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Inside

- Pakistan's Emergency and the Commonwealth Response
- The Commonwealth and Civil Society
- Final Recommendations of Commonwealth Human Rights Forum
- Pressure Amounting to Nothing? Sustaining the Fight Against Impunity in Sri Lanka
- High Commissions to Embassies and Back Again?
- Commonwealth Countries Place on CAT and OPCAT
- Commonwealth Heads Fail to Mandate an Expert Group on Policing
- New Zealand Embraces Extreme Democracy'
- Recommendations of CHRI's Report on the Impact of Counter Terrorism on Policing
- Pacific CSOs Discuss Regional Concerns
- Human Rights NGO's Concern's in the Commonwealth Caribbean



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Pakistan's Emergency and the Commonwealth Response

Gudrun Dewey

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On Saturday 3 November, as the Commonwealth Heads of Government prepared to come together in Kampala, General Pervez Musharraf declared a state of emergency in Pakistan. He suspended the Constitution, dismissed Pakistan's independent judiciary and removed all private television transmissions from the air while police commenced widespread arrests of politicians, lawyers, human rights defenders and protestors. Targeted at maintaining power as President and Chief of Army Staff, with the justification of maintaining stability in Pakistan, the measures have stifled democracy and the fundamental rights of people across Pakistan.

The state of emergency is in stark contrast with the Harare Principles, the political values to which every member of the Commonwealth, including Pakistan, is committed. Primarily, the Principles bind Commonwealth members to the protection of fundamental human rights and the promotion of democracy, democratic processes, the rule of law, independence of the judiciary and just and honest government.

The emergency in focus

In his declaration, General Musharraf cited that two threats to Pakistan – the spread of violent extremism and judicial interference in the executive – required emergency rule if he was to prevent the country from “suicide”.¹ He brought the Provisional Constitutional Order into force to govern the emergency, suspending Pakistan's Constitution along with the fundamental human rights protections it contains.²

¹ Proclamation of Emergency (Issued 3 November 2007): available at http://www.pakistani.org/pakistan/constitution/post_03nov07/proclamation_emergency_20071103.html

² Provisional Constitution Order No 1 of 2007: available at 1
http://www.pakistani.org/pakistan/constitution/post_03nov07/pco_1_2007.html

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The declaration of emergency ousted Pakistan's independent judiciary by requiring all judges in the country to be immediately governed by a new oath of office, under which they must pledge not to challenge the emergency or General Musharraf.³ Immediately following the declaration, Chief Justice Iftikhar Chaudhry and other justices of the Supreme Court convened urgently to try and strike down the emergency order. Instead they were forcibly arrested and placed under high security house arrest.

The declaration accuses the judiciary of interfering in the function of the executive, arguing that during the past year it has undermined the Government, demoralised the police and threatened the security of the state by releasing terrorists. In reality, a more accurate assessment is that the judiciary, as it is bound to, has been upholding the rule of law and fulfilling its function to check excesses of police conduct and General Musharraf's expansive presidential power.

The international consensus has been that the emergency was declared to prevent the Supreme Court ruling on the legality of General Musharraf's October re-election as President. Rather than a threat to national security, General Musharraf saw the independent judges as a threat to his personal security in retaining power. Judicial activism had already been displayed by the bench, as had Chief Justice Chaudhry's open hostility to General Musharraf, who had sacked Chaudhry in March only to see him reappointed shortly after by his fellow judges and receive wide popular support from lawyers across Pakistan.

The removal of the judiciary was closely followed by the suppression of freedom of expression through the shutdown of up to 30 non-state private television channels. Citizens were left without information, after a state media regulatory body issued an ordinance for all private television stations to cease broadcasting and restricted the cable network transmission of international news networks, including the CNN and BBC. A Media Ordinance was also declared, severely restricting all media content and news coverage by

prohibiting the publication of criticism directed at the government, the emergency, or anything else "likely to jeopardise or be prejudicial to the sovereignty, ideology or security of Pakistan."

In addition to the direct attacks on the media and judiciary, General Musharraf banned political gatherings and issued broad new powers of arrest and force to the police, which they have employed to suppress legitimate dissent. In the days that have followed the declaration, there was a security crackdown and a brutal police response, involving the violent use of batons, tear gas and forcible arrests, of lawyers, judges, students, journalists human rights activists who have turned out in large numbers to demonstrate across Pakistan. Within the first three days, the opposition reported that over 3500 people had been arrested and more protestors continue to be detained⁴

With this response has come the arrest of a number of public opponents to General Musharraf and his military rule. Among those placed under house arrest was Asma Jahangir, President of the Human Rights Commission of Pakistan, a former UN Special Rapporteur on Freedom of Religion or Belief and a staunch opponent to Pakistan's military rule. In an email to the public Jahangir pertinently observed that: "Ironically the President (who has lost his marbles) said that he had to clamp down on the press and the judiciary to curb terrorism. Those he has arrested are progressive, secular minded people while the terrorists are offered negotiations and ceasefires." Both Chief Justice Chaudhry and Benazir Bhutto, leader of the opposition Pakistan People's Party (PPP), were also placed under house arrest, yet this did not stop them from calling for popular uprisings that saw protests intensify along with the violent police response to them.

CMAG takes action

The Commonwealth Ministerial Action Group on the Harare Declaration (CMAG) – a Commonwealth body established to address serious and persistent violations of the Commonwealth principles – convened an extraordinary meeting on 12 November to take action on the worsening crisis in Pakistan. Since its establishment in 1995, the nine-member committee of

³ Oath of Office (Judges) Order, 2007.

⁴ Robin McDowell, "Pakistan Police Clash With Lawyers" Associated Press: http://ap.google.com/article/ALeqM5jIE0IU4WliaMBpjG8SI_6H5RXzgD8SNVF600

CMAG has proved that it is one of the few bodies able to sanction governments refusing to uphold democracy, human rights and the rule of law. CMAG's statement condemned the suspension of the Constitution, expressed grave concern at the dismissal of the Chief Justice and other judges and that Government action against lawyers, opposition politicians, civil society leaders and the media "constitute violations against Commonwealth fundamental values."

CMAG threatened to suspend Pakistan from the Commonwealth if it failed to take necessary measures to restore democracy before CMAG met on the eve of CHOGM, 22 November 2007. These measures included the restoration of the Constitution, release of political prisoners, reappointment of the independent judiciary and recognition of its judgment on the legality of the October 2007 re-election. Additionally, General Musharraf had to step down as Chief of Army Staff by 15 November, on the date that his appointment was due to lapse and the date he had previously pledged to step down. Although diplomatic pressure had already forced General Musharraf to announce parliamentary elections for early January 2008, the Commonwealth warned that these elections could not be considered free, fair and valid unless the Constitution was restored and the state of emergency ended.

CMAG and Pakistan's stilted steps towards democracy

When it comes to political sanctions, CMAG has demonstrated that it is one of the few international mechanisms able to sanction countries based on a failure to uphold good governance and democracy. It suspended Nigeria following the imposition of military rule in 1995 and Fiji late last year, after a military coup overthrew the democratically elected government.

This is not the first time Pakistan has faced the might of CMAG. On 14 October 1999, General Musharraf declared a state of emergency in a military coup, illegally and unconstitutionally ousting then-Prime Minister Nawaz Sharif from office. The widespread popular belief within Pakistan at the time was that the army might help stabilise the nation's security and address

corruption problems that had dogged Sharif's rule.

On 18 October 1999, CMAG met, unanimously condemned Musharraf's actions, suspended Pakistan from the Commonwealth and also from the imminent 1999 CHOGM in South Africa, pending the restoration of democracy.

After a five-year suspension, Pakistan controversially retained its full Commonwealth membership in May 2004. Its readmission was granted on the grounds of progress made towards restoring democratic institutions, by holding elections in October 2002, and by the restoration of the Constitution, as amended by the 17th amendment, in 2003.⁵ While the United Kingdom was among those who welcomed the readmission, it was strongly opposed by many at the time, including Benazir Bhutto's Pakistan People's Party (PPP) who linked the readmission to Musharraf's cooperation with the United States in the fight against al-Qaeda and terrorism. On readmitting Pakistan, the Commonwealth noted its "continuing concern in regard to the strengthening of the democratic process." Pakistan's return to the Commonwealth was accepted on the basis that the Musharraf would step down as army chief before the end of 2004. At the 2005 CHOGM in Malta, the Heads emphasised that where a person is both Head of State and Chief of Army Staff, the basic principles of democracy and the spirit of the Harare Principles are contravened. They reiterated that until the two offices were separated, the process of democratisation continued to be at risk. Pakistan has remained in the Commonwealth since.

The nation's strides towards meaningful democracy under General Musharraf have been doubtful from the outset. Musharraf introduced constitutional amendments in 2002 that granted him wide powers and validated the 1999 coup. Following prolonged debate between the pro-Musharraf ruling party and the leading opposition of the six-party religious alliance (Muttahida Majlis-e-Amal (MMA)), the amendments were accepted on the basis that Musharraf would relinquish his position as army chief. Based on the agreement reached by both sides, the 17th amendment (also known as the Legal Framework Order) was passed

⁵ As amended by the Constitution (Seventeenth Amendment) Act (2003): <http://www.pakistani.org/pakistan/constitution/amendments/17amendment.html>

by the legislature with the constitutionally required two-thirds majority in December 2003. The amendment allowed General Musharraf to retain the dual office until 31 December 2004, after which point, he would remain as President but could not continue as army chief.⁶ However due to the wording of the provision, Parliament was able to enact a further law allowing General Musharraf to retain the dual office holding until elections on 16 November 2007.⁷ Thus, on 30 December 2004, Musharraf reneged on his pledge and publicly declared he would continue in both roles. His justification was that to do otherwise would undermine the nation's political and economic stability.

After General Musharraf's reelection on 6 October 2007, the Supreme Court began to grapple with the resulting constitutional confusion as it heard petitions challenging his presidential candidature and the validity of the election. In response to speculated threats about the imposition of martial law if the Supreme Court ruled against Musharraf, one judge, Justice Javed Iqbal, stated that "[t]hese threats have no value for us. This is an issue to be decided in accordance with the law and... merits."⁸ The issue did not get decided and on 3 November the threat was played out and General Musharraf altogether abandoned his false promises and the rule of law.

Violation means suspension

CMAG met to review Pakistan's compliance with the Harare Declaration on 22 November and, demonstrating its commitment to the basic political values of democracy, human rights and good governance that underpin membership of the Commonwealth, suspended Pakistan, pending the restoration of democracy and rule of law. CMAG condemned the ongoing emergency, and the related suspension of the Constitution, lack of independent judiciary and curtailing of fundamental rights and the rule of law. CMAG also expressed its solidarity with the people of Pakistan, saying that they had "a right to enjoy the provisions and protections of its Constitution, with fundamental freedoms of expression and assembly, and the rule of law." CMAG has committed to staying

engaged with Pakistan, even as it is suspended, to help it get back on the road to democratic rule.

The emergency in Pakistan has struck at the fundamental promises of Commonwealth membership, and CMAG has protected those values in its action. We now watch and wait, with CMAG, in the hope that democracy will return to Pakistan in the near future..

New Secretary General of Commonwealth

Kamalesh Sharma, India's High Commissioner to Britain became the fifth Secretary-General of the Commonwealth after being selected unanimously by the heads of state who attended the Commonwealth Heads of Government meeting in Kampala, Uganda. Sharma succeeds Right Honourable Don McKinnon whose term ends on March 2008 for a four-year term. Sharma is the first Asian to hold this post. The



Secretary- General Designate Kamalesh Sharma

Commonwealth has had four Secretary General so far. The first was Arnold Smith, a Canadian, the second was Sridath Ramphal who was from the Caribbean, the third Secretary-General Chief Emeka Anyaoku was a Nigerian, while Sir Don McKinnon is from New Zealand. Talking

to journalists shortly after being selected the next Secretary-General, Kamalesh Sharma stated that Commonwealth represents a "unique force for good" and that the Commonwealth was "a family of equals, not just a family of nations." ■

⁶ Article 63(1) (d) would operate from 31 December 2004, disallowing the president from holding another office of profit.

⁷ President to Hold Another Office Act (2004):

<http://www.pakistani.org/pakistan/legislation/2004/actVIIof2004.html>

⁸ Ghauri, I, "Does not 17th Amendment allow Musharraf to run for president: SC" Daily Times (Pakistan):

http://www.dailytimes.com.pk/default.asp?page=2007%5C10%5C19%5Cstory_19-10-2007_pg7_8

The Commonwealth and Civil Society

Kumi Naidoo

The Commonwealth may be a grouping of 53 states, but it is also a family of over 2 billion people or roughly a third of the world's population. It therefore includes hundreds of thousands – if not millions – of civil society organisations. Let the leaders of the Commonwealth not forget that they work not just in the interests of member states but of all these citizens and the voluntary groupings they have formed.

In recent years, the Commonwealth has publicly recognised the value of civil society and committed itself to working with this important sector. The Coolum Declaration of 2002, for instance, talked of the Commonwealth “family” and the “need for stronger links and better two-way communication and coordination between the official and non-governmental Commonwealth”. Again in 2005, in Malta, heads of government “noted the steps taken by the Commonwealth and its institutions to mainstream civil society in all its activities and called for these efforts to be increased.”

Such recognition is laudable, but needs to be underpinned by action at the pan-Commonwealth and national levels. If the Commonwealth is serious about collaborations with civil society, then we need to see evidence of this across the board. It is true that some Ministerial meetings have limited access for civil society but the depth and breadth of this varies and so the Commonwealth Heads of Government Meeting (CHOGM) provides an opportunity for Heads of Government to declare that all Ministerial meetings will include involvement of civil society. This would ensure important civil society perspectives are considered, give a practical example of the Commonwealth acting on past commitments, and assist the Commonwealth in complying better with international good practice.

We must also look at what is happening at the national level. The space for civil society and civic activities appears to be shrinking around the Commonwealth, particularly in the context of the global “war on terror”. New legislation and law enforcement measures may be justified as “protecting” their populations but, sadly, in many countries these have been used to facilitate infringements of human rights. In a number of instances, governments have taken advantage of this context to intensify their own crackdowns on political opponents, advocacy groups and civic activists.

The record of the host nation of this CHOGM, Uganda, is far from unblemished. In 2006, the NGO Registration (Amendment) Act was quickly passed, without genuine parliamentary debate and ignoring virtually all suggestions made by civil society during the previous years of discussions. Our civil society members and partners in Uganda have highlighted how this law, along with others such as the Sedition Act, is restrictive of their work and limits the space for dissenting views to be expressed.

Sadly though, Uganda is not alone and many other nations in all regions of the Commonwealth have chosen to ignore international human rights principles and limit their citizens' enjoyment of freedoms of expression, association and assembly. If the Commonwealth is serious about strengthening civil society and its relations with this sector, then its members must ensure civil society in their countries has the space to flourish.

Some ways to do this that the Heads of Government may wish to consider during their deliberations in Kampala include:

- Committing to both engaging with civil society and ensuring an environment where civil society can work independently and free from interference or intimidation.
- Ratifying and implementing core international human rights treaties, including those that protect civil society through the promotion and protection of freedoms of expression, association and assembly.
- Ensuring that all legislation and government procedures, including those relating to terrorism, abide by international human rights standards; and ensuring adequate space for debate, dissent and criticism.
- Ensuring that polices and legislation relating to civil society is developed in collaboration with the sector, and is developed to assist rather than inhibit the functioning of civil society.
- Improving opportunities for genuine civil society engagement at all official meetings of the Commonwealth, including CHOGM, ministerial meetings and the Commonwealth Ministerial Action Group.

These are just a few of the ways that the Commonwealth could forward its civil society agenda. Those at the Commonwealth Peoples' Forum, as well as citizens around the Commonwealth, will be waiting eagerly to see if this opportunity is grasped. We will then be looking to each member of the Commonwealth to make true its commitment to the Commonwealth Harare Declaration and all other Commonwealth commitments by actions that truly benefit their people. After all, when we look across these 53 nations, it is citizens and civil society who truly are our Commonwealth.

The writer is the Secretary General of CIVICUS: World Alliance for Citizen Participation, an international alliance working to support and strengthen civil society around the globe.

More information: www.civicus.org ■

Final Recommendations of Commonwealth Human Rights Forum

Compiled from the final statement of the Commonwealth Human Rights Forum

On 19th and 20th November 2007, prior to the Commonwealth Heads of Government Meeting (CHOGM), human rights activists and civil society actors from across the Commonwealth, met in Kampala, Uganda, for the third Commonwealth Human Rights Forum (CHRF), entitled “Transforming societies - realising people’s potential: Living up to Human Rights Commitments”. CHRF was co-convened by the Commonwealth Human Rights Initiative, Amnesty International, Commonwealth Policy Studies Unit, HURINET and the Foundation for Human Rights Initiative.

The issues discussed included the rights of marginalised and vulnerable communities, threats to civil society across the Commonwealth, counter-terrorism measures that violate human rights standards, and the need for measures to ensure effective and accountable policing. Also discussed were some countries of particular concern including Pakistan, Fiji, The Gambia and the host country, Uganda, as well as past member, Zimbabwe.

The Forum also deliberated Commonwealth processes and the need to ensure genuine civil society participation, including introducing a formal mechanism for civil society engagement with the Commonwealth Ministerial Action Group (CMAG). Additionally, the role of Commonwealth countries in the United Nations was discussed, with the need for member states to fully implement their pledges and commitments and promote and protect human rights at the UN Human Rights Council, including full participation in the Universal Periodic Review.

After two days of discussion, delegates circulated a concluding statement and recommendations. Participants called on:

- The Commonwealth to establish an Expert Group on Policing to develop best practice guidelines on

all aspects of policing and training and to monitor police practices across the Commonwealth.

- The Commonwealth to work actively to ensure the adoption of and effective implementation of access to information laws, to enable democratic participation.
- The Commonwealth to revisit the Commonwealth’s election monitoring role, including an examination of ways to strengthen such a role via civil society consultations.
- Commonwealth members to ensure that the procedure the UN Human Rights Council adopts for Universal Peer Review should be independent and meaningful, with appropriate participation of experts (and not merely by other member states) and that the process should be preceded by some discussions at the national level with the participation of civil society.
- Commonwealth members to fully implement pledges and commitments made at the UN Human Rights Council, including ensuring decisions are consistent with human rights values.
- Commonwealth members to ensure the independence of National Human Rights Institutions, through adequate funding and strict conformity with the Paris Principles.
- Commonwealth members to sign, ratify and implement the United Nations Convention on the Rights and Dignity of Persons with Disabilities..
- The Commonwealth to establish a mechanism for the protection of human rights defenders.
- Uganda to exercise special leadership, as it takes the chair of the Commonwealth, to improve its human rights record, including the protection of civil society space.

To read the full statement and recommendations, visit CHRI website www.humanrightsinitiative.org. The full text of the statement and recommendations will also be published in the next edition of the CHRI newsletter. ■

Pressure Amounting to Nothing? Sustaining the Fight Against Impunity in Sri Lanka¹

Gudrun Dewey

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The resignation of four civil society members from the Government Advisory Panel on Human Rights at the start of October was a demonstration of the continued outrage and hopelessness felt by Sri Lankans in the face of a government that has consistently refused to initiate a functioning system of justice and accountability in the face of widespread killings and disappearances that have been committed by its police and security forces since the late 1970s.² It was also another signal to the international community that the Government must be condemned for continuing to hide behind an empty commitment to human rights and accountability institutions when in reality it allows for abuses to continue with impunity.

The Advisory Panel

The Advisory Panel was created in 2006. It comprised ten members appointed from local civil society by Minister for Disaster Management and Human Rights Mahinda Samarasinghe. Their broad aspiration was to have “constructive engagement with the government with regard to the human rights situation”,³ issuing recommendations for specific investigations and prosecutions of police and security officers involved in extra-judicial killings, detentions, abductions and disappearances.

However, the Panel has proved to be a Government smokescreen. One of the central criticisms raised by the resigning members of the Panel was that the Government had done little to act on its recommendations. In rebuttal, Minister Samarasinghe claims the Government *had* acted, primarily through re-issuing presidential directives to police in relation to detentions and allowing visits to police stations. However, there is no evidence that these reissued

directives have been complied with any more than the original, identical directives.

On resignation, former Panel member Dr Saravanamuttu, stated that “the Government was not serious on protecting human rights or eliminating the culture of impunity, so we wrote to the Minister saying we were giving up our positions with immediate effect.”⁴ Minister Samarasinghe is reported to have commented, “[t]he whole idea of having a committee was to give the opportunity to civil society leaders to sit together with others and discuss issues face to face.”⁵ In reality however, the Government paid no more than lip service to the idea and refused to take heed of the Panel’s recommendations.

Sri Lanka: violence and violations

A frightening number of extra-judicial killings, enforced disappearances and other human rights abuses have been committed in the protracted conflict between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan Government. Violent conflict resumed following the disintegration of the ceasefire agreement in early 2006 seeing the reenactment of hard line emergency laws, over 1,500 reported killings, the displacement of more than 250,000 and the disappearance of thousands more.⁶

President Mahinda Rajapaksa, alongside his brother Gotabhaya, the Defence Secretary, continue to use the military as a primary tool to resolve the conflict with the LTTE. This conflict has been made particularly brutal due to the illegitimate use of anti-terrorism powers. Anti-terrorism police have extraordinary powers to arrest and detain people without charge for up to a year and in spite of repeated requests, they have released no list of detainees.⁷ In a visit to Sri Lanka this October, the

¹ Thank you to Alan Keenan and Kishali Pinto-Jayawardena for sharing their reflections.

² The members that resigned are Nimalka Fernando, Sunila Abeysekera, Rohan Edirisinha and Dr Paikiasothy Saravanamuttu.

³ Nimalka Fernando in interview with A Vamanan (17 October 2007) “International Monitors a Must” *The Morning Leader* (Canada).

⁴ (15 October 2007) “HR panel falls apart following Arbour visit” <http://www.lankanewspapers.com/news/2007/10/20363.html>

⁵ *Ibid.*

⁶ International Crisis Group (14 June 2007)

Sri Lanka's Human Rights Crisis: Crisis Group Asia Report No 135

⁷ Human Rights Watch (6 August 2007) *Human Rights Under Siege* <http://hrw.org/reports/2007/srilanka0807/srilanka0807web.pdf>

UN Special Rapporteur on Torture concluded that the torture of detainees was widely practiced by the police and in particular by the anti-terrorism division, the Terrorist Investigation Department (TID).⁸

Accountability on paper, not in practice

Although the UN and human rights organisations agree that wide ranging human rights abuses are being committed, the Government continues to deny many of the violations are taking place and waives criticism by referring to the treaties it has signed and the range of national commissions and oversight bodies it has established. However most of these mechanisms have come to nothing, many lacking in enforcement power, independence or the political will required for them to function as they should.

Sri Lanka has expressed its international commitment to human rights. One example of this was through implementing its obligations under the UN *Convention Against Torture* by enacting the *Convention Against Torture Act of Sri Lanka (Act No. 22 of 1994)*. This Act allows for the Attorney General to investigate allegations of torture, file indictments and makes torture a punishable offence with a minimum of seven years imprisonment. In spite of this torture still continues. After his visit last month, the UN Special Rapporteur on Torture reported that torture is frequently employed in Sri Lankan detention facilities and the National Human Rights Commission (HRC) receives a high number of complaints. Despite this, in the thirteen years Sri Lanka's *Convention Against Torture Act* has been in force, there have only been three convictions and a handful of cases filed against the police. The Special Rapporteur reflected that the *Convention Against Torture Act* is not effectively supported by the HRC and that there is an urgent need for an independent human rights body to carry out independent surprise visits to detention facilities.⁹

Lack of independence is a central failure of Sri Lanka's national human rights institutions. The 2002 17th amendment to Sri Lanka's Constitution pledged the

removal of political interference from national institutions, including the Human Rights Committee (HRC) and the National Police Commission (NPC). It aimed to create a politically neutral ten-member Constitutional Council to oversee the appointment and disciplinary control of these bodies. However, the Council is not functioning. It has only had four members since 2005. The President is mandated to appoint the remaining members from five nominated by the Prime Minister and Opposition, while the minority parties are to nominate one member, something they failed to do. Instead of appointing the tenth member to form a functioning Council, President Rajapaksa maintains that the council is not operational and, accordingly, he has directly appointed members to the commissions. This unconstitutional system of appointment has severely jeopardised any potential independence of the Commissions and their ability to impartially investigate state related human rights abuses.

On its face, the HRC has great potential. It has eleven offices across Sri Lanka and is mandated with investigative and protective powers to report human rights violations, visit police stations and detention centres, and issue summons to the Government to address issues of concern. It can also act as an educational body on human rights and make recommendations to the Government relating to compliance with international law.¹⁰ Unfortunately, it has never fulfilled the expectations that accompanied its creation in 1997. It is both poorly funded and lacks independence from the Government.¹¹

A similar situation confronts the National Police Commission (NPC). When formed in 2002 it was required to form a procedure for investigating and redressing complaints against the police force, which remains drastically in need of an enforced disciplinary mechanism. The biggest obstacle to its effectiveness is that the Inspector General of Police has acted as its head since 2006. Again, he was appointed directly by the President.

⁸ United Nations (29 October 2007) *Special Rapporteur on Torture Concludes Visit to Sri Lanka*, Press Release: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/F493C88D3AFDCDBEC1257383006CD8BB?opendocument>

⁹ United Nations (29 October 2007) *Special Rapporteur on Torture Concludes Visit to Sri Lanka*, Press Release: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/F493C88D3AFDCDBEC1257383006CD8BB?opendocument>

¹⁰ Established by Human Rights Commission Act, No. 21 (1996)

¹¹ The current head of the HRC is Minister Samarasinghe, who was personally appointed by the President in April 2006. Note that the HRC is currently due for accreditation review by the *International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC)*, which will look at its compliance of appointment procedures with the Paris Principles, and "whether the actual practice of the Commission remains balanced, objective and non-political, particularly with regard to the discontinuation of follow-up to 2000 cases of disappearances in July 2006": See (March 2007) ICC Sub-Committee on Accreditation Report, p. 8.

Another accountability mechanism has come in the form of a Commission of Inquiry (CoI). Formed in 2006, the CoI was mandated to investigate sixteen specific human rights violations going back as far as 2005.¹² Yet in the style of other commissions, it has no independence and although an established Independent Group of Eminent Persons (IIGEP) oversees it, in reality the oversight has proved ineffective as the group is only vested with limited powers to observe and report to the President.¹³

The challenges facing civil society

Faced with these challenges, there is much frustration felt by many human rights defenders on Sri Lanka's local stage, be they lawyers, activists or civil society. There are many local actors who possess the knowledge of the country, the politics, the conflict and the commission system. They are committed advocates for the restoration of the rule of law, they witness the violations and write eloquently on the issues and see nothing changing as a result. They see the problems in the commissions and know what needs to be done, they live under President Rajapaksa and experience the disenchantment and insecurity of unaccountable security forces first hand. Yet like those that sat on the Government Advisory Panel, they are disenfranchised.

International interventions

A recent visit by the UN High Commissioner for Human Rights Louise Arbour, has cast the international focus back to Sri Lanka with her observations of "weakness of the rule of law and the presence of impunity." Arbour was convinced that human rights abuses will not end without more vigorous investigations, prosecutions and convictions, and proposed the establishment of a UN Human Rights Monitoring Mission to kick-start this process.¹⁴

International monitoring missions have been implemented throughout Asia with the aim of investigating human rights abuses and bringing the perpetrators to justice. In July, Human Rights Watch testified to the UN Human Rights Council it's belief that a UN mission "could make a real difference".¹⁵ Yet despite all the calls, experience shows international

monitor cannot function without significant support from the local population, civil society and most crucially, a green light from the Government. As for the opinion of international intervention of those working locally, one view is that there is a need to "remedy our own ills and use international support constructively and carefully for that purpose."¹⁶ Yet, as the International Crisis group has reflected, "given the failure of domestic institutions to protect the civilian population, it is hard to see what alternative might be conceived that would produce a significant improvement in the human rights situation. At the very least the Office of the United Nations High Commissioner for Human Rights should be more active in pushing the government for serious change."¹⁷ Minister Samrasinghe, speaking for the Sri Lankan Government, maintains that there is no need for the formation of an independent body or an intervention. He denies findings that torture is widely practiced by the police and military, and while he agrees that there is a problem, he argues it only relates to poor funding and staffing and that the only way for the UN to help is to "strengthen the local capacity."¹⁸ Days before Arbour's visit, the Government justified its decision to reject Arbour's suggested UN mission on the basis that it had adequate human rights institutions in place. Considering one of those bodies it cited was the now resigned Advisory Panel, how much longer can the Government hide behind these superficial measures?

Looking to the future

Following the resignation of the Government Advisory Panel, the Sri Lankan Government must come under further condemnation for failing yet again to allow an accountability mechanism to work. It cannot continue to hide behind the treaties it has ratified or the institutions it has created that only pay lip service to the protection of human rights. Nor can it justify the abuses committed by the police and military as necessary side effects of a fight against terrorism. The Government must engage with local civil society on more than just a superficial level, while also allowing for international monitoring to bring political neutrality to an accountability system that presently has none. ■

¹² CoI website: www.pchrv.gov.lk/Index.htm.

¹³ See further Kishali Pinto-Jayawardena (Summer 2007) "Cosmetic Commissions and the Rule of Law in Sri Lanka", *CHRI Newsletter*

¹⁴ High Commissioner for Human Rights, *Press Statement on Conclusion of Visit to Sri Lanka* (13 October 2007): <http://www.ohchr.org/english/press/newsFrameset-2.htm>

. Arbour is due to present her findings before the Human Rights Council on 10 Dec. 2007.

¹⁵ See Human Rights Watch (26 July 2007) "The UN Human Rights Council: Testimony Delivered to the US Senate Foreign Relations Committee": http://hrw.org/english/docs/2007/07/26/usint16521_txt.htm.

¹⁶ Kishali Pinto-Jayawardena (21 October 2007) "Focus on Rights: Blind refusal to see the realities for what they are" *The Sunday Times* (Sri Lanka).

¹⁷ International Crisis Group (14 June 2007) *Sri Lanka's Human Rights Crisis: Crisis Group Asia Report No 135*, p. 31.

¹⁸ Tamil Eelam News Services (31 October 2007) "Sri Lanka Denies Nowak's UN Report on Torture": http://www.tamileelamnews.com/news/publish/tns_8857.shtm

High Commissions to Embassies and Back Again?

Chi Kavindele

Ordinarily one cannot accuse the many tourists who walk towards Trafalgar Square in London of being oblivious towards their surroundings. Particularly given the picturesque historical buildings that occupy the Strand, one of the many roads leading to that magnificent symbol of British architecture; Trafalgar Square.

However, sometime during December 2003 Zimbabwe House, on the Strand, was subject to some sort of magical metamorphosis that shook the Commonwealth organisation and its member countries. Zimbabwe House turned from a High Commission into an Embassy.

This political symbolism, irrelevant to your average tourist, was the result of the Zimbabwean government's decision to leave the Commonwealth on the 11th of December 2003. At the time Don McKinnon, the Commonwealth Secretary-General, responded by saying 'all [Commonwealth] members will be saddened', he continued, 'members of the Commonwealth will continue to seek to engage Zimbabwe to promote national reconciliation and facilitate its return to the Commonwealth'.

Despite this, four years later, Zimbabwe is firmly 'off the agenda' for CHOGM 2007, the justification for this is the fact that Zimbabwe is no longer a member of the Commonwealth. It does not take an international relations academic, or ambivalent tourist, to question this apparent U-turn in policy. Concerned Commonwealth citizens and civil-society organisations, led by the Royal Commonwealth Society (RCS), are beginning to stand up and make their voices heard above the political parapet that dictates the Commonwealth can no longer be engaged with Zimbabwe. Stuart Mole, Director-General of the RCS said, 'the Commonwealth cannot ignore Zimbabwe. Just as it kept faith with the people of South Africa during that countries anti-apartheid struggle, so it now has a duty to act on Zimbabwe.'

A brief foray into history shows that, as in South Africa, the Commonwealth played a significant role in facilitating Rhodesia's emergence into a democratic and representative Zimbabwe following the white minority government declaring UDI (Unilateral Declaration of Independence). In Rhodesia the Commonwealth continued to support and engage with liberation movements; justified by the fact that the government did not represent the people. Therefore irrespective of the government's decision to leave the Commonwealth, the

people of Rhodesia remained part of the Commonwealth family.

A similar challenge faces the Commonwealth today, however the organisation's inaction cannot solely be attributed to a lack of political will. President Mugabe has cleverly manipulated and played upon the concept of sovereignty. Sovereignty, the bastion upon which the international system is based, is viewed as an untouchable within international politics. Mugabe has utilised this perception and made his position clear with regards to the Commonwealth and Zimbabwe's sovereignty, in his eyes they are mutually exclusive; Zimbabwe cannot have both, 'If the choice was made for us, one for us to lose our sovereignty and become a member of the Commonwealth or to remain with our sovereignty and lose membership of the Commonwealth, then I would say, then let the Commonwealth go'.

Mugabe is of course wrong; the Commonwealth does not have to ignore Zimbabwe completely for fear of infringing on its sovereignty. The very essence of the Commonwealth and what makes it a force for good in the modern world is its use of 'soft' power. To put it simply soft power is the ability to use an attraction to shared values to engender co-operation. Democracy, lacking in Zimbabwe, is one such shared value espoused by the Commonwealth. CHOGM presents an ideal opportunity for the Commonwealth to engage with Zimbabwe, as leaders will be behind closed doors without the plethora of advisors, international commitments, obligations and conventions to stop them simply talking about Zimbabwe.

Those outside the political process may question the effectiveness of soft power in the same way a wide-eyed tourist may question the practical significance of Zimbabwe House turning from a High Commission into an Embassy. As the old adage goes: the first step towards fixing a problem is realising you have one. By fellow Commonwealth leaders publicly acknowledging Zimbabwe is lacking in democracy; countries may not be so afraid to tip toe around Zimbabwe for fear of infringing on its sovereignty.

The writer works for the Royal Commonwealth Society and the article represents the views of the author as an individual and not the views of the Royal Commonwealth Society or any affiliated Commonwealth organisations. ■

Commonwealth Countries place on CAT and OPCAT

Compiled from 2007 Report 'Stamping Out Rights'

CHRI seeks to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states. One such important international instrument is Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It may be noted that more than 20 out of 53 members states are not party to the Convention Against Torture, including almost all of the Caribbean and Pacific Island states. The OPCAT provides for an independent international body to visit and investigate places of detention in the ratifying country. So

far only five countries have ratified the OPCAT while four countries have signed but not ratified it. While the Commonwealth continues to encourage states to ratify core human rights treaties, however most Commonwealth nations have failed to endorse this key instrument. This assumes significance as 13 Commonwealth countries (Bangladesh, Canada, Cameroon, Ghana, India, Malaysia, Mauritius, Nigeria, Pakistan, South Africa, Sri Lanka, UK and Zambia) are members on the newly formed UN Human Rights Council that replaced the UN Commission on Human Rights and have each made specific pledges for the advancement of human rights.

The Table below lists Commonwealth countries that have neither signed nor ratified and those that have Signed or have Ratified the CAT and OPCAT.

Country	CAT	OPCAT
Antigua and Barbuda	R	x
Australia	R	x
Bahamas	x	x
Bangladesh	R	x
Barbados	x	x
Belize	R	x
Botswana	R	x
Brunei	x	x
Cameroon	R	x
Canada	R	x
Cyprus	R	S
Dominica	x	x
Fiji Islands	x	x
Gambia	S	x
Ghana	R	S
Grenada	x	x
Guyana	R	x
India	S	x
Jamaica	x	x
Kenya	R	x
Kiribati	x	x
Lesotho	R	x
Malawi	R	x
Malaysia	x	x
Maldives	R	R
Malta	R	R
Mauritius	R	R
Mozambique	R	x
Namibia	R	x

Country	CAT	OPCAT
Nauru	S	x
New Zealand	R	R
Nigeria	R	x
Pakistan	x	x
Papua New Guinea	x	x
Samoa	x	x
Seychelles	R	x
Sierra Leone	R	S
Singapore	x	x
Solomon Islands	x	x
South Africa	R	S
Sri Lanka	R	x
St. Kitts and Nevis	x	x
St. Lucia	x	x
St. Vincent and Grenadines	R	x
Swaziland	R	x
Tanzania	x	x
Tonga	x	x
Trinidad and Tobago	x	x
Tuvalu	x	x
Uganda	R	x
United Kingdom	R	R
Vanuatu	x	x
Zambia	R	x

Chart

R = ratification

S = signature

x = countries that have neither signed or ratified.

@= Reservation or declaration

Commonwealth Heads Fail to Mandate an Expert Group on Policing

Daniel Woods

Coordinator, Police Programme International, CHRI

At the end of November, the Commonwealth Heads of Government came together in Uganda for their biennial meet, to discuss issues facing the Commonwealth and to set the Commonwealth's policy direction for the next two years. The theme of this CHOGM - transforming societies to achieve political, economic and human development provided unparalleled scope for the Heads to engage with some of the critical issues facing Commonwealth members, set the Commonwealth on a course that will support real change and realise the promise of democracy and development across the Commonwealth. Unfortunately, the Heads did not make the most of the opportunities the meet presented, particularly on the issue of police transformation, which is a key first step to achieving the functional, stable and effective democracies that are both a central promise of Commonwealth membership and an essential precursor to political, economic and human development.

Many of the police forces of the Commonwealth are archaic, unreformed legacies of colonial rule. These forces are defined by illegitimate political interference, partisan and brutal methods and an unrelenting loyalty to those in power, rather than the community. The community's experience of this policing is defined by corruption, illegal arrest and detention, excessive use of force, violence and a failure to follow due process. Until the police of the Commonwealth are transformed, true democracy will remain elusive and community development a failed hope.

Uganda hosted this year's CHOGM, and will chair the Commonwealth for the next two years. Policing in Uganda raises serious human rights and good governance issues and police reform is big news. The Ugandan police themselves are currently conducting an internal review of policing, ahead of an anticipated police reform process. Civil society organisations from across the country are taking up police reform as a central part of their work. A Government-mandated judicial inquiry sat in 1999 and 2000, found widespread corruption in police ranks and made a comprehensive set of recommendations for change. Policing continues to be a priority for the Government justice/law and order sector reform programme supported by international donor agencies. Change is also backed regionally, with the recent adoption of a resolution supporting police reform, accountability and civilian police oversight by the African Commission of Human and Peoples' Rights. The time for police reform in Uganda has arrived, work has begun, and there is an opportunity for the Commonwealth to get involved and assist the transformation of societies by supporting work on policing.

The Commonwealth Secretariat has done some work towards supporting police change. In 2002, the Commonwealth Law Ministers asked the Secretariat to work towards building police capacity on human rights issues. The Secretariat, through its Human Rights Unit, developed a human rights training manual for police in West Africa that took a "train the trainer" approach. The manual was released in December 2005, and was later further developed for use across the Commonwealth.

There have been more and more calls for the Commonwealth to do more work on policing, and, in particular, to set up an Expert Group to look into policing. One example of many was the 2005 Commonwealth People's Forum recommendation that the Commonwealth "establish a Commonwealth Expert Group on policing to develop guidelines on training, accountability mechanisms, legal regimes and mutual professional support to ensure democratic policing."

At CHOGM, civil society, police organisations and members of Commonwealth communities were all looking to the Heads to mandate the Secretariat to set up an Expert Group. An Expert Group would have provided an opportunity to take a look at the way police are structured, develop Commonwealth Principles on Policing, assess legislative and structural alternatives to current systems and democracy, evaluate human rights education and police training and develop guidelines on training, accountability mechanisms and laws. This work would greatly support the police reform processes that are taking place within jurisdictions such as Uganda showcase good practice from across the Commonwealth, encourage cross-border learning and lead to real change across the Commonwealth.

The Heads failed to mandate an Expert Group, despite pressure from a wide range of stakeholders and popular support for the Group, instead reiterating past statements of support for the Secretariat's existing training work. While the training work is an invaluable first step to supporting the transformation of police organisations across the Commonwealth, it falls a long way short of the level of commitment that the Commonwealth must make if it is to realise its promise of democracy and ensure political, economic and human development. Uganda 2007 was one lost opportunity, but the coming years will provide many more chances for the Commonwealth to step up to the police reform plate. Fingers are firmly crossed that these opportunities will not also be lost.

For more information on the Commonwealth Expert Group on Policing visit the CHRI website (www.humanrightsinitiative.org). ■

New Zealand Embraces 'Extreme Democracy'

Daniel Woods

Co-ordinator Police Programme International - CHRI

On 26 September 2007, the New Zealand police opened up a wiki that allowed members of the community to help draft the country's new Police Act. This was a radical shift away from the traditional approach to legal drafting; rather than policy discussions taking place along the government halls and inside political offices, they would take place in an open forum; open to community appraisal and open to community involvement.

Hamish McCardle, New Zealand Police Superintendent, suggested that the wiki was "extreme democracy" and said that drafting new legislation "shouldn't just be the sole reserve of politicians". In practical terms, the wiki was a website that displayed a skeleton Police Act put together by the New Zealand Police Act Review Team. During New Zealand business hours, the Act was opened up for comment, additions and changes – all a user had to do was log on to the site, read the section they were interested in, and then offer amendments, comments and alternatives, that were then published for other users to read and respond to. Changes were moderated by Police Act Review staff, as well as other users accessing the site, to prevent electronic vandalism.

There was an immediate response from global media and online communities, who lauded the project as an important

first step towards the realisation of more open government using the world wide web. Hits on the wiki increased exponentially as it was profiled on major news sites, and then by high profile online communities.

The wiki closed for comment within four days. Reading between the lines, it appears that it was a victim of its own popularity and the broad base of its contributors. The Review Team smoothed out the draft law, and user comments, and have developed a second generation wiki, which is now open to identified international and New Zealand policing experts and commentators, to further refine the law.

The police wiki's moment in the sun was brief, but is a demonstration of how new forms of electronic media will enable greater community participation in government and impact on the way that laws are made in the future. As Laurel Papworth, a social networks strategist was quoted in the Australian *Age* newspaper, "It empowers the voters to have a voice not just a vote, so that they are actually contributing to the dialogue and not just voting on the outcome." CHRI made a submission to an earlier stage of the New Zealand Police Act Review. To read CHRI's submission, visit the CHRI website, or request an electronic copy by emailing Daniel Woods (Daniel@humanrightsinitiative.org).

Stamping Out Rights:

CHRI releases 2007 report to the Commonwealth on the impact of anti-terrorism laws on policing

CHRI released its 2007 report to the Commonwealth, *Stamping Out Rights: The impact of anti-terrorism laws on policing*, as part of this year's Commonwealth Human Rights Forum in Kampala, Uganda, ahead of the Commonwealth Heads of Government Meeting.

In the foreword to *Stamping Out Rights*, Sam Okudzeto, Chair of the CHRI International Advisory Commission, comments on terrorism, looking at both its nature and the most effective way for states to respond to it.

"Terrorism, in its various forms of organised violence against the state and against the civilian population, has a long history. What has changed is the response to it. Once restricted within national borders, terrorism has now been labeled a global phenomenon and there is tremendous international pressure from powerful states and institutions to respond to it through law, policy and measures on the ground. The sub-text is that it does not matter how it is done provided the menace of terrorism is eliminated. That menace itself is seen only in terms of the violence and havoc that attacks can wreak and not as the insidious ways in which state responses can in fact encourage and abet the cause of terrorists.

By its very nature terrorism is grounded in the notion of lawlessness while the validity of the state is founded on the rule of law, ability to safeguard people against every kind of depredation and ensure justice for all.

CHRI believes that the best and indeed the only way to fight terrorism is to ensure the rule of law, civil liberties, access to justice, people's participation in governance and better governance based on accountability, transparency and celebration of diversity. CHRI contends that these values and human rights cannot be sacrificed in the name of security. CHRI is concerned that across the Commonwealth political expediency and the need to be seen doing something to fight terrorism – however ineffectual the reality of that course – is increased disrespect for established international norms of state behaviour and consequently providing aid and succour to the terrorists' cause."

For more information, access an electronic copy of *Stamping Out Rights* from the CHRI website, or request a hardcopy by emailing Arnaud Chaltin at CHRI (Arnaud@humanrightsinitiative.org).

Findings and Recommendations of CHRI's Report on the Impact of Counter-Terrorism on Policing

Arnaud Chaltin

Consultant, CHRI

Many Commonwealth countries have enacted laws increasing police powers to stop and search, use force, arrest without warrant, preventively detain suspects for long-periods and limit fundamental due process rights as a response to the threat of terrorism. Abusive policing is already rife in many Commonwealth countries and anti-terrorism legislation is allowing the police to act with further impunity while adding to the distance between police and society, alienating marginalised communities and undermining policing at a time when it most needs public support. The Commonwealth Human Rights Initiative (CHRI) 2007 report to the Commonwealth Heads of Government – *'Stamping Out Rights: The impact of anti-terrorism laws on policing'* examines the changing face of policing throughout the Commonwealth, the applicable international law and standards, the legislative response, the human rights abuses occurring, and counter-terrorism police accountability mechanisms.

Our research revealed that it is being conceived as necessary to violate human rights to enhance security and successfully police terrorism. Yet, human rights and security are interdependent, countering terrorism derives from the obligation of states to avoid interference with the fundamental rights of their citizens (including right to life), and security cannot be achieved unless each and every individual in the country feels safe, both from terrorists, and from states' practices to counter terrorism. Human rights and counter terrorism share a common objective; one cannot therefore be used as a justification to undermine the other. Without human rights, counter-terrorism is counter-productive. Furthermore, states are bound by their international and constitutional obligations to uphold human rights. This first finding led us to recommend the ratification of international instruments by member states, as well as their implementation, amongst other things, by undertaking police reform to ensure compliance with the standards of democratic policing in accordance with human rights principles and the rule of law.

A first glance at the various pieces of legislation highlighted that the principle of legal certainty, at the

heart of the rule of law, failed to be complied with in all the countries having enacted anti-terrorism laws. No international agreement on the definition of terrorism has yet been reached, yet states legislated, crafting their own definitions. However, none of these provide with the required clarity and certainty. The questions of state terrorism failed to be answered, and the border between the right to self-determination and terrorism was left blurry. The definitions contain a long list of actions that often, but not always, have to be coupled with the intention to influence the government, to spread terror, or to promote a political, religion, or ideological idea. Therefore, as practice shows, abuses (yet legal!) are frequent, and special counter-terrorism powers are being used to violently tackle demonstrations (they indeed promote a political opinion, or try to influence the state). We therefore urged states not to enact any specific legislation until they are able to fulfill this criterion of legal certainty, and for the international community to resume discussions on the topic (based on the cumulative characteristics identified in Security Council Resolution 1566).

These laws have not only criminalised certain behavior, or enhanced penalties of existing crimes, but they significantly reduced the procedural guarantees of suspects. For example, pre-trial detention was enhanced drastically, and can last indefinitely in certain countries. Such detention is particularly difficult to challenge - the law allowing for the non-disclosure of the grounds of detention for national security reasons (this is always the case with terrorists suspects). Powers to stop and search, to arrest, and to use force have also been enhanced in violation of fundamental liberties. Such measures are even more worrying for they are coupled with low accountability amounting in certain cases to de facto immunity for law enforcement bodies. It is necessary to undertake a full review of the proposed anti-terrorism laws with human rights standards, to establish and implement appropriate, robust, independent police oversight bodies, and to ensure that alleged abuses are actively investigated.

Human Rights violations are further encouraged by the militarisation of police practices, such as the

establishment of “shoot to kill policies”, or by the creation of mixed police and army units such as the Rapid Action Battalion in Bangladesh, or the Black mambas in Uganda. These practices are to be condemned, and states should ensure that in all cases civilian police are the only agents empowered to carry out policing tasks.

States are primarily responsible to respect and promote human rights while countering terrorism. Yet, the Commonwealth must ensure that its member states will take such steps and monitor those changes. The Commonwealth Ministerial Action Group is mandated to address “serious or persistent violations” of the principles outlined in the 1991 Harare Commonwealth Declaration that gives recognition to principles of human rights, democracy and good governance. Similarly, the rule of law and human rights are part of the new strategic plan of the Commonwealth Secretariat, it should therefore endeavor to support the states by providing them with a model law, which, unlike the existing one, would promote the respect of human rights standards and the rule of law. The Creation of a police expert group to guide and assist police practices and operations would also add value to this effort.

The recommendations of the report also stressed the potential of the Heads of Police meeting to exchange best practice on police accountability, on transparency, on strengthening relationships between the police and communities, on establishing recruitment policies reflecting the population diversity, or on ensuring that policing is demonstrably non-discriminatory and that bias is neither tolerated within the service nor in law enforcement. These tools are indeed fundamental to enhance community oriented policing, in turn necessary to counter terrorism efficiently.

Interaction and cooperation between the police and various communities is considered as the key to gather reliable information on terrorism. Too often, by targeting certain categories of people through the use of racial profiling, in particular with the lower threshold of proof for terrorism suspicion and with the little importance given to human rights and non-discrimination in the context of terrorism, communities who would have otherwise provided with the most valuable information are alienated, and their frustration against the state enhanced.

Rife human right abuses committed under the pretext

of countering terrorism are not limited to the Commonwealth. Similarly, counter terrorism is being dealt with in other international instances such as the United Nations. Their findings could be of a great use for the Commonwealth to reach the goals we recommend, and it could for example ensure that member states take full account of the observations of the UN Human Rights Council and of the UN special rapporteurs pursuant this issue. If the Commonwealth Secretariat promotes respect to human rights while countering terrorism within the Commonwealth, it should as well encourage the member states to channel this message in other international organisations. This could be done through the adoption of common positions. The Commonwealth states speaking with one voice at the UN level. Such positions should include support for a stronger cooperation between the UN Counter-Terrorism Committee (CTC) and the Special Rapporteur on Human Rights while countering terrorism, or stressing the importance of a review through a human rights filter of countries submissions on the steps they have taken to counter terrorism.

A clear example of the need to promote the Commonwealth principles at that level is the absence of reaction of the CTC on the 2005 Pakistani report demonstrating its commitment to 1373 Resolution by stating that “Pakistan also launched a military operation in Tribal Areas of Pakistan to flush-out al Qaeda/Taliban miscreants. Their hide-outs were destroyed and a number of foreign al-Qaeda elements and their local collaborators were killed during the military operation”.

The Commonwealth States demonstrated little care for human rights while enacting counter-terrorism legislation. It is necessary for States to respect their international obligations, and to promote the Commonwealth’s principles. Steps to amend or repeal existing acts have to be taken, and due pre-legislative scrutiny should be carried prior to the enactment of Bills on this human rights sensitive topic. This is primarily the duty of states, but the Commonwealth has a major role to play in ensuring that states live up to their pledges. It is the duty of the Commonwealth bodies to promote the Harare Declaration principles who have been shamelessly been stamped upon by states efforts to counter terrorism. ■

Pacific CSOs Discuss Regional Concerns

Katabwena Tawaka

Programme Manager Information Sharing, Pacific Islands Association of Non Governmental Organisations

The minute Pacific Island Countries' economic growth, sustainable development, good governance and security were the broad areas of discussions at the recent Pacific Regional CSO Forum organised by the Pacific Islands Association of Non Governmental Organisations (PIANGO) in partnership with other Pacific Regional Non – Governmental Organisations (PRNGOs).

The Pacific Regional CSO Forum principally funded by New Zealand's International Aid and Development Agency, is the annual meeting for Civil Society Organisations (CSOs) in the Pacific whereby CSOs from all corners of the Pacific deliberated on issues of concern and presented the outcomes to their Pacific Leaders.

According to Cema Bolabola, Executive Director of PIANGO, more than 50 Pacific Civil Society Organisations (CSOs) attended the Regional CSO Forum held in Tonga to deliberate on six thematic areas including Pacific trade partnership for sustainable economic growth, energy needs, climate change, HIV/AIDS and gender violence in the Pacific, weaving accountable leadership and democracy into Pacific communities, and supporting a human security framework for the Pacific.

“In its outcome statement, the Forum strongly believes that active involvement and participation of Pacific CSOs in the Pacific will greatly assist Pacific Island Leaders in achieving their vision of establishing mechanisms at regional and national levels to ensure meaningful consultations through the much anticipated Pacific Plan.” she said.

Despite the increasing engagement by governments in training experts in its negotiations in ensuring a cohesive Economic Partnership Agreement for Pacific Island countries, Pacific CSOs strongly urged Pacific leaders to adhere to the ‘red lines’ agreed by Pacific ACP (African, Caribbean and Pacific) Ministers in June 2007, as a minimum negotiating position.

Further, Pacific CSOs expressed concerns over the additions to the European Union's (EU) negotiating position with regard to the *Most Favoured Nation* clause and strongly urged its rejection.

Executive Director for Pacific Institute of Advanced Studies in Development and Governance at the University of the South Pacific, Professor Ron Duncan backed the Pacific CSOs concerns towards the concept of free trade in the region.

“The two main concerns of the small island Pacific states with respect to liberalising their trade are; the loss of customs duty revenue when they lower trade barriers upon

joining some form of trade agreement (regional or global) and lowering their barriers against imports leading to the loss of jobs and industries.” he said.

Pacific CSOs have also registered their concern that 70 per cent of Pacific communities, particularly women and children continue to be lacking the access to modern energy services.

The access to safe renewable energy is considered a fundamental pillar to ensure sustainable livelihoods for the eradication of poverty and Pacific CSOs have called on CROP (Council of Regional Organisations in the Pacific) agencies and relevant national authorities to work in partnership with CSOs to ensure communities have access to information regarding energy issues.

With climate change posing an immediate threat to the survival of Pacific island communities, Pacific CSOs are deeply concerned with the lack of action by major polluting countries and those who have not signed the Kyoto Protocol.

“We in the Pacific are profoundly the most affected by the impact of climate change despite our insignificant contribution to greenhouse gas emission.” Ms Bolabola said.

The other major threat that could be devastating in the Pacific if neglected is the impact of HIV/AIDS. Pacific CSOs realise that Papua New Guinea is facing a generalised epidemic and the regional pandemic is doubling every five years. There is also a fear that women are making up at least half the number of new cases with discrimination continuing to exist as a result of low education and lack of legal protection.

Pacific CSOs however, welcome the Pacific Islands Regional Strategic Plan on HIV/AIDS implemented by the Secretariat of the Pacific Community (SPC).

PIANGO, which is the catalyst for effectively promoting and advancing the interests and well-being of Pacific people by facilitating communication and providing a common voice at regional and international fora believes that responsible leadership and democracy will secure a peaceful future for the people of the Pacific. In their outcome statement, Pacific CSOs recognise the accountability of Pacific Leaders and equal participation of the people is crucial to achieving good governance that recognises the Pacific values in communities.

The issue of human security was also discussed at the recent Pacific CSO Forum and Pacific CSOs have noted that the state and its interests have been at the centre of conventional approaches to human security.

CSOs believe that in order for human security interventions to work in and for the Pacific, the approach must also take into account relationships within and between Pacific communities.

Furthermore, Pacific CSOs strongly believe that the granting of independence and self-rule are fundamental freedoms and that the human rights of indigenous peoples are paramount.

“We commend the Forum Leaders for the continuous support they have shown to the issue of political self-determination in the Pacific region and in other parts of the world. However, the Pacific Plan still needs to reflect that support.” Ms Bolabola said.

Pacific CSOs are greatly concerned about the conflicts emerging in the region that are destabilising our countries and threatening the sovereignty of the people in the Pacific.

This includes the hope that parliamentary democracy will be restored in Fiji by March 2009, and particular assistance be provided to facilitate and accelerate democratic reform in Tonga.

Gender equality continues to be a concern in the Pacific and Pacific CSOs have strongly urged Pacific leaders to allow women to fully integrate into all process of the Pacific Plan including the Regional Digital Strategy.

According to Pacific CSOs, development goals cannot be adequately achieved without the voice of women to define the type of development they want and without the successful incorporation of women and indigenous strategies in the Plan.

The Pacific Regional CSO Forum was held from the 12th - 15th October in Nuku'alofa, Tonga. ■

CHRI Releases Report on Police Accountability in South Asia

Daniel Woods, Coordinator, Police Reform Programme, CHRI

The issues around policing and police accountability in South Asia have been thrown into stark relief over the last months – consider the total failure of Government and police accountability in Sri Lanka or the escalating police violence and brutality under the Pakistan emergency. The issues that each of the countries of Commonwealth South Asia – Bangladesh, India, Maldives, Pakistan and Sri Lanka – are facing are nothing new, though, stemming back to the legacy of feudal policing left behind by the departing British colonialists and exploited by independent governments to shore up their own power.

CHRI has just launched a report looking at police accountability in South Asia, *Feudal Forces: Democratic Nations*. The report maps the policing terrain of the region, tracing the social and political context, legal frameworks and public experiences of policing and setting out a roadmap for democratic reform. The report also presents an examination of police accountability in the region – internal accountability, accountability to the executive, to parliament, to the judiciary, to civilian oversight mechanisms and accountability to society.

South Asian communities have a negative experience of policing – an experience based in torture, extra-judicial executions, disappearances, excessive use of force, failure to follow due process, discrimination and corruption. Each of these malpractices can be traced through to legal and institutional impunity, illegitimate political interference, increasing violent crime (and public support for “tough policing”) and increasing levels of militarisation within the police.

There have been some attempts to move policing away from its feudal roots, and to shape police organisations in

the image of the developing democracies in the region. All of the governments in the region have constituted specific commissions or committees to examine policing and suggest reforms (except for Maldives, which is reviewing its police as part of its wholesale “reform agenda” policy, ahead of democratic elections in 2008). Typically, the reports of these committees have been set on bureaucrat shelves to gather dust, but this trend is changing. Pakistan and Sri Lanka have both taken concrete steps to bring about legislative and constitutional change, although good reforms are later undermined or diluted. Bangladesh is currently engaged in a reform process, led by the caretaker military government and supported by international donors. India is undergoing rapid and radical change as state legislatures pass new police laws in the wake of Supreme Court directions that police accountability must become a reality.

These moves towards reform are not enough to ensure that South Asia’s fledgling democracies get the democratic, transparent and accountable police that they need to thrive and develop. Existing accountability mechanisms must be strengthened and new ones created. The crucial role of independent civilian oversight in ensuring police accountability must be recognised. The process and criteria of appointments to accountability systems must be fair and transparent. Mechanisms must be adequately resourced, and governments and police must respect their recommendations and decisions.

For more information, access an electronic copy of *Feudal Forces: Democratic Nations* from the CHRI website, or request a hardcopy by emailing Gudrun Dewey at CHRI (Gudrun@humanrightsinitiative.org). ■

Human Rights NGOs Concerns in the Commonwealth Caribbean

Carolyn Gomes

Executive Director, Jamaicans for Justice

All English speaking Caribbean countries were British Colonies and share largely similar histories, similar present day economic, political and social realities and similar legal systems. Most are now independent though a few (notably the Cayman Islands and Montserrat) remain British administered territories. All share a history of slavery, indentureship, colonialism, multi-ethnic, migrant and mobile populations, and economic struggle. Today almost all share the present day reality of economic underdevelopment (the notable exemptions being Trinidad and Tobago and Barbados). They are mostly parliamentary (Westminster type) democracies, the exception being Guyana that concentrates power in the hands of an Executive President who is not directly elected. Given the similarities it is not strange that human rights activists and members of the Non Governmental Organisation (NGO) community across the region share similar concerns.

Political Systems

The constitutions of the independent countries of the Caribbean are all almost identical and based on the Westminster system of parliamentary democracy. All the constitutions concentrate huge amounts of power in the hands of the Prime Ministers (or a President) who are chosen by those members of their party who are elected to Parliament. The concentration of power allows Prime Ministers effective control over Parliament and most critical appointments including those of the Ministers, members of the Service Commissions, the Chief Justices, the Directors of Public Prosecutions and the Attorneys General. This concentration of power, without a strong tradition of independence of the members of Parliament from the executive, has led to an authoritarian, non-consultative style of governance across the region which is of grave concern to the NGO community.

Attitude to Human Rights

NGO's across the region are proud of the united stance taken by their governments against human rights abuses around the world including the active role played in the struggle to end apartheid in South Africa. We are, however, perplexed by the defensive and insular attitudes adopted to human rights problems within our own jurisdictions. This defensive and insular attitude is manifest in the withdrawal of the government of Trinidad and Tobago from the Inter American Court of Human

Rights and the failure of other governments, other than that of Barbados, to join the court. It is also manifest in the withdrawal of the government of Jamaica from the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) that has denied its citizens the opportunity to use the United Nations mechanisms for the protection of rights. It would appear that the governments of the Caribbean do not fully accept the international nature of the struggle for rights and see any external oversight and questions as a threat to their sovereignty. Public education about human rights has been limited to the work of NGO's with little or no support from the governments across the region.

Crime and Violence

Most Caribbean territories have experienced increased rates of violent crime, including rising murder rates, over the last decade. This is of concern to their populations and to the NGO community. The geographic position of the Caribbean territories has made them prime locations for the transshipment of cocaine between the USA, the UK and Europe and fuelled the national crime rates as well as the influx of guns and drugs which are used locally. The geography of the region and the relatively ineffectual police forces have also allowed for the growth of human trafficking networks and gang networks linked to international organised crime groups. This in turn has fuelled police corruption and rising crime rates locally.

Problems of Policing

To a greater or lesser extent all the police forces in the Caribbean suffer from the ills of unreformed police structures. The failure of attempts at police reform to reduce abuses by the police is of grave concern. These failures are manifest in a myriad of problems ranging from breaches of the rights of juveniles, failure to deal effectively with domestic abuse and abuse of women, failure to follow due process; use of brutality and torture; corruption; bias and discrimination; violence and discrimination against homosexuals; and alleged extra-judicial executions. At a recent conference of human rights NGO's in the Caribbean these concerns were expressed thus: "Police forces across the region are characterised by high levels of corruption and severe weaknesses, or complete lack of accountability mechanisms. The timidity and ineffectualness of reform efforts are failing to break corrupt linkages, entrench

accountability or produce professionalism in police forces.”

Problems in the Justice System

There is concern that politicisation of those institutions created to uphold the law, namely the judiciary, the public prosecutor's office and the police, has resulted in collusion on issues which in turn have led to the erosion of human rights. While this concern is of greater or lesser importance in different territories, the recent *contretemps* between the Prime Minister and Chief Justice in the Republic of Trinidad and Tobago is illustrative and cautionary.

Common across the region are some worrying threats to the Rule of Law including: corruption; mob-violence and killing and ordinary citizens taking the law into their own hands even to the extent of carrying out extra-judicial killings. The Justice systems are still fairly inaccessible to those who need it most, the poor and disadvantaged. Jamaica's Justice systems in particular, but also some of the systems in other territories have lengthy delays in the disposal of cases. These delays, of themselves, constitute a threat to the provision of justice.

Also of concern is the severely limited provision of Legal Aid in most territories. Limitations of Legal Aid are particularly acute in small islands where everyone knows everyone else and persons accused of heinous crimes may have severe difficulties getting legal aid representation. There are also problems of getting legal representation in challenges to government authority in small societies. Attempts to address this issue are currently underway in the NGO community.

The issue of the application of the death penalty is also of concern. The death penalty remains on the books in all the independent territories and attempts to remove it as a punishment have foundered on a lack of political will to confront entrenched societal attitudes that demand the death penalty as a response to rising crime levels.

Discrimination

While the Caribbean is mostly free of the worst forms of discrimination there are specific problems in some territories. Guyana and Trinidad and Tobago particularly grapple with issues of racial tension between persons of Afro-Caribbean and Indo-Caribbean heritage. Belize struggles with the issue of ensuring no discrimination against refugees and migrants from its Spanish-speaking neighbours Honduras and Guatemala. Belize and Guyana also have a problem with ensuring and enshrining indigenous people's rights. Throughout the Caribbean, but more particularly in Jamaica, there is the problem of insufficient legal procedures to safeguard the rights of

asylum seekers who come primarily from Haiti and Cuba.

There are also problems of discrimination against, and exploitation of the labour of, foreign (often undocumented) workers who travel between the territories in search of work. They are often paid below minimum wage, over worked and exploited because they fear to complain lest they be deported.

The right to non-discrimination of persons living with HIV/Aids is proving an ongoing challenge that for the most part has been well dealt with by the governments of the region. Less well handled has been the issue of discrimination against persons on the basis of their sexual orientation, with Jamaica in particular having a chilling record of mob attacks on gays and tepid (or non-existent) government response.

Women's and Children's Rights

The region's governments have done much work on the issues of women's and children's rights, however, much remains to be done to ensure the protection of these vulnerable groups. Many NGO's across the region work for the promotion and protection of the rights of Women and Children.

Prison Conditions

Prison conditions across the region remain substandard and unacceptable. Overcrowding has become a particular concern given the rising crime rates across the region. In many of the territories attention needs to be paid to the conditions of incarceration of juveniles who far too frequently are housed with adult offenders due to lack of suitable juvenile facilities. Also of concern are the lack of proper medical attention available in prisons and the, often horrendous, treatment of the mentally ill in prisons.

Freedom of the Press

The Caribbean has, for the most part, an admirable record of freedom of the press. However, most territories retain fairly draconian libel laws that have been used by some politicians in, what would appear to be, attempts to muzzle the press and suppress embarrassing revelations. Concerns about the economic power of government being used to limit freedom of the press have also surfaced recently with the withdrawal of Government advertising from one newspaper in Guyana that was critical of the governing party. This action has attracted protest from the Inter American Press Association.

The territories of the Caribbean share much, including breath taking natural beauty. Unfortunately they share common problems of abuse of rights which are not always addressed with the will or alacrity which the Caribbean NGO community would wish to see. ■

CHRI Calendar : July - September 2007

CHRI Headquarters (New Delhi)

- Cecelia Burgman attended CHRI's Africa Regional Conference on Freedom of Information in Ghana.
- Venkatesh Nayak lectured on understanding public interest in the context of RTI Act at the National Academy of Direct Taxes, Nagpur on 4 September.
- Rashmi Jalota, Cecelia Burgman, Madhumita Mitra and Sohini Paul attended a presentation on the implementation of RTI Act in India by a group of students from Georgetown University, USA. This study was organised jointly by the World Bank and Georgetown University.
- Reshmi Mitra participated in a conference organised by Centre for Youth Development and Activities (CYDA). It was a 4-day international conference on Youth and Democracy in South Asia from 11-14 August 2007.
- The Director and Venkatesh Nayak made presentations at the Conference on Non-Government, Public Actors organised by the Institute of Commonwealth Studies and the Economic & Social Research Council in London on 11th September
- A group of development practitioners from Mass-line Media Centre (MMC), Bangladesh visited CHRI on 7 September to understand CHRI's role in the RTI movement in India.
- A team of media persons from Bangladesh visited India to understand the role of media and NGOs in supporting the implementation of the RTI Act in India.

- Shobha Sharma, Ebba Martensson and Aditi Datta attended a workshop on Police Reforms in Bangalore.

CHRI Accra Office

- CHRI organised an African Regional Conference on Freedom of Information at the Erata Hotel in Ghana. The conference was under the theme. 'Critical Reflection on Advocacy for the Right to Information Legislation in Africa'.
- The Coordinator Nana Oye Lithur attended a three week training workshop for the Ghana Police service in Human Rights, Criminal prosecution and criminal Justice Administration in Ghana. The workshop was organised by the Faculty of Law, Kwame Nkrumah University of Science and Technology. Nana gave a lecture on the topic, 'Prosecution of gender crimes in Ghana'.
- The Coordinator Nana Oye Lithur attended Freedom of Information Conference in Nairobi, Kenya.
- Edmund Acquaye attended the 2nd West and Central Africa Human Rights Advocates training Programme held in Accra. The training was to equip human rights activists, advocates and organisations in the region with necessary skills and tools to effectively address human rights challenges and contribute effectively to building a culture of human rights in west and central Africa.
- CHRI attended a luncheon at the US Embassy organised by Pamela E. Bridgewater, The ambassador of the United States of America in honour of Congressman Donald Payne, Chairman of the subcommittee on Africa and

Global Health, House Foreign Affairs Committee.

- The Coalition on the Right to Information, Ghana spearheaded by CHRI called a press conference on the Right to Know Day 28th September. The Press conference addressed the position of the coalition towards the review and passage of the RTI Bill into law.
- CHRI attended the opening ceremony of the West Africa Peace building Institute (WAPI) for 2007, the institute is run by West Africa Network for Peace building.

CHRI London Office

- CHRI's 20th Anniversary Conference "Human Rights for Human Wrongs: The Continuing Commonwealth Challenge" was held on September 14th 2007. The conference was attended by New Delhi and Africa office staff.
- The conference was followed by an evening reception where an *Announcement regarding the Overseas Territories Human Rights Project* to be conducted jointly by the Commonwealth Foundation, the Commonwealth Legal Education Association and CHRI was made.
- Uttara Shahani visited the CHRI Headquarters for five days, as part of a personal visit to India at the end of August 2007 to familiarise herself with the work of the Delhi office.
- The Director met with representatives of the governments of Nigeria, South Africa, Tanzania and Uganda to build support for a Commonwealth Expert Group on Policing.

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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