadmap' in March, repression of independents and the opposition has increased. The government has achieved this through both draconian legislation introduced under the guise of 'reform' and through arbitrary arrest and heavy-handed action by security forces that echo the clampdowns of 2003 and 2004. The government's approach to the freedom of assembly and the freedom of the press illustrates these two methods clearly.

In May, 2006 the President enacted a decree entitled "Regulation on Strengthening the Right to Freedom of Assembly", bypassing Parliament. In contradiction of the Constitution of the Maldives, which guarantees the right to freedom of assembly, and in spite of its title, the Decree has placed severe restrictions on freedom of assembly. The view of the United Nations is that this "decree contains excessive restrictions on the freedom of assembly as enshrined in the ICCPR". For example, under the new regulations, police have the power to strike and break up an assembly at their discretion, with or without issuing any warning, and by whatever means they see fit.

This law has been abused to detain dozens of peaceful demonstrators. During a week of peaceful protests in May 2006, nearly 200 demonstrators were detained, prompting a statement from the European Union which declared that it was "very concerned over recent numerous arrests of peaceful demonstrators by security forces… [which] goes against the spirit of the Government's Road Map for the Reform Agenda". The United Nations echoed these criticisms, and the European Union concluded that "the activities of the Maldivian Government's security forces cast serious doubts on a full commitment to the reform process".

While the government now claims that this Decree will be succeeded by a Bill put to Parliament that meets international human rights standards, this is still pending, and pro-government Member of Parliaments have already rejected such a Bill put forward by the opposition.

This same unfortunate pattern of repression is also observed within the media. Only state-run television and radio is permitted by the government and overt intimidation of the independent press continues. In May 2006 a BBC journalist covering the trial of opposition party chairperson Mohammed Nasheed was pepper sprayed by the police.

Proposed legislation is equally problematic. The press freedom organisation Article 19 has criticised the Freedom of the Press Bill as falling "far short of international standards and the Defamation Bill as "vague", "internally inconsistent", and "poorly drafted".

It is against this backdrop that the government's proposals and claims to strengthen human rights must be understood. While of course the government's intimation that it will sign the International Covenant and Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, is welcome, these promises matter little if they are not reflected in domestic law and practice: the Convention on the Rights of the Child was ratified by the government in 1991, yet a survey conducted by the Maldives Human Rights Commission and the United Nations Development Program last year revealed that over 90 per cent of people believe that sexual abuse of girls is a serious problem. Scepticism is warranted until commitments on paper are translated into real action.

Political negotiations between the opposition and government may address some of the human rights issues identified above, particularly the most egregious violations of civil and political rights. Ultimately, however, the best long-term guarantor of human rights is a population that is aware of its rights and demands them of its leaders, whether they be of the current government or the opposition. In a country that for so long has been kept deliberately unaware of what human rights even are, let alone how they might be realised, such a goal will not be realised any time soon. ■

Sri Lanka

Fighting that broke over a water source around 26 July has turned into undeclared full scale war. Both the government and the Liberation Tigers for Tamil Eelam (LTTE) claim to be taking defensive steps and the ceasefire has not been officially repudiated by either party. Hundreds are said to have been displaced in the recent fighting and hundreds more are expected to be dead. The exact figures are not available as it is impossible to get any independent source of information from the affected parts of the country. Both the government and the LTTE are also fighting a propaganda war against each other. Both sides have accused each other of killing civilians. The LTTE accused the government of killing 60 school girls in a bomb attack and the government accuses the LTTE of massacring Muslims. The government does not deny bombing a facility that held young girls but it claims they were LTTE child soldiers while the LTTE claims they were school girls undergoing first aid lessons. The United Nations Children's Fund has confirmed the bombing but says it found no trace of the facility being a training camp, however it is not sure whether the dead number to 60. The situation of the internally displaced in the meanwhile has been alarming with dropping hygiene in camps followed by overcrowding. The cutting off of the Jaffna peninsula by the war has made it worse for aid supplies to reach those in distress. In the meanwhile the war has been accompanied by shooting of a Tamil member of the government Peace Secretariat and a bomb attack on the Pakistani High Commissioner in Colombo both alleged to be the handiwork of the LTTE. While on the one hand a Tamil politician and the managing director of a newspaper were shot in Jaffna, there has also been a huge international outcry over the execution style killing of 17 Tamil aid workers in the East on 6 August. Both these incidents have been alleged to be the handiwork of the government armed forces. Besides this, there are several other stories of atrocities being churned out by both the parties against each other making truth blurred.

Australia

In August, keeping on the path of its draconian refugee policy the Australian government went ahead with plans of putting together an armed prison ship that would, according to it, hold up to 30 illegal fishermen. Fears of human rights violations in such treatment of fishermen have been raised along with fears that the ship may also be used to house illegal immigrants who arrive by boat. Shortly afterwards in the same month, the Australian lower house passed a Bill that would allow the Australian Government to process all illegal immigrants offshore enabling the Government to discriminate between refugees based on their mode of transport. This meant that those arriving by boat would not have access to various Australian legal facilities that other refugees enjoy and it would also be easy for the Government to deal with them in a high handed manner away from national legal hurdles as well as monitoring bodies. This also would allow a large-scale violation of the principle of non-refoulement which has become *jus cogens* in international law. However, due to large protests, the Prime Minister dropped the Bill before it went to the upper house for approval.

Canada

The Canadian Newspaper Association (CNA) in September released its National Freedom of Information Audit 2006. The audit tested access to information in ten provinces and found that out of 100 information requests made by journalists from 39 newspapers one-third were either denied information or provided with partial information. The requests covered a host of issues including municipal spending on herbicides and pesticides, bonuses paid to local hospital executives and crime statistics. As in the CNA's 2005 audit, the federal government performed poorly and failed to provide any responses within the 30-day mandated period. The audit's release was timed to coincide with the start of Right to Know Week, an initiative conceived by the country's information commissioners to raise public awareness about the right to information.

Commonwealth

Elections in Seychelles/Gambia

Presidential elections in Seychelles were held between the 28 and 30 July. Commonwealth Secretary-General Don McKinnon released the report of the Independent Expert Team on 18 August that reported that the election was credible, "allowing for the expression of the will of the Seychellois people". The Secretary-General noted that the Expert Team's report had recommended a number of changes in the electoral process for example 'the report called for the separation of the State and the ruling party," as well as the need for "establishing an independent Public Service Commission, so as to ensure civil service employment is not affected by any transition of power." The Expert Team's report also urged the establishment of an "Electoral Commission to enhance good governance and the the need for inter-party dialogue, and a vibrant and independent media."

Elsewhere, Presidential elections were also held in the Gambia on 22 September. Mr. Yahya Jammeh was re-elected with more than 60 per cent of the vote and was declared the winner of the election. The Commonwealth Observers Group in their Interim Statement had noted that they were "impressed by the enthusiasm with which the Gambian people exercised their democratic rights". Although the Observers Group stated that the process was well organised and that the voters were able to express their will however they also noted that "they had been made to be aware of events in the lead up to the Election Day which might have impacted on the outcome." Due to problems of illiteracy, Gambians used marbles to cast their ballot.

Pakistan

In early September, Sherry Rehman, a Member of the National Assembly from the opposition Pakistan Peoples Party has introduced the Freedom of Information Bill 2006 in the National Assembly. The Bill seeks to reform the six media ordinances introduced by the military regime in 2002, including the Freedom of Information Ordinance, and enshrine freedom of information as a fundamental human right.

Tonga

The King of Tonga died on 10 September. He has been succeeded by King Tupou V. Economic disparity has been growing lately with the traditional nobility being prosperous while almost 40 per cent out of the 114,000 population live below the poverty line. The government has been bordering bankruptcy of late due to bad investment strategies. There is a pro-democracy movement in Tonga that has been calling for democratic reforms and abolition of monarchic practices. The recent death of the King led to a short pause in the movement but it has now resumed again. The new king has promised speedier reforms and more democracy.

Vanuatu

On 24 August, Lieutenant Colonel Patu Navoko Lui was appointed as Vanuatu's Police Commissioner. The post has been vacant for two years. Lieutenant Colonel Lui has identified structural reform of the police force as a priority, saying that the current police organisation is top heavy and suffers a lack of junior officers.

The previous Police Commissioner, Robert de Niro, was sacked in 2004, following an attempt by the police to arrest President Vohol. President Vohol was removed from office shortly after this incident, following a parliamentary vote of no confidence. The Police Service Commission later conducted an investigation into the incident and revoked Commissioner de Niro's appointment.

The replacement of the Police Commissioner was delayed by debate over whether it is appropriate to appoint a foreigner. The current Internal Affairs Minister, George Wells, favoured a foreign appointment. The Police Service Commission began the selection process for the Commissioner in July last year, eventually whittling down to three local candidates. Subsequently Lieutenant Colonel Lui was selected from the three.

Lieutenant Colonel Lui has previously served with the Vanuatu Mobile Force. This elite group is the paramilitary wing of the Vanuatu police. In 1996, the group briefly kidnapped the then President during a pay dispute.

FOI and the Fight Against Corruption in Kenya

Priscilla Nyokabi
International Commission of Jurists -Kenya

The Kenyan Section of the International Commission of Jurists has campaigned for years to promote the right to know. Information is power, when citizens have the right information they can be a very powerful force for positive change. The right to access information held by public bodies referred to as 'freedom of information' is a fundamental human right recognised in international law. The right to seek, receive and impart information is enshrined in the international instruments including the International Covenant on Civil and Political Rights, the United Nation's Universal Declaration of Human Rights and the African Charter on Human and People's Rights. Kenya is party to all these international instruments and has assumed obligations thereto towards making the rights a reality in Kenya.

Freedom of information (FOI) supports better public policy and is a salient antidote for corruption and opacity in government. The public has the right to know how policy is made. It is an open fact that corruption is prevalent in Kenya. The National Rainbow Coalition (NARC) Government came to power on the platform of reforms, chief of which was zero-tolerance for corruption. However there are numerous incidences of corruption reported in the NARC regime such as the Anglo Leasing Scandal.

Corruption Thrives in Secrecy!

In Kenya we have in operation the Official Secrets Act that is used to silence any whistleblowers on corruption in Government. One of the key challenges of anti-corruption reform in Kenya is treatment of whistleblowers. Many persons are afraid of blowing the whistle on corrupt people and dealings because they fear penalisation and mistreatment for making such disclosures. The draft FOI Bill 2006, which was developed by civil society activists contains a provision on protection of whistle blowers which would boost the fight against corruption in Kenya.

Corruption thrives in secrecy because corrupt leaders and public officials are confident that they cannot be caught and their misdeeds cannot be revealed to the public. Corrupt leaders know they can be returned to office and do not risk being voted out. If citizens are made aware of their misdeeds, they would not re-elect them.

The purpose of a freedom of information law in addition to eliminating secrecy is to ensure that the public can trust the information it receives from the government and to force the government to speak truthfully.

Poor third world countries such as Kenya have their situations worsened by lack of official information. Being information poor is worse than suffering a poverty of resources. In Kenya we are information poor. The salient reason for information poverty is that large stockpiles of valuable information are kept away from the citizens.

To effectively eradicate opacity and corruption, a freedom of information law must conform to international principles on freedom of information. These are founded on the premise that information is a public good, presumption of openness, proactive disclosure, maximum disclosure and minimum exemptions, protection of whistle blowers, effective machinery for access and ensuring that access is affordable. These principles are included in the draft FOI Bill 2006.

Any efforts to fight corruption will come to nought unless an effective Freedom of Information Law underpins them. Attempting to end graft without such a law will be an expensive, fraught and eventually unsuccessful endeavour. A freedom of information law assists citizens to be vigilant over government; deepens the media's watchdog role and helps the oversight and legislative functions of Parliament.

How the Draft FOI Bill 2006 will help

Firstly the definitions of public bodies and information are wide and inclusive enough to capture all departments of the government and all sorts of information. The position in Kenya now by virtue of not having freedom of information legislation is that all information held by government is classified, privileged and secret. Government in Kiswahili

translates as *serikali* drawn from *siri* kali (fierce or top secret). The Government is a place of top secrets!

All government departments would be captured by the definition of public bodies including parastatals, commissions and all bodies supported by public funds. This means that even the newly set up corruption fighting bodies would be covered, they would have to release information on what they are doing, who they are investigating, what are the allegations etc.

Under the FOI Bill 2006, the Government is bound to collect, collate, store and record information in a manner and form that is easily retrievable. The corruption related fables we hear of files getting lost or records not being kept would be a thing of the past. Enhanced transparency and openness heralded by freedom of information legislation would make it difficult for corruption to take place.

Record keeping would help the public keep tabs on what is happening and question things immediately. In the example of tendering, if only one company kept winning tenders, we would be able to question it right away. Further it would help remove the problem of painting all members of government with the same brush. We can be sure that not all NARC Ministers and public officials are corrupt because openness would help us to single out and nail the culprits.

The right to information envisaged in the FOI Bill means that the Government has a duty of disclosure at all times. The Government would be obliged to keep us informed so that we can have participatory democracy. Granted, there is information that the public should not be privy to because it would endanger national security or public interest. But even for this kind of scenario the Government should give reasons why it should not disclose some information. The decision not to disclose should be in the public domain. A ready example here is affairs concerning the military and defence departments. The hottest corruption sagas in recent times have emanated from there. Our knowing about a contractual dealing in the military has more public good than harm to national security.

In the budget process the populace is locked out until the Minister for Finance reads his budget in mid-June. The FOI law would help to open up the process of allocating financial resources for government activities. The interaction between planning and budgeting is referred to as the Planning and Budget Cycle. A final component of the cycle is the implementation stage where budgeted resources are expended. Unfortunately, this intricate process is all carried out internally within the government machinery, and shrouded in secrecy until the final document is released for public consumption.

Currently, there is no policy of proactively releasing public information for purposes of monitoring this process. The public is only able to participate at the parliamentary level through their representatives. If information on government planning and expenditure was availed to the public, there would be fewer or no avenues for grand corruption and embezzlement. We would be able to question any over-estimations as well as white elephant projects in which a lot of money is expended but with nothing to show. We would know what monies were allocated for what tasks so if the tasks are not done the monies should remain in public coffers. Access to information in the budgeting process would help reduce budget lines intended or susceptible to corruption and embezzlement. With a freedom of information law in place, all citizens will have a chance to participate in decision-making and development initiatives.

There are a few available avenues of accessing information on government expenditure such as the Auditor General's Office, Parliamentary Accounts Committee (PAC), and the Parliamentary Investment Committee (PIC). These committees are empowered by the National Assembly (Powers and Privileges) Act to seek information relating to public expenditure within all public institutions where the Government has at least 51 per cent equity shareholding. However, in all of the Auditor General's reports studied there were numerous sections where information was not forthcoming from the relevant departments or officials. Ironically these bodies too are shrouded in secrecy. They themselves, as in the case of the Auditor General, do not have easy access to information held by other departments. The Government should put a stop to all this by allowing for the right to access information.

In the Transparency International rating it is notable that the countries with freedom of information legislation rank low on corruption levels. In this context, Kenya should urgently enact the FOI Bill to help fight against entrenched corruption that has so blighted the country's development since independence. ■

The Challenge of Freedom of Information in Fiji and the Pacific

Pacific Centre for Public Integrity
and Charmaine Rodrigues, FOI Consultant

In Fiji, and in fact throughout the Pacific, the need for a Freedom of Information Bill or at the very least, a comprehensive government information disclosure policy, is increasingly apparent. On the rise are human rights violations, tightly controlled public enterprises, poor delivery of basic services, lack of democratic elections, weak rule of law, poverty, unemployment and corruption. It comes as no surprise that the Pacific Islands have continued to lag behind in progressive development and governance changes occurring internationally. Access to information could help address these issues by providing the people of the Pacific with a tool to re-engage with their own governance and development.

Information challenges in the Pacific

A recurring problem in many Pacific countries is the transition from a colony to a fully independent country. It is difficult to change the ideology of respecting elders to challenging their actions; and conversely to get representatives to cater to voters beyond their immediate support base and to change from merely making promises to being accountable for their actions. Getting leaders to move from operating in secret (with the constant threat of persecution) to a culture of open dialogue in a new democracy requires time and commitment, as does the move to more open internal debate after the long habits of suppressing internal dissent.

Unfortunately, to date the need to forego centralising control and allow for checks and balances has had very limited success. The lack of public scrutiny has encouraged leaders to have 'clients rather than constituents'. Poor governance and corruption scams have resulted in the loss and abuse of millions of dollars in state revenue and assets.

Economic restructuring and privatisation has largely failed to achieve any significant improvement in living standards or economic prospects for Pacific islanders. Therefore, the movement for good governance advocates for a fundamental policy change from an emphasis on private sector development that was expected to lead to democratisation, to a belief in participatory democracy, which encourages partnerships with the civic sector and strengthening the capacity of government. This will help to nurture a market friendly economy that will more effectively improve living standards for ordinary people.

Promoting FOI in the Pacific

The Pacific Centre for Public Integrity (PCPI) has started working towards facilitating more meaningful participatory democracy by promoting freedom of information (FOI) legislation (and Leadership Codes of Conduct) in Pacific countries. FOI supports an effective public and private sector in the economy, with respect for human rights and empowers civil society including trade unions, and NGOs and an independent media to engage more effectively with development processes. Information promotes good governance values and practices and can be used to expose and address corruption by giving the public information about what goes on inside government.

In this context, it is exciting that the movement for greater access to information in the Pacific has begun to gain momentum over recent years. Civil society in Fiji, Solomon Islands, Vanuatu and Papua New Guinea have already been working on promoting freedom of information domestically. A Model FOI Bill has been produced by civil society organisations in Fiji and Vanuatu, and it is understood that an FOI Bill developed by media organisations was submitted to the Cabinet in the Cook Islands. FOI is being promoted through targeted civil society awareness campaigns, most commonly through awareness-raising and training workshops, development and dissemination of information through the media and preparation of information advocacy packs to assist the civic sector to effectively lobby their governments on FOI.

FOI opportunities in Fiji

In Fiji, the right to information is a constitutional right, where apart from the right to freedom of expression, section 174 of the Constitution provides that: *As soon*

as practicable after the commencement of this Constitution, the Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies. It is important to note that Fiji does not have parliamentary sovereignty but constitutional sovereignty which means that as the supreme governing law of Fiji, the provision on the right to information is absolute.

It is now 2006, nearly a decade since the Constitution was enacted. While PCPI has been assured that a draft FOI Bill is in the pipeline, to date there has still been nothing that has been released for public, or even parliamentary, debate. In 2001, an exposure draft of an FOI Bill was released by a different Fijian Government, but this Bill has lapsed and nothing has been released to replace it. This is disappointing, considering the need for FOI in Fiji.

In August 2005, PCPI organised a workshop on sensitising the media on public information disclosure – both by explaining the principles of good legislation, as well as by discussing its value in enhancing media freedom and effectiveness. PCPI, along with the Regional Rights and Resource Team and Transparency International Fiji, also participated in another workshop on FOI run by the Secretariat to the Fiji Parliament. The workshop was an important opportunity to talk to the many new MPs elected in the recent Fiji elections – as well as returned MPs – about the importance of FOI for their constituents and for Fiji itself. In light of the fact that an FOI Bill has been touted already by the new Government, it was also a chance to teach MPs about the principles of best practice FOI legislation, so that when a Bill is finally tabled they can more effectively scrutinise it to ensure that the Fijian people get an FOI Bill that reflects international best practice.

The workshop drew out some very interesting FOI issues, which are relevant not only to the Fiji context, but also to the Pacific more broadly. As the Commonwealth Human Rights Initiative resource person who attended the workshop highlighted, the right to information offers a cheap but effective way of meaningfully promoting public participation in governance, as well as achieving more effective accountability of public figures and public institutions. In that context, it is particularly important that any FOI law covers all institutions which spend public funds including trusts, the private sector and civic society bodies to the extent that they receive public funds. In the local context, this means that people will need to decide whether bodies such as the Great Council of Chiefs are covered by the law. How is the cultural respect of tribal elders to be balanced against the taxpayers' right to know how public funds are spent?

In developing countries in particular, it is important that the state should regularly disclose information to the general public, for example by publishing documents on the internet and putting important information on local noticeboards or departmental offices. Many people in the Pacific simply will not have the time or resources to make individual requests for basic information, so instead the government could disclose information via putting notices in local newspapers or airing announcements over the radio.

At a more technical level, the workshop also drew out issues about how exactly an FOI regime would operate in the Pacific. How would applications be submitted, especially by illiterate people and/or people who live in far off rural areas? The CHRI speaker noted that other similar jurisdictions provided good examples of cheap, fast modes of accessing information.

One of the most important and interesting issues that will need to be dealt with is who will be responsible for handling any complaints about the law. If bureaucrats reject information requests, who will be responsible for considering complaints because a member of the public feels their application was unfairly rejected? In Fiji, this could be the existing Ombudsman or the Human Rights Commission, both of which options would keep down costs. Whatever body is chosen, it is important that they are staunchly independent of government influence and interference, and have strong investigation and decision-making powers.

Overall, both the FOI workshops recently held in Fiji were a huge success. The overwhelming support for the implementation of FOI (and a Leadership Code) by the Parliamentarians themselves was a positive and encouraging step towards the recognition of good governance in an economy like Fiji. In the comming months, PCPI now aims to inform, educate and train the leaders, the public and all the stakeholders involved on FOI issues in Fiji and also plans to undertake similar activities in other countries of the Pacific. ■

Adding Insult to Injury: The State of India's Human Rights Commissions

Mandeep Tiwana
Access to Justice Programme, CHRI

The resignation of the Chair of the Jammu and Kashmir State Human Rights Commission at the end of July raises disturbing questions about the future of human rights bodies in India. Justice Mir lamented that the state government was not serious about the Commission, recommendations were routinely ignored, making his continuance in office serve no useful purpose. In March, the Jammu and Kashmir Human Rights Commission in its annual report, presented to the state legislature, had accused government officials of contradicting its recommendations and starting fresh inquiries at their end even after receiving recommendations for action. The Commission also drew attention to the failure of the government to provide it adequate funds and infrastructure.

The manner in which the Jammu and Kashmir Human Rights Commission has been undermined rings true to the experiences of all of India's national and state human rights commissions. Established under the Protection of Human Rights Act 1993, these commissions are often show cased as proof of official commitment to the international human rights regime and the rights enshrined in the Indian Constitution. A closer look reveals far too many shortcomings in the working of the commissions to make them effective guarantors of human rights protection. Firstly, the central and state governments need to accord commission decisions the weightiness their statutory basis demands. Action on the commissions' recommendations is often dispensed with, partly implemented or deferred for so long that it becomes meaningless to the complainant or victim. Guidelines of the National Human Rights Commission (NHRC) are routinely flouted by officials, and tabling of the commissions' annual reports in the legislature, along-with a memorandum of action taken by the government, is often delayed by bureaucratic indifference.

Most of the state commissions are functioning with less than the prescribed number of members, which considerably impedes the processing of complaints. Even when appointments are made, the process lends itself to political patronage rather than the merit of a candidate being tested by the criteria laid down in law. Frustrated by their attempts to engage with the commissions, human rights defenders and social activists have consistently warned that these institutions are in grave danger of becoming post-retirement retreats for politically savvy judges and bureaucrats, arguably wedded more to the perks of office than to human rights values.

Legislators too, have contributed to the weakening of the commissions. Annual reports when laid in the house are hurriedly passed, though they should really be discussed threadbare. The Government is rarely held to account by the Opposition for failing to act on the commissions' recommendations. Moreover, insufficient budgetary allocations are bogging down the commissions, leaving meagre funds to pursue projects and programme.

Further, the law itself limits the commissions' potential in significant ways. For instance, state human rights commissions are prevented from taking up cases involving human rights violations by the security forces of the Union. Even the National Human Rights Commission (NHRC) can only seek a report from the Central Government and make suitable recommendations - it cannot summon witnesses and the necessary documents to get to the bottom of a case. These are serious omissions, as a large number of abuses take place in situations of insurgency and internal disturbances where armed and paramilitary forces are deployed. People living in these areas require enhanced, not reduced, protection of their rights.

The NHRC has consistently highlighted deficiencies in the Protection of Human Rights Act. In 1998, a high level committee headed by a former Chief Justice of India, AM Ahmadi, was constituted to suggest changes in the law. The committee made many useful suggestions, including the need to grant greater financial independence to the commissions. Seven years later,

most of these recommendations have been ignored in the Protection of Human Rights (Amendment) Bill 2006, which was passed by the Indian Parliament in August.

It is time for the Government to deliver on its constitutional commitment to uphold human rights values by bringing about the necessary changes in law and policy to allow the commissions to realise their true potential. Some suggestions in this respect are:

Strengthening the Protection of Human Rights Act 1993: Though the Protection of Human Rights Amendment Bill 2006 makes an attempt, albeit feeble, to enhance the effectiveness of the commissions - most notably by removal of the requirement to inform the Government before visiting prisons and detention facilities - the law needs much more teeth. For one, the bar in the Protection of Human Rights Act 1993 that prevents the commissions from instituting complaints after the lapse of one year since the reported violation must be removed. Equally, violations by armed forces of the Union need to be brought within the ambit of the commissions' powers of inquiry. Incorporation of sound provisions from other Commonwealth jurisdictions in the Act can enhance the effectiveness of the commissions. Examples include providing punishments for those who impede the work of commissions; making it the legal duty of the Government to provide adequate funds to the commissions and fill vacancies within a specified period; obliging the commissions to draw up a state or national action plan on human rights; and requiring the commissions' annual reports to be tabled in the legislature within three months of the ending of each financial year.

Building Good Precedents: Any good law can fail if those charged with implementing it don't hold fast to its spirit. Law reform derives sustenance from the development of good precedents. A government's commitment to public welfare is demonstrated by its willingness to set and abide by democratically robust precedents. One example is to always appoint human rights commissioners on the basis of demonstrable commitment and track record of human rights protection, rather than on superficial fulfilment of the criteria laid down in law. Similarly, the moral strength of the commissions should be reason enough for government officials to take swift action on recommendations. If for some reason, it is untenable for the Government to implement a recommendation, then the matter should be submitted to the High Court but this must happen only in the *rarest of rare cases*. Law courts themselves need to view the commissions as complementary institutions and allies in discharging their constitutional obligations.

It is a sad commentary on the Government of India's commitment to public aspirations if even after 13 years of the enactment of the Protection of Human Rights Act, the commissions still face 'teething troubles'. Human rights commissions must become more than just mere instruments to seek votes in the name of rights protection or ornaments to show case to the international community. They must belong to and act on behalf of the People of India. *(Source: Published in The Tribune, India 3 September 2006)* ■

Nigerian Government Sacks NHRC Chief

On 19 June Bukhari Bello, the Executive Secretary of the National Human Rights Commission of Nigeria was removed from office. It has been widely believed that this was due to discontent on the part of the Government arising from Bello's remarks on the Government. It has also been alleged that Bello was removed without recourse to due process as has been laid down in the national Human Rights Commission Act. This led to doubts being raised on the capacity of the National Human Rights Commission of Nigeria to function independently. Further to this, Kehinde Ajoni was appointed as Acting Executive Secretary despite the fact that the National Human Rights Commission Act contained no provision for such a post. Subsequent efforts by activists to hold a meeting to discuss the issue of Bello's removal was stopped by the police on the grounds of absence of a permit that was already deemed not valid by the Federal High Court In Abuja in 2005. One of the reasons for Bello's removal it is said, was his comments against intelligence services raiding Nigeria's largest private television network, Africa Independent Television, the arrest of the host of a show, and the arrest of a journalist of the Daily Independent. The arrests are said to be linked to political comments made in the media. Increasing clamp downs on the media and Bello's removal are also being linked to efforts to amend the present constitutional limit of a two year term for the President.

Ab To Hum Janenge - Now We Will Know

Swati Kapoor
Media & Communications Officer, CHRI

While RTI activists have been busy with their campaigns to spread awareness on India's Right to Information (RTI) Act, 2005, a large segment of the population especially those living in rural and far-flung areas are still not aware of the law. CHRI understood the problem and therefore to motivate citizens in these areas to file applications as well as to spread awareness on the subject, the Media Unit along with the RTI team came up with the idea of commissioning a radio series on RTI.

The Means

Radio was identified as the perfect broadcasting medium to reach out to the rural as well as urban sectors at the same time. Radio was given preference over television because radio is a far more accessible form of mass media for the poorer sections of society. For the urban, radio may be a gadget to keep 'entertained' while they drive back from work or a medium to help them sing along to in the shower. But for the rural population, a transistor radio is a means to acquire knowledge, and a vital channel to the outside world. Additionally, to make it interesting and interactive, more rural communities have formed radio clubs. A group of 10-15 people get together to form a radio club, which serves as a platform for carrying out discussions and exchanging ideas. CHRI chose the Vividha Bharati Network with its 29 stations that cover the Hindi belt states as an apt medium to get the RTI message out to rural areas. Hindi being the national language and widely spoken in many states and used by public offices was chosen as the best language that could effectively communicate the message.

The government-run All India Radio (AIR) was selected owing to its wide audience segment. AIR has a network of 215 broadcasting centres with 144 medium frequency (MW), 54 high frequency (SW) and 139 FM transmitters. It covers a total of 91.42 per cent of the area and serves 99.13 per cent of the people in India. It covers 24 languages and 146 dialects in home services.

The Programme

Having selected the means, the challenge was now to develop a series of radio programmes that were short, crisp and yet very informative, and not just another bland mass-market cookie cutter series. CHRI's RTI team had already collated a set of case studies and experiences of filing applications from across India. We pondered over the issues and identified the format to be that of a radio play. We then collaborated with a private production company and narrated each of the case studies and tasked them to develop a script for the same. After a series of meetings, the characters were decided - a happy family who would run into problems and use RTI as a powerful tool to solve their issues.

Our protagonist was Saakshi, a middle-class college student who is aware of her rights and does not hesitate in implementing them, even if it means regular follow up with government officials, travelling distances or spending time educating people. The underlying idea behind this is that a college-going girl could easily identify with Saakshi and muster confidence taking examples from her acts and consequently take actions whenever required. Other characters of the series are Akhilesh (Saakshi's paternal uncle), Nirmala (Akhilesh's wife), their son Raghav, Haria (an optimistic villager who nurtures the will to reform) and others who would need a measure of RTI now and then.

The script was sent to All India Radio for final approval and within two months we had a complete series with us (with 13 episodes and each having a duration of 15-minutes each). The programme was aptly named Ab To Hum Janenge (now, we will get to know). The title itself was unusual for a radio programme and stirred up listeners' curiosity instantly.

Pre-Publicity and Broadcast

This was very necessary in order to inform the listeners before hand about the programme and build up the connection with them even before the actual broadcast

happened. Jingles were played four times a day throughout the week. This ensured a good listenership right from the first episode. The broadcast started from 6 April 2006 and successfully ended on 29 June 2006. Issues discussed through the programme were - corruption in the construction of a road, widow pensions, various Below Poverty Line issues, fair distribution of rations in the Public Distribution Shops, school admissions, Indira Awaas Yojana (Government scheme that provides housing to the rural poor), public health services etc. The last two episodes were an encapsulated version of the entire series and were particularly appreciated by many of our regular listeners. The highlight of the series was an episode where the audience was educated on the procedures and the processes to file information requests.

Feedback Mechanism

One good thing that happened during the entire exercise was the procurement of a permanent P.O. Box number by CHRI. The P.O. Box helped in getting feedback from different places across the country. Simultaneously, for the computer savvy, we also aired our e-mail address, which too resulted in a good response. The e-mail became a quick way of responding to our listeners' queries and also for guiding them through an RTI request. However, it was surface mail that helped us in estimating the reach and popularity of the programme. Most of the letters we received wanted details of the RTI Act and congratulated us for the programme for example, there were some who wanted to be steered through a filing process and sought technical details on select topics.[1] To cite examples, a senior citizens' group volunteered to spread RTI in their area and support CHRI in all its endeavours and a Border Security Force jawaan (soldier) congratulated us and enquired for more information on the subject. We replied to all of them answering their queries as well as sending a complimentary copy of our pamphlets and relevant RTI publications.

Carrying it Forward

For a subject like RTI, one-time airing is not enough to have a maximum reach or to stir up the motivation levels of the masses. We needed to have a mechanism that is a constant reminder – something that is accessible to those who had not heard the programme. So, we decided to Podcast – a means to upload audio or video mp3 files on the Internet. Voice of Ambition (VOA), India's First People's Radio is an informative website where postings from all over the world are discussed and debated. We uploaded the complete series. Although this does not have a wide reach as compared to the radio as a very small percentage of the population in India have access to internet, VOA was a good preference bearing in mind their reach to the Non Resident Indian community all over the world. Thus, the programme started getting heard by people residing outside India as well. Uploaded on 13 May, 2006, we have had 800 downloads to date (as on 31 August, 2006).

Owing to popular demand from specific sectors and realising the importance of airing at focused pockets where CHRI has its strategic presence, we decided to rebroadcast the series in Madhya Pradesh (from 27 August 2006, every Sunday, 8.15 pm – 8.30 pm) and Chhattisgarh (from 29 August 2006, every Tuesday, 1:45 pm-2 pm). The second phase of airing has a different approach towards pre-publicity and getting feedback. The pre-publicity happened through stickers pasted at public offices, schools and on public vehicles. The feedback this time would involve trained volunteers collecting feedback through a questionnaire which included demographic details. In order to tap the community radios through a controlled station, we sent the radio series to Mudra Institute of Mass Communications, Ahmedabad (MICA) to be aired at their local community radio station MICAVAANI. This covers five small villages near Ahmedabad and it is hoped that it would strengthen further the RTI movement in that area.

Despite its success, our biggest challenge now is to take RTI to remote villages. However, India is a land of many languages. Our next step will be to replicate the programme in different languages to further spread the RTI message accross the country. ■

[1] CHRI received about 100 post letters and 70 e-mails for the programme and more letters and e-mails are still trickling in.

Reforming Prisons in Ghana

Sally Heady
CHRI, Africa Office

Prisons are places of incarceration and remains highly impermeable to the outside world. In most countries including Ghana, prisons and the condition in which the inmates live evokes little public debate and sympathy. The society views them as a condemned lot even though it is a fact that most prisons are composed of inmates, who have not been convicted in the court of law. Not many realise that unless the Government as well as the society at large takes the initiative in ensuring the general welfare of the prison population both during the time when they are incarcerated and also after by way of rehabilitation packages, there is a looming danger that instead of getting assimilated back into society after their release, many might actually take recourse to the very crime which incarcerated them there in the first place.

One major problem of Ghana's prison system is overcrowding. For example Nsawam Medium Security Prison now holds 2,350 inmates instead of its capacity of 717. President Kufuor has described as "unfortunate the conditions in the country's prisons, which are characterised by deterioration with overcrowding becoming a common feature." In a report by the Commission on Human Rights and Administrative Justice in 2002 it was stated that in Akuse prison, prisoners barely had enough space to lie down flat on the floor and complained of near suffocation during the night. The Kade Member of Parliament, Ofosu Asamoah has disclosed that in recent visit to the Akuse prison, he found that conditions were very terrible, adding that no one could stay there for the next five years and survive.

Overcrowding has a number of side effects and therefore on prisoners. Gambaga Prisons, the 2003 Prisons Service report found that inmates did not wash or shower for a month 'due to lack of soap', which resulted in a series of skin ailments which could have been easily avoided. Prisoners are expected to fend for themselves for minor and major ailments which in many cases is impossible to treat as most prisoners are from poor or deprived backgrounds. In addition they may have been shunned by friends and family because of the shame of imprisonment. Close proximity of prisoners means that contagious diseases, which could usually be contained very easily, rampage through the institution. Lack of basic medicines to treat common ailments adds to the misery and threat to life.

According to the 2002 Prisons Service Report, 125 prisoners in the country died from tuberculosis, HIV/AIDS and anaemia. According to the United Nations Minimum Rules on the Treatment of Prisoners, sanitary installations should be provided to every prisoner to comply with the needs of nature when necessary and in a clean and decent manner. In addition, bathing and shower installations should also be provided so that every prisoner can have a bath or shower, as frequently as general hygiene demands, but at a minimum of once a week. The 1972 Prisoner Service Decree also states that every prisoner should be promptly supplied with all medicines, drugs, special diets or other things prescribed by a medical officer of health as necessary for the health of that prisoner.

What most people do not realise is that right to health is one of the most fundamental and basic of all human rights. Moreover, a person's human rights cannot be denied because they have been sent to prison. People go to prison because they are awaiting trial for the most part and it is only a minority of the incarcerated who are convicted prisoners in any case. Convicts serving out their sentences are paying their debt to society. But it is not part of their sentence to be exposed to greater risk and life threatening situations. They have rights as much as anyone else except to the extent that these are curtailed by being held in prison. A prisoner loses his freedom of movement but not his right to health. This

is not popularly understood and allows a degree of neglect to turn prisons into hazardous places from which weak, ill and embittered people return to society and once more become an unwitting danger to society's well being.

The poor treatment of prisoners goes against international and African prison standards. The United Nation's Minimum Rules for the Treatment of Prisoners serves as an international guideline on how to treat prisoners and therefore overlaps considerably with the 1972 Ghanaian Prisons Decree. This Decree cements what is outlined in the United Nations Minimum Rules on the Treatment of Prisoners by embedding it in Ghanaian law. These laws and guidelines are in place to ensure that every prisoner lives in dignity, health and cleanliness, with the assurance that they have been given a fair trial and have been entitled to all human rights, except the right to liberty which has been denied to them. However these standards have rarely been implemented. This lack of implementation coupled with inadequate funding for the Prisons Service have exacerbated the situation.

Any attempt to ameliorate these conditions has to be seen in the larger context of the criminal justice system. There are many ways in which prisons could be less crowded. In Ghana, as elsewhere, the police are far too anxious to arrest persons and keep them in remand. In this context, magistrates need to examine if bail provisions are being used to the optimum. There is too great a tolerance for adjournments and too little concern that prisoners are not being produced and examined on designated days for flimsy reasons. The excuse that transport or escorts are not available is unacceptable. If there are too many accused, the system must be responsive to those numbers. It is a grave indictment of the system that the very people it is meant to serve must suffer the injustices of its shortfalls. The courts must insist on timely production and effective hearings. This would happen if the agencies responsible for production of prisoners in court are held accountable and feel the consequences of not bringing a prisoner to the bar of the court. Equally, prosecution counsel must be held accountable for not being ready with materials that can take the case forward. Insisting on streamlining appearance provisions of parole for an early trial will assist in lightening the load of the prison administration by reducing the prison population. Again, there are also community sentences which can be used as a substitute for incarceration where the transgression is not dreadfully serious.

While conditions in prisons leave many inmates embittered, the absence of inadequate rehabilitation packages on their release from prison only compounds their trauma. In Ghana, there is hardly any rehabilitative programme for prisoners. In this context Ghana can draw inspiration from India where, a prominent packer and mover company has promised to open a placement cell on the Tihar jail campus and the company has agreed to hire 50 inmates every year. The jail authorities took inspiration from the Singapore Yellow Ribbon Society, a Non Government organisation that works for the 'development of rehabilitation and reintegration activities' for convicts. A similar scheme was also echoed by the Chairman of the Prisons Ministry, Mr Sam Okudzeto, who had recently stated that the top priority for government expenditure should be teaching inmates new skills and trade so that they can regain their sense of livelihood and earn a living once they are released.

Needless to say prison reform needs to be given more attention by both the Government and the society at large. Civil society and the media should come forward and educate the masses on the issue and thereby mount pressure on the Government to allocate resources as well make them understand the need for bringing about criminal justice reforms. Ghana's government and people must learn that a welfare state is one which treats every living being with dignity, respect and provides every human being with a set of rights which he is entitled to whether he is outside or inside a Prison. ■

Roundtable on Policing and Public Order

Caroline Avanzo
Consultant, CHRI

A Roundtable on the 'Policing and Public Order' was organised by Commonwealth Human Rights Initiative (CHRI) in collaboration with the second Administrative Reforms Commission (ARC) in New Delhi on 10 June, 2006. Participants included civil liberties lawyers, social activists and Non-Government Organisations' leaders from across the country. The Roundtable was organised after the ARC had been tasked by the Government of India to suggest a framework to strengthen the administrative machinery to maintain public order in a way conducive to social harmony and economic development. CHRI felt that it was important for the ARC to have the benefit of the civil liberties perspective in framing its recommendations on tackling public order issues, to which policing is key.

Background to the Roundtable: The 'authoritarian impulse' in the official discourse

While problems with policing are widely acknowledged, suggested approaches to tackle them differ vastly. The 'authoritarian impulse' leans towards diluting due process and fair trial guarantees, granting the police greater powers, more discretion and increased physical and financial resources, while leaving the traditional methods and structures of policing essentially unchanged. Proponents of this approach felt that the prevailing problems of terrorism, insurgency and naxalism, which are threatening the security of the country, are symptoms of a weak State. Hence, the capacity of the police – which is the most visible arm of the State – to tackle these growing threats should be enhanced to provide for special powers of arrest, detention, remand and use of force to deal with internal disturbance.

In addition, this school of thought considers that the criminal justice system – of which the police are a vital part – is heavily loaded in favour of the accused and the police are being hindered in their ability to tackle crime due to excessive emphasis on protecting the rights of the accused. Some of the solutions put forward were: reducing the standard of proof for conviction by the court from the current standard, which requires a case to be proven 'beyond reasonable doubt'; making 'previous bad character' of the accused relevant in the trial; making 'confessions' made to police officers admissible as evidence in courts of law; compelling witnesses to sign statements made to the police in the course of an investigation; increasing the period of police remand; and merging the police and the prosecution. (Selected recommendations from the 2003 Report of the Committee on Reforms of the Criminal Justice System, known as the 'Malimath Committee')

Delegates' recommendations

The discussions touched on the need to address 'public disorder' within the context of societal change rather than strictly in the realm of law enforcement. Failed governance, government highhandedness, and curtailed rights were identified as some of the root causes of large-scale public disorder. Delegates highlighted the fact that any new framework must be envisaged in the light of civil liberties, human rights and principles of democratic governance. They expressed the view that using the 'authoritarian impulse' as a cure would only increase the malaise.

Grave concerns were voiced on the repressive tone of recently enacted laws related to public order as well as the manner in which these laws are enforced. There was a consensus that whenever state powers have been expanded, abuses and infringement of human rights have followed. Delegates felt that there was no need to enact laws giving more powers to law enforcement agencies to tackle public order issues since the lacuna lies in police abuse or neglect in implementation rather than in insufficient laws. The Malimath Committee's recommendations were strongly criticised on several fronts and unanimously rejected. Instead, recommendations were framed to minimise the possibility of disorder and to democratise governance.

The afternoon discussions largely focused on institutional police reform. Delegates expressed the view that the solution to public disorder is not to enhance police capabilities to crush dissent but to make all State agencies, particularly the police, more responsive to the people and more accountable to the law. Numerous practical recommendations were made to the ARC to enhance responsiveness and accountability of the police. A comprehensive report of the Roundtable has been presented to the ARC, which is currently drafting its final report to the Government. ■

News Round-up in the United Kingdom

Stephanie Aiyagari,
London Liaison Officer, CHRI Trustee Committee Office

In October 2006, the House of Lords will vote on the Government's Police and Justice Bill. The proposed law would establish a National Policing Improvement Agency whose mandate would include identifying and disseminating good practices. Composition criteria and method of appointment to police authorities would be simplified under the law, and police authorities would be given new functions and powers. The Home Secretary would also be able to confer powers upon the police authorities by issuing orders. For example, a police authority could be ordered to monitor its force's performance, or to promote diversity. The law would also create a standard set of powers for Community Support Officers across England and Wales. In addition to the National Policing Improvement Agency, the law would create a mechanism called the 'Community Call for Action' that enable neighbourhoods to request action on a community safety issue that they believe the police have failed to address adequately.

Two of the country's most senior black policemen have alleged that racism and inequality within the police forces continues. They were speaking on the occasion of the first International Black Police Conference in Manchester in August. Complaints include that ethnic minorities currently make up only 3.7 per cent of the service, and that senior police officers sanction racial profiling of black youths, which they say is unnecessary labelling that leads to criminalisation merely due to race. Fears of racial, ethnic or religious profiling by the police have grown in recent times in the context of anti-terror investigations in the United Kingdom.

Prisons

In July 2006, a joint Metropolitan Police and Prison Service report claimed that around 1,000 prison officers across England and Wales were involved in corruption, ranging from accepting cash bribes to move inmates to more comfortable conditions to drug smuggling. Fourteen police officers have been suspended from the Pentonville prison in North London pending investigation into allegations of corruption, including trafficking in mobile phones and cannabis, and 'inappropriate relationships' with inmates. The Chairman of the Prison Officers' Association, Colin Moses, called for more stringent methods of vetting police officers and for an external investigation. The shadow Home Secretary, David Davis, also spoke out, saying it was alarming that the suspension had triggered an overcrowding crisis. Prison inmates in England and Wales hit a new record on 11 August when they numbered 79,094 which is only 705 spaces short of total capacity.

Fighting Terrorism

In two cases on 1 August 2006, the Court of Appeal found that 'control orders' used by the government to detain terror suspects (for whom there is not enough evidence for conviction) within their homes where they are also banned from communicating with others deny an individual's right to liberty. Control orders are thought to be currently used on 15 individuals, both British and foreign nationals. The Court of Appeal found that subjecting people to curfews and restricting where they can live amounts to imprisonment. Appeals to the House of Lords are expected. If the Government loses it may be forced to abolish the control order system or decide to derogate from Article 5 of the European Convention on Human Rights which guarantees the right to liberty.

In its 24th report issued on 1 August, entitled *Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention*, the Parliamentary Joint Committee on Human Rights criticised recent Home Affairs Select Committee views that terror suspects should be held for up to 28 days before being charged as a preventive measure, even if evidence leading to prosecution is not gathered during their detention. It also urged the Government to bring terror suspects into the courts by turning intelligence data into prosecution evidence, which would assist in preventing future terror attacks. It also recommended increased parliamentary scrutiny of the security and intelligence agencies regarding Government claims based on intelligence information. ■

CHRI Calendar : June - August 2006

CHRI Headquarters

June 2006

• The Director attended a Jamboree organised by the Open Society Network (OSN), in Istanbul, Turkey.

• CHRI contributed to the deliberations of the Police Act Drafting Committee and participated in all 13 meetings of the PADC between June and August.

• A Roundtable on Policing and Public Order was organised with the Administrative Reforms Commission, in Delhi.

• Five CHRI reports on policing in East Africa were launched by Peter Kiguta, Director General, East African Community, in Arusha.

• Conducted a workshop on Right to Information at the CIVICUS World Assembly in Glasgow.

July 2006

• Participated in the Second World Forum on Human Rights at Nantes, France.

• A Civil Society Consultation on Police Reforms was organised by CHRI and NCDHR in Patna.

• Presented at a state level consultation organized by the Bihar Social Institute on the National Rural Employment Guarantee Act (NREGA) and RTI, for representatives of 60 civil society organisations of Bihar.

• Presented on the RTI Act at National level Consultation of civil society organisations, organised by Vishwa Yuvak Kendra, New Delhi.

August 2006

• A Civil Society Consultation on Police Reforms and Accountability was organised by CORE (Centre for Organisation, Research and Education) Manipur, and CHRI in Imphal, Manipur.

• Conducted a three-day workshop, in Suva Fiji, organised by the UNDP Pacific Sub-regional office, the Regional Rights Resource Team and Pacific Centre for Public Integrity to raising awareness about RTI for non-government organisations in the Pacific.

• Released an electronic report on policing in the Pacific region, Strengthening Democratic Policing in the Commonwealth Pacific.

CHRI Africa Office

June 2006

• Attended a round table discussion on torture hosted by the Commission for Human Rights and Administrative Justice in Accra.

• Organised and hosted the Right to Information Coalition meeting to discuss a strategic framework on advocacy for the Right to Information Bill in Accra.

July 2006

• Presented at the women and law conference in, Dakar, Senegal organised by Open Society Initiative for West Africa (OSIWA).

• CHRI was Invited by Mr. Ozeilo Ozonnia of the UNDP Peace and Conflict Office to discuss governance, human rights and conflict.

August 2006

• Presented at the 37th Commonwealth Parliamentary Association Conference (Africa Region) in Ghana, at Accra International Conference Centre.

• Presented at the 36th Session of the United Nations Committee on the Elimination of Discrimination against Women in New York.

CHRI Trustee Committee Office (London)

June 2006

• Attended a conference on Governance in the Overseas Territories at the Institute for Commonwealth Studies.

• Presented on human rights and development at the Commonwealth Policies Studies Unit Summer Conference.

July 2006

• The Director and Stephanie Aiyagari met with the Head of the Human Rights Unit at the Commonwealth Secretariat, the Director of the Commonwealth Foundation, and with PAD to discuss the CHRF, Uganda, and the Maldives.

• A memorial service for Beko Ransome-Kuti, former CHRI AC member, was held at the Royal Commonwealth Society, organised by Richard Bourne.

August 2006

• Worked on an analysis of the 2001-2005 report by the UK Parliamentary Joint Committee on Human Rights of its achievements.

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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