



# CHRI NEWS

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## War Blues...

- Margaret Reynolds

*Chair, International Advisory Commission, CHRI*

The invasion of Iraq without Security Council approval demonstrates a clear breach of international law and suggests human rights standards are being undermined by countries preoccupied with military rather than humanitarian goals. As America and its few allies continue to brazenly defy the UN and world opinion, it is timely to reassess the role of human rights advocates and determine how we can be more effective in persuading governments to adhere to the basic principles of international humanitarian law.

When CHRI was founded, Commonwealth professional associations believed that an organisation committed to human rights education and advocacy could influence members of the Commonwealth to upgrade their legislative programs to better realise the fundamental human rights of their citizens.

For a few years after the end of apartheid in South Africa it seemed that perhaps human rights reform across the Commonwealth could be achieved and even serve as a model to other nations to emulate. At several meetings of Commonwealth Heads of Government in the 1990s, leaders agreed to principled communiqués about the individual needs of the people and how these must be protected through good governance, human rights and the rule of law.

Yet sadly these communiqués have proved to be of little value in tackling the complexity of human conflict over recent years.

The paradigm has shifted since September 11th with governments preoccupied with implementing draconian measures to tackle terrorism or alternatively using their military might to annihilate Saddam. It is not an easy time for

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

(For private circulation only.)

# Swimming Against the Tide:

## *Human Rights in a Time of Fear*

**John Hucker**

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**W**e are living through a bad period for human rights, when our easy assumptions about the guarantees found in domestic or international law must seem, in retrospect, naïve. For the moment at least, the human rights well has been poisoned by the events, which transpired in New York on September 11, 2001.

To see the extent to which real or perceived security concerns carry the day, one need only scan the daily media. For example, *The Guardian* on February 6, 2003, reported on a discussion paper prepared for the UK government, which canvassed the possibility of that country withdrawing from the 1951 Geneva Convention on the Protection of Refugees and from some of its obligations under the European Convention on Human Rights. All of this to enable the government to deny asylum more easily to those who might pose a security threat. Unsurprisingly, the authors concluded that the government could not easily abrogate the country's longstanding commitments under these treaties. This conclusion is hardly reassuring when weighed against the remarkable fact that a Labour government, whose party traditions have historically been so closely identified with the ideals of social democracy and protection of disadvantaged groups, would contemplate rolling back human rights protections that have existed for half a century.

On the same day, the BBC reported that four more detainees at the United States prison at Guantanamo Bay had attempted to kill themselves, bringing the total number of attempted suicides to fourteen during the past year. All of the more than 600 Taliban and Al Qaeda suspects imprisoned in this US enclave are denied the rights that would normally accrue to them as prisoners-of-war – for example access to lawyers and

visits from family members. By being detained outside the United States, they also lose the procedural safeguards that would otherwise be available to them under that country's Bill of Rights. To date, none of these individuals have been charged with a crime and very few have been released, a situation that does not appear likely to change in the near term.

In the immediate wake of September 11, 2001, both the United States and the UK passed legislation greatly expanding the powers of law enforcement agencies to arrest and detain those suspected of involvement in terrorist activities. Canada, generally seen as a more benign regime, has enacted its own Anti-Terrorism Act, which came into force on December 18, 2001. Like its American and British counterparts, the Canadian legislation was given an expedited ride through the legislature, where Committee hearings were held under a compressed timetable. A number of groups appeared before the House of Commons Justice Committee, including the Canadian Human Rights Commission, the federal Privacy Commissioner and the Canadian Bar Association. A theme common to many of the presentations was that the powers contained in the law were too undefined and that the government should take the necessary time to achieve an appropriate balance between security concerns and fundamental liberties.

Features of the proposed Canadian law that caused particular concern included the definition of groups deemed to be engaged in terrorist activities (which as initially presented would almost certainly have included certain organizations hitherto viewed as legitimately working towards the achievement of political change); the powers to arrest and detain a person without a warrant if a police officer believed this was necessary

to prevent terrorist activity; and a requirement to answer questions even if to do so might incriminate the person concerned. While some minor amendments to the proposed law were accepted, its fundamentals were not altered.

The potential for police to resort to racial profiling in identifying potential terrorists was an immediate concern of many critics of the new law. Although there is not evidence of any pattern of official abuse by Canadian authorities, representatives of the Muslim and Arab communities remain understandably concerned at the increased surveillance and intermittent hostility to which they have been subjected. In one unfortunate incident, an Iranian law professor who had, ironically, come to Canada to improve his English was arrested and prosecuted for suggesting to a flight attendant who attempted to jam his briefcase beneath his seat that she should be careful or the case might explode. His comments came on the final leg of a long, tiring journey and evidence was given that the word 'explode' could in the Farsi language also mean to burst or pop open. The defendant was granted an absolute discharge by the Court, but only after spending 26 days in jail awaiting trial.<sup>1</sup>

A number of years ago, Pierre Trudeau observed that for Canadians, living next door to the United States was analogous to a mouse sharing its bed with an elephant. If the latter rolls over, we are in trouble. This has proven to be particularly the case for certain Canadians living in or passing through the United States. Individuals unfortunate enough to have been born in countries on the list of states deemed by the US government to be terrorist-supporting have found their Canadian citizenship to offer limited, if any protection. Certainly, it has not prevented some from being detained, for up to a year, with consequential damage to careers and family life. One unfortunate Canadian, born in Syria from which he had departed many years earlier without completing his military service, was unwise enough to travel abroad and return to Canada via New York. He was detained there by US Immigration for several days and then turned up in

Syria, apparently after having been sent to Jordan first (the full facts are still not clear). Neither Canadian consular authorities nor his anxious wife in Ottawa were informed of his detention for several days. The latter was understandably distressed when she eventually learnt of her husband's fate. No apology or explanation has been forthcoming as to why this Canadian citizen was not simply put on a plane to Canada.

Many other examples could be cited where the civil liberties of individuals in Canada have been compromised, primarily if not solely because of their national origin. Their stories do not necessarily show up as statistics of complaints filed with human rights agencies, either because the individual does not wish to draw further attention to an indignity he or she has suffered – such as the public servant of Iranian origin living near the United States embassy whose apartment has been visited on three occasions by Canadian security officials – or because their difficulties occurred outside of Canada's jurisdiction – as was the case with a Canadian physician of Middle Eastern origin who was prevented from delivering a paper at a prestigious medical conference in the United States when he was denied entry, finger printed and detained for several hours, ostensibly for security reasons, after his aircraft touched down.

The excesses associated with the anti-Communist scares of the 1940s and 1950s in the United States are well known. But Canada too has acted in the past to deprive citizens of their rights on grounds that did not withstand the light of subsequent scrutiny. Notable examples were the deportations of political radicals in the wake of a 1919 general strike and the detention in camps and seizure of the property of Japanese Canadians during the Second World War. During this difficult period, it is important not to lose sight of the lessons of history, which teach us that measures deemed necessary at a particular moment are often shown, with the passage of time, to have been overly broad and with pernicious consequences for vulnerable groups in society. ■

<sup>1</sup> Toronto Globe and Mail, February 6, 2003

# A Paradigm Shift in the Sri Lankan Peace Process

*Jehan Perera*

*Media Director, National Peace Council of Sri Lanka*

**I**n February 2002, the Sri Lankan government and the Tamil militant group, Liberation Tigers of Tamil Eelam (LTTE) signed a ceasefire agreement under Norwegian government auspices that appears to offer the real prospect of a final end to violence as a means of conflict resolution. This agreement is all the more remarkable in a world context where war seems to be the only preferred option to end conflict.

In Nepal, where the government is confronted with a Maoist insurrection that has engulfed more than half the country, the British government has given a substantial grant of money to peace organisations to engage in conflict resolution work. Ironically, it has given ten times that amount to the Nepalese government to upgrade its military. Both the US attitude to Iraq and the British pattern of aid to Nepal suggest that military option is the preferred strategy of governments worldwide.

This was also the case in Sri Lanka until the present government took power. The general preference for military force rather than negotiations is not difficult to fathom. A military solution is one that is imposed on the opponent without the need to compromise. The practitioner of the military solution can get 100 percent of what is desired, or something close to it, whereas negotiations necessarily imply compromise and getting less than 100 percent. But there is a condition that needs to be satisfied for a military solution to work, and that is overwhelming military power that the US has, and both Nepal and Sri Lanka lack.

Pushing the parties towards negotiation were several factors working together - a general war weariness among the general population, economic debilitation

and the threat of the US led war against terrorism put pressure on the conflicting parties to compromise and resolve their disputes through political negotiations. However, there were still many obstacles and roadblocks on the path to political reform, which included the LTTE's highly military nature, a fragmented Sinhalese polity and economic, vested interests.

The new government's strategy is a complete shift from that of the previous Government's, which was to confront the LTTE at every level. The government's strategy appears to be based on an assessment of the former government's failure to succeed through confrontation. After the collapse of the peace talks with the LTTE at the very beginning of its term of office in April 1995, the former government declared a full-scale war for peace. The two-pronged military and political strategy aimed to weaken and sideline the LTTE. But both types of confrontation failed.

Initially, the retaking of Jaffna by the Sri Lankan Army through Operation Riviresa in November 1995 seemed to indicate that the military strategy of full-scale confrontation would succeed. But thereafter poorly executed military campaigns, such as the two and a half year Operation Jayasikuru failed at very high cost. Instead of being militarily weakened, the LTTE emerged militarily strengthened from these major confrontations.

Furthermore, the former government's political prong against the LTTE in the form of the devolution package, which offered much hope in its initial manifestation of August 1995, could also not be sustained. The government fiercely confronted all

political opponents of its devolution package, even incurring the curses of religious prelates upon it. But ultimately, the government's bid to transmute the devolution package into constitutional law proved unsuccessful. In a replay of partisan politics that have dogged all political efforts down the decades to end the ethnic conflict through negotiations, the opposition led by Ranil Wickremesinghe simply refused to cooperate.

The failure of all these military strategies became clear in the general election in December 2001, which pitted the People's Alliance (PA) government and its Marxist ally, the People's Liberation Front, against the United National Front (UNF). On the surface, the general election in Sri Lanka was about the role separatist Liberation Tigers of Tamil Eelam (LTTE) would play in a future peace process that would end the 18-year ethnic war. The powerful government-controlled media made a secret deal between the main opposition party and the LTTE its central weapon during the bitter word slinging that characterises most election campaign periods. But underlying the rhetoric was the grim reality of an economy that had registered close to zero percent growth in 2001.

Ironically, the PA's nationalist propaganda was defeated in part by its own success. Over the past seven years, President Chandrika Kumaratunga, of the PA, was in the vanguard of those propounding that the conflict required a political solution. But her government was unable to deliver on its pledges. At these elections the repeated failure of the PA government in either proceeding with these constitutional reforms or in making peace with the LTTE accounted for virtually every opposition Tamil party running on a platform of Tamil nationalism. The most successful party, the Tamil National Alliance, even went to the extent of extolling the LTTE as the sole Tamil representative at peace talks with the government.

Held amidst widespread violence, election results proved a conclusive comeback for the opposition, United National Front (UNF) and its leader, Ranil Wickramasinghe.

## Important Lessons

It seems that the new government under Prime Minister Wickremesinghe has learnt two important lessons from the former government's failure. The first is that head-on confrontation will not bring a solution to the ethnic conflict. Accordingly, political and structural reforms might have to be de facto rather than de jure, to be acquiesced in by the general population with whom as little information as possible is shared. The alternative of explaining everything in detail to the people, in order to get them to vote in favour of the settlement, is likely to get into too much controversy.

The second lesson evidently learnt by the new government is that all outstanding problems cannot be resolved in one go, but require a phased approach. The former government's position was premised upon the inequality of the two parties, with the government being a sovereign state and the LTTE being an internationally banned terrorist organisation. The two-pronged approach of the former government aimed at knockout victories, such as by the Jaffna victory and the devolution package. But even when the first task was accomplished, as in the retaking and successful holding of Jaffna, the resilience of the LTTE ensured that the victory was incomplete.

It is likely that even if the devolution package had been passed with the bipartisan support of the opposition, its implementation would have been impossible due to resistance by the LTTE. Having witnessed, and contributed to, the failure of the former government's confrontational strategy, the new government appears to have opted for a non-confrontational strategy for the time being at least.

For the first time since Sri Lanka obtained independence in 1948 there will be an opportunity for a negotiated political solution to the ethnic conflict in which the interests of all the communities are met, rather than the interests of only the majority community. But this will require the LTTE to also renounce its own self-interest in monopolizing power and put the interests of the Tamil people foremost at the negotiating table.

## Main Breakthroughs

Among the breakthroughs in the peace process has been the agreement to explore a framework of federal governance for the country. But federalism is not the only breakthrough in the course of the yearlong peace process. Earlier breakthroughs were the signing of the Ceasefire Agreement in February coupled with the swift and equally unexpected removal of security barriers in Colombo, and the joint government-LTTE participation in the Oslo aid donor meeting in November last year. Few political analysts anticipated either event.

Government leaders who have been in the forefront of the peace process, have explained these dramatic changes by the term 'paradigm shift'. The rationale for the paradigm shift is that the old way of seeing the situation was not leading to conflict resolution but to conflict escalation. Indeed, by the time of the general election of December 2001, the country was close to economic collapse. Many commercial establishments were being shut down. Even big corporate leaders began to publicly warn that their companies would crash unless there was a change.

It was in this desperate context that the paradigm shift occurred and the government decided to deal with the LTTE in a hitherto unprecedented manner. The government recognized the reality that military option was leading nowhere but to stalemate at best. It also recognized the reality that the LTTE was in physical control of vast swathes of the north and east, and would not simply go away. Therefore, the LTTE had to be accepted as a solidly entrenched reality and dealt with on that basis.

Once the government made the decision to consider the LTTE as a partner in the peace process, rather than as an enemy, the nature of its negotiations with the LTTE registered a fundamental change. Previously the unstated agenda behind the negotiations was to somehow weaken the LTTE at the negotiating table.

The previous negotiations were premised on the belief that politics was a continuation of war by other means. As a result those negotiations were conducted in a spirit of rivalry and mistrust, with each side trying to bargain hard with the other and extract the most it could without considering the interests of the other.

However, with the paradigm shift taking place, the nature of the negotiation process appears to have changed as well. Instead of engaging in hard bargaining and trying to outwit each other, the government and LTTE seem to be extremely sensitive to each other's interests at the negotiating table. One of the LTTE's main interests has been to be accepted as a legitimate actor and not as a terrorist one. The government acknowledged this by lifting its ban on the LTTE and by referring to it as a partner and taking it to the Oslo donor meeting on that basis.

On the other hand, the LTTE has been prepared to publicly settle for federalism, which is much less than a separate state. It could have demanded a confederation, which is like a half-way house to separation. Many analysts had expected such an LTTE stand at the peace talks. But the LTTE did not make this demand perhaps realising that it was something the government could not grant.

The present peace process in Sri Lanka is based upon the failure of previous efforts to resolve the conflict through a combination of military and political strategies. The Sri Lankan state proved too weak to successfully implement either strategy, much less the two in combination. Similarly the LTTE proved unable to secure a comprehensive military victory despite its ability to eliminate individual army camps and weaken the country's economy. In today's peace process, the principle of negotiations between opponents takes the primary and only place. This means that neither the Sri Lankan government nor the LTTE will get 100 percent of what it wanted. ■

# Ghana's National Reconciliation Commission

*Meredith Wain*

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Since 1995, when the South African Truth and Reconciliation Commission drew the eyes of the world to the opportunities and challenges associated with this method of inquiry, truth commissions have become increasingly common tools used by countries attempting to come to terms with violent pasts. In this context, Ghana's National Reconciliation Commission (NRC) instituted in early 2002, serves to highlight the role they can play in promoting reconciliation and healing the wounds suffered in the country's past.

## Functions and Objectives of Truth Commissions

While their specific functions vary, generally speaking, truth commissions have two main roles. First, commissions set out to establish an official and accurate record of a country's past, which means documenting human rights abuses suffered during the mandated time frame. Furthermore, commissions are charged with putting forth recommendations to governments for reparations to victims, and for reforms of existing laws or institutional structures in an effort to prevent future abuses.

There is no set format for truth commissions. For example, commissions can conduct closed-door interviews or public hearings to which all are invited to attend. They can take on a formal courtroom-like atmosphere, or a much more casual, informal tone resembling a roundtable discussion. They can accept the victim's story as the truth without requiring any corroborating evidence, or conduct in-depth investigations into each case brought before the commission. These are just a few of the matters that must be decided upon when designing the structure of a commission, and they serve to illustrate the flexible and accommodating, as well as the complex and undefined, nature of truth commissions.

There are many possible objectives in undertaking such an exercise. It should be noted that each commission might omit, or place different degrees of emphasis on, some of the objectives. In Priscilla Hayner's Unspeakable Truths: Confronting State Terror and Atrocity, the five objectives of truth commissions are laid out. These include:

- ◆ clarification and acknowledgement of the truth;
- ◆ responding to the needs and interest of the victims;
- ◆ contributing to justice and accountability;
- ◆ outlining institutional responsibility and recommending reforms; and
- ◆ promoting reconciliation and reducing tension resulting from past violence.

## The Ghanaian Case

Ghana, a West African country that has undergone a number of periods of unconstitutional rule since it gained independence from Britain in 1957, suffered widespread human rights abuses during these periods. This gross aberration of human rights (which included crimes such as torture, killings, abductions, disappearances, detentions and seizure of property) by people in positions of authority was directly responsible for the formation of the Commission in early 2002.

Under Act 611, the NRC is mandated to establish an accurate and complete historical record of abuses perpetrated against individuals by public institutions and office-holders, or by individuals purporting to have acted on behalf of the state during periods of unconstitutional rule. It is also charged with putting forth recommendations for redress and institutional reform to the President.

The NRC began receiving statements of human rights violations from the public on September 2, 2002. Public

hearings commenced on January 14, 2003. The Commission sits for 12 months from the first hearing, with the possibility of a Presidential extension of six months, if good cause is shown. At the end of its work, the Commission shall within three months submit its final report to the President.

The Commission is made up of nine members, as appointed by the President in consultation with the Council of State. A series of Committees has also been set up in order to examine various institutions and bodies, such as the legal profession, the press, the labour and student movements, and religious bodies and chiefs. The Committees will investigate any involvement these groups may have had in human rights violations during the Commission's mandated time frame, and will put forth recommendations for reform.

The NRC conducts hearings and investigations into human rights violations, and the circumstances surrounding the abuses. The Commission has the powers of the police in its investigations, and the powers of a court in its hearings. This means that the NRC has the power to search, enter, and remove any property needed in its investigations, and also has the power to subpoena. It should be understood that this does not mean the NRC can place people under arrest, or hand down sentences. As discussed above, it is strictly a fact-finding and recommendation-making body.

Cases brought to hearing will be public, unless it is deemed inappropriate by the Commission. The NRC hearings have a quasi-judicial tone. They are being held in Accra, the capital city, in a newly renovated room in the Old Parliament buildings. The room itself resembles a courtroom, in that there is a bench behind which the nine Commissioners sit and preside over the hearings. The witnesses themselves sit facing the Commissioners, with microphones before them on the table. The proceedings are recorded in English. Television cameras from Ghana Broadcasting Corporation record all proceedings, which are broadcast live. Journalists and the general public sit on balconies overlooking the hearings.

## Critics of the NRC

There are a multitude of issues surrounding the Ghanaian National Reconciliation Commission that could be debated, but this section will be confined to two highly publicised issues.

The NRC has been called a partisan initiative by many observers who see it as an attempt by the ruling New Patriotic Party (NPP), to tarnish the image of its main opposition, the National Democratic Congress (NDC). Ghana returned to democratic rule in 1992 under Jerry Rawlings and the NDC. Generally speaking, truth commissions are held during, or soon after, times of transition. In the Ghanaian case, the NRC is occurring over ten years after transition. Rawlings had been responsible for two coups in the past, and had ruled Ghana as a military leader prior to his installation as a democratic leader. Rawlings and the NDC remained in power until 2000, when John A Kufour and the NPP were voted in. It was only after the NPP came to power that Act 611 was signed, allowing for the creation of the NRC, which would examine human rights abuses committed under past unconstitutional rulers, most notably Rawlings. Many point to this as evidence of the partisan nature of the NRC. They claim that the NPP seeks to damage the image of the NDC, their main political opponents, thus boosting their political power.

Other critics feel that within the Ghanaian context, a truth commission is simply inappropriate. They point to the truth commissions in South Africa and Sierra Leone, for example, and make note of the very different conflicts leading up to the establishment of the commissions. South Africa's commission was a response to mass human rights abuses that occurred under Apartheid, a state-sponsored system of racism leading to countless abuses committed against non-white South Africans and opponents of Apartheid. Apartheid was a policy that was a part of everyone's life in South Africa. In Sierra Leone, civil war ripped apart the country, and pitted groups against each other, rather than having a single nucleus of power committing abuses. Critics of the NRC do not deny that human rights abuses occurred under various regimes in Ghana, but they say they were much more isolated incidents

than the ones found in South Africa and Sierra Leone. They say the country did not undergo a widespread and penetrating conflict that calls for national reconciliation. Further, some argue that since the perpetrators are of a smaller number and more easily identifiable than those in South Africa and Sierra Leone, a truth commission is inappropriate. Still others say we should 'let sleeping dogs lie', and not risk stirring up old memories, pain, and political tension, when there is no assurance that the NRC will in fact yield any healing or reconciliation.

While all of these issues are still subjects of debate, the fact remains that the National Reconciliation Commission is well underway in Ghana. On 10<sup>th</sup> September, 2002, barely a week after it started its sessions, the number of complaints had reached over 350 and counting. Complaints included allegations of torture, disappearances, confiscation of properties and unlawful dismissal from work places.

Based on the steady establishment and popularity of new truth commissions over the past two decades, it seems clear that truth commissions are here to stay. With that in mind, at the very least, the NRC can serve as an instructional example for the design of future commissions. At best, it will serve to promote individual healing, and the reconciliation of a nation. ■

### Editorial Contd.

earnest human rights advocates to promote the principles of United Nations human rights law. The total preoccupation with a so-called "war on terrorism" has been used by many political leaders to increase their authority for denial of human rights. Governments world over have rallied enthusiastically to the cause of tighter security controls and increased policing with little regard for addressing the root causes of terrorism.

Kofi Annan, while making a speech about the menace of terrorism, also addressed this issue when he said, "*States fighting various forms of unrest or insurgency are finding it tempting to abandon the slow difficult but*

*sometimes necessary processes of political negotiation for the deceptively easy option of military action. Just as terrorism must never be excused so must genuine grievances never be ignored.*"

Basic standards of human rights must be respected by all leaders if they are to be successful in negotiating realistic alternatives to conflict. Regrettably so much current debate about human conflict relies on reactionary and retaliatory rhetoric rather than restrained reflection of human rights law and practice.

It appears there are too many political leaders who need to have an "enemy" to justify their behaviour of polarizing the debate about "good and evil". We hear plenty of accusations and condemnations but little preparedness to consider WHY there is such hatred and extremism nor to discover HOW we can work to prevent such distressing disregard for humanity.

Within the Commonwealth itself the human rights agenda is rarely debated as our leaders try to dominate in other fora. Tony Blair is convinced his major role is to support the military might of the United States. Current Chair of the Commonwealth John Howard is similarly persuaded even though his Asian Pacific neighbours are aghast at Australian priorities outside its region. Meanwhile Robert Mugabe continues to override all standards of democratic practice with little resistance from Commonwealth members.

Through these dismal days of the war whose first casualty has been the rule of law, even the most ardent supporter of human rights needs to hold on to belief and activism and must not be suppressed by the depressing atmosphere that surrounds us. There is only one justifiable human cause and that is humanity itself, so we must all re-double our efforts to find new ways to promote the human rights agenda. ■

# “Without Moi, Anything is Possible!” Or is it?

## *The Possibilities of the Post - Moi Kenya*

*Michelle Kagari*

*Project Co-ordinator, CHRI*

“Without Moi, anything is possible!” was the rallying cry of the opposition, enthusiastically taken up by Kenyans prior to the election held on 27<sup>th</sup> December, 2002. Due to President Daniel Arap Moi’s retirement, for the first time in 24 years, Kenyans were assured of a different personality at the helm. Moreover, it was the first time in 40 years, that the ruling party, KANU, faced election opposition that threatened to remove it from power. When the opposition, the National Rainbow Coalition Party (NARC), won the elections by a landslide, the country embarked on a new road in its chequered and violent history.

For many Kenyans, a government without Moi or KANU, though sought-after, was inconceivable. The landslide victory indicated the country’s desperate yearning for change. As a result, the new NARC government has so far enjoyed tremendous popularity and goodwill from the people, combined with dangerously high expectations for immediate change and economic prosperity.

President Kibaki and NARC have inherited a country on the brink of total economic collapse, with endemic corruption supported and actively promoted by the previous regime. Over the last month, as the new government has acted to purge the system of the mess KANU left behind, citizens have been slow to realize that the system’s corruption goes beyond those who profited from it and that institutional reforms are urgently needed if Kenya is to make a clean start.

Recently, Kenyans have been mesmerised by stunning revelations in the press of hitherto suspected, but unconfirmed, reports of massive plunder of public funds and assets under the KANU regime. They have

been told that public funds amounting to millions of US dollars have been lost through fraudulent transactions, from the payment of padded contracts for public development, to the unfair allocation of government property, to just plain old theft. Power-brokers under the former regime are implicated in the revelations, and the new government seems determined to haul them into court to answer for their crimes.

It is only now that the extent of the damage caused by what appears to be unencumbered plunder of public coffers is beginning to sink in. Kenyans are beginning to bray for blood. And as long as the blood belongs to members of the previous regime, the government may be only too happy to comply.

But there is an ominous lack of activity by the government when it comes to purging the system itself, rather than the personalities in the system. Avid media exposure of scandalous crimes has been important in revealing the extent of the damage, and the perpetrators. But perhaps more important is to investigate the weaknesses in the system that allowed this harm to occur in the first place.

What hasn’t been emphasised so far is that over and above a shattered economy, the new government also inherited governing institutions that are unanswerable to the people they govern. The problems start at the heart of the Constitution, which grants the President extensive, unfettered powers with only weak and manipulable checks and balances. Not just the constitution, but the whole corpus of Kenyan law supports and sustains this imbalanced system.

At the moment, Kenyans have indulged the new regime, wanting to give the government a chance to

settle in before they implement substantive organisational change. The assumption is that the new government will, with each passing day, remain equally committed to bringing about the sweeping reform that formed the basis of their pre-election promises. For the time being, Kenyans still feel safe in the knowledge that without Moi, anything is in reality, possible.

But the people of Kenya cannot afford to sit on their laurels. With each passing day there is greater danger that the new government will, in fact, get "settled in". The legal and institutional framework that allowed the gargantuan pillage that Kenyans are now beginning to comprehend still exists, and grants the new regime the same opportunity for abuse.

## The Need for Constitutional Review

For the last two years, Kenya has been going through a constitutional review process, which is expected to culminate in the adoption of a new constitution. It is hoped that the new constitution will change the prevailing structure of power relations by drastically reducing the overarching powers of the executive, and restoring a system of checks and balances. The new constitution is also expected to create institutions for independent oversight of the government.

However, the constitutional review process has been fraught with difficulties, especially under the pre-December KANU government. Immediately prior to the national constitutional conference scheduled to run from the end of October 2001, President Moi unilaterally suspended the process. NARC, in one of its major campaign promises, stated that it would see the constitutional review process to its proper conclusion and adopt a new constitution for the country within its first 100 days in office.

Ominously, signs are emerging that the new regime is being seduced by the sense of infallibility that comes

with almost absolute power. A few days after the swearing in of Mr. Kibaki as Kenya's third president, editorial pieces were highly laudatory of the alleged fact that President Kibaki had promised not to run for a second term. Barely one month later, when asked about the issue, the President allegedly quipped, "When did I say that?"

Kenyans bought the election promise that the stalled constitutional review process would be brought back on track and completed within NARC's first 100 days in power. At the time of writing, NARC's first 100 days in office were nearly complete, and the constitutional conference still had not been scheduled, apparently due to internal bickering. Signs are clearly emerging that the government's enthusiasm for effecting change decreases a little more with each passing day.

Kenyans must sit up, take notice and take action otherwise they will discover for themselves the hard truth, that Moi was enabled by an institution that sanctioned dictatorship. They need to maintain pressure and ensure that the government sees the constitutional review process to its conclusion. Kenyans must also ensure that the government begins to systematically dismantle the laws and procedures that allowed the previous regime to operate without accountability.

The new Government, if it hopes to avoid the same fate that KANU is facing, must act now to open itself up, not only to broader and deeper scrutiny, but also to liability for its actions. A new constitutional order would be a necessary first, but not the only step, to achieve this.

Moi's retirement has certainly made the transition to an accountable and functioning government a little easier. However, without a system that guarantees institutional transparency, accountability, and fettered powers, Kenya will only succeed in producing a new set of Moises. ■

# Death for Rapists

## And Justice for All...?

Navaz Kotwal  
Project Officer, CHRI

*"They killed a mother and took out her unborn child from her womb, they raped a daughter in front of her mother's eyes- you retell each story as if this is the first time it is happening in India."*<sup>1</sup>

In these words the Indian Defense Minister speaking in Parliament, trivialized rapes and huge violence against women in the Gujarat carnage that followed the Godhra incident<sup>2</sup>. A few months later, the Deputy Prime Minister, reacting to the alarming rise in rape across the country said rapists deserved nothing less than the death penalty for this unpardonable crime.

Contradictory statements from two ministers of the same government leave many confused. While the first statement connotes a fatalism to a commonplace in India, the second unequivocally condemns rape as a serious offence that deserves the harshest of punishment. Either way, statements are no substitute for justice on the ground and that remains out of reach for most victims of violence in Gujarat. In December, after elections had

brought him back to power with a huge majority, the Chief Minister Narendra Modi, who had been at the helm of affairs in Gujarat at the time of the carnage, promised "justice for all and appeasement to none". Today a hundred thousand eyes are looking for justice. Amongst them are also those of rape victims who, a year after the riots, are still struggling at the first stage to get their complaints registered.

Eyewitness, doctor's and testimonial accounts indicate an unusual level of perversity in the violence that women suffered. Repeated rapes; mutilation of wombs, vaginas and breasts after gang-rape; and insertion of objects in vaginas added to the humiliation and cruelty of watching family members being disposed of in equally gruesome ways. At the best of times it is

difficult for a woman to be believed when she cries rape but the breakdown of law and order in large areas, the need to run to distant places for shelter and the preoccupation of the police with the widespread unrest have made it all but impossible for the victim to report the crime let alone prove it conclusively. Yet, convictions are possible only if cases are proved beyond doubt. But before that the case must reach court. Police routinely refuse to register complaints or investigate fully. Often they don't have the will

and often they don't have the capability. Female victims who visit police stations not once but several times to ask for a First Information Report (FIR) to be lodged are repeatedly turned away by insensitive policemen who insist that an 'omnibus' FIR that covers a whole set of incidents in one locality is all that is going to go on record. Typically an 'omnibus' FIR merely says "on such and such day in such and such area an unruly mob

*In February 2002, several Hindu volunteers traveled to Ayodhya, India, to participate in a ceremony for constructing a temple. A 400-year-old mosque, which stood on the site, had been demolished in 1992. 58 of these volunteers returning to Gujarat were burnt alive inside a train car at a station, in a small town by persons widely believed to be from the minority Muslim community. In the outpouring of anger that followed and continued unrestrained for weeks, more than 2000 Muslims were killed, scores of women raped, houses burnt and millions of rupees worth of their property and business destroyed.*

<sup>1</sup> Translated from speech given by Defence minister, George Fernandes, in Parliament, on 30<sup>th</sup> April, 2002

<sup>2</sup> See box

gathered to riot. People were injured and property burned.” It may or may not name specific individuals who are not connected to specific incidents even though eye-witnesses have clearly said what they were doing at the time. Since these FIRs dictate the direction of investigations the vaguer they are, the more likely they are to obfuscate the issue and draw attention away from individual investigation for a single crime.

Bilkees’ story illustrates. Four months pregnant, 19 year old Bilkees was gang-raped by three men. Then before her eyes her mother, sisters and aunts were raped and burnt alive. Her two-year-old child was beheaded and thrown from a hill. Her two-day-old niece was roasted on the tip of a sword. Bilkees lives only because her rapists mistook her to be dead.

It is just possible that in such circumstances the first thing on Bilkees’ mind was not that she must necessarily undergo a medical examination or find a police station and calmly record her complaint. Instead, alone and traumatized, she trudged for days to reach safety and finally spoke with the authorities. They wrote down a complaint but did not mention her rape. It however did mention the rape and burning alive of her mother and two sisters. Telling her story to a sympathetic women’s fact finding team a little later, she spoke about her own gang-rape and named three accused for the same. Only then was she sent for a medical examination. Though all along she had visible lacerations to her back and swelling and tenderness indicative of sexual violence, no mention was made of it and the possibility of rape was ruled out. The police not only recorded their own version of the rape narrated by Bilkees in the FIR but have closed the whole case for murder on the basis of insufficient evidence and an unstable mind of the victim. Her statements have been judged contradictory and to add insult to injury the final report mentions that the accused named in her statement are respected members of society - some being doctors and lawyers and in all probability they could not have committed the crime!

Sultani’s story provides another reminder of the heartlessness of the justice system. Sultani has three eye-witnesses to her gang-rape. But two months later, she was still trying to register her FIR. There was no quiet corner where she could tell her story, no police woman to listen respectfully, no trauma room or counseling. She was forced to recount intimate details of the rape to a gawking crowd of constables. A brazen

policeman then declared that no separate report was going to be filed for “simply rape”. An omnibus FIR already existed and at the most, her testimony could be attached. Left with no alternative, Sultani gave her statement, which was attached to the common FIR. With the process set in motion Sultani was sent off to be medically examined - 45 days after the incident! The report did not mention rape. The chargesheet is out, which does state her rape but fails to identify the rapists. Her complaint is waiting to be tried in a court clubbed with diverse incidents of murder, dacoity and arson, which occurred in the village on the day of the incident. Sultani at her end waits for justice, which never seems to reach oppressed people like her.

Bilkees and Sultani are just two of the many victims, both men and women and sadly bereaved and lost children, who stumble about the blind alleys of the judicial system asking for attention, asking for justice, asking for some closure to the torment of mind that they have suffered. Their problems are endless. They lie in the rules of evidence, in procedural hurdles, in a gender blind judiciary, a hostile police force, and lack of public support to a rape survivor. Compounded by the social stigma that the victims routinely endure, it is no surprise that only a handful of rape cases have survived on the record in Gujarat.

If even one case were to end in conviction given the present state of investigations, prosecution capability and trial standards, a mandatory death sentence would be a travesty. Mandatory death sentences in any case have no deterrent effect and in fact make judges very reluctant to declare findings of guilt.

Gujarat, like the Delhi riots in 1983, which killed 3000 Sikhs and the Punjab killings of thousands of innocents in police operations, once again demonstrates with sharp new urgency the need for reform of the entire criminal justice system. Mr Modi’s future administration must urgently address the issue of reform, if it is to repair the sorrows of the recent past, reconstruct the economic base and ensure peace in the state. Fundamental to ensuring reform is to guarantee accountability and lawful punishment for criminal acts. Without this there can be no justice for all. Can it still be that we must hope against all hope that a secure and well ensconced popular government will make a beginning and prove to the world that there is more there than popular demagoguery and the politics of hate? ■

# Poaching on Innocents

*Kumar Badal<sup>1</sup>*

**M**y journey from the CBI headquarters to jail had all the elements of a suspense drama. Prior to my appearance before the CBI, there was a raid at my residence and our office premises, which came as a rude shock to all of us, including my wife who was still to overcome her post-pregnancy complications (my son was only two months old).

There were media reports that I was absconding and we had to clarify that this wasn't true. It was just an irresponsible statement from the CBI that started the confusion. When our lawyers objected to the CBI leak, the agency was forced to respond with a proper notice for me to appear before it as a witness in a poaching case. As I appeared before the CBI, I had no idea of what they intended to ask me. As the day progressed I was subjected to a barrage of questions concerning the functioning of my organisation, *tehelka.com*. By late evening, I was told that I was under arrest.

I was taken for a medical examination at the Safdarjung Hospital. In the morning I was taken to the Saharanpur court. As I stood in the witness box, some 5,000 people gathered to catch a glimpse of me. The CBI got my remand for three days (on second attempt) and mercifully the judge allowed my lawyers to be with me during the 78-hour interrogation.

I was carrying the images of prison culled from what I had seen in Hindi movies. But reality was different. I found myself inside a crude barrack, resembling a railway platform fenced in by concrete walls on all sides. I could see prisoners sitting in groups. Some were smoking, some passing their time by putting insects in

a bottle and watching them fight, while some were just chatting. A number of them approached me and asked me about my case. Some even pledged their support to ensure a comfortable stay for me.

I remember an occasion when I went on hunger strike against the government's letting loose a reign of terror on us *tehelka.com* journalists. Almost the entire barrack goaded me to end the strike by saying that they've seen many such protestors end in obscure deaths. Many of them brought fruits for me to end my fast, while some even pleaded with the authorities to make me see reason and end my fast. I conceded to their wishes after six days.

As my bail petitions got rejected, I realised that I was fighting a losing battle against a force to reckon with. But in due course I also realised that my trauma and despair pales in comparison to what my fellow prisoners were going through.

Visitors - my wife, journalists, office colleagues, friends and relatives - came to meet me twice a week. I was getting comparatively better food than the bland stuff that almost 90 per cent of the inmates were getting. I didn't have to pay money to avoid punishment - which included your feet being tied together with a piece of cloth with a wooden shaft in between, and being hung upside down while someone hit your feet with another wooden shaft. And I didn't have to work like a slave in the jail compound.

Prisoners don't get any of the 'comforts' that I received during my incarceration. Though they get temporary

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<sup>1</sup> Kumar Badal is a *tehelka.com* journalist. He was imprisoned for being in league with poachers, a charge that he has denied throughout.

reprieves, improvement in this matter is subject to transfers of the jail authorities as well as the police force.

One prisoner was in jail on the flimsy charge of stealing two eggs. He had been languishing behind bars for the last 13 months! Then there were mentally disabled prisoners who have to face the wrath of jail authorities as well as that of fellow prisoners. They are subjected to unspeakable ridicule, abuse and exploitation day in and day out.

What I have learnt from my stay in jail is that the real culprits are hardly ever imprisoned and even if they are, they are free after a very short period. I've seen this happen many times in all my seven months of captivity. Even the police officials confided in me that they get a 'quota' from their seniors, who in turn get a 'quota' from the top brass to 'crack' a certain number of cases per month to keep the police force in good light. This 'quota system' results in many innocents getting picked up in the bargain who keep languishing in jail without anyone to care for them. And once they get picked up, they get the tag of being a criminal. Even after release, they are again picked up by the police at their whim and fancy.

I spoke to many such prisoners who told me that they commit crimes knowing that they will be 'picked up anyway'. The strange part is that they hardly get jailed for the crimes they have actually committed.

G.G. Hasan was a jolly prisoner I met in jail. Whenever I asked him about his case, he told me as if cracking a joke that he was charged with attempting to run away with a locomotive engine! Later I came to know from fellow prisoners that the first time he was arrested, he was charged with 'trying to lift a scooter'. The truth was that he was just a village bumpkin who didn't even know how to drive a scooter. Since then, he had been picked up several times by the police on several charges. By the time I met him, he had become a drug addict and a petty thief.

As he was being released after some time, I told him to stop committing crimes and leave the area in which he lived to start a new life. He promised to follow my advice and left. After a week, while I was returning to my barrack after receiving a visitor, I saw 'G.G.' sitting with other prisoners. I was stunned to see him back in the jail so soon. He informed me that when he came to the court to appear for a previous case, the police - on a false charge of 'lifting an autorickshaw' - picked him up again.

This time he looked quite sad, for he couldn't spend enough time with his three children after being released from his one-and-a-half year stint in jail. A few days later, as I was entering the prison hospital, I saw G.G. pleading with the prisoners on duty to admit him in the hospital as he was having serious chest pain. The prisoners on duty reacted violently. I tried to convince them to let him in so that a doctor could attend to him. They finally agreed and the doctor referred him to the district hospital.

Next morning, when I saw that G.G. was still in the jail hospital, I asked him why he wasn't taken to the district hospital. He replied that the jail authorities were convinced that he was faking his chest pain and sent him back. Since I couldn't do much, I decided to wait for the doctor till the evening and talk to him about the matter.

During the same afternoon, as I was reading a book in my cell, I heard someone say that a prisoner had died. G.G. instantly came to my mind. When I went to see him, I found him lying on a stretcher.

As I touched G.G. to feel his pulse, I realised that he was dead. This was confirmed when the jail doctor arrived after an hour. I am still not sure whether he got a decent burial or not. ■

*(Source: Hindustan Times - January 28, 2003.)*

# Police-Community Interaction

## - an idea for the times?

*Dr. Doel Mukerjee*

*Project Officer, Police, Prisons and Human Rights Unit, CHRI*

**C**HRI's recent consultation with strategic groups in the Indian states of Chhattisgarh and Madhya Pradesh illustrated two important aspects about the community in relation to the police organisation. First, there is lack of communication and accessibility between police and citizens and secondly, the police are misunderstood. While the ruler and ruled relationship of the past is slowly improving through various spirited community policing experiments in the country, there still remains a need for legislation entrenching community police partnerships.

Community policing has emerged as a promising alternative to the traditionally repressive mode of law enforcement, which renders the police ineffective and alienated from the public. This new concept gives a significant role to the community in identifying their own policing needs and in guiding police performance.

The basic idea underlying community policing is to involve the citizen in police work so that gradually policemen become an integral part of the community. This idea is not a recent phenomenon but dates back to the origins of policing. However, the police organization in India, formally established after the Indian mutiny in 1857, to curb dissent and serve the interests of the British, still forms the basis of the current police administration. The structure of the 1861 Police Act left little scope for citizen-police interaction and in fact charged locals for any additional reinforcements in times of civil and political disturbance. This legacy engendered a pro-ruler/anti-people attitude among the police force, which in turn

caused deep resentment of the local population with the police, an attitude that persists to date.

### Facts and Figures!

- ◆ In 1999, over 74322 complaints were received by the public against police personnel in the country.<sup>1</sup>
- ◆ In 1999-2000 the National Human Rights Commission received reports of 177 deaths in police custody, 1157 'illegal detention and arrests', 1647 'false implications' and 5783 'other police excesses'.<sup>2</sup>

Even though over the last two decades there has been an increasing acceptance of the idea amongst the police personnel that they cannot control crime or maintain law and order without the community's support, there has not been enough formal recognition within the law. No matter how elaborate police resources and strategies are, citizen involvement in police tasks is imperative for achieving law and order objectives.

The basic premise of community policing lies in allowing the community to collaborate with the force to perform various duties. These could include maintenance of peace and security, safety of citizens, law enforcement, crime control and orderly flow of traffic. The assumption flows that if these functions are taken care of, it will leave ample time for the police to execute their remaining duties such as investigation of cases.

<sup>1</sup> Crime in India, 1999

<sup>2</sup> NHRC Annual Report 2000

International experiments have also proven the viability of the community policing idea. In the UK, the New Police Act instituted in 1860 decentralised and gave a fresh image and responsibility to the beat constable making the bobby a household person in hamlets, in the back alleys and the big cities. More recently, the Police Act and the recent UK Police Reforms Bill, 2002, further entrenches the idea by requiring community consultation and providing scope for induction of Community Support Officers and Community Accreditation Schemes. In addition, the Reform Bill allows the Chief of Police in the UK to liaise with the business community of an area to supervise their employees in carrying out certain community safety functions.

The *Koban* System of Japan is perhaps the best instance of the Neighbourhood Watch System, also popular in the USA, where the police instruct citizens in home security measures and enlist their assistance in watching their neighbours' homes. The scheme takes its name from the *Kobans* or one-room boxes situated in residential areas where the policemen live within the community. This gives them tremendous access to information about the community and enables them to receive complaints, deal with parking offences, give advice regarding citizen grievances and so on. Mobile boxes also make the police more accessible in different parts of the country.

Other experiments have originated from within the community. In Kenya, the Central Business District Association of Nairobi (NCBDA), concerned about vigilante groups and spiralling crime, collaborated with the police by paying for ten police assistance booths. Though others followed this lead with booths coming up all over central Nairobi, this initiative lacked sustainability since it was not formalised in law but taken up on an experimental basis.

A similar initiative in Karachi has its origin in the Police Reforms Ordinance 2001, which formalises the Citizen

and Police Liaison Committees (CPLC). The citizen's board, which includes judges, advocates, and people from business and finance, works in close association with law enforcement to institute a crime database, bridge the gap between the police and the public and ensure all cases are duly registered.

Wherever community policing has been enshrined in law, the concept has flourished beyond an experiment or a mere initiative. In South Africa, the Constitution makes it the "political responsibility" of each province to promote "good relations between the police and the community".<sup>3</sup> The Constitution also requires the government to appoint a commission of inquiry in case of a breakdown in relations between the two. The Police Act on the other hand prescribes standards in instituting community police forums and boards to liaison with the community.

Back in India, the scenario has been limited to some spirited initiatives by a few dynamic police officers. However, these experiments die a quick death when the initiators are transferred to different posts and replaced with incumbents who believe in more traditional policing. The government has also taken steps to promote the concept within the police system, such as the 1999 United Nations Development Programme (UNDP) project in which nine police stations in three states were listed as Model Police Stations. The idea behind this project was to bring an attitudinal change in the police personnel and catalyse other police stations in the same area.

However, these small steps are not enough. The problem does not lie in the nature of such experiments or the prudent judgement by the initiator. Even when sufficient resources are spent, success does not guarantee sustainability and until a people friendly legislation is set in place community-police relationships will continue to be an exercise in futility. ■

<sup>3</sup> The Constitution of the Republic of South Africa 1996, Article 207 (5)

# Our Need to Know

Seema Kandelia

Right to Information Programme, CHRI

*"Information is the lifeblood of our times; we need it to survive and prosper, almost as much as we need oxygen to live. ... If information represents power, then we must ensure that it is not monopolized by the rich and powerful."*<sup>1</sup>

Information is fundamental to our ability to make choices and to exercise our rights in all aspects of our lives. We need to know, for example, what our government is doing and why. We need information on the State's legal system and its budget decisions, as well as information relating to our health, our civil liberties and our environment. Not only must we be able to seek such information freely, we must also receive it proactively from the government. Information that is in the public interest does not belong to those, such as governments, private corporations or multilateral agencies, with the power and resources to access or withhold it. Information that concerns the people is the property of the people.

Providing people with a right to information empowers ordinary citizens to make choices, which are vital to participatory democracy and for ensuring an open and efficient government. A democratic government must be inclusive, consultative, transparent and accountable to its citizens. It cannot keep secret its policy decisions, its expenditure or any other information that is in the public interest. Information acquired by public authorities is not for the benefit of officials or politicians but for the public as a whole. Unless there are specific and genuine reasons for withholding such information, it should be available to everyone. As the Supreme Court of India recently stated: "The people of the country have a right to know every public act,

everything that is done in a public way by the public functionaries. ... Public education is essential for the functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision-making process."<sup>2</sup>

Assured information availability not only promotes confidence in public institutions, it also helps root out corrupt and exploitive governmental practices. If governments are not transparent, their public cannot hold them accountable for their actions or ensure that it is the public interest, which is being served rather than the interests of those in power.

Without a right to information, all our other rights become endangered. The right to food, the right to adequate health care, the right to education, and the right to vote - all depend upon our having enough information from those in the know to exercise them. In India, although a public distribution system has been set up entitling those living below the poverty line to purchase subsidised food from government ration shops, people are still dying from starvation. Last year in Rajasthan, at least 40 people from the Sahariya tribal community, most of whom were children, died over a span of two months from hunger-related causes. Yet government warehouses remain full of surplus grain.<sup>3</sup> Due to the lack of information about the rules and

<sup>1</sup> Priscilla Jana, ANC National Assembly, February 2000, describing South Africa's new freedom of information law.

<sup>2</sup> Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294, at p.313.

<sup>3</sup> Harding, L., "Dying of hunger in a land of surplus", Guardian, 15 November 2002.

benefits of the programme, many intended beneficiaries are unable to draw on their entitlements. Instead, they fall prey to the corrupt practices of officials and shop owners who often fail to distribute ration cards correctly, or who forge the signatures of the intended beneficiaries and sell the cheap grain on the black market at high profits. Without knowing that they are entitled to ration cards, the procedures for obtaining a card, or who to complain to about exploitative practices, the poor will continue to die of starvation, despite the government's best intentions.

In addition to information from the government, we need access to information held by private corporations and multilateral and transnational entities whose decisions, policies and activities affect the lives of large communities. In less than two years, the residents of the Barskoon village in Kyrgyzstan have been victims of three chemical spills from the Kumtor Gold Mine, which is operated by the Cameco Corporation of Canada. Despite this tragic history, the corporation remains unwilling to release the contents of an "emergency response plan" for public review, leaving the Barskoon residents completely unprotected should another spill occur.<sup>4</sup> Cameco received major financial support from the European Bank for Reconstruction and Development and a number of other publicly backed financial lending institutions. Not only is Cameco responsible for its own criminal neglect, but the lending institutions who make it possible for such multinationals to continue operating must bear responsibility for ensuring that the companies they subsidise operate responsibly and disclose all information that is in the public interest.

As it becomes increasingly common for private bodies to supplant the State's role in providing public services such as health care, education, transport and policing, it also becomes impingent upon these private service providers to publicly disclose adequate information

about their practices. Similarly, when transnational corporations have a profound effect on a country's human rights practice, its environment or on the way it is governed, they too, have an obligation to be transparent to the public. However, many get away with conducting their business in secret, leaving the public largely unaware of any harmful consequences of their practices. In developing countries, which are rich in natural resources, such as Angola and Nigeria, oil and mining companies are often the main source of budget revenues and foreign currency earnings. When this foreign money is used to fuel civil wars fought by agents trying to grab control of the country's wealth, rather than by citizens to whom the resources belong, the paying companies should bear some responsibility for the misappropriation of their funds. Individuals and communities who are adversely affected by the uncontrolled influx of capital from these organisations should be able to hold them accountable. If transnational corporations were under a duty to disclose their payments, taxes, and fees, citizens in recipient countries would be in a better position to scrutinise their government's expenditure, exert pressure against corruption and fight to ensure that the public, rather than individuals, receive the benefit from the sale of public resources.<sup>5</sup>

People are undeniably the best protectors of information and as such they ought to demand and use it for their well-being. While governments are responsible for representing their people and for providing crucial public services, citizens also have a correlative duty to ensure that these agencies serve them correctly. Citizens must monitor not only their own government's conduct, but also the conduct of other agencies whose practices affect the way they live. Providing people with a right of access to information is a vital element in enabling them to perform this responsibility. ■

<sup>4</sup> "Fatality at Troubled Kumtor Gold Mine: Kyrgyz and International NGOs Renew Call for Independent Environmental/Safety Audit; Coalition to Assemble Audit Team", 10 July 2002, MiningWatch, Canada.

<sup>5</sup> Soros, G., "Transparent Corruption", Financial Times op-ed, 13 June 2002, "Publish What You Pay" campaign.

# Out of Touch?

## - The Commonwealth and Young People

**Amanda Shah**

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**W**e live in a young Commonwealth. Across the 54 member states, two-thirds of citizens are under twenty-nine years of age, the ceiling used by the Commonwealth Youth Programme as a measurement of youth. Moreover behind this overall statistic, some distinct local realities emerge, for example:

- ◆ In 2001, the median age of citizens in Canada's Northwest Territories was 29.7 years and there were nearly three times as many citizens below the age of 10 as there were over the age of 60.
- ◆ According to the Cook Islands National Youth Policy, 40% of the Islands' population are aged 15-34 year old.
- ◆ The UNDP cites sixty-three percent of the population in Africa as under the age of twenty-five
- ◆ Of a total population of 140 million, 40 million Bangladeshi citizens are under 35 years of age.

Despite this overwhelmingly youthful outlook, for many years now it has been clear that the Commonwealth is not registering strongly on the radar screen of young people's interests. In effect the Commonwealth has become of limited consequence to the majority of its citizens.

A series of conferences held at Cumberland Lodge in the UK throughout the 1990s saw successive young participants characterise the Commonwealth as "elitist", "non-participatory", "not action oriented", and "dwelling too much on the past." The conference reports make for damning reading for the Commonwealth, despite the fact that familial ties continue to be a strong link between many young people across different member states. Two-thirds of UK primary school children, for example, have at least second cousins in other Commonwealth countries.

The one aspect of Commonwealth activity that regularly raises the interests and passions of younger citizens is the

quadrennial Commonwealth Games. Yet the Commonwealth continues to grapple with the challenge of how to use the newspeg of the Games to translate this Commonwealth crowd-puller into any more sustained interest in the association of nations and its wider activities.

The other strong pulse of the Commonwealth – the biennial Commonwealth summit or CHOGM – fails to result in more than the smallest ripples of youth interest. A situation compounded by the shrouded nature of the event, which does a good job of keeping all citizens at arms length, whether they are 16 or 76. The biggest success in encouraging young people to engage with CHOGMs has been the peaceful anti-globalisation protests planned prior to the postponed 2001 Brisbane CHOGM, where young Australians came together in meetings, and on websites, to discuss CHOGM, the Commonwealth and its value to the modern world.

So why does this example of youth interest in the Commonwealth stand out against a sea of antipathy or, more worryingly, apathy and, what has the Commonwealth been doing to turn the tide in the face of such disinterest by its younger citizens?

In 1974 the official Commonwealth established a designated youth programme to work "*for a world where young women and men (15-29 years) can reach their full potential.*" The Commonwealth Youth Programme is co-ordinated from London with regional programme centres in Lusaka, Brisbane, Chandigarh and Georgetown. It is unique in Commonwealth terms because of the degree of youth participation in its governance structures so that at the meetings of Youth Ministers, convened triennially within the Commonwealth, the chair of the Commonwealth Youth Caucus holds equal speaking rights to ministers. At the 2002 Coolum CHOGM, the official Commonwealth's approach to youth issues was given new direction through the Commonwealth Youth for the Future Initiative but, for a range of political, economic and logistical reasons, the scheme

has yet to take off. Fundamentally, with its limited professional staff (fifteen people across the Commonwealth) and resources (£2,223,850 for 2000-2001), the official programme is in itself not the answer to the Commonwealth family's continuing struggle to attract the interest, and thereby benefit from the contribution of, its younger citizens.

Yet if the Commonwealth is both an association of peoples as well as states, as we are so often told, it is important to also ask what the non-governmental Commonwealth (particularly pan-Commonwealth NGOs) have been doing to address the issue of youth engagement. After all, the official and unofficial Commonwealth are locked together in their battles for relevancy and survival in the twenty-first century. Both need an injection of younger participation in order to thrive, or even survive, and youth interest in either the Commonwealth, or Commonwealth NGOs, inevitably increases youth interest in the other.

As part of ongoing research, the Commonwealth Policy Studies Unit circulated a questionnaire to over ninety civil society organisations working on Commonwealth issues, asking "*why do you think so few young people involve themselves with Commonwealth NGOs?*" Responses, although limited, indicated four major areas of concern: (i) the image of the Commonwealth, (ii) a lack of public knowledge about the modern Commonwealth or Commonwealth NGOs, (iii) the prevalence of professional associations amongst Commonwealth NGOs and (iv) a lack of follow-up with young people who have had some exposure to Commonwealth affairs.

On top of those issues highlighted by the questionnaire, it would seem that certain cultural, financial and logistical barriers also prevent young people from fuller participation with the non-governmental Commonwealth. The timing of meetings, membership fees, the way in which organisations are run, the issues that are tackled and the unintentional, but inherent, age restrictions put on membership by organisations of professionals, all impact on young peoples' willingness and ability to participate.

Organisations have addressed the problems outlined above differently depending on their background, and many have yet to operationalise any concrete youth policies. However, some examples of actions to date include: the Commonwealth Human Rights Initiative, which runs an established internship programme offering young people the opportunity to contribute to its work programmes as

members of staff, tackling the financial barrier of prohibitive membership fees; the Commonwealth Lawyers Association offers reduced rate membership for young lawyers; the Commonwealth Parliamentary Association runs youth parliaments, Commonwealth Day events and follow-up seminars; both the Royal Commonwealth Society and the Royal Agricultural Society of the Commonwealth run bursary or sponsorship schemes to involve young people in their peak events; and the Commonwealth Youth Exchange Council (the only accredited Commonwealth NGO dedicated to youth work) organises youth exchanges and last year ran a Commonwealth Youth Summit on citizenship issues.

So what could the Commonwealth do collectively as a family of constituent parts to facilitate the engagement of its younger generations? CPSU has recommended:

- ◆ a focus group on youth (comprised of civil society representatives from different sectors and young people) to engage with the Co-ordination Committee for Commonwealth Agencies;
- ◆ the adoption of an institutionalised participatory culture within the official Commonwealth, an essential plank of which should be youth participation;
- ◆ the mainstreaming of youth policies across official Commonwealth programmes and Commonwealth NGOs, the content of which should be shaped by young people themselves; and
- ◆ the establishment of a Commonwealth Young Alumni Scheme with a database to track, and keep in touch with, those who have had contact with either the governmental or non-governmental Commonwealth.

In today's world none of the components that make up the Commonwealth are big players. Furthermore, they all have a recognised difficulty in attracting the interest and active participation of young people. Therefore there is a supreme logic in all members of the Commonwealth family pulling together to address youth apathy, particularly as Heads of Government at the Coolom CHOGM argued for "*the need for stronger links and better two-way communication and co-ordination between the official and non-governmental Commonwealth.*" Without a coordination of efforts to enrich the Commonwealth with a boost of young blood, complementing its older supporters, there will be no one to undertake a review of the role of the Commonwealth at the end of the 21<sup>st</sup> century, as all interested parties will have passed away. ■

# Highlights from CHRI's Statement to the Commonwealth on Zimbabwe

1. The Commonwealth Human Rights Initiative (CHRI) welcomes the Commonwealth Secretary-General's March 16th 2003 statement that Zimbabwe will remain suspended from the councils of the Commonwealth. CHRI also welcomes the Secretary-General's assurance that this matter will be discussed at the Commonwealth Heads of Government Meeting (CHOGM) in December 2003. However, more action must be taken to ensure protection of human rights of the Zimbabwean people.
2. Many of CHRI's concerns about human rights violations in Zimbabwe have been expressed in past submissions to the Commonwealth Ministerial Action Group (CMAG). We note with deep concern that the situation has not improved, and that in fact the government has been pursuing an agenda disrespectful of human rights, and consequently the situation has worsened considerably.
3. Many local and international human rights groups have carefully monitored and documented thousands of cases of human rights abuse in Zimbabwe. CHRI is particularly concerned that:
  - ◆ Food is being used for political purposes, with government officials who are responsible for food distribution discriminating against suspected supporters of the Opposition. This action, in a country brought to its knees by current poor food production, drought, and the disastrous effects of AIDS, is reprehensible and has led to and will in the future continue to lead to great human tragedy.
  - ◆ Lack of government legitimacy: the Commonwealth Observer Group noted at the May 2002 Presidential elections, the political violence and the lack of free expression of the political will of the people. Similar concerns have been expressed about the local government elections in September, with registration rules for candidates changing weeks before the election making it impossible for many to stand, and widespread intimidation forcing the withdrawal of many candidates.
  - ◆ Restricted civil society space: CHRI deplores the way that laws such as the Public Order and Security Act are used to stifle freedom of speech, intimidate critics and screen the government from domestic and international scrutiny. This includes restrictions on the work of many NGOs and civil society groups.
  - ◆ Summary and extra-judicial executions, illegal arrests, and unlawful detention have been used particularly against the Opposition and vulnerable sections of society. This has created widespread fear and insecurity, when it is the duty of a government to ensure personal security and civil liberties.
  - ◆ Media restrictions: In flagrant disregard for freedom of speech, independent media has been restricted, journalists arrested and reportedly threatened with violence or death by the police if their stories are critical of the government and its policies. An example of attempts to silence independent media is the multiple arrests of local and foreign journalists.
  - ◆ Organized violence has increased in scope and number of incidents. Torture and political rape have been used to intimidate the opposition.
4. In view of all of the above, CHRI has a number of recommendations to the Commonwealth:
5. Zimbabwe should remain suspended from the councils of the Commonwealth until there is compliance with Commonwealth standards of good governance, human rights and rule of law. A specific Commonwealth human rights inquiry should be conducted in Zimbabwe prior to re-admittance.
6. CHRI calls for Zimbabwe to remain on the agenda of CMAG. CMAG should continue to closely monitor the situation and take a proactive role in promoting a restoration of democracy, rule of law and protection of human rights.
7. CHRI calls on the Commonwealth Secretariat and CMAG to continue to try to engage President Mugabe in dialogue. However, recognizing that this has previously stalled and that Commonwealth Observers found the Presidential elections unfair and recognizing the situation of starvation and political distribution of food, CHRI calls on the Secretary-General to include the leader of the Opposition, Director of the World Food Programme and civil society organizations in discussions.
8. CHRI calls on the Commonwealth to give urgent attention to the deteriorating food situation in Zimbabwe, as immediate international intervention is needed to avert further calamity.
9. CHRI urges Commonwealth countries to express grave concern about the plight of Zimbabwe's citizens in a country resolution at the 59th Session of the Commission on Human Rights in Geneva.
10. The Commonwealth must stand firm on issues of good governance, the rule of law and human rights. To ignore violations of these principles is to risk the credibility of the Commonwealth as an organization, and jeopardize the welfare of Zimbabweans. ■

# Counting Down to CHOGM 2003

*Clare Doube*

*Human Rights Advocacy Programme, CHRI*

As the months pass towards the next Commonwealth Heads of Government Meeting (CHOGM) - to be held in Abuja, Nigeria between 5-8 December 2003 - the involvement of civil society will no doubt be a debated issue. In its period of introversion over the past two years, the Commonwealth has recognized the importance of genuine interaction between the official and unofficial Commonwealths - that is, between the intergovernmental meetings and agencies (such as CHOGM and the Secretariat) and civil society. Movement towards enhancing this involvement has increased in the past two years, but there is still space for more; and CHOGM 2003 will be a perfect opportunity to see if action matches rhetoric.

Along with the meeting of the Heads of Government, Commonwealth civil society actors will be organizing and attending events, both in advance of and in parallel to CHOGM. One such event will be a Commonwealth Human Rights Forum organized by CHRI, in collaboration with other human rights NGOs. This will provide an opportunity for human rights groups to meet and discuss issues of common concern. CHRI will also be launching their biennial report, on the right to information in the Commonwealth; and a workshop will be held on this theme. More information about these events will be included on CHRI's website over the coming months.

The Commonwealth Foundation, as the key intergovernmental agency that interacts with the unofficial Commonwealth, has started organizing civil society events to be held in December. These include:

A Commonwealth Peoples' Forum will be held from 1- 7 December 2003, with the theme of Citizens and Governance. Like the civil society events that the Foundation has organized at previous CHOGMs, this Forum will provide an opportunity to showcase the work of civil society and enable networking between such groups, and provide an opportunity for cross

Commonwealth debates and linkages on development issues. It will therefore provide exhibition space, as well as including workshops, meetings and seminars.

A Commonwealth Civil Society Meeting will also be held at this time. Discussions will examine the changing environment in which civil society organisations are operating and citizen participation in governance; as well as common issues of concern such as achieving the Millennium Development Goals, youth participation, sustainable development, poverty eradication, and HIV/AIDS. The Commonwealth Civil Society Meeting will be preceded by five regional consultations, expected to be held in India, Papua New Guinea, Kenya, Gambia and Barbados. This process will then culminate in the production of recommendations for presentation to CHOGM.

Commonwealth Roundtables will also be organized by the Commonwealth Foundation. These will offer a platform for discussions involving government, civil society and private sector representatives on issues on the CHOGM agenda.

The Foundation will also organize field visits for civil society representatives from overseas to selected Nigerian civil society organizations.

Traditionally, CHOGM events have also included a cultural element. The Nigerian Ministry of Tourism and Culture is organising the cultural component of a Commonwealth Market Place to be held in Abuja, which will showcase Nigeria's cultural heritage through a series of themed markets and cultural performances.

More information about the Commonwealth Foundation events can be found at: [www.commonwealthfoundation.com](http://www.commonwealthfoundation.com)

For more information about CHRI's work relating to CHOGM, please contact Clare Doube: [clare@humanrightsinitiative.org](mailto:clare@humanrightsinitiative.org) ■

# CHRI Calendar

## CHRI New Delhi Office

December 1, 2002

Workshop on Community Policing in Bhilai, Chhattisgarh.

December 3, 2002

Legal Literacy Camp in Bilaspur, Chhattisgarh.

December 4, 2002

Workshop on Right to Information in collaboration with Action Aid in Bolangir, Orissa.

December 10, 2002

Meeting with Regional Directors of Commonwealth Youth Programme in Chandigarh.

December 10 - 15, 2002

Workshop on 'Constitution and Democracy' in Raigarh, Bilaspur and Rajnandgaon, Chhattisgarh.

December 16, 2002

Presentation for CARE capacity building officers on Constitutional Education in Durg, Chhattisgarh.

January 28 - 31, 2003

Advocacy Orientation Workshop for CHRI Staff.

February 6, 2003

Meeting on Right to Information at Gandhi Peace Foundation, New Delhi.

March 6 - 8, 2003

Workshop on Legal Awareness in Raipur & Bhilai, Chhattisgarh.

March 7, 2003

Workshop with Ex-officio Visitors to Prisons in Jabalpur, Madhya Pradesh.

March 8, 2003

Workshop on Dietary conditions of Prisoners in Jabalpur, Madhya Pradesh.

March 10, 2003

Workshop on Community Policing in Bhilai, Chhattisgarh.

March 13 - 15, 2003

Workshop on 'Participating for Good Governance' in Jabalpur, Madhya Pradesh.

March 16 - 19, 2003

Presentation on 'Human Rights and International Conventions' to Youth NGOs and Government representatives in Hyderabad, Andhra Pradesh.

## CHRI Ghana Office

February 2003

Workshop on Human Rights for Human Rights Commissions and NGOs.

Meeting of NGO groups on Prison Reform.

Quiz on the Commonwealth at the University of Ghana.



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